



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 24, 2020 at 4:00 p.m., at City Hall, 555 Walnut Street, Council Chambers, Abilene, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER

1. **Executive Session** - City Council will convene into Executive Session at 4:00 p.m.
Reconvene - City Council will reconvene into open session at 5:30 p.m.

INVOCATION

2. Mayor Pro-tem Weldon Hurt

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

3. **Proclamation:** National Good Neighbor 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 September 10, 2020 (**Shawna Atkinson**)

5. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Utilizing Cares Act Grant Funds for Abilene ISD's Distance Learning Initiative **(Mike Rains)**
6. **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)**
7. **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)**
8. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing and Take Action to Approve a Contract with Informa Princeton, LLC for Air Service Development Consulting **(Don Green)**
9. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing and Take Action to award a Restaurant Operating Agreement to Jessie L. Scifres dba Abilene Pizza Company and The Flour Shop Bakery at Abilene Regional Airport **(Don Green)**
10. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Purchase of Two Stop Trucks from Rush Truck Center for Sewage Collection **(Tim Cass)**
11. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Purchase of One Backhoe Loader for Water Distribution **(Tim Cass)**
12. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approval for a Change Order with Bontke Construction for Minter Park **(Lesli Andrews)**
13. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Water Department Street and Miscellaneous Repair Work 2019-2020 Change Order **(Greg McCaffery)**
14. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding Annual Street Services Division Materials Bid #CB-2077 **(Greg McCaffery)**
15. **Ordinance (First Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Change the Time Limits and Metered Parking Zones for Downtown Parking **(Greg McCaffery)**
16. **Ordinance (First Reading) Z-2020-10:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Sharon Riley, agent H.C. Zachry, to amend existing Planned Development (PD) District Number 32 by removing from subparagraph (f) 1 and 2 stating “no other signs shall be allowed” from Lots 25-30 and allowing all signage allowed in General Retail (GR) **(Mike Warrix)**
17. **Ordinance (First Reading) Z-2020-13:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Denise Dilliard Rister and Jerry Lynn Rister to rezone property from General Commercial (GC) to General Retail (GR) District **(Mike Warrix)**
18. **Ordinance (First Reading) CUP-2020-06:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Hit Ventures LLC, agent Cody Myers, for approval of Conditional Use Permit allowing light manufacturing and, in particular, coffee processing in a Heavy Commercial (HC) District **(Mike Warrix)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

19. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve an Agreement with Ceridian HCM, Inc. to provide a Human Capital Management (HCM) System **(Brenda Alexander)**
20. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Modifying and Extending the Declaration of Local Disaster Issued August 27, 2020 **(Robert Hanna)**
21. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Letter Sent to the Governor of Texas Regarding Support of Local Businesses and Local Control of COVID-19 Response **(Robert Hanna)**

EXECUTIVE SESSION

22. **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. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No. P-8277-83-CV, In the 83rd Judicial District Court, Pecos County, Texas; filed September 11, 2020
 13. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
 14. Governor's Executive Orders - COVID-19

B. 551.072 (Deliberations about Real Property)

1. Clyde Water
2. 200 Block of Walnut Street

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

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

E. 551.076 (Deliberations about Security Devices)

F. 551.087 (Business Prospect/Economic Development)

1. Abilene Convention Center Hotel Project

RECONVENE

REGULAR AGENDA

23. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the Municipal Court Judge
24. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Attorney
25. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Resolution Approving an Agreement with Project ERG-9 **(Misty Mayo)**

PUBLIC COMMENTS

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

ADJOURNMENT

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

CERTIFICATION

I hereby certify the above AMENDED meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 21st day of September, 2020, at 1:15 p.m.

Shawna Atkinson, TRMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

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 September 10, 2020 (*Shawna Atkinson*)

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on September 10, 2020

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 09-10-2020 Minutes - Regular - Morning

CITY COUNCIL MEETING
September 10, 2020 at 8:30 a.m.

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

The City Council of the City of Abilene, Texas met in Regular Session on September 10, 2020, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Anthony Williams was present and presiding with Mayor Pro-tem Weldon Hurt, Deputy Mayor Pro-tem Donna Albus and Councilmembers Shane Price, Jack Rentz, Kyle McAlister and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

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

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Employee Service Awards
 - Patricia Perez – 30 Years – COACH Clinic
- Proclamations
 - Lissencephaly Awareness Day Proclamation was accepted by Alysha Trego and her son Josiah.

CONSENT AGENDA

The Consent Agenda consisted of items 4-14. No items were pulled for individual consideration.

Items 5 and 6 were pulled from consideration prior to the meeting.

Councilmember Price moved to approve the consent agenda, now consisting of items 4 and 7-14. 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

4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on August 27, 2020
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
[ASSIGNED RESOLUTION NO. 168-2020]
8. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Purchase Three (3) Support Vehicles for CityLink
[ASSIGNED RESOLUTION NO. 169-2020]
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
[ASSIGNED RESOLUTION NO. 170-2020]

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
[ASSIGNED RESOLUTION NO. 171-2020]
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
[ASSIGNED RESOLUTION NO. 172-2020]
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)
[ASSIGNED RESOLUTION NO. 173-2020]
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
[ASSIGNED RESOLUTION NO. 174-2020]
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
[ASSIGNED RESOLUTION NO. 175-2020]

ITEMS PULLED FROM CONSIDERATION

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
[NOT CONSIDERED]
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
[NOT CONSIDERED]

REGULAR AGENDA

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

Greg McCaffery, Director of Public Works, presented the item. This was a request from Dyess Air Force Base, as there have been many accidents at that intersection, which have caused damage to their fence. This area does not warrant a traffic signal, so staff is recommending brush clearing along Texas Avenue, and an illuminated stop sign at the intersection. The Public Works Department has enough money in their budget for the brush clearing, but not the stop sign. It is the consensus of Council to move forward with both the brush clearing and the illuminated stop sign.

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

This item was for presentation only. No votes or action were taken.

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

Greg McCaffery, Director of Public Works, introduced Nader Ayub with Iteris to present this item. Mr. Ayub stated that the goal of this bond project was to enhance the safety and efficiency of the traffic signal operations in the city, as well as to be more proactive to citizens and staff. They have implemented new technology that links all the traffic signals together in one mainframe, and is able to detect problems with the signals before a citizen makes a complaint. This has also reduced traffic time, making it more efficient for drivers.

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

- David Swart - stated his enthusiasm for this project, but that he did wonder why the signal at Ross Street changes for no reason sometimes.

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

This item was for presentation only. No votes or action were taken.

PUBLIC COMMENTS

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

- David Swart – wanted to remind everyone that Friday is 9/11 and wanted to say how much he appreciates veterans and service members. Mr. Swart also stated that staff should create an option when reporting street lights to have it directed to AEP on the SeeClickFix app.

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

EXECUTIVE SESSION

Mayor Williams recessed into Executive Session at 9:24 a.m. pursuant to the following of the Open Meetings Act, with the following issues discussed during this session, as listed on the agenda and authorized by the noted Texas Government Code Section:

- 17. A. 551.071 (Consultation with Attorney)
 - 1. Governor's Executive Orders COVID-19
 - 2. Claim of Tommy Milliorn
- 17. D 557-074 (Personnel Matters)
 - 1. Personnel Matters – City Manager (also agenda item #25)
 - 2. Personnel Matters – City Secretary (also agenda item #27)
- 17. F. 551-087 (Business Prospect/Economic Development)
 - 1. Abilene Convention Center Hotel Development Project
 - 2. Economic Development Agreement with KKP Investments, LLC (also agenda item #22)
 - 3. DCOA Project Grasshopper (also agenda item #20)
 - 4. DCOA Project ERG-10 (also agenda item #21)

The Executive Session ended at 11:15 a.m. and reconvened to Open Session. Mayor Williams reported no votes or action were taken in Executive Session. Councilmember Craver left the meeting at the conclusion of Executive Session.

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
[NOT CONSIDERED]
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)
[NOT CONSIDERED]
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
[ASSIGNED RESOLUTION NO. 178-2020]

Earlier in the meeting, under Section 551.087 (Business Prospect/Economic Development) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 9:24 a.m. and ended at 11:15 a.m. No votes or actions were taken at that time.

Misty Mayo, CEO of the Development Corporation of Abilene, presented the item. Adoption of the item would approve an agreement with Quality Implement Company for Project Grasshopper.

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

- Samuel Garcia – wanted to congratulate the DCOA and Quality Implements for investing in Abilene. Mr. Garcia is in favor of this item.

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

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

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

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
[ASSIGNED RESOLUTION NO. 179-2020]

Earlier in the meeting, under Section 551.087 (Business Prospect/Economic Development) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 9:24 a.m. and ended at 11:15 a.m. No votes or actions were taken at that time.

Misty Mayo, CEO of the Development Corporation of Abilene, presented the item. Adoption of the item would approve an agreement with BWJ Metalworks for Project ERG-10.

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

Councilmember McAlister moved to approve the item as presented. 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

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

[ASSIGNED RESOLUTION NO. 180-2020]

Robert Hanna, City Manager, presented the item. Adoption of the item would approve 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.

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

Councilmember Price moved to approve the item as presented. 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

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

[ASSIGNED RESOLUTION NO. 181-2020]

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

Councilmember McAlister moved to nominate the following:

Place 1	Robert T. Herrera
Place 2	John W. (Buzz) Fullen
Place 3	Jeffrey Snyder
Place 4	Robert S. Hauck

Councilmember Rentz seconded the motion; motion carried

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

NAYS (0): None

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
[ASSIGNED RESOLUTION NO. 182-2020]

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

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

Board	Term End Date
<i>Keep Abilene Beautiful</i>	
Ifeoluwa "Tobi" Popoola [Reappointment]	September 2023
Chase Robertson [New]	September 2023

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

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

Earlier in the meeting, under Section 551.074 (Personnel Matters) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 9:24 a.m. and ended at 11:15 a.m. No votes or actions were taken at that time.

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

Deputy Mayor Pro-tem Albus moved to approve the evaluation and salary adjustment of the City Manager. 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

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

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

Earlier in the meeting, under Section 551.074 (Personnel Matters) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 9:24 a.m. and ended at 11:15 a.m. No votes or actions were taken at that time.

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

Councilmember Price moved to approve the evaluation and salary adjustment of the City Secretary. 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

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
[ASSIGNED RESOLUTION NO. 183-2020]

Robert Hanna, City Manager, presented the item. Adoption of the item would adopt a resolution in Support of Local Businesses and Local Control of COVID-19 Response to the Governor of Texas. Mayor Williams put together a committee of himself, Mayor Pro-tem Hurt and Councilmember Price to work with City staff to craft this document and review it before being sent.

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

- Samuel Garcia – stated that the reason for the lack of decisions about COVID-19 in America is because the President knew about the severity of the virus and didn't do anything. Abilene has had forty people die and it is because the President didn't act. Governor Abbott is trying to do the best he can, but the problem is no one is on the same page. The Council is doing the right thing by fighting for the City. Mr. Garcia thinks the President is responsible.

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

Mayor Pro-tem Hurt moved to have City Administration format a letter to send to the Governor of Texas in support of local businesses and local control of COVID-19 response, copied to Legislators, that the committee notated above can review before being sent, and that will be presented at the next City Council meeting. Councilmember Price seconded the motion; motion carried.

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

ADJOURNMENT

There being no further business, the meeting adjourned at 11:51 a.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Mike Rains, Finance Director

SUBJECT: 5. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Utilizing Cares Act Grant Funds for Abilene ISD's Distance Learning Initiative (*Mike Rains*)

GENERAL INFORMATION

Abilene ISD has requested the City utilize Cares Act grant funds the City has been allocated for a portion of the cost to fund distance learning. The total cost of the program is \$747,000, Abilene ISD will utilize state funds for \$373,500 or half of the cost. They are requesting the City fund \$186,750 from Cares Act funds.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Funding would come from the City's Cares Act grant.

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution Utilizing Cares Act Grant Funds for Abilene ISD
2. Powerpoint - Resolution Utilizing Cares Act Grant Funds for Abilene ISD

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS UTILIZING CARES ACT GRANT FUNDS FOR ABILENE ISD.

WHEREAS, the City of Abilene has been awarded Cares Act grant funds from the State of Texas;
and

WHEREAS, Abilene ISD has requested funds to provide distance learning for students; and

WHEREAS, the total cost of the program is \$747,000 of which the State will fund \$373,500; and

WHEREAS, Abilene ISD is requesting the City to fund \$186,750 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 Abilene ISD in the amount of \$186,750.

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

ADOPTED this 24th day of September, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

Resolution Utilizing Cares Act Grant Funds for Abilene ISD



Resolution Utilizing Cares Act Grant Funds for Abilene ISD

- Abilene ISD has requested the City fund a portion of their distance learning project with the City's allocation of Cares Act grant funds.
- The total project cost is \$747,000 with the State funding \$373,500. Abilene ISD is requesting \$186,750 from the City.
- The program is allowable under the Cares Act as a distance learning initiative.



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

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

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 24th day of September 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

CONTRACT DOCUMENTS

FOR

Abilene Regional Airport

Aircraft Rescue and Fire Fighting Station Construction

CB-2065



September 24, 2020

Anthony Williams, Mayor

City Council

Shane Price

Kyle McAlister

Jack Rentz

Donna Albus

Weldon Hurt

Travis Craver

Robert Hanna, City Manager

PREPARED BY:

Click or tap here to enter text.

CITY OF ABILENE, TEXAS

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SCOPE OF PROJECT

Construct the new Aircraft Rescue and Fire Fighting Station at Abilene Regional Airport in accordance with all Plans and Specifications included in Invitation for Bids (CB-2065) and Section 00 80 00.

DEFINITIONS

Definitions applicable to these Contract Documents are found in the Definition of Terms (00 80 10).

SPECIAL CONDITIONS

FAA General Provisions and FAA Special Provisions applicable to these Contract Documents are found in Division 00 - Procurement and Contracting Requirements. The Construction Contract applicable to this project is found in these Contract Documents.

SUPPLEMENTARY CONDITIONS

Supplementary Conditions applicable to these Contract Documents are found in Division 00 73 00.

GENERAL REQUIREMENTS

General Requirements applicable to these Contract Documents are found in Division 01 of the referenced Specifications Group within the CB-2065 Bid Document, with the exception of the added section below:

35. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

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 the Contract Documents Procurement Group Division 00 (attached) and Specifications Group Divisions 01 - 33 through 33 (referenced). Specifications and Plans control in the event of a conflict.

In consideration of this Work, the City will pay the Contractor the sum of **\$5,300,000.00**.

2. Timely Work. The Contractor must begin and fully complete Work in the days stated in the Notice to Proceed. The time allows for normal delays associated with weather conditions, crew coordination, etc. Time is of the essence, and liquidated damages as set forth in the Division 00 74 00 General Requirements and Covenants (Paragraph 16) apply for late Work.

3. Payment. If Performance and Payment Bonds are required, the City will pay Contractor according to the Division 00 74 00 General Requirements (Paragraph 22). 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:
Collier Construction

Business Address:
2202 Ave E

Lubbock, TX 79404

Signature

Business Phone No.
806-741-1982

Name – Typed or Printed
Scott Collier

Federal Tax I.D. # 45-5492854

ATTEST: (If Corporation)

Title – Typed or Printed
Owner

Corporate Secretary's Signature

Corporate Seal
(If none, write "None")

CITY OF ABILENE

Robert Hanna, City Manager

ATTEST:

APPROVED:

Shawna Atkinson, City Secretary

Stanley Smith, City Attorney

Seal

STATUTORY PERFORMANCE BOND

STATE OF TEXAS	§	STATUTORY PERFORMANCE BOND
	§	PURSUANT TO TEX. GOV'T CODE ANN.
	§	Section 2253.021 (Vernon 1994)
COUNTY OF TAYLOR	§	

Click or tap here to enter text. as Principal(s) and Click or tap here to enter text. as Surety(s) are bound to the City of Abilene, Texas, ("Obligee") in the sum of \$Click or tap here to enter text. lawful money of the United States. By this document, they bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, to pay this amount.

On Click or tap here to enter text., 20Click or tap here to enter text., the Principal entered into a written contract with the Obligee for Click or tap here to enter text. which contract is incorporated by reference for all purposes. The Principal is required by law to execute a bond in the contract amount before beginning work.

If the Principal faithfully performs the work according to the Contract Documents, including any performance required of the Principal for a period of one year after the date of final acceptance of the work, under guarantees furnished the Obligee, then this obligation is void; otherwise, it remains in full force.

This bond is executed under the provisions of TEX. GOV'T CODE ANN. § 2253.001, *et. seq.* (Vernon 1994), as amended, and all liabilities on this bond shall be determined according to the provisions of that Code.

Surety, for value received, stipulates that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it waives notice of any such change, extension of time, alteration, or addition to the terms of the contract, or to the work performed thereunder.

We, Principal(s) and Surety(s), have signed and sealed this instrument:

, 20

(Principal)

By: _____
(Signature)

(Name - typed)

(Title – typed)

The undersigned surety company represents that it is authorized to do business in Texas, and designates Click or tap here to enter text. its agent in Taylor County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. Surety consents to venue in Taylor County, Texas.

, 20

_____ (Surety)	_____ (Signature of Attorney-in-Fact)
By: _____ (Signature)	_____ (Typed Name of Attorney-in-Fact)

Surety's Seal

NOTE: If signed by an officer of the Surety Company, the Surety Company must submit a certified extract from the by-laws showing that this person has authority to sign the bond. If signed by an Attorney-in-Fact, a copy of the Power of Attorney must be attached to this bond.

(Note: Date of Bonds must not be before Contract date)

STATUTORY PAYMENT BOND

STATE OF TEXAS	§	STATUTORY PAYMENT BOND
	§	PURSUANT TO TEX. GOV'T CODE ANN.
	§	Section 2253.021 (Vernon 1994)
COUNTY OF TAYLOR	§	

Click or tap here to enter text. as Principal(s), and Click or tap here to enter text. as Surety(s) are bound to the City of Abilene, Texas, ("Obligee") in the sum of \$Click or tap here to enter text. lawful money of the United States. By this document, they bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, to pay this amount.

On the Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., the Principal entered into a written contract with the Obligee for Click or tap here to enter text. which contract is incorporated by reference for all purposes. The Principal is required by law to execute a bond in the contract amount before beginning work.

If the Principal pays all claimants supplying labor and material to Principal or a subcontractor in the performance of the work provided for in the contract, then this obligation is void; otherwise, it remains in full force.

This bond is executed under the provisions of TEX. GOV'T CODE ANN. § 2253.001, *et. seq.* (Vernon 1994), as amended, and all liabilities on this bond will be determined according to the provisions of that Code.

Surety, for value received, stipulates that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract, or to the work performed thereunder.

We, Principal(s) and Surety(s), have signed and sealed this instrument:

, 20

(Principal)

By:

(Signature)

(Name – typed)

(Title – typed)

The undersigned surety company represents that it is authorized to do business in Texas, and designates Click or tap here to enter text. its agent in Taylor County to whom any requisite

notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. Surety consents to venue in Taylor County, Texas.

, 20

(Surety)

(Signature of Attorney-in-Fact)

By: _____
(Signature)

(Typed Name of Attorney-in-Fact)

Surety's Seal

NOTE: If signed by an officer of the Surety Company, the Surety Company must submit a certified extract from the by-laws showing that this person has authority to sign the bond. If signed by an Attorney-in-Fact, a copy of the Power of Attorney must be attached to this bond.

(Note: Date of Bonds must not be before Contract date)

MAINTENANCE BOND

STATE OF TEXAS	§	MAINTENANCE BOND PERSUANT TO CITY
	§	OF ABILENE LAND DEVELOPMENT CODE
	§	3.1.8.6
COUNTY OF TAYLOR	§	

That Click or tap here to enter text., hereinafter called “Principal”, and Click or tap here to enter text., a corporation organized and existing under the laws of the State of Click or tap here to enter text. and licensed to transact business in the State of Texas, hereinafter called “Surety”, are held firmly bound unto the CITY OF ABILENE, TEXAS, a home rule municipal corporation hereinafter called “Beneficiary”, in the amount of Click or tap here to enter text. DOLLARS (\$Click or tap here to enter text.), in lawful money of the United States, to be paid in Abilene, Taylor County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors and assigns, jointly and severally, and firmly by these presents. This bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price, but in no event shall a change order or supplemental agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain written Contract with the Beneficiary, dated the Click or tap here to enter text. day of Click or tap here to enter text., Click or tap here to enter text., A.D. which is made a part hereof by reference for the construction of certain public improvements that are generally described as follows: Click or tap here to enter text.

NOW, THEREFORE, if Principal will maintain and keep in good repair the work herein contracted to be done for a period of one (1) year from the date of final acceptance and do and perform all necessary work and repair any defective condition, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by Principal; then this obligation shall be void, otherwise it shall remain in full force and effect; and in case Principal shall fail to do so it is agreed that the City may do such work and supply such materials and charge the same against Principal and Surety on this obligation.

PROVIDED, FURTHER, that if any legal action be filed on this Bond, exclusive venue shall lie in Taylor County, Texas.

PROVIDED FURTHER, that Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the resident agent in Taylor County to whom all requisite notice may be delivered and on who service of process may be had in matters arising out of this suretyship.

We, Principal(s) and Surety(s), have signed and sealed this instrument:

, 20

(Principal)

By:

(Signature)

(Name – typed)

(Title – typed)

The undersigned surety company represents that it is authorized to do business in Texas, and designates Click or tap here to enter text. its agent in Taylor County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. Surety consents to venue in Taylor County, Texas.

, 20

(Surety)

(Signature of Attorney-in-Fact)

By:

(Signature)

(Typed Name of Attorney-in-Fact)

Surety's Seal

NOTE: If signed by an officer of the Surety Company, the Surety Company must submit a certified extract from the by-laws showing that this person has authority to sign the bond. If signed by an Attorney-in-Fact, a copy of the Power of Attorney must be attached to this bond.

(Note: Date of Bonds must not be before Contract date)

NOTICE OF AWARD

TO:

DATE:

PROJECT DESCRIPTION: Click or tap here to enter text.

The City of Abilene has considered your Bid response to the Invitation for Bids dated Click or tap here to enter text. day of Click or tap here to enter text., 20Click or tap here to enter text., for the project listed above.

The City of Abilene accepts your Bid in the amount of Click or tap here to enter text..

The Instructions to Bidders require you to execute the Contract and furnish applicable bonds and insurance documents within 15 days from the date of this Notice of Award. If you fail to timely fulfill these obligations, the City is entitled to regard your failure as a forfeiture of any rights which might arise by the City's accepting your Bid.

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

ACCEPTANCE OF NOTICE

Date: _____
Contractor acknowledges receiving
the Notice of Award.

By: _____
(Signature)

Name: _____
(Typed or Printed)

Title: _____

Federal Tax ID #: _____

THE CITY OF ABILENE, TEXAS

By: _____
(Signature)

Name: _____
(Typed or Printed)

Title: _____

NOTICE TO PROCEED

TO:

DATE:

PROJECT DESCRIPTION: Click or tap here to enter text.

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

You must complete all work on or before Click or tap here to enter text., 20Click or tap here to enter text..

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

ACCEPTANCE OF NOTICE

Date: _____

Contractor acknowledges receiving
the Notice to Proceed.

By: _____
(Signature)

Title: _____

Federal Tax ID #: _____

THE CITY OF ABILENE, TEXAS

By: _____
(Signature)

Name: _____
(Typed or Printed)

Title: _____

CHANGE ORDER



CITY OF ABILENE

CHANGE ORDER NUMBER: Click or tap here to enter text.

1. CONTRACTOR: Click or tap here to enter text.

2. Change Order Work Limits:

Sta. NA

to Sta. NA

3. Type of Change: Click or tap here to enter text.

(Major/Minor)

4. Reasons: Click or tap here to enter text.

5. Describe the work being revised:

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).

Project:

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:

Original contract price

Existing contract price: *

Click or tap here to enter text.

Amount added or subtracted by this CO:

* Includes previous COs

CITY OF ABILENE

Director

Date

City Attorney

Date

City Manager

Date

AFFIDAVIT OF BILLS PAID



AFFIDAVIT OF BILLS PAID

Contractor: Click or tap here to enter text.

Project Number: Click or tap here to enter text.

Project Description: Click or tap here to enter text.

This is to certify that the above project was accepted on Click or tap here to enter text. and that all bills for labor, materials and incidentals incurred on this Contract have been paid in full, discharged, or waived and that I know of no claims pending. I am also aware that the City may request additional evidence to its satisfaction. I am also aware that the City may, after notifying the Contractor, either pay unpaid bills or withhold from the Contractor's compensation a reasonable sum of money sufficient to pay all lawful claims until the Contractor furnishes satisfactory evidence that all liabilities have been discharged.

THE CONTRACTOR

Company Name

Notary Public, State of Texas

Company Authorized Signature

Date

Date

(Seal)

Printed Name

RECOMMENDED APPROVAL

City Engineer

Date

TECHNICAL SPECIFICATIONS AND PLANS

Reference Specifications and Plans for CB-2065 Specifications Group Divisions 01 – 33.

**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 than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Contractor shall notify the City 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 Employer's Liability	Statutory \$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
and property damage
- . Owned/Leased Autos (per occurrence)
- . 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 by 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

Day	Contract Amount	\$ Per
75.00	Under \$5,000.00	50.00
	\$5,000.00 to \$14,999.99	
	\$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, fire/rescue 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:

<u>Owner</u>	<u>Person to Contact (Phone Number)</u>
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 kg) 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 underweighing (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 ($\bar{X}$) 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 subplot 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 ($\bar{X}$) for all subplot test values within the lot by using the following formula:

$$\bar{X} = (x_1 + x_2 + x_3 + \dots + x_n) / n$$

Where: $\bar{X}$ = Sample average of all subplot test values

within a lot $x_1, x_2, \dots, x_n$ = Individual subplot test values
 n = Number of subplot test values

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

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

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

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

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

$(x_n - X)$ n = Number of subplot test values

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

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

Where: L = specification lower tolerance limit

Estimate the percentage of material within limits (PWL) by entering Table 1 with QL , using the column appropriate to the total number (n) of measurements. If the value of QL 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 QL and QU by use of the following formulas:

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

and

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

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 QL and QU , using the column appropriate to the total number (n) of measurements, and determining the percent of material above PL and percent of material below PU for each tolerance limit. If the values of QL fall between values shown on the table, use the next higher value of PL or PU . Determine the PWL by use of the following formula:

$$PWL = (PU + PL) - 100$$

Where: PL = percent within lower specification

limit PU = 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. $X = (x_1 + x_2 + x_3 + \dots + x_n)$

/ 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 QL 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 QL= 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. $X = (x_1 + x_2 + x_3 + \dots + x_n) / n$

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

$$X = 3.57\%$$

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 $(\text{measurement} - \text{average}) / (\text{standard deviation})$ 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 $(\text{average} - \text{measurement}) / (\text{standard deviation})$ 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 $(97.95 + 1.463 \times 1.15) = 99.63\%$

OR

less than $(97.95 - 1.463 \times 1.15) = 96.27\%$.

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 (PL and PU)	Negative Values of Q (QL and QU)							
	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 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 as 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 (29 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

ARFF Station Construction Contract Award to Collier Construction



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.



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

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 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 discussed 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. CHANGE ORDER 1 (Collier)
3. 200814_ARFF VE Spreadsheet_FINAL
4. Collier Contract Change Order 1 Presentation (9-10-20)

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 24th day of September 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

CHANGE ORDER



CITY OF ABILENE CHANGE ORDER NUMBER: 01

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).

Project: ARFF Station Construction

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



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



	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)

Change Order 1 to the Collier Construction Contract



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.



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

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 Approve a Contract with Informa Princeton, LLC for Air Service Development Consulting (Don Green)

GENERAL INFORMATION

The City contracted with UMBi Princeton in 2017 after conducting Request for Qualifications CB-1765. The term of the contract expires September 30, 2020, so Airport staff requests a new contract with this firm, now named Informa Princeton, LLC for a one-year term with four one-year options.

Informa has provided excellent services under the current contract, including essential assistance in attracting the new SkyWest/United Express service to Houston George Bush Intercontinental Airport beginning October 21, 2020.

Under the new contract, Informa will continue to provide data and consulting services to help airport staff with air service retention and recruiting efforts.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This contract is funded by the Airport Marketing and Development contract with development Corporation of Abilene.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board approved its recommendation at its September 9, 2020 meeting.

ATTACHMENTS:

1. 2020 Resolution Informa Princeton LLC Air Service Consultant Contract
2. Informa Princeton LLC 09-2020
3. Informa Contract Award Presentation (9-24-20)

RESOLUTION NO _____

**A RESOLUTION OF THE CITY OF ABILENE, TEXAS APPROVING A PROFESSIONAL SERVICES
CONTRACT WITH INFORMA PRINCETON, LLC FOR AIR SERVICE DEVELOPMENT CONSULTANT**

WHEREAS, City of Abilene and Abilene Regional Airport must continually look at opportunities for new and improved air service and retaining current air service; and

WHEREAS, the City of Abilene conducted a request for qualifications for Air Service Development Consultant through CB-1765 in 2017; and

WHEREAS, Council awarded a contract to UBMi Princeton, LLC (now Informa Princeton, LLC) with an initial term of one year with two one-year options to conduct activities related to recruiting new airline service; and

WHEREAS, Informa assisted in attracting new SkyWest/United Express service to Houston George Bush Intercontinental Airport starting October 21, 2020; and

WHEREAS, this new contract will include continued air service development and retention efforts for one year with four one-year mutually agreeable options; and

WHEREAS, the Airport Development Board approved its recommendation for this contract on September 9, 2020.

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

PART 1: That City Council approves this award in the amount of Sixty-One Thousand Two Hundred Dollars and No Cents (\$61,200.00) per year to Informa Princeton, LLC, with an initial one-year term and up to four additional one-year options to extend the initial term.

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

ADOPTED this 24th Day of September, 2020

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT (Not Architect or Engineer)

This contract, dated the 1st day of October, 2020, is between the City of Abilene, a home rule municipal corporation of the State of Texas (“City”), and Informa Princeton, LLC (“Professional”).

The City is engaged in air service attraction, retention, consultation and desires to engage the services of Professional, as an independent contractor and not as an employee, to assist in the project and to render his or her services on the terms and conditions provided in this Contract.

The Professional is a[n] qualified consultant properly licensed/certified to practice in the State of Texas. Professional desires to render professional services as further described in Attachment A to the City on the terms and conditions provided in this Contract.

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

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

I. TERM

In consideration of the compensation stated in Paragraph II and further described in Attachment B., the Professional must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Professional must complete all services by September 30, 2021. Contract may extend to four (4) mutually agreeable one-year options.

II. PAYMENT

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

III. ASSIGNMENT

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

IV. STATUS OF PROFESSIONAL

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

V. AMENDMENT OR MODIFICATION

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

VI. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of Documents and Materials is according to Attachment C.

VII. NONDISCLOSURE

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

VIII. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

Professional must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Professional’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 Professional or Professional’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 Professional.

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

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

IX. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

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

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

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

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

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

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

C. TYPES AND AMOUNTS OF INSURANCE

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

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

- ___ 4. Professional Liability \$500,000 combined single limit
(per occurrence)
- ___ 5. See Addendum for Special
Coverages and/or revisions
- _X_ 6. No Insurance Required

X. VENUE, CHOICE OF LAW AND INTERPRETATION

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

XI. TERMINATION

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

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

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

XII. PROJECT REPRESENTATION

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

XIII. NOTICE

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

City – ATTN: **Don Green, A.A.E**
 2933 Airport Blvd., Ste 200
 Abilene, TX 79602

Professional - ATTN: **Martin Kammerman**
 6651 Clearbrook Dr.
 Nashville, TN 37205

XIV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XV. NO INDEBTEDNESS

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

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

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

XVI. EQUAL EMPLOYMENT OPPORTUNITY

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

XVII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XVIII. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

XIX. SALES TAX

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

XX. LEGAL CONSTRUCTION

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

XXI. 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.

XXII. SECTIONS AND OTHER HEADINGS

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

XXIII. COUNTERPARTS

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

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

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

CITY OF ABILENE

PROFESSIONAL

By: Robert Hanna

By: Martin Kammerman

Title: City Manager

Title: Director, Air Service Strategy/Dev.

Address: 6651 Clearbrook Dr Nashville. YX
37205

Phone Number: 773-808-3534

Federal Tax ID#: 90-0529208

ATTEST:

ATTEST: (if corporation)

City Secretary

Corporation's Secretary

APPROVED:

Corporate Seal (if available)

By: _____
City Attorney

ATTACHMENT A

Scope of Services

Task 1: To monitor air carrier industry and related factors to airport and City staff that could impact ABI air service presently or in the future. Perform duties included in the monthly retainer.

1. Prepare, coordinate and attend airline headquarter meetings (2 per year)
2. Prepare, coordinate and attend airline industry conference meetings (8 per year)
3. Prepare and present a Leakage Study for full year 2019 (or other period as requested by ABI)
4. Plan, prepare, present air service update in a community visit with identified airport stakeholders.
5. On-Call ASD Consulting (regular calls with Consultant, and data support
6. Any other tasks as assigned by airport staff at an additional negotiated fee.

All prices are in \$US. Expenses for travel, conferences, and any additional materials and services in order to successfully complete Task 1.

This agreement has two one-year extension options that may be exercised upon agreement by both parties at a fee negotiated prior to the execution of the option.

ATTACHMENT B

PAYMENT SCHEDULE

PARTIES TO INITIAL OPTION SELECTED

OPTION 1 Click or tap here to enter text.

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

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

OPTION 2 ____

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

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

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

OPTION 3 X

Payment is a fixed fee amount of \$61,200.00 plus other expenses allowed under Attachment A payable per equal month installments of \$5,100.00 upon completion of the work and written acceptance by City's Project Representative.

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

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

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

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

(Option 2) ____

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

ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

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

a. Definitions

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

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

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

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

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

- f. The Professional shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Professional shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Professional knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Professional shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Professional shall contractually require each person with whom it contracts to provide services on a project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Professional, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;
 - (3) provide the Professional, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Professional:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project;

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

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

ATTACHMENT E
NOTICE TO PROCEED

Click or tap here to enter text.

ATTACHMENT F
CHANGE IN SCOPE OF SERVICES

Click or tap here to enter text.

Informa Princeton LLC Contract Award



Informa Princeton LLC Contract Award

- The City conducted a Request For Qualifications (RFQ), CB-1765 in 2017, for an Air Service Development Consultant and UBMi Princeton was selected.
- The term of this contract September 30th and a new contract with this firm, now named Informa Princeton, LLC is requested.
- Informa was instrumental in the Airport attracting the new SkyWest/United Express service to Houston George Bush Intercontinental Airport beginning October 21st.
- Under the new contract, Informa will continue assisting in air service development and retention efforts.



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

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 award a Restaurant Operating Agreement to Jessie L. Scifres dba Abilene Pizza Company and The Flour Shop Bakery at Abilene Regional Airport *(Don Green)*

GENERAL INFORMATION

The City conducted a Request for Proposals (CB-2051) for a restaurant to operate at Abilene Regional Airport. One proposal was received from Abilene Pizza Company and The Flour Shop.

Airport staff has met with the owner, Jessie L. Scifres, to discuss this proposal and the challenges of opening a restaurant, especially during reduced passenger traffic due to COVID-19. Mr. Scifres understands these challenges and remains steadfast in his ability to successfully operate the restaurant.

The agreement has a primary term of two years with no revenue to the City in Year 1 and a negotiable rent of up to \$500 per month in Year 2. There are three one-year extension options.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board approved its recommendation at its September 9, 2020 meeting.

ATTACHMENTS:

1. Airport Restaurant Resolution 9-24-20
2. Airport Restaurant Contract (signed)
3. Restaurant Lease Exhibit A
4. Restaurant Lease EXHIBIT B
5. The Flour Shop Lease Agreement Presentation (9-24-20)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AND OPERATING
AGREEMENT WITH JESSIE L. SCIFRES dba ABILENE PIZZA COMPANY AND THE
FLOUR SHOP**

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

WHEREAS, the City conducted a Request for Proposals (CB-2051) for a restaurant to operate at Abilene Regional Airport's Terminal;

WHEREAS, one proposal was received from Jessie L. Scifres dba Abilene Pizza Company and The Flour Shop; and

WHEREAS, The agreement has a primary term of two years with no revenue to the City in Year 1 and a negotiable rent of up to \$500 per month in Year 2. There are three one-year extension options; and

WHEREAS, the Airport Development Board approved its recommendation at its September 9, 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 lease and operating agreement with Jessie L. Scifres dba Abilene Pizza Company and The Flour Shop.
2. That this Resolution is effective immediately upon Council approval.

ADOPTED this 24th day of September 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

RESTAURANT SERVICES OPERATING AGREEMENT

THIS AGREEMENT, by and between CITY OF ABILENE, TEXAS, a municipal corporation principally situated in Taylor County, ("City") and, Jessie L. Scifres dba Abilene Pizza Company and The Flour Shop Bakery ("Company") a corporation existing under the laws of the State of TEXAS whose address is listed in Section 17.2.

W I T N E S S E T H:

WHEREAS, City controls, owns, operates, and maintains an airport in the City of Abilene, Taylor County, Texas known as the Abilene Regional Airport ("Airport"), with the power to grant rights and privileges with respect thereto, and

WHEREAS, Company is engaged in the business of operating Food and Beverage facilities as a service to the traveling public, and

WHEREAS, proposals were received for the operation of a food and beverage concession at the Airport pursuant to a Request for Proposals and the specifications contained therein, and Company was the company selected by this process and determined to be qualified to operate the concession, and

WHEREAS, City, on the terms and conditions herein contained, is willing to grant to Company the non-exclusive right to operate the food and beverage concession at the Airport Terminal;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, City and Company agree as follows:

SECTION 1 DEFINITIONS

Section 1.1 Definitions. The words and phrases defined in Section 1 shall have the following meanings when used elsewhere in this Agreement.

- (a) **Agreement** means this Food and Beverage Concession Agreement between City and Company, as the same may be amended or supplemented from time to time pursuant to the terms hereof, which shall include the City's Request for Proposal and Company's response to said Request for Proposal, which is attached hereto and made an integral part hereof.
- (b) **Airport** means the Abilene Regional Airport.
- (c) **City** means the City of Abilene, a municipal corporation.

- (d) **City Property** means finishings, fixtures, furnishings and equipment acquired, installed and owned by the City, as listed in Exhibit III.
- (e) **Commencement Date** shall mean the first day of the Primary Term of this Agreement, which shall be the date of execution by the City Manager of the City of Abilene, following execution by company, and shall be the effective date of the agreement.
- (f) **DBE** means Disadvantaged Business Enterprise as defined in 49 C.F.R. Part 23, subpart F, and shall include small business concerns which are owned and controlled by socially and economically disadvantaged individuals which shall include Small Business Administration ("SBA"), Section 8(a) certificate holders.
- (g) **Director** shall mean the Director of Transportation Services (Director) of the City, or the designee of the Director whenever the Director is unable to act in such capacity.
- (h) **DOT** means the United States Department of Transportation or any department of agency succeeding to its jurisdiction and function.
- (i) **EPA** means the United States Environmental Protection Agency and any federal, state or local agency, or governmental entity, succeeding to, or being delegated with, its jurisdiction, functions, or responsibilities.
- (j) **FAA** means the Federal Aviation Administration of the United States Department of Transportation, or any department or agency succeeding to its jurisdiction or function.
- (k) **FAR** means Federal Aviation Regulations and shall include, but not be limited to, all regulations, policies, statements and directives promulgated or issued by the FAA.
- (l) **Finishes** means those improvements to the Leased Premises installed by Company, including counters, partitions, carpeting, wall coverings, counters, heating, plumbing, ventilation, and air conditioning duct work and controls, ceilings, lighting and power fixtures, wiring, accessories and parts necessary to bring power to the Leased Premises.
- (m) **Fiscal Year** shall mean City's fiscal year meaning the twelve (12) month period commencing October 1 and extending to September 30 of the following year.
- (n) **Governmental Requirements** means all federal, state and local laws, rules, regulations, security plans, and rulings, including all amendments, now in effect or hereinafter enacted.

- (o) **Expendables** shall mean commodities, supplies, glassware, dishes, utensils and consumable items.
- (p) **Leased Premises** means the area or areas designated on Exhibit "A" attached hereto as the place or places within the Airport where concessions are located.
- (q) **Leasehold Improvements** means all improvements and equipment which are affixed to the Leased Premises and which cannot be removed without material damage to the Leased Premises.
- (r) **Minimum Annual Guarantee** if applicable, means the annual minimum guarantee payable monthly by Company to City subject to each and every term and condition contained in this Concession Agreement. In the event of a partial month, the monthly portion of the Minimum Annual Guarantee shall be prorated based on the number of days during the month that this agreement was in effect.
- (s) **Personal Property** shall mean all movable property of the Company not directly related to the restaurant operations of the privileges granted hereunder, including office furniture, office equipment, and office supplies.
- (t) **Term** shall mean the fixed term commencing no later than sixty (60) days after the commencement date, or upon the opening of operations for business, whichever occurs earlier.
- (u) **Refurbish** or **Refurbishment** shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, fixtures or finishes. Refurbishment shall not mean the performance of routine or deferred maintenance.
- (v) **Request for Proposal** means City's Request for Proposal for Food, and Beverage Concession for the Abilene Regional Airport, #CB-1214 dated February 14, 2012.
- (w) **Terminal Building** means the Passenger Terminal Building at the Airport, as it exists on the date hereof, and any additions made thereto during the term of this Agreement.
- (x) **Trade Fixtures** means all non-affixed items that are not City property, except Expendables, Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures and the like.
- (y) **TSA** shall mean Transportation Security Administration of the United States Department of Homeland Security, or any department or agency succeeding to its jurisdiction or function responsible for providing personnel

and equipment to screen passengers, baggage and goods at the Airport and enforcing federal transportation security regulations.

Section 1.2 Rules of Construction. Throughout this Agreement, unless the context clearly shall require otherwise

The singular includes the plural and vice versa;

- (b) The words "and" and "or" shall be both conjunctive and disjunctive;
- (c) The words "hereby", "herein", "hereof", "hereto" and "hereunder" and any similar terms used in this Agreement refer to this Agreement;
- (d) The words "all" and "any" mean "any and all";
- (e) The word "including" shall not mean in a limiting nature, but shall be construed to mean "including without limitation";
- (f) The word "he" or any other masculine pronoun includes any individual regardless of gender;
- (g) Words denoting persons shall include firms, associations, partnerships, limited liability corporations, limited liability partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (h) Reference to any attachments or exhibits shall mean exhibits attached to this Agreement which shall be deemed incorporated fully by reference and made an integral part of this Agreement; and
- (i) Any headings preceding the text of the Articles, and Sections of this Agreement and any Table of Contents or marginal notes appended to notes hereof shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction, interpretation or effect of this Agreement.
- (j) Reference to articles or sections respectively shall mean articles or sections of this Agreement.

SECTION 2 TERM

Section 2.1 Term . This Agreement shall become effective on October 1, 2020 and shall continue unless sooner terminated in accordance with this Agreement until September 30, 2022. The Company shall open the restaurant for business operations no later than January 11, 2021.

Section 2.1(a.) Option Periods. Upon 60 written days' notice prior to the expiration of the preceding term, and with the mutual agreement between City and Company, this Agreement shall have three (3) one-year extensions.

Section 2.2 Holding Over. To provide continuous service to the air traveler and public, Company may, upon written request of City, remain upon the Leased Premises and manage the operation of all concessions subject to this Agreement for up to a one hundred eighty (180) day period, as so requested by City, after termination of this Agreement by expiration of the Term, cancellation or default, to give a new company sufficient time to be chosen and commence operation. Upon the termination of this Agreement, through the passage of time or otherwise, Company shall aid City, in all ways possible, in continuing the business of management of the operation of the facilities subject to this Agreement without interruption, between termination of this Agreement and commencement of operations by a new company.

In the event that Company, without request or objection by City, shall continue to occupy the Leased Premises beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only upon the terms incorporating all terms and conditions of this Agreement; except provided, however that, at City's option, the Minimum Annual Guarantee shall be equal to the last Minimum Annual Guarantee paid to City, increased by Consumer Price Deflator Index published by the U.S. Department of Labor, as may be selected by City. The Company will continue to pay rentals using the adjusted Minimum Annual Guarantee and the payment structure defined in Section 5 hereof. No such holdover shall be deemed to operate as renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Company by giving thirty (30) days' written notice of said termination to the other party at any time. Company will have no rights to renew or extend the term of this Agreement.

SECTION 3 LEASED PREMISES

Section 3.1 Leased Premises. For and in consideration of the mutual covenants contained herein, City hereby provides Company approximately 1,982 square feet of restaurant operating space hereinafter called "Leased Premises", as set forth on **Exhibit A**.

For purposes of this Agreement relating to Company's responsibilities, the Leased Premises shall mean the areas shown on **Exhibit A** where (a) the exact boundaries are deemed to be three (3) inches inside each wall separating the Leased Premises from the adjacent premises or the external Terminal wall, and (b) with respect to the facade and/or wall on the front of the Leased Premises, separating the Leased Premises from the Terminal common areas, the exact boundary is deemed to be the external face of the facade and/or wall.

In addition, and with the written approval of the Director, kiosks, tables and similar facilities may be located in other public areas of the terminal if doing so is warranted

for enhanced customer service, and does not interfere with other terminal and passenger flow activities.

The area and location may from time to time be adjusted as hereinafter provided and subsequently illustrated on a revised **Exhibit A**.

Section 3.2 Extent of Leasehold. In addition to the use of the Leased Premises described in Section 3.1 above, Company shall possess the non-exclusive right of ingress and egress to and from the Leased Premises as may be necessary on through areas designated by the Director, subject to Airport rules and regulations, including security regulations, as may be amended from time to time, provided that Company's exercise of such right shall not impede or interfere unduly with the operation of the Airport by City, its tenants, customers and other authorized occupants. Company shall not place or install any racks, stands or other display of merchandise or trade fixtures in any Airport property outside the Leased Premises without the express prior consent of the Director. In no event will Company engage in any activity on the Airport outside the Leased Premises for the recruitment or solicitation of business.

Section 3.3 Remeasurement of Leased Premises. At any time and from time to time, the Director may cause City to conduct a space audit pursuant to which City remeasures the Leased Premises, using the Airport's then current measurement specifications. At the Director's request, Company and City shall enter into an amendment of this Agreement reflecting the results of such remeasurement.

Section 3.4 Changes to Airport. Company acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building; (b) City has made no representations, warranties, or covenants to Company regarding the design, construction, pedestrian traffic, or views of the Airport or the Leased Premises. Without limiting the generality of the foregoing, Company acknowledges and agrees that the Airport (i) is currently undergoing and may from time to time hereafter undergo renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Company's business. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although City will use reasonable efforts to minimize the effect of Airport changes on Company's business, Company acknowledges that such activity may have some effect on the Company's food and beverage operations located at the Airport, and Company shall not be entitled to any rent credit or other compensation therefor.

At any time and from time to time, City may, without the consent of Company, and without effecting Company's obligations under this Agreement, at City's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion of the Airport, including without limitation the concourses, boarding areas, and restaurant areas and security areas located within the Terminal

Building, (b) build additional stories above or below the Airport buildings, including the Terminal Building, (c) eliminate or relocate public entrances to the Leased Premises so long as there is at all times one public entrance to the Leased Premises, (d) construct multi-level, elevated or subterranean parking facilities and (e) expand or contract the Airport, including redefining the Airport boundaries so as to include additional lands within the Airport or exclude lands from the Airport or both. Without limiting waivers set forth elsewhere in this Agreement, Company hereby waives all claims against City and releases City from all losses that Company suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Company further agrees that Company will not be entitled to any rent abatement or any other rent relief in connection with any changes to the Airport or any portion of the Airport.

Section 3.5 Common Areas. The term "common areas" means all areas and facilities located within the Airport that are determined by City from time to time for the general use and convenience of the tenants of the Airport and other occupants of the Airport and the traveling public and other visitors to the Airport such as concourses, sidewalks, elevators, escalators, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways. City may, in its sole discretion, and without any liability to Company (a) change the common areas, (b) increase or decrease the common areas (including conversion of common areas to leasable areas and the conversion of leasable areas to common areas) and (c) impose parking charges. City will, in its sole discretion, maintain the common areas, establish and enforce Airport rules and regulations concerning the common areas, close temporarily portions of the common areas for maintenance purposes, and make changes to the common areas including changes in the location of security check points, driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic.

SECTION 4 USES AND PRIVILEGES

Section 4.1 Concession Rights Granted. For and in consideration of the terms of this Agreement, City hereby grants to Company, subject to all of the terms, covenants and conditions of this Agreement, the Terminal Building right and obligation to operate and maintain the restaurant services operation.

Company shall enjoy the following privileges in connection with its use of the Leased Premises:

- (a) The right, privilege, and obligation to conduct and operate the Terminal Building restaurant services operation at the Airport. Company shall not engage in any other business on the Airport under this Agreement.
- (b) The right, privilege and obligation to sell food, alcoholic and non-alcoholic beverages to passengers, employees and the general public and to cater airline and private aircraft food and beverage needs, as well as meetings and special events taking place on and off the airport, in accordance with the terms and

conditions outlined herein. Company shall sell food and beverages only in accordance with the terms of this Agreement.

- (c) Company may sell, within its operating space, merchandise that is typical to airport terminal vendors including, over-the-counter medicines, phone and computer accessories, travel supplies, books and magazines, and gift items.

Section 4.2 Operational Assurances and Requirements.

- (a) **Company shall pay to the City a refundable deposit of \$500.00 prior to occupying leasehold. Deposit will be held to cover cleaning or repairs to leasehold should Company vacate without cleaning or repairing leasehold to the satisfaction of the Director.**
- (b) **Approval of Menus.** Company shall not conduct any other business, or sell any type of food and beverage products unless specifically authorized to do so by the Director. Company shall be permitted to sell those menu items outlined in **Exhibit B**, attached. Changes to the menu and prices shall be submitted to the Director for his review and written approval prior to the change. City will respond to such requests for authorization within a reasonable time not to exceed five (5) business days. This does not apply to menus for catering, meetings and special events, which are for private use only and not for public consumption.
- (c) **Development of Food and Beverage Business.** At the location(s) indicated herein, Company shall provide food and beverage service every day of the term hereof, in accordance with the schedule approved by the Director. Company shall not divert, cause or permit to be diverted any business from the Leased Premises without the written approval of the Director. Such approval shall be subject to fees for non-airport use of airport facility and equipment. It is acknowledged that Company may operate a catering service from its Airport leasehold. Such catering revenue shall be accounted separately and the City will be paid a commission on all such catering revenues per **Section 5**. Company shall take all reasonable measures, in every proper manner, to develop, maintain and increase the business conducted by it under this Agreement. Company shall actively operate each food and beverage facility so as to best serve the needs of the traveling public at the airport.
- (d) **Advertising and Promoting of Products.** Company may advertise brand-name products on its packaging and within the Leased Premises only upon the written approval of the Director. City will respond to such requests for authorization within a reasonable time not to exceed five (5) business days. Receipts for any such advertising or promotion, if any, shall be subject to fees

as described in Section 5 hereof. This does not pertain to the advertisement or promotion of food and beverages sold in the leased premises.

- (e) **Dispute with Other Tenants.** In the event of a dispute between Company and any other Airport tenant as to the services to be offered or products to be sold, Company shall meet and confer with the Director, who shall consider the rights and obligations set forth in the tenants' Agreements with the City and make a determination. Company agrees to that it shall be bound by the decision of the Director.
- (f) **No Other Uses.** Company shall not use nor permit the Leased Premises to be used for any purpose other than as herein above set forth except with the prior written consent of City, nor for any use in violation of any applicable present or future law, ordinance, rule or regulation of any governmental authority, agency, department or officer thereof.
- (g) **Purchasing.** The Company shall have the right to purchase Personal Property or services, materials and supplies used by Company from any person or company of Company's choice. The Company shall have the right to make agreements with any person or company of Company's choice for services to be performed for Company which are incidental to the conduct of Company's activities. It is understood that if Company's suppliers, contractors and furnishers of service exclusively use any portion of the Airport or facilities of City, then City may charge reasonable fees therefore, but nothing herein gives the Company the right to grant to any other party the privilege to use any portion of the Airport or facilities of City.
- (h) **Disposal of Equipment.** The Company may dispose of equipment, which is not City property, and which has been replaced or fully amortized, or which is unnecessary; provided, that such right shall not be construed as authorizing the conduct of a separate business.
- (i) **Employees' Parking Facilities.** If not otherwise provided, Company shall have the right to the use of reasonably adequate vehicular parking facilities for its employees employed at the Airport in common with other employees, which facilities shall be located in an area designated by the Airport Director as near as practicable to the Terminal Building. Only employees assigned to the Airport shall use the Terminal Building employee parking facilities. City reserves the right to assess a reasonable charge for such employee parking facilities, based on the cost of providing, operating, and maintaining the facilities as set forth on City's published schedule of Airport rates, fees and charges. **The charge for employee parking is waived in Year 1 of the Agreement.**
- (j) **Access.** (1) Subject to the provisions hereof, the rules, regulations, and ordinances, and such restrictions as Company may impose with respect to its Leased Premises, City hereby grants to Company, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of access, ingress, and egress to the Leased Premises and to public

areas and public facilities of the Terminal; (2) The ingress and egress provided for above shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Company that Company is not authorized to engage in or perform under the provisions hereof unless expressly authorized by City; (3) City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Company's use pursuant to this Agreement or otherwise, either temporarily or permanently; provided that reasonable notice to Company and a reasonably convenient and adequate means of access, ingress and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Company's obligations under this Agreement

- (k) **Within 90 days of opening, Company must maintain, at minimum, a state-issued Beer and Wine Permit at all times and provide such beverages for sale at all times as permitted by such Permit. However, the Director may suspend this requirement, if deemed in the interest of the City.**
- (l) **Pest Control.** Company is responsible for maintaining monthly scheduled licensed pest control.
- (m) **Grease Trap.** Company is responsible for cleaning the grease pit and ensuring proper disposal of removed grease.

Section 4.3 No Joint Venture or Partnership. This Agreement shall not be deemed or construed (a) to create any relationship of joint venture or partnership between City and Company, (b) to give City any interest in the business of Company, or (c) to grant to Company any powers as an agent or representative of City, the Authority, or the City for any purpose or to bind City, the Authority, or the City.

SECTION 5 COMPENSATION, BOOKKEEPING, AND AUDIT

Section 5.1 Compensation

(a) Rent. EFFECTIVE Year 1 - Company shall pay no rent to the City. EFFECTIVE Year 2 - Company shall pay to the City each year, for the full term of the Agreement, \$6,000.00 in monthly installments of \$500.00.

(b) Other Fees and Charges. Notwithstanding the above, City expressly reserves the right to assess and collect the following:

1. A reasonable fee payable by Company or its Terminal Building employees for the employee parking area(s) provided at the Airport.

2. Charges for other services or facilities not enumerated herein which are provided by City to Company, at Company's request, except as provided in Section 7.2. Such services or facilities may include, but are not limited to, special maintenance of Leased Premises. Charges will be based on the actual cost of providing such facilities or services.

Section 5.2 – Gross Receipts Defined

As used herein, the term "Gross Receipts" shall include all revenue derived from the sale of products, services, merchandise and all revenue transactions from Leased Premises, whether delivered on or off the Airport, and whether paid for in cash or credit, and regardless of when or whether paid for or not, except only as explicitly excluded hereunder. Excluded from Gross Receipts shall be:

- a) Federal, state, county, and municipal sales taxes or other taxes separately stated and collected from customers;
- b) Actual credit card transaction fees not to exceed three percent (3%) for any given transaction;
- c) Receipts from the sale of or the trade-in value of any Trade Fixtures;
- d) Receipts from, the value of, or the sale of, any supplies or equipment to another operation or affiliate of Company, whether or not located at the Airport; provided such sale is incidental to or not made for the purpose of circumventing the fee provisions of this Agreement.
- e) Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
- f) Cost or value of meals provided without charge to employees of Company or the amount of any discount ,if any, given to Airport employees, employees of Company or employees of other tenants of the Airport;
- g) The amounts of any gratuities paid or given by patrons or customers to employees of Company, so long as such gratuities are voluntary and not included in the invoices to such patrons or customers.
- h) Receipts from the sale of uniform or clothing to Company's employees whether such uniforms or clothing are required to be worn by said employees.

Except as herein above specified, if any charge for any of the products or services provided hereunder is not assessed, charged, or collected, irrespective of the reason therefore, the proper amount of such charge shall, nevertheless, be included in the term "Gross Receipts" as the same is used in this section. Further, no deduction shall

be made from Gross Receipts by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other charge or charge arrangements.

Section 5.3 – Statements, Books and Records.

Within ten (10) days after the close of each calendar month of the term of this Agreement, Company shall submit to City, in such detail and form as may be specified by City, certain information, including but not limited to, a statement of its Gross Receipts during the preceding month. Said statement to be signed by a responsible accounting officer of Company. Said statement shall include, at a minimum, a breakdown of Company's sales at each location for food and beverages. City reserves the right to change the form of the monthly statement and to require the submission by Company of other information pertaining to the Gross Receipts hereunder, and Company agrees to change the form of its statements to that requested by City and to provide any additional information City may request.

Section 5.4 Late Fees on Overdue Payments

Any payment not received from Company within ten (10) days after the due date shall accrue a late fee at an interest rate of one percent (1.0%) per month, beginning with the original due date until paid in full, subject to a minimum late fee of twenty-five dollars (\$25.00).

SECTION 6 IMPROVEMENTS AND EQUIPMENT IN LEASED PREMISES

Section 6.1 Improved Space. The Leased Premises is provided by the city fully finished and equipped for typical food and beverage services operation.

Section 6.2 Alterations and Improvements. Company shall not install or erect additional, nonstructural improvements in the Leased Premises, or alter, change, or make other improvements unless and until plans and specifications for such additional alterations or improvements shall have been submitted to and approved in writing by Director. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Director before any work or construction is commenced. Any such alterations or improvements shall be without cost to City, except as provided in Section 6.3 below. All structural improvements, equipment and interior design and decor constructed or installed by Company, its agents, or contractors, including the plans and specifications, shall be of attractive construction and first- class design and shall comply with any and all applicable statutes, ordinances, building codes, and rules and regulations. City shall make its architect for the Terminal Building available for coordination on design matters.

Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reject any layout or design proposals submitted and to require Company to submit any such layout or design proposal until they meet City's approval.

One reproducible final copy of the as-built plans for all improvements or subsequent changes therein or alterations thereof to the Leased Premises shall be signed by Company and submitted to the Director within thirty (30) days following completion of any project. These plans, and any subsequent modifications or alterations, shall also be furnished to City on computer discs as electronic files in a format compatible with the CAD system used by City.

Section 6.3 Title, Removal, and Demolition of Improvements. All permanent improvements, additions and alterations made to the Leased Premises and any items on **Exhibit C** purchased from the allowance provided in Section 6.3 by Company shall upon installation become the property of City free and clear of liens or encumbrances; provided, however, that any Trade Fixtures, signs and other Personal Property of Company not permanently affixed to Leased Premises shall remain the property of Company. Should Company fail within twenty (20) business days following the termination of this Agreement to remove its Trade Fixtures, signs and other Personal Property of Company not permanently affixed to Leased Premises, then at the option of City, title to same shall vest in City at no cost to City.

Company shall not remove or demolish, in whole or in part, any improvements upon Leased Premises without the prior written consent of the Director. Company understands and agrees that consent may be conditioned upon the obligation of Company to replace the same by an improvement specified in such consent at Company's sole expense.

SECTION 7 MAINTENANCE

Section 7.1 City's Obligations in Terminal Building.

- (a) City shall provide structural maintenance of the Terminal Building and maintenance of electrical, heating, ventilating and air conditioning systems providing services to the leased premises.
- (b) City will at all times maintain, operate, and keep in good repair the Terminal Building, and all appurtenances, facilities, and services now or hereafter connected thereto.

Section 7.2 Company's Obligations in Terminal Building.

- (a) Except for structural maintenance of the Terminal Building, as provided in Section 7.1, Company shall be obligated, without cost to City, to maintain the Leased Premises in good appearance, repair, and safe condition consistent with good business practices, industry standards and in accordance with all applicable laws and rules and regulations of the City. Company shall maintain and repair all Leasehold Improvements and all furnishings, fixtures, and equipment therein, whether installed by Company, the City or by others, including repainting or redecorating as necessary, and replacing or repairing fixtures or furnishings. All such maintenance and repairs shall be of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Director. Company shall be responsible for such repairs to City-owned equipment up to Five Hundred dollars (\$500) in cost. City shall be responsible for any repairs to City-owned equipment, (with the exception of the dining/bar security gate) which exceeds Five Hundred dollars (\$500) with the exception that any damage resulting from Company's or its employee's or agent's abuse or neglect shall be the full responsibility of Company.
- (b) Company shall be responsible for transporting all trash from its trash receptacles to City-designated trash containers in a manner satisfactory to the Director.
- (c) If City determines that maintenance of the Leased Premises is not satisfactory, City shall so notify Company in writing. If said maintenance is not performed by Company within fifteen (15) days after receipt of written notice, City or its agent shall have the right to perform the maintenance therefor and Company agrees to reimburse City promptly for the cost thereof, plus ten percent (10%) thereof for administrative overhead.
- (d) Upon execution of this Agreement, Company shall establish a preventive and routine maintenance program, the provisions of which shall be subject to the approval and periodic review by the Director. Company shall from time to time, upon request, provide the Director a written schedule of Company's cleaning and maintenance program.
- (e) On or about the commencement of each calendar year, representatives of City and Company shall tour the Leased Premises and jointly agree upon what, if any, routine Refurbishment is required to maintain the Leased Premises in first-class condition, and Company shall undertake such Refurbishment at its sole cost and expense. If Company and City cannot jointly agree upon the type and extent of Refurbishment, City may at its sole discretion determine the Refurbishment required.
- (f) Upon discovery, Company shall immediately give oral and written notice to City of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be removed and disposed of immediately in accordance with local, state and federal regulations. At the direction of said Director,

Company shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.

- (g) Company agrees to employ sufficient maintenance and janitorial personnel, and provide necessary equipment, to keep the Leased Premises and all furniture, furnishings, fixtures and equipment clean, neat, safe, sanitary and in good working order and condition at all times.
- (h) Company shall, at its cost, comply with all fire suppression, health and sanitary regulations adopted by all applicable governing bodies and all rules and regulations promulgated by the City. Company shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to the Director and Company shall promptly give a copy of any reports to the Director.

SECTION 8 OPERATIONS OF LEASED PREMISES

Section 8.1 – Hours of Operation. Company shall actively operate its restaurant in and use its best efforts to accomplish a business-like operation therein. The restaurant shall be open to serve the public a minimum of Sunday through Friday with the exception of Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day, July 4th and Labor Day, unless otherwise authorized in writing by City. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Company may advise the Director of Company's analysis of the optimum arrangements, but the final determination shall be made by the Director based on an analysis of necessary service to the public. No facilities shall be blocked off or closed at any time during the approved hours of operation.

Section 8.2 – Delivery of Goods. Company shall arrange for the timely delivery of all food products, goods, merchandise, and supplies, at such times, in such location(s), and by such routes as determined by the Director and according to such procedures that may be established from time to time by the Director and, in the case of deliveries to secured areas, the Transportation Security Administration.

Section 8.3 Utilities. The cost of all utilities, excluding phone and data, used or consumed in the Leased Premises shall be borne by the City.

Section 8.4 Personnel. All personnel employed by Company shall be neat, clean, groomed and courteous at all times. Company shall employ sufficient trained personnel to staff and meet the reasonable needs or demands of patrons. Personnel shall be thoroughly qualified, familiar with the business, the products sold, courteous, informative and helpful to the public.

- (a) **Removal of Employees.** After receipt of written notice from City, Company shall immediately remove any employee or other representative of Company from the Airport who participates in improper or illegal acts on the Airport, who violates Airport rules and regulations or any provision of this Agreement, or whose continued presence on the Airport is, in the opinion of the Director, deemed not to be in the best interests of City.
- (b) **Conduct of Suppliers, Others.** Company shall not allow its agents, servants, contractors, suppliers or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner. Company shall ensure that all personnel treat all patrons equally and courteously.
- (c) **Lawful Working Age.** All employees or other personnel of Company working on City property shall be of lawful working age. Company shall comply with all federal, state and local labor and employment laws, including laws and regulations relating to the handling, sale, and serving of alcoholic beverages.
- (d) **Employee Appearance.** Company shall ensure that its employees present a neat, clean, and orderly appearance at all times.
- (e) **Security Background Checks.** Employees of Company providing services in secured areas of the Terminal Building must qualify for a security clearance, submit to the required fingerprinting and background check, and obtain appropriate security badges, at Company's expense, and otherwise comply with security regulations that may be established by the City and the TSA from time to time. Personnel who are refused security clearance shall not be permitted by Company to perform work in the secured areas of the Airport.
- (f) **General Manager.** Company shall select and appoint a general manager with day-to-day responsibility for the food and beverage concession. The management employee shall be in complete charge of Company's operation at the Airport and shall be a qualified and experienced manager vested with full powers to conduct Company's operation hereunder. The management employee shall be available during regular business hours; and at all times during his/her absence, a designated representative of the Company shall be in charge and available. City shall have the right to approve the appointment of Company's general manager prior to assignment to the Airport.

Section 8.5 – Quality and Character of Service.

- (a) **Type of Operation.** Company shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgement of City, does not annoy, disturb, or offend others at the Airport. Company shall ensure that each customer receives prompt, efficient and courteous service. In conjunction with that requirement, Company shall ensure that the operation has adequate staff to provide such service. Company shall

ensure that all locations are adequately staffed during normal peak operating hours and during any special or emergency situation. Company shall conduct its business in the manner described in the Company's Proposal, incorporated herein by reference.

- (b) **Quality of Food.** Company shall supply sufficient goods and product to fully stock its Leased Premises. All foodstuff must be new, fresh, and of top quality. Branded food and beverage units will, at a minimum, conform to the requirements established by the franchisor or licensor.
- (c) **Pricing.** The Company has covenanted in the Company's Proposal to charge prices that are reasonable and comparable to prices charged for similar items in similar facilities in the Abilene area. The Airport reserves the right to verify, approve or reject the prices and/or comparables used by the company. Comparable facilities shall mean food and beverage facilities offering similar service, quality, and quantity of offerings, including shopping malls or downtown locations. Comparable facilities shall not include special event venues, seasonal festivals, fairs and sporting events, or hotels and convention centers.
- (d) **Director's Right to Object.** The Director shall have the right to raise reasonable objections to the condition of the Leased Premises, the quality and quantity of food and beverage offered, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to said Director to be remedied by Company.
- (e) **Services Nondiscriminatory.** Company shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable and nondiscriminatory prices; provided, however, that Company may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees.
- (f) **Replacements and Refunds.** Company may, at all times during the term of this Agreement, and without any additional charge to customers, replace any food or beverage product by said customer to be unsatisfactory, or shall provide said customer a full refund therefor.
- (g) **Credit/Debit Cards.** At all times during the term of this Agreement, Company shall accept as payment for goods and services at least two nationally recognized credit/debit cards (e.g., American Express, Master Card, Visa, etc.).
- (h) **General Public Services.** Company understands and agrees that its operation at the Airport obligates it to render public services such as making change upon request and without charge, giving directions, and reasonably assisting the public, when requested.

- (i) **Additional Compliance.** Company shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

Section 8.6 – Signs.

- (a) **Right to Install.** Company shall have the right to install and operate upon or in the Leased Premises, and at Company's sole cost and expense, signs containing its name and representing its business. Company acknowledges City's desire to maintain a high level of aesthetic quality in the Terminal Building and in all concession facilities throughout the Terminal Building. Therefore, Company covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Leased Premises, it will submit to City the size, design, content, and intended location of each and every sign it proposes to install on or within the Leased Premises, and that no signs of any type shall be installed on or within the Leased Premises without the specific prior written approval of Director as to the size, design, content, and location. Neon, handwritten, or hand lettered signs are prohibited. Notwithstanding any prior written approval, upon written notice from the Director at any time during the term of this Agreement, Company shall install, remove, or modify any signs which the Director deems necessary or unnecessary for identification or information to the public, passengers, or other Airport users. Failure to require removal of any sign placed on or about the Leased Premises without written permission shall not imply consent or limit the authority of the Director to require removal of any unapproved sign.
- (b) **Signs and Fixtures Outside Premises.** Company shall not place or install any racks, stands, and trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Director.
- (c) **Removal of Signs.** Upon the expiration or sooner termination of this Agreement, Company shall, if requested by the Director, remove any and all identification signs and similar devices placed by Company on or in the Leased Premises. In the event of the failure on the part of Company to so remove each and every sign as requested by the Director, the Director may perform such work and, upon demand, Company shall pay the cost thereof to City.

Section 8.7 - Security. Company acknowledges and accepts full responsibility for the security and protection of the Leased Premises and any and all inventory, equipment, and facilities now existing or hereafter placed on or installed in or upon its Leased Premises, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all rules and regulations of the Airport and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. Company further expressly acknowledges and accepts full responsibility to maintain the integrity of the airfield security from or through the leased premises to the airfield operations area, and hereby agrees to fully comply with all Federal, State and local laws, including, but not limited to 49CFR Part 1542, Airport Security, as amended

from time to time, and with all rules and regulations of Airport concerning security procedures, as they presently exist or may be amended from time to time.

SECTION 9 LICENSES AND TAXES

Company covenants and agrees to obtain all proper licenses or permits for the operation of its business hereunder, and to pay all taxes assessed or imposed by any governmental authority upon the fees, rentals, and charges and upon any improvements erected or installed thereon. Company shall, after notifying City of its intention to do so, have the right to contest in good faith by all appropriate proceedings, the amount, applicability, or validity of any such tax or assessment. In the event that Company shall fail to pay any of the foregoing items required by this Section, City may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by City shall become an additional obligation of Company, which amounts, together with interest thereon at the rate of one percent (1.0%) per month from the date thereof, Company agrees to pay upon demand. The foregoing provision shall in no way be construed as restricting City from contesting the legality of any such tax or other governmental assessment.

SECTION 10 LIENS, PAYMENTS AND PERFORMANCE BONDS

Construction Surety Bond. Company shall not allow any liens to attach to the Leased Premises or its leasehold interest without the prior written approval of City. Prior to the commencement of any construction, alteration, or repair hereunder which exceeds twenty-five thousand dollars (\$25,000) in cost, Company or its contractor shall furnish to City, and without expense to City, a surety bond, naming City as co-obligee, issued by a surety company licensed to transact business in the state of Texas and satisfactory to and approved by City with Company's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of contract or contracts for the construction, alteration, or repair of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment of all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in said construction contract and shall protect City from any liability, losses or damages arising therefrom.

Section 11 Damage or Destruction of Leased Premises in Terminal Building

Section 11.1 Partial Damage. If all or a portion of the Leased Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not

rendered untenable, the same will be repaired with due diligence by City subject to the limitations of Section 13.4; provided, however, that if the damage is caused by the negligent act or omission of Company, its sub-Lessee, agents, or employees, to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in such repair.

Section 11.2 Extensive Damage. If the damages referred to in Section 13.1 shall be so extensive as to render the Leased Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Section 13.4; and, the compensation payable herein under Section 5 shall abate from the time of such damage or destruction until such time as the said Leased Premises is fully restored and certified by City's Building Inspectors as ready for occupancy; provided, however, that if said damage is caused by the negligent act or omission of Company, its sub-Lessee, agents or employees, said fees and charges will not abate and, to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in such repair.

Section 11.3 Complete Destruction. In the event the Leased Premises is completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or so damaged that it is untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and compensation payable herein under Section 5 shall abate as of the time of such damage or destruction until such time as the said Leased Premises is fully restored and certified by City's Building Inspectors as ready for occupancy; provided, however, that if said damage is caused by the negligent act or omission of Company, its sub-Lessees, agents, or employees, said fees and charges will not abate, and to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in said repair; provided further, however, if within twelve (12) months after the time of such damage or destruction said Leased Premises shall not have been repaired or reconstructed, Company may cancel this Agreement in its entirety.

Section 11.4 Limits of City's Obligations. It is understood that, in the application of the foregoing Sections 11.1, 11.2, and 11.3, City's obligations shall be limited to repair or reconstruction of the Terminal Building Leased Premises to the same extent and of equal quality as obtained at the commencement of operations. Redecoration and replacement of furniture, fixtures, equipment, and supplies provided by Company shall be the responsibility of Company and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

SECTION 12 FEDERAL REQUIREMENTS

(a) Company, its successors in interest and assigns, does hereby covenant and

agree that:

- (i) No person on the grounds of race, color, national origin or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 - (ii) In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, national origin or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 - (iii) The Company shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Sub-title A, Part 21, Non-discrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (b) Company acknowledges and agrees that the provisions of all Federal-Aid Airport Program Grant Agreements with the City that are applicable to the Airport are by reference made a part hereof to the same extent as though copied herein at length.
- (c) Nothing herein shall be deemed to grant Company any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.
- (d) Company agrees to comply with the City's Disadvantaged Business Enterprise programs insofar as such programs are applicable to Company's operations on the Airport. Company acknowledges that the goals set forth in such programs shall be subject to change without notice to Company.
- (e) Public Benefit. Company agrees to operate the Leased Premises for the use and benefit of the public and further agrees:
- (i) To use reasonable efforts to furnish good, prompt and efficient services adequate to meet all the demands for its services at the Airport;
 - (ii) To furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof; and
 - (iii) to charge fair, reasonable and nondiscriminatory prices for each unit of sale or service, provided that the Company may make reasonable nondiscriminatory discounts, rebates or other similar types of price reductions for volume purchases

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

In accordance with Regulations of the U.S. Department of Transportation, 49 CFR Part 23, Subpart F, the City has implemented a Disadvantaged Business Enterprise (DBE) concession plan under which qualified firms may have the opportunity to operate an airport business. DBE firms are encouraged to submit proposals for this concession opportunity. Full ACDBE program available upon request.

As of proposal, the overall ACDBE goal is not required for concessions other than Car Rental concessions. Should the Airport ACDBE goal be changed, restaurant will be required to comply with the program goal requirements. Airport Staff will further explain this in detail if it becomes required reporting.

SECTION 13 RIGHTS AND OBLIGATIONS OF CITY

Section 13.1 Right of Flight. Company understands that the City reserves the right of flight for the passage of aircraft above the surface of the Leased Premises in accordance with the criteria of the Federal Aviation Administration and that the grant and demise of the Leased Premises is subject to this reserved right of flight, which such right shall include the right to cause in such air space such noise as may be inherent to the operation of aircraft now known or hereafter used for the navigation of or flight in the air. Further, Company understands and agrees that City reserves the right to use said air space for landing at, taking off from and operating aircraft on and over the Airport.

Section 13.2 Operation, Maintenance and Expansion of Airport by the City.

- (a) The City agrees to operate, maintain and keep in good repair the areas and facilities at the Airport for the public and Company in accordance with the practices of a reasonably prudent airport operator. The City agrees to use reasonable efforts to keep the Airport free from obstructions and to do all things reasonably necessary for the safe, convenient and proper use of the Airport by those who are authorized to use the same. The City agrees to maintain and operate the Airport in accordance with all applicable standards, rules and regulations of the FAA.
- (b) The City may expand and improve the Airport as it, in its sole judgment, may deem necessary to provide required facilities in the interest of the public and the City.
- (c) The City shall have the right, but not the obligation, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport,

together with the right to direct and control all activities of Company in this regard.

SECTION 14

LIABILITY, INDEMNIFICATION, INSURANCE AND CONDEMNATION

Section 14.1 Liability. The City shall not be liable for its failure to perform any of the obligations under this Agreement or for any delay in the performance thereof, nor shall any delay or failure be deemed a default by the City when such failure or delay is the result of any cause beyond its reasonable control or jurisdiction. In any such case, a promptly written notice will be given by the City to Company of the existence of such cause and of readiness to resume performance upon the removal or termination thereof provided, however, that in every instance where the operation of the Airport and its facilities shall be wholly or partially suspended because of fires, storms, riots or acts of God, the City will proceed with due diligence and insofar as it has funds available to do so, to repair and restore the Airport and its facilities to such conditions as will permit its use and enjoyment as a commercial airport.

Section 14.2 Indemnification.

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.

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

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

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

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

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

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

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

Company 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 Company or Company'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 Company.

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

BOTH CITY AND COMPANY EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE COMPANY 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.

Section 14.3 Insurance.

- (a) The Company shall provide and maintain, at its own expense, the following types and amounts of insurance, during the term of this Lease:

<u>TYPE</u>	<u>AMOUNT</u>
(i) Comprehensive General (Public) Liability - to include (but not limited to) the following:	Combined single limit coverage (or equivalent) for bodily injury and property damage: \$1 million on a per occurrence basis
a) Premises/operations	
b) Independent contractors	
c) Personal injury liability	
d) Contractual liability	
e) Product / completed operations liability	
f) Liquor Liability	
(ii) Worker's Compensation and Employer's Liability	Statutory \$100,000 per occurrence

The preceding amounts notwithstanding, the City reserves the right to increase the minimum amount required insurance to be effective 90 days after notice is sent to the address provided in Section 17.2 (or subsequent address provided in writing to the City, through its airport management designee.

- (b) The procurement of said insurance shall not be construed to be a limitation upon the Company's liability or as a full performance on its part of the indemnification provisions of the Lease. The Company's obligations are, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the Leased Premises.
- (c) Before commencement of activities under this Lease, the Company shall furnish to the City, certificates of insurance, plainly and clearly evidencing the required insurance, and thereafter, new certificates prior to the expiration date of any prior certificate. The Company understands that it is solely responsible to provide this necessary information. If the City notifies Company, in writing, that a violation of this article has occurred, Company will have 30 days to comply. If after thirty (30) days such violation has not been cured, this shall be considered a cause for cancellation of this lease, under the provisions of Section 15.
- (d) Insurance required herein shall 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 shall be subject to examination and approval by the City's Risk Management office for their adequacy as to form, content, form of protection, and providing company.

- (e) Insurance required by this Lease for the City, as additional insured, shall be primary insurance and not contributing with any other insurance available to the City, including any third party liability policy. The inclusion of the City as an additional insured is not intended to, and shall not make the City a partner or joint venturer with Company.
- (f) The Company further agrees that with respect to the above-required insurance, the City shall:
 - (i) Be named as additional insured/or an insured, as its interest may appear;
 - (ii) Be provided with a waiver of subrogation; and
 - (iii) Be provided within thirty (30) days advance notice, in writing, of cancellation or material change.
- (g) Said policies of insurance shall be performable in Taylor County, Texas, and shall be construed in accordance with the laws of the state of Texas.
- (h) Protection against loss by fire or other casualty to the equipment or property of Company shall not be an obligation of the City.

Section 14.4 Insurance of the Leased Premises.

- (a) **Improvements.** The Leased Premises shall be insured at all times during the term of this Agreement by Company for fire risks under a policy issued by a responsible insurance company. All such insurance policies on the Leased Premises shall name as insured thereunder the City and Company. Said insurance on a replacement cost basis, in an amount not less than fifty thousand dollars (\$50,000), covering loss or damage to any buildings and/or improvements on the premises and premises contents owned or leased by the Company. The City of Abilene shall not be liable for any damages to fixtures, merchandise, or other personal property of Company, regardless of the cause, and the Company does hereby release the City from any such liability; and Company shall release and relieve the City, and waive its entire claim of recovery for loss or damage to property arising out of any of the perils whether included in Company's property insurance, or not, regardless if the loss or damage is due to negligence of the City or the Company, or their respective agents, employees, guests, licensees, invitees, contractors or other persons.
- (b) **Reconstruct/Repair.** In the event the Leased Premises or a substantial part thereof is damaged or destroyed by an insured casualty, Company shall at its sole cost reconstruct or repair the improvements and the insurance proceeds shall be applied to the reconstruction or repair of the improvement, the Company shall pay any deficiency between the cost of reconstructing or repairing the improvements to its state prior to such loss and the proceeds. The facilities shall be reconstructed or repaired, either in accordance with the original plans and specifications or in accordance with the new or modified plans and specifications jointly approved by the City and Company. Before any repair or reconstruction under this paragraph, Company shall submit plans and specifications to the City for approval.

SECTION 15 EVENTS OF DEFAULT AND REMEDIES

Section 15.1 Default by Company. The following shall be events of default as to the Company under this Agreement:

- (a) Failure by the Company to pay any rent within thirty (30) days of the date it receives written notice from the City that such rent is past due.
- (b) Failure by the Company to observe and perform any covenant, condition or agreement on its part to be performed other than as referred to in sub-section (a) for a period of thirty (30) days after receipt of written notice from the City specifying such failure and requesting that it be remedied.
- (c) Abandonment or desertion of Leased Premises by the Company for any period of time exceeding thirty (30) consecutive calendar days or filing of any lien

against the Leased Premises or Company's interest therein in violation of this Agreement and shall remain unreleased for a period of sixty (60) days from the date of such filing unless within said period the Company is contesting in good faith the validity of such lien and while such lien is appropriately bonded.

- (d) A receiver is appointed without Company's application or consent, in any action or proceeding by or against Company and such action or proceeding is not stayed or discharged within sixty (60) days after its commencement, or Company is involuntarily made a party to any insolvency proceeding conducted pursuant to the laws of any state or of a political subdivision of any state and such proceeding is not stayed or discharged within sixty (60) days after its commencement, or Company involuntarily becomes a debtor in any case commenced under the provisions of the United States Bankruptcy Code, as amended and such case is not stayed or discharged within sixty (60) days after its commencement.
- (e) The dissolution or liquidation of Company or the filing by Company of a voluntary petition in bankruptcy or failure by the Company promptly to remove any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Leased Premises.

Section 15.2 Remedies on Default. Whenever any event of default referred to in Section 15.1 hereof shall have happened, the City may take any one or more of the following remedial steps as against the Company:

- (a) The City may re-enter and take possession of the Leased Premises of Company without terminating this Agreement and sub-lease the interest of the Company to any party or operate the same on behalf of the Company. In either case, holding the Company liable for the difference, if any, between the rents and other amounts payable by Company hereunder and the rents and other amounts payable by such sub-leasing.
- (b) After thirty (30) days' written notice to Company, the City may terminate this Agreement, exclude the Company from possession of the Leased Premises and shall use its best effort to lease Company's interest therein to another party for the account of City holding Company liable for all rents and other amounts due under this Agreement and not paid by such other party.
- (c) The City may take whatever other action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due from Company or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement.
- (e) If the City and the Company disagree with respect to Company's obligations to pay money under this Agreement, Company may pay the amount under protest

and such payment shall not prejudice Company's right to recover the disputed amount if it is determined that such payment was not due.

Section 15.3 :Non-Exclusive Remedy. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement.

Section 15.4: Legal Fees. In the event there should be a default under any of the provisions of this Agreement and the City should determine that the services of an attorney are required or the City incurs other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of Company, the Company agrees that it will on demand therefor pay to the City the reasonable, just and necessary fees of such legal and other reasonable incurred expenses.

SECTION 16 ASSIGNMENTS, SUBLETTING, TERMINATION AND ENCUMBRANCES

Section 16.1 Assignment and Subletting

- (a) Company covenants and agrees that it will not sell, convey, transfer or assign this Agreement or any part thereof or any rights created thereby or sublet the Leased Premises covered by this Lease or any part thereof without the prior written consent of the Director provided, however, that Company shall have the right to assign its interest hereunder or to sublet the Leased Premises to any subsidiary, affiliate or successor company thereof upon the condition that the Company hereunder shall remain liable for the full, faithful and complete performance of this Agreement. Upon approval of the Director, Company may sublet the Leased Premises subject to Company and Sub-Company remaining liable for the full faithful and complete performance of this Lease both pre-assignment and post-assignment. Such approval will consider the effect such sale, conveyance, transfer or assignment will have on the continued performance of successor company under this agreement and its response to the request for proposal.
- (b) If, without the prior written consent of the Director, the Company assigns, sells, conveys, transfers or sublets in violation of Section (a) of this Section or if the Leased Premises are occupied by anybody other than the Company, as provided in this Lease, the City may collect rent from any assigns, sub-Company or anyone who claims a right to this Agreement or who occupies the Leased Premises and the City shall apply the net amount collected to the rental herein reserved but no such collection shall be deemed a waiver by the City of the covenants contained in subdivision (a) of this Section or an acceptance by the City of any such assignee or sub-Company.

- (c) Any assignment or transfer of this Agreement or any rights of Company hereunder (except as otherwise permitted herein) whether it be a voluntary assignment without the consent of Director or an assignment or transfer by operation of law, shall be null and void and shall constitute a default on the part of the Company.

Section 16.2 Termination by Company. If not in default in any of its obligations hereunder, Company may at its option terminate this Agreement by giving the Director thirty (30) days' written notice thereof if any of the following shall occur:

- (a) The City shall fail to remedy any breach by it of any of the covenants and agreements herein contained within thirty (30) days after receipt of a written notice by the Company of the existence of such breach.
- (b) To the extent within its reasonable control, the City fails, for a period of thirty (30) days after receipt of a written notice by the Company to remove any or take the reasonable steps to remove a condition of the Airport caused by the act or omission of the City and such condition results in Company's inability to conduct business operations at the Airport.
- (c) The condemnation and taking by authority of eminent domain of the Leased Premises or any part thereof that substantially renders unusable the operation by Company of its authorized business at the Airport.

SECTION 17 MISCELLANEOUS

Section 17.1 Consents and Approvals

- (a) With respect to the approvals herein required of the Company, Company shall from time to time furnish to the City appropriate certifications setting forth the officers or representatives of Company who are authorized to grant such approvals and to bind the Company thereto.
- (b) The City's Airport Director may give any consent or approval herein required of the City unless otherwise provided.
- (c) All consents and approvals required or permitted herein by either party shall be given in writing.

Section 17.2 Notices All notices required or permitted to be given to the City or Company shall be deemed sufficiently given if in writing and sent either by registered mail or certified mail, postage prepaid, addressed as follows, or to such other address or addresses as the City or Less

City:

Director of Transportation Services
Abilene Regional Airport
2933 Airport Blvd., Suite 200
Abilene, Texas 79602

Company:

LeRay Scifres, Owner
2565 Cloverleaf Lane
Abilene, TX 79601

Section 17.3 Brokerage. The Company represents and warrants that no brokers have been concerned on their behalf in the negotiation of this Agreement and that there are no such brokers who are or may be entitled to be paid commissions in connection therewith. Company shall hereby indemnify and save harmless the City of and from any claim for commission or brokerage made by any such brokers when such claims are based in whole or in part upon any acts or omissions by Company.

Section 17.4 Force Majeure. Neither the City nor Company shall be deemed in default hereunder if either party is prevented from performing any of its obligations, other than the payment of rentals, fees and charges hereunder, by reasons of strikes, boycotts, labor disputes, embargoes, shortages of energy or material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, acts of sabotage or any other circumstances for which it is not responsible or which are not within its control.

Section 17.5 Entire Agreement. This Agreement constitutes the entire agreement between the City and Company.

Section 17.6 Lease to Federal Government. During time of war or national emergency, City shall have the right to lease the landing area or any part thereof the leased premises to the United States Government for military use and if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended but such suspension shall not extend the term of this Agreement, without written approval by the City.

Section 17.7 Place of Performance; Laws Governing Venue. This Agreement shall be performable and enforceable in Taylor County, Texas, and shall be construed in accordance with the laws of the State of Texas. Venue for any cause of action shall be Taylor County, Texas.

Section 17.8 Severability. Should any part of this Lease be held to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this Lease, which shall remain in full force and effect.

IN WITNESS WHEREOF this Agreement has been entered into and is effective as of the Effective Date and has been executed in quadruplicate original counterparts by the respective officers of the parties hereto as of the dates noted below.

City of Abilene, a Municipal Corporation

Jessie L. Scifres dba Abilene Pizza Company and The Flour Shop Bakery

By: _____
Robert Hanna, City Manager

By: Jessie L. Scifres
Jessie L. Scifres, Owner

Date: _____

Date: 9/17/2020

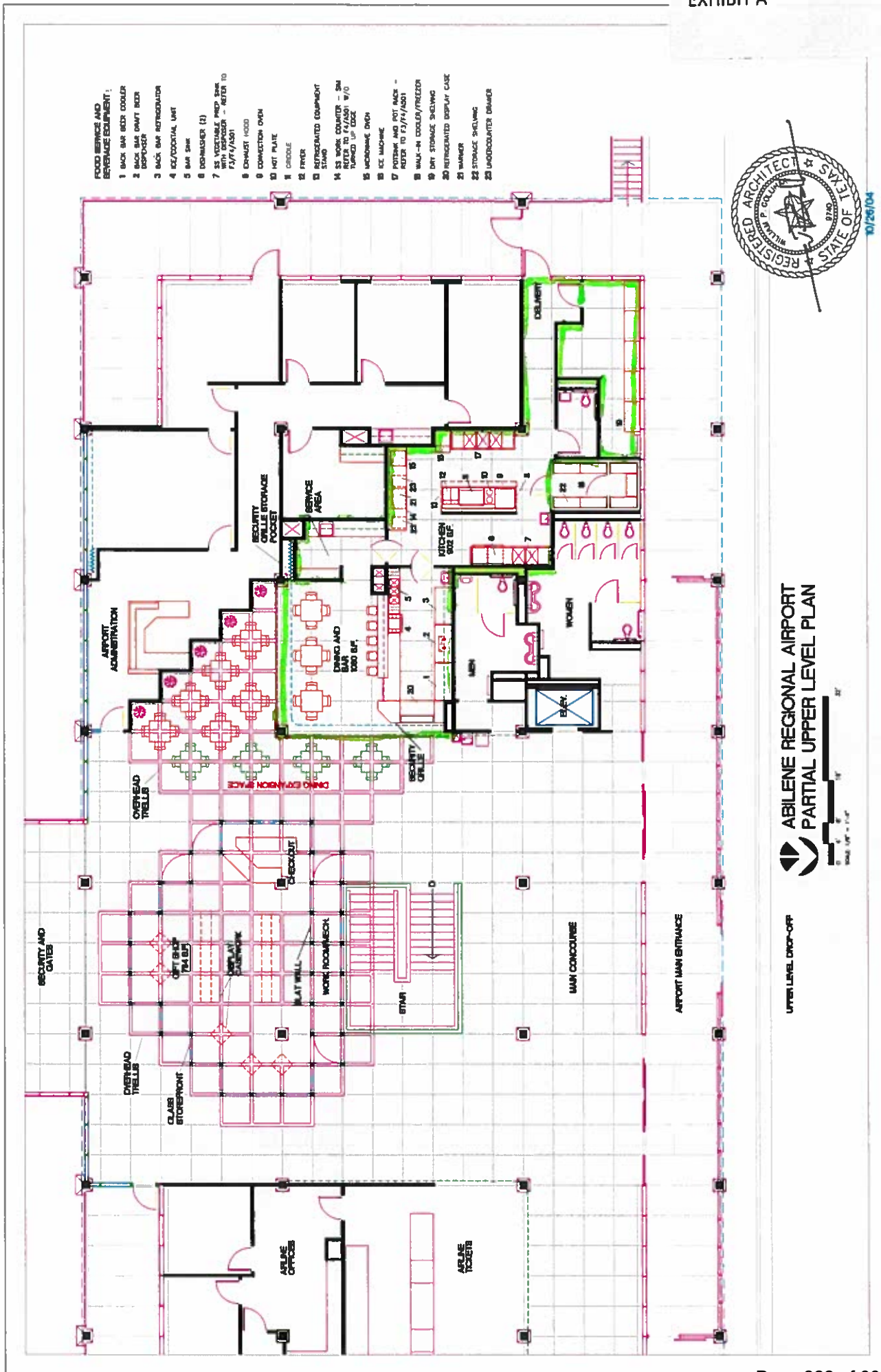
APPROVED:

ATTEST

Stanley Smith, City Attorney

ATTEST:

Shawna Atkinson, City Secretary



**ABILENE REGIONAL AIRPORT
PARTIAL UPPER LEVEL PLAN**

UPPER LEVEL DROP-OFF

MENU

TBD

Lease and Operating Agreement with Abilene Pizza Company/The Flour Shop



Lease and Operating Agreement with Abilene Pizza Company/The Flour Shop

- The City conducted a Request for Proposals (CB-2051) for a restaurant to operate at Abilene Regional Airport. One proposal was received from Abilene Pizza Company and The Flour Shop.
- Airport staff has met with the owner, LeRay Scifres, to discuss this proposal and the challenges of opening a restaurant, especially during reduced passenger traffic due to COVID-19.
- The agreement has a primary term of two years with no revenue to the City in Year 1 and a negotiable rent of up to \$500 per month in Year 2. There are three one-year extension options.
- The Airport Development Board approved its recommendation at its September 9, 2020 meeting.







**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Tim Cass

SUBJECT: **10. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Purchase of Two Stop Trucks from Rush Truck Center for Sewage Collection (*Tim Cass*)**

GENERAL INFORMATION

Fleet Management seeks approval to purchase two Stop Trucks for Sewage Collection. Units to both be 2021 Isuzu NRR Cab and Chassis with Vactor Ramjet USJ3030-750 Jetting Body.

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

Funds for the purchase are to be provided by the Fleet Replacement Fund and total \$307,887.50

STAFF RECOMMENDATION

Staff recommends the purchase of the two Stop Trucks

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Stop Truck Resolution
2. Pricing For Complete Jetter Truck
3. Co-Op Stop Trucks Budget vs Actual
4. Co-Op Stop Trucks Addtl Info
5. CO-OP Stop Trucks Presentation

RESOLUTION NO _____

**A RESOLUTION OF THE CITY OF ABILENE, TEXAS
TO PURCHASE TWO STOP TRUCKS FOR WATER SEWAGE COLLECTION FROM RUSH TRUCK CENTER,
BUYBOARD COOPERATIVE**

WHEREAS, City of Abilene's Water Sewage Collection Division has a need for two Stop Trucks; and

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

WHEREAS, City of Abilene received pricing to purchase two Stop Trucks through BuyBoard Co-Op Contract 609-19; and

WHEREAS, Each unit is to be a 2021 Isuzu NRR cab and chassis with Vactor Ramjet USJ3030-750 Jetting Unit; and

WHEREAS, Rush Truck Center is the BuyBoard approved vendor for the cab and chassis and is using BuyBoard vendor Kinloch Equipment & Supply of Texas to supply the jetting body and system components.

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

PART 1: That the City Council approves this purchase from Rush Truck Center in the amount of Three Hundred Seven Thousand Eight Hundred and Eighty Seven Dollars and Fifty Cents (\$307,887.50) for two complete Stop Trucks.

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

ADOPTED this 24th day September, 2020

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE BUYBOARD

Vendor	<i>RUSH TRUCK CENTER</i>	Date Prepared	<i>9/3/2020</i>
Contact for Vendor:	<i>COLTON KRUSE</i>	Phone	<i>(830) 302-5219</i>
End User:	<i>City of Abilene</i>		
End User Contact:	<i>Cheri Carter</i>	Phone/Fax	<i>(325) 676-6252</i>
Product Description:	<i>Isuzu NRR Jetter Units</i>		

A: Base Price in Bid/Proposal Number: 609-19				Series: NRR		\$41,730.00
B: Published Options(<i>Itemize Below</i>)						
	DESCRIPTION		AMOUNT	OPT #	DESCRIPTION	AMOUNT
Isuzu	215 HP / Aisin Trans Package		\$ 3,295.00	RTC-0040	OEM+ Safety Analysis	\$ 1,375.00
Isuzu	Fire Ext		\$ 88.00	RTC-0122	Refuse Body Prep	\$ 3,934.00
Isuzu	Seat Covers		\$ 280.00	RTC-1024	Jetter Unit	\$ 101,875.00
Isuzu	Back Up Alarm		\$ 112.00	RTC-1026	Flooring/Insurance	\$ 1,761.00
Subtotal Column 1:		\$ 3,775.00		Subtotal Column 2:		\$ 108,945.00
Published Options added to Base Price(<i>Subtotal of "Col 1" & "Col 2"</i>)						\$ 112,720.00

C: Subtotal of A + B					\$ 154,450.00
D: Buyboard Approved Vendor					
Skid Mounted High Pressure Jetter System	\$ (4,881.25)				
Subtotal Column 1:		\$ (4,881.25)	Subtotal Column 2:		\$ -

Unpublished Options added to Base price (<i>Subtotal "Col 1 + Col 2"</i>)	\$ (4,881.25)
---	---------------

E: Contract Price Adjustment (<i>If any, explain here</i>)	

F: Total of C + D +/- E	\$ 149,568.75
-------------------------	---------------

G: Quantity ordered Units:	<u>2.00</u>	\$ 299,137.50
----------------------------	-------------	---------------

H: BUYBOARD Administrative Fee	\$ 400.00
--------------------------------	-----------

I: Non-Equipment Charges & Credits (<i>I.e.: Ext. Warranty, Trade-In, Delivery, etc.</i>)					
Extended Warranty Engine & Aftertreatment (5/200K)	\$ 2,850.00	x	2	\$ 5,700.00	
Freight	\$ 1,325.00	x	2	\$ 2,650.00	
					\$ 8,350.00

J: TOTAL PURCHASE PRICE INCLUDING (G+H+I)	\$ 307,887.50
---	---------------

BUDGET vs ACTUAL COSTS
Stop Trucks

Repl For Unit #	Division #	Division Name	Type Equipment	Budgeted Cost	Actual Cost	Budgeted vs Actual Variance
4097	8060	Water Utilities	Stop Truck	\$165,000.00	\$153,943.75	(\$11,056.25)
4098	8060	Water Utilities	Stop Truck	\$165,000.00	\$153,943.75	(\$11,056.25)

ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM
Stop Trucks

Unit #	Assignment	Year	Make	Model	Mileage	Hours	Total Maintenance Costs	Disposal Method	Replacement Reasoning
4097	WATER UTILITIES	2009	Ford/Pipehunter	F-650/7834	110,322	4,897	\$53,877.92	Auction	Meets replacement requirements
4098	WATER UTILITIES	2009	Ford/Pipehunter	F-650/7834	87,707	7,033	\$43,926.12	Auction	Meets replacement requirements

Purchase of 2 Stop Trucks from Rush Center for Sewage Collection



Stop Trucks

- CO-OP Purchase of Two Stop Trucks Assigned to Sewage Collection
- Both are replacement units
- Units to be 2021 Isuzu NRR Chassis with Vactor Ram-Jet Bodies
- BuyBoard Cooperative purchase to coordinate the build and delivery process







**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Tim Cass

SUBJECT: 11. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Purchase of One Backhoe Loader for Water Distribution (*Tim Cass*)

GENERAL INFORMATION

Fleet Management seeks approval to purchase one Backhoe Loader for Water Distribution. Unit is to be 2020 Caterpillar 420F2 AE4 Backhoe Loader.

The current unit could not be repaired by the City Shop or the Manufacturer's Dealer.

Backhoe is purchased through Sourcewell quote number 032119-CAT.

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

Funds for the purchase are to be provided by the Fleet Replacement Fund and total \$104,950.00

STAFF RECOMMENDATION

Staff recommends the purchase of the one Backhoe Loader

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Backhoe Loader Resolution
2. Pricing For 420F2 Backhoe
3. Co-Op Backhoe Loader Budget vs Actual
4. Co-Op Backhoe Loader Addtl Info
5. CO-OP Backhoe Loader Presentation

RESOLUTION NO _____

**A RESOLUTION OF THE CITY OF ABILENE, TEXAS
TO PURCHASE ONE BACKHOE LOADER FOR WATER DISTRIBUTION FROM WARREN CAT,
SOURCEWELL COOPERATIVE**

WHEREAS, City of Abilene's Water Distribution Division has a need for one Backhoe Loader; and

WHEREAS, City of Abilene received pricing to purchase one Backhoe Loader through Sourcewell Co-Op Contract 032119-CAT; and

WHEREAS, Unit is to be a 2020 Caterpillar 420F2 AE4; and

WHEREAS, Warren Cat is the Sourcewell approved vendor for the complete backhoe loader unit.

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

PART 1: That the City Council approves this purchase from Sourcewell in the amount of One Hundred Four Thousand Nine Hundred and Fifty Dollars and No Cents (\$104,950.00) for one complete Backhoe Loader.

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

ADOPTED this 24th day September, 2020

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



SOURCEWELL QUOTE

SOURCEWELL CONTRACT NUMBER:032119-CAT

Quote 234528-03

September 1, 2020

CITY OF ABILENE
PO BOX 60
ABILENE
Texas
79604-0060

Attention:CHERI CARTER

Dear CHERI CARTER, Thank you for this opportunity to quote Caterpillar products for your business needs. We are pleased to quote the following for your purchase consideration.

One (1) New CATERPILLAR Model: 420F2 AE4 Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

STOCK NUMBER:C103760 **SERIAL NUMBER:**0HWC05939 **YEAR:**2020

We wish to thank you for the opportunity of quoting on your equipment needs. This quotation is valid for 30 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.
Sincerely,

Lee Conoly
Machine Sales Representative

One (1) New CATERPILLAR Model: 420F2 AE4 Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

STANDARD EQUIPMENT

BOOMS, STICKS, AND LINKAGES--BACKHOE-LOADER-- 14'4" Center pivot backhoe-- Single Tilt Loader-4.3 Meters-- Lift cylinder brace-- Boom and swing transport locks-- Self-leveling loader with single-- Pilot operated backhoe and-lever control-electro hydraulic stabilizer controls-- Return-to-dig-- Street type stabilizer shoes-(automatic bucket positioner)-- Anti-drift hydraulics (boom, stick,-- Transmission neutralizer switch-and E-stick)-- Bucket level indicator-- Cat Cushion Swing(tm) system

POWERTRAIN-- Water separator-- Torque converter-- Thermal starting aid system-- Transmission-four speed manual shift-- Dry type axial seal air cleaner with-- Neutral safety switch-integral precleaner-- Spin-on filters for-- Automatic dust ejection system-Fuel-- Filter condition indicator-Engine oil-- Hydraulically boosted multi-plate-Transmission oil-wet disk brake with dual pedals and-- Outboard Planetary Rear Axles-interlock-- Diesel particulate filter-- Differential lock-- Hydrostatic power steering

HYDRAULICS-- Pilot hoe and mechanical loader-- Caterpillar XT-3 hose-controls-- Hydraulic oil cooler-- Load sensing, variable flow system-- Pilot control shutoff switch-with 43 gpm (162 L/min) axial piston-- Flow-sharing hydraulic valves-pump-- Hydraulic suction strainer-- 6 micron hydraulic filter

ELECTRICAL-- 12 volt electrical start-- Audible system fault alarm-- Horn, front and rear-- Key start/stop system-- Backup alarm-- 850 CCA maintenance free battery-- Hazard flashers/turn signals-- Battery disconnect switch-- Halogen head lights (2)-- External Power Receptacle (12v)-- Halogen rear flood lights (2)-- Diagnostic ports for engine and-- Stop and tail lights-machine Electronic Control Modules

OPERATOR ENVIRONMENT-- Interior rearview mirror-- Automatic Engine Speed Control-- ROPS canopy, Rear Fenders-- One Touch Low Idle-- 2-inch (50mm) retractable seat belt-- Floor mat and Coat Strap-- Tilt steering column-- Lockable storage area-- Steering knob-- Air suspension seat-- Hand and foot throttle

FLUIDS-- Antifreeze - Extended Life Coolant--20F (-30C)

OTHER STANDARD EQUIPMENT-- Standard Storage Box-guard-- Transport tie-down points-- CD-ROM Parts Manual-- Ground line fill fuel tank with-- Safety Manual-42.3 gal (160L) capacity and 5 gal (19L)-- Operations and Maintenance Manual-- diesel exhaust fluid-- Lockable hood-- Rubber impact strips on radiator-- Tire Valve Stem Protection

MACHINE SPECIFICATIONS

Description	Reference No
420F2 BHL ST, TIER 4, HRC	450-8448
STICK, EXTENDABLE, 14FT	450-8730
ENGINE, 74.5KW,C4.4 ACERT, T4F	450-8757
HYDRAULICS, GP, 6FCN/8BNK, ST	450-8527
CAB, DELUXE	450-8683
SEAT, DELUXE FABRIC	433-4806
BELT, SEAT, 2" SUSPENSION	206-1747
AIR CONDITIONER, T4	450-8715
COUNTERWEIGHT, 1015 LBS	337-9696
STABILIZER PADS, FLIP-OVER	9R-6007
BUCKET-GP, 1.4 YD3, PO	337-7388
CUTTING EDGE, TWO PIECE	9R-5321
INSTRUCTIONS, ANSI	430-9944
SERIALIZED TECHNICAL MEDIA KIT	421-8926
RIDE CONTROL	398-2681
LINES, COMBINED AUX, E-STICK	398-2853
RADIO, FM BLUETOOTH	540-2298
FAN	387-6682
COLD WEATHER PACKAGE, 120V HRC	398-2882
PLATE GROUP - BOOM WEAR	423-7607
GUARD, STABILIZER	353-1389
SHIPPING/STORAGE PROTECTION	461-6839
RUST PREVENTATIVE APPLICATOR	462-1033
PRODUCT LINK, CELLULAR PL641	581-1781
BUCKET-ROCK, HD, 24", 7.0 FT3	219-3396
WORKLIGHTS (8) LED LAMPS	491-6736
POWERTRAIN, 4WD, POWERSHIFT	547-6095
TIRES, 340 80-18/500 70-24, MX	533-0488
LANE 3 ORDER	0P-9003

WARRANTY

Extended Warranty: 420 GOVERNMENT 60 / 3000 POWERTRAIN + HYDRAULICS + TECH

Abilene

Signature

BUDGET vs ACTUAL COSTS
Backhoe Loader

Repl For Unit #	Division #	Division Name	Type Equipment	Budgeted Cost	Actual Cost	Budgeted vs Actual Variance
4329	8050	Water Distribution	Backhoe Loader	Unplanned Purchase	\$104,950.00	(\$104,950.00)
						(\$104,950.00) Over Budget

ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM
BACKHOE LOADER

Unit #	Assignment	Year	Make	Model	Mileage	Hours	Total Maintenance Costs	Disposal Method	Replacement Reasoning
3973	WATER UTILITIES	2009	Case	590 Super M	N/A	5,174	\$77,007.64	Auction	Unit was not able to be repaired by the City shop or the Manufacturer

Purchase of Backhoe Loader for Water Distribution



Backhoe Loader

- CO-OP Purchase of One Backhoe Loader assigned to Water Distribution
- Unit is to replace irreparable like kind equipment
- Unit is to be a 2020 Caterpillar 420F2 AE4 Backhoe Loader
- Sourcewell Cooperative purchase to coordinate the build and delivery process



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Lesli Andrews, Director

FROM: Robert Hanna, City Manager

SUBJECT: 12. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approval for a Change Order with Bontke Construction for Minter Park (Lesli Andrews)

GENERAL INFORMATION

The water fountain at Vera Minter Hall Park (Minter Park) collapsed during the summer of 2018. Parks and Recreation Board approved at the September 10, 2018 Board meeting selecting a citizen committee of 5-7 citizens to look at renovations and updates to Minter Park. The committee met numerous times over five months to develop a design. Parks and Recreation Board approved the conceptual drawing on February 19, 2019. City Council approved the contract with Bontke Construction on December 5, 2019.

SPECIAL CONSIDERATIONS

During the installation of the water curtain electrical and plumbing upgrades were required.

FUNDING/FISCAL IMPACT

Change Order 1 for the amount of \$60,000 is required. \$15,960.81 is coming from contingency and \$44,039.19 is coming from the general fund.

STAFF RECOMMENDATION

Staff recommends approval of the change order in the amount of \$60,000 for the upgrades to

electrical and plumbing for the water curtain.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution Bontke Construction - Minter Park Change Order
2. Changer Order
3. Presentation Minter Park Water Curtain

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING A CHANGE ORDER TO THE CONTRACT WITH BONTKE BROTHERS CONSTRUCTION COMPANY FOR MINTER PARK ADDITIONS & ALTERATIONS PROJECT.

WHEREAS, the water fountain at Vera Minter Hall Park (Minter Park) collapsed during the summer of 2018; and

WHEREAS, the City awarded the contract for construction of additions and alterations to Minter Park to Bontke Brothers Construction Company in the amount of \$295,800; and

WHEREAS, during the installation of the water curtain it was discovered that a change order was required for electrical and plumbing upgrades; and

WHEREAS, the total cost of the Change Order is \$60,000; and

WHEREAS, funding for the change order will come from the contingency in the amount of \$15, 960.81 and \$44,039.19 from FY 2020 General Fund.

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

Part 1: The City Manager is hereby authorized to sign the change order to Bontke Brothers Construction Company for Minter Park electrical and plumbing upgrades in the amount of \$60,000.

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

ADOPTED this 24th day of September 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

CHANGE ORDER



CITY OF ABILENE CHANGE ORDER NUMBER: 1

1. CONTRACTOR: Bontke Construction

2. Change Order Work Limits:
Sta.
to Sta.

3. Type of Change: Minor
(Major/Minor)

4. Reasons: Upgrade and attach plumbing and electrical where required while installing the water curtain at Minter Park.

5. Describe the work being revised: Upgrade and attaching plumbing and electrical in the storeroom and trouble shooting the water curtain during install.

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).

Project:

Street:

Contract Number:

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: September 16, 2020

(Signature)

Typed/Printed Name: Brent Partain

Typed/Printed Title: Project Manager

The following information must be provided:

Change in contract time:

0

Original contract price:

\$295,800

Existing contract price: *

355,800

Amount added or subtracted by this CO:

\$60,000

* Includes previous COs

RECOMMENDED FOR EXECUTION:

Inspection Services Manager

Date

City

Date



HEADQUARTERS USA
530 S. Gaudin St.
Anaheim, CA 92805
• 1-714-294-8900
• info@aquareign.com

PROJECT

DIGITAL WATER CURTAIN

PLACE

SHEET TITLE

HYDRAULIC INSTALLATION

CAO

GEN-01

DATE

REVISION

DRAWN

CHECKED

BY

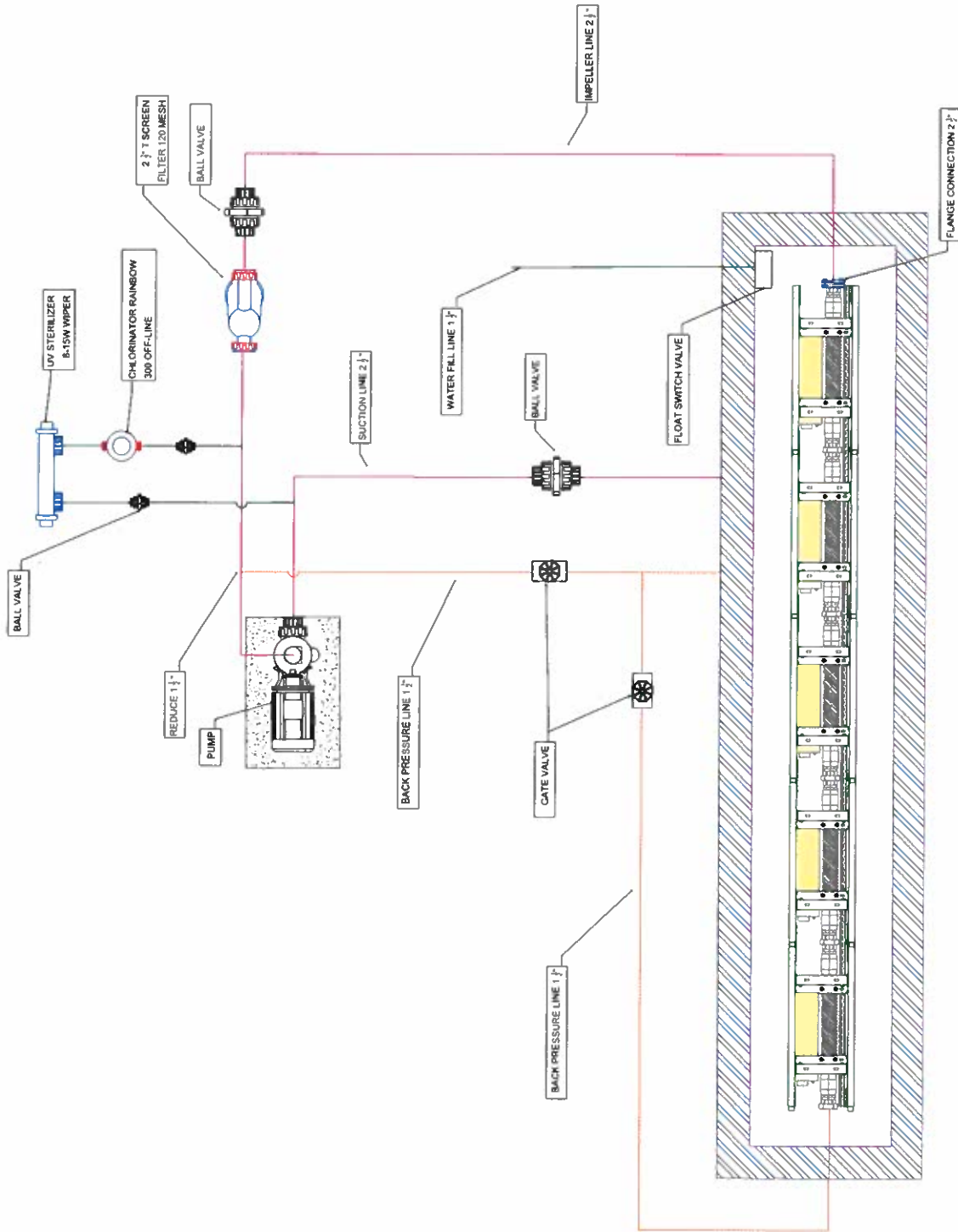
DATE

APPROVED

J.M. CASTAN

[Signature]

SCALE
UNITS
ON
A2



THIS DRAWING IS THE PROPERTY OF AQUAREIGN. UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS ARE IN INCHES. UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS ARE IN INCHES. UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS ARE IN INCHES.

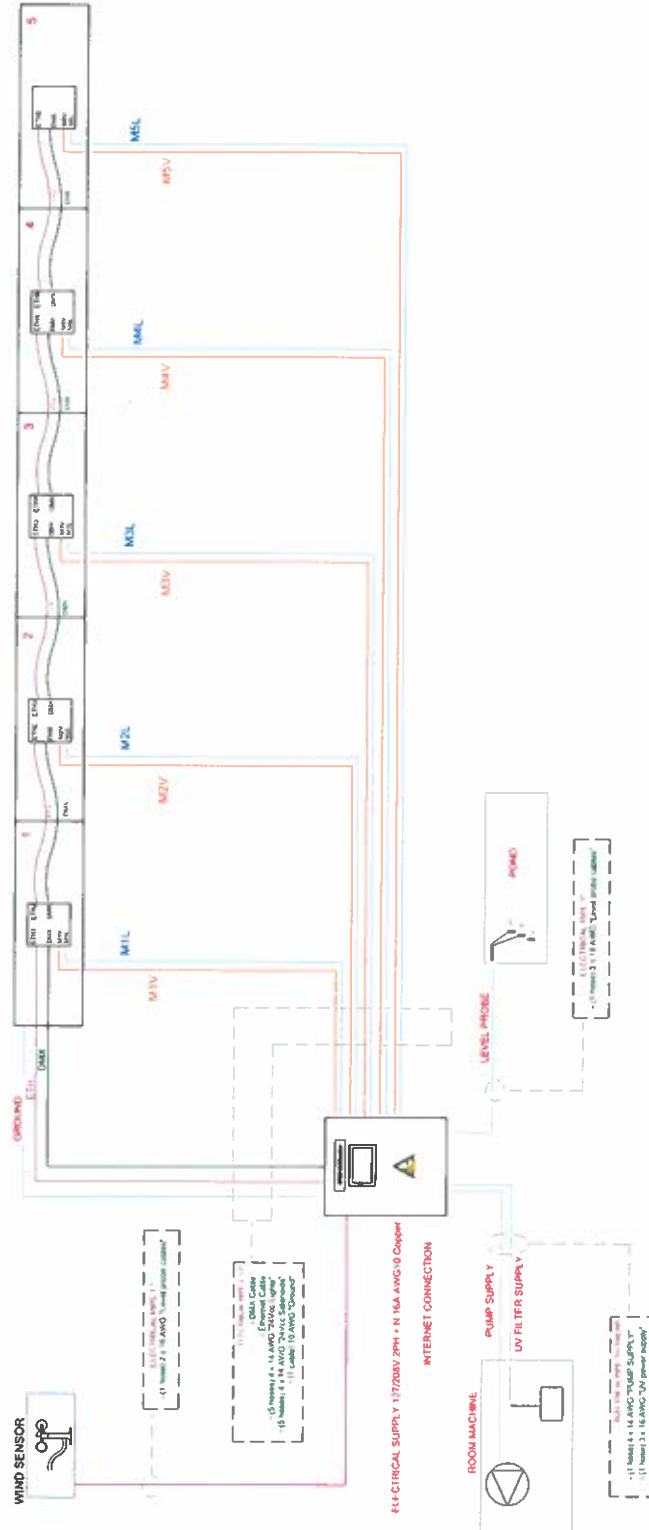


HEADQUARTERS USA
10015 E. Commercial St.
Suite C
Austin, TX 78758
P: 512-336-9999
E: info@aquareign.com

PROJECT	DIGITAL WATER CURTAIN		
PLACE			
SHEET TITLE			
ELECTRICAL DIAGRAM			
CAD	GEN-03		
DATE	REVISION	DRAWN	CHECKED
10/1/15	9	R.M.S.	J.M. CASTAN
APPROVED			
J.M. CASTAN			

SCALE	DIN
UNITS	mm

SCHEMATIC DIAGRAM



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Resolution: Minter Park Water Curtain Additions and Upgrades



Request to Approve Change Order to Bontke Construction

- Upgrade to electrical and plumbing needed during install of the water curtain
- Original contract \$285,800
- Change order required cost \$60,000
- New contract price \$355,800
- Funds to be used:
 - \$15,960.81 Contingency
 - \$44,039.19 FY20 General



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Greg McCaffery

SUBJECT: 13. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Water Department Street and Miscellaneous Repair Work 2019-2020 Change Order (Greg McCaffery)

GENERAL INFORMATION

The Public Works Department manages an ongoing construction project with a local contractor with the purpose of repairing pavement at various locations within Abilene as a result of repair of completed by the Water Utilities towards waterlines and sanitary sewers. The current contract included nearly three-hundred backlogged repair cuts not previously addressed, as well as, new repairs during the year (typically 360 per year). The current contractor has outperformed what has been completed in previous years. Therefore, the existing contract needs an extension of both time and funding to continue work until the new repair contract initiates, and also minimize the length of time that needed repairs are left undone. Staff desires to extend the current contract time by 15 calendar days, from September 30, 2020 to October 15, 2020 and increase the current contract amount by \$250,000.00. The contract increase will be for additional roadway base, asphalt and mobilization costs.

SPECIAL CONSIDERATIONS

This project period will end on October 15, 2020.

FUNDING/FISCAL IMPACT

Funding for this project is allocated through funds from the Water Department.

STAFF RECOMMENDATION

Staff recommends approval of this change order.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Water Cuts Change Order Project Resolution
2. Change_Order_1_Sealed
3. Backup_Info_Signed_Contract
4. REV_PP_Water Cuts Change Order

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING
CHANGE ORDER OF THE CONTRACT: WATER DEPARTMENT STREET &
MISCILANEOUS REPAIR WORK 2019-2020**

WHEREAS, the Public Works Department requests approval of change order of the contract for Water Department Street & Miscelaneous Repair Work 2019-2020; and

WHEREAS, the change order involves an extension of time, by 15 calandar days, and an increase in the funding limit by \$250,000.00; and

WHEREAS, the following change order was prepared on September 15, 2020:

Bontke Brothers Construction Co., Inc., Abilene, Texas -- \$250,000.00

WHEREAS, Bontke Brothers Construction Co., Inc., Abilene, has agreed to the amount of \$250,000.00 with the change order meeting specifications. Staff recommends approval of this change order.

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

PART 1: That the City Council approves this change order for 15 additional calendar days and an increase of \$250,000.00 to the spending limit.

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

ADOPTED this 24th day of September, 2020.

ATTEST:

Shawana Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



CITY OF ABILENE

CHANGE ORDER NUMBER: 1

1. CONTRACTOR: Bontke Brothers Construction Co

2. Change Order Work Limits: City of Abilene

3. Type of Change: Major (Major/Minor)

4. Reasons: Adding to Items 251, 310, 340-1, & 529.

5. Describe the work being revised: Adding 8000 sy to item 251, adding 2000 gal to item 310, adding 880 tons to item 340-1, adding 112 locations to item 500-2 and adding 48 sf to Item 531-1. Also adding 15 calendar days to contract.

Project: Water Dept. Misc. Street Repairs

Street: City of Abilene

Contract Number: E4588

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 9-16-20

(Signature)

Typed/Printed Name Michael Bontke

Typed/Printed Title VP

The following information must be provided:

Change in contract time: 15 days.

Original contract price: \$ 1,019,350.00.

Existing contract price: * \$ 1,019,350.00.

Amount added or subtracted by this CO: \$ + 250,000.00.

Revised contract price: \$ 1,269,350.00.

* Includes previous CO's

RECOMMENDED FOR EXECUTION:

City Manager

Date

City Engineer's Seal:



CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made August 22, 2019, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Bontke Brothers Construction Company, Inc. of the City of Abilene, State of Texas. ("Contractor").

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

THE AGREEMENT

1. Work and Consideration.

The Contractor hereby agrees to commence and complete the construction of Work described as **WATER DEPARTMENT STREET AND MISCELLANEOUS REPAIR WORK 2019-2020**

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

WATER DEPARTMENT STREET AND MISCELLANEOUS REPAIR WORK 2019-2020

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, (2) the Technical Specifications section of these Contract Documents, and (3) the Plans attached to these Contract Documents. City of Abilene specifications control over Texas Department of Transportation specifications in the event of a conflict.

a) Contractor will complete a minimum of 18 of the approximately 200 existing Water Department street cut repairs per month. All existing street cuts should be addressed by the end of the contract term. Failure to complete work according to this schedule shall be considered a breach of contract.

b) Contractor will complete the repair of each new Water Department street cut and miscellaneous work within 30 calendar days of receiving notice of the location of each new street cut. Failure to complete new street cut repairs within 30 calendar days shall be considered a breach of contract.

In consideration of this Work, the City will pay the Contractor the sum of \$1,019,350.00 (One million nineteen thousand three hundred fifty dollars and zero cents).

2. **Term and Termination.** The term of this contract will be through September 30, 2020, contingent upon continued funding by the Governing Body of the City of Abilene. At the end of the term, the City of Abilene may, with the agreement of the Contractor, extend this contract for one year.

This contract may be terminated by the City for any reason, upon 60 days written notice by City to Contractor. In the event of termination, Contractor will be compensated for work satisfactorily performed before the termination date.

If, through any cause, the Contractor fails to fulfill obligations under this contract, or if the Contractor breaches any term of this Contract, the City has the right to send notice of the failure to fulfill obligations or breach to the Contractor. Contractor shall have 30 days from the date notice

is sent, to fulfill the obligation or remedy any breach. If at the end of the 30 day period, Contractor has failed to fulfill its obligations or remedy any breach of the Contract, the City may immediately terminate the Contract in writing. The Contractor will be compensated for work satisfactorily performed before the termination date.

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

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

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

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

6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

7. Insurance. The Special Conditions found 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 WHERE OF, the parties hereto have executed this contract:

CONTRACTOR

Name of Contractor:

Bontke Brothers Construction Co., Inc.

Business Address:

102 College Drive

Abilene, Texas 79601


Signature

Kenneth Bontke
Name - Typed or Printed

President
Title - Typed or Printed

(325) 677-6276

Business Phone No.

75-1331325

Federal Tax I.D.#

ATTEST: (If Corporation)


Corporate Secretary's Signature
Michael Bontke

Corporate Seal
(if none, write "None")

CITY OF ABILENE


Authorized Signature

APPROVED:


City Attorney


Risk Manager

ATTEST:


City Secretary

Seal:

BID FORM

Date: 8/13/19

Bid of Buntke Brothers, ("Bidder"), organized and existing under the laws of the

State of TX, doing business as a Corporation
(corporation, partnership, or individual)

To: THE CITY OF ABILENE, TEXAS

Bidder offers to perform all Work for constructing

WATER DEPARTMENT STREET AND MISCELLANEOUS REPAIR WORK 2019-2020

according to the Contract Documents and at the prices stated in the Bid Schedule.

Bidder acknowledges receiving Addenda _____

Bidder certifies (if a joint bid, each party certifies as to its own organization) that this Bid has been arrived at independently and without consultation, communication or agreement with any other bidder or competitor as to any matters relating to this Bid.

Bidder offers to perform all contract work described for an as earned total of: 1,019,350.00

The Bid Schedule states the lump sum, unit prices, if requested, and alternate prices.

Bidder offers to complete any work under this Contract by September 30, 2020. Contractor may have option of continuing work for one additional year in accordance with Contract terms.

BID SCHEDULE

Show bid prices in words and numerals. Words take precedence over numerals. Round off unit prices to two decimal places only. These Bid prices must include all labor, materials, equipment, insurance, overhead, superintendence, transportation, profit, and incidentals to cover the finished Work called for in the Contract Documents. In case of mathematical error in extensions, (Unit Prices) prevails

BID SCHEDULE FOR WATER DEPARTMENT STREET AND MISCELLANEOUS REPAIR WORK 2019-2020 BASE BID NOTE: Bids shall include all applicable taxes and fees.				
ITEM	ESTIMATE QUANTITY	DESCRIPTION AND UNIT PRICES (PRICE TO BE WRITTEN)	UNIT PRICE (NUMBERS)	TOTAL
201	100.00 SY	Rehabilitate Base at <u>Twelve</u> DOLLARS and <u>NO</u> CENTS PER SY	12.00	1,200.00
204	10.00 HR	Sprinkling (Dust Control) at <u>One Hundred Twenty Five</u> DOLLARS and <u>NO</u> CENTS PER HR	125.00	1,250.00
247	75.00 CY	Flexible Base (Type A, Gr. 2) at <u>one Hundred</u> DOLLARS and <u>NO</u> CENTS PER CY	100.00	7,500.00
251	10,000.00 SY	Reworking Base Material (Var. Depth) at <u>Five</u> DOLLARS and <u>NO</u> CENTS PER SY	5.00	50,000.00
275	325.00 SY	Portland Cement Treated Material at <u>Twenty-Two</u> DOLLARS and <u>NO</u> CENTS PER SY	22.00	7,150.00
310	1,600.00 GAL	Asphalt Prime Coat (AEP) at <u>Nine</u> DOLLARS and <u>NO</u> CENTS PER GAL	9.00	14,400.00
340-1	1,200.00 TON	Hot Mix Asphaltic Concrete (Type "D")(2") at <u>One Hundred Forty</u> DOLLARS and <u>NO</u> CENTS PER TON	140.00	168,000.00
340-2	50.00 TON	Hot Mix Asphaltic Concrete (Type "B")(Var. Depth) at <u>One Hundred Eighty</u> DOLLARS and <u>NO</u> CENTS PER TON	180.00	9,000.00 ⁽⁸⁹⁾
360	200.00 SY	Concrete Pavement (Class "P")(7") at <u>One Hundred Ten</u> DOLLARS and <u>NO</u> CENTS PER SY	110.00	22,000.00
401	10.00 CY	Flowable Backfill at <u>Two Hundred</u> DOLLARS and <u>NO</u> CENTS PER SY	200.00	2,000.00

BID SCHEDULE FOR WATER DEPARTMENT STREET AND MISCELLANEOUS REPAIR WORK 2019-2020 BASE BID NOTE: Bids shall include all applicable taxes and fees.				
ITEM	ESTIMATE QUANTITY	DESCRIPTION AND UNIT PRICES (PRICE TO BE WRITTEN)	UNIT PRICE (NUMBERS)	TOTAL
420-1	3,000.00 SF	Concrete Structure (Alley Approach)(Class "A")(6") at <u>Ten</u> DOLLARS and <u>NO</u> CENTS PER SF	10.00	30,000.00
420-2	75.00 SY	Concrete Structure (Valley Gutter)(Class "P")(7") at <u>One Hundred</u> DOLLARS and <u>NO</u> CENTS PER SY	100.00	7,500.00
420-3	6,000.00 SF	Concrete Structure (Class "P")(6" Driveway) at <u>Ten</u> DOLLARS and <u>NO</u> CENTS PER SF	10.00	60,000.00
500-1	30.00 EA	Mobilization (Large Watercut) at <u>Two Thousand</u> DOLLARS and <u>NO</u> CENTS PER EA	2000.00	60,000.00
500-2	320.00 EA	Mobilization (Small Watercut) at <u>Six Hundred Ten</u> DOLLARS and <u>NO</u> CENTS PER EA	610.00	195,200.00
500-3	10.00 EA	Mobilization (Emergency) at <u>Two Thousand Five Hundred</u> DOLLARS and <u>NO</u> CENTS PER EA	2500.00	25,000.00
502-1	12.00 MO	Barricades, Signs, and Traffic Handling at <u>Six Thousand</u> DOLLARS and <u>NO</u> CENTS PER MO	6000.00	72,000.00
502-2	6.00 EA	Barricades, Signs, & Traffic Handling (Emergency) at <u>Six Thousand</u> DOLLARS and <u>NO</u> CENTS PER EA	6000.00	36,000.00
529	600.00 LF	Concrete Curb, Gutter, & Combined Curb and Gutter at <u>Twenty Five</u> DOLLARS and <u>NO</u> CENTS PER LF	25.00	15,000.00
531-1	1,200.00 SF	Sidewalk (Class "A")(4") at <u>Ten</u> DOLLARS and <u>NO</u> CENTS PER SF	10.00	12,000.00
531-2	150.00 SF	Curb Ramps at <u>Twenty Five</u> DOLLARS and <u>NO</u> CENTS PER SF	25.00	3750.00
SPL-1	3,500.00 SY	Small Watercut Pavement Repair (Hot Mix) at <u>Sixty</u> DOLLARS and <u>NO</u> CENTS PER SY	60.00	210,000.00

BID SCHEDULE FOR WATER DEPARTMENT STREET AND MISCELLANEOUS REPAIR WORK 2019-2020 BASE BID NOTE: Bids shall include all applicable taxes and fees.				
ITEM	ESTIMATE QUANTITY	DESCRIPTION AND UNIT PRICES (PRICE TO BE WRITTEN)	UNIT PRICE (NUMBERS)	TOTAL
SPL-2	8.00 HR	Vacuum Truck (Dust Control) at Three Hundred DOLLARS and NO CENTS PER HR	300.00	2400.00
SPL-3	10.00 HR	Site Clean Up at Eight Hundred DOLLARS and NO CENTS PER HR	800.00	8000.00

TOTAL AMOUNT OF BASE BID (In words):

One million Nineteen Thousand, Three Hundred & Six dollars
and no cents

TOTAL AMOUNT OF BASE BID (In numbers):

\$ 1,019,350.00

Respectfully submitted,



Signature

Michael Bontke

Typed or Printed Name

Title: Vice President

Address: 102 College Dr.

Abilene, TX 79601

Telephone: 325-677-6276

Federal Tax I.D. #: 75-1331325

ATTEST:



Signature

Brent Partain

Typed or Printed Name

Title: Project Manager

(Seal required if Bid by Corporation)

Resolution:
Water Department Street and Miscellaneous Repair
Work 2019-2020 Change Order

(McCaffery)



Water Department Street and Miscellaneous Repair Work 2019-2020

- Contract Award August 22, 2019 for \$1,091,350.00.
- Included with the contract were 280 existing water/ sewer utility cuts of which a minimum 18 were to be completed per month.
- Average of 30 new water/ sewer per month.
- Request of a Change Order for the extension of time by 15 calendar days and an increase in contract amount by \$250,000.00.
- Contract items include Roadway base, asphalt and mobilization.
- New contract amount would be \$1,341,350.00 and a contract completion date of October 15, 2020.
- Staff recommends approval of change order.



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Greg McCaffery

SUBJECT: **14. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding Annual Street Services Division Materials Bid #CB-2077 (Greg McCaffery)**

GENERAL INFORMATION

The City of Abilene Street Services Division is requesting the City Council award bids, by resolution, for materials used in the maintenance and rehabilitation of the street and alley system. Notices were published in the Abilene Reporter News on August 30, 2020 and September 6, 2020, and bids were opened on September 15, 2020. The following table lists the individual materials bids, staff recommended bidder and unit price bid. In addition, staff recommends an alternative bid for Hot Mix Asphalt, Type D - Delivered be awarded to Vulcan Materials, Abilene, Texas for the unit price of \$80.14 per ton. The alternative award would only be used when the primary is not able to provide the product within two days. Item #16 shall not be awarded as no bids were received.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Funding for the materials is available in the 2020/2021 general operating budget for Street Maintenance Fund.

STAFF RECOMMENDATION

It is recommended that the City Council award, by resolution, the bulk materials supply contracts as listed and recommended by the City Staff, and to authorize the City Manager or his designee to execute all necessary documents related to these contracts.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. REV_ResolutionCB-2077
2. CB2077 TABSHEET - STREET MAINTENANCE MATERIALS (1)
3. REV_PP_Resoulution Award of Bid CB-2077

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARD, THE BULK MATERIALS SUPPLY CONTRACTS TO VARIOUS BIDDERS AS LISTED BELOW – FUNDS ARE AVAILABLE IN THE 2020-21 GENERAL OPERATING BUDGET

WHEREAS, the City of Abilene Street Services Division is requesting the City Council award bids, for materials used in the maintenance of street and alley system. The City of Abilene duly advertised and gave such noticed, as required by law, and bids opened on September 15, 2020; and

WHEREAS, the following table lists the individual materials bid, and the staff recommended bidder and unit price bid:

Limestone Rock Asphalt Type CC	Vulcan Const. Materials	\$ 88.19/Per Ton
Hot Mix Type D – Delivered	J.H. Strain & Sons Inc.	\$ 72.00/Per Ton
Hot Mix Type D – Picked Up	J.H. Strain & Sons Inc.	\$ 66.00/Per Ton
Hot Mix Type B – Delivered	J.H. Strain & Sons Inc.	\$ 71.00/Per Ton
Hot Mix Type B – Picked Up	J.H. Strain & Sons Inc.	\$ 65.00/Per Ton
A-1 Flexible Base – Delivered	Vulcan Const. Materials	\$ 12.10/Per Ton
A-1 Flexible Base – Picked Up	Vulcan Const. Materials	\$ 7.00/Per Ton
Type A, Grade 6 Rock – Delivered	Vulcan Const. Materials	\$ 29.34/Per Ton
Type A, Grade 6 Rock – Picked Up	Vulcan Const. Materials	\$ 16.00/Per Ton
Portland Cement Type 1	Abilene Lumber BMC	\$ 11.97/Per Ton
Class A Portland Cement, 5 Sack	Ingram Concrete	\$ 110.00/Per Ton
Class P Portland Concrete	Ingram Concrete	\$ 115.50/Per Ton
Flowable Fill Concrete	Ingram Concrete	\$100.00/Per Cubic Yard
Polymer Modified Crack Sealant	Crafco Inc.	\$ 0.45/ Per Pound
HPPM	Unique Paving Materials	\$ 115.50/Per Ton

WHEREAS, staff recommends an alternate supply contract with Vulcan Construction Materials, Abilene TX, for the purchase of Hot Mix Type D – delivered at the price of \$80.14 per ton when the primary is not able to provide the same material within two days of notice.

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

- PART 1: That the City Council award the supply contracts as listed in the table above, including the alternate contract, recommended by the Street Service's Staff and to authorize the City Manager or his designee to execute all necessary documents related to the contracts.
- PART 2: That this Resolution shall take effect immediately from and after passage.

ADOPTED this 24th day of September, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

PAGE
1 OF 3

Page 278 of 660

Award of Annual Street Services Division Materials 2021

Resolution: Bid Award #CB#-2077 Annual Street Services Division Materials 2021

(G. McCaffery)



Resolution: Award of Annual Street Service Division Materials

Item

Limestone Rock Asphalt Type CC
Hot Mix Type D-Delivered
Hot Mix Type D-Delivered (Alternate)
Hot Mix Type D-Picked Up
Hot Mix Type B-Delivered
Hot Mix Type B-Picked Up
A-1 Flex Base-Delivered
A-1 Flex Base-Picked Up
Type A, Grade 6 Rock-Delivered
Type A, Grade 6 Rock-Pick Up
Portland Cement Type I
Class A Portland Cement, 5 Sack
Class P Concrete
Flowable Fill Concrete
Polymer Modified Crack Sealant
HPPM

Company

Vulcan Const. Materials
J.H. Strain & Sons Inc.
Vulcan Const. Materials
J.H. Strain & Sons Inc.
J.H. Strain & Sons Inc.
J.H. Strain & Sons Inc.
Vulcan Const. Materials
Vulcan Const. Materials
Vulcan Const. Materials
Vulcan Const. Materials
Abilene Lumber BMC
Ingram Concrete
Ingram Concrete
Ingram Concrete
Crafco Inc.
Unique Paving

Unit Price

\$88.19/Per Ton
\$72.00/Per Ton
\$80.14/Per Ton
\$66.00/ Per Ton
\$71.00/ Per Ton
\$65.00/ Per Ton
\$12.10/ Per Ton
\$7.00/ Per Ton
\$29.34/ Per Ton
\$16.00/ Per Ton
\$11.97/Per Sack
\$110.00/ Per Cubic Yard
\$115.50/ Per Cubic Yard
\$100.00/ Per Cubic Yard
\$0.45/ Per Gallon
\$115.50/ Per Ton

NOTE: Hot Mix Type D-Delivered (Alternate) – This contract only utilized when Strain & Sons Inc is unable to provide Hot Mix Type D-Delivered within 2 days of notice.



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Greg McCaffery

SUBJECT: **15. Ordinance (First Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Change the Time Limits and Metered Parking Zones for Downtown Parking (*Greg McCaffery*)**

GENERAL INFORMATION

Over the last several months the Mayor's Downtown Task Force (Task Force) has held discussions, evaluated and made recommendations regarding the improvements of available on-street parking, limits on timed parking, structured parking improvements, and branding & marketing of downtown Abilene.

At the Task Force meeting of a June 26, 2020, it was recommended to change the parking limits and parking metered zones to improve the efficiencies of parking in the downtown. These improvements would involve removing the parking meters and adjusting the time limits, mostly to hours, on certain streets within the downtown.

An ordinance amendment has been developed by staff to address the time limits for parking within the downtown whereby parking meters will be removed and two hour parking limit will be set in place within the central downtown area bounded by North 1st Street to North 6th Street and Hickory Street to Walnut Street. Further, one hour parking would be allowed on Pine Street (Eastside) from 3rd to 4th Streets, and 3rd (Northside) and 4th (Southside) Streets from Walnut to Pine Streets.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval of the ordinance amendment.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. REV2_09242020_First_Reading_Parking_Limits (1)
2. REV_Existing Parking Maps Model 09172020 (1)
3. REV_Proposed Parking Maps Model 09172020 _1 (1)
4. PP_REV2_Downtown Parking_Limits

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 18, “MOTOR VEHICLES AND TRAFFIC,” ARTICLE VIII, “SCHEDULES,” SECTION 18-299, “PARKING TIME LIMITED,” AND SECTION 18-300, “PARKING METER ZONES” AS SET OUT BELOW; AND CALLING A PUBLIC HEARING.

WHEREAS, the Mayor’s Downtown Task Force, has made various recommendations regarding the improvements of available on-street parking, metered zoned parking and limits on timed parking within the downtown area; and,

WHEREAS, the City of Abilene is currently in the process of improving the efficiency of downtown parking; and,

WHEREAS, improvements include removing the metered street parking and adjusting time limits on certain streets within the downtown; and,

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

PART 1: That Chapter 18, “Motor Vehicles and Traffic,” Article VIII, “Schedules,” Section 18-299, “Parking time limited,” of the Abilene City Code be amended as set out in Exhibit “A,” attached hereto and made a part of this Ordinance for all purposes.

PART 2: That Chapter 18, “Motor Vehicles and Traffic,” Article VIII, “Schedules,” Section 18-300, “Parking meter zones,” be amended as set out in Exhibit “A,” attached hereto and made part of this Ordinance for all purposes.

PART 3: That if the provisions of any section, subsection, paragraph, subdivision or clause of this Ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.

PART 4: That any person, firm, or corporation violating the provisions of this

Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

PART 5: Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 24th day of September, 2020.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on 27th day of September 2020, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 8th day of October, 2020, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 8th day of October 2020.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

Exhibit A

Sec. 18-299. Parking time limited.

In accordance with the terms of this chapter, and when signs are erected giving notice thereof, no person shall stand, stop or park a vehicle in excess of the indicated period of time specified in this schedule on the indicated days on the indicated sides of the following streets or portions of streets. Each consecutive increment of the time limit during which a vehicle remains continuously parked shall be deemed to be a separate offense.

(a) Two hour limit: 8:00 a.m. to 5:00 p.m., Monday through Friday:

<u>Street</u>	<u>Side</u>	<u>Extent</u>
North 1st St.	North	From Pine St to Cypress St.
North 2nd St.	South	From Pine St. to Cypress St.
	South	From Cedar St. to Hickory St.
	South	From alley east of Walnut St. to the alley west of Walnut St.
	North	From Walnut St. to Pine St.
	South	From Walnut St. to Pine St.
North 3rd St.	North	Cedar St. to Cypress St.
	North	From Hickory St. to alley east of Hickory St.
	South	Hickory St. to Cedar St.
		From alley east of Walnut St. to Walnut St.
	South	From Walnut St. to Pine St.
	North	From Pine St. to alley west of Pine St.
North 4th St.	Both	From Pine St. to Hickory St.
	North	From Walnut St. to Pine St.
North 5th St.	North	From Walnut St. to alley east of Hickory St.
	South	From alley west of Walnut St. to alley east of Hickory St.
Cedar St.	West	From North 2nd St. south to the alley

	West	From North 3rd to North 5th Sts.
	East	From North 2nd St. to North 1st St.
	East	From 150 feet north of North 3rd St. to North 6th St.
	East	From North 1st St. to North 3rd St.
<u>Cypress St.</u>	West	From alley between North 1st St. and North 2nd St. to North 2nd St.
	West	From North 5th St. to North 6th St.
	West	From North 3rd St. to 104 feet south of North 3rd St.
	East	From North 5th St. to North 6th St.
<u>Hickory St.</u>	East	From North 3rd St. to North 4th St.
<u>Pine St.</u>	Both	From North 5th to North 6th Sts.
	East	From North 4th to North 5th Sts.
	West	From 90 feet north of North 2nd St. to North 3rd St.
<u>Pine St.</u>	East	North 1st St. to North 2nd St.
	East	From North 2nd St. to North 3rd St.
<u>Walnut St.</u>	East	From North 2nd St. to North 3rd St.
	East	From North 5th St. north a distance of 155 feet
	East	From North 4th St. north a distance of 195 feet.
	West	From North 2nd St. to 100 feet south of North 5th St.
<u>North 2nd St.</u>	Both	From Walnut St. to Hickory St.
<u>North 3rd St.</u>	Both	From Pine St. to Hickory St.
	South	From Walnut St. to Pine St.
<u>North 4th St.</u>	Both	From Pine St. to Hickory St.
	North	From Walnut St. to Pine St.
<u>North 5th St.</u>	Both	From Walnut St. to Hickory St.
<u>North 6th St.</u>	Both	From Walnut St. to Cypress St.
	Both	From Cedar St. to Hickory St.
<u>Cedar St.</u>	Both	From North 1st St. to 5th St.

<u>Cypress St.</u>	<u>Both</u>	<u>North 1st St. to North 6th St.</u>
<u>Hickory St.</u>	<u>East</u>	<u>From North 3rd St. to North 4th St.</u>
<u>Pine St.</u>	<u>West</u>	<u>From North 1st St. to North 6th St.</u>
	<u>East</u>	<u>From North 1st St. to North 3rd St.</u>
	<u>East</u>	<u>From North 4th St. to North 6th St.</u>
<u>Walnut</u>	<u>Both</u>	<u>From North 2nd St. to North 5th St.</u>

(b) One hour limit: 8:00 a.m. to 5:00 p.m., Monday through Friday:

<u>Street</u>	<u>Side</u>	<u>Extent</u>
North 2nd St.	North	From Cypress St. to Cedar St.
	North	From Cedar St. to Hickory St.
	North	From Pine St. to Cypress St.
	South	From Cypress St. to Cedar St.
North 3rd St.	North	From Cypress St. to alley west of Pine St.
	North	From 45 feet west of Mesquite St. to alley west of Mesquite St.
	South	From Mesquite St. to alley west of Mesquite St.
	South	From Pine St. to Cedar St.
North 5th St.	South	From Walnut St. to alley west of Walnut St.
North 6th St.	North	From Hickory St. to the alley east of Hickory.
Cedar St.	West	From North 2nd St. to North 3rd St.
	East	From North 3rd St. north a distance of 150 feet
Cypress St.	West	From 80 feet north of North 1st St. to alley between North 1st St. and North 2nd St.
	East	From North 1st St. to North 5th St.

	West	From 104 feet south of North 3rd St. to North 2nd St.
	West	From North 3rd St. to North 5th St.
Mesquite St.	West	From 90 feet north of North 3rd St. to 160 feet south of North 4th St.
Pine St.	West	From North 1st St. to 90 feet north of North 2nd St.
	West	From North 3rd to North 5th Sts.
Walnut St.	East	From North 3rd to North 4th St.
	West	From North 5th St. to south a distance of 100 feet.
<u>North 3rd St.</u>	<u>North</u>	<u>From Pine St. to Walnut St.</u>
<u>North 4th St.</u>	<u>South</u>	<u>From Pine St. to Walnut St.</u>
<u>Pine St.</u>	<u>East</u>	<u>From North 3rd St. to North 4th St.</u>

(c) One hour limit: 8:00 a.m. to 4:00 p.m., school days only:

<u>Street</u>	<u>Side</u>	<u>Extent</u>
North 5th Street	South	From Shelton Street to alley east of Shelton Street
North 6th Street	North	150 feet east of Fannin St. to 70 feet east of Burger St.
South 38th St.	North	From Sayles Blvd. west 260 feet
	South	From Sayles Blvd. west 240 feet
North 19th St.	North	Burger St. to alley west of Burger St.
Burger St.	West	From North 3rd St. to North 6th St.
	East	From 150 feet north of North 3rd St. to North 6th St.
Cooke St.	North	From Sayles Blvd. west a distance of 360 feet
	South	From Sayles Blvd. west a distance of 270 feet
Fannin St.	West	From 70 feet north of North 3rd St. to North 6th St.

	East	From North 6th St. to alley south of North 6th St.
	East	From 120 feet south of the alley south of North 6th St. to 190 feet north of North 3rd St.
Grand Ave.	East	From 300 feet south of South 35th St. to Sayles Blvd.
	West	From Moore St. to alley north of Cooke St.
Green St.	West	From 180 feet north of North 3rd St. to North 6th St.
Green St.	East	From 120 feet north of North 3rd St. to alley south of North 6th St.
Highland Ave.	East	From Sayles Blvd. to south 35th St.
Highland Ave.	West	From Sayles Blvd. north 250 feet
Moore St.	Both	From Sayles Blvd. to Erie St.
Shelton St.	East	From North 6th St. north a distance of 280 feet
	Both	From North 3rd St. to North 6th St.

(d) Forty-five minute limit: 8:00 a.m. to 5:00 p.m., Monday through Friday:

<u>Street</u>	<u>Side</u>	<u>Extent</u>
Campus Court	West	From point 150 feet north of East North 16th St. to a point 100 feet south of East North 18th St.
College Dr.	Both	From Campus Court to an alley west of Campus Court

(e) Thirty-minute limit: At any time: [Reserved]

(f) Reserved.

(g) Reserved.

(h) Reserved.

(i) Reserved.

(j) Reserved.

(k) One hour limit: 8:00 a.m. to 5:00 p.m., Sunday through Saturday:

<u>Street</u>	<u>Side</u>	<u>Extent</u>
South 4th St.	South	Oak St. to Pecan St.
South 5th St.	North	Oak St. to Pecan St.

~~(l) Two hour limit: 8:00 a.m. to 2:00 p.m., Saturday:~~

<u>Street</u>	<u>Side</u>	<u>Extent</u>
Walnut St.	West	From North 3rd St. to North 4th St.

~~(m) One hour limit: 8:00 a.m. to 2:00 p.m., Saturday:~~

<u>Street</u>	<u>Side</u>	<u>Extent</u>
Walnut St.	East	From North 3rd St. to North 4th St.

Sec. 18-300. Parking meter zones. Reserved.

~~In accordance with the terms of this chapter, parking meter zones are hereby established upon the following parking lots, streets or portions of streets, in which the parking of vehicles shall be regulated by parking meters between the hours of 8:00 a.m. and 6:00 p.m. of any day, except Saturdays, Sundays and legal holidays, except as otherwise specified herein:~~

~~(a) 4-hour limit: At Rate A.~~

<u>Street</u>	<u>Side</u>	<u>Extent</u>
---------------	-------------	---------------

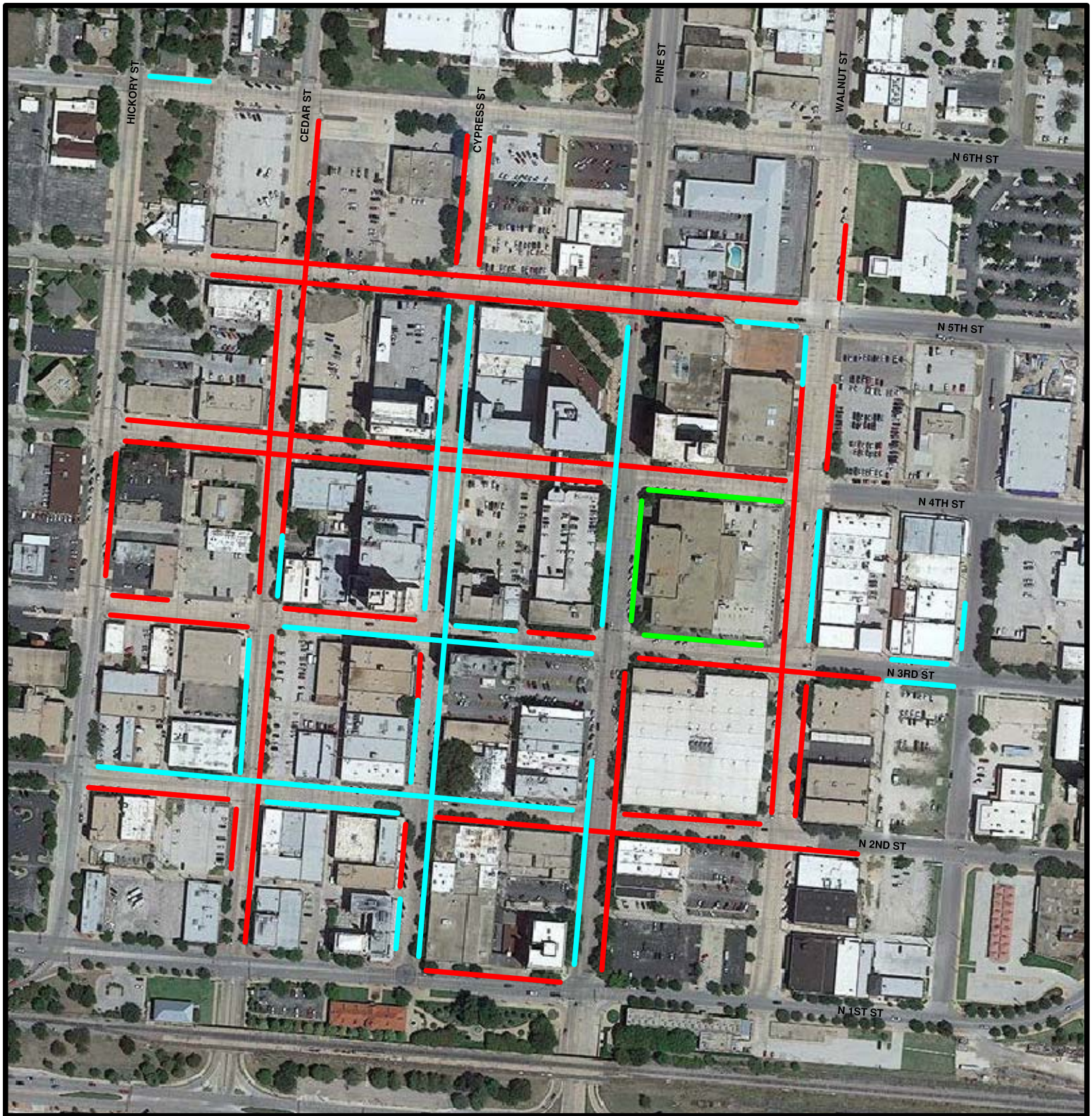
~~200 Block Cedar St. East All spaces~~

~~(b) — 24 minute limit. At Rate B.~~

<u>Street</u>	<u>Side</u>	<u>Extent</u>
North 3rd St.	North	From Pine to Walnut Sts.
North 4th St.	South	From Walnut to Pine Sts.
Pine St.	East	From North 3rd to North 4th Sts.

~~The time limits prescribed by this section shall be the maximum time for continuous parking within any space within the applicable parking meter zone. It shall be unlawful for any person to cause, allow, permit or suffer any vehicle registered in his name, operated by him or in his custody or control to be parked or remain in any parking space for any period of time in excess of the maximum period of time prescribed for such space by this section, or be parked or remain in any parking space while the meter controlling such space is displaying a signal or otherwise indicating that the vehicle occupying such space has been parked therein beyond the period of time permitted by this section or other provisions of this chapter. The enumeration of the foregoing violations shall not be exclusive, and shall not relieve any person from the duty to observe other and more restrictive provisions of this chapter or other applicable laws and ordinances.~~

~~In any prosecution charging a violation of this section, proof that the particular vehicle in question was parked or situated in any one parking space governed hereby at different times on the same day shall constitute in evidence a prima facie presumption that such vehicle was continuously parked or continuously remained in such parking space at all times during the period between such different times.~~



LEGEND

— TWO HOUR PARKING

— ONE HOUR PARKING

— METERED PARKING



Sheet
1
of
1

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

CENTRAL BUSINESS DISTRICT EXISTING PARKING TIME

Designed By: S. CHANDLER

Drawn By: T. MATTHEWS

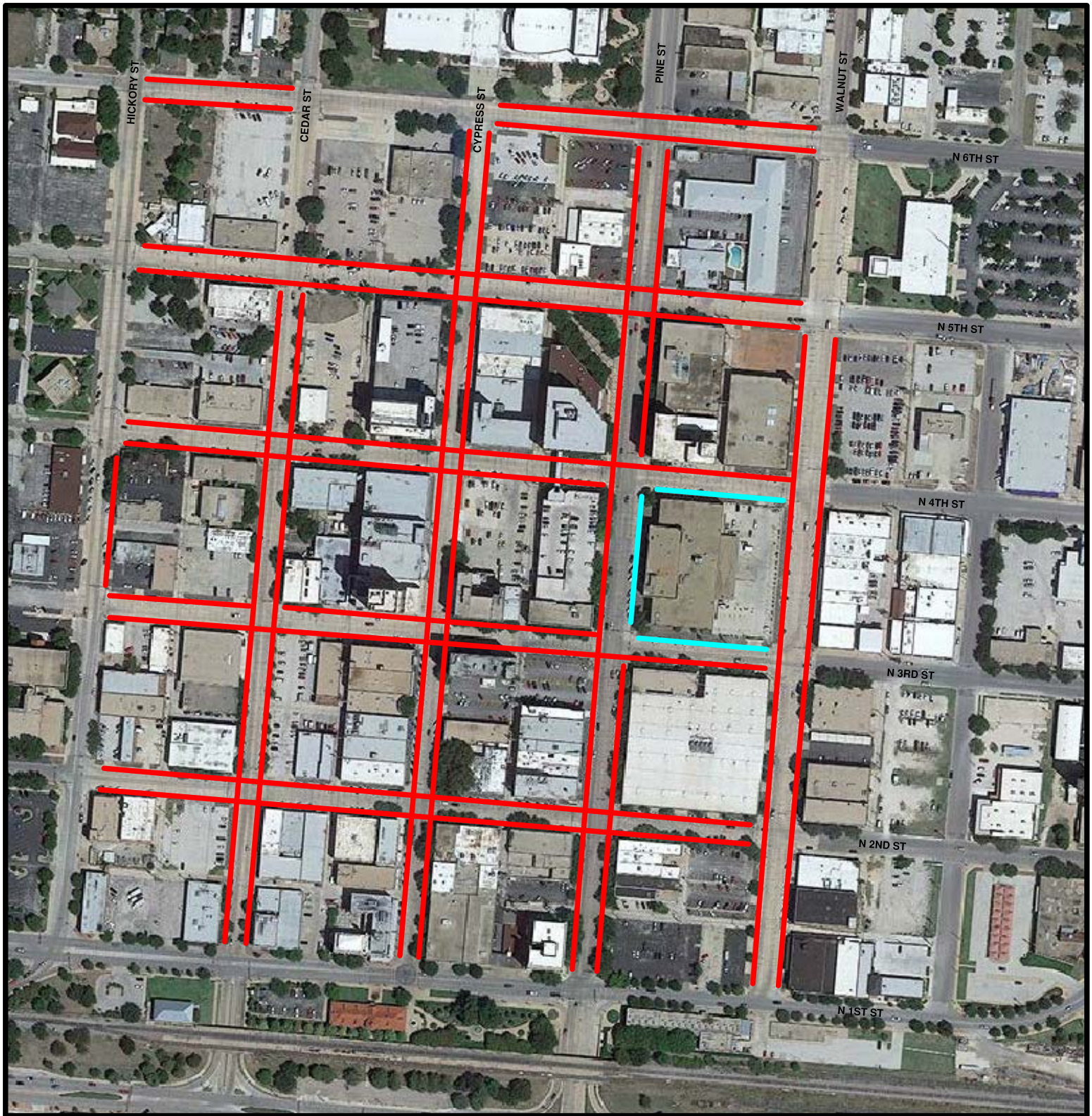
Checked By: S. CHANDLER

Horizontal Scale: 1"=600'

Vertical Scale: N.T.S.

Computer File Name:
PARKING MAPS

Date: SEPTEMBER 2020



LEGEND

——— TWO HOUR PARKING

——— ONE HOUR PARKING

——— METERED PARKING



Sheet
1
of
1

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

CENTRAL BUSINESS DISTRICT PROPOSED PARKING TIME

Designed By: S. CHANDLER

Drawn By: T. MATTHEWS

Checked By: S. CHANDLER

Horizontal Scale: 1"=600'

Vertical Scale: N.T.S.

Computer File Name:
PARKING MAPS

Date: SEPTEMBER 2020

Downtown Parking Metered and Time Limited

(G. McCaffery)



Mayor's Downtown Task Force Summary

- Evaluated On-Street Parking, Structured Parking, , and Branding & Marketing of Downtown Abilene
- June 26, 2020 Task Force Recommended Removal of Metered Parking and Changes to Two Hour Parking for Most Downtown Streets
- July 23, 2020 City Council Presentation of the On-Street Parking, Street Configuration and Overall Recommended Alignments
- Existing Ordinance Provides for Various Two Hour, One Hour and Metered Parking Downtown
- Amendment Provides for Two Hour Parking for Most Streets and One Hour Parking Around the US Post Office.



Existing Parking Time Limits and Parking Meter Zones

City of Abilene

Sections 18-299 and 300 Parking Time Limit and Parking Meter Zones Tables

Existing

(a) Two hour limit: 8:00 a.m. to 5:00 p.m., Monday through Friday:

Street	Side	Extent
North 1st St.	North	From Pine St. to Cypress St.
North 2nd St.	South	From Pine St. to Cypress St.
	South	From Cedar St. to Hickory St.
	South	From alley east of Walnut St. to the alley west of Walnut St.
	North	From Walnut St. to Pine St.
	South	From Walnut St. to Pine St.
North 3rd St.	North	Cedar St. to Cypress St.
	North	From Hickory St. to alley east of Hickory St.
	South	Hickory St. to Cedar St.
		From alley east of Walnut St. to Walnut St.
	South	From Walnut St. to Pine St.
	North	From Pine St. to alley west of Pine St.
North 4th St.	Both	From Pine St. to Hickory St.
	North	From Walnut St. to Pine St.
North 5th St.	North	From Walnut St. to alley east of Hickory St.
	South	From alley west of Walnut St. to alley east of Hickory St.
Cedar St.	West	From North 2nd St. south to the alley
	West	From North 3rd St. to North 5th St.
	East	From North 2nd St. to North 1st St.
	East	From 150 feet north of North 3rd St. to North 6th St.
	East	From North 1st St. to North 3rd St.
Cypress St.	West	From alley between North 1st St. and North 2nd St. to North 2nd St.
	West	From North 5th St. to North 6th St.
	West	From North 3rd St. to 104 feet south of North 3rd St.
	East	From North 5th St. to North 6th St.
Hickory St.	East	From North 3rd St. to North 4th St.
Pine St.	Both	From North 5th St. to North 6th St.
	East	From North 4th St. to North 5th St.
	West	From 90 feet north of North 2nd St. to North 3rd St.
Pine St.	East	North 1st St. to North 2nd St.
	East	From North 2nd St. to North 3rd St.
Walnut St.	East	From North 2nd St. to North 3rd St.
	East	From North 5th St. north a distance of 155 feet
	East	From North 4th St. north a distance of 195 feet
	West	From North 2nd St. to 100 feet south of North 5th St.

(b) One hour limit: 8:00 a.m. to 5:00 p.m., Monday through Friday:

Street	Side	Extent
North 2nd St.	North	From Cypress St. to Cedar St.
	North	From Cedar St. to Hickory St.
	North	From Pine St. to Cypress St.
	South	From Cypress St. to Cedar St.
North 3rd St.	North	From Cypress St. to alley west of Pine St.
	North	From 45 feet west of Mesquite St. to alley west of Mesquite St.
	South	From Mesquite St. to alley west of Mesquite St.
	South	From Pine St. to Cedar St.
North 5th St.	South	From Walnut St. to alley west of Walnut St.
North 6th St.	North	From Hickory St. to the alley east of Hickory St.
Cedar St.	West	From North 2nd St. to North 3rd St.
	East	From North 3rd St. north a distance of 150 feet
Cypress St.	West	From 80 feet north of North 1st St. to alley btwn. North 1st St. and North 2nd St.
	East	From North 1st St. to North 5th St.
	West	From 104 feet south of North 3rd St. to North 2nd St.
	West	From North 3rd St. to North 5th St.
Mesquite St.	West	From 90 feet north of North 3rd St. to 160 feet south of North 4th St.
Pine St.	West	From North 1st St. to 90 feet north of North 2nd St.
	West	From North 3rd St. to North 5th St.
Walnut St.	East	From North 3rd St. to North 4th St.
	West	From North 5th St. south a distance of 100 feet

(l) Two hour limit: 8:00 a.m. to 2:00 p.m., Saturday:

Street	Side	Extent
Walnut St.	West	From North 3rd St. to North 4th St.

(m) One hour limit: 8:00 a.m. to 2:00 p.m., Saturday:

Street	Side	Extent
Walnut St.	East	From North 3rd St. to North 4th St.

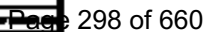
Parking Meter Zones

(a) 4-hour limit: At Rate A.

Street	Side	Extent
200 Block Cedar St.	East	All spaces

(b) 24-minute limit: At Rate B.

Street	Side	Extent
North 3rd St.	North	From Pine St. to Walnut St.
North 4th St.	South	From Walnut St. to Pine St.
Pine St.	East	From North 3rd St. to North 4th St.



Proposed Parking Time Limits

New Time Limit Parking Tables

(a) Two hour limit: 8:00 a.m. to 5:00 p.m., Monday through Friday:

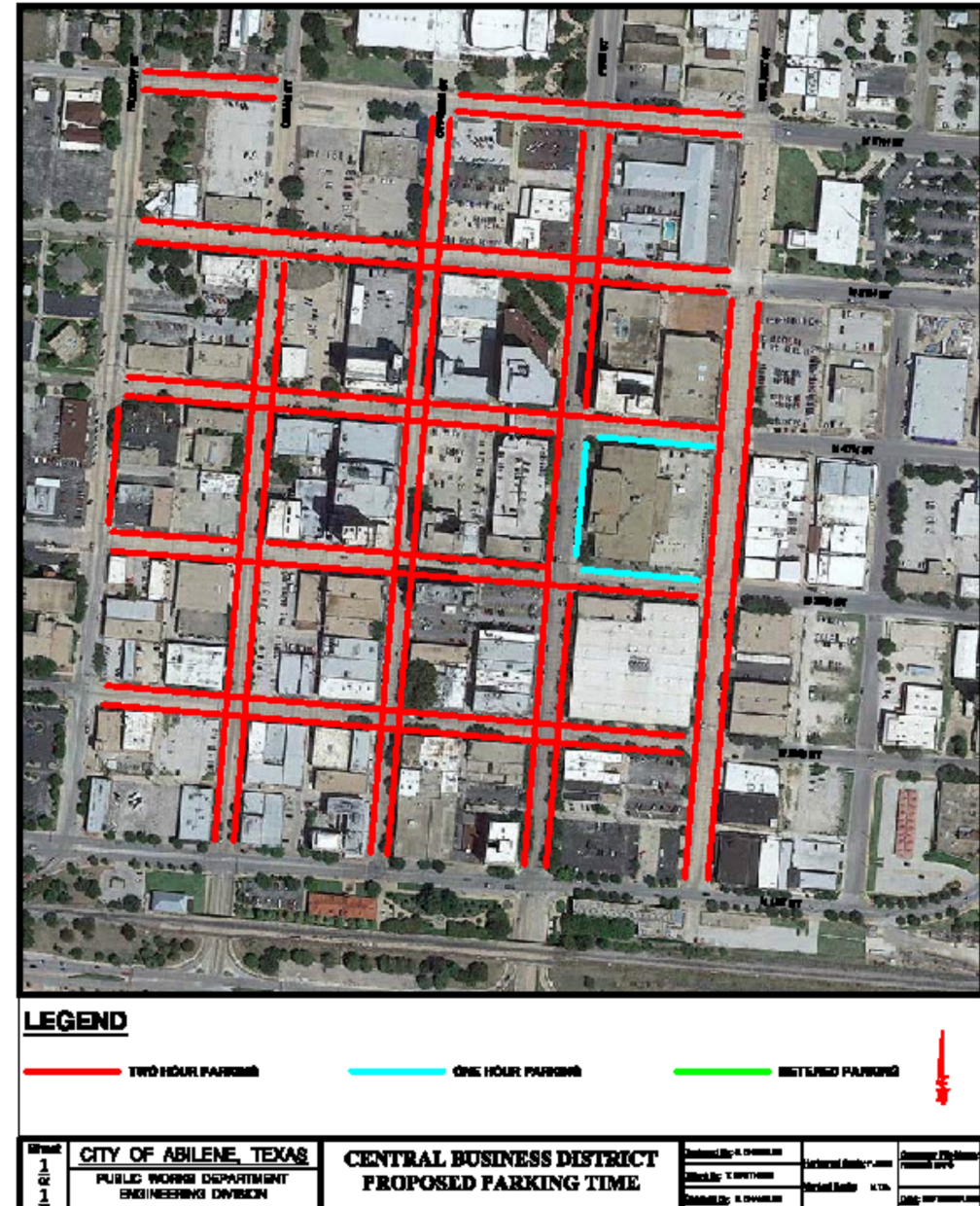
<u>Street</u>	<u>Side</u>	<u>Extent</u>
North 2nd St.	Both	From Walnut St. to Hickory St.
North 3rd St.	North	From Pine St. to Hickory St.
	South	From Walnut St. to Hickory St.
North 4 th St.	Both	From Pine St. to Hickory St.
	North	From Walnut St. to Pine St.
North 5th St.	Both	From Walnut St. to Hickory St.
North 6th St.	Both	From Walnut St. to Cypress St.
	Both	From Cedar St. to Hickory St.
Cedar St.	Both	From North 1 st St. to North 5th St.
Cypress St.	Both	North 1st St. to North 6th St.
Hickory St.	East	From North 3rd St. to North 4th St.
Pine St.	West	From North 1st St. to North 6th St.
	East	From North 1st St. to North 3rd St.
	East	From North 4th St. to North 6th St.
Walnut	Both	From North 2nd St. to North 5th St.

(b) One hour limit: 8:00 a.m. to 5:00 p.m., Monday through Friday:

North 3rd St.	North	From Pine St. to Walnut St.
North 4th St.	South	From Pine St. to Walnut St.
Pine St.	East	From North 3rd St. to North 4th St.



Proposed Parking Time Limits



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **16. Ordinance (First Reading) Z-2020-10: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Sharon Riley, agent H.C. Zachry, to amend existing Planned Development (PD) District Number 32 by removing from subparagraph (f) 1 and 2 stating “no other signs shall be allowed” from Lots 25-30 and allowing all signage allowed in General Retail (GR) *(Mike Warrix)***

GENERAL INFORMATION

Lot 232 is the subject property of potential construction for an off-site advertising billboard. Such a billboard is not permitted due to the current restrictions of the Planned Development Ordinance, although the underlying zoning for this lot is General Retail (GR) which is a zoning district that ordinarily permits off-site advertising billboards. The applicant is requesting to amend the current PD ordinance to allow one off-site advertising billboard on Lot 232. This amendment shall provide an updated graphic concept plan which illustrates the re-platting of Lot 30 to accurately reflect the lots which currently exist within this PD.

SPECIAL CONSIDERATIONS

The applicant has applied for their lot only to be allowed off-site advertising. However, due to verbiage in the Planned Development (PD), it was the opinion of staff to include the entire section of the PD that would be effected by the change if approved. Therefore a portion of this rezone request was initiated by staff.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

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

ATTACHMENTS:

1. 1- Z-2020-10 recommended PD ordinance (2)
2. 2- Z-2020-10 Council Staff Report
3. 3- Z-2020-10 Council Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE CITY CODE AND CONCERNING PD-32, A PLANNED DEVELOPMENT DISTRICT, AS WELL AS ORDINANCE NUMBERS 49-1985 AND 77-1986; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That the Land Development Code of the City of Abilene is hereby amended by changing Ordinance Number 77-1986 specifically as set out in Exhibit "A" attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 24th day of September 2020.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 15th day of August, 2020, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 8th day of October, 2020, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 8th day of October, 2020.

ATTEST:

Shawna Atkins,
City Secretary

Anthony Williams,
Mayor

APPROVED:

Stanley Smith,
City Attorney

ORDINANCE NO. _____

Exhibit "A"
2nd Amendment to Ordinance No. 49-1985

Amend Ordinance No. 49-1985 and Ordinance 77-1986 as follows:

DELETE: Existing Part 7, Paragraph 3, subparagraph (f), which reads as follows:

f. For all office-type uses as categorized by the Zoning Ordinance, including medical or dental clinics or offices, and those residential uses permitted in a Shopping Center district, either of the following standards for signs shall apply at the proponent's option:

1. Business and/or Identification Sign: Freestanding, maximum thirty-six (36) square feet in area; maximum (12) feet in height; located at least ten (10) feet from all property lines; one sign per use; illumination permitted. A nameplate or placard is allowed for each use and shall not exceed three (3) square feet in area and is to be wall-mounted.

All other sign regulations prescribed for Office-type uses shall furthermore apply and no other sign shall be allowed.

-or-

2. Business and/or Identification Sign: One wall sign no larger than 25% of the area of the wall upon which it is located; only one wall sign per use. A nameplate or placard is allowed for each use and shall not exceed three (3) square feet in area and is to be wall-mounted.

All other sign regulations prescribed for office-type uses shall furthermore apply, and no other signs shall be allowed.

ADD: New Part 7, Paragraph 3, subparagraph (f), to read as follows:

f. For all office-type uses as categorized by the Zoning Ordinance, including medical or dental clinics or offices, and those residential uses permitted in a General Retail district, either of the following standards for signs shall apply at the proponent's option:

1. Business and/or Identification Sign: Freestanding, maximum thirty-six (36) square feet in area; maximum (12) feet in height; located at least ten (10) feet from all property lines; one sign per use; illumination permitted. A nameplate or placard is allowed for each use and shall not exceed three (3) square feet in area and is to be wall-mounted.

All other on-site regulations pertinent to Office (O) zoning districts shall otherwise be applicable.

-or-

ORDINANCE NO. _____

EXHIBIT "A"

PAGE 3

2. Business and/or Identification Sign: One wall sign no larger than 25% of the area of the wall upon which it is located; only one wall sign per use. A nameplate or placard is allowed for each use and shall not exceed three (3) square feet in area and is to be wall-mounted.

All other on-site sign regulations pertinent to Office (O) zoning districts shall otherwise be applicable.

ADD: New Part 7, Paragraph 3, subparagraph (g), to read as follows:

- g. Off-site advertising signs ordinarily allowed within General Retail (GR) zoning districts shall be permitted, subject to all applicable standards governing location, size, height, spacing, et cetera.



ZONING CASE Z-2020-10

STAFF REPORT



REQUEST: Amend existing Planned Development District Number 32 (PD 32)

APPLICANT:

Owner: Sharon Riley
Agent: HC Zachry and City of Abilene

HEARING DATES:

P & Z Commission: September 1, 2020
City Council 1st Reading: September 24, 2020
City Council 2nd Reading: October 8, 2020

LOCATION:

2050 Antilley Road
Legal description: Lot 232 of Humana West Addition

BACKGROUND:

A Planned Development (PD) District is one that permits flexibility in building siting, mixtures of housing types and land uses, usable open spaces, and the preservation of significant natural features in new development.

Planned Development District 32 (PD 32) was approved in May of 1985. PD 32 is intended to provide a mixture of retail, office and medical care facilities. The PD 32 ordinance was amended by City Council in September of 1986 to modify sign regulations on lots 25-30 as identified on the originally provided site exhibit. This amendment limits all free standing signs constructed on lots 25-30 to 36 square feet in area with a maximum height of 12-feet. Furthermore, all other sign regulations prescribed by office zoning would apply and no other signs would be permitted. Since this time Lot 30 has been subdivided into four new lots which are respectively Lots 130, 131, 232, 233 of Humana West Addition.

PROPOSAL AND REQUESTED ACTION:

The applicant is the owner of Lot 232, the proposed site of an “off-site” advertising billboard. Such a billboard is not permitted due to the current restrictions of the PD 32 ordinance, although the underlying zoning for this lot is General Retail (GR) which is a zoning district that ordinarily permits off-site advertising billboards. The applicant is requesting to amend the current PD 32 ordinance to allow one off-site advertising billboard on Lot 232. This amendment shall provide an updated graphic concept plan which illustrates the replatting of Lot 30 to accurately reflect the lots which currently exist within this PD. The verbiage in the existing PD restricts lots 25-29 and Lot 30, which are now Lots 130, 131, 232, 233 respectively, in the area of signage. It is the opinion of staff that by amending the PD the other lots will be affected by the change. As a result, the City has requested to include the additional lots as part of this request.

APPLICATION REVIEW:

According to Section 1.4.1.4 (Criteria for Approval) in the City of Abilene Land Development Code, the Planning & Zoning Commission and City Council may consider the following factors in making a determination regarding requested zoning changes:

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

The subject property is located near the intersection of Highway 83-84 and Antilley Road. The Future Land Use and Development Plan Map considers this area to be a special activity center. The Comprehensive Plan states that special activity centers should provide unique services and uses to the local and regional economy, this particular special activity center serves as a medical hub for South Abilene and provide a mixture of both medical office and retail uses. It is customary for billboard advertising signs to be located near interstate and major arterial interchanges such as this. These locations provide the greatest exposure for promotion of businesses throughout Abilene.

(2) Whether the proposed zoning amendment will be appropriate in the immediate area of the subject property.

Abilene's Land Development Code provides a list of roads which permit off-site advertising signs. Antilley road is included on this list of roads that allow billboards. The immediate area of the subject property is entirely commercial in nature; therefore installation of a billboard will not appear out of place or inconsistent with the surrounding land uses. Furthermore, the base zoning of the subject property within PD 32 is (GR), thereby permitting all uses ordinarily allowed within this zoning classification. Traditionally, off-site advertising signs are permitted within General Retail (GR) zoning.

	Zoning	Existing Land Use
North	PDD-32	Vacant
South	PDD-25	Medical Use
East	PDD-32	Medical Use
West	PDD-32	General Retail

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

The proposed change will not adversely affect existing utilities and will not be required to provide public improvements and services.

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

It is the opinion of staff that the proposed rezoning and potential uses would not negatively affect the public health, safety, morals, or general welfare of the City of Abilene.

STAFF COMMENTS:

Abilene's Land Development Code identifies zoning districts which permit off-site advertising signs, General Retail (GR) zoning is one such zoning classification that is listed. The subject property falls within a Planned Development District with a base underlying zoning of General Retail (GR). Furthermore, Abilene's Land Development Code provides a list of roads which permit off-site advertising signs, specifically "Type II" signs, Antilley Road is listed as an appropriate road to locate off-site advertising Type II signs. Type II signs are be defined as off-site advertising signs permitted along arterial and collector roads as identified in

Abilene's Thoroughfare Plan, Type II signs are permitted to have a maximum area of 378 square feet and maximum height of 35-feet. Lastly, the proposed location of this sign meets all separation requirements for off-site advertising signs as outlined in Section 4.2.8.9 in Abilene's Land Development Code.

STAFF RECOMMENDATION:

Staff recommends approval.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning & Zoning Commission recommended approval of this request by a vote of five (5) to zero (0) on Tuesday, September 1, 2020.

NOTIFICATION:

The Planning Services Division sent, with certificate of mailing, public notices to the applicant and to all owners of property within a 200-foot radius of the subject property.

Owner	Situs	Response
6050 HOSPITAL DRIVE LLC	6050 HOSPITAL DR	
ABILENE SOUTH REALTY LP	2015 HOSPITAL PL	
ABILENE SOUTH REALTY LP	2009 HOSPITAL PL	
ARMC LP	1888 ANTILLEY RD	
ASMO PROPERTIES LLC	2074 ANTILLEY RD	Opposed
CENTRAL PARK 91 JV		In Favor
COULTER PROPERTIES LLC	1901 ANTILLEY RD	
FIRST FINANCIAL BANK NA	1801 ANTILLEY RD	
FIRST FINANCIAL BANK NA	1725 ANTILLEY RD	In Favor
GFC LEASING CORP	24 HOSPITAL DR	
GFC LEASING CORP	1926 ANTILLEY RD	
HIT VENTURES LLC	1925 HOSPITAL PL	Opposed
HUMANA WEST LTD	5 HOSPITAL DR	
HUMANA WEST LTD	2 HOSPITAL DR	
MANGREM JOSEPH T & KELSI D	6 HOSPITAL DR	
MANGREM JOSEPH T & KELSI D	7 HOSPITAL DR	In Favor
NC SCHI INC	23 HOSPITAL DR	
NC SCHI INC	21 HOSPITAL DR	
PHYSICIAN RELIANCE INVEST	1957 ANTILLEY RD	
PROSPERITY BANK	2001 ANTILLEY RD	
RILEY SHARON		In Favor
RILEY SHARON	2050 ANTILLEY RD	In Favor
SHRINGERI AKKAMAHADEVI P	2100 ANTILLEY RD	
TENISON OIL CO	2005 HOSPITAL PL	In Favor
TENISON OIL CO	1963 HOSPITAL PL	In Favor
WILLIS THOMAS LEE	8 HOSPITAL DR	
WILLIS THOMAS LEE	4 HOSPITAL DR	

ATTACHMENTS:

- Application
- Site Plan Exhibit
- PowerPoint





Hoff's
Burgers

SUBWAY





Development Application

Planning

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

Relief Procedures

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

Project Name: Sharon's Barbeque D.S. Jul Sign

Address: 2050 Antilley Rd No. of lots: 1 Acreage: _____

Legal Description: _____

Subdivision Name: Humana West Block: _____ Lot: 232

Current Zoning: PDD-32 Proposed Zoning (if applicable): ~~PDD-32~~ ~~Other~~

OWNER AND AUTHORIZATION

Owner Name: Sharon Riley

Address: P.O. Box 3877

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

Phone: _____ Email: _____

Agent Name: EHT

Address: 402 Cedar

City, State, Zip: Abilene, Tex 79606 Fax: _____

Phone: 698-5560 Email: david.todd@e-hi.com

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

Signature Owner: [Signature] Date: 6/4/20

FOR OFFICE USE ONLY

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

Case No.: _____ Reviewed By: _____

Remove from Subparagraph (f) 1 & 2 the wording "no other signs shall be allowed"

THE STATE OF TEXAS

COUNTY OF TAYLOR

Know all men by these presents that the undersigned owner of the real property described on the reverse side hereof, has made, constituted and appointed, and by these presents does make, constitute and appoint H.C. ZACHRY, my true and lawful attorney, for me in my name, place, and stead, to:

(1) File an application for (check all that apply):

- ☒ Zone Change,
- ☐ Plat,
- ☐ Thoroughfare Closure, or
- ☐ Appeal to the Board of Adjustment, and

(2) Appear on my behalf at all necessary meeting of the appropriate board, commission, or City Council, as the case may be.

The undersigned further agrees that this power of attorney may be voluntarily revoked only by written revocation filed with the Planning and Development Services Division for the City of Abilene, Texas.

Witness my hand this 22 day of JUNE, 2020

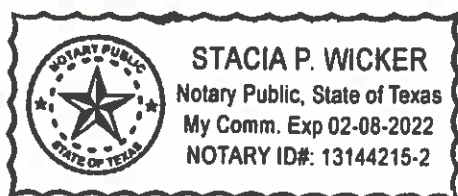
Sharon Riley
Owner

THE STATE OF TEXAS .

COUNTY OF TAYLOR .

BEFORE ME, the undersigned authority, on this date personally appeared Sharon Riley known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 22 day of June, 20 20.



Stacia P. Wicker
Notary Public, Taylor County, Texas

Zoning

ORDINANCE NO. 49-1985

613 0000 3-4

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, ZONING, OF THE ABILENE MUNICIPAL CODE, CONCERNING HUMANA WEST PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23, Subpart E, known as the Zoning Ordinance of the City of Abilene, is hereby amended; as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 9 day of May,
A.D. 19 85.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 5 day of May, 19 85, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 9:00 a.m., on the 23 day of May, 19 85, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING this 23 day of _____
May, A.D. 19 85.

ATTEST:

Patricia Patton
CITY SECRETARY

David Stubbeman
MAYOR

APPROVED:

Karen L. Anderson
CITY ATTORNEY

00133

Exhibit "A"

ORDINANCE NO. 49-1985

PART 1: Land Title. Title to land not dedicated to public use and services or for utility purposes and not otherwise designated for development purposes shall remain in the owner thereof, his heirs, assigns, lessees and successors in interest and shall not be the responsibility of the City of Abilene for any purpose.

PART 2: Development Specifications. All development in the Planned Development District shall be in accordance with the maps, topographical and drainage plans, utility plans, architectural drawings, site plan, plat, and any other required plans filed in connection with this requested Planned Development District and are hereby incorporated by reference and included as part of this ordinance. Site Plan (and vicinity map) is attached as Exhibit B.

Further, all agreements, provisions, or covenants which govern the use, maintenance, and continued protection of this P.D.D. are hereby incorporated by reference and included as part of this ordinance. (Some of these documents may be attached as Exhibit C.)

All use and development within the Planned Development District must be in compliance with the general Comprehensive Zoning Ordinance of the City of Abilene except as otherwise specifically provided herein.

PART 3: Building Specifications. All structures in the herein said Planned Development District shall be constructed in accordance with all pertinent building and construction codes of the City of Abilene.

PART 4: Zoning. That Chapter 23, Subpart E, Abilene Municipal Code, known as the Zoning Ordinance of the City of Abilene, is hereby further amended by changing the zoning district boundaries, as hereinafter set forth: From AO (Agricultural Open Space) District to PD MX (Planned Development Mixed Use) District.

That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

PART 5: Legal Description. The legal description of this P.D.D. is as follows:

ORDINANCE NO. 49-1985

EXHIBIT "A"

Page 2

Legal Description:

BEING all that certain lot, tract or parcel of land out of a 64.41 acre tract out of a 78.12 acre tract out of lot 4 out of Alfred & Mary Fasshauer Subdivision of Survey 10 and 12, Lunatic Asylum Lands, Abilene, Taylor County, Texas, and being more particularly described as follows:

BEGINNING at a 3/8" iron rod, found, for the Northwest corner of said 64.41 acre tract, for the Northwest corner of this tract;

THENCE North 89 degrees 31 minutes 13 seconds East along the North line of said 64.41 acre tract a distance of 1061.62 feet to a 3/8" iron rod, found, for the Northeast corner of this tract;

THENCE South 0 degrees 06 minutes 03 seconds West a distance of 1349.61 feet to a 3/8" iron rod, set, on the North right-of-way of Antilley Road for the Southeast corner of this tract;

THENCE South 88 degrees 09 minutes 11 seconds West along said North right-of-way of Antilley Road a distance of 1018.82 feet to a 3/8" iron rod, found, for the Southwest corner of this tract

THENCE North 1 degree 42 minutes 22 seconds West along the West line of said 64.41 acre tract a distance of 1374.17 feet to the place of beginning containing 32.52 acres of land.

PART 6: Purpose. The purpose of the Humana West Planned Development district is to integrate development of facilities for retail, office, and medical care. District regulations described in the following Part 7 are designed to achieve the following:

- A. designate particular areas within the district for appropriate selected activities, and
- B. integrate the scale of building development in the district with less intensive residential use existing and anticipated to the west, as well as with relatively intensive commercial use existing and anticipated to the north and east.

PART 7: Specific Modifications.

- A. The following regulations shall govern the use and development of the Planned Development district, for each of the lots indicated on the site plan (attached as Exhibit B) and as set forth below:

- 1. Lots 1-20. Except as otherwise specified below, use and development of land shall be subject to regulations applicable to the Office (O) zoning classification.
 - a. Surgical centers shall be permitted as a right-of-use, rather than by special exception only.
 - b. Buildings shall be limited to two stories or 30 feet, whichever is greater, excluding architectural exceptions as generally allowed by Zoning Ordinance.
 - c. Building setbacks shall be a minimum of 30 feet from the bounding arterial street (Antilley Road) and 20 feet from other bounding street rights-of-way.
- 2. Lots 21-24. Except as otherwise specified below, use and development of land shall be subject to regulations applicable to the Limited Commercial (LC) zoning classification.
 - a. Surgical centers shall be permitted as a right-of-use, rather than by special exception only.
 - b. Building setbacks shall be a minimum of 30 feet from the bounding arterial street (Antilley Road) and 20 feet from other bounding street rights-of-way.
 - c. The number of business signs shall be restricted to just one (1) per business, no taller than 30 feet in height and no greater than 150 square feet in area.
- 3. Lots 25-30. Except as otherwise specified below, use and development of land shall be subject to regulations applicable to the Shopping Center (SC) zoning classification.
 - a. Hotel and motel facilities shall be permitted as a right-of-use.
 - b. Building height shall be limited to two stories or 30 feet, whichever is greater, excluding architectural exceptions as normally allowed by Zoning Ordinance.
 - c. Building setbacks shall be a minimum of 30 feet from the bounding arterial street (Antilley Road) and 20 feet from any other bounding street rights-of-way. Rear building setbacks shall be a minimum of 20 feet, and building setbacks from the (interior) side lot line shall be a minimum of 10 feet.

- d. Unless some specific use may be identified, for which parking demand may be more specifically measured, off-street parking spaces shall be provided as follows:
- (1) One space for each 222 square feet of gross retail area.
 - (2) One space for each 300 square feet of gross office area.
 - (3) One space for each motel or hotel unit.
 - (4) For other activities, as specified within the Zoning Ordinance.

- e. Except as otherwise specified below, no more than one (1) business sign shall be permitted per business, and such sign shall be a wall sign no larger than 25 percent of the building wall area to which it is attached. Businesses have customer access and/or building frontage within 100 feet of adjacent street rights-of-way, may have two (2) such business signs mounted on walls of the building in which they are located. In addition to permitted wall signs, a hotel, motel or restaurant may have one (1) free-standing sign mounted on a pole, so long as such sign is no more than 150 square feet in area and extends to a height no more than 30 feet. Also, any shopping center(s) located on the lot shall have no more than one free-standing sign per street frontage, identifying the name of the overall shopping center development. Such signs shall be no more than 150 square feet in area and extend no more than 30 feet in height.

- f. For activities other than of a commercial nature, sign regulations pertinent to the Office (O) zoning classification shall be applicable.

Lot 31. Except as otherwise specified below, use and development of land shall be subject to regulations applicable to the Medical Use (MU) zoning classification.

- a. Standard restaurant facilities shall be allowed to occupy up to 25% of the total floor area of an appropriate structure in which the restaurant is located.
- b. Buildings, or portions thereof, constructed on the western 100 feet of the lot shall be no greater than two stories or 30 feet, whichever is greater, excluding architectural exceptions normally allowed by Zoning Ordinance.
- c. Buildings, or portions thereof, constructed on the remainder of Lot 31, shall be no greater in height than 3 stories or 40 feet, whichever is greater, excluding architectural exceptions normally allowed by Zoning Ordinance.
- d. Building setbacks from all bounding street rights-of-way shall be a minimum of 20 feet.
- e. For any future lot resubdivided within Lot 31, the minimum (interior) side building setback shall be 10 feet.
- f. The minimum building setback from any rear lot boundary (not adjoining a street) shall be 10 feet.
- g. The Zoning Ordinance requirement for an additional one (1) foot of building setback, for every additional one foot of building height above 30 feet, shall not be applicable.
- h. Screening requirements associated with activities in the MU district shall be applicable only to power and/or heat generation facilities, refuse collection facilities, off-street loading spaces and open storage.

- B. Except as otherwise specified below, subdivision or resubdivision of any one or more lots represented on the site plan (attached as

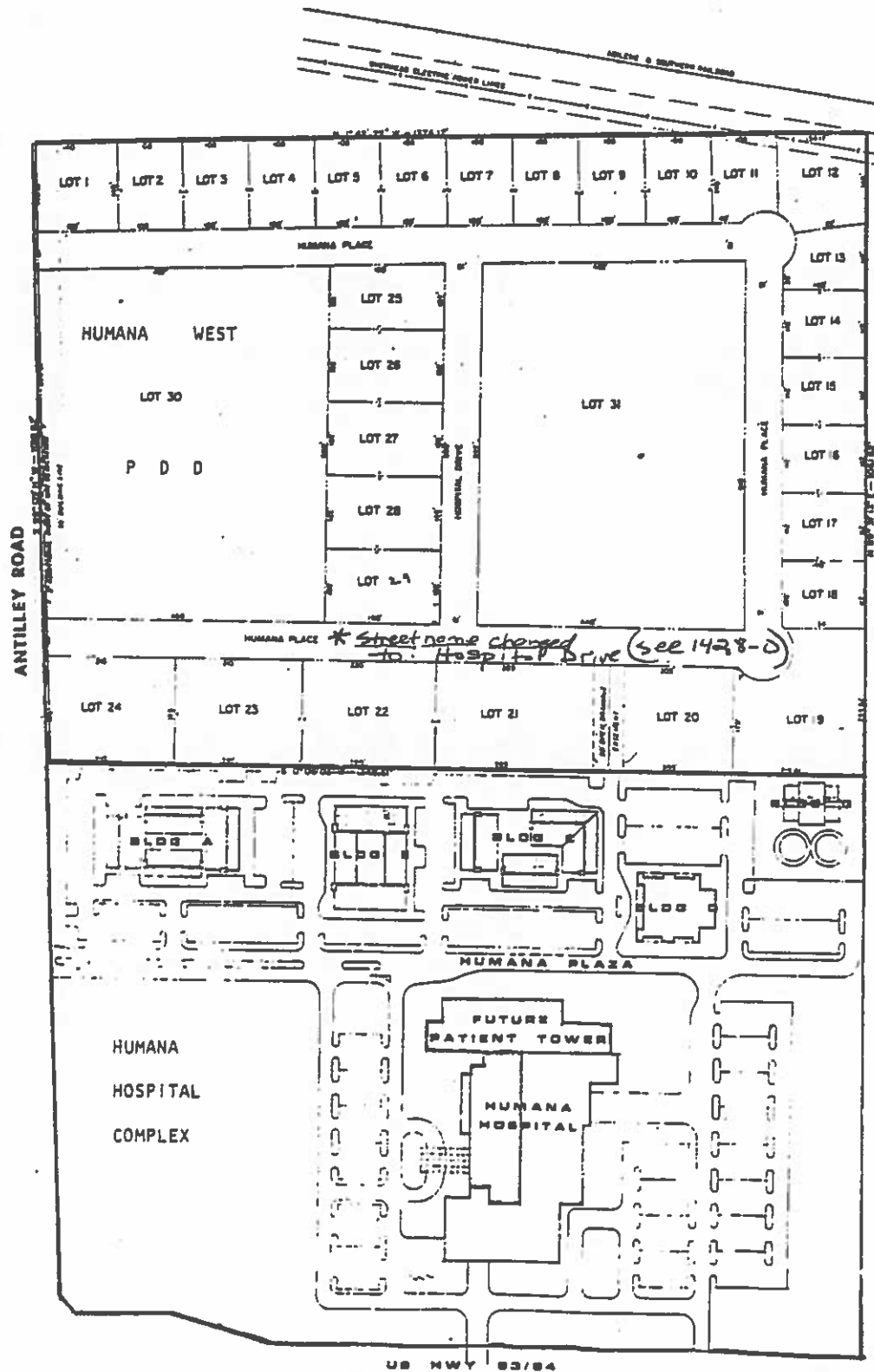
no longer applicable as it implies the old signs are reg.

Lot 30

Exhibit B) shall be undertaken in conformance with Subdivision Regulations of the City of Abilene applicable at the time of resubdivision. Amendment of this Planned Development ordinance shall not be necessary for resubdivision; however, above-described regulations regarding use and development shall remain applicable to the lots represented on the attached site plan, unless such regulations are modified by amendment to this ordinance.

1. Provisions of Utility Placement Policy shall be modified to permit installation of electric, communication and gas utility lines (and all associated above-ground appurtenances) within any appropriately-designated easements located on private property.
2. Provisions of the Street Naming Policy shall be modified to permit one street name for a U-shaped street extended throughout the Humana West Planned Development district.

ORDINANCE NO. 49-1985
EXHIBIT "B"



00139

Cur. Plan.

ORDINANCE NO. 77-1986

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE AND ORDINANCE NO. 49-1985, CONCERNING THE HUMANIA WEST PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23, Subpart E, known as the Zoning Ordinance of the City of Abilene, is hereby amended by changing Ordinance No. 49-1985, as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 11 day of September, A.D. 19 86.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 31 day of August, 19 86, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 9:00 a.m., on the 25 day of September, 19 86, to permit the public to be heard prior to final consideration of this ordinance. Such ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING this 25 day of September, A.D. 19 86.

ATTEST:

Patricia Patton
CITY SECRETARY

Died Stubbeman
MAYOR

APPROVED:

Harry Cayle
CITY ATTORNEY

ORDINANCE NO. 77-1986

EXHIBIT "A"

1st amendment to Ordinance #49-1985

Amend Ordinance #49-1985, Part 7, Paragraph 3, subparagraph (f)

DELETE: subparagraph (f)

ADD: New subparagraph (f), to read as follows:

- f. For all office-type uses as categorized by the Zoning Ordinance, including medical or dental clinics or offices, and those residential uses permitted in a Shopping Center district, either of the following standards for signs shall apply at the proponents option:

1. Business and/or Identification Sign: Freestanding, maximum thirty-six (36) square feet in area; maximum twelve (12) feet in height; located at least ten (10) feet from all property lines; one sign per use; illumination permitted. A nameplate or placard is allowed for each use and shall not exceed three (3) square feet in area and is to be wall-mounted.

~~All other sign regulation prescribed for Office-type uses shall furthermore apply and no other signs shall be allowed.~~

-or-

2. Business and/or Identification Sign: One wall sign no larger than 25% of the area of the wall upon which it is located; only one wall sign per use. A nameplate or placard is allowed for each use and shall not exceed three (3) square feet in area and is to be wall-mounted.

All other sign regulation prescribed for office-type uses shall furthermore apply, and no other signs shall be allowed. ,



TENISON OIL CO
STE B101
209 S DANVILLE DR
ABILENE, TX 79605-1451



NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number Z-2020-10

07/20/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, August 4, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Sharon Riley, agent Enprotec/Hibbs and Todd, Inc., to amend existing Planned Development (PD) District Number 32 by removing from subparagraph (f) 1 and 2 the language stating "no other signs shall be allowed" from Lot 232 and allowing all signage allowed in General Retail (GR); Legal description being Lot 232 of Humana West Addition, Abilene, Taylor County, Texas and located at 2050 Antilley Road.

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

The attached map shows the area of the request. Only that area which is bounded by the cross-hatched line on the map is being considered for rezoning. The solid boundary line around the subject area is only a notification area. If approved by the Planning and Zoning Commission or if denied and appealed to Abilene's City Council within the specified ten-day period, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **August 27, 2020, at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

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

For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2020-10

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

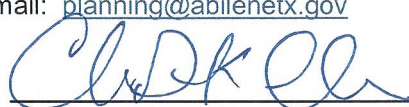
Name: TENISON OIL CO
Address: 1963 HOSPITAL PL

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments: 

I am opposed ☐

Signature: 

July 28, 2020

City of Abilene
Planning and Zoning Commission

RE: Rezoning Application Number Z-2020-10

Dear Planning and Zoning Commission,

I am writing in response to rezoning Application Number Z-2020-10, concerning lot number 232 of Humana West Addition located at 2050 Antilley Road. that asks for a change in language to allow further signage.

The owners respectfully ask for no language change to the current Planned Development on this parcel not because we are anti-growth but because we are enthusiastic supporters of smart, planned urban development. Our most compelling reasons include:

- The request is based exclusively upon a desire to make more money out of the property as we have been made aware of the development plans to place a large, obnoxious sign in the said area.
- The particular physical surroundings do not support the need of such as sign in that particular location, especially that it will detract from our current office at 2074 Antilley and will obstruct our planned sign addition at the corner of 2074 Antilley.
- Another visual distraction will exacerbate current traffic congestion that may result in more accidents, injuries, or fatalities. This might be alleviated by a new traffic signal at the intersection which should be considered by the City of Abilene.
- It is a neighborly consideration to give equal air space to everyone in the area.

In as such, we **oppose** the said variance/language change and rezoning request. We respectfully ask for the Planning and Zoning Commission to deny this application.

Regards,



Bryan R. Vela
Administrator
ASMO Properties
2074 Antilley Road
Abilene, Texas 79606

CASE #: Z-2020-10

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

Name: ASMO PROPERTIES LLC
Address: 2074 ANTILLEY RD

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

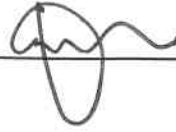
Email: planning@abilenetx.gov

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: _____

A handwritten signature in black ink, consisting of a stylized 'A' followed by a wavy line, is written over a horizontal line.



Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

Rezoning

Kelsi Mangrem <kmangrem@hollandhearing.com>
To: cheryl.sawyers@abilenetx.gov

Fri, Au

I support the rezoning application relating to signage changes in our development area on Antilley between 83/84 and Memorial Drive.

Thank you!

Dr. Kelsi Mangrem
Holland Hearing Center
[7 Hospital Drive](#)



Dr. Kelsi Mangrem
Owner/Audiologist

kmangrem@hollandhearing.com | Phone: 325-437-4730
7 Hospital Dr. Abilene, TX 79606 | hollandhearing.com



Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

Zoning

1 message

Logan Huffington <huffingtonpilatesandfitness@gmail.com>
To: cheryl.sawyers@abilenetx.gov

Thu, Aug 13, 2020 at 12:28 PM

I support the rezoning application relating to signage changes in our development area.

Dayna Huffington

Huffington Fitness Studio

[9 Hospital Drive](#)

CITY OF ABILENE

PLANNING &
DEVELOPMENT
SERVICES

TENISON OIL CO
STE B101
209 S DANVILLE DR
ABILENE, TX 79605-1451

NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number Z-2020-10

07/20/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, August 4, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Sharon Riley, agent Enprotec/Hibbs and Todd, Inc., to amend existing Planned Development (PD) District Number 32 by removing from subparagraph (f) 1 and 2 the language stating “no other signs shall be allowed” from Lot 232 and allowing all signage allowed in General Retail (GR); Legal description being Lot 232 of Humana West Addition, Abilene, Taylor County, Texas and located at 2050 Antilley Road.

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

The attached map shows the area of the request. Only that area which is bounded by the cross-hatched line on the map is being considered for rezoning. The solid boundary line around the subject area is only a notification area. If approved by the Planning and Zoning Commission or if denied and appealed to Abilene's City Council within the specified ten-day period, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **August 27, 2020, at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

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

For the PLANNING & ZONING COMMISSION

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

CASE #: Z-2020-10

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

Name: TENISON OIL CO

Name: TENISON OIL CO

Address: 2005 HOSPITAL PL

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

Email: planning@abilenetx.gov

I am in favor ☒

Additional Comments:

I am opposed ☐

Signature:

ChDK LLC

CASE #: Z-2020-10

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

Name: RILEY SHARON
Address: 2050 ANTILLEY RD

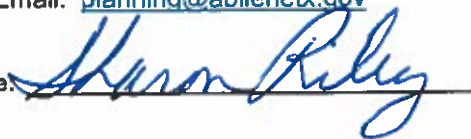
Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____



AUG 10 AM 10:19



Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

Rezoning application

1 message

Steve Walker <steve@walkertradesman.com>

Fri, Aug 14, 2020 at 5:01 PM

To: "cheryl.sawyers@abilenetx.gov" <cheryl.sawyers@abilenetx.gov>

I support the rezoning application relating to signage changes in our development area.

Steve & Diane Walker

Walker Tradesman Plumbing

[31 Windmill Circle Ste B](#)

Sincerely,

Steve Walker, Owner/Operations Manager

[31 Windmill Circle, Suite B](#)

[Abilene, Texas 79606](#)

Phone: 325.704.4100

Fax: 325.672.4769

<http://walkertradesmanplumbing.com>

Walker Tradesman Plumbing and Walker Tradesman Construction – *"Together We Can Make It Happen"*.

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Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

Rezoning Application

1 message

Andrew Kouba <akouba@abilenedc.com>

Fri, Aug 14, 2020 at 2:39 PM

To: "cheryl.sawyers@abilenetx.gov" <cheryl.sawyers@abilenetx.gov>

Good Afternoon Ms. Sawyers,

I support the rezoning application relating to signage changes in our development area.

Andrew Kouba CEO

Medical Mall of Abilene

[1665 Antilley Road](#)

Andrew Kouba, CPA

Chief Executive Officer



[1665 Antilley Rd, Suite 180](#)

[Abilene, TX 79606](#)

[325-437-8645 \(office\)](#)

[806-535-4000 \(cell\)](#)

akouba@abilenedc.com

Please consider the environment before printing this e-mail. 🌱

Abilene Diagnostic Clinic, PLLC This email communication and

any attachments may contain confidential and/or privileged

information for the use of the designated recipient(s) named above.

If you have received this email in error, please destroy all copies and any attachments.

If you continue to receive erroneous email, please contact me at postmaster@abilenedc.com.



Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

Signage in our development area

2 messages

Kris Seale <kris.seale@funeraldirectorslife.com>
To: "cheryl.sawyers@abilenetx.gov" <cheryl.sawyers@abilenetx.gov>

Sat, Aug 15, 2020 at 9:56 AM

Cheryl:

I understand that HC Zachry has a rezoning application filed for a "billboard" on Antilley Blvd. I support the rezoning application relating to signage changes in our development area.

Kris Seale

Funeral Director's Life

6550 Director's Parkway

Blessings,

Kris

Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>
To: Kris Seale <kris.seale@funeraldirectorslife.com>

Sat, Aug 15, 2020 at 2:46 PM

Thank you Kris, I'll put your response in the packet for the commission and council.

[Quoted text hidden]

--

CHERYL SAWYERS

Planning Services Manager

Planning & Development Services

City of Abilene

555 Walnut Street, Suite 110

Abilene, Texas 79601-5254

Post Office Box 60

Abilene, Texas 79604-0060

(325) 676-6230 (Office)

[City of Abilene Planning & Development Services](#)





Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

Billboard zoning opinion

1 message

Jason Heuerman <jmdrugsouth@yahoo.com>

Wed, Aug 12, 2020 at 11:23 AM

To: "cheryl.sawyers@abilenetx.gov" <cheryl.sawyers@abilenetx.gov>

I support the rezoning application relating to signage changes in our development area.

Trey Guffey

James McCoy's Drug Store South

[1725 Antilley Road](#)



CENTRAL PARK 91 JV
PO BOX 6868
ABILENE, TX 79608-6868

NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number Z-2020-10

08/21/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, September 1, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Sharon Riley, agent H.C. Zachry, to amend existing Planned Development (PD) District Number 32 by removing from subparagraph (f) 1 and 2 the language stating "no other signs shall be allowed" from Lots 25-30 and allowing all off-site advertising signage ordinarily allowed in General Retail (GR); Legal description Lot 232 of Planned Development 32, Humana West Addition, Abilene, Taylor County, Texas and located at 2050 Antilley Road.

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

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

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

For the PLANNING & ZONING COMMISSION

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

CASE #: Z-2020-10

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

Name: CENTRAL PARK 91 JV

Address:

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

CASE #: Z-2020-10

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

Name: RILEY SHARON

Address:

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: Sharon Riley

AUG 10 AM 10:19



Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

[Planning] Rezoning application Z-2020-10

1 message

Gary Milliorn <GMilliorn@ffin.com>

Tue, Aug 25, 2020 at 2:49 PM

To: "planning@abilenetx.gov" <planning@abilenetx.gov>

This message was sent securely using Zix®

First Financial Bank

[1725 Antilley](#)

1801 Antilley

Approve

Gary Milliorn

VP Property Manager

First Financial Bank, N.A. | Abilene[400 Pine St.](#), 2nd Floor | Abilene, Texas 79601

Office: 325-627-7151 Cell: 325-307-8146

Fax: 325-627-7187

gmilliorn@ffin.comThis message was secured by **Zix**®^{#174}.

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You received this message because you are subscribed to the Google Groups "Planning Services" group.
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To view this discussion on the web visit <https://groups.google.com/a/abilenetx.gov/d/msgid/planning/DM5PR19MB1307D0437A8AEEEE05E7A95FCB570%40DM5PR19MB1307.namprd19.prod.outlook.com>.



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

[Planning] Case#: Z-2020-10

1 message

Bryan Vela <velab67@gmail.com>
To: planning@abilenetx.gov

Tue, Aug 25, 2020 at 6:30 PM

Please find my position of "opposed" to the above referenced case.

Please note we are the new owners of 1925 Hospital Place and have not received letter from this department.

Regards,

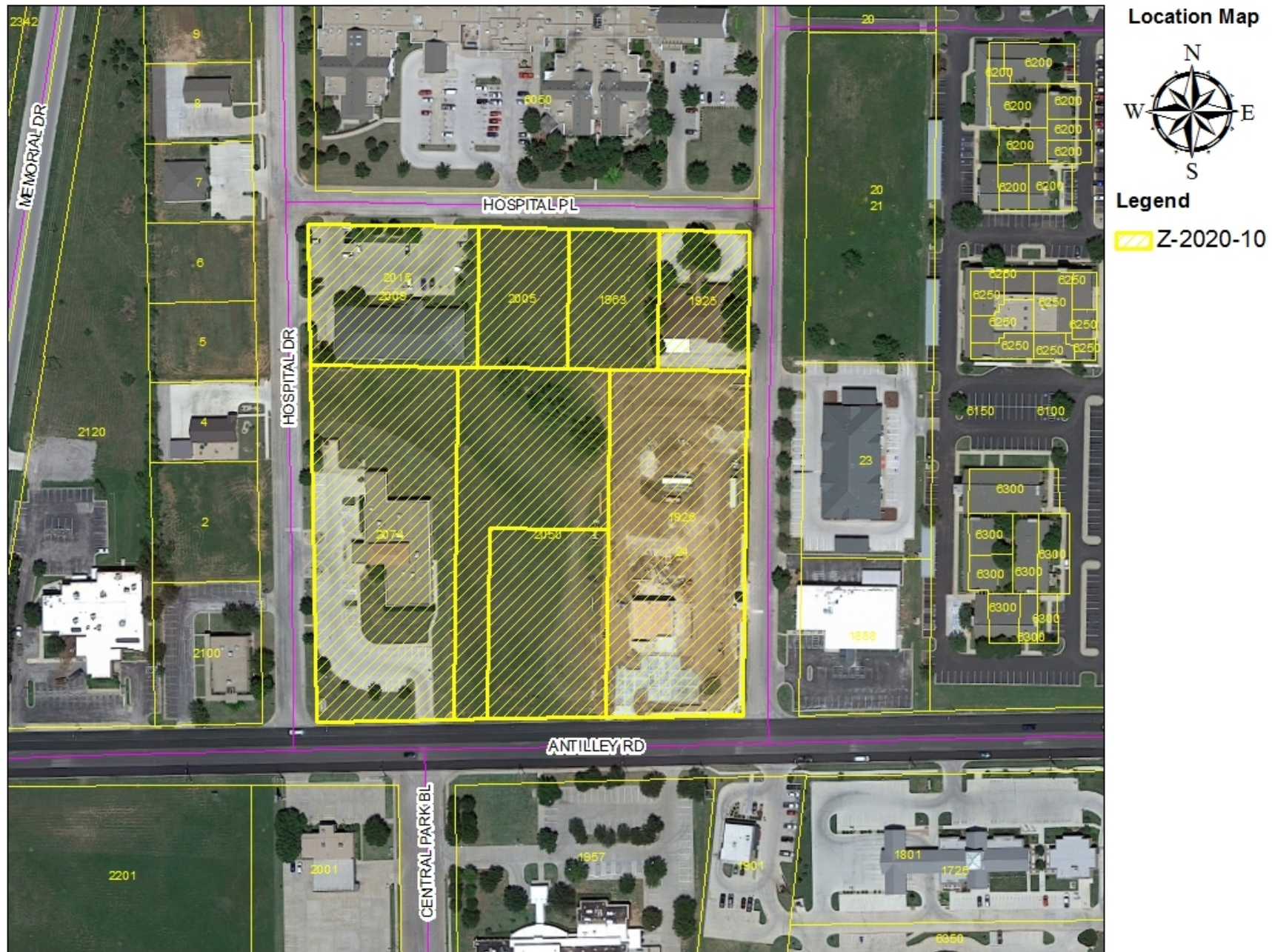
Bryan and Erika Vela
1925 Hospital Place
Abilene, TX 79606

--

You received this message because you are subscribed to the Google Groups "Planning Services" group.
To unsubscribe from this group and stop receiving emails from it, send an email to planning+unsubscribe@abilenetx.gov.
To view this discussion on the web visit <https://groups.google.com/a/abilenetx.gov/d/msgid/planning/208E6C5C-899B-40F9-B680-31A81400E80B%40gmail.com>.

Case: Z-2020-10
Owner: Sharon Riley
Agent: HC Zachry and City of Abilene
Request: Amend existing Planned Development District
Number 32 (PD 32)
Location: 2050 Antilley Road
Notification: 12 in Favor, 2 Opposed
Planning & Zoning Recommendation: Approval

Z-2020-10 AERIAL LOCATION MAP (Amended Portion of PD32)

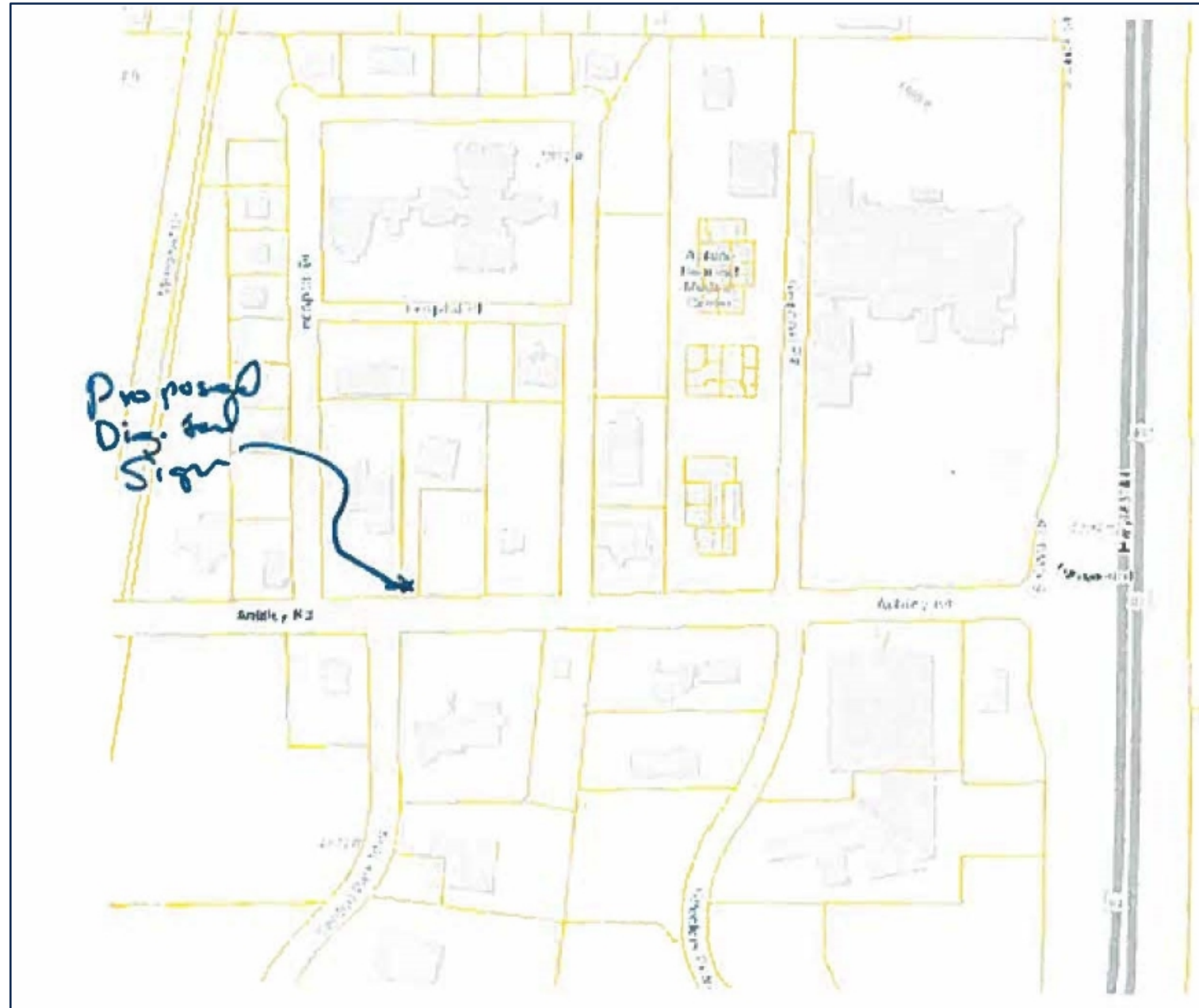


Z-2020-10 AERIAL LOCATION MAP (Proposed Billboard Location)



Z-2020-10 ZONING MAP







Subject Property



Neighboring property to the East



Neighboring property to the West



Property South of Antilley Rd.



Notification Map

200'

Notification Area

Z-2020-10

12- In Favor- (Green Circle)

2- Opposed- (Red Circle)

12% Opposed

- Consistent with *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Consistent with General Land Use and Zoning Character of Immediate Area (Section 2.3.3.5)
- Reviewed Pursuant to Section 1.4.3.5 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval
- Planning & Zoning Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **17. Ordinance (First Reading) Z-2020-13: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Denise Dilliard Rister and Jerry Lynn Rister to rezone property from General Commercial (GC) to General Retail (GR) District (Mike Warrix)**

GENERAL INFORMATION

The applicant is requesting to rezone from General Commercial (GC) to General Retail (GR) to permit residential use by right.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of six (6) to zero (0).

ATTACHMENTS:

1. 1- Z-2020-13 council ordinance
2. 2- Z-2020-13 Council Staff Report
3. 3- Z-2020-13 Council Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 2 (Zoning Regulations) of the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

PASSED ON FIRST READING the 24th day of September, 2020.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 15th day of August, 2020, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 p.m. on the 8th day of October, 2020, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 8th day of October, 2020.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Change the zoning classification of the following described tract, from a General Commercial (GC) District to a General Retail (GR) District:

Legal Description being approximately South 53 feet of the West 140 feet of Lot 1, Block 16, Campus Addition, City of Abilene, Taylor County, Texas



Location: 1425 Matador Street, Abilene, TX

ZONING CASE Z-2020-13

STAFF REPORT



REQUEST: Rezoning

APPLICANT:

Owner: Denise Dilliard & Jerry Lynn Rister

Agent: Sarah Faynan

HEARING DATES:

P & Z Commission: September 1, 2020

City Council 1st Reading: September 24, 2020

City Council 2nd Reading: October 8, 2020

LOCATION:

- 1425 Matador Street
- Legal description(s): South 53 feet of the West 140 feet of Lot 1, Block 16, Campus Addition.

PROPOSAL AND REQUESTED ACTION:

The applicant is requesting to rezone from General Commercial (GC) to General Retail (GR) to permit residential use by right.

APPLICATION REVIEW:

According to Section 1.4.1.4, Criteria for Approval, of the City of Abilene Land Development Code, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

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

The Future Land Use and Development Plan Map of the Comprehensive Plan designates this general area as a Local Community Center. The intent of local community centers is to provide neighboring residential districts with a mixture of supermarkets, retail stores, service shops, churches, and parks within a walkable distance. Many local community centers are surrounded by higher-density housing with residential intensities decreasing closer to single-family areas. This proposed zone change is consistent with the characteristics of local community centers. It will also promote the Comprehensive Plan's goal of achieving a mixture of land uses that will encourage a variety of activities, shorten automobile trips and promote pedestrian and bicycle accessibility.

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

General Retail (GR) zoning permits residential structures by right and serves as an appropriate zoning buffer between commercial zoning districts and residential zoning districts. The block consists of four (4) other residences, church, fast food restaurant, and a retail shopping center; all of which are permitted uses within GR zoning.

	Zoning	Existing Land Use
North	GC	Single Family Residence
South	GC	Single Family Residence
East	GC	Crossway Youth & Activity Building
West	GC	Kenley School

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

The subject property currently has access to existing utilities and public amenities. No additional development of said infrastructure will be required for the development of this subject property.

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

It is the opinion of the staff that there are no other factors, which substantially affect the public health, safety, morals, or general welfare of the City of Abilene.

STAFF COMMENTS:

Building records indicate that a residence has existed on this property since at least 1950 and according to the zoning ordinance in effect at this time, single family dwellings were permitted uses. In 1974, when the City of Abilene adopted its current Zoning Map, this property including the entire 16th block of Campus Addition was designated as a General Commercial (GC) District. However in 2010, when the City of Abilene adopted the current Land Development Code, single-family dwellings along with other residential uses, became non-permitted uses within the GC Zoning. Based on the neighboring residential properties and similarities of both GC and GR zoning districts, re-zoning this property would permit residential use within a predominantly non-residential district.

STAFF RECOMMENDATION:

Staff recommends approval of the request. The rezoning request was reviewed pursuant Section 1.4.1.4 (Criteria for Approval).

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission recommended approval of this request by a vote of six (6) to zero (0) on Tuesday, September 1, 2020.

NOTIFICATION:

The Planning Services Division sent, with a certificate of mailing, public notices to the applicant and property owners within a 200-foot radius.

Owner	Situs	Response
ALEMAN MARTHA OLVERA	1457 MATADOR ST	
CROSSWAY BAPTIST CHURCH	1458 SEWELL ST	
CROSSWAY BAPTIST CHURCH	1410 SEWELL ST	
GGTP LLC	2807 S 14TH ST	
GGTP LLC	2809 S 14TH ST	
GGTP LLC	2805 S 14TH ST	
GGTP LLC	2803 S 14TH ST	
GGTP LLC	2801 S 14TH ST	
GGTP LLC	2833 S 14TH ST	
GGTP LLC	2741 B S 14TH ST	
GGTP LLC	2741 S 14TH ST	
HILL JOHN A	1425 SEWELL ST	Opposed
HILL JOHN A & MOLLY	1415 SEWELL ST	Opposed
JONES WILLIAM D II	1449 MATADOR ST	
KENLEY SCHOOL	1434 MATADOR ST	
LUDOVICI BUILDING TWO INC	2901 S 14TH ST	
MC NEILL DAN S & SHERI L	2910 S 15TH ST	
MC NEILL DAN S & SHERI L	1450 MATADOR ST	
MC NEILL DAN S & SHERI L	1442 MATADOR ST	
MC NEILL DAN S & SHERI L	1450 1/2 MATADOR ST	
MC NEILL DAN S & SHERI L	1442 1/2 MATADOR ST	
MOEN PAMELA & DONALD	1433 MATADOR ST	
ORTIZ MANUEL	1417 MATADOR ST	In Favor
ORTIZ MANUEL	2849 S 14TH ST	In Favor
RISTER DENISE DILLIARD	1425 MATADOR ST	

ATTACHMENTS:

- Application
- PowerPoint





Development Application

Planning

- ☐ Conditional Use
 ☐ Easement Release
 ☒ Rezoning
 ☐ Other
☐ PDD
 ☐ Street Name Change
 ☐ Thoroughfare Abandonment
 ☐ PDD Amendment
 Other: _____

Project Name: NA
 Address: 1425 Matador No. of lots: 1 Acreage: _____
 Legal Description: _____
 Subdivision Name: Campus Addition Block: _____ Lot: _____
 Current Zoning: General Commercial Proposed Zoning (if applicable): General Retail

OWNER AND AUTHORIZATION

Owner Name: Denise Dilliard Rister + Jerry Lynn Rister
 Address: 1425 Matador St.
 City, State, Zip: Abilene, Tx. 79605 Fax: _____
 Phone: 325-260-8706 Email: deniserister56@gmail.com

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

Agent Name: Sarah Fayman
 Address: 2545 S. Danville Dr.
 City, State, Zip: Abilene Tx 79605 Fax: _____
 Phone: 325-669-1667 Email: Sarahfayabilene@gmail.com

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

Signature Owner: Denise Rister Date: 7-21-2020

FOR OFFICE USE ONLY

Received: Nick Watts Fee: \$ waived Receipt No.: N/A
 Case No.: 2020-13 Reviewed By: NW



Development Application

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

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

I Sarah Fay was hired by Mr. Mrs. Bister to sell there property located at 1425 Matador Abilene Tx 79605. The list price for property was \$120K. I sold the property in 3 days. The property passed all inspections and was appraised for sales price with no lender repairs. The appraiser Justin Walker with walker appraisal realized that the property was currently zoned GC. As an appraiser he had to report to the lender the zoning. Because of this zoning the lender (and all lenders) will not loan money to a buyer to live in a residential property zoned commercial. The reason why if some accident or unforeseen destruction of the property the current owner would have to rebuild commercial and that cannot be done with a 1-4 residential leading contract. We are asking the City to rezone this property to GR so that the sellers can sell there property and the buyers lender will loan on the property. The seller has spent her inheritance to remodel and fix up the house on Matador to sell. The Seller currently have bought another home and was using the proceeds from the sale of the home to finalize the payment of there new home.



Development Application

RECOMMENDATIONS

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

PUBLIC NOTIFICATION

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

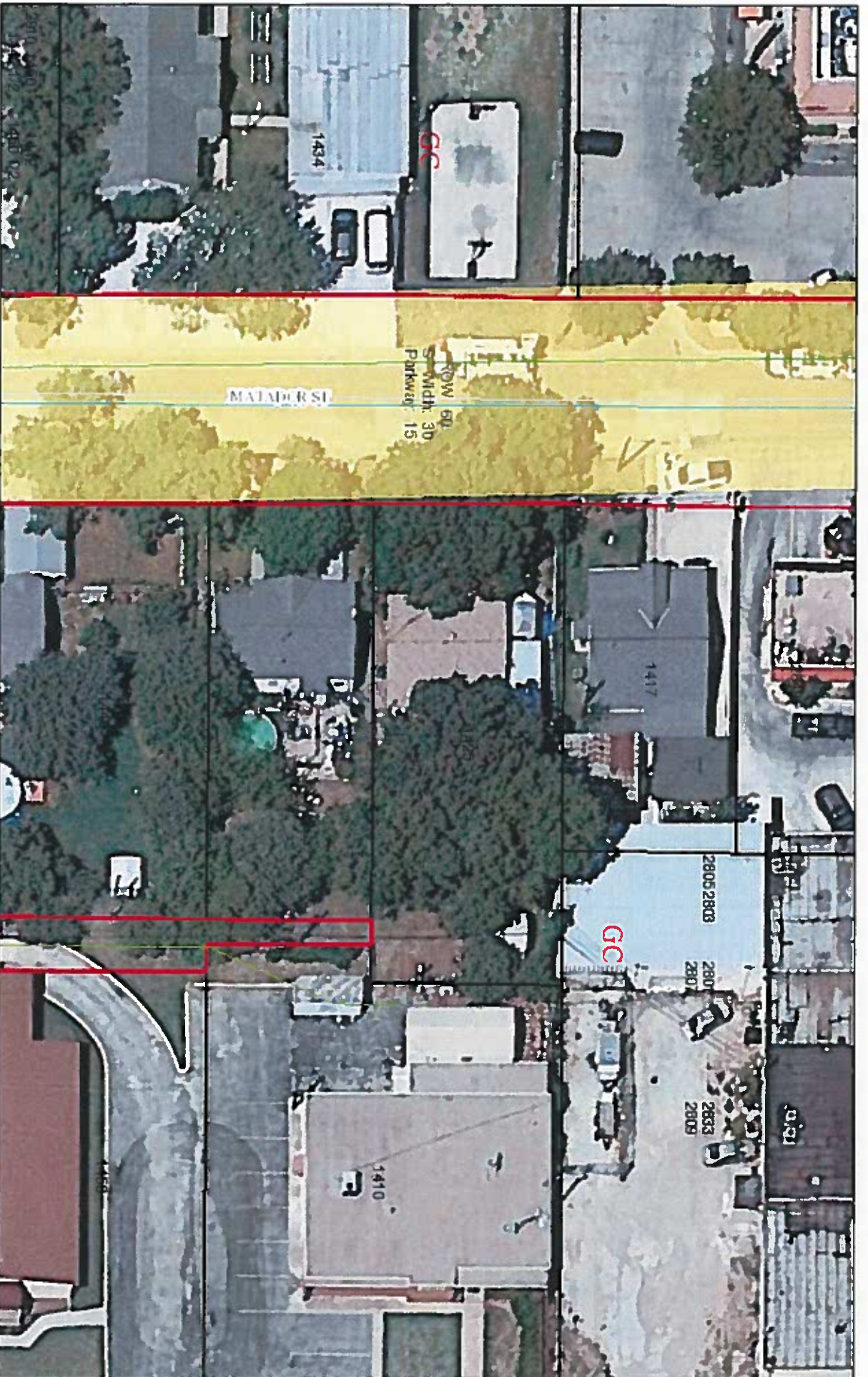
PLEASE READ BEFORE SIGNING

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

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

SIGNED: *Denise Rister* DATE: 7-21-2020

ArcGIS Web Map



July 21, 2020

- Water Lines
- Sewer Lines
- Streets
- Thirpjan Current
- Arterial
- Collector
- Expressway
- minor arterial
- Thirpjan Extended
- Arterial - Extended
- Expressway
- Thirpjan Proposed
- Arterial
- Collector
- Expressway
- minor arterial
- ZONING

1:564

0 0.00475 0.0095 0.019 mi

0 0.0075 0.015 0.03 km

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, Geobase, IGN, Kadaster NL, Ordnance Survey, Esri



HILL JOHN A
750 N JUDGE ELY BLVD
ABILENE, TX 79601-5560

NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number Z-2020-13

08/21/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, September 1, 2020** at **1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Denise Dilliard & Jerry Lynn Rister to **rezone 1425 Matador Street from General Commercial (GC) District to General Retail (GR) District**. Legal descriptions being South 53 feet of the West 140 feet of Lot 1, Block 16, Campus Addition, City of Abilene, Taylor County, Texas

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

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

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

For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

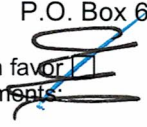
CASE #: Z-2020-13

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

Name: HILL JOHN A
Address: 1425 SEWELL ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments: 

I am opposed ☐

Signature: 

Why go from GC to GR? Makes no sense!



HILL JOHN A & MOLLY
750 N JUDGE ELY BLVD
ABILENE, TX 79601-5560

NOTICE OF PUBLIC HEARING

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08/21/2020

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CASE #: Z-2020-13

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Name: HILL JOHN A & MOLLY
Address: 1415 SEWELL ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: 

Don't take the more restrictive zoning!

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

CASE #: Z-2020-13

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

Name: ORTIZ MANUEL
Address: 1417 MATADOR ST

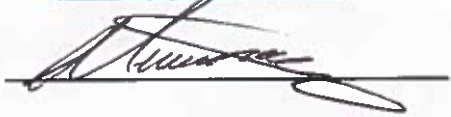
Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature:



AUG 28 AM 10:09

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

CASE #: Z-2020-13

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

Name: ORTIZ MANUEL

Address: 2849 S 14TH ST

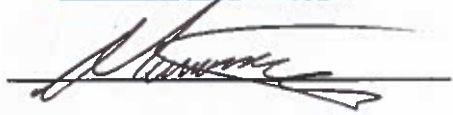
Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature:



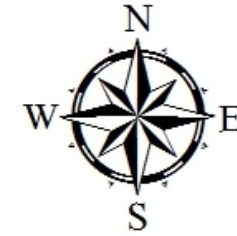
AUG 23 AM 10:09

Case:	Z-2020-13
Owner:	Denise Dillard & Jerry Lynn Rister
Request:	Rezone from GC to GR
Legal Description:	South 53' of the West 140' of lot 1, Block 16, Campus Addition, City of Abilene, Taylor County, Texas.
Notification:	2 in Favor, 2 Opposed
Planning & Zoning Recommendation:	Approval

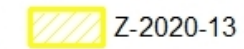
Z-2020-13 AERIAL LOCATION MAP



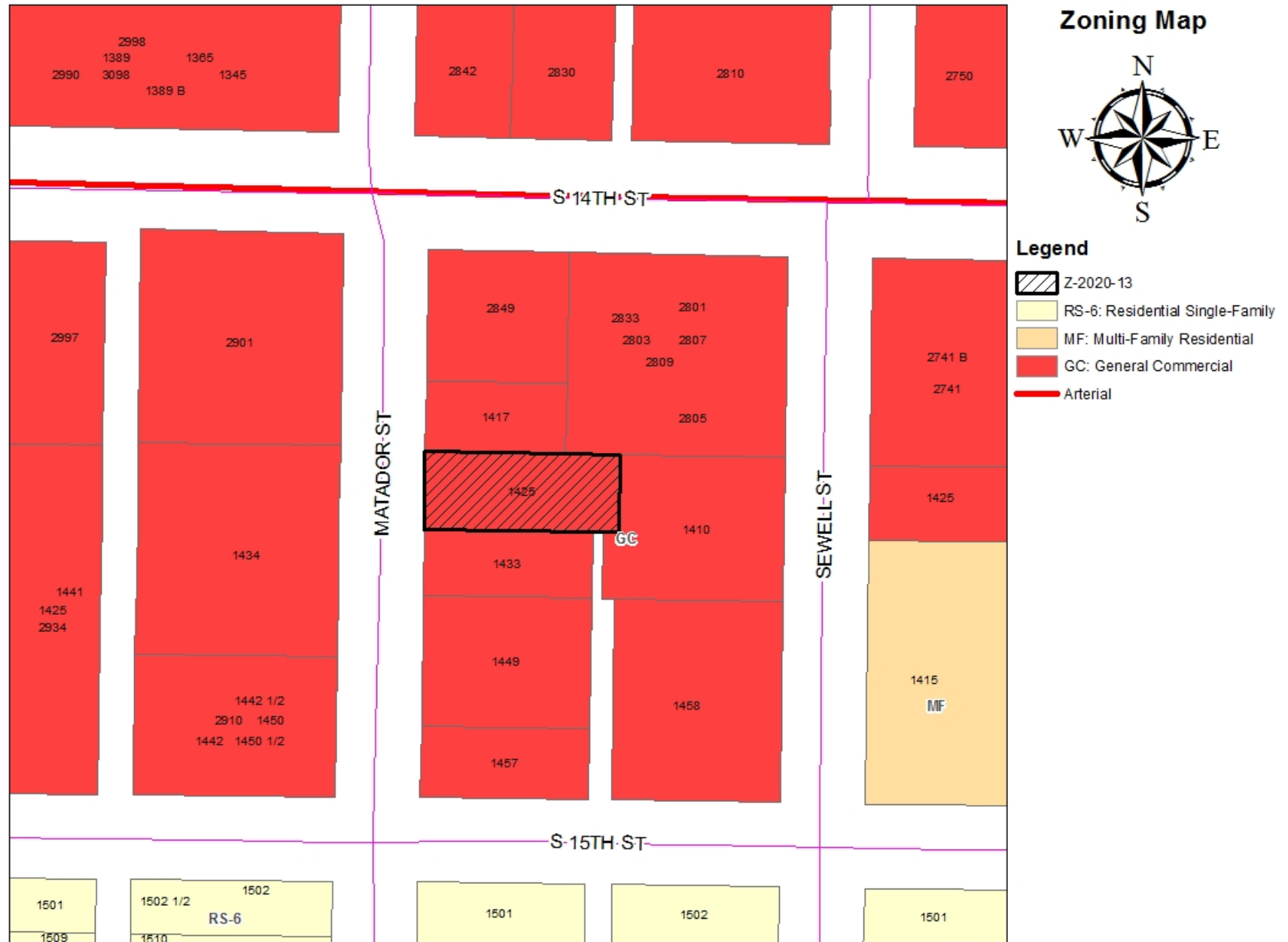
Location Map



Legend



Z-2020-13 ZONING MAP



GC PERMITTED USES

RESIDENTIAL USES:

- P Hotel/Motel
- C Vacation Travel Trailer Park

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Freight Container
- P Fuel Sales
- TP Itinerant Business
- P Manufacturing (incidental)
- C Mobile Home (permanent security residence)
- TP Mobile Home (temporary security residence)
- C Mobile Home or Temporary Building (office for sales and service)
- P Recycling Collection Point
- C Travel Trailers (accessory to hospitals)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- P Cultural Facilities
- P Drive-in Theater
- P Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Recreation and Commercial Entertainment – Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Ambulance Service
- P Fire/Police Station
- C Homeless/Emergency Shelter
- P Hospital
- P Medical/Dental Laboratory
- P Post Office
- C Rehabilitation Facility
- P Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

- P Arts School
- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P Day-Care Operation - Center-Based
- P Educational and Scientific Research
- P School: Public/Private
- P Trade/Business School
- P University/College

SERVICE

- P/C Automobile Wash
- C Contractor Services
- P Funeral Home/ Mortuary/Morgue
- C Kennel (With Outdoor Pens)
- P Kennel (Without Outdoor Pens)
- P Laundry, Dry Cleaning, Dyeing, and Linen Service (no retail customers)
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- P Printing, Copying, Reproduction, Publishing
- C Recycling Collection and Processing Center
- P Repair and Maintenance Services - Automobile/Small Truck (major)
- P Repair and Maintenance Services - Automobile/Small Truck (minor)
- P Repair and Maintenance Services (indoor)
- C Repair and Maintenance Services (outdoors)
- P Storage - Self-Service Units
- P Tattoo Parlor
- P Taxidermist
- P Veterinary Service (small animals)

TRADE – RETAIL USES

- C Aircraft and Accessories
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Fuel Sales
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- P Liquor Store (On Premises Consumption) (*Defined under Liquor Store*)
- P Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (automobile/small truck)
- P Retail Sales/Rental (indoor)
- P Retail Sales/Rental (outdoors, non-vehicle)
- C Retail Sales/Rental (trucks and other large vehicles and equipment)

TRADE – WHOLESALE USES

- C Wholesaling and Storage (indoor)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Antenna Tower - Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Broadcast Studio
- P Passenger Ground Transportation Terminal
- P Pressure Control Station
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

- P** Permitted as a Right-of-Use (may be subject to compliance with conditions described within Section 2.4.3 of the Land Development Code)
- C** Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP** Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

GR PERMITTED USES

RESIDENTIAL USES:

- P Bed & Breakfast
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Institutional
- P Dwelling – Multiple-Family
- P Dwelling – Single Family Detached**
- P Hotel/Motel

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Day Care Operation – Home Based
- P Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Freight Container
- P Fuel Sales
- P Garage Sales
- P Home Occupation
- TP Itinerant Business
- P Manufacturing (incidental)
- TP Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage and parking)
- P Recycling Collection Point
- P Subdivision Sales Office (temporary)
- P Swimming Pools, Private (accessory to residential use)
- P Tennis Courts, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- P Cultural Facilities
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- C Ambulance Service
- P Fire/Police Station
- P Medical/Dental Laboratory
- P Post Office
- C Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

- P Arts School
- P Church or Place of Worship
- P Day-Care Operation - Center-Based
- P Educational and Scientific Research
- P School: Public/Private
- C Trade/Business School
- P University/College

SERVICE

- P/C Automobile Wash
- C Funeral Home/ Mortuary/Morgue
- P Kennel (Without Outdoor Pens)
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- C Printing, Copying, Reproduction, Publishing
- P Repair and Maintenance Services - Automobile/Small Truck (minor)
- P Repair and Maintenance Services (indoor)
- C Tattoo Parlor
- P Veterinary Service (small animals)

TRADE – RETAIL USES

- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Fuel Sales
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- P Liquor Store (On Premises Consumption) (*Defined under Liquor Store*)
- P Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (indoor)
- C Retail Sales/Rental (outdoors, non-vehicle)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Antenna Tower- Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Broadcast Studio
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

P

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Section 2.4.3 of the Land Development Code)

C

Permitted as a Conditional Use Permit, Requiring Approval by City Council

TP

Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Z-2020-13 VIEWS OF SUBJECT PROPERTY

Neighboring Property (North)



Neighboring Property (East)



Photo of Subject Property



Neighboring Property (West)



Neighboring Property (South)



Z-2020-13 NOTIFICATION AREA MAP



- Consistent with *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval
- Planning & Zoning Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **18. Ordinance (First Reading) CUP-2020-06: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Hit Ventures LLC, agent Cody Myers, for approval of Conditional Use Permit allowing light manufacturing and, in particular, coffee processing in a Heavy Commercial (HC) District *(Mike Warrix)***

GENERAL INFORMATION

The applicant is requesting a Conditional Use Permit (CUP) to allow light manufacturing within Heavy Commercial (HC) Zoning.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval with conditions.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval of this request by a vote of six (6) to zero (0).

ATTACHMENTS:

1. 1- CUP-2020-06 3- ordinance
2. 2- CUP-2020-06 Council staff report
3. 3- CUP-2020-06 Council Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, BY APPROVING A CONDITIONAL USE PERMIT (CUP) AFFECTING CERTAIN PROPERTY; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 2 (Zoning Regulations) of the Land Development Code of the City of Abilene, is hereby amended by approving a Conditional Use Permit (CUP) as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto. PASSED ON FIRST READING the 24th day of September A.D. 2020.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 15th day of August, 2020, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 8th day of October, 2020, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 8th day of October, A.D. 2020.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Conditional Use Permit (CUP) to allow a “Light Manufacturing” facility as defined within the Land Development Code, specifically limited to only allow coffee processing with the following conditions for approval:

1. The portion of the facility which is to be utilized for coffee processing shall be separately ventilated from the portion of the business which is used as customer dining area.
2. The portion of the facility which is to be utilized for coffee processing must be fully partitioned and separate from the portion of the building which is utilized as customer dining area.
3. Light manufacturing activities at this location are restricted to the processing of coffee. To include but not to be limited to roasting, grinding, packaging, canning and distribution of coffee products.

Legal description: Lot 1 & 2 of Block Y in J. Stoddard, Johnston Subdivision a re-plat of Lot 2, Block 190 of Original Town of Abilene.



Location: 802 S Treadaway Blvd.

-END-

ZONING CASE CUP-2020-06

STAFF REPORT



REQUEST: Conditional Use Permit

APPLICANT:

Owner: Hit Ventures, LLC

Agent: Cody Myers

HEARING DATES:

P & Z Commission: September 1, 2020

City Council 1st Reading: September 24, 2020

City Council 2nd Reading: October 8, 2020

LOCATION:

- 802 S. Treadaway Blvd.
- Lots 1 & 2 of Block Y in J. Stoddard, Johnston Subdivision a Re-plat of Lot 2, Block 190 of Original Town of Abilene

PROPOSAL AND REQUESTED ACTION:

The applicant is requesting a Conditional Use Permit (CUP) to allow light manufacturing within Heavy Commercial (HC) Zoning.

BACKGROUND:

The subject property has been zoned Heavy Commercial (HC) since at least 1974. This building was originally an automotive service station. Over the years, several automotive businesses have operated at this location. In 2018, a certificate of occupancy was issued for a retail coffee shop to occupy the existing building. The applicant is seeking a Conditional Use Permit (CUP) for light manufacturing to allow the roasting/processing of coffee beans as well as the packaging and distribution of products from this location as an incidental to the currently existing retail coffee shop.

ANALYSIS:

Criteria Analysis:

Staff has reviewed the request based upon the factors established in Section 1.4.3.5, Criteria for Approval, of the Land Development Code. These factors are identified and addressed below:

1. The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.

Yes, the Comprehensive Plan designates the property to be located within a "Local Activity Center." The Comprehensive Plan details the purpose of such activity centers to "provide a higher concentration and greater variety of activity for several neighborhoods, including a mix of commercial, employment, entertainment, housing and civic services."

2. **The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.**

Yes, Heavy Commercial (HC) Zoning is intended to accommodate sales and services which by their nature may not be compatible with many other traditional commercial zoning districts found in the City of Abilene, this is interpreted to include light manufacturing.

3. **The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development-related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods.**

Due to the scale of processing and distribution of coffee products from this location, City staff believes granting the CUP for light manufacturing will not be detrimental to the overall character and integrity of the surrounding properties.

4. **The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.**

The proposed use will not generate pedestrian and vehicular traffic that will be hazardous or conflict with existing and anticipated traffic.

5. **The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.**

The proposed use will not incorporate roadway adjustments, traffic control devices, mechanisms and access restrictions. However, no anticipated generation of traffic which would warrant such measures.

6. **The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties.**

In order to be considered light manufacturing, all activities associated with the proposed conditional use must take place indoors and must not create any nuisances such as odors, noise, heat, vibration and radiation outside of the subject property. It is the opinion of staff that there are no negative visual impacts associated with the proposed conditional use.

7. **The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.**

It is the opinion of staff that the proposed use will meet the standards for the zoning district.

Comprehensive Planning Analysis

The Future Land Use and Development Plan Map of the Comprehensive Plan designates this general area as a local activity center. Approval of the Conditional Use Permit promotes the goal of the future land use plan as it intends to provide a high concentration and greater variety of activity for several neighborhoods, including a mix of commercial, employment and entertainment services. Additionally, the subject property is located within the Neighborhood Empowerment Zone (78-2018), a zone designed to promote redevelopment in “economically distressed” areas of Abilene.

Existing Land Use

Location	Zoning	Existing Land Use
North	HC	Restaurant
South	HC	Vacant Building
East	HC	Abilene Hope Haven (transitional housing)
West	PD (137B)	Single Family Residential

STAFF RECOMMENDATION:

Staff recommends approval subject to the following conditions:

1. The portion of the facility which is to be utilized for coffee processing shall be separately ventilated from the portion of the business that is used for a customer dining area.
2. The portion of the facility which is to be utilized for coffee processing must be fully partitioned and separate from the portion of the building which is utilized for customer dining area.
3. Light manufacturing activities at this location are restricted to the processing of coffee. To include but not to be limited to roasting, grinding, packaging, canning and distribution of coffee products.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission recommended approval of this request by a vote of six (6) to zero (0), on September 1, 2020.

NOTIFICATION:

The Planning Services Division sent public notices, with a certificate of mailing, to the applicant and to owners of property within a 200-foot radius of the subject property.

Owner	Situs	Response
ABILENE HOPE HAVEN INC	801 S TREADAWAY BL	
CIRCLE G INVESTMENTS LLC	754 S TREADAWAY BL	In Favor
CIRCLE G INVESTMENTS LLC	758 S TREADAWAY BL	In Favor
CROSSLAND ASHLEY JUSTIN & DUARTE WALTER ANTONIO	781 S TREADAWAY BL	
HERNANDEZ PEDRO G	833 CHERRY ST	
HERNANDEZ SALETA	827 CHERRY ST	
HIT VENTURES LLC	825 CHERRY ST	
LONE STAR RAILROAD INC	802 S TREADAWAY BL	
MK POWELL PROPERTIES LLC	825 S TREADAWAY BL	
MORRIS & JACOBY PARTNERSHIP	830 S TREADAWAY BL	In Favor
MORRIS & JACOBY PARTNERSHIP	773 CHERRY ST	
MORRIS MARVIN	780 S TREADAWAY BL	
MORRIS MARVIN	765 CHERRY ST	
MORRIS MARVIN	811 CHERRY ST	
MORRIS MARVIN	809 CHERRY ST	
PARKS GREGORY L	842 S TREADAWAY BL	
POPE BRYAN	820 S TREADAWAY BL	In Favor
SCOTT FAMILY ENTERPRISES LLC	765 S TREADAWAY BL	
SCOTT FAMILY ENTERPRISES LLC	773 S TREADAWAY BL	
SMITH LARRY C & KRISTY K	834 S TREADAWAY BL	
WEST TEXAS UTILITIES CO	841 S TREADAWAY BL	





Development Application

Planning

☒ Conditional Use ☐ Easement Release ☐ Rezoning ☐ Other
☐ PDD ☐ Street Name Change ☐ Thoroughfare Abandonment ☐ PDD Amendment
 Other: _____

Project Name: Big Country Coffee Food Manufacturing
 Address: 802 South Treadaway Boulevard No. of lots: _____ Acreage: 0.2984
 Legal Description: Lots 1 and 2 in Block Y of J. Stoddard Johnston's Subdivision of Lot 2, Block 190, Abilene's Original Town
 Subdivision Name: _____ Block: _____ Lot: _____
 Current Zoning: Heavy Commercial Proposed Zoning (if applicable): _____

OWNER AND AUTHORIZATION

Owner Name: Hit Ventures, LLC
 Address: 402 South 7th Street
 City, State, Zip: Abilene, TX 79602 Fax: _____
 Phone: (325) 829-5160 Email: harleyburnett@gmail.com

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

Agent Name: Cody Myers
 Address: 9 Reagan Circle
 City, State, Zip: Abilene, TX 79605 Fax: _____
 Phone: (406) 581-2487 Email: kelevrainvestments@hotmail.com

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

Signature Owner: Cody Myers Date: 8/5/2020

FOR OFFICE USE ONLY

Received: 8/3/20 Fee: \$ 1500 Receipt No.: _____
 Case No.: ~~2020-06~~ Reviewed By: [Signature]
CUP-2020-06

*Conditional use to allow roasting coffee and canning cold brew coffee products, as limited light manufacturing, in existing heavy commercial district.



Development Application

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

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

As mentioned on page number 6 of this application, Big Country Coffee is seeking to obtain a
conditional use permit in an existing heavy commercial district for the use of limited light manufacturing
and processing of coffee products. This includes roasting coffee and canning cold brew coffee.
The area dedicated for manufacturing is partitioned from their coffee shop residing within the same
building. The partition provides full separation of their customers from the manufacturing of their goods.



Development Application

RECOMMENDATIONS

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

PUBLIC NOTIFICATION

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

PLEASE READ BEFORE SIGNING

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

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

SIGNED: _____

Cody Meyer

DATE: _____

8/3/2020

An aerial photograph of a property. A yellow rectangular label with a black border is placed over a building. The label contains the text "Coffee Roasting" and "Light Manufacturing". The building is a large, light-colored structure with a dark roof. To the left of the building is a paved area with several cars parked. To the right is a dirt area. A red dashed line outlines the property. A red "HC" label is visible below the yellow label. A search result box is on the right side of the image, and a page number "1895" is visible in the bottom right corner.

Coffee Roasting
"Light Manufacturing"

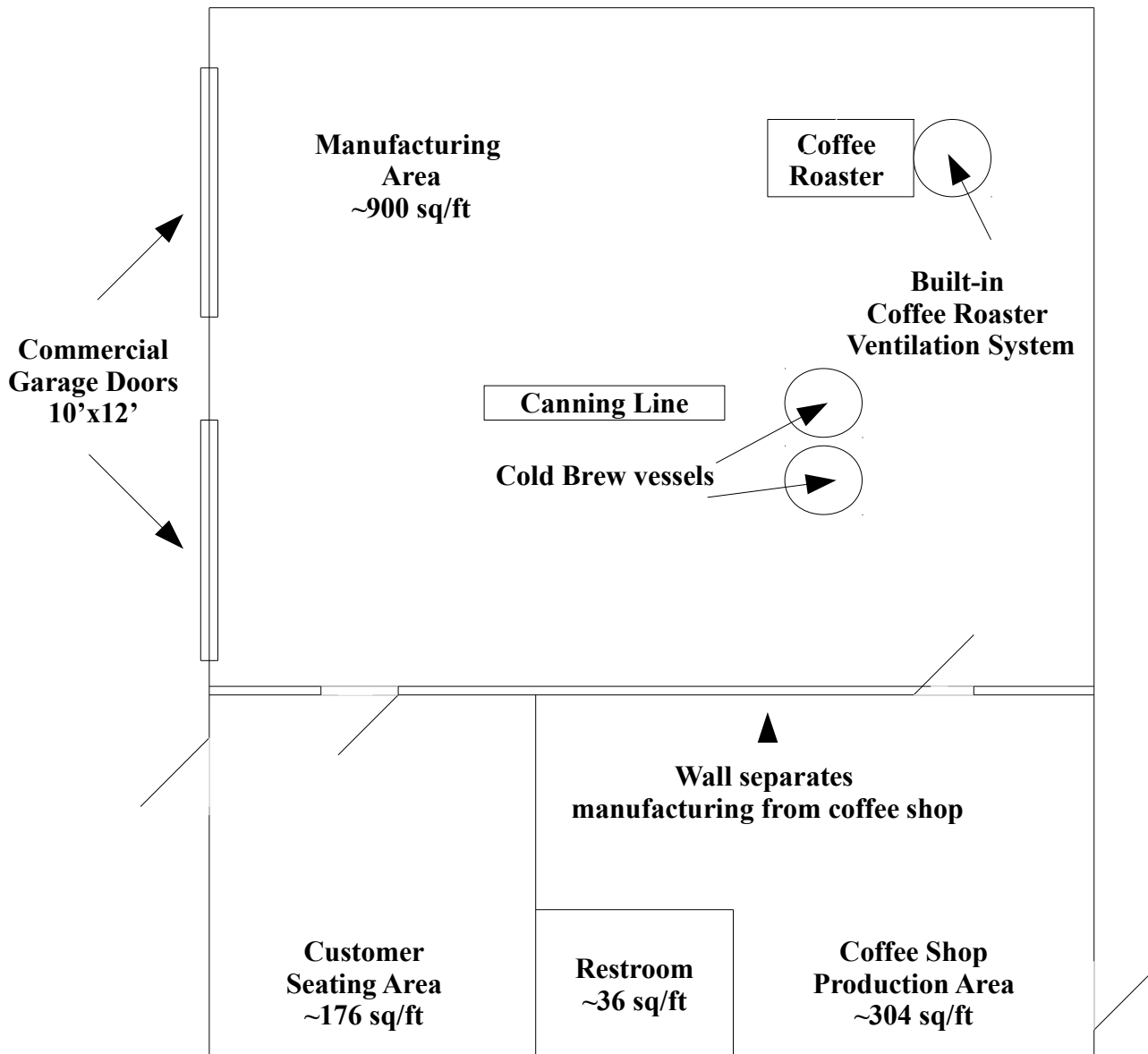
HC

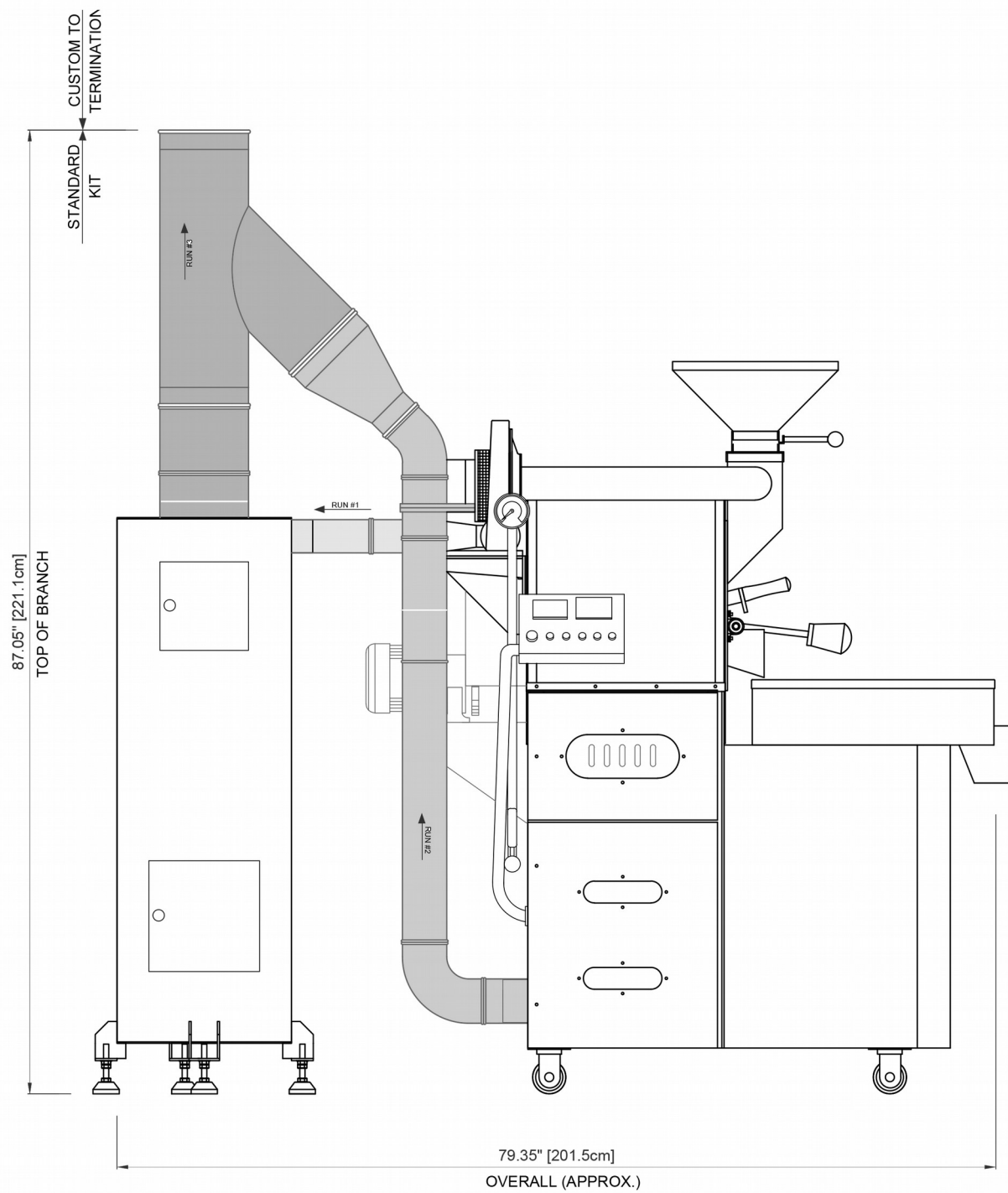
Search result

802 S TREADAWAY BL, ABIL

[Zoom to](#)

1895





ELEVATION: ROASTER & CHAFF COLLECTOR



CITY OF ABILENE

PLANNING &
DEVELOPMENT
SERVICES

MK POWELL PROPERTIES LLC
2810 S 27TH ST
ABILENE, TX 79605-6328

NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number CUP-2020-06

08/19/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, September 1, 2020** at **1:30 PM**, in City Council Chambers, 2nd Floor, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Hit Ventures LLC, agent Cody Myers, for approval of Conditional Use Permit allowing light manufacturing and, in particular, coffee processing in a Heavy Commercial (HC) District; Legal description being Lots 1 and 2 in Block Y of J. Stoddard Johnston's Subdivision of Lot 2 in Block 190 of Abilene's Original Townsite and located at 809 South Treadaway Boulevard.

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

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

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

For the PLANNING & ZONING COMMISSION

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

CASE #: CUP-2020-06

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

Name: MK POWELL PROPERTIES LLC
Address: 830 S TREADAWAY BL

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: *MK Powell, member*



CIRCLE G INVESTMENTS LLC
1408 DORAL CT
SAN ANGELO, TX 76904-9372

NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number CUP-2020-06

08/19/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, September 1, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Hit Ventures LLC, agent Cody Myers, for approval of Conditional Use Permit allowing light manufacturing and, in particular, coffee processing in a Heavy Commercial (HC) District; Legal description being Lots 1 and 2 in Block Y of J. Stoddard Johnston's Subdivision of Lot 2 in Block 190 of Abilene's Original Townsite and located at 809 South Treadaway Boulevard.

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For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

CASE #: CUP-2020-06

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

Name: CIRCLE G INVESTMENTS LLC
Address: 754 S TREADAWAY BL

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: 



CIRCLE G INVESTMENTS LLC
1408 DORAL CT
SAN ANGELO, TX 76904-9372

NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number CUP-2020-06

08/19/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, September 1, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Hit Ventures LLC, agent Cody Myers, for approval of Conditional Use Permit allowing light manufacturing and, in particular, coffee processing in a Heavy Commercial (HC) District; Legal description being Lots 1 and 2 in Block Y of J. Stoddard Johnston's Subdivision of Lot 2 in Block 190 of Abilene's Original Townsite and located at 809 South Treadaway Boulevard.

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

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

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

For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

CASE #: CUP-2020-06

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

Name: CIRCLE G INVESTMENTS LLC
Address: 758 S TREADAWAY BL

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

A handwritten signature in black ink, appearing to read "Doug Smith", written over a horizontal line.

AUG 26 AM 10:15

For the PLANNING & ZONING COMMISSION

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

CASE #: CUP-2020-06

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

Mailing To:

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

I am in favor ☒

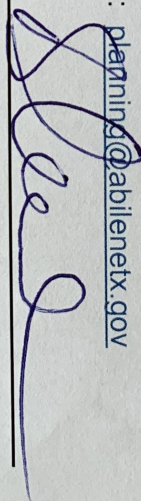
I am opposed ☐

Additional Comments:

Name: POPE BRYAN
Address: 820 S TREADAWAY BL

Email: planning@abilenetx.gov

Signature: _____



Case: CUP-2020-06
Owner: Hit Ventures, LLC
Agent: Cody Myers
Request: Conditional Use Permit to allow “Light Manufacturing” in Heavy Commercial (HC) Zoning
Location: 802 S. Treadaway Blvd.
Notification: 4 in Favor, 0 Opposed
Planning & Zoning Recommendation: Approval

CUP-2020-06 AERIAL LOCATION MAP



Location Map



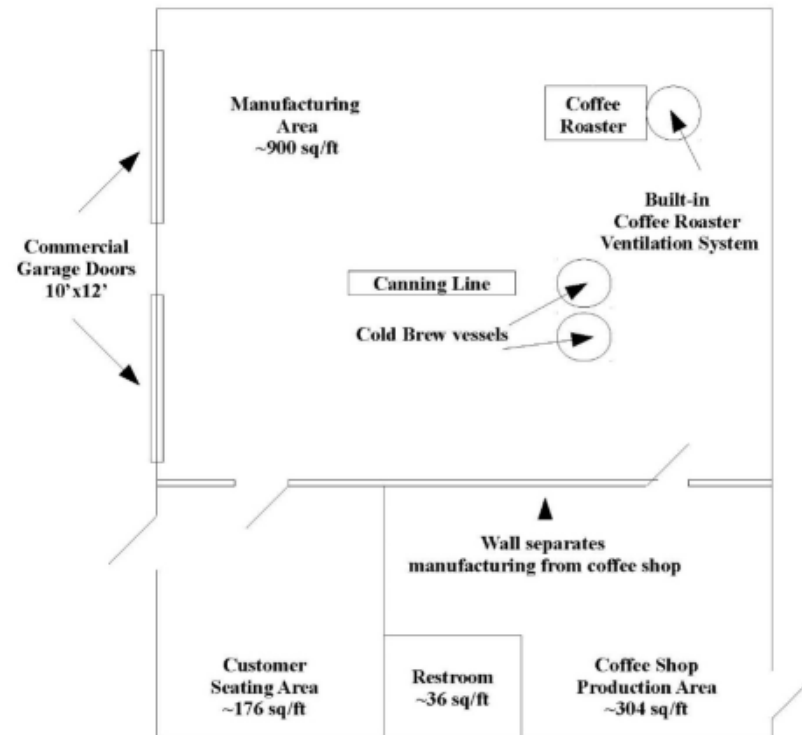
Legend

 CUP-2020-06

CUP-2020-06 ZONING MAP









Subject Property



Neighboring property to the South



Neighboring property to the North



Property East of S. Treadaway Blvd



CUP-2020-06 NOTIFICATION AREA MAP



- Consistent with *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Consistent with General Land Use and Zoning Character of Immediate Area (Section 2.3.3.10)
- Reviewed Pursuant to Section 1.4.3.5 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval with conditions
- Planning & Zoning Recommendation: Approval with conditions

Questions?



City Council Agenda Memo

City Council Meeting Date: 9/24/2020

TO: Robert Hanna, City Manager

FROM: Brenda Alexander, Director

SUBJECT: 19. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve an Agreement with Ceridian HCM, Inc. to provide a Human Capital Management (HCM) System (*Brenda Alexander*)

GENERAL INFORMATION

The City's Human Resources department currently utilizes several technology platforms to manage multiple critical functions. These technology platforms are collectively referred to as our Human Capital Management (HCM) systems.

Human capital management consists of managing the entire life cycle of an employer's workforce, including:

- Employment recruiting, applications processing, selection, background screening and new hire onboarding processes
- Employee records management
- City staffing management, position control and tracking
- Timekeeping, with hourly scheduling for a diverse workforce
- Leave management, including FMLA and workers compensation
- Payroll calculations, deductions, and payroll tax reporting
- Transactional and global reporting at all levels of the organization
- Employee development and learning
- Performance management
- Compensation management
- Employee benefits enrollment and administration

Currently, HR uses the following systems that are partially integrated to work together:

- Infor Lawson (since 2010) - a web-hosted HR/payroll system
- NeoGov (since 2013) - a web-hosted recruitment/hiring system

- Kronos (since 2014) - a web-hosted timekeeping system
- Direct Path - a web-hosted employee benefits system (being replaced by Businessolver effective 10/1/20)

The above systems are antiquated, extremely limited in functionality and create significant workflow and reporting problems. Maintaining separate systems for related functions is challenging in data integration, causing staff inefficiencies and extracting reliable data for management decision making.

Infor Lawson plays the most significant role within these HR systems, hosting employee data and generating the City's \$77.9 million payroll. The Infor Lawson contract expires in December 2021.

The expiration of the Infor Lawson contract provides an opportunity to combine the functionality within Infor Lawson, NeoGov and Kronos into a comprehensive, dynamic system "under one roof". With one system, we can eliminate current integration issues, streamline processes, produce work efficiencies and provide enhanced analytics.

The minimum timeline needed to implement a replacement system is nine (9) months. We plan to launch implementation of the new HCM system in January 2021, with an anticipated go-live start date of October 1, 2021.

The attributes specified for the new system were:

- A single system to drive all core HR functions, with the exception of benefits management
- A multi-tenant SaaS (Software as a Service) system with subscription-based access
- Security for the City's data and housed within the US
- Proven ability to handle a complex payroll (multiple work schedules and Civil Service rules)
- Innovative leader in the HCM market
- Real time workflow processes, rather than old-style batch processing methods
- User-friendly timekeeping system
- Capability for managers to electronically initiate and monitor HR and payroll transactions
- Global reports on HR's internal work-in-progress
- Ability for staff to work in future periods
- Easy usability, with data-rich metrics and graphical dashboards
- Enhanced flexibility for HR staff to manage rule changes, with minimal external re-programming
- Enhanced functionality, reporting options and auditing tools
- Position control features
- Minimal frequency of software upgrades and testing required by City staff

SPECIAL CONSIDERATIONS

The Human Resources department began the due diligence process in mid-2018 to identify potential replacement systems for Infor Lawson. Over the past two years, staff has researched numerous HCM systems and held eight (8) system demonstrations with management review.

Notices were published for RFP #CB-2073 on August 9 and August 16, 2020, with proposals due on August 27,

2020. Six (6) companies responded to the RFP and were evaluated by the City's HR staff and IT Director.

The proposal rating criteria consisted of the following:

1)	Successful experience in SaaS-based HCMs	15%
2)	Quality and design of features and transformational/operational work flows	50%
3)	Ease of use / ability for HR staff to manage system	10%
4)	Overall cost	20%
5)	Quality of implementation and ongoing technical support	5%
		<u>100%</u>

The most advantageous proposal was received from Ceridian HCM, Inc., to provide their Dayforce SaaS system. Ceridian is a recognized leader in the HCM market. Their Dayforce product provides the specified features and functionality at a competitive cost.

FUNDING/FISCAL IMPACT

Currently, the City has \$1,076,310 set aside in capital project funds dedicated towards implementation of new enterprise systems for HR and/or Finance. The Ceridian Dayforce system will be funded using a combination of capital project funds and budgeted technology funds as

<u>Cost</u>	<u>Capital Project Funds</u>	<u>FY 22 Technology Fund Budget</u>	
<u>One-time costs</u>			
50% implementation fee - January 2021	\$ 71,946.74		
Timekeeping hardware - Fall 2021	50,320.00		
50% implementation fee - October 2021	71,946.74		
<u>Yr 1 recurring costs</u>			
Annual hardware maintenance (projected) - Fall 2021		\$ 7,650.00	*
Monthly subscription fees (projected) - starting October 2021		261,606.60	*
	<u>\$ 194,213.48</u>	<u>\$ 269,256.60</u>	

follows:

* The Ceridian contract provides for price increases to annual recurring costs by the US Employment Cost Index, estimated at approximately 3% per year. The total projected 5-year cost is \$1,595,435.64, based on an estimated 3% annual cost increase.

The FY 22 first year cost for Ceridian Dayforce is \$269,256.60. The current FY 21 Technology Fund budget for the systems being replaced by Ceridian Dayforce is \$212,580.62, representing a budget increase of \$56,675.98 in FY 22.

The anticipated subscription service period would begin after the implementation period on October 1, 2021, with an initial 60-month term and annual renewals thereafter by mutual agreement for up to three additional years.

STAFF RECOMMENDATION

It is the staff's recommendation that the City accept the proposal from Ceridian HCM, Inc. to provide the Ceridian Dayforce system and authorize the City Manager to execute the final contract.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2020 Resolution Ceridian HCM
2. Dayforce Order Form w Att_2020-09-14 .docx
3. Dayforce-SOC2-TYPE2-April-1-2019-March-31-2020
4. Presentation

RESOLUTION NO. _____

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
APPROVING AN AGREEMENT WITH CERIDIAN HCM, INC. TO PROVIDE A HUMAN
CAPITAL MANAGEMENT (HCM) SYSTEM**

WHEREAS, the City utilizes several Human Resources technology platforms to manage multiple functions; and

WHEREAS, the City desires to replace several of the systems and combine them into one Human Capital Management (HCM) system; and

WHEREAS, the Lawson Infor contract expires in December 2021 and the City has \$1,076,310 set aside in capital project funds dedicated towards implementation of new enterprise systems for HR and/or Finance; and

WHEREAS, the City issued RFP #CB-2073 for a Human Capital Management (HCM) System and received the most advantageous proposal from Ceridian HCM, Inc.; and

WHEREAS, the initial one-time implementation cost is \$194,213.48, to be funded with capital project funds; and

WHEREAS, the annual costs thereafter will be funded through the annual Technology Fund budget and will be based on employee headcount and price increases based on the US Employment Cost Index. The estimated first year cost is \$269,256.60; and

WHEREAS, the Agreement with Ceridian will be executed in September 2020, with an initial 60-month subscription term beginning in October 2021, and annual renewals by mutual agreement for up to three additional years.

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

PART 1: The City Manager is authorized to negotiate and execute an agreement with Ceridian HCM, Inc. to provide a Human Capital Management (HCM) system as set-forth above.

PART 2: This Resolution will take effect immediately from and after passage.

ADOPTED on the 24th day of September, 2020

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

ORDER FORM

Client Order No.: Q-71177

Generation Date: September 14, 2020

Offer Expiration: 30 days from Generation Date

Service Term Length (from Service Start Date): 60 Months

Territory: United States

Currency: USD

Client Information				
Client Name City of Abilene				
the "Client"				
Service Contact Robert Hanna	Phone No. (325) 676-6206	e-mail robert.hanna@abilenetx.gov		
Billing Street Address 555 Walnut St	City Abilene	State/Province TX	Zip/Postal Code 79601	

Estimated Recurring Fees	Frequency	Product Type	Unit of Measure	Unit Price	Quantity	Price
Dayforce Subscription Fee*	Monthly	Subscription	Per Employee	\$16.33	1,335	\$21,800.55

Estimated Staging Fees	Frequency	Product Type	Unit of Measure	Unit Price	Quantity	Price
Dayforce Staging Fee	One Time	Staging	Each	\$8,175.21	5	\$40,876.05

Estimated Implementation and One-Time Fees	Frequency	Product Type	Unit of Measure	Unit Price	Quantity	Price
Dayforce Implementation Fee	One Time	Implementation	Each	\$103,017.45	1	\$103,017.45

Hardware Fees	Frequency	Product Type	Unit of Measure	Unit Price	Quantity	Price
Dayforce Touch Clock w/ no reader	One Time	Hardware - Purchase	Each	\$1,480.00	34	\$50,320.00
Dayforce Touch Clock w/ no reader	Annual	Hardware - Maintenance	Each	\$225.00	34	\$7,650.00

Summary of Estimated Annual Totals	Total
Estimated Total Recurring Fees	\$269,256.60
Estimated Total One Time Fees	\$194,213.48

The Parties further acknowledge and agree that the following Service Particulars attached hereto shall apply (rather than the online equivalent Service Particulars):

- Dayforce-General Terms
- Dayforce-Payroll Terms
- Dayforce-Clock Terms
- Dayforce-Ancillary Services Terms

*Included in the Dayforce Subscription Fee:

- Dayforce Core (Includes Core Elements and HR & Self Service)
- Dayforce Payroll
- Dayforce Wallet
- Dayforce Time and Attendance
- Dayforce Compensation Management
- Dayforce Learning
- Dayforce Performance Management
- Dayforce Document Management
- Dayforce Recruiting
- Dayforce Dashboards
- Dayforce Succession Planning
- Dayforce Engagement
- Dayforce Employment/Salary Verification
- Dayforce Education Package

The Dayforce Subscription Fee includes one (1) Federal, State, and Local Tax Filing ID

Each additional Federal Tax Filing ID will be charged at a price of \$55.00

Each additional State Tax Filing ID will be charged at a price of \$10.00

Each additional Local Tax Filing ID will be charged at a price of \$10.00

Prices are exclusive of all Taxes. Goods and/or materials, if any, shipped FOB Origination Point

This Order Form, and the attached SOW(s), is entered into between Client and the Ceridian entity that has signed below, and is governed by the terms of the Master Services Agreement, attached hereto (the "MSA"). Capitalized terms used and not otherwise defined in the Order Form, SOW(s), or any document found at <https://contracts.ceridian.com> have the meaning set forth in the MSA.

In addition to the Fees set forth herein, Client will be charged for ad hoc/ancillary Fees as applicable in accordance with the applicable [Rate Sheet](#). Ceridian may change and/or expand the list of items and/or rate of such items from time to time by publishing a new Rate Sheet on the above site, and such changes shall apply to the Client effective the date of such change.

MODIFIED TERMS

The following sets out changes or additions to one or more of the written documents comprising the Agreement (the "Modified Terms"), as referenced in this Order Form (the "Standard Terms"). In the case of any conflict between the Standard Terms and the Modified Terms, the Modified Terms shall govern, but only with respect to the particular Services and/or Territory to which the Modified Terms relate. All capitalized terms used herein shall, unless otherwise defined, have the meaning ascribed to them in the Standard Terms. In accordance with the foregoing, Ceridian and Client hereby agree as follows:

1. Section 4.3.1 of the Dayforce General Terms is amended to delete "In no event will the Number of Employees used for calculating the monthly Recurring Fees for any given calendar month be less than the Minimum Monthly Employee Count".
2. Section 4.3.2 of the Dayforce General Terms is deleted.

Except as modified herein, the terms of the Agreement will remain in full force and effect, unamended.

Client acknowledges having read and understood all terms of the Order Form, MSA, Service Particulars and, if applicable, SOW and Rate Sheet, all of which form an integral part of the Agreement between Ceridian and Client.

Ceridian HCM, Inc.

Per: {{_es_signer2_signature}}

Printed Name: {{_es_signer2_fullname}}

Title: {{_es_signer2_title}}

Date: {{_es_signer2_date}}

I have the authority to bind the corporation

City of Abilene

Per: {{_es_signer1_signature}}

Printed Name: {{_es_signer1_fullname}}

Title: {{_es_signer1_title}}

Date: {{_es_signer1_date}}

I have the authority to bind the corporation/partnership

In respect of the Line of Credit Agreement

Ceridian Dayforce Licensing LLC

Per: {{_es_signer2_signature}}

Printed Name: {{_es_signer2_fullname}}

Title: {{_es_signer2_title}}

Date: {{_es_signer2_date}}

I have the authority to bind the corporation

ATTACHMENT TO ORDER FORM STATEMENT OF WORK IMPLEMENTATION SERVICES FOR DAYFORCE

CLIENT INFORMATION	
Client Name	
City of Abilene	the "Client"

This is the implementation SOW for Dayforce as contemplated in the Order Form made between Ceridian and Client. This SOW sets forth the details for the implementation Services and/or deliverables (the "Implementation Services") to be provided in respect of the Subscribed Modules and those Services described in the attached Order Form. Capitalized terms not defined in this SOW shall have the meanings ascribed to them in the MSA.

Ceridian's obligation to deliver the Implementation Services for the One Time Fees stated in the Order Form will survive for twelve (12) months from project launch. Should the project exceed twelve (12) months for any reason not the fault of Ceridian, Ceridian reserves the right to revisit the scope and/or the One Time Fees associated with the Implementation Services.

1. Executive Summary

Client has engaged Ceridian to implement and provide education and training for the following bundled Subscribed Modules:

- Dayforce Core (Includes Core Elements and HR & Self Service)
- Dayforce Payroll
- Dayforce Wallet
- Dayforce Time and Attendance
- Dayforce Compensation Management
- Dayforce Learning
- Dayforce Performance Management
- Dayforce Document Management
- Dayforce Recruiting
- Dayforce Dashboards
- Dayforce Succession Planning
- Dayforce Engagement
- Dayforce Single Sign On
- Dayforce Employment/Salary Verification

For the following population:

- 1,335 Employees in the United States

2. Implementation Methodology

Ceridian determines the scope of work, timelines and Fees for Implementation Services on the basis that the Implementation Services will be delivered as one continuous project, and has scheduled resources based on this assumption. Any delays or phased roll out may impact the One Time Fees, and could result in a complete work stoppage until resources can be reassigned.

The tasks, duties, responsibilities, and deliverables to be provided by Ceridian to Client in conjunction with the Implementation Services will be provided utilizing the methodology described below. Note: activities within each stage may be adjusted to reflect project scope, and/or complexity. Not all activities apply to all projects. Adjustments, as may be required, will be identified during the Initiate stage.

		Primary Responsibility	
Stage	High-Level Task	Ceridian	Client
Initiate	Implementation team assigned	X	
	Establish project roles and responsibilities	X	X
	Establish project governance	X	X
	Client PM, Super Users and Power Users complete required training		X
	Provide access to the Activate Wizard	X	
	Provide data in required templates		X
	Create environment with provided data	X	
	Document integration and data conversion requirements, as appropriate	X	X
	Provide access to instances in the pre-production environment. Included as standard are two (2) pre-production environments: (1) TEST (accessible by Ceridian and Client, generally used for solution refinement), and (2) CONFIG (accessible by Ceridian and Client, generally used for application configuration and testing)	X	
Model	Complete remaining data templates through the Activate Wizard		X
	Complete Activate Wizard questionnaires		X
	Complete post-wizard checks and validations	X	X
	Finalize and sign-off on solution blueprint	X	X
	Complete training curriculum		X
Refine	Create Client-specific test cases for User Acceptance Testing (UAT), and integration testing		X
	Complete configuration of solution and execute prepared test cases	X	
	Prepare day in the life scenarios	X	

	Execute day in the life scenarios and document feedback		X
	Refine solution based on test/day in the life results vs. requirements, and confirm results with Client	X	
	Create and execute Client-specific test cases to append to Ceridian test cases for UAT and integration testing and document test results		X
	Complete final data loads and audit for parallel testing and go-live	X	X
	Conduct parallel payroll testing and document discrepancies		X
	Address Client's parallel payroll testing results through triage and resolution of Client's documented issues	X	
Experience	Complete organizational go-live preparedness activities		X
	Prepare production environment	X	
	Support two (2) live production runs through triage and resolution of Client's documented issues	X	
	Transition Client to Ceridian Customer Support	X	

3. Ceridian and Client Roles and Responsibilities

To facilitate the successful delivery of the Implementation Services, Client and Ceridian will ensure the appropriate individuals are assigned and available, as applicable, to fill the following roles with the associated responsibilities. Depending on project scope, not all projects will require separate individuals for all roles and/or responsibilities. Roles and responsibilities by individual will be confirmed and agreed upon by both Parties during the Initiate stage.

Ceridian Role / Responsibilities		Client Role / Responsibilities	
Project Sponsor	• Provide overall direction and management support for the Implementation team • Allocate necessary resources • Participate in executive updates and checkpoints • Address project escalations in a timely manner	Project Sponsor	• Provide overall direction and management support for the project team • Allocate necessary resources • Participate in executive updates and checkpoints • Address project escalations in a timely manner • Make business decisions in a timely manner
Project Manager	• Develop, maintain and track progress against the project plan and associated logs (risk log, issues log, etc.) • Manage milestone schedule with Client • Manage Implementation team resources and deliverables • Report on project status through meetings and reports, including project risks and issues with mitigation plans • Facilitate communication between project teams • Act as a central point of contact for all day-to-day activities • Lead and manage change control activities • Facilitate Client's access to training	Project Manager	• Participate in development and update of project plan and associated logs • Manage Client project team and third party resources and deliverables • Provide input to project status reports and participate in meetings • Act as a central point of contact for all day-to-day activities from all locations and/or business areas • Represent Client in change control activities • Facilitate communication between Client and third party groups and stakeholders • Plan and manage rollout strategy and logistics • Develop and manage the execution of an organizational readiness plan
Implementation Consultant(s)	• Ensure initial instance is set up and that initial back office data entry is complete • Lead requirements gathering/validation and documentation throughout the implementation • Facilitate completion of data load templates in Dayforce Activate • Convey implementation best practices to leverage features and functionality • Lead solution configuration, QA, review and refinement • Lead and execute required testing and review and confirm the outputs of that testing with Client • Support Client testing, parallel processing and audit activities through issue triage and resolution of Client documented issues and defects • Provide in-depth product and/or domain knowledge as required throughout the project lifecycle • Suggest implementation and configuration best practice • Participate in solution configuration, QA and refinement • Provide technical services (inbound/outbound data feeds, data conversion/migration) as documented in the project plan • Complete issue triage and resolution	Client Super Users, Client Power Users, Client SMEs	• Complete the project workbook • Confirm access to the Dayforce Activate URL • Confirm access to Live Membership and training materials • Organize internal participants as required • Validate outputs and provide sign offs at each stage as defined by project plan • Review and approve the outputs of test cases with the Implementation Consultant • Advise if any needs have been missed or any test cases are inaccurate • Work with the Implementation Consultant to identify unique test case requirements as may be required • Lead UAT Test script execution with Ceridian support and document discrepancies • Execute day in the life scenarios, provide feedback • Complete role-specific training at appropriate points in the project lifecycle as documented in the Ceridian Education Center (CEC) training curriculum • Complete rollout of the solution across the organization • Complete organizational readiness activities leveraging Ceridian provided best practices and collateral • Assume ownership of the configured solution at go-live • Work with the Implementation Consultant to complete all required Customer Checkpoint milestones
Data Consultant(s)	• Assist Client through the Getting Started data gathering • Introduce the Dayforce Activate tools to Client • Facilitate Client's initial exposure to, and provide guidance around, completing the data entry templates • Facilitate completion of data load templates in Dayforce Activate	Client Super Users, Client Power Users, Client SMEs	• Complete initial Employee data load templates • Complete parallel and final data load templates • Ensure accuracy of data and assist Ceridian with data mapping
Technical Consultant(s)	• Engage with Client's third-party vendors to validate file type, structure and mapping requirements to build the export file • Partner with the Ceridian Implementation Consultant to build out the configuration to support the export • Build and test the export and provide Client with output of data issues that need to be corrected	Export SMEs	• Engage Client's third-party vendors regarding changes to exports/interfaces • Provide contact information for Client's third-party vendors, details of vendor's account structure, and file layout/specifications to Ceridian • Complete export details tab of project workbook and prepare for project kick-off

	• Gather vendor and Client sign off once testing cycle is completed to move export into production		• Review and approve outputs of test cases with the Implementation Consultant, including validating and rectifying data related issues
Dayforce Education Services	• Provide access to Organizational Readiness Toolkit • Process access to Ceridian Education Centre • Schedule and deliver Client exclusive sessions (optional) • Schedule and deliver custom training sessions (optional)	Org Readiness Champion	• Develop organizational readiness plan • Register key project team resources and administrators for access to Ceridian Education Centre • Monitor ongoing progress of training and organizational readiness activities • Develop and deliver training to end users

4. Services, Responsibilities and Deliverables for Implementation of Subscribed Modules and Core Functionality

The components listed below reflect those components and the corresponding scope that are available with respect to the Subscribed Modules listed in the Order Form. Ceridian will provide access to and implement those components indicated below as included. Additional Fees may apply to any additional consultation session(s) requested by Client in excess of what is included below.

Unless a task, duty, responsibility or deliverable is expressly identified as included below, it is out of scope and will not be provided or performed by Ceridian as part of the Implementation Services. Without limiting the generality of this principle, Ceridian and Client expressly confirm that the following specific items are out of scope:

- Integration to 3rd party systems other than those identified below;
- Development of training materials outside of the education services specified herein;
- Client resource and/or third party vendor management.

Component	Description	Scope
Dayforce Core Elements		
Organizational Hierarchy	Configuration of the core organizational tree as defined and documented in the solution blueprint.	Included
Jobs and Positions	Configuration and import of jobs and positions including work assignments, pay grades, departments, job families and functions and workers compensation.	Included
Role Security	Configuration of security roles that define what areas of the Dayforce application users can access.	Included
Pay Frequencies	Configuration of pay groups that define the frequency of pay for a group of employees as defined and documented in the solution blueprint.	Included
HR Administration Configuration	Configuration of Client provided lists for employment status, employment status reasons, pay classes, pay types, relationship types, contact information types, marital status, and employee properties. Also includes configuration of new hire role assignment and employee data mapping rules.	Included
iOS and Android Applications	Configuration of security roles that define what areas of the mobile application users can access. Employees can download the Dayforce mobile application from Apple's App Store or Google's Play Store.	Included
Dayforce HR & Self Service		
Time Away from Work	Configuration of time off policies to define parameters on how to request time off. Setup of time away from work form and manager approval.	Included
Administrator Self Service Forms	Configuration of Administrator level Self Service forms and associated workflow and guided processes screens as listed in the product documentation.	Included
Manager Self Service Forms	Configuration of Manager level Self Service forms as listed in the product documentation, and access to manager and employee form submission history.	Included
Employee Self Service Forms	Configuration of Employee level Self Service forms as listed in the product documentation, and access to form submission history.	Included
Workflows	Configuration of standard workflows defined as follows: commit to database, single approval, double approval and conditional workflow. Additional workflow configurations are available for a fee based on discovery.	Included
Guided Processes	Configuration of wizard-like collections of forms with configurable start and end messages to manage work and life events.	Included
Letter Management	Consultation on configuration and utilization of Dayforce Letter Management with Client's HR administrator, through a set of up to 2 standard weekly sessions, including guidance and best practices.	Included
Entitlements	Configuration of rules that control how employees earn balances that represent their benefits, such as vacation, holiday time or personal days.	Included
TeamRelate	Enablement of TeamRelate feature, which allows employees to complete a TeamRelate survey, view their profile and the profile of other employees. Provides manager visibility into employee and team profile information, including communication styles, core convictions, and tips to help promote employee engagement.	Included
Dayforce Onboarding		
Onboarding	Consultation on configuration and utilization of Dayforce Onboarding with Client's onboarding administrator, through a set of up to 10 standard weekly sessions, including guidance and best practices.	Included
HireRight I-9 Integration	Configuration of HireRight I-9 integration in the Dayforce application. Work with Client and HireRight during testing. Client must contract directly with HireRight for HireRight I-9 services	Included

	and provide a technical contact for the vendor to Ceridian. Client will manage the third-party vendor relationship and actively participate in the testing cycle.	
Dayforce Payroll		
Payroll Codes	Configuration of earning and deduction groupings that can be utilized for earnings or deduction calculations, pre-defined tax methods built in for compliance purposes, configurable limits and declining balances, arrears tracking and recovery. Configuration of earnings, deductions, memo calculations, and taxable benefits.	Included
Legal Entities	Configuration of legal entities (FEIN, CRA#) for the proper calculation and remittance of tax filing. Includes federal, state/provincial, local, and other employer and employee taxes.	Included
Employer Bank Accounts	Configuration of bank account information from which Client will fund payments for Client payroll.	Included
Deferred Compensation / RRSP and Pension Plans	Configuration for calculation of deferred compensation plans including RRSPs, Pension Plans, 401(k) and 403(b), Roth, catch-up and employer matches.	Included
Workers Compensation	Configuration of Workers Compensation accounts and rates, linking of those rates to jobs and positions, and creating associated Workers Compensation reporting.	Included
3rd Party Payments	Configuration of 3rd party payees.	Included
Year End	Configuration of access to year end processing and year end documents, and filings.	Included
Payroll Production Reports	Configuration of payroll production reports and storage of a rolling 36 months of the payroll production reports.	Included
Payments to Non-Employees (Pensioners or Contractors)	Configuration of 1 additional pay group and legal entity for the explicit use of payments to contractors and configuration of 1 additional pay group and legal entity for the explicit use of payments to pensioners.	Included
Payroll Setup	Enablement of payroll properties in support of On-Demand Pay for each applicable pay group.	Included
iOS and Android Applications	Enablement of the user access on the mobile application.	Included
Employee Profile	Enablement of settings on the Employee Profile for all On-Demand Pay users.	Included
Onboarding	Enablement of Dayforce Wallet in the employee Onboarding process.	Included
Dayforce Time and Attendance		
Scheduling	Consultation of scheduling best practices for both manual and rotation based scheduling techniques. Configuration of shift rotations.	Included
Pay Policies	Configuration of pay policies that define the assignment of pay rules and qualifiers to employees. Standard pay policies include regular time and overtime.	Included
Punch Policies	Configuration of punch policies that define an employee's time entry method and any optional rules and validation to be applied when an employee records working time. Standard punch policies include Salary, Hourly and Hourly Exempt.	Included
Employee System Access	Consultation of Self-Service features that are in scope: Availability, Messaging and Alerts, Schedule Access, Timesheet Access, Employee Self Service Clock, and Time Away from Work Request screen. Ceridian will enable pertinent features as documented in the solution blueprint.	Included
Schedule Compliance	Configuration of employee policies, schedule alerts and warnings to facilitate compliance with legislative and company policies.	Included
Projects	Consultation of Projects functionality, including how to define start/end dates, budget in hours or dollars and assignment to an area of the organization.	Included
Attendance Tracking	Configuration of attendance policies to define attendance incidents, how the occurrence of these incidents cause attendance violations, and the action to be taken for these violations.	Included
Shift Trading	Configuration of shift trading policies to define which employees can make shift trades, swaps, or re-trades with or without supervisor approval.	Included
Dayforce Compensation Management		
Compensation Management	Consultation on utilization of Dayforce Compensation Management with Client's compensation administrator, through a set of up to 10 standard weekly sessions, including guidance and best practices.	Included
Import of Salary Benchmarking Data	Enablement of Salary Benchmarking feature with Client-provided data. Client is responsible to acquire salary benchmarking data from a third party. Client is responsible for the import of the data into Dayforce. Client is responsible for providing data in manner and form that meets Ceridian's conversion file specifications.	Included
Import of Compensation Data	Importing of external/historical compensation data into the Dayforce Compensation Management module is not available.	Not Included
Dayforce Learning		
Dayforce Learning	Consultation on configuration and utilization of Dayforce Learning with Client's learning administrator, through a set of up to 11 standard weekly sessions, including guidance and best practices.	Included
Dayforce Learning Coach and Share	Consultation on utilization of Dayforce Learning Coach and Share with Client's learning administrator, through up to 2 standard weekly sessions, including guidance and best practices.	Not Included
Skills	Not currently available/supported.	Not Included
LinkedIn Learning	Not currently available/supported.	Not Included
OpenSesame Integration	Consultation on OpenSesame integration in the Dayforce application. Work with Client and OpenSesame during testing. Client must contract directly with OpenSesame for OpenSesame services. Client will manage the third-party vendor relationship, configuration in the Dayforce application and testing.	Included

Dayforce Performance Management		
Performance Management & TeamRelate	Consultation on configuration and utilization of Dayforce Performance Management with Client's performance management administrator, through a set of up to 10 standard weekly sessions, including guidance and best practices.	Included
Import of Performance Data	Importing of external/historical performance data into the Dayforce Performance Management module is not available	Not Included
Dayforce Document Management		
Document Management	Consultation on configuration and utilization of Document Management with Client's document management administrator, through a set of up to 4 standard weekly sessions, including guidance and best practices.	Included
Without limiting the generality of the agreement between the Parties, Client is solely responsible for ensuring retention of documents is in compliance with all applicable privacy laws.		
Dayforce Recruiting		
Recruiting Management	Consultation on configuration and utilization of Dayforce Recruiting with Client's recruiting administrator, through a set of up to 17 standard weekly sessions, including guidance and best practices.	Included
Import of Recruiting Data	Importing of external/historical recruiting data into the Dayforce Recruiting module is not available	Not Included
HireRight Background Checks Integration	Configuration of HireRight Background Checks integration in the Dayforce application. Work with Client and HireRight during testing. Client must contract directly with HireRight for HireRight Background Checks services and provide a technical contact for the vendor to Ceridian. Client will manage the third-party vendor relationship and actively participate in the testing cycle.	Included
HireRight I-9 Integration	Configuration of HireRight I-9 integration in the Dayforce application. Work with Client and HireRight during testing. Client must contract directly with HireRight for HireRight I-9 services and provide a technical contact for the vendor to Ceridian. Client will manage the third-party vendor relationship and actively participate in the testing cycle.	Included
eQuest Integration	Configuration of and consultation on eQuest integration in the Dayforce application and support of initial posting to eQuest. Client must contract directly with eQuest for eQuest services and provide Ceridian with the credentials for the integration to be set up. Client will complete an initial test posting within their production system.	Included
Dayforce Dashboards		
Access to Pre-Built Dashboards	Enablement of pre-built dashboards. Dashboards are available for customers with WFM, HR, Benefits, Payroll and Recruiting data.	Included
Public Dashboards	Enablement of pre-built dashboards and views that span the Dayforce domains, available for Client to use and modify.	Included
Custom Dashboard Feature	Enablement of View Builder, which provides the ability for Client to create Client-specific dashboards and views.	Included
Shared Dashboards/Groups	Enablement of dashboard groups which allow Client to create groups or folders in which to store custom dashboards for the purpose of sharing dashboards with other My Dashboards users in Client's organization.	Included
Quick View	Enablement of Quick View feature which allows Client to query My Dashboards data mart using native language search engine.	Included
Dayforce Succession Planning		
Succession Planning	Enablement of the Succession feature, which enables managers and administrators to conduct talent reviews, generate a talent matrix, and create talent pools for key positions.	Included
History Import	Historical succession data created outside of the Dayforce application cannot be imported into the Dayforce Succession Planning module.	Not Included
Dayforce Engagement		
Engagement	Consultation on configuration and utilization of Dayforce Engagement with Client's engagement administrator, through a set of up to 4 standard weekly sessions, including guidance and best practices and the ability to create custom survey questions. A pre-defined set of questions is included.	Included
History Import	Historical engagement data created outside of the Dayforce application cannot be imported into the Dayforce Engagement module.	Not Included
Dayforce Education Services		
Dayforce Essentials Org Readiness Toolkit	Set of tools available for the purposes of creating and executing communication and go-live training plans. The tools include introductory role-based videos, sample email announcements, sample job aids, communication and training project plan templates, and videos that provide an introduction to Dayforce module functionality.	Included
Platform/Technical		
Client Verified Single Sign On	Provide user authentication with Client's SAML 2.0 or ADFS Identity Management Solution where Client acts as the identity provider.	Included
Imports, Exports and Interfaces		
Interface Configuration	Configuration of interfaces within the framework of the Dayforce application. These can include carrier feeds, GL exports, time imports, etc.	Following Interfaces are included:

	Ceridian will produce exports from the Dayforce application as supported by Dayforce functionality, as well as collaborate with Client's third-party vendors to perform system integration testing of such exports. Ceridian will adhere to the specifications of Client's third-party vendors. Client and/or Client's third-party vendors will extract data from source systems and produce imports into Dayforce, and collaborate with Ceridian to perform system integration testing of such imports. Client and/or Client's third-party vendors will adhere to Dayforce import specifications. Client is responsible for third party platform configuration requirements and ensuring platform availability at time of implementation. Client will adhere to Ceridian integration specifications.	6 - Standard Imports Required into Dayforce 2 - Deferred Compensation Exports (Pension, 401K, RRSP, Superannuation, Personal Retirement Savings Account, KiwiSaver) 6 - Other Exports Required ESVS Integration
Client-Specific General Ledger Export	Provide the Client with a GL consultant to gather the Client's requirements to configure a Client-specific GL export file. The number of exports is determined by the number of unique file specifications and/or Chart of Accounts that Ceridian will be required to configure. If the Client does not provide the necessary file requirements in line with the payroll implementation cycle, it will result in a delay in providing the GL export(s) for the Client's first payroll commit and may be subject to additional fees.	Up to 1 Client-Specific General Ledger Export(s) Included
Data Conversion Consulting Services		
Data Conversion Consulting Services	Data conversion consulting team to assist in preparation of Ceridian conversion files. Client is responsible for providing accurate data in manner and format that meets Ceridian's conversion file specifications. All required data must be available by the agreed upon due date for each data load. Client shall provide data, as specified by Ceridian, sufficient to meet Ceridian's import file specifications. All data must be provided in the correct Ceridian specification format and layout template. Data must be provided for each load as required by the project plan and must be provided in a timely manner. If data is being consolidated from multiple sources, it is Client's responsibility to consolidate the multiple sources into a single import file. Ceridian will provide a data conversion consultant with a project hour allocation of up to 50 hours of data migration consulting. These consulting Services include a high level overview of Ceridian's import specifications, and assist with mapping Client's existing data to Ceridian import specifications. There are no specific deliverables for this effort. Ceridian will provide guidance, best practices, answer questions and provide documentation where available. If all required conversion data is not made available, or there are delays in Client providing the required data, One Time Fees are subject to change. Client will provide import data for conversion in the correct format and layout template, assist with the mapping process, validate, test and audit the conversion files prior to loading into the Dayforce application, and provide the completed file conversion acceptance form upon successful conversion of the data.	Included
Customer Size	Employees to convert.	Employees indicated in Executive Summary
Core Current Conversion	Import of formatted files containing current record for active and current year terminated employee data included in the Ceridian HR Import (HR Import - Core employee information including Name, Address, Employee base information, Work Assignment, Employment Status, Confidential Information, Emergency Contact, Direct Deposit, current employee tax parameter), Employee Elections, Current Year to Date Payroll information, Employee outstanding balances, as provided by Client and meeting Ceridian's conversion file specifications.	Active and Current Year Terminated Employees Included
HR History	Import of prior years' HR history data for Job, Compensation, and Employment Status for active and current year termed employees as provided by Client and meeting Ceridian's conversion file specifications. HR history must be provided in the same file and at the same time as the Core Conversion data is provided. Ceridian cannot load HR history separately.	Included (not to exceed 7 years)
HR History, Previous Year Termed	Import of previous year termed employee's HR history data for Job, Compensation, and Employment Status for employees as provided by Client and meeting Ceridian's conversion file specifications. HR history must be provided in the same file and at the same time as the Core Conversion data is provided. Ceridian cannot load HR history separately.	Included (not to exceed 7 years)
Earning Statements	Import of prior years' non-reportable earning statement data for employees as provided by Client and meeting Ceridian's conversion file specifications including running YTD totals for earnings, deductions, taxes, and gross pay.	Included (not to exceed 7 years)
Garnishment	Import of current employee garnishments for active employees as provided by Client and meeting Ceridian's conversion file specifications.	Included (current year only)

5. Acknowledgment Regarding Mid Quarter Start

Client acknowledges that a mid quarter start is only available if Client meets the qualifying criteria reasonably established by Ceridian. If Client qualifies, Client will be required to provide all additional data which meets Ceridian's conversion specifications. This data includes year to date payroll information accurate to the last complete quarter and current quarter to date payroll information containing Employee and employer taxable wages, wages to limit, and tax detail for each tax category. Client will also be required to provide Employee 12th day counts, weeks worked, hours worked, and other tax related information for the open quarter, as required by Client's state, and in accordance with Ceridian's specifications. Such data is required prior to Service Start Date, on a delivery date reasonably agreed to by the Parties. Client will be fully responsible and liable for any tax variation in any of the tax jurisdictions involved, and will be solely liable for any reconciliation due to any tax violation.

The following terms and conditions are incorporated into the Order Form between Ceridian and Client and form an integral part of the Agreement.

MASTER SERVICES AGREEMENT

1. DEFINITIONS AND INTERPRETATION. As used in this Master Services Agreement:

- 1.1 *"Affiliate(s)"* means a person that directly or indirectly controls, is controlled by, or is under common control with, a Party, where "control" means the possession, directly or indirectly, or the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract or otherwise;
- 1.2 *"Agreement"* means this Master Services Agreement together with all Order Forms, Statements of Work, Service Particulars, Rate Sheets and other written documents made between Client and Ceridian whether by execution of such document by both Parties or incorporation by reference;
- 1.3 *"Business Day"* means any day of the year other than a Saturday, Sunday or a Statutory or public holiday in the Territory(ies), but only to the extent such term refers to a Service being delivered in respect of such Territory;
- 1.4 *"Ceridian"* means the Ceridian entity that has signed the Order Form;
- 1.5 *"Ceridian Contractor"* means any person who is not a Party or an employee of Ceridian, who Ceridian contracts or otherwise engages to assist with or perform any part of the Services;
- 1.6 *"Ceridian Property"* means, collectively: (i) any and all systems, hardware, software, networks, online content, applications, source codes, specifications, templates, modules, devices, equipment, documentations or other property owned, licensed, leased, produced, designed, created or used by Ceridian as of the Effective Date or thereafter, whether for purposes of providing the Services pursuant to the Agreement or for any other purpose; (ii) all Confidential Information of Ceridian; (iii) all Materials; and (iv) any and all Intellectual Property in any of the foregoing or related thereto;
- 1.7 *"Client Data"* means any data of Client supplied by or on behalf of Client to Ceridian hereunder, or any such data created as a result of the processing of such data, including any data contained or embodied in Ceridian Property;
- 1.8 *"Confidential Information"* means any information identified by either Party and/or its Affiliates as "Confidential" and/or "Proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing Party's (and/or an Affiliate's) business, employees, service methods, software, documentation, financial information, prices and product plans;
- 1.9 *"Data Protection Program"* means the security measures and controls comprising Ceridian's overall data security program, as such program is described in Ceridian's [Data Processing Addendum](https://contracts.ceridian.com) posted on <https://contracts.ceridian.com>, as updated from time to time;
- 1.10 *"Effective Date"* has the meaning set forth in Section titled "Term";
- 1.11 *"Fees"* means the fees payable by Client to Ceridian for the Services, as contemplated in Section titled "Fees" below;
- 1.12 *"Including"* and *"Includes"* shall, wherever they appear in the Agreement, be deemed to be followed by the statement "without limitation", and neither of such terms shall be construed to limit any words or statement which it follows to the specific or similar items or matters immediately following it;
- 1.13 *"Intellectual Property"* means all intellectual property rights (including all copyrights, patents, trademarks, trade secrets, industrial designs and know how) and all applications, continuations, extensions, notices, licenses, sublicenses, agreements and registrations thereof in any jurisdiction;
- 1.14 *"Master Services Agreement"* or *"MSA"* means this master services agreement and any schedules, appendices or other attachments hereto;
- 1.15 *"Materials"* means all materials, documentation, forms, brochures, tip sheets, posters, and online content furnished by Ceridian to Client, and any derivatives thereof;
- 1.16 *"Order Form"* means the applicable order form signed by Client and Ceridian in respect of the Services;
- 1.17 *"Parties"* means collectively Client and Ceridian, and each is a "Party";
- 1.18 *"Rate Sheet"* means the applicable Rate Sheet posted on <https://contracts.ceridian.com>. Such Rate Sheet items are intended to compensate Ceridian for additional work and/or disbursements as a result of the occurrence of such events (e.g., NSF charge, client stop payment request). Ceridian reserves the right to change the list of items and/or charges on the Rate Sheet from time to time by posting an updated copy on the above site;
- 1.19 *"Service Particulars"* means the applicable Service Particulars for the Services posted on <https://contracts.ceridian.com> at the time of signing the applicable Order Form;
- 1.20 *"Service Start Date"* means, in respect of a Service, the Service Start Date as defined in the applicable Service Particulars;
- 1.21 *"Service Term"* means the term length for a particular Service, as will be expressly set forth in the applicable Order Form;
- 1.22 *"Services"* means, collectively, the services supplied by Ceridian to Client under the Agreement, as such services are more particularly described in the Service Particulars or a Statement of Work, and each is a "Service";
- 1.23 *"Software"* means any software program(s) licensed or provided by Ceridian to Client through which the Service will be provided, as such Software may be more particularly described in the Service Particulars or Statement of Work;
- 1.24 *"Statement of Work"* or *"SOW"* means the applicable Statement of Work between Client and Ceridian, setting forth in detail the work, services and deliverables to be provided by Ceridian in respect of any professional services work;
- 1.25 *"Taxes"* means all sales taxes, value added taxes, goods and services taxes, business transfer taxes, withholding taxes or any other taxes now or hereafter levied or imposed by any governmental authority by reason of or with respect to the provision of the Services to Client, but, for certainty excluding Ceridian's taxes for income derived under the Agreement; and
- 1.26 *"Territory"* means the territory or territories in respect of which the Services are to be delivered, as identified in the Order Form.

2. SERVICES

2.1 Services. Ceridian shall provide the Service(s) to Client as more particularly set forth in the Service Particulars. Client acknowledges and agrees that certain Services or parts thereof may be subcontracted by Ceridian to Ceridian Contractors, including Affiliates of Ceridian. However, regardless of any such subcontract, Ceridian shall remain solely liable for performance of the Services and all of its obligations hereunder.

2.2 Affiliates Use. All Services are provided to Client on the strict condition that they are used for Client's own internal business use within the respective Territory or Territories and not for re-sale by Client or for any use by Client that would constitute providing a service for third parties. However, and notwithstanding the above it is agreed that the Services may be used by Client's Affiliates provided that:

- 2.2.1 the Services are used by Client and/or its Affiliates only within the respective Territory in which Ceridian has agreed to provide such Service;
- 2.2.2 Client shall remain liable for the acts and omissions of all of its Affiliates as if the acts and omissions were acts and omissions of Client;
- 2.2.3 any loss or damage arising in connection with the Services incurred by such Client Affiliate shall be actionable by Client as if such loss and damage were incurred by Client, but shall not be actionable by Client's Affiliate directly against Ceridian or any Ceridian Contractor;
- 2.2.4 such Affiliate shall be deemed to have agreed to comply with all covenants and obligations on the part of Client herein, and agreed that Ceridian shall be entitled to all of the rights and benefits granted herein, as if such Affiliate has been a signatory to the Agreement;
- 2.2.5 Client shall be liable with the Affiliate for any and all Fees and other charges, arising as a result of such Affiliate's use of the Services, including any consequent increases in transactions, user numbers, set-up requirements, data records or Service provision; and
- 2.2.6 as a condition of allowing the Affiliate to access or continue to use the Services, Ceridian may, but shall not be obliged to, require the Affiliate to execute such documentation as reasonably required by Ceridian to confirm the Affiliate's agreement to the terms hereof.

2.3 Professional Services. Any work or services to be delivered by Ceridian which are not described in the Service Particulars shall be described in a Statement of Work. The scope of services in a Statement of Work may be amended from time to time upon mutual agreement in writing by the Parties. Ceridian shall assign employees or subcontractors qualified to perform such professional services work, who shall exercise due professional care and competence in the performance of such Services. With respect to such professional Services, Client shall:

- 2.3.1 furnish qualified personnel to work with Ceridian personnel in the execution of each Statement of Work;
- 2.3.2 supply adequate resources and information as mutually agreed upon;
- 2.3.3 notify Ceridian in writing of any request for changes to the Statement of Work; and
- 2.3.4 review and accept or reject each deliverable within ten (10) Business Days of notification by Ceridian of completion of such work, or within such other time frame (and/or in such manner) as may be expressly contemplated in a Statement of Work, such acceptance not to be unreasonably withheld. Subject to any express acceptance criteria to the contrary set forth in a Statement of Work, each deliverable will be deemed to be accepted by Client on the tenth (10th) Business Day after notification by Ceridian of completion of such work, unless Client has provided Ceridian (within such ten (10) Business Day period) with written notice rejecting such work and specifying the manner in which the deliverable is defective.

3. TERM AND TERMINATION

3.1 Term. This Master Services Agreement will become effective when the Order Form is signed by Client and by Ceridian (the "Effective Date"), and shall continue until terminated in accordance with the terms hereof. The Service Term for each particular Service shall commence on the Service Start Date and continue for the length of the Service Term expressly set forth in the Order Form. While Ceridian will use commercially reasonable efforts to meet the anticipated Service Start Date, the Parties acknowledge that implementation timelines have been estimated in good faith and Client shall not be entitled to any compensation or relief for loss resulting from a failure to meet such estimated time frames.

3.2 Termination. The Agreement (or at the option of the Party exercising the termination right, only the affected Service) may be terminated as follows:

- 3.2.1 by Ceridian, if Client fails to pay any Fees when due (excluding any Fees disputed in good faith in accordance with Section 4.4 below), and such failure continues for a period of seven (7) Business Days after Ceridian provides Client with written notice of such breach and expressly refers to the threat of termination therein;
- 3.2.2 by either Party if the other Party fails to materially perform, or is otherwise in default of, any one or more of its material obligations under the Agreement (except failure by Client to pay Fees, when the provisions of the preceding subsection shall prevail), and fails to remedy such failure within thirty (30) days after receiving written notice of default from the non-defaulting Party specifying the particulars of the breach and expressly referring to the threat of termination under this subsection, or if such breach is of a nature that it cannot be reasonably remedied within such 30-day period, then if the Party fails to commence to remedy such breach within such 30-day period or thereafter fails to proceed diligently to remedy such breach;
- 3.2.3 immediately by either Party if the other Party is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or insolvent, or any corporate action, legal proceedings or other procedure or step is taken against such Party in relation to or with a view to winding-up, dissolution, administration, reorganization (in each case, whether out of court or otherwise) in respect of such Party (or a Client Affiliate receiving Services) or any of its assets, or any analogous procedure or step is taken in any jurisdiction;
- 3.2.4 upon written notice by either Party, if the Service Term for every Service has expired (without being renewed or continuing in accordance with the Service Particulars), or has otherwise been terminated as permitted in accordance with the terms of the Agreement; or
- 3.2.5 upon written notice by Client, and upon payment by Client of any applicable early termination fee in accordance with the Service Particulars.

4. FEES AND PAYMENT

4.1 Fees. Client will pay the Fees plus all applicable Taxes, in the amounts and in accordance with the payment terms and processes set forth in the Order Form, SOW, Service Particulars and/or Rate Sheet. Any Taxes imposed on any transactions between Client and Ceridian contemplated under the Agreement shall be the subject of an additional charge and shall be shown separately on any invoice or similar document together with the required tax registration numbers, and paid by the party at the same time as the party pays the amount in respect of which such Taxes are payable. All Fees (and applicable Taxes) for Services provided within a Territory are the sole responsibility of Client and will be invoiced to, and payable by, the local Client entity located in such Territory. However, in the event that Services are invoiced to a Client entity from a Ceridian entity outside of the Territory in which Client entity receiving such Services is located, Client entity shall remit payment to the Ceridian entity issuing the invoice and shall be solely responsible to self-assess for all Taxes relating to such Services to the extent such Taxes are not paid to Ceridian. In addition, neither Party shall exercise the right of set-off against any Fees.

4.2 Expenses. Client shall, in addition to all Fees, reimburse Ceridian for all reasonable travel, accommodation and meal expenses (in accordance with Ceridian's then current expense policy) incurred in connection with the implementation and provision of the Services. Ceridian will advise Client prior to incurring such expenses and obtain Client's prior approval for same. Travel and subsistence will be charged from the location from which the respective Ceridian employee performing the work is based, to the required place of work, and Ceridian will endeavor to direct staff for most appropriate use of skills and economy of expense.

4.3 Late Fees. Ceridian may charge a late payment fee in the amount of 1% per month for late payments made by Client. Client agrees to pay late payment fees including all costs of collection (including reasonable legal fees and expenses). If Client fails to comply with any of the terms of payment for more than seven (7) Business Days after receipt of a written demand for payment (excluding any Fees disputed in good faith in accordance with Section 4.4 below), Ceridian may, in addition to any other right available to it, suspend performance of all or any part of its Services.

4.4 Good Faith Dispute. In the event of a good faith dispute with respect to any Fees, the payment due date (as it relates to the disputed amount) will not be calculated until the disputed amount has been settled to the satisfaction of both parties, acting reasonably, provided that the Client has given Ceridian written notice of the disputed amount (and the reasons for such dispute).

4.5 Currency. All Fees are payable in the currency stated in the relevant Order Form and shall be remitted to Ceridian in that currency. If remitted in another currency and/or from outside the Territory, sufficient funds must be remitted such that the net sum received by Ceridian in the requisite currency after foreign exchange and other bank charges is that stated on the relevant invoice. Ceridian will be entitled to invoice Client for any shortfall.

5. CONFIDENTIALITY AND PRIVACY

5.1 Non-Disclosure. Neither Party shall disclose Confidential Information of the other Party except as permitted in accordance with the terms of the Agreement. The receiving Party shall use the same degree of care as it uses to protect its own Confidential Information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing Party. The foregoing obligations shall not apply to any information that (i) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving Party; (ii) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving Party; (iii) was known to the receiving Party at the time of disclosure; (iv) was generated independently by the receiving Party; or (v) is required to be disclosed by law, subpoena or other legal process, including but not limited to the Texas Public Information Act. Either Party may transfer the other Party's Confidential Information to a governmental agency or other third party to the extent necessary for the transferring Party to perform its obligations under the Agreement or if the Party has given the transferring Party written authorization to do so.

5.2 Compliance. Ceridian will adhere to the principles of its Data Protection Program and each Party agrees to comply with the Data Processing Addendum.

5.3 Injunctive Relief. The receiving Party acknowledges and agrees that any breach by it or by any of its agents, representatives or employees of the provisions hereof may cause irreparable harm to the disclosing Party and that actual damages may be difficult to ascertain and in any event may be inadequate. Accordingly, in the event of such breach, the disclosing Party shall be entitled to temporary and/or permanent injunctive relief against the receiving Party and/or its agents, representatives and employees (in addition to such other legal or equitable remedies as may be available), without the necessity of proving irreparable harm or actual damage to the disclosing Party.

6. INTELLECTUAL PROPERTY

6.1 Ownership of Intellectual Property. Each Party shall remain the owner of all Intellectual Property it owns prior to the Effective Date and that which it creates in the performance of its obligations under the Agreement. As between the Parties and vis à vis any third party, Ceridian is and shall remain the sole and exclusive owner of all Ceridian Property and any and all components thereof, whether owned on the Effective Date or acquired thereafter, and Client is and shall remain the sole and exclusive owner of Client Data and any and all components thereof. Forthwith upon the expiration or termination of the Agreement or a particular Service, as the case may be, each Party shall forthwith return to the other Party, all such property in its possession or control relating to Agreement or terminated Service, as the case may be.

6.2 Right of Use. Ceridian hereby grants to Client, starting on the Effective Date and continuing for so long as required for a Service, the right to access and use the Software and such other Ceridian Property as may be required for Client to receive and use the Services internally within the Territory, subject to and in accordance with the following terms:

6.2.1 the Software and Ceridian Property is provided solely for the purpose of enabling Client to receive and use the Services, and without limitation, Client shall not use it in any manner that would be illegal, offensive or damaging to Ceridian or any third party;

6.2.2 Client shall not assign, transfer, sublicense, charge or otherwise deal in, encumber or make available to any third party the Software or Ceridian Property, and any attempt to do so shall be null and void and shall constitute a material breach of the Agreement;

6.2.3 Client is responsible for all activities that occur in the accounts of its employees and agents, and for compliance by such parties with the Agreement, and shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, as well as notify Ceridian promptly of any such unauthorized access or use;

6.2.4 to the extent the Software or Ceridian Property is licensed to, or otherwise in the possession or under the control of, Client, then Client agrees not to modify, merge, copy, disseminate, display, disassemble, reverse engineer, tamper with, or otherwise attempt to decrypt or derive the source code, any trade secrets or any proprietary information or create any applications or any derivative works thereof.

6.3 Indemnity for Infringement. Ceridian will indemnify and hold Client harmless from and against any and all claims alleging that the Services and any Intellectual Property furnished by Ceridian violate any third party's patent, trade secret or copyright, except to the extent that such claims arise from Client's modification of the Services or Intellectual Property or from Client's use of such Services in excess of the provisions set out in this Section 6 (including the use by the Client or its Affiliates out of the Territory). However, Ceridian's liability hereunder shall be conditional upon Client providing Ceridian with timely written notice of any such claim or threat thereof, and the full and exclusive authority for, and information for and assistance with, the defense and settlement thereof. If such claim has occurred, or in Ceridian's opinion is likely to occur, Client agrees to permit Ceridian, at its option and expense, either to procure for Client the right to continue using the Intellectual Property, or replace or modify the same so that it becomes non-infringing. If neither of the foregoing alternatives is reasonably available, Ceridian may immediately terminate its obligations (and Client's rights) under the Agreement with regard to such Intellectual Property (if the Services are deliverable without such Intellectual Property) or terminate the Agreement in its entirety (to the extent Ceridian is not able to provide the Service without such Intellectual Property).

7. DISCLAIMER OF IMPLIED TERMS

7.1 The express and limited terms, representations and warranties provided in the Agreement (including in the Software Functionality and Global Use Guide, when applicable) comprise all of the representations and warranties made with respect to the Services, products, Intellectual Property and other items provided, furnished, licensed, leased or otherwise made available or performed to Client by Ceridian pursuant to or in relation to the Agreement. Any further or other warranties or conditions, whether express or implied, contractual or statutory, including any implied warranties or merchantability or fitness for a particular purpose, are expressly excluded to the extent permitted by law.

8. LIMITATIONS OF REMEDIES

8.1 Limitation of Liability. To the maximum extent permitted by applicable law, Client agrees that Ceridian's total maximum aggregate cumulative liability (including that of Ceridian's Affiliates and Ceridian Contractors) to the Client, its Affiliates and other related parties (collectively in this Section referred to as the "Aggrieved Parties") for all past, present and future claims, demands, actions, causes of actions, requests, lawsuits, judgments, damages, costs, expenses, prejudices or losses (collectively in this Section referred to as the "Claims") in relation to or arising under the Agreement (whether for breach of contract, strict or statutory liability, negligence or any other legal or equitable theory) shall be limited to the Aggrieved Parties' actual direct damages and shall not, under any circumstances, exceed, in the aggregate, for all Claims past, present and future, the total amount paid by the Client (and any Affiliates) under the Agreement during the 36 months immediately preceding the loss. This remedy shall be the Aggrieved Parties' sole and exclusive remedy against Ceridian, any Ceridian Affiliate and Ceridian Contractor. However, the above limitation of liability shall not apply to Claims relating to the following:

8.1.1 death or personal injury resulting from that Party's negligence;

8.1.2 that party's fraud, statements made fraudulently or willful misconduct;

8.1.3 any Claim for indemnity by the Client under Section 6.3 (IP Infringement); and

8.1.4 any acts or omissions for which the governing law prohibits the exclusion or limitation of liability.

8.2 Damages Disclaimer. To the maximum extent permitted by applicable law, and notwithstanding anything to the contrary contained in the Agreement, neither Party nor any of its Affiliates shall be liable for any indirect, consequential (including damages for business interruption or loss of business information or data), special, punitive, exemplary or incidental damages, or damages for loss of profits, goodwill, anticipated savings or revenues, arising in relation to or under the Agreement, even if advised of the possibility of such damages or if the possibility of such damages was reasonably foreseeable.

9. CHANGES TO LEGISLATION

9.1 In the event of a change to any applicable law or regulation affecting the Services, Ceridian may make changes to the Agreement as are reasonably necessary to address such changes, with thirty (30) days' prior written notice to Client. If, upon notification of the change, Client elects not to continue the Services, then notwithstanding anything to the contrary in the Agreement, Client may terminate the Agreement upon thirty (30) days' prior written notice without penalty or cancellation fees.

10. NOTICES

10.1 All notices to the Parties shall be in writing (including fax or similar writing) and shall be sent to Client at the address set forth on the Order Form, and to Ceridian to the attention and address of Client's account representative (if any) or to the local Ceridian service center or to such other address or fax number as either Party may hereafter specify by written notice to the other Party. Each such notice, request or communication shall be effective upon receipt, provided that if the day of receipt is not a Business Day, then the notice shall be deemed to have been received on the next succeeding Business Day.

11. FORCE MAJEURE

11.1 Neither Party nor their respective Affiliates (nor Ceridian Contractor) shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of the Agreement (except for the failure to pay money) when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party.

12. BUSINESS CONTINUITY PLAN

12.1 Ceridian covenants, represents and warrants that it has developed, and will keep current a formal business continuity plan which details strategies for response to and recovery from potential disasters that could disrupt Ceridian's operations and timely delivery of the Services.

13. GENERAL PROVISIONS

13.1 The Agreement and the Parties' rights and obligations shall be governed by the laws of the state of Texas if the Territory is the United States; the province of Ontario if the Territory is Canada, and all federal laws applicable therein; the laws of England if the Territory is the United Kingdom or the Republic of Ireland; the laws of New South Wales if the Territory is Australia, and all federal laws applicable therein; or the laws of New Zealand if the Territory is New Zealand.

13.2 Either Party may assign its rights and obligations under the Agreement without the consent of the other Party: (i) to an Affiliate of the assigning Party or to a partnership, limited liability company, joint venture or other similar legal entity, of which at least 50% of the equity interests are owned directly or indirectly by the assigning Party or any parent entity, but no such assignment shall release the assigning Party, and such Affiliate or successor entity shall be jointly and severally liable under the Agreement; or (ii) to any successor to its business, or a substantial part thereof, whether through merger, amalgamation, consolidation, divestiture or sale, provided that the proposed successor entity is not a primary competitor of the other Party. Further, Ceridian may without the consent of Client and without regard to any other limitations set forth in the Agreement, grant a security interest in this Agreement to a Ceridian lender, provided that such grant of security in no way affects or derogates from any of Client's rights under this Agreement. Any other transfer or assignment of the Agreement or any rights hereunder requires the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Upon request of the non-assigning Party, any permitted assignee shall execute an agreement in writing with the other Party hereto assuming all obligations of its assignor under the Agreement. Any purported assignment in contradiction of this Section shall be null and void and be of no force or effect.

13.3 In the case of any conflict between the main body of the Agreement which are applicable to all Services, and the terms applicable to only one or more particular Service(s) as set forth in the Service Particulars, Order Form or Statement of Work, the terms of the Service Particulars, Order Form or Statement of Work shall govern, but only with respect to the particular Services and/or Territory to which the Service Particulars, Order Form or Statement of Work relates. Notwithstanding the foregoing, Section 5 ("Confidentiality and Privacy"), Section 6 ("Intellectual Property") and Section 8 ("Limitations of Remedies") of this Master Services Agreement may not be overridden or amended by the Parties (and all such amendments shall be deemed void) unless approved in writing by each Party's legal counsel.

13.4 Client is solely responsible for the accuracy and completeness of all records and information furnished to Ceridian. In no event will Ceridian be responsible for any errors or matters existing prior to the Service Start Date, and any entries made by Client into the system thereafter, and Ceridian shall be entitled to rely solely on the information, authorizations, representations and warranties provided by Client pursuant to the Service Particulars. Ceridian is not obligated to commence providing Services until receipt from Client of all information reasonably required to be received from Client to provide the Services. Client will reimburse Ceridian for the costs of producing any information in Ceridian's possession or control relating to Client's business or employees that Ceridian produces in response to a Client request or court order. Ceridian may dispose of Client's records and data in accordance with Ceridian's data retention policy in effect from time to time (but in compliance with all privacy laws as contemplated in this Master Services Agreement).

13.5 No delay or indulgence by either Party at any time, to enforce any of the provisions of the Agreement, or any right with respect thereto, shall be construed as a waiver of such provision or right, nor shall it prejudice or restrict the rights of that Party. A waiver of its rights shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party and the rights, powers and remedies shall be cumulative.

13.6 The Parties have expressly requested that the Agreement be drawn up in the English language. Les parties aux présentes ont expressément requis que cette convention soit rédigée en anglais. Expresamente las Partes del presente Contrato solicitan que este documento sea redactado en el idioma Inglés. In the event of any contradiction, discrepancy or difference between the English language version and the French or Spanish versions (if any) of the text of this document, or any documents contemplated or referenced hereunder, the English language version shall govern.

13.7 Any provision of the Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13.8 Headings in the Agreement are for ease of reference only and will not affect its interpretation.

13.9 All amounts payable under the Agreement shall be payable in lawful currency as specified in the Order Form and/or Service Particulars, or if no such currency is specified, then the currency shall be deemed to be the lawful currency of the Territory in which the Service is being provided.

13.10 If more than one entity has signed the Agreement for the same Party, or an entity has signed for and on behalf of another entity in addition to itself, the covenants of all such entities shall be considered to be joint and several and shall apply to each of them. Additionally, should any one or more of such entities wish to amend the Agreement, or add or remove Services, it may do so separate and apart from the other entities of the same Party; provided however that: (i) the amendment or change to the Services shall only apply in respect of such entity(ies), and (ii) the entities comprising the Party shall only be jointly and severally liable in relation to the terms and Services common to such entities.

13.11 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.

13.12 The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal. Any amendment to the Agreement must be in writing and signed by authorized representatives of both Parties.

Client hereby consents to Ceridian conducting credit investigations, from time to time, including such requests for and exchange of information to and from consumer reporting agencies or credit grantors as it may require to approve and maintain any funding arrangements to be granted by Ceridian in relation to the Services, and to provide payment history information to such agencies.

DATA PROCESSING ADDENDUM

This Data Processing Addendum and its annexes set forth the terms and conditions pursuant to which Personal Data will be transferred and processed in the framework of the Agreement.

DEFINITIONS

For the purposes of this Data Processing Addendum, capitalized terms used shall have the following meanings:

"Authentication Credentials"	means the mechanism/tool used to prove a person's identity, such as passwords and access tokens.
"Controller"	means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the Processing of Personal Data.
"Data Protection Legislation"	means, the applicable Laws of any country with regard to the protection of Personal Data relating to the Services, as amended or replaced from time to time.
"Data Subject"	means an identified or identifiable natural person to whom the Personal Data relates. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person. The relevant categories of Data Subjects are identified in <u>ANNEX 1</u> .
"Law(s)"	means all laws or statutes of any jurisdiction and any other regulation, ordinance, order, decree or rule having the force of law, whether in existence as of the Effective Date or promulgated thereafter, as amended or superseded, to the explicit exclusion of Client-specific legal sources.
"Personal Data"	means any information relating to a Data Subject. The relevant categories of Personal Data that are provided to Ceridian by, or on behalf of, Client are identified in <u>ANNEX 1</u> .
"Personal Data Breach"	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed in connection with the provisioning of the Services.
"Privacy Contact Person"	means the individual(s) assigned in Article 10 by a Party and communicated to the other Party as point of contact and representing the Party for (a part of) the Services.
"Processing", "Process(es)" or "Processed"	means any operation or set of operations which is performed upon Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
"Processor"	means a natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the Controller.
"Standard Contractual Clauses"	means the standard contractual clauses of which the European Commission on the basis of <u>Article 46 of the General Data Protection Regulation</u> decided that these offer sufficient safeguards for the transfers of Personal Data to a third country, or the data protection clauses adopted by the European Commission or by a supervisory authority and approved by the European Commission, posted on https://contracts.ceridian.com , as updated from time to time.
"Sub-processor"	means any Ceridian Contractor who agrees to receive Personal Data intended for Processing.

ARTICLE 1 INTERPRETATION

1.1 This Data Processing Addendum forms an integral part of the Agreement. The provisions of the Agreement therefore apply to this Data Processing Addendum. All capitalized terms not defined in this Data Processing Addendum will have the meaning set forth in the Agreement.

1.2 This Data Processing Addendum constitutes the entire agreement and understanding between the Parties in respect of the subject matter hereof and supersedes, cancels and nullifies any previous provisions agreed between the Parties in relation to such subject matter.

ARTICLE 2 SPECIFICATION OF THE DATA PROCESSING

2.1 Ceridian and Client each hereby represent that they will process Personal Data relating to the Services in accordance with the applicable Data Protection Legislation. However, Ceridian is not responsible for compliance with any Data Protection Legislation or other Laws applicable to Client or Client's industry that are not generally applicable to Ceridian as a service provider.

2.2 Ceridian acknowledges that it is receiving Personal Data in connection with the performance of Services it provides under the Agreement. Ceridian shall not use or disclose Personal Data without Client's permission for any purpose other than as set forth in the Agreement. Ceridian acknowledges that Client determines the purpose and means of the processing of the Personal Data delivered to Ceridian under the Agreement and Client hereby gives Ceridian permission to use, transfer and process such Personal Data as set forth herein.

2.3 A more detailed description of the subject matter of the Processing of Personal Data in terms of the concerned categories of Personal Data and of Data Subjects and of the instructions and purposes for the Processing of Personal Data is contained in **ANNEX 1** hereto and in the Agreement. Ceridian may anonymise Personal Data to accomplish any of the purposes in Annex 1 or in the Agreement.

2.4 If a Data Subject contacts Ceridian directly in order to exercise his or her individual rights such as requesting a copy, correction or deletion of his or her data or wanting to restrict or object to the Processing activities, Ceridian will promptly direct such Data Subject to Client. In support of the above, Ceridian may provide Client's basic contact information to the requestor, and, to the extent disclosed by Data Subject, Data Subject's basic contact information and a summary of the request to Client. Client shall inform Data Subjects that they may exercise these rights solely vis-à-vis Client. Client agrees to answer to and comply with any such request of a Data Subject in line with the provisions of the applicable Data Protection Legislation.

2.5 Ceridian shall use commercially reasonable efforts to cooperate with and assist Client for the fulfilment of Client's obligations under applicable Data Protection Legislation to respond to requests of Data Subjects, Personal Data Breach notifications, requests for audit or investigation or any other requests.

ARTICLE 3 CONSULTATION AND CORRECTION OF PERSONAL DATA

3.1 Where Personal Data is not made available through self-service access to Client or Client's employees, Ceridian will, within a reasonable period of time, as necessary under the applicable Data Protection Legislation and upon payment of a fee on a time and materials basis at Ceridian's then current rates, either: (a) provide Client, in its role of Controller, with the ability to consult or correct Personal Data; or (b) provide Client with a copy of the Personal Data that it Processes and make any corrections on Client's behalf in accordance with the instructions of Client.

ARTICLE 4 DISCLOSURE

4.1 Ceridian will not disclose Personal Data to any third party, except (a) as Client directs, (b) as stipulated in the Agreement, (c) as required for Processing by Sub-processors in accordance with Article 7, or (d) as required by the Data Protection Legislation.

4.2 Ceridian shall inform the persons acting on its behalf and having access to Personal Data about the applicable requirements and ensure their compliance with such requirements through contractual or statutory confidentiality obligations to maintain the security and confidentiality of Personal Data in accordance with provisions appropriate to the sensitivity of the Personal Data.

ARTICLE 5 DELETION AND RETURN OF PERSONAL DATA

5.1 Client Data:

- (a) Upon termination of the Agreement, Ceridian shall delete Personal Data on its systems (without prejudice to any backup archives) unless otherwise instructed by Client prior to the effective date of termination. Ceridian shall cooperate reasonably and in a timely manner with the efforts by Client, or any other party acting on Client's behalf, to provide for an orderly transition of the applicable Services to Client or another service provider. The costs attached to such request are at Client's expense.
- (b) During the Service Term, Ceridian may make available, for some products, limited purge functionality. Ceridian is not responsible for compliance with Client's data retention requirements.

5.2 Ceridian Data: Notwithstanding anything to the contrary, Ceridian may retain or dispose of Ceridian records that may contain Client Data only for as long as there exists a legitimate business purpose or legal requirement to do so but in compliance with applicable Data Protection Legislation and subject to the protections of this Data Processing Addendum.

ARTICLE 6 LOCATION OF PROCESSING

6.1 Personal Data that Ceridian processes on Client's behalf shall be Processed in the United States.

ARTICLE 7 USE OF SUB-PROCESSORS

7.1 Client acknowledges and expressly agrees that Ceridian may transfer Personal Data to third party Sub-processors for the provision of the Services if such transfer is done in accordance with the terms of this Article 7.

7.2 Ceridian will enter into written agreements with any such Sub-processor which contain no less onerous data protection obligations as this Data Processing Addendum. Client hereby explicitly grants Ceridian a mandate to execute and enforce the Standard Contractual Clauses on its behalf against Ceridian's relevant Sub-processors, such an Onward Transfer Addendum being governed by the present Data Processing Addendum. Sub-processor written agreements will permit Sub-processors to obtain Personal Data only to deliver the services Ceridian has entrusted them with and will prohibit Sub-processors from using such Personal Data for any other purpose.

7.3 Where required by applicable Data Protection Legislation, Ceridian will make available a list of Sub-processors which shall be posted on the customer due diligence portal or its equivalent.

7.4 Where required by General Data Protection Regulation, Ceridian will provide a notice mechanism to inform Client about changes relating to the Sub-processors (This notice mechanism represents Ceridian's duty to inform and request consent from Client for the use of a new Sub-processor) and in addition;

- (a) If Client reasonably objects to the Processing of Personal Data by one or more Sub-processors, then Client shall notify Ceridian in writing (including e-mail) within fifteen (15) Business Days after receipt of Ceridian's notice.
- (b) In the event Client reasonably objects to a Sub-processor, Ceridian will use reasonable efforts to change the affected Services or to recommend another commercially reasonable change to Client's use of the affected Services to avoid the Processing of Personal Data by the Sub-processor concerned. If Ceridian is unable to make available or propose such change within sixty (60) calendar days, Client may terminate the relevant part of the Agreement regarding those Services which cannot be provided by Ceridian without the use of the Sub-processor concerned as its sole and absolute remedy. To that end, Client shall provide written notice of termination taking into account a notice period of six (6) months and providing a reasonable motivation for non-approval.

ARTICLE 8 TECHNICAL AND ORGANIZATIONAL MEASURES

8.1 Ceridian has implemented and will maintain a security program that takes into account appropriate technical and organizational measures appropriate to the nature and sensitivity to the data, intended to protect Personal Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss or destruction. This program shall address the following:

- (a) the prevention of unauthorized persons from gaining physical access to systems Processing Personal Data (physical access control);
- (b) the prevention of systems Processing Personal Data from being used without authorization (logical access control);
- (c) ensuring that persons entitled to use a system Processing Personal Data gain access only to such Personal Data as they are entitled to accessing in accordance with their access rights, and that, in the course of Processing, Personal Data cannot be read, copied, modified or deleted without authorization (data access control);
- (d) ensuring that Personal Data cannot be read, copied, modified or deleted without authorization during electronic transmission, transport or storage on storage media, and that the target entities for any transfer of Personal Data by means of data transmission facilities can be established and verified (data transfer control);
- (e) ensuring the establishment of an audit trail to document whether and by whom Personal Data has been entered into, modified in, or removed from systems Processing Personal Data (entry control);
- (f) ensuring that Personal Data Processed is Processed solely in accordance with the instructions (control of instructions);
- (g) ensuring that Personal Data is protected against accidental destruction or loss (availability control).

8.2 The present technical and organizational addressed by Ceridian's security program are described in ANNEX 2 of this Data Processing Addendum. Ceridian may adapt such measures from time to time, for example, as a result of the development of regulations, technology and other industry considerations. In any event, the implemented technical and organizational measures shall ensure a level of security appropriate to the risks represented by the Processing and the nature of the Personal Data to be protected, taking also into account the state of technology and the cost of their implementation.

8.3 During the term of this Data Processing Addendum, Client may request Ceridian to provide Client within a reasonable period of time with an updated description of the implemented technical and organizational protection measures.

ARTICLE 9 PRIVACY AND DATA PROTECTION REPRESENTATIVE

9.1 The Parties shall appoint an individual responsible for privacy and data protection matters, including where applicable, a data protection officer.

For Ceridian HCM:
Chief Privacy Officer
Privacy@Ceridian.com
3311 East Old Shakopee Road, Bloomington MN, 55245

9.2 Upon the effective date of this Data Protection Addendum, Client shall notify Ceridian's Privacy Contact Person identified in this [Article 9](#) in writing of the identity of its privacy contact or, if applicable, its data protection officer. In the event Client does not provide a Privacy Contact Person pursuant to this [Article 9](#), Ceridian may use the process for notices set forth in the Agreement.

ARTICLE 10 PERSONAL DATA BREACH

10.1 In the event of a Personal Data Breach of Client's Personal Data Processed by Ceridian or its Sub-processors, and irrespective of its cause, Ceridian shall notify Client without undue delay after having become aware of such Personal Data Breach, specifying where known or readily identifiable:

- (a) the nature of the Personal Data Breach;
- (b) the categories and approximate number of Data Subjects and Personal Data records concerned;
- (c) as the case may be, the remedial actions taken or proposed to be taken to address the Personal Data Breach, to mitigate its effects and to prevent recurrence.

10.2 Client must notify Ceridian promptly about any possible misuse of its accounts or Authentication Credentials or any security issue related to its use of the Services.

10.3 The Party responsible for the Personal Data Breach shall without undue delay further investigate the Personal Data Breach and shall keep the other Party informed of the progress of the investigation and take reasonable steps to further minimize the impact. Both Parties agree to fully cooperate with such investigation and to assist each other in complying with any notification requirements and procedures.

10.4 A Party's obligation to report or respond to a Personal Data Breach is not and will not be construed as an acknowledgement by that Party of any fault or liability with respect to the Personal Data Breach.

10.5 To the extent that a Personal Data Breach is determined to be a result of Ceridian's breach of this Data Processing Addendum and Ceridian is required by law to notify public authorities, individuals, or other required persons, it will fully comply with such legal obligations. To the extent that a Personal Data Breach is determined to be a result of Ceridian's breach of this Data Processing Addendum and Client is required by law to notify public authorities, individuals, or other required persons, Ceridian may, at Ceridian's cost, offer to undertake to the extent reasonable and appropriate under the circumstances to (a) notify public authorities, individuals, or other required persons on behalf of Client, and/or (b) provide credit monitoring services to impacted individuals in accordance with Data Protection Legislation. While the timing, content, and manner of any notice that the Client is legally obligated to make shall be determined by Client, Client shall cooperate with Ceridian to ensure that any notices are accurate and complete. Ceridian shall not be responsible for failure of any notice to comply with applicable Law or other damages that result from remedial actions to the extent such actions were requested or directed by Client. Ceridian and Client will jointly cooperate to determine the need for and scope and nature of any credit monitoring to ensure such monitoring is sufficient to mitigate any reasonably anticipated financial harm.

ARTICLE 11 DATA PROTECTION IMPACT ASSESSMENTS

11.1 Where Client is obligated by applicable Data Protection Legislation to execute a data protection impact assessment ("DPIA"), Ceridian shall provide reasonable cooperation and assistance to Client for the execution of the DPIA to allow Client to comply with its obligations. Ceridian shall be entitled to invoice Client on a time and material basis at the Ceridian's then current rates for any time expended for any such assistance.

ARTICLE 12 CLIENT RESPONSIBILITIES

12.1 Client shall comply with the applicable Data Protection Legislation as well as any other Laws applicable to Client or Client's industry. If compliance with any such specific Laws requires any actions with regard to data protection on the part of Ceridian in addition to the obligations set forth in this Data Processing Addendum, such actions will only be taken upon mutual agreement between the Parties. For the avoidance of doubt, Ceridian will use commercially reasonable efforts to accommodate additional requirements but shall not be obligated to do so. In any event, Client will provide reasonable advance notice of the required actions, cooperate fully with Ceridian in respect thereof and compensate Ceridian for any such efforts that require additional services or investment or modifications in the Services.

12.2 Client is responsible for the lawfulness of Personal Data and the Processing thereof under the Agreement.

12.3 Client represents and warrants that, where it provides any Personal Data to Ceridian for Processing by Ceridian:

- (a) it has duly informed the relevant Data Subjects of their rights and obligations, and in particular has informed them of the possibility of Ceridian Processing their Personal Data on Client's behalf and in accordance with its instructions;
- (b) it has complied with all applicable Data Protection Legislation in the collection and provision to Ceridian of such Personal Data and has ensured that Ceridian can collect such Personal Data in accordance with all applicable Data Protection Legislation; and
- (c) the Processing of such Personal Data in accordance with the instructions of the Controller is lawful.

12.4 Client shall take reasonable steps to keep Personal Data up to date to ensure the data are not inaccurate or incomplete with regard to the purposes for which they are collected.

12.5 With regard to components that Client provides or controls, including but not limited to workstations connecting to Ceridian Services, data transfer mechanisms used, and credentials issued to Client personnel, Client shall implement and maintain the required technical and organizational measures for data protection.

ARTICLE 13 NOTIFICATIONS

13.1 Unless legally prohibited from doing so, Ceridian shall promptly notify Client if it or any of its Sub-processors, with regard to Client's Personal Data:

- (a) receives an inquiry, a subpoena or a request for inspection or audit from a competent public authority relating to the Processing;
- (b) intends to disclose Personal Data to any competent public authority outside the scope of the Services of the Agreement. At the request of Client, Ceridian shall provide a copy of the documents delivered to the competent authority to Client.

13.2 Any notification under this Data Processing Addendum, including a Personal Data Breach notification, will be delivered to one or more of Client's Privacy Contact Persons via e-mail. Upon request of Client, Ceridian shall provide Client with an overview of the contact information of the registered Client's Privacy Contact Persons. It is Client's sole responsibility to timely report any changes in contact information and to ensure Client's Privacy Contact Persons maintain accurate contact information.

13.3 If either Party is subject to an inquiry by a data protection authority, regulator or agency, the scope of which includes operations or information within the other Party's control, each Party agrees to provide reasonable cooperation to the other Party.

ARTICLE 14 AUDIT & COMPLIANCE

14.1 In addition to Ceridian's obligations in [Article 8.3](#), where required by applicable Data Protection Legislation, Ceridian will assist Client in demonstrating compliance with this Data Protection Addendum by making available upon request of Client information reasonably necessary to demonstrate such compliance. As applicable under applicable Data Protection Legislation, Ceridian shall immediately inform the Client if, in its opinion, any of instructions given under this Article 14 violate the Data Protection Legislation.

14.2 Where required by applicable Data Protection Legislation, or where a competent data protection authority requires this under applicable Data Protection Legislation, Client may, upon thirty (30) calendar days' prior written notice, at its own expense, instruct acknowledged audit professionals to conduct an audit of Ceridian's compliance with applicable Data Protection Legislation no more than once every twelve (12) months provided that such audit inquiries shall not

unreasonably impact in an adverse manner Ceridian's regular operations and do not prove to be incompatible with the applicable Data Protection Legislation or with the instructions of a competent authority;

14.3 Before the commencement of any such audit inquiries, Client and Ceridian shall mutually agree upon the scope, timing and duration of the audit.

14.4 Client shall promptly notify Ceridian with information regarding any non-compliance discovered during the course of additional audit inquiries. Client agrees to provide Ceridian with a draft of the audit report for review. Ceridian is entitled to propose any amendments and add management comments to this draft before Client establishes the final version.

14.5 During such audit, Ceridian shall provide reasonable cooperation and assistance to the auditors. Ceridian shall be entitled to invoice Client on a time and material basis at Ceridian's then current rates for any time expended for any such audit inquiries. Client shall not be entitled to claim compensation for any kind of audit expenses incurred by Client.

14.6 The Ceridian audit report, any other information to which Client or the aforementioned audit professionals have access pursuant to any audit activities, as well as an attestation of the implementation of the technical and organizational measures to protect Personal Data will be considered Ceridian Confidential Information.

ARTICLE 15 TERM AND TERMINATION

15.1 This Data Processing Addendum comes into effect on the date noted above, and remains in force until Processing of Personal Data by Ceridian is no longer required (a) in the framework of or pursuant to the Agreement or (b) for a period after termination of the Agreement or the relevant Services for any reason whatsoever, in accordance with Client's explicit instructions or other legally permissible basis.

ARTICLE 16 APPLICABLE LAW

16.1 This Data Processing Addendum and any rights and obligations arising out of it shall be interpreted according to and governed by the law governing the Agreement.

ANNEXES

1. Details of the Personal Data Processing
2. Technical and Organizational measures

ARTICLE 1 DATA SUBJECTS

Present and former job candidates, employees, contractors, agents and other collaborators of Client, as well as third parties who are appointed by the aforementioned persons as family members or contact persons.

ARTICLE 2 CATEGORIES OF PERSONAL DATA

The Personal Data transferred concerns all relevant information that is required to deliver the requested Services, which may include (a subset of) the following categories of data:

- (a) Personal details such as name, birth date, etc.
- (b) Contact details such as address, e-mail address, telephone number, etc.
- (c) Marital status and information on partner and children
- (d) Payment details, including bank account number
- (e) Employee number
- (f) Job (description)
- (g) Employee contract data including but not limited to gross salary, compensations and other employee benefits
- (h) Social security number (if required for government declarations), or equivalent
- (i) Expenses
- (j) Time registration and absence information
- (k) Qualifications, including CV and references
- (l) Information regarding education, training, etc. the Data Subject has received or will follow
- (m) Information regarding personal development and evaluations
- (n) Authentication Credentials to use the Services, such as username, IP address, PC Name, etc.
- (o) Activities performed by Client users in their use of the Services
- (p) Any other category of Personal Data agreed upon between Parties in the relevant service exhibit, service particulars, order form, statement of work or any other document of the Agreement.

Client's data fields can be partly configured as part of the implementation of the Services or as otherwise permitted within the scope of the Services.

ARTICLE 3 PURPOSES OF PROCESSING OF PERSONAL DATA

Personal Data will be processed for the following purposes:

- (a) Performance of the Services including but not limited to:
 - (i) Employee HR administration
 - (ii) Payroll and employee benefits administration
 - (iii) Management of employee development and training plans
 - (iv) Personal development and performance evaluation of employees
 - (v) Workforce planning and organization
- (b) Compliance with Data Protection Legislation and information security requirements
- (c) Any other purpose of Processing of Personal Data agreed upon between Parties in the relevant service exhibit, service particulars, order form, statement of work or any other document of the Agreement.
- (d) Ceridian may de-identify Client Data and may use De-identified Data (as defined below) for the purpose of creating ideas that will improve performance and effectiveness of the present and future services, products and software provided by Ceridian, to provide customized reporting and analysis such as, developing attributes and algorithms, evaluating trends, generating aggregate benchmarks, performing machine learning tasks such as sentiment analysis or evaluating or enhancing job descriptions and talent reviews. "De-identified Data" as used herein means data, whether used alone or in combination with other information, that does not allow an individual to be identified and is not capable of being reversed. For the avoidance of doubt, when data is De-identified it would not include the following identifiers (whether of the individual or his/her relatives, household members, or employers): names, geographic subdivisions smaller than state/province (including zip/postal code), all elements of birth dates except year, telephone numbers, email addresses, social security/social insurance numbers or other government identifiers, account numbers, internet protocol addresses, biometric identifiers, full face photos and comparable images, and any unique identifying numbers, characteristics or codes. Among other things, Ceridian represents that it has implemented technical safeguards that prohibit reidentification of the individual to whom the information may pertain, has implemented business processes that specifically prohibit reidentification of the information, has implemented business processes to prevent inadvertent release of De-identified Data, and will make no attempt to reidentify the information.
- (e) Ceridian shall not use any Personal Data for any reasons not connected with the supply of its Services to the Client under this Agreement.

ANNEX 2: TECHNICAL AND ORGANIZATIONAL MEASURES

Domain	Practices
Information Security Policy and Organization of Information Security	Ownership for Security and Data Protection. Ceridian has appointed an Information Security Officer responsible for coordinating and monitoring the security rules and procedures as well as data protection compliance. Security Roles and Responsibilities. Security responsibilities of Ceridian co-workers are formally documented and published in security and privacy policies. Risk Management Program. Ceridian executes periodical risk assessments of the implemented security controls.
Human Resources Security	Confidentiality obligations. Ceridian co-workers are subject to written confidentiality obligations Security and privacy training. Ceridian informs its co-workers about relevant security measures to protect Personal Data. Termination. Ceridian ensures according to formal security administration procedures that access rights are timely revoked upon termination.
Asset Management	Asset Inventory. Ceridian maintains an inventory of all computing equipment and media used. Access to the inventories is restricted to authorized Ceridian personnel. Asset Handling - Personal Data on portable devices are encrypted. - Ceridian has procedures for securely disposing of media and printed materials that contain confidential data.
Cryptography	Encryption of Personal Data is performed according to formal processes and encryption standards. Encryption mechanisms follow the highest standards available, only using strong ciphers.
Physical and Environmental Security	Physical Access to Facilities. - Ceridian limits access to facilities where Personal Data are processed to identified and authorized individuals. - Physical access to data centers is only granted following a formal authorization procedure and access rights are reviewed periodically Protection from Disruptions. Ceridian uses a variety of industry standard systems to protect its data centers against loss of data due to power supply failure, fire and other natural hazards.
Access Control	Access Policy. Ceridian enforces an access control policy based on least privileges principles. Access Authorization - Ceridian has implemented and maintains an authorization management system that controls access to systems containing Personal Data. - Every individual accessing systems containing Personal Data has a separate, unique identifier/username. - Ceridian restricts access to Personal Data to those individuals who require such access to perform their job function. Authentication - Ceridian uses industry standard practices to identify and authenticate Users who attempt to access Ceridian network or information systems, including strong authentication. - Where Authentication Credentials are based on passwords, Ceridian requires that the passwords are at least eight characters long and sufficiently complex. - De-activated or expired identifiers/username are not granted to other individuals. - Accounts will be locked out in case of repeated attempts to gain access to the information system using an invalid password. - Ceridian maintains practices designed to ensure the confidentiality and integrity of passwords when they are assigned and distributed, and during storage. Network access. Ceridian maintains control measures (e.g. firewalls, security appliances, network segmentation) to provide reasonable assurance that access from and to its networks is appropriately controlled.
Operations Security	Data Recovery Procedures - On an ongoing basis, but in no case less frequently than once a day (unless no data has been updated during that period), Ceridian maintains backup copies of Personal Data for recovery purposes. - Ceridian stores copies of Personal Data and data recovery procedures in a different place from where the primary computer equipment processing the Personal Data is located. Malicious Software. Ceridian maintains anti-malware controls to help avoid malicious software gaining unauthorized access to Personal Data. Security updates. Security patches are installed following a documented security patch management process. Event Logging. Ceridian logs access and use of its information systems containing Personal Data, registering the access ID, time and relevant activity.

ANNEX 2: TECHNICAL AND ORGANIZATIONAL MEASURES

Domain	Practices
Communications Security	Network Segregation. Ceridian has implemented a network segmentation policy and controls to avoid individuals gaining access to communication and systems for which they have not been authorized. Transfer outside own network. Ceridian encrypts, or provides the mechanisms to Client to encrypt, Client information that is transferred across public networks. Information Transfer. Any transfer of Personal Data to third parties is only performed when authorized and following the execution of a formal written non-disclosure agreement.
System Acquisition, Development & Maintenance	Security Requirements. Requirements for protecting data and systems are analyzed and specified. Change Control. Ceridian has implemented a formal change management process to ensure changes to operational systems and applications are performed in a controlled way.
Supplier Relationships	Supplier Selection. Ceridian maintains a selection process by which it evaluates the security and privacy practices of a subcontractor with regard to data handling. Contractual Obligations. Suppliers with access to Personal Data are subject to data protection and security obligations and these are formally integrated into supplier contracts.
Information Security Incident Management	Incident response. Ceridian maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported. Incident notification. For each security breach that impact the confidentiality or integrity of Personal Data, notification by Ceridian will be made without unreasonable delay.
Business Continuity Management	Disaster Recovery. Ceridian maintains a disaster recovery program (DRP). Redundancy. Ceridian's redundant storage and its procedures for recovering data are designed to attempt to reconstruct Personal Data in its last-replicated state from before the time it was lost or destroyed.
Compliance	Security Reviews. Information security controls are independently audited and reported to management on a periodical basis.

The following Service Particulars are incorporated into the Order Form between Ceridian and Client and form an integral part of the Agreement and are applicable to all Dayforce clients (which are clients who have purchased a Dayforce bundle as stated on the Order Form).

SERVICE PARTICULARS DAYFORCE GENERAL TERMS

1. CAPITALIZED AND DEFINED TERMS

1.1 All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Agreement (as defined in the MSA).

1.2 As used herein:

1.2.1 *"Annual Inflation Index"* means (i) if the currency is USD, the Employment Cost Index for total compensation, for private industry workers, by occupational group and industry (not seasonally adjusted), for all workers (ECI), as published by the Bureau of Labor Statistics, US Department of Labor; (ii) if the currency is CAD, the Consumer Price Index, as published by Statistics Canada, Government of Canada; (iii) if the currency is GBP, the Retail Prices Index excluding mortgage interest, as published by the Office for National Statistics (United Kingdom); (iv) if the currency is Euro, the Consumer Price Index, all groups, non-seasonally adjusted, as published by the Reserve Bank of Australia; (v) in the case of the Republic of Ireland, the Consumer Price Index (All Items), as published by the Central Statistics Office (Ireland); (vi) if the currency is NZD, the Consumers Price Index, as published by Stats NZ; and (vii) for all for all other currencies, the applicable price index published by the Organization for Economic Cooperation and Development for the applicable Territory;

1.2.2 *"Business Hours"* means Ceridian's regular business support hours on each Business Day;

1.2.3 *"Core Module"* means Dayforce Core, Dayforce Payroll, Dayforce Benefits Essential, or Dayforce Time and Attendance;

1.2.4 *"Documentation"* means all documentation relating to the Software, whether in machine-readable or printed form, provided by Ceridian to Client, including any updates, revisions, new versions, and supplements to the Documentation;

1.2.5 *"Early Termination Fee"* has the meaning set forth in the Section titled "Early Termination Fee";

1.2.6 *"Implementation Services"* means the implementation Services and/or deliverables to be provided in respect of the Subscribed Modules and Services, as described in the applicable Implementation SOW;

1.2.7 *"Implementation SOW"* means the Statement of Work detailing the Implementation Services;

1.2.8 *"Minimum Monthly Employee Count"* means eighty percent (80%) of the Number of Employees as indicated on Client's Order Form(s), which number represents the approximate current Number of Employees of the Client;

1.2.9 *"Modifications"* means any error corrections, modifications or enhancements to the Software that are included by Ceridian in Support of the Software to all clients;

1.2.10 *"New Versions"* means new versions of the Software that may be deployed by Ceridian to Client for license pursuant to these Service Particulars;

1.2.11 *"Number of Employees"* means the number of employee records in the Software that do not have a terminated status, including full-time and part-time employees as well as any contingent labor or contractors, or any other individual in respect of whom information is being recorded in a Subscribed Module, and all administrators or other users who are accessing the Software or database relating to the Services (for the purposes of these Service Particulars, each shall be considered an "Employee");

1.2.12 *"One Time Fees"* means those Fees set forth in the Order Form under the heading "Estimated Implementation and One Time Fees", including those Fees payable for the Implementation Services, or are otherwise identified or understood to be one time or non recurring Fees, including any Fees payable with respect to change requests;

1.2.13 *"Planned Maintenance Window"* means Ceridian's planned maintenance hours, currently 2:00 a.m. to 6:00 a.m., Wednesdays and Thursdays, local to the data center in which Client's data is hosted (in the case of the United States and Canada - Eastern Time; in the case of the United Kingdom and Ireland - Greenwich Mean Time; and in the case of Australia and New Zealand - Australia Eastern Time);

1.2.14 *"Recurring Fees"* means those Fees set forth in the Order Form under the heading "Estimated Recurring Fees", or are otherwise identified or understood to be Fees which are payable on the periodic recurring basis stated in the Order Form;

1.2.15 *"Regular Maintenance"* means (i) maintenance performed during the Planned Maintenance Window and (ii) maintenance for which the Client is provided at least 24 hours' prior notice;

1.2.16 *"Service Level Agreement"* means the document attached hereto as Appendix A;

1.2.17 *"Service Start Date"* means in respect of the initial Order Form, the date on which a Core Module has been configured for use by Client; in the case of a subsequent Order Form, the date on which Client has access to any of the Subscribed Modules and/or Services purchased in such Order Form;

1.2.18 *"Services"* means, collectively, access to the Subscribed Modules, together with all other Services described in these Service Particulars;

1.2.19 *"Software"* means the software program(s) licensed by Ceridian to Client through which the Services will be provided, together with all Modifications and New Versions;

1.2.20 *"Subscribed Module(s)"* means, at a given date, the module(s) to which Ceridian will provide Client access as part of the Services and as set forth in the Order Form; and

1.2.21 *"Support"* means the support and maintenance services provided by Ceridian to Client with respect to a Subscribed Module in accordance with these Service Particulars.

2. IMPLEMENTATION

2.1 General Approach. Ceridian's general project approach to providing the Implementation Services is based on the concept of shared project responsibility, resulting in a cooperative, hands-on project that is jointly managed by Ceridian and Client. Ceridian works with Client to plan the project – its scope, schedule and resources. During the project planning phase, the Parties will agree upon their respective roles and responsibilities, which will be confirmed in writing and need to be completed in accordance with the agreed upon schedule in order for the Implementation Services to be delivered successfully and within the desired timeline set forth in the project plan. Ceridian will educate Client's resources on how to maintain the Subscribed Modules so that Client will become self-sufficient with the functionality of the Subscribed Modules.

2.2 Assumptions. In addition to the assumptions and requirements set forth herein and in the Implementation SOW, Client acknowledges and agrees that the One Time Fees and estimated timelines are based on the following assumptions:

- 2.2.1 Client will accurately complete all applicable questionnaires, templates, discovery workbooks, and other documents and requests for data as reasonably required for Ceridian to fulfill its implementation roles and responsibilities;
- 2.2.2 Client will provide access to Client's current systems, data storage environment, and personnel with the appropriate knowledge of Client's systems and its configuration, to assist in data analysis for HR data import, exports and configuration. Client will provide any required data in the manner reasonably prescribed by Ceridian by the agreed upon timelines;
- 2.2.3 While both Ceridian and Client may have a project manager, Client is responsible for management of its own resources and engaging third-party vendors, as necessary. Lack of access to Client resources or Client's third-party vendor resources, or changes to any individuals filling Client roles identified in the Implementation SOW may impact project timeline and costs;
- 2.2.4 Client will provide solution feedback and confirmation of acceptance through the prescribed process, and working with resources in a reasonable time frame per the project schedule.
- 2.2.5 Client will provide data requested by project team in a timely manner and per the project schedule;
- 2.2.6 Client Power User will be appointed during project launch stage, will complete necessary training per published curriculum prior to project kick-off, and will be available for the duration of the project;
- 2.2.7 Client will engage its third-party vendors as required in a timely manner and per the project schedule. Failure by Client's third-party vendors to adhere to project timelines may impact the project timeline and costs;
- 2.2.8 Client will confirm acceptance for all Implementation Services leveraging Ceridian implementation methodology templates in a timely fashion and per the project schedule;
- 2.2.9 Any changes to scope described in the Implementation SOW will be addressed through a change request;
- 2.2.10 Client will complete training activities as outlined in the training curriculum and per the project schedule prior to Service Start Date;
- 2.2.11 Client will follow the instructions contained in the training materials;
- 2.2.12 Client will identify export files by project kick-off. Any additional feed(s) identified thereafter may result in additional Fees;
- 2.2.13 The CONFIG environment (including all data) will be decommissioned after a period of sixty (60) days from the Service Start Date. In the case of a phased implementation, the CONFIG environment will remain in place until the Service Start Date of the last phase of the project. The TEST environment will remain active for the duration of the Service Term; and
- 2.2.14 Additional non-production environments may be provided by Ceridian for Client's use, subject to additional costs. Should Client's existing TEST environment be in use for a project at the time that another project / phase is commenced, an additional non-production environment will be required at an additional cost.

3. SOFTWARE FUNCTIONALITY, HOSTING AND SUPPORT

3.1 Software Functionality

3.1.1 Client's election of the Subscribed Modules will be set forth in the Order Form, signed by both Ceridian and Client. Ceridian warrants that the Subscribed Modules and the Software shall substantially perform in accordance with the Software Functionality and Global Use Guide. Ceridian shall not be liable to remedy any failure of the Subscribed Modules and the Software resulting from the acts or omissions of Client or any third party (other than Ceridian Contractors), and is provided "as-is" and "as-available". The Subscribed Modules and the Software may be used by Client outside the Territory in accordance with the terms of the Software Functionality and Global Use Guide. Without limiting the terms of the Software Functionality and Global Use Guide, Client acknowledges and agrees that certain country specific laws (including privacy laws) outside of the Territory may, from time to time, restrict or prohibit Client's use of the Subscribed Modules and the Software, and Client is responsible for ensuring it is complying with such requirements.

3.2 Software Hosting and Support

3.2.1 Ceridian's Obligations.

- (i) Uptime. Ceridian shall host and provide ongoing support for the Software and supported third party products from data centers accessible via the internet. Ceridian will strive to ensure the web-based application interface for the production environment that will be accessed through Client URL, shall be available in accordance with the service levels set forth in the Service Level Agreement, failing which the Client shall be entitled to the rights and remedies set forth therein.
- (ii) Support. For so long as the Services remain in effect, and provided that Client has paid the applicable Fees, Ceridian shall provide Support in accordance with the following:
 - (a) Ceridian will, commensurate with the severity of the defect, correct any malfunction, defect or non-conformity in the operation of the Software from the [Software Functionality and Global Use Guide](https://contracts.ceridian.com) posted on <https://contracts.ceridian.com> (each, a "Defect") to enable the Software to substantially perform in accordance with the Software Functionality and Global Use Guide in effect at the time the Support is provided. Ceridian shall provide Client Named Support Users (as defined below) with access to (1) its toll free customer support telephone line (which rolls over to the emergency help line after Business Hours) and (2) online support portal (the "Help Desk") for reporting to Ceridian any Defects and for inquiries regarding the Services or ordinary use and operation of the Software as may arise from time to time. Live operators at the Help Desk shall be available during Business Hours. Client shall provide reasonable assistance related to Client systems, as required for Ceridian to correct a Defect. Such reasonable assistance may require Client to provide certain Client information, documentation, technical and other feedback related to Client's systems in order to assist Ceridian to correct such Defect;
 - (b) Support may be provided to Client Named Support Users through one or more of a number of means at Ceridian's reasonable discretion, such as telephone, e-mail, online meeting, or Internet self-service, which includes general technical information and assistance with Defect determination, isolation, verification, and resolution, during Business Hours with regard to in-person telephonic, e-mail and on-line meeting support, or 24/7 (excluding Regular Maintenance hours) with regard to Internet

self-service. Support services are not to be used as an alternative to obtaining training. Client shall make commercially reasonable efforts to refer to the Documentation as a first step in answering questions and learning functions of the Services prior to contact with Ceridian with regard to problems or questions;

(c) In the event Client Named Support Users use the Help Desk to describe, categorize (in terms of nature and urgency) and submit requests for Support, Ceridian will provide a first response to such inquiry within the time frames set forth in the Service Level Agreement, failing which Client shall be entitled to the rights and remedies set forth therein;

(d) Only those named persons (as indicated on the Help Desk access list provided from time-to-time by Client to Ceridian) trained on the use and operation of the Software ("Client Named Support Users") may access to the Help Desk for Support. Ceridian reserves the right to establish a maximum number of Client Named Support Users, acting reasonably;

(e) Ceridian will use commercially reasonable efforts to perform all required maintenance to the Software (or any other elements of the hardware or infrastructure necessary for the provision of the Services contemplated under these Service Particulars) during the Planned Maintenance Window. Ceridian will use commercially reasonable efforts to keep the period during which Client's access to the Software is impeded during the Planned Maintenance Window to a minimum. Ceridian will notify Client of all maintenance at least twenty-four (24) hours in advance, provided that, for maintenance for which Ceridian cannot provide twenty-four (24) hour response, Ceridian will provide notice as soon as reasonably practicable. Ceridian will not be responsible for any damages or costs incurred by Client, if any, for scheduled down time. Ceridian may change its Planned Maintenance Window upon thirty (30) days' prior notice to Client; and

(f) support provided under these Service Particulars does not include services provided with respect to the following matters: (1) any problem resulting from configuration or customization of the Services (including any Professional Services) made by a party other than Ceridian, Client, or other party authorized by Ceridian; or (2) any problem caused by modifications of the Software not made or authorized by Ceridian (other than ordinary configuration changes the functionality for which is built into the Software and intended to be made by Client).

(iii) Ceridian may from time to time (but shall not be required to unless a Modification is required to fix a Defect) make Modifications to the Software and/or its functionality, for purposes such as maintenance or upgrades, or otherwise as deemed appropriate by Ceridian. Such Modifications are within the discretion of Ceridian, and are not required to be made, but will not materially adversely affect Clients' Services (when viewed as a whole) or require the payment of additional Fees or costs. Modifications will be pre-announced a reasonable time in advance and Client shall have a reasonable opportunity to interact with modified Services in a non-live (e.g., test, sandbox) environment. Ceridian will only provide Support in respect of Ceridian Clocks as part of the Services, and will not provide Support or other assistance in respect of clocks or other hardware supplied by any other provider.

3.2.2 Client's Obligations.

(i) Client will not: (a) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (b) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (c) send or store any virus, worm, time bomb, Trojan horse or other harmful or malicious code, file, script, agent or program; (d) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (e) attempt to gain unauthorized access to the Services or related systems or networks.

(ii) Client will designate Client Named Support Users to triage all internal support incidents reported by end users. Triage occurring by Client Named Support Users includes: checking the Documentation for assistance in dealing with the reported incident, attempting to reproduce the incident in a production copy, and documenting the steps required to reproduce the incident. Upon reporting an incident, Client agrees to cooperate, work closely with, and provide assistance to Ceridian in the investigation, diagnosis, and resolution of the incident.

(iii) Ceridian shall have the right to access Client's account from time to time, for purposes of Support, administration, invoicing and to inspect Client's utilization of the Services so as to ensure Client's compliance with the provisions of this Agreement, as reasonably necessary in Ceridian's sole discretion.

(iv) Client is responsible for meeting the minimum software and system requirements needed to use the Services, as identified by Ceridian.

4. SERVICE FEES AND PAYMENT

4.1 Fees. The Fees payable by Client to Ceridian for the Services are as set forth in the Order Form. The Fees are exclusive of all Taxes. Except as otherwise stated herein, all invoices will be due and payable by Ceridian supported electronic means (e.g., direct deposit, pre-authorized debit) within thirty (30) days of the date of invoice.

4.2 One Time Fees

4.2.1 The One Time Fees for Implementation Services have been calculated taking into account the work and materials Ceridian has reasonably estimated will be required to implement the Service. This estimate has been made by Ceridian in good faith based on the information available to Ceridian at the time of executing the Order Form, including information and representations provided by Client. To the extent that new or additional information becomes available to Ceridian which impacts the estimated One Time Fees, the Parties shall mutually agree to necessary changes to the Implementation SOW (including to corresponding Fees).

4.2.2 (i) The One Time Fees for implementation (including any applicable conversion) Services will be invoiced and payable in two (2) installments as follows: (a) fifty percent (50%) at the date Implementation Services are started (generally by way of a project kick off meeting) and (b) fifty percent (50%) at Service Start Date;

(ii) All event-based One Time Fees will be payable upon event completion; and,

(iii) All other One Time Fees will be invoiced upon Service Start Date.

4.3 Recurring Fees

4.3.1 Except as otherwise stated below, the monthly Recurring Fees will be invoiced and payable monthly in advance, commencing as of the Service Start Date, based on the Number of Employees as at the 15th of each calendar month, or such other date as may be communicated to Client by Ceridian. In no event will the Number of Employees used for calculating the monthly Recurring Fees for any given calendar month be less than the Minimum Monthly Employee Count. A designated bill cycle date will be established by Ceridian at order set-up for Recurring Fees. Services included in the Order Form that are based on a per occurrence (e.g., Fees for ancillary services shown on the Rate Sheet), will be invoiced monthly in arrears. Any estimated annual Fees shown in the Order Form are estimates only, based on Client's Number of Employees and/or transaction count as at the date of signing the Order Form. The Recurring Fees for additional non-production environments (if applicable) will be invoiced monthly, commencing upon environment availability.

4.3.2 Where Client's Services include Managed Payroll and / or Managed Benefits Services in addition to Dayforce SaaS Services, the Minimum Monthly Employee Count specific to such managed Services will be calculated separately from the Minimum Monthly Employee Count for Dayforce SaaS Services.

4.3.3 The monthly Recurring Fees for Dayforce Managed Garnishments and Dayforce Managed Garnishments – Employee Contact Center will be invoiced and payable monthly in arrears based on the number of active garnishments each month, commencing after the first payroll processing in accordance with the designated bill cycle date as set forth above.

4.3.4 When and if made available by Ceridian, at Client's election, SMS text messaging for "Alerts and Notifications" functionality will be provided to Client at Ceridian's then current rate per message (both outbound and inbound messages shall be counted for the purposes of billing). Other miscellaneous charges may apply for mobile device access. Such Fees shall be billed based on the actual count for the previous month.

4.4 Staging Fees. Once Ceridian commences the Implementation Services, a Client instance of the Software is established for the purposes of configuration, user testing and implementation team training. In order to compensate Ceridian for the work required to establish and maintain such Client environment, commencing as of the initial project kick-off meeting through to the Service Start Date (the "Staging Period"), Client shall pay Ceridian the Staging Fee listed in the Order Form (the "Staging Fee") in the amount and at the frequency shown therein. If the Staging Fee is shown as one single payment, it will be invoiced upon project kick-off and payable in accordance with the invoicing payment terms set forth herein. If the Staging Fee is shown in a quantity more than 1, such amount will be payable monthly during the Staging Period. For the avoidance of doubt, where the Staging Period is different (greater or lesser) than the stated quantity (which quantity is an estimate calculated by Ceridian in good faith based on the information available to Ceridian at the time of executing the Order Form), Client will be invoiced for the actual number of months comprising the Staging Period.

4.5 Training Fees. All event-based training Fees will be payable upon event completion. Subscription-based training Fees will be payable upon project kick-off (or if subscribed after kick-off, immediately upon subscription) and each renewal date thereof. Consulting-based training Fees will be invoiced on a time and materials basis, billed monthly based on the amount of work completed each month. The Fees stated in the Order Form have been calculated using an hourly rate based on the estimated hours stated therein, as determined by the Parties. The Fees payable will be based on actual hours worked. The training is for use within a twelve (12) month period, effective upon project kick-off of Implementation Services (or upon signing of subsequent Order Forms). The hourly rate will expire at the end of such twelve (12) month period. If Client terminates the Agreement, the associated Services, or the training project, as the case may be, for any reason, Client will be responsible to pay to Ceridian any Fees incurred for hours worked.

4.6 Hardware Fees. All One Time Fees in respect of purchased Ceridian Clocks, badges or other tangible items or hardware, will be invoiced upon shipment. Clock annual maintenance Recurring Fees will be invoiced upon shipment of the purchased Ceridian Clocks and each renewal date thereof. Rental Recurring Fees will be invoiced upon shipment and each subsequent month. Recurring Fees with respect to webclocks will be invoiced upon configuration of the webclock and each subsequent month.

4.7 Annual Fee Increase. All Fees are subject to annual increases in an amount not to exceed the annual increase in the Annual Inflation Index for the respective billing currency (on a cumulative basis from the Service Start Date), the first such increase to be calculated and effective on the first anniversary of the Service Start Date.

5. SERVICE TERM AND TERMINATION

5.1 Service Term and Fees payable for Early Termination. The Agreement for the Services shall be effective and binding immediately upon execution of the Order Form, and unless terminated earlier by a Party as expressly permitted under the termination provisions of the Agreement, shall remain in effect for an initial Service Term equal to the number of months / years set forth in the Order Form calculated from the Service Start Date. The Service Term shall automatically continue after the expiration of the initial Service Term, on the same terms and conditions without the need for any written extension agreement, until terminated by either Party upon ninety (90) days' prior written notice to the other, or until terminated otherwise in accordance with the termination provisions in the Agreement. If Client terminates the Services prior to the expiration of the initial Service Term, in addition to being responsible to pay Ceridian Fees for all work and Services provided up to and including the effective date of termination of the Services (including all One Time Fees for work performed up to such date), Client shall be required to pay Ceridian the Early Termination Fee.

5.2 Early Termination Fee. The early termination fee ("Early Termination Fee") is the fee payable by Client to Ceridian if Client terminates a Service before the end of the initial Service Term (except pursuant to Section 3.2.2 ("Material Breach") or Section 3.2.3 ("Insolvency") of the MSA by Ceridian). The Early Termination Fee will be equal to the average monthly Recurring Fees (computed based on the average Recurring Fees paid by Client for Services during the three (3) month period preceding cancellation (or where the Services have not as yet commenced, then based on estimated annual fees as shown in the Order Form divided by twelve)) multiplied by the number of whole or partial months between the date that the cancellation is effective and the expiration date of the initial Service Term, less a discount equal to 25%.

5.3 Transition Assistance. Ceridian shall cooperate reasonably and in a timely manner on a time and materials basis with the efforts by Client, or any other party acting on Client's behalf, to provide for an orderly transition of the applicable Services to Client or another service provider.

6. ADDITIONAL PROVISIONS

6.1 TeamRelate. The TeamRelate feature made available via the Software is intended to be used as one part of an overall candidate and employee assessment process and is not designed or recommended for standalone use or as a replacement for the professional judgment of Client's employees. If Client becomes dissatisfied with the TeamRelate feature, Client's sole remedy shall be to discontinue its use.

6.2 Extended Access to Historical Data. To the extent Client is migrating the Services described hereunder from an existing Ceridian hosted platform (the "Prior Ceridian System"), Ceridian agrees to provide access to Client's data stored in the Prior Ceridian System (the "Historical Data") for a period of six (6) months following the Service Start Date (subject to any shorter retention period as required by applicable privacy or other laws) or on the Prior Ceridian System retirement date, whichever is earlier. Access to the Historical Data will be provided at no charge during such 6 month period. Unless otherwise agreed between the Parties in writing, access will be terminated without further notice upon expiration of the noted period.

6.3 Dayforce Engagement. Dayforce Engagement allows Client to conduct engagement surveys using pre-defined and Client-created surveys. Client remains solely responsible for complying with the laws and regulations associated with conducting engagement surveys, including any decisions affecting Employees and the conclusions drawn from the survey results.

6.4 Dayforce Safety Monitor. Dayforce Safety Monitor provides tools for collecting data relating to a public health emergency, and it is intended to be used as one part of Client's overall business continuity program. Dayforce Safety Monitor has not been designed or reviewed to comply with any specific application of the law, regulation or other requirement as it relates to Client. Client remains solely responsible for complying with any applicable laws relating to the collection of employee data.

Appendix A SERVICE LEVEL AGREEMENT

This document sets forth the specific performance measures that will be tracked and measured in connection with Ceridian's performance of the Services (the "Service Levels"), including the target level of Service which Ceridian strives to meet in delivering the Service (the "Service Target"), as well as the minimum acceptable level of Service below which Client shall be entitled to the recourse prescribed (the "Minimum Acceptable Level"). Ceridian will treat all Service Level failures as a priority and work diligently to avert or minimize any adverse effect such failure may have, including developing a work around solution. Ceridian will develop and implement a proposal for rectifying any such failure, and identify improved processes to identify, detect and avoid similar failures in the future. Without limiting the generality of anything herein, the Parties agree that in calculating the Service Levels for any period, Ceridian shall exclude any incident or failure which was caused by: (a) the negligence of Client, or Client failing to perform any of its covenants under the Agreement in a timely fashion or at all; and (b) any reason beyond the reasonable control of Ceridian, including (but not limited to) failure of Client's systems, failure of Client's internal network or access to the internet, acts of God, acts of war or terrorism, labor strikes or other act of force majeure.

If Ceridian fails to meet the Minimum Acceptable Level for a Service Level in any calendar month, Ceridian will provide a root cause analysis for the failure and a short-term plan (and long-term plan if appropriate) to return to acceptable Service Levels. If Ceridian fails to meet the Minimum Acceptable Level for the same Service Level any two consecutive calendar months, Ceridian will assign a senior support escalation contact to Client who will meet with the Client on a regular basis (at times and schedule as mutually agreed upon) until the Service Levels are restored.

1.0 Client Support Portal Service Levels

Objective: Ceridian will respond in a timely fashion to support enquiries from Client Named Support Users submitted through Ceridian's online support portal.

Definition: Client Named Support Users will use Ceridian's online support portal to describe, categorize (in terms of nature and urgency) and submit requests for Support. Ceridian will provide a first response to such inquiry within the time frames set forth below.

Method: Case management system tickets opened during the current measurement period will be used to compute the following: Total number of inquiries submitted through the portal and responded to within the corresponding acceptable time frame, divided by the total number of inquiries submitted through the portal.

Severity	Description	First Response	
		Application Support Standard	Application Support Premium (if purchased)
Urgent	A complete inability to use major functionality within the application resulting in a serious impact to the Client's business operations with no existing workaround	Within 1 Business Hour (Monday to Friday)	Within 1 Hour (Monday to Sunday)
High	Severely limited ability to use major functionality within the application that could impact the Client's business operations, with workarounds that may not fully address the issue	Within 8 Business Hours (Monday to Friday)	Within 4 Business Hours (Monday to Friday)
Medium	Minor errors in functionality within the application, often accompanied by workarounds	Within 12 Business Hours (Monday to Friday)	Within 12 Business Hours (Monday to Friday)
Low	General inquiries on the use of the application or; Minor cosmetic errors or incidents which otherwise do not require immediate attention or; Rare errors that appear during unusual conditions or are otherwise unlikely in normal use or; Errors which have a sustainable workaround	Within 24 Business Hours (Monday to Friday)	Within 24 Business Hours (Monday to Friday)

Performance Level:

Values	Metrics
Target Level for First Response	95% of enquiries will be responded to within the designated time frame
Minimum Acceptable Level for First Response	80% of enquiries responded to within the designated time frame.

Service Level Performance Tracking: Monthly

2.0 Software Availability

Objective: Ceridian will provide Client's users with 24x7 access to information via the internet, except during scheduled maintenance.

Definition: The Client's production environment for the Software will be available 24 hours per day, 7 days a week, 365 days a year ("Total Minutes"), excluding:

- (a) Regular Maintenance;
- (b) unavailability due to improper configuration of the Software caused by the Client or the use of unsupported hardware or software; (collectively, "Maintenance Minutes").

The Client will be notified of scheduled maintenance through Ceridian's support notices program. An email will be sent from supportnotices@dayforce.com to all Client Named Support Users.

Method: Ceridian hosted services system records will be used to compute "Availability" as follows: (Total Minutes minus Maintenance Minutes) minus unscheduled downtime, divided by (Total Minutes minus Maintenance Minutes).

Performance Level:

Values	Metrics
Target Level	100% availability, excluding Maintenance Minutes.
Minimum Acceptable Level	99.75% availability, excluding Maintenance Minutes.

Service Level Performance Tracking: Monthly

Example

April Total Minutes	30 days x 24 hrs x 60 mins	43,200 Total Minutes
April Maintenance Minutes	8 days x 4 hours / day x 60 mins	1,920
April Total Available Minutes	43,200 – 1920	41,280
April additional excused outages (e.g. force majeure)	0	0
April unexcused outages	30	30

Calculation

$$[(41,280 - 30) / 41,280 = 99.93\%$$

Result: Meets Minimum Acceptable Level.

SERVICE PARTICULARS DAYFORCE PAYROLL TERMS (US)

(APPLICABLE ONLY TO DAYFORCE BUNDLES WHICH CONTAIN DAYFORCE PAYROLL)

1. CAPITALIZED AND DEFINED TERMS

1.1 All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Agreement (as defined in the MSA) or the Dayforce General Terms (the Service Terms applicable to all Dayforce bundles), as applicable.

1.2 As used herein:

1.2.1 "ACA" means the Affordable Care Act;

1.2.2 "ACA Forms" means IRS Forms 1094-C and 1095-C;

1.2.3 "Funding Authorization" means such written authorization, power of attorney or other form executed by Client from time to time as reasonably required by Ceridian to authorize and permit Ceridian to withdraw money, forward payments or take other steps to facilitate the movement of payments as part of the Services;

1.2.4 "Funds" means those funds to be received by Ceridian from Client, in an amount equal to the Payments to be made for a particular Payroll;

1.2.5 "Payments" means any payments to be made by Ceridian on Client's behalf hereunder, to its Employees statutory remittances, tax filing liabilities and other third-party payments as directed by Client and agreed to by Ceridian;

1.2.6 "Payroll" means the Client Payments processed or to be processed by Ceridian with which the Services are associated;

1.2.7 "Tax Forms" means those forms, as supported by Ceridian's Software, as prescribed by Taxing Authorities from time to time which are required to be provided by Client to the Employees in connection with the remuneration paid or payable to the Employees;

1.2.8 "Taxing Authorities" means those government agencies to which tax remittances are made relating to compensation paid by Client to Employees, and any successors to such agencies; and

1.2.9 "Trust" means the trust(s) established pursuant to a written declaration of trust for the purposes of receiving Funds from its clients, or such additional or replacement trust(s) as may hereafter be established by Ceridian for such purposes.

2. ONGOING SERVICES

2.1 Funds Transfer (Ceridian Bank Account)

2.1.1 Ceridian's Obligations for Ceridian Direct Deposit and Ceridian Check. Where Ceridian is responsible for issuing Payments using the Trust, Ceridian will:

- (i) issue the Payments in accordance with the Payroll and Payment processing schedule, as agreed upon by the Parties, to meet Client's Payroll obligations, by way of: (a) submitting Payment information to the appropriate funds transfer network(s) in the form required for the electronic crediting/direct deposit of payment to the designated accounts of Employees; and/or (b) create negotiable paychecks to the order of Employees drawn on the Trust account. Each paycheck will be printed on Ceridian check stock with Ceridian officer's signature and Ceridian logo;
- (ii) for Ceridian Direct Deposit and Ceridian Check, process file reversals, request stop payment orders and request direct deposit reversals upon Client's written request
- (iii) for Ceridian Direct Deposit and Ceridian Check process stop payments and direct deposit reversals upon Client's written request (subject to any time restrictions reasonably prescribed by Ceridian);
- (iv) at the request of Client or at Ceridian's option, provide Client a report identifying un-cashed paychecks considered stale dated, and pay to Client an amount equivalent to any Payroll Funds held on account of Payments against which stop payments have been placed, or which are, according to banking practice, considered to be stale-dated (less a reasonable administration fee; or at the request of Client, such Payroll Funds may be credited to Client's next Payroll);
- (v) notify Client of exceptions related to paychecks processing and pre-notification rejections, bank requested notification of change requests, and returned credits, as applicable ("Exceptions");
- (vi) notify Client of any errors or other circumstances in the event Ceridian is unable to provide Payments and either re-performs Services (when possible) or arrange return of unpaid funds to Client. Unpaid Payroll Funds will be returned only after verification of available and sufficient fund balances (with time allowances for returned items) by the bank in which such funds are held; and
- (vii) monitor and interpret changes to those laws and regulations in the Territory pertaining to payroll gross-to-net calculations (including tax tables / tax rates) and modify the Software and Services as required to incorporate such changes and ensure the Software performs all such calculations in compliance with the applicable laws and regulations; and

2.1.2 Client's Obligations for Ceridian Direct Deposit and Ceridian Check. Where Ceridian is responsible for issuing Payments using the Trust, Client will:

- (i) enter, maintain and transmit (via the Software) Payroll data to Ceridian, in such number of days as established by Ceridian (acting reasonably) prior to the date the paychecks are to be issued and deposits are to be made, as required to meet agreed upon processing schedules, as set forth in the Funding Authorization;
- (ii) review and audit all Payroll data, reports and other materials prior to committing the Payroll. Client shall correct any discrepancies or errors in such materials prior to the next scheduled processing;
- (iii) monitor changes to those laws specifically applicable to Client's business, interpreting applicable laws and regulations, determining the requirements for compliance with such laws and regulations, and notifying Ceridian of any changes to the Payroll processing required as a result of such laws;
- (iv) Client will be solely responsible for compliance with earning statement obligations, retirement and benefit election and remittance requirements, garnishment obligations and any incorrect payments made to Employees as a result of incorrect, incomplete, and/or changed data or information received by Ceridian from Client;

- (v) correct Exceptions before transmitting Payroll data for Client's next Payroll (otherwise Client could be in breach of applicable laws or regulations);
- (vi) be responsible for contacting payees to resolve payment of any voided paychecks and reimburse Ceridian for any losses and fees incurred by Ceridian in circumstances where Ceridian honors Client's request to initiate a stop payment order and issues a replacement check, but the check originally issued is subsequently presented for payment by a holder in due course (including fraud or misconduct on the part of Employees) and Client shall reimburse Ceridian for any payments made or fees resulting from holder in due course claims;
- (vii) require Employees to complete, sign and maintain any account funding authorizations or other documents or authorizations necessary for Ceridian to provide Services, including authorizations for the initiation of credit entries. Without limitation, Client shall ensure that each Employee utilizing Ceridian Direct Deposit has authorized the initiation of credit entries and the crediting of the Employee account, as well as the debiting of the Employee account through a file reversal in the event of erroneous transactions (including but not limited to incorrect or duplicate transactions) a returned item from Client's account or any funding deficiency by Client (to extent permitted by law). Client must ensure that such authorizations are operative at the time of transmittal and crediting/debiting of the Employee accounts;
- (viii) hereby grant to Ceridian the authority to issue Payments on behalf of Client, and to take such other action as may be necessary from time to time in connection with the provision of the Services, which might authorize to instruct its bank to stop payment and authorize to refuse payment as required to provide the Services;
- (ix) forward or make available the Funds to an account established by the Trust as directed by Ceridian. The Funds will be provided by Client in a manner satisfactory to Ceridian (acting reasonably). Client will fully fund such account and as agreed upon by the Parties, shall either timely wire the funds, or shall timely authorize the initiation of debit entries and the debiting of the account in the amount and on the date specified and ensure that such authorization is operative at the time of transmittal and debiting of Client account. Ceridian shall not be obliged to release any Payroll documents or to make or honor any Payments until it has received confirmation that Client's financial institution upon which the Funds have been drawn has irrevocably honored such request for advance of funds. In this regard, Ceridian reserves the right, at its option, to implement such procedures as may reasonably be required to guarantee the irrevocable receipt by it of the Funds prior to Ceridian paying out any such funds;
- (x) provide Ceridian with Funds in an amount equal to the tax liability Payments to be made for a particular Payroll
- (xi) pay for all reasonable expenses incurred by Ceridian as a result of Client errors or omissions

2.2 Payment Solutions (Client Bank Account)

- 2.2.1 Ceridian's Obligations. Where Client elects to issue Payments using its own checks and / or drawn on its own bank account, Ceridian will:
 - (i) issue the Payments in accordance with the Payroll and Payment processing schedule, as agreed upon by the Parties, to meet Client's Payroll obligations, by way of: (a) submitting Payment information to the appropriate funds transfer network(s) in the form required for the electronic crediting/direct deposit of payment to Client's bank account; and/or (b) create negotiable paychecks to the order of Employees drawn on the Client's bank account. Each paycheck will be printed on standard check stock with Client officer's signature and, if selected, Client's logo using the check data and account provided by Client;
 - (ii) process file reversals, and request direct deposit reversals upon Client's written request;
 - (iii) notify Client of exceptions related to paychecks processing and pre-notification rejections, bank requested notification of change requests, and returned credits related to direct deposit services ("Exceptions");
 - (iv) notify Client of any errors or other circumstances in the event Ceridian is unable to provide payments and either re-performs Services (when possible) or arrange return of unpaid funds to Client. Unpaid Funds will be returned only after verification of available and sufficient fund balances (with time allowances for returned items) by the bank in which such funds are held; and
 - (v) monitor and interpret changes to those laws and regulations in the Territory pertaining to payroll gross-to-net calculations (including tax tables / tax rates) and modifying the Software and Services as required to incorporate such changes and ensure the Software performs all such calculations in compliance with the applicable laws and regulations.
- 2.2.2 Client's Obligations. Where Client elects to issue Payments using its own checks and / or drawn on its own bank account, Client will:
 - (i) enter, maintain and transmit (via the Software) Payroll data to Ceridian, such number of days as established by Ceridian (acting reasonably) prior to the date the paychecks are to be issued and deposits are to be made, as required to meet agreed upon processing schedules, as set forth in the Funding Authorization;
 - (ii) review and audit all Payroll data, reports and other materials prior to committing the Payroll. Client shall correct any discrepancies or errors in such materials prior to the next scheduled processing;
 - (iii) monitor changes to those laws specifically applicable to Client's business, interpreting applicable laws and regulations, determining the requirements for compliance with such laws and regulations, and notifying Ceridian of any changes to the Payroll processing required as a result of such laws;
 - (iv) Client will be solely responsible for compliance with earning statement obligations, retirement and benefit election and remittance requirements, garnishment obligations and any incorrect payments made to Employees as a result of incorrect, incomplete, and/or changed data and information received by Ceridian from Client;
 - (v) correct Exceptions before transmitting Payroll data for Client's next Payroll (otherwise Client could be in breach of applicable laws or regulations);
 - (vi) be responsible for contacting payees to resolve payment of any voided paychecks and reimburse Ceridian for any losses and fees incurred by Ceridian in circumstances where Ceridian honors Client's request to initiate a stop payment order and issues a replacement check, but the check originally issued is subsequently presented for payment by a holder in due course (including fraud or misconduct on the part of Employees);
 - (vii) require Employees to complete, sign and maintain any account funding authorizations or other documents or authorizations necessary for Ceridian to provide Services, including authorizations for the initiation of credit entries. Without limitation, Client shall ensure that each Employee utilizing Ceridian's direct deposit service has authorized the initiation of credit entries and the crediting of the Employee account, as well as the debiting of the Employee account through a file reversal in the event of a returned item from Client's account or any funding deficiency by Client (to extent permitted by law). Client must ensure that such authorizations are operative at the time of transmittal and crediting/debiting of the Employee accounts;
 - (viii) hereby grant to Ceridian the authority to issue Payments on behalf of Client, and to take such other action as may be necessary from time to time in connection with the provision of the Services, which might authorize to instruct its bank to stop payment and authorize to refuse payment as required to provide the Services;
 - (ix) ensure the Funds are available in the account from which Ceridian is drawing the Client Checks and/or initiating the Payments and authorize the initiation of debit entries and the debiting of the account in the amount and on the date specified and ensure that such authorization is operative at the time of transmittal of Client account; and
 - (x) pay for all reasonable expenses incurred by Ceridian as a result of Client errors or omissions.

2.3 Tax Filing Services

- 2.3.1 Ceridian's Obligations. Ceridian will:
- (i) prepare, deposit, and file Client's Payroll tax returns for those federal, state and local jurisdictions supported by Ceridian and reflected on Client's Tax jurisdictional profile;
 - (ii) remit Client's tax liabilities to Taxing Authorities as supported by Ceridian;
 - (iii) provide Client with a regular tax statement for each Client tax registration number processed by Ceridian;
 - (iv) provide, prepare and file employer Tax Forms in the formats required by each Taxing Authority provided that Ceridian has provided tax filing Services for Client for the entire calendar year or Client has provided year to date or quarterly tax filing data in accordance with Section 2.3.2(vii);
 - (v) respond to all Taxing Authorities inquiries pertaining to jurisdictions processed by Ceridian for periods of services provided by Ceridian. Ceridian shall provide Client with copies of correspondence sent to Taxing Authorities in the resolution of the inquiry; and
 - (vi) provide Client with online access to account information, including tax deposit history.
- 2.3.2 Client's Obligations. Client will:
- (i) prior to the first Payroll date, provide Ceridian with such information, forms, Powers of Attorney, written authorizations and other documentation as reasonably required by Ceridian in order to enable Ceridian to determine paid and accrued taxes and tax liabilities, and to remit Client's tax liabilities and otherwise act on Client's behalf in this regard;
 - (ii) provide accurate account numbers, remittance frequency and all other information required from time to time to permit accurate and timely remittance by Ceridian;
 - (iii) notify Ceridian in writing immediately of any changes to the frequency with which it must make its statutory remittances and provide Ceridian with any notices it receives from the Taxing Authorities relating to the frequency of such remittances or any other reporting requirements. Client shall continue to receive, review and be the contact for all correspondence and all other communications with the Taxing Authorities, but Client authorizes Ceridian to discuss matters relating to remittance of Client's source deductions with such Taxing Authorities;
 - (iv) communicate in writing any changes in services or changes that affect the information provided by Client to Ceridian ten (10) Business Days prior to the desired effective date of such change. Any penalty or other charges that result from incorrect, incomplete, or changed tax information provided by Client is Client's sole and exclusive liability and responsibility. Ceridian is not responsible for any matters existing prior to Ceridian's first Payroll date;
 - (v) review and compare the transmitted liabilities with Ceridian posted liabilities and notify Ceridian of any discrepancies within one (1) Business Day of initial receipt (or such other time period as reasonably established by Ceridian in accordance with its processing schedule
 - (vi) enter, maintain and transmit (via the Software) Payroll data to Ceridian, such number of days as established by Ceridian (acting reasonably) prior to the date the paychecks are to be issued and deposits are to be made, as required to meet agreed upon processing schedules;
 - (vii) provide mid quarter data within two (2) weeks of the Service Start Date, or by the 15th day of March, June, September, or December, whichever comes first, if Client's Service Start Date is after tax liabilities have been paid by Client in the quarter of service (or by such other deadlines as reasonably established by Ceridian from time to time in accordance with its processing schedule);
 - (viii) assist Ceridian in responding to inquiries or in processing amendment requests by providing the information necessary to meet Tax Authority requirements. Client shall provide Ceridian with written approval for amendments or inquiries resulting in additional tax, penalty and/or interest due, and agrees to fund these amounts in full prior to completion and submission;
 - (ix) retain records according to the schedules established by Taxing Authorities for Client. Ceridian has no responsibility or liability for maintaining or retaining records on behalf of Client;
 - (x) submit any necessary changes to the year-end tax file in accordance with the time frames reasonably established by Ceridian (such time frames will be established based on the time required, after receipt of such information by Ceridian, for Ceridian to perform its responsibilities within the time prescribed by the Taxing Authorities); and
 - (xi) provide Ceridian with Funds in an amount equal to the tax liability Payments to be made for a particular Payroll.

2.4 Year End Employee Tax Forms

- 2.4.1 Ceridian's Obligations. Ceridian will:
- (i) deliver the Tax Forms to Client no later than five (5) Business Days (or such other deadline as reasonably established by Ceridian from time to time in accordance with its processing schedule) after Client has committed/released to print (through the Software functionality) the Tax Forms in the year immediately following the calendar year for which the Tax Forms are being prepared (subject to Client's obligations to provide data and review output as contemplated herein, in a timely fashion);
 - (ii) provide support services via Ceridian's designated support portal for Client's technical personnel and primary users of the Services;
 - (iii) annually publish the Tax Forms production schedule;
 - (iv) print and/or post the type(s) and quantity of Tax Forms specified by Client and as the data appears in the file transmitted by Client; and
 - (v) package Tax Forms for shipment within five (5) Business Days (or such other deadline as reasonably established by Ceridian from time to time in accordance with its processing schedule) after Client has committed (through the Software application) to print/release the Tax Forms. Additional charges will apply for any Client requested (a) sorting and/or splitting, or (b) printing of Tax Forms.
- 2.4.2 Client's Obligations. Client will:
- (i) review Tax Forms upon receipt of same and notify Ceridian of any errors in such materials within two (2) Business Days (or such other deadline as reasonably established by Ceridian from time to time in accordance with its processing schedule) of receipt of printed Tax Forms; and
 - (ii) adhere to the annually published Tax Forms production schedule provided by Ceridian including: (a) completion of any necessary adjustments in the timeframe designated by Ceridian; and (b) committing the Tax Forms to print.

2.5 Wage Attachment Disbursements

- 2.5.1 Ceridian's Obligations. Ceridian will:
- (i) timely prepare and deposit Client's wage garnishment liabilities for those federal, state, and local payment processing units and individual third parties supported by Ceridian to which an Employee owes a debt and has agreed or is compelled by appropriate governmental authority to resolve via garnishment of Employee's wages;

- (ii) collect funds to cover the total amount of wage garnishment liabilities transmitted by Client in accordance with the terms set forth in the Funding Authorization or in accordance with the timelines established by Ceridian from time to time, acting reasonably; and
- (iii) provide a statement of account activity to Client summarizing funds collection and disbursement transactions. Ceridian is not responsible for providing additional administrative services including agency research, account reconciliation, and wage garnishment data input and adjustments except where Ceridian has agreed in writing to provide such services.

2.5.2 Client's Obligations. Client will:

- (i) provide wage garnishment data including wage order data, wage garnishment amounts, payee addresses, bank account information in a Ceridian approved format as outlined in user manuals, client communications and service advisories within the timeframes as required in respect of the Payroll data generally;
- (ii) provide funds to cover the total amount of wage garnishment liabilities transmitted by Client in accordance with the terms set forth in the Funding Authorization;
- (iii) notify Ceridian of any unscheduled and/or special Payroll runs that will impact wage garnishment data including void, manual, and/or adjustment transactions;
- (iv) correct any errors before transmitting Client's next Payroll or wage garnishment data transmission. Any penalty or other charges that result from incorrect, incomplete, and/or changed wage garnishment data received by Ceridian from Client, or from Client's changed information or signatures and documents in Client's possession that are not provided to Ceridian in a timely manner are Client's sole and exclusive responsibility; and
- (v) compensate Ceridian for any applicable late or miscellaneous fees related to the services. Any penalty or other charges that result from incorrect, incomplete, and/or changed wage garnishment data received by Ceridian from Client, or from Client's changed information that it has not disclosed to Ceridian in a timely manner is Client's sole and exclusive responsibility.

2.6 ACA Forms Filing Services (APPLIES ONLY WHEN ACA MANAGEMENT IS PURCHASED)

2.6.1 Ceridian will, upon receipt of complete, accurate and properly coded data in the format specified by Ceridian, annually file Client's ACA Forms in the format required by the Taxing Authority.

2.6.2 Client's Obligations. Client will:

- (i) prior to the Service Start Date and at appropriate intervals thereafter, provide Ceridian with such information, forms, written authorizations and other documentation as reasonably required by Ceridian to file ACA Forms;
- (ii) provide complete and accurate data to Ceridian in a Ceridian specified manner, and promptly review and validate data and correct any incomplete, inaccurate and improperly coded data. Taxing Authorities will not accept a data file that is incomplete or improperly formatted;
- (iii) adhere to the annually published ACA Forms production schedule provided by Ceridian including: (a) completion of any validation and necessary adjustments in the timeframe designated by Ceridian; and (b) committing the ACA Forms to Ceridian for processing; and
- (iv) respond to Taxing Authority inquiries related to the ACA Forms.

2.7 ACA Forms Print and Image Services (APPLIES ONLY WHEN ACA MANAGEMENT IS PURCHASED)

2.7.1 Ceridian's Obligations. Ceridian will:

- (i) annually publish the ACA Forms production schedule;
- (ii) subject to Client's obligations to provide complete, accurate and properly coded data, in a timely fashion, print and package ACA 1095-C Forms for shipment in accordance with its processing schedule. Employees may opt-out of receiving a printed form using the self-service functionality in the Software. Additional charges will apply for printing as well as any Client requested splitting of ACA Forms;
- (iii) make available a copy of ACA Forms within the Software for review and approval by Client administrators. Upon approval, ACA Forms may be printed from the system; and
- (iv) provide support services via telephone, electronic mail and/or access to Ceridian's designated web site for Client's technical personnel and primary users of the Services.

2.7.2 Client's Obligations. Client will:

- (i) complete web setup provided by Ceridian;
- (ii) provide complete and accurate data to populate ACA Forms, and promptly review and validate data (including any codes auto-populated by the Software), and correct any incomplete, inaccurate and improperly coded data. Taxing Authorities will not accept a data file that is incomplete or improperly formatted; and
- (iii) adhere to the annually published ACA Forms production schedule provided by Ceridian including: (a) completion of any validation and necessary adjustments in the timeframe designated by Ceridian; and (b) committing the ACA Forms to Ceridian for processing.

3. DAYFORCE WALLET / CARD PROGRAM. (APPLIES ONLY WHEN CLIENT SUBSCRIBES FOR DAYFORCE WALLET IN AN ORDER FORM)

3.1 As used in this Section 3:

3.1.1 "Accountholder Agreement" means the agreement to be entered into directly between an Employee and the Issuing Bank, with respect to the Employee's use of the Card and Dayforce Account;

3.1.2 "Advance" means any advance of monies made by Ceridian DF Licensing to the Trust, on behalf of the Client, in connection with and to fund On-Demand Pay, including:

- (i) On-Demand Pay amounts deposited into Dayforce Accounts;
- (ii) applicable source deductions payable to Taxing Authorities in respect of Advances made to Employees; and
- (iii) payments made to other third parties (in accordance with the rules configured in the Software) in connection with Advances made to Employees, including garnishments and benefit premiums;

3.1.3 "Card" means the access device or number associated with a Dayforce Account;

3.1.4 "Ceridian DF Licensing" means Ceridian Dayforce Licensing LLC, an Affiliate of Ceridian, licensed to provide the Advances contemplated for On-Demand Pay;

3.1.5 *"Dayforce Account"* means a Ceridian designated prepaid account established by an Employee with the Issuing Bank, into which Ceridian may distribute Payments (on behalf of the Client) to the Employee;

3.1.6 *"Dayforce Card Program"* (referred to as *"Dayforce Wallet"* on the Order Form) means, collectively, the overall program and associated mobile application functionality whereby Payments are made to the Dayforce Accounts, and (if made available by the Client) Employees may request advance payments of their wages or other compensation through On-Demand Pay, all as more particularly described in this Section 3;

3.1.7 *"Issuing Bank"* means the bank with which Ceridian has contracted to issue the Dayforce Accounts and Cards;

3.1.8 *"Line of Credit Agreement"* means the Line of Credit Agreement between Client and Ceridian DF Licensing, pursuant to which Ceridian DF Licensing will make available the Advances, the terms and conditions of which are set forth in Appendix A hereto;

3.1.9 *"Maximum Employee Advance"* means, in respect of each Employee, an amount equal to the Employee's gross wages or other compensation earned (during the then current Payroll period, as reflected in the Software) as of the date of the Advance request,

3.1.10 *"Network"* means the MasterCard, Cirrus and Maestro networks or substitute networks through which the Cards are accepted;

3.1.11 *"Next Scheduled Payroll"* means, at any given time, Client's immediately next scheduled Payroll to be processed hereunder;

3.1.12 *"On-Demand Pay"* means, where made available by Client to its Employees, the feature of the Dayforce Card Program whereby Ceridian (through Ceridian DF Licensing, under the Line of Credit Agreement) makes available to an Employee, an advance of net earned wages (or other earned compensation) prior to the Next Scheduled Payroll, by payment of such net earned amounts into the Employee's Dayforce Account; and

3.1.13 *"Rules"* means the laws, rules, regulations, by-laws or other operating standards or requirements of: (a) any Network; (b) any other card association operating a payment network which is utilized by Ceridian or the Issuing Bank for the purposes of provisioning a Dayforce Account or Card; (c) the National Automated Clearinghouse Association; or (d) other applicable regulators or associations with jurisdiction over activities associated with the Dayforce Card Program.

3.2 **General.** The Dayforce Card Program enables Client to make available to its Employees, the following:

3.2.1 the ability for Employees to establish individualized Dayforce Accounts, into which Payments (including On-Demand Pay) may be deposited, and from which the Employee may store, transfer and distribute funds, all as contemplated in the Accountholder Agreement; and

3.2.2 the ability to request payment of all or a portion of the Employee's wages or other compensation earned to date, prior to the Client's Next Scheduled Payroll.

3.3 Dayforce Accounts. In order to participate in the Dayforce Card Program, an Employee must enter into an Accountholder Agreement directly with the Issuing Bank. The Parties acknowledge and agree that the Dayforce Accounts are "payroll card accounts" as defined in Regulation E (12 CFR Part 205). Monies payable to an Employee will be deposited into an omnibus account in the name of the Issuing Bank (and under the issuing Bank's tax identification number), for the benefit of all Accountholders. Employee rights and obligations with respect to the Dayforce Account will be established by, and subject to, the terms and conditions of the Accountholder Agreement made between the Employee and the Issuing Bank, and may be maintained by Employee after his / her employment with Client ends. Ceridian or the Issuing Bank may refuse to issue or distribute a Dayforce Account to any Employee for which Ceridian or the Issuing Bank has not been able to independently verify the identity of the Employee, or where Ceridian has determined, in its sole discretion (acting reasonably), that an Employee represents an unreasonable risk (e.g. the Employee appears on a prohibited persons list).

3.4 **Client Covenants.** Client covenants, represents and warrants as follows:

3.4.1 it will offer Dayforce Accounts in accordance with applicable law; and

3.4.2 it will not distribute Payroll to Employees via Dayforce Accounts without first providing each Employee a copy of the applicable Accountholder Agreement and the Dayforce Accounts Fees disclosure form;

3.4.3 it will distribute to Employees such other program compliance related materials as may be reasonably requested by Ceridian from time to time; and

3.4.4 it will not distribute any materials with respect to the Dayforce Card Program that are not approved by Ceridian in advance.

3.5 Responsibility for Cards. To the extent physical Cards are provided to Client, Client accepts full responsibility for such Cards while in its possession or control (including inventory tracking and management), and will comply with all Rules issued at the time of physical card implementation. Client shall notify Ceridian and/or Ceridian's designee immediately upon becoming aware of any loss, theft, unauthorized use or fraudulent use of Cards and shall be fully responsible for the unauthorized or fraudulent use thereof.

3.6 Program Audit Rights. Client agrees that Ceridian, the Issuing Bank, and regulatory authorities having jurisdiction over Issuing Bank or Ceridian, will have the right to audit and inspect Client's books and records related to the Dayforce Card Program and Client's performance of its obligations with respect thereto, including: (a) any of Client's records pertaining to the set-up of Employees for participation in the Dayforce Card Program; and (b) marketing materials related to the Program. In the event a communication from a governmental authority regarding the Dayforce Card Program is received: (1) by Client, Client will promptly notify Ceridian; and (2) reasonably cooperate with any such inquiry received by Client, Ceridian or the issuing Bank.

3.7 **On-Demand Pay.**

3.7.1 As and when requested (and initiated) by an Employee through the Software, Ceridian will cause Ceridian DF Licensing to make an Advance (to the Trust) in an amount not to exceed the Maximum Employee Advance, to be distributed by the Trust as follows:

(i) payment of Employee's net wages (or other compensation) earned into the Employee's Dayforce Account.

(ii) withholding, and paying when due, the tax liabilities (as described in Section 2.3.1 above) payable in respect of the Advance, to the Taxing Authorities; and

(iii) withholding, and paying when due, other applicable third party payments (as configured in the Software) payable in respect of the Advance (such as, by way of example only, garnishments), to the respective third parties.

For the avoidance of doubt, certain limits and restrictions with respect to Advances can be configured in the Software, but in no event will an Employee be permitted to receive an Advance in an amount greater than the Maximum Employee Advance.

3.7.2 The Advances will be made by Ceridian DF Licensing on an interest free basis, provided the Advances are repaid in full on the Next Scheduled Payroll from the Payroll Funds provided by Client for the Next Scheduled Payroll. For the avoidance of doubt, Client will not be entitled to carry an ongoing balance beyond the Next Scheduled Payroll. Ceridian reserves the right to charge interest on any Advances not paid in full by the Next Scheduled Payroll, which will accrue from the date of each Advance, at the interest rate as set forth in the Line of Credit Agreement.

3.7.3 Ceridian reserves the right to cease making Advances, in whole or in part, or to institute limits on the Advances, as it considers reasonable and prudent, at any time and from time to time, in its sole discretion. In this regard, Client acknowledges and agrees that while Ceridian (and Ceridian DF Licensing) may provide Advances under the Line of Credit Agreement initially without requiring security for the Line of Credit (by way of example only, during a pilot phase or initial roll out of the Dayforce Card Program), a priority security interest or other form of protection or assurance with respect to the Line of Credit will be required from Client when the On-Demand Pay feature is used by more Employees and / or the aggregate amount of the Advances exceeds the limits established by Ceridian where security is required, in its sole discretion.

3.7.4 In order to facilitate the Advances contemplated in connection with On-Demand Pay, Ceridian has arranged for its Affiliate, Ceridian DF Licensing, to provide Client a short term credit facility, on the terms and conditions as set forth in the Line of Credit Agreement. The Advances to be made by Ceridian DF Licensing under the Line of Credit will be provided directly to the Trust, to be distributed as set forth in Section 3.7.1 above, for and on behalf of the Client. **BY EXECUTING AN ORDER FORM SUBSCRIBING FOR THE DAYFORCE WALLET, IN ADDITION TO AGREEING WITH CERIDIAN TO THE TERMS OF THIS SECTION 3, CLIENT IS ALSO AGREEING WITH CERIDIAN DF LICENSING TO BE BOUND BY AND COMPLY WITH THE TERMS AND CONDITIONS OF THE LINE OF CREDIT AGREEMENT.** Access to the On-Demand Pay feature of the Dayforce Card Program, and the obligation of Ceridian to cause Advances to be made, is subject to Client agreeing to, and complying at all times with, the terms and conditions of the Line of Credit Agreement.

3.8 Contact with Employees. Client acknowledges and agrees that Ceridian (and / or the Issuing Bank, as applicable) may directly contact Employees as reasonably required in connection with the Dayforce Program, including: to provide additional information about features and functionality associated with the Dayforce Card Program; requesting information required to set up or maintain a Dayforce Account or Card, including verification of identity; provide support for Employees in connection with the Dayforce Card Program; and otherwise as reasonably required to meet its obligations to Client and the Employees in connection with the Dayforce Card Program.

3.9 Right to Change or Discontinue the Program. The Dayforce Card Program may be modified, suspended or discontinued by Ceridian at any time or from time to time, including as necessary to remain compliant with the Rules.

4. ADDITIONAL PROVISIONS

4.1 Client's Acknowledgement Regarding Trust Funds. Ceridian has established and shall maintain the Trust for the purpose of holding and keeping Funds and other trust funds received from its clients separate from Ceridian's own property. For clarity, the principal amount of the Funds received by Ceridian from Client shall at all times while in the possession or control of Ceridian, be held in the Trust. Client acknowledges that Ceridian is entitled to invest monies held by the Trust in accordance with the investment guidelines established from time to time by Ceridian, and that Ceridian, in its own capacity, is entitled as income beneficiary to all income and gains derived or realized from such investments and is not accountable to Client, the Employees, or any other person for such income or gains. The Trust is entitled to pledge such investments for borrowings of the Trust to facilitate the Payments, rather than converting the investments into cash. Notwithstanding any limitation of liability contained in the MSA, Ceridian shall fully and completely indemnify and save Client and Client's Affiliates harmless from and against any and all loss of any portion of the principal amount of the Funds (including any losses of principal resulting from the investment of the Funds) caused by Ceridian, to the extent such Funds were actually received by Ceridian.

Appendix A

Dayforce Card Program - Line of Credit Agreement

This line of credit agreement ("*Line of Credit Agreement*") is made between Client and Ceridian Dayforce Licensing LLC ("*Ceridian DF Licensing*"), an Affiliate of Ceridian, as of the date of the Order Form signed by the Client subscribing for the Dayforce Card Program. Capitalized terms used herein are defined below.

RECITALS

WHEREAS:

- A. Client and Ceridian HCM, Inc. ("*Ceridian*") have entered into (or are contemporaneously herewith entering into) the Ceridian HCM Agreement, pursuant to which the Parties agree that Ceridian will be providing Client with certain payroll processing services.
- B. Client is desirous of its Employees having access to Advances under the On-Demand Pay functionality offered by Ceridian under the Agreement.
- C. In order to facilitate the Advances contemplated in connection with On-Demand Pay, Ceridian has arranged for its Affiliate, Ceridian DF Licensing, to provide a short term credit facility to Client, on the terms and conditions as set forth in this Line of Credit Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained in this Line of Credit Agreement, Client and Ceridian DF Licensing agree as follows:

1. CAPITALIZED AND DEFINED TERMS; INCORPORATION OF TERMS

- 1.1. **Incorporation of Terms.** This Line of Credit Agreement is entered into between Client and Ceridian Dayforce Licensing, in connection with the Ceridian HCM Agreement. In this regard, the Parties agree that the terms and conditions of the Master Services Agreement shall also apply to this Line of Credit Agreement, and are incorporated herein by reference; provided, however, that Section 8 (Limitation of Remedies) or any other similar provision of the Master Services Agreement limiting a party's liability to a multiple of the Fees paid by the Client thereunder, shall not apply to this Line of Credit Agreement. In the event of any conflict between the terms of the Master Services Agreement and the terms of this Line of Credit Agreement, the terms of this Line of Credit Agreement will prevail. All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Ceridian HCM Agreement. In this regard, and for ease of reference, certain terms defined in the Ceridian HCM Agreement which are applicable to this Line of Credit Agreement, have been reproduced below, together with additional defined terms used herein.
- 1.2. **Defined Terms.** As used herein:
 - 1.2.1. "*Advance*" means any advance of monies made by Ceridian DF Licensing to the Trust, on behalf of the Client, in connection with and to fund On-Demand Pay, including:
 - 1.2.1.1. On-Demand Pay amounts deposited into Dayforce Accounts;
 - 1.2.1.2. applicable source deductions payable to Taxing Authorities in respect of Advances made to Employees; and
 - 1.2.1.3. payments made to other third parties (in accordance with the rules configured in the Software) in connection with Advances made to Employees, including garnishments and benefit premiums;
 - 1.2.2. "*Ceridian HCM Agreement*" means the written agreement between Client and Ceridian pursuant to which Client engaged Ceridian to provide Client with certain payroll processing services, the details of which are known to the parties. The terms and conditions applicable to such agreement are set forth in an Order Form, together with the various terms and conditions incorporated therein by reference, including a Master Services Agreement, Service Particulars, Statement(s) of Work and other applicable documents and funding authorizations;
 - 1.2.3. "*Ceridian DF Licensing*" means Ceridian Dayforce Licensing LLC, an Affiliate of Ceridian, licensed to provide the Advances contemplated for On-Demand Pay;
 - 1.2.4. "*Dayforce Account*" means a Ceridian designated prepaid account established by an Employee with the Issuing Bank, into which Ceridian may distribute Payments (on behalf of the Client) to the Employee;
 - 1.2.5. "*Dayforce Card Program*" means, collectively, the overall program whereby Payments are made to the Dayforce Accounts, and (if made available by the Client) Employees may request advance payments of their wages or other compensation through On-Demand Pay, all as more particularly described in the Ceridian HCM Agreement;
 - 1.2.6. "*Issuing Bank*" means the bank with which Ceridian has contracted to issue the Dayforce Accounts and Cards;
 - 1.2.7. "*Line of Credit Agreement*" means this Line of Credit Agreement;
 - 1.2.8. "*Master Services Agreement*" means the written Master Services Agreement comprising part of the Ceridian HCM Agreement, and any schedules, appendices or other attachments thereto;
 - 1.2.9. "*Maximum Credit Limit*" has the meaning set forth in Section 2.1.2 below;
 - 1.2.10. "*Maximum Employee Advance*" means, in respect of each Employee, an amount equal to the Employee's gross wages or other compensation earned (during the then current Payroll period, as reflected in the Software) as of the date of the Advance request;
 - 1.2.11. "*Next Scheduled Payroll*" means, at any given time, Client's immediately next scheduled Payroll to be processed hereunder;
 - 1.2.12. "*On-Demand Pay*" means, where made available by Client to its Employees, the feature of the Dayforce Card Program whereby Ceridian (through Ceridian DF Licensing, under the Line of Credit Agreement) makes available to an Employee, an advance of net earned wages (or other earned compensation) prior to the Next Scheduled Payroll, by payment of such net earned amounts into the Employee's Dayforce Account; and
 - 1.2.13. "*Prime Rate*" means the annual rate of interest announced from time to time by Ceridian's primary financial institution as a reference rate then in effect for determining interest rates on U.S. dollar commercial loans in the United States.

2. TERMS OF ADVANCE

2.1. Advances. Ceridian DF Licensing agrees to provide short term credit facility to Client, by way of Advances to be made to the Trust on behalf of Client to facilitate the On-Demand Pay requests, in accordance with the following:

2.1.1. Employee Advances. As and when requested by Ceridian (as initiated by an Employee through the Software), Ceridian DF Licensing will make an Advance to the Trust up to the Maximum Employee Advance, for and on behalf of the Client, for distribution to the Employee and others by the Trust as contemplated under the terms of the Dayforce Card Program. Each Advance processed by Ceridian DF Licensing will be considered an Advance at the end of the Business Day on the date of processing of the Advance.

2.1.2. Client Advance Limits and Restrictions. Ceridian DF Licensing reserves the right, in its sole and absolute discretion, to institute a maximum dollar amount (the "*Maximum Credit Limit*"), or to impose other restrictions or limits on the Advances to be made on behalf of the Client to its Employees hereunder. The Maximum Credit Limit and other restrictions and limits are subject to review and revision by Ceridian DF Licensing from time to time, with any such change to be communicated to Client in writing no less than one Payroll period in advance. In addition, this Line of Credit Agreement may be temporarily suspended from time to time, or terminated by Ceridian DF Licensing at any time, in each case in Ceridian DF License's sole discretion.

2.1.3. Due Diligence. Prior to the initial Advance and periodically thereafter, Ceridian DF Licensing may conduct due diligence to determine Client's eligibility to participate in the On-Demand Pay program. Client agrees to provide Ceridian DF Licensing with reasonable access to information as reasonably requested from time to time to evaluate Client's suitability for participation in the On-Demand Pay program, or to establish or review limits imposed on the Advances.

2.2. Notice of Client Default. Client agrees to immediately notify Ceridian DF Licensing upon becoming aware of the existence of any condition or event which with the lapse of time or failure to give notice would cause Client to be in breach of its obligations under this Line of Credit Agreement, including the ability to repay outstanding Advances. Such written notice will specify the nature and period of the existence of such condition or event, and any action which Client is taking or propose to take with respect thereto.

3. REPAYMENT

3.1. Repayment of Outstanding Advances. Client agrees to repay all outstanding Advances in full on the Next Scheduled Payroll, from Funds provided in the ordinary course by Client for the Next Scheduled Payroll, or such other payment method as agreed upon by Ceridian or Ceridian DF Licensing. For the avoidance of doubt, Client will not be entitled to carry an ongoing balance beyond the Next Scheduled Payroll. Ceridian DF Licensing reserves the right to charge interest on any Advances not paid in full by the Next Scheduled Payroll, with interest accruing from the date of each Advance, at an interest rate equal to the Prime Rate plus two (2%) percent.

3.2. Client Breach. If Client fails to pay the full amount of all outstanding Advances on the Next Scheduled Payroll, Client agrees that Ceridian DF Licensing may:

3.2.1. immediately terminate Client's and/or its Employees' participation in On-Demand Pay;

3.2.2. subject to any right to notice of default and right to cure required by state law, declare all outstanding Advances immediately due and payable,

3.2.3. debit Client's bank account for all outstanding Advances;

3.2.4. exercise a right of offset against other Funds held in Trust on behalf of Client; and

3.2.5. pursue any and all other remedies available to it at law.

Client waives any and all defenses to liability under this Line of Credit Agreement other than payment in full.

3.3. Attorneys' Fees and Collection Costs. To the extent not prohibited by applicable law, Client shall pay Ceridian DF Licensing, on demand, any and all expenses, including, but not limited to, arbitration filing and other fees, collection costs, reasonable attorneys' fees, and all other expenses expended by Ceridian DF Licensing to obtain or enforce payment obligations of Client hereunder.

4. ADDITIONAL TERMS

4.1. Additional Assurance. Ceridian DF Licensing has agreed to provide an initial Line of Credit to Client, for the purposes Client's pilot participation in the On-Demand Pay Program, without requiring a security interest or other assurances of repayment of the Outstanding ODP amounts. However, the Parties acknowledge and agree that Ceridian DF Licensing shall have the right, in its sole discretion, to require that Client provide additional assurances to continue its participation in the On-Demand Pay Program as the number of potential Employees accessing funds through the On-Demand Pay Program increases, the potential dollar amount of the Credit Limit increases beyond the limit or threshold amount considered reasonable (in Ceridian's sole discretion) for an unsecured credit facility, or otherwise if Ceridian believes that the Client's ability to repay the Outstanding ODP amounts has deteriorated. Ceridian DF Licensing shall provide Client with notice of its intention to require such additional assurance, and the Parties will agree upon the nature and form of security to be provided, failing which Client's participation in the On-Demand Pay Program may be limited to the then current level (or such other limit as Ceridian considers reasonable in the circumstances for an unsecured facility) or terminated. By way of example only, the kinds of assurances reasonably acceptable to Ceridian DF Licensing, include the following: (i) granting Ceridian DF Licensing a security interest, (ii) providing Ceridian DF Licensing a letter of credit, (iii) pre-funding the Maximum Credit Balance or some other amount mutually agreed by the Parties, (iv) placing cash on deposit with Ceridian DF Licensing, or (v) revising the method and timing of funds transfer (e.g., requiring a drawdown wire to be processed at an earlier time than originally stipulated).

4.2. Transfer and Assignment. Ceridian DF Licensing reserves the right to sell, transfer, or assign all or any portion of its interest in this Line of Credit Agreement (including, without limitation, any amounts advanced hereunder from time to time) to another entity or person and Client hereby knowingly consents to such sale, transfer, or assignment. This Line of Credit Agreement, and the rights and obligations hereunder, may not be assigned by Client (including by operation of law) without Ceridian's prior written consent and any purported assignment in violation of the foregoing shall be void ab initio. For the avoidance of doubt, no such transfer or assignment shall be effective unless the assignee has agreed to be bound by the terms and conditions of this Agreement.

4.3. Term and Termination. This Agreement commences as of the Effective Date, and unless earlier terminated in accordance with the express terms hereof, will continue for so long as Ceridian continues to provide Client with the Dayforce Card Program Services under the Ceridian HCM Agreement. For the avoidance of doubt, this Line of Credit Agreement shall automatically terminate contemporaneously with the expiration or termination (for any reason) of the Ceridian HCM Agreement.

- 4.4. Breach, Default, and Termination.** Without limiting the generality of the application of the Master Service Agreement to this Line of Credit Agreement (as contemplated under Section 1.1 above), the parties agree that Section 3.2 (Termination) of the Master Services Agreement shall apply to this Line of Credit Agreement.

5. CLIENT'S REPRESENTATIONS AND WARRANTIES.

Client represents and warrants as follows on the date hereof and on the date any advance is made hereunder:

- 5.1. Formation.** Client is duly organized, validly existing, and in good standing under the laws of its state of incorporation and is duly qualified or licensed and in good standing to do business as a foreign entity in all jurisdictions in which Client does business.
- 5.2. Client's Authorization.** The execution, delivery and performance by Client of this Line of Credit Agreement are within Client's powers, have been authorized by all necessary corporate action and do not and will not contravene Client's Articles of Incorporation or Bylaws, violate any provision of law or result in a breach of or default under any other Line of Credit Agreement to which Client is a party, including any other financing agreements.
- 5.3. Litigation.** There is no pending or threatened action, claim, investigation, lawsuit or proceeding affecting Client before any court, governmental agency, arbitrator or arbitration panel, which if decided adversely to Client would have a material adverse effect on the financial condition or operations of Client.
- 5.4. Valid Obligations.** This Line of Credit Agreement when delivered hereunder will be legal, valid and binding obligations of Client, enforceable against Client in accordance with their respective terms.
- 5.5. Taxes.** Client (i) has filed all tax reports and returns, if any, required to be filed, including but not limited to reports and returns concerning income, franchise, employment, sales and use, and property taxes; (ii) has paid all of its tax liabilities, if any, which were due on or prior to the date hereof; and (iii) is not aware of any pending investigation by any taxing authority nor of any pending assessments or adjustments which would materially increase its tax liability.
- 5.6. Solvency.** Client is not in default under any agreement by which it has obtained the right to make and sell any of the services or other products sold and/or provided by it. Client represents that as of the date of this Line of Credit Agreement (i) Client has no present intention to close or cease operating its business, in whole or in part, temporarily or permanently, (ii) Client is solvent and not contemplating any insolvency or bankruptcy proceeding, (iii) during the four (4) months preceding the date hereof, Client has not discussed with or among Client's management, counsel, or any other advisor or creditor, any potential insolvency, voluntary or involuntary bankruptcy, receivership, or assignment for the benefit of creditors with respect to Client and no such action or proceeding has been filed or is pending, and (iv) no eviction or foreclosure is pending or threatened against Client.
- 5.7. Business Information.** All information (financial and other) provided by or on behalf of Client to Ceridian and Ceridian DF Licensing in connection with the execution of or pursuant to the Ceridian HCM Agreement and this Line of Credit Agreement and during the term of this Line of Credit Agreement is and will be true, accurate and complete in all respects.

6. GENERAL PROVISIONS

- 6.1. General Provisions of the Master Services Agreement Apply.** Without limiting the generality of the application of the Master Service Agreement to this Line of Credit Agreement (as contemplated under Section 1.1 above), the parties agree that Section 13 (General) of the Master Services Agreement shall apply to this Line of Credit Agreement.
- 6.2. Survival of Repayment Obligations.** Notwithstanding anything herein or in the Master Services Agreement to the contrary, Client's obligation to repay all Advances in full shall continue in full force and effect until all such Advances have been paid in full, notwithstanding the expiration or termination of this Line of Credit Agreement or the Ceridian HCM Agreement. Any Section herein that, by its terms, suggests survival beyond termination hereof, shall so survive until the natural expiration thereof.

SERVICE PARTICULARS DAYFORCE CLOCK TERMS

(APPLICABLE ONLY TO DAYFORCE BUNDLES WHERE CLIENT RENTS OR PURCHASES CERIDIAN CLOCKS)

1. CAPITALIZED AND DEFINED TERMS

1.1 All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Agreement (as defined in the MSA) or the Dayforce General Terms (the Service Terms applicable to all Dayforce bundles), as applicable.

1.2 As used herein:

1.2.1 “*Ceridian Clocks*” means clocks (including Factory Reconditioned Clocks), hardware and other ancillary products, purchased or rented by Client from Ceridian as part of the Services, as set forth in the Order Form;

1.2.2 “*Factory Reconditioned Clocks*” means Ceridian Clocks which are identified as being factory reconditioned on the Order Form.

2. CLOCK TERMS

2.1 Installation of Purchased or Rented Clocks from Ceridian

2.1.1 Ceridian's Obligations. Ceridian will:

- (i) deliver Ceridian Clocks to Client in good working condition. Ceridian Clocks will be shipped upon the initial project kick-off – clock discovery meeting, or for orders placed after project kick-off – clock discovery, immediately upon order placement;
- (ii) make all corrections necessary to bring terminal(s) into compliance with the applicable specifications; and
- (iii) provided Client is current on the mandatory maintenance fees for the Ceridian Clocks, provide maintenance services consisting of support, periodic updates to firmware, and updates to interfaces for the Software as required, as well as provide emergency replacement of terminal(s) that Ceridian stocks in the normal course of business. Emergency replacements will be shipped same Business Day if a return merchandise authorization (rma) is issued prior to 2:00 p.m. Eastern Time. If after 2:00 p.m. Eastern Time, shipment will be next Business Day. The maintenance fees are included in the base rental fee for rental Ceridian Clocks but are payable on an annual basis for purchased Ceridian Clocks. NEMA model Ceridian Clock maintenance includes a return and repair policy rather than emergency replacement.

2.1.2 Client's Obligations. Client will:

- (i) make available a suitable place of installation, adequate power and surge protection, and cabling. Client is responsible for location and mounting of the terminal(s) in compliance with accessibility laws and all building codes;
- (ii) install and test terminal(s);
- (iii) within fifteen (15) days of the receipt of terminal(s), notify Ceridian of any material Defect in terminal(s). If Client does not send written notice of the occurrence of a material Defect within such fifteen-day time period, Client will be deemed to have accepted terminal(s);
- (iv) return any rented hardware within fifteen (15) days upon termination of these Service Particulars (save for Maximus model Ceridian Clocks which do not have to be returned to Ceridian if the rental period is two (2) years or greater). Ceridian Clock rental fees will continue to accrue until all hardware has been returned.

2.1.3 Except for NEMA model Ceridian Clocks which may not be returned, Client has the option to return rental or capital purchased hardware, within forty-five (45) days of receiving shipment, so long as the hardware is unopened and unused (in the case of Factory Reconditioned Clocks, so long as the hardware has not been installed). Client is responsible for shipping costs of returned Ceridian Clocks. Any returns not meeting the above conditions are not eligible for a refund of fees paid.

2.1.4 If applicable, rental fees will begin to accrue immediately upon receipt of the rented Ceridian Clocks, and are required for a minimum period of twelve (12) months. Rental fees are applicable for the duration of time during which Client has the Ceridian Clocks in their possession. Rental fee accrual will not be terminated without an approved rma and will continue until Ceridian receives all Ceridian Clocks. If Client places the implementation on hold for any reason, Ceridian Clock rental fees will continue to apply.

2.1.5 With the exception of NEMA model Ceridian Clocks, if an emergency replacement of any terminal is required as part of the maintenance coverage, Client is obligated to return the original terminal(s) within fifteen (15) days of shipment of replacement. If Client does not return the original terminal(s) within this timeframe, Client will be charged full list price for the replacement terminal(s).

2.2 Ceridian Clock Warranty. Ceridian warrants that it has the right to sell terminal(s) to Client. Ceridian is not responsible or liable for damage, malfunction, or performance failures resulting from changes made to terminal(s) after acceptance or damage caused by the misuse, physical abuse, improper operation, the environment or other causes beyond Ceridian's exclusive control.

2.3 Employee Information Tracked on Ceridian Clocks (including Webclocks). Client shall be responsible for complying with all applicable laws associated with the collecting, processing, and tracking of employee Personal Data (including all applicable privacy laws), including with respect to geo-tracking and biometric information (if applicable). Client acknowledges and agrees that it is Client's responsibility to establish and maintain appropriate security and privacy procedures and policies, to properly inform its employees of the collecting, processing, and tracking of information, to obtain all necessary consents with respect thereto and to obtain all applicable government registrations. While Ceridian may inform Client's employees regarding the collection and use of Personal Data, this is not a substitute for Client's responsibilities and obligations as set forth herein. It is Client's responsibility to consult with independent legal counsel to ensure it is complying with all applicable privacy laws. Ceridian shall not be responsible for Client's use of such information or the application.

SERVICE PARTICULARS DAYFORCE ANCILLARY SERVICES TERMS (US)

(APPLICABLE TO THOSE ANCILLARY SERVICES PURCHASED BY CLIENT AS REFLECTED IN THE ORDER FORM)

1. Ceridian makes available certain ancillary services for use in connection with the Dayforce Services. Client may elect to use the following ancillary services at any time throughout the Service Term, at the then current Fee charged by Ceridian for such ancillary services (as set forth in the Order Form and/or Rate Sheet, as applicable). All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Agreement (as defined in the MSA) or the Dayforce General Terms (the Service Terms applicable to all Dayforce bundles), as applicable.

2. **INSIGHTS Conference Discounted Annual Pass (the "Pass").** For each annual Pass Fee paid, Client will be entitled to send one representative to the annual INSIGHTS conference. This Fee covers admission to the conference and all sponsored events ordinarily included with such Fee (see INSIGHTS brochure for more details). Should INSIGHTS Plus be chosen, the Fee covers the aforementioned admission as well as Client's access to the hands-on lab sessions offered. Client will be responsible for all travel, accommodations and other expenses incurred. The first year's Fee will be invoiced upon signing this document and payable in accordance with the payment terms for Client's other Services. Client will automatically be renewed to attend the conference each year of the Service Term, for the Fee set forth in the Order Form (which Fee may be increased by Ceridian each year by written notice to Client). The Pass will subsequently be billed each year of the Service Term one (1) year from the date of the original Pass invoice. If the Pass is cancelled sixty (60) days prior to the conference, a refund of the Pass Fee, minus a \$150 administrative fee will be provided to Client. If the Pass is cancelled within 59 days of the conference, a refund of fifty (50%) percent of the Pass Fee, minus a \$150 administrative fee will be provided to Client. Client acknowledges that the Pass is valid only for the year it is administered and cannot be used for subsequent years of the Service Term.

3. **Employment and Salary Verification.** Ceridian will conduct employment, income and other employment status verification searches (at the then current rate, to be confirmed at time of ordering) for Client. Client will provide Ceridian with the required information in time for Ceridian to complete the Services in accordance with the mutually agreed upon processing schedule. As the data furnisher, Client shall be solely responsible for the accuracy of all data and information provided to Ceridian, and in this regard will participate (as needed) in consumer dispute resolution process that may occur related to the accuracy of information provided to Ceridian. The third party contractor through whom Ceridian provides this Service owns and operates The Work Number and is a Consumer Reporting Agency, as defined by the federal Fair Credit Reporting Act (FCRA). Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website: www.consumerfinance.gov/learnmore. The specific obligations of Furnishers of Information under the FCRA can be found at www.federalregister.gov/articles/2012/11/14/2012-27581/fair-credit-reporting-regulation-v-correction#h-14.

4. **Unemployment Compensation.** Ceridian will become the "address of record" on behalf of Client to ensure the appropriate unemployment compensation forms are delivered on behalf of Client, and determine (in consultation with Client) whether or not unemployment claims should be protested and provide consultation on unemployment appeals and hearings. Ceridian will also verify unemployment rates and charges, protest invalid charges, verify annual unemployment tax rate assessment, calculate voluntary contributions when applicable and provide quarterly management reports. Client will deliver the required information in time for Ceridian to complete such services in accordance with the mutually agreed upon processing schedule, and will be solely responsible for the accuracy of all data and information furnished to Ceridian.

5. **Block of Hours.** Client may purchase a block of hours for Professional Services (as defined below) at a discounted hourly rate for use within a twenty-four (24) month period, effective upon project kick-off of Implementation Services (or upon signing of subsequent Order Forms). The Fees associated with the Professional Services set forth in the Order Form will be invoiced and payable on a monthly basis, based on actual hours worked, with any balance invoiced upon expiration of the 24-month period. Any Professional Service hours remaining at the end of said 24-month period will lapse and cannot be carried over to the following year. The discounted hourly rate shall apply to additional Professional Services hours upon Client's request during said 24-month period. Once the 24-month period has lapsed, additional hours will be subject to Ceridian's then current rate. If Client terminates the Professional Services for any reason, any remaining outstanding balance will be payable immediately. Client assumes all responsibility for determining the appropriate number of Professional Services hours it will require. While Ceridian provides historical or industry data as context for Client, Ceridian cannot be held liable for over or under estimation of hours Client may need pursuant hereto. For the purposes of this section, "Professional Services" is for-fee work performed by Ceridian's Professional Services Team, as determined by Ceridian, which includes projects performed to complement, enhance, or modify Client's configuration and/or data to meet Client's current or future business needs.

6. **Additional Environments.** For purposes of conducting ongoing configuration activities in a non-production environment, Ceridian will provide Client with access to the number of additional non-production environments set forth in the Order Form. One Time Fees will be invoiced upon environment availability and Recurring Fees will be invoiced and payable monthly, commencing upon environment availability.

7. **Language Packs.** Language Packs shall be added to the Software. Through this feature, Ceridian, for any given language, will translate labels in the user interface (UI) and may translate all, some, or none of the Dayforce admin & user guides, release notes, and interface specifications.

8. **Application Support – Premium.** In addition to the standard support provisions set out in the Dayforce General Terms, Client shall receive the enhanced first response times and hours of first response for urgent matters, as set forth in the following table:

SEVERITY	DESCRIPTION	FIRST RESPONSE
Urgent	A complete inability to use major functionality within the application resulting in a serious impact to the Client's business operations with no existing workaround	Within 1 hour (Monday to Sunday)
High	Severely limited ability to use major functionality within the application that could impact the Client's business operations, with workarounds that may not fully address the issue	Within 4 business hours (Monday to Friday)

8. Dayforce Managed Garnishments.

8.1 Ceridian's Obligations. Ceridian shall: (i) receive wage garnishment order directly from Client or by Electronic Income Withholding Orders (e-IWO) via the department of Health and Human Services for child support orders; (ii) notify sender if the information that Ceridian has received is insufficient. Ceridian is not responsible for any pre-existing errors or similar matters arising prior to commencement of the Services by Ceridian or for any errors that may occur in the event that Ceridian is not provided with the necessary information by Client in a timely manner; (iii) retain a copy of each order received, subject to Ceridian's data retention policies and as required to execute the Service; (iv) review, set-up, modify or terminate each garnishment in the payroll system as directed in the applicable wage garnishment order; (v) provide garnishment order information to impacted employees if required by applicable state laws; (vi) setup the required calculation method, target, goal, payee information and employee arrear amounts as required in the payroll system; (vii) ensure multiple employee garnishments are properly prioritized as per legislative requirements; (viii) configure garnishment administration fees as directed by the Client business rules; (ix) respond to Client requests regarding the appropriate wage garnishment deductions for bonuses and off cycle checks; (x) remit payment and required reporting to the appropriate payees as specified in the garnishment order; (xi) research and take action on any returned funds and determine if the employee or Client should be

reimbursed for such funds; (xii) send notification to the originating party of the garnishment order stating that the payer is no longer an employee of the Client upon employee termination; (xiii) respond to routine agency interrogatories; (xiv) assist with management of garnishments pertaining to void and reissue of payroll checks; (xv) maintain garnishment rules in the system; (xvi) the Services do not include Ceridian appearing in court on behalf of Client or any activity that constitutes the practice of law. If legal representation of Client is required, Ceridian will furnish Client with the relevant wage garnishment data in Ceridian's possession to support Client's efforts to comply with the request; and (xvii) upon termination of the Services, provide wage garnishment document images to Client at Ceridian's agreed rate as referenced in the Order Form.

8.2 Client's Obligations. Client shall: (i) submit a completed and signed e-IWO consent form listing each FEIN; (ii) assign a primary point of contact and designated alternate contact responsible for coordinating Service delivery; (iii) provide wage garnishment data including wage order details, wage garnishment amounts, payee addresses, bank account information, within the timeframes as required in respect of the Payroll data generally; (iv) except in the case of e-IWO, receive and retain the original wage garnishment orders and provide Ceridian a copy of wage garnishment orders via email or fax (not in paper form) or SFTP no later than three (3) Business Days after Client's receipt of such documents; (v) be responsible for the accuracy and completeness of wage garnishment orders and information provided to Ceridian; (vi) review garnishment reports to ensure receipt of all garnishments; (vii) notify Ceridian of any unscheduled and/or special payroll runs that will impact wage garnishments; and (viii) notify Ceridian three (3) weeks in advance of any bonus runs or lump sum payment to allow Ceridian adequate lead time to obtain agency direction for wage garnishment deductions from such payments. In the event Client business conditions do not allow adequate time for Ceridian to contact and receive a response from agencies regarding appropriate wage garnishment deductions, Ceridian will contact Client to approve the wage garnishment deduction amount and Client is solely responsible for the accuracy of the payroll deduction amount; any penalty or other charges that result from incorrect, incomplete, and/or changed wage garnishment data received by Ceridian from Client or from Client's changed information or signature and documents in Client's possession that are not provided to Ceridian in a timely manner are Client's sole and exclusive responsibility.

8.3 Employee Contact Center (Dayforce Managed Garnishments). Upon Client request and for additional Fees, Ceridian will provide authorized Employees with contact center support via phone or email to answer questions concerning the Services. Queries from spouses or third parties will not be honored by Ceridian; the only exceptions being cases for powers of attorney and estates. The contact center will be available Monday through Friday between 8:00 a.m. and 8:00 p.m. Eastern Time (excluding holidays).

9. Technical Account Manager ("TAM"). Client will be assigned a TAM to serve as a designated resource to Client following the implementation of Services, for purposes of assisting Client with adoption of the Software within its organization, providing ongoing support of Software releases and assisting with related communication between Client and Ceridian.

10. Dayforce Education Services.

10.1 Dayforce Essentials (applicable when a Core Module is purchased). Ceridian will make a set of tools available for the purposes of creating and executing communication and go-live training plans. The tools include introductory role-based videos, sample email announcements, sample job aids, communication and training project plan templates, and videos that provide an introduction to Dayforce module functionality.

10.2 Dayforce MyPath. Ceridian will provide pre-built end-user training content accessible via the Dayforce application or loaded in Client's learning management system, as elected by Client, for an additional Fee. All users with access to the Dayforce application will have access to content during the subscription period which includes e-learning, student guides and job aids.

10.3 Dayforce MyPath Pro. Ceridian will provide pre-built training content accessible via the Dayforce application or loaded into Client's learning management system, as elected by Client, for an additional Fee. All users with access to the Dayforce application will have access to content during the subscription period which includes e-learning, student guides and job aids. Allows a single named user with an active subscription to author content.

10.4 Dayforce Education Package. Ceridian will provide a certain number of Live Memberships based on the Number of Employees (1-1000 Employees – 3 Live Memberships; 1001–5000 Employees - 5 Live Memberships; 5000+ Employees – 10 Live Memberships). Client will be entitled to the Services set forth in the sections titled "Dayforce Live Membership" and "Dayforce MyPath".

10.5 Dayforce Education Package Pro. Ceridian will provide a certain number of Live Memberships based on the Number of Employees (1-1000 Employees – 3 Live Memberships; 1001–5000 Employees - 5 Live Memberships; 5000+ Employees – 10 Live Memberships). Client will be entitled to the Services set forth in the sections titled "Dayforce Live Membership" and "Dayforce MyPath Pro".

10.6 Dayforce Live Membership. For each Live Membership purchased, a single named member may attend any publicly scheduled training session offered to Dayforce clients or access recorded or self-paced content available through the Ceridian Education Center during the subscription period. Members must register their name and email address with Ceridian. Members must self-enroll using online registration tools. Membership can be transferred to a new user if the current member is no longer accessing the Dayforce application.

10.7 Instructor-Led Client Exclusive Training. Ceridian will provide instructor-led training delivered exclusively to the Client via onsite or virtual delivery. Standard Dayforce Education training environment and course materials will be used. Client will receive soft copy of course materials for distribution to participants and up to 12 participants may attend a session. Client can create a tailored agenda by selecting relevant course topics available in the standard course offerings.

10.8 Dayforce Custom Go-Live Training – Employee/Manager. Ceridian will provide go-live training for managers and employees, accessible via the Dayforce application. The course consists of custom-developed content (up to 15 topics) using Client's configuration to cover unique business processes and standard content for core functionality being deployed. The content will be developed in one language (English). The content is relevant to employee or manager use of Dayforce and assumes one role each for manager and employee audiences. One day of instructor-led training or content walk-through to serve as Train-the-Trainer session is included. Two review cycles are included: cycle 1 captures client feedback and cycle 2 validates that feedback from cycle 1 was properly implemented. Client must reserve 3 weeks for development following completion of UAT and integration testing, and will assume all risks (time delay and additional costs) associated with configuration changes.

10.9 Dayforce Custom Training – Other. Ceridian will provide custom training for defined Client users. The course consists of custom-developed content using Client's configuration to cover unique business processes and/or standard content repurposed to focus on core functionality being deployed. A quote setting out details of the training will be approved by the Client in advance of development and delivery of training.

10.10 Dayforce Reporting Workshop – Assessment. Ceridian will provide a one-day assessment to evaluate Client's reporting requirements. The assessment includes an analysis of up to 5 reports, recommended reporting solutions, and assessment of Client reporting skillset. Client must provide detailed examples of required reports.

10.11 Dayforce Reporting Workshop. Ceridian will provide a two-day workshop to train/coach up to 3 Client representatives to develop reports as identified in the Reporting Assessment. Participants must meet knowledge and skill prerequisites as identified in the Reporting Assessment.

10.12 Dayforce Education Consulting Services. Ceridian will provide one-on-one information training/coaching via onsite or virtual delivery (as purchased) on specific tasks/processes as identified by Client. The training/coaching is limited to tasks such as transaction processing, explanation of Dayforce product concepts and processes, and minor administration or configuration updates. Access to training environments or training manuals are not included. Participants must meet pre-requisite knowledge either through attending Dayforce training or equivalent work experience.



Ceridian HCM, Inc.

Dayforce HCM

Service Organization Control (SOC2®) Report

Report on Ceridian HCM, Inc.'s Description of its Dayforce Human Capital Management System ("Dayforce HCM") and on the Suitability of the Design and Operating Effectiveness of its Controls Relevant to Security, Availability, Confidentiality, Processing Integrity and Privacy throughout the period April 1, 2019 to March 31, 2020

Ceridian HCM, Inc.

Dayforce HCM Application

Throughout the Period April 1, 2019 to March 31, 2020

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Section I – Independent Service Auditors' Report Provided by KPMG LLP



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Independent Service Auditor's Report

To: Ceridian HCM, Inc.

Scope

We have been engaged to report on Ceridian HCM, Inc.'s accompanying description of its system titled "Ceridian HCM, Inc.'s Description of its Dayforce Human Capital Management System" throughout the period April 1, 2019 to March 31, 2020 ("description") based on the criteria for a description of a service organization's system in DC section 200, *2018 Description Criteria for a Description of a Service Organization's System in a SOC 2® Report* (AICPA, *Description Criteria*), ("description criteria") and the suitability of the design and operating effectiveness of controls stated in the description throughout the period April 1, 2019 to March 31, 2020 to provide reasonable assurance that Ceridian HCM, Inc.'s service commitments and system requirements were achieved based on the trust services criteria relevant to security, availability, processing integrity, confidentiality, and privacy ("applicable trust services criteria") set forth in TSP section 100, *2017 Trust Services Criteria for Security, Availability, Processing Integrity, Confidentiality, and Privacy* (AICPA, *Trust Services Criteria*).

Ceridian HCM, Inc. uses subservice organizations to provide hosting and infrastructure services for the Dayforce HCM application and perform aspects of its computer processing ("Navisite", "Microsoft Azure"). In addition to hosting service in their own facilities, Navisite also provides infrastructure services on Azure to Ceridian (Navisite "Managed Cloud Service"). The description indicates that complementary subservice organization controls that are suitably designed and operating effectively are necessary, along with controls at Ceridian HCM, Inc., to achieve Ceridian HCM, Inc.'s service commitments and system requirements based on the applicable trust services criteria. The description presents Ceridian HCM, Inc.'s controls, the applicable trust services criteria, and the types of complementary subservice organization controls assumed in the design of Ceridian HCM, Inc.'s controls. The description does not disclose the actual controls at the subservice organization. Our engagement did not include the services provided by the subservice organization, and we have not evaluated the suitability of the design or operating effectiveness of such complementary subservice organization controls.

The description indicates that complementary user entity controls that are suitably designed and operating effectively are necessary, along with controls at Ceridian HCM, Inc., to achieve Ceridian HCM, Inc.'s service commitments and system requirements based on the applicable trust services criteria. The description presents Ceridian HCM, Inc.'s controls, the applicable trust services criteria, and the complementary user entity controls assumed in the design of Ceridian HCM, Inc.'s controls. Our examination did not include such complementary user entity controls and we have not evaluated the suitability of the design or operating effectiveness of such controls.



Service organization's responsibilities

Ceridian HCM, Inc. is responsible for its service commitments and system requirements and for designing, implementing, and operating effective controls within the system to provide reasonable assurance that Ceridian HCM, Inc.'s service commitments and system requirements were achieved. Ceridian HCM, Inc. has provided the accompanying statement titled "Statement by Ceridian HCM, Inc. Management" ("statement") about the description and the suitability of design and operating effectiveness of controls stated therein. Ceridian HCM, Inc. is also responsible for preparing the description and statement, including the completeness, accuracy, and method of presentation of the description and statement; providing the services covered by the description; selecting the applicable trust services criteria and stating the related controls in the description; and identifying the risks that threaten the achievement of the service organization's service commitments and system requirements.

Our Independence and Quality Control

We have complied with the relevant rules of professional conduct / code of ethics applicable to the practice of public accounting and related to assurance engagements, issued by various professional accounting bodies, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

The firm applies Canadian Standard on Quality Control 1, Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance Engagements, and accordingly maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Service auditor's responsibilities

Our responsibility, under this engagement, is to express an opinion on the description and on the suitability of design and operating effectiveness of controls stated in the description based on the evidence we have obtained.

Our engagement was conducted in accordance with attestation standards established by the:

- Canadian Standard on Assurance Engagements ("CSAE") 3000, Attestation Engagements Other Than Audits or Review of Historical Financial Information, set out in the CPA Canada Handbook – Assurance
- American Institute of CPAs (AICPA) ATC-C Section 105 and 205
- the International Standards on Assurance Engagements (ISAE) 3000 established by the International Auditing and Assurance Standards Board.

These standards require that we plan and perform our engagement to obtain reasonable assurance about whether, in all material respects, the description is presented in accordance with the description criteria



and the controls stated therein were suitably designed and operated effectively to provide reasonable assurance that the service organization's service commitments and system requirements were achieved based on the applicable trust services criteria. We believe that the evidence we obtained is sufficient and appropriate to provide a basis for our opinion.

A reasonable assurance engagement to report on the description of a service organization's system and the suitability of the design and operating effectiveness of controls involves the following:

- Obtaining an understanding of the system and the service organization's service commitments and system requirements
- Assessing the risks that the description is not presented in accordance with the description criteria and that controls were not suitably designed or did not operate effectively
- Performing procedures to obtain evidence about whether the description is presented in accordance with the description criteria
- Performing procedures to obtain evidence about whether controls stated in the description were suitably designed to provide reasonable assurance that the service organization would achieve its service commitments and system requirements based on the applicable trust services criteria
- Testing the operating effectiveness of controls stated in the description to provide reasonable assurance that the service organization achieved its service commitments and system requirements based on the applicable trust services criteria
- Evaluating the overall presentation of the description
- Performing such other procedures as we considered necessary in the circumstances.

Inherent Limitations

The description is prepared to meet the common needs of a broad range of report users and may not, therefore, include every aspect of the system that each individual report user may consider important to meet their informational needs.

There are inherent limitations in the effectiveness of any system of internal control, including the possibility of human error and the circumvention of controls.

Because of their nature, controls may not always operate effectively to provide reasonable assurance that the service organization's service commitments and system requirements are achieved based on the applicable trust services criteria. Also, the projection to the future of any conclusions about the suitability of the design and operating effectiveness of controls is subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.



Description of Tests of Controls

The specific controls tested and the nature, timing, and results of those tests are listed in section V.

Opinion

In our opinion, in all material respects,

- a. the description presents Ceridian HCM, Inc.'s Dayforce Human Capital Management system that was designed and implemented throughout the period April 1, 2019 to March 31, 2020 in accordance with the description criteria.
- b. the controls stated in the description were suitably designed throughout the period April 1, 2019 to March 31, 2020 to provide reasonable assurance that Ceridian HCM, Inc.'s service commitments and system requirements would be achieved based on the applicable trust services criteria, if its controls operated effectively throughout that period and if the subservice organization(s) and user entities applied the complementary controls assumed in the design of Ceridian HCM, Inc.'s controls throughout that period.
- c. the controls stated in the description operated effectively throughout the period April 1, 2019 to March 31, 2020 to provide reasonable assurance that Ceridian HCM, Inc.'s service commitments and system requirements were achieved based on the applicable trust services criteria, if complementary subservice organization controls and complementary user entity controls assumed in the design of Ceridian HCM, Inc.'s controls operated effectively throughout that period.

Restricted Use

This report, including the description of tests of controls and results thereof in section IV, is intended solely for the information and use of Ceridian HCM, Inc., user entities of Ceridian HCM, Inc.'s Dayforce Human Capital Management system during some or all of the period April 1, 2019 to March 31, 2020, business partners of Ceridian HCM, Inc. subject to risks arising from interactions with Ceridian HCM,



Inc.'s Dayforce Human Capital Management system, practitioners providing services to such user entities and business partners, and regulators who have sufficient knowledge and understanding of the following:

- The nature of the service provided by the service organization
- How the service organization's system interacts with user entities, business partners, subservice organizations, and other parties
- Internal control and its limitations
- Complementary user entity controls and complementary subservice organization controls and how those controls interact with the controls at the service organization to achieve the service organization's service commitments and system requirements
- User entity responsibilities and how they may affect the user entity's ability to effectively use the service organization's services
- The applicable trust services criteria
- The risks that may threaten the achievement of the service organization's service commitments and system requirements and how controls address those risks

This report is not intended to be and should not be used by anyone other than these specified parties.

KPMG LLP

June 22, 2020
Calgary, Alberta Canada

Section II – Ceridian HCM, Inc.’s Management Statement

STATEMENT BY MANAGEMENT OF CERIDIAN HCM, INC.

We have prepared the attached description titled “Description of Ceridian HCM, Inc.’s Dayforce Human Capital Management system throughout the period April 1, 2019 to March 31, 2020” (the description), based on the criteria for a description of a service organization’s system in DC section 200, 2018 Description Criteria for a Description of a Service Organization’s System in a SOC 2® Report (AICPA, Description Criteria) (“description criteria”). The description is intended to provide report users with information about the Dayforce Human Capital Management system that may be useful when assessing the risks arising from interactions with Ceridian HCM, Inc.’s system, particularly information about system controls that Ceridian HCM, Inc. has designed, implemented, and operated to provide reasonable assurance that its service commitments and system requirements were achieved based on the trust services criteria relevant to security, availability, processing integrity, confidentiality, and privacy (“applicable trust services criteria”) set forth in TSP section 100, 2017 Trust Services Criteria for Security, Availability, Processing Integrity, Confidentiality, and Privacy (AICPA, Trust Services Criteria).

Ceridian HCM, Inc. uses external subservice organizations to provide hosting and infrastructure services for the Dayforce application and perform aspects of its computer processing (“Navisite” and “Microsoft Azure”). In addition to hosting service in their own facilities, Navisite also provides infrastructure services on Azure to Ceridian (Navisite - “Managed Cloud Service”). The description indicates that complementary subservice organization controls that are suitably designed and operating effectively are necessary, along with controls at Ceridian HCM, Inc., to achieve Ceridian HCM, Inc.’s service commitments and system requirements based on the applicable trust services criteria. The description presents Ceridian HCM, Inc.’s controls, the applicable trust services criteria, and the types of complementary subservice organization controls assumed in the design of Ceridian HCM, Inc.’s controls. The description does not disclose the actual controls at the external subservice organizations.

The description indicates that complementary user entity controls that are suitably designed and operating effectively are necessary, along with controls at Ceridian HCM, Inc., to achieve Ceridian HCM, Inc.’s service commitments and system requirements based on the applicable trust services criteria. The description presents Ceridian HCM, Inc.’s controls, the applicable trust services criteria, and the complementary user entity controls assumed in the design of Ceridian HCM, Inc.’s controls.

We confirm, to the best of our knowledge and belief, that:

- a. the description presents Ceridian HCM, Inc.’s Dayforce Human Capital Management system that was designed and implemented throughout the period April 1, 2019 to March 31, 2020, in accordance with the description criteria.
- b. the controls stated in the description were suitably designed throughout the period April 1, 2019 to March 31, 2020 to provide reasonable assurance that Ceridian HCM, Inc.’s service commitments and system requirements would be achieved based on the applicable trust services criteria, if its controls operated effectively throughout that period, and if the subservice organization(s) and user entities applied the complementary controls assumed in the design of Ceridian HCM, Inc.’s controls throughout that period.

This report is intended solely for the information and use of the management of Ceridian HCM, Inc. its user organizations, and the independent auditors of its user organizations.

Management’s Statement

- c. the controls stated in the description operated effectively throughout the period April 1, 2019 to March 31, 2020, to provide reasonable assurance that Ceridian HCM, Inc.'s service commitments and system requirements were achieved based on the applicable trust services criteria, if complementary subservice organization controls and complementary user entity controls assumed in the design of Ceridian HCM, Inc.'s controls, operated effectively throughout that period.

Ceridian HCM, Inc.

June 22, 2020

Section III – Description of the Dayforce HCM System Provided by Ceridian HCM, Inc.

SCOPE OF REPORT

This report has been prepared to provide information on the processes and controls at Ceridian HCM, Inc. that are applicable to the Dayforce Human Capital Management (HCM) system. The description is intended to provide users with information about the Dayforce HCM System, particularly system controls intended to meet the criteria for the Security, Availability, Processing Integrity, Confidentiality, and Privacy principles set forth in the TSP section 100, *Trust Services Principles, Criteria, and Illustrations for Security, Availability, Processing Integrity, Confidentiality, and Privacy* issued by the Assurance Services Executive Committee of the AICPA and CPA Canada (applicable trust services criteria).

This report is designed with consideration for all Ceridian HCM, Inc.'s Dayforce clients with the exception of a limited number with unique hosting arrangements. Therefore, the report focuses on those processes and controls that are applicable to the common Dayforce processes supported by Ceridian HCM, Inc. Any unique client hosting arrangement is outside the scope of this report.

Changes During the Period

In addition to Canada and the United States, the scope of this report has been expanded to cover the processes and controls of the Dayforce product and the relevant supporting components in the United Kingdom and the Commonwealth of Australia.

OVERVIEW OF CERIDIAN HCM, INC.

Ceridian HCM, Inc. is a global product and services company in the human resource (HR) market. Ceridian enables customers to outsource a broad range of employment processes, such as payroll, payroll-related tax filing, human resource information system (HRIS), employee self-service, time and labor management, benefits administration, employee assistance and work-life programs, recruitment and applicant screening, and post-employment health insurance portability compliance. HCM operations are located primarily in the United States, Canada, Australia, Mauritius and the United Kingdom.

The following are summary descriptions of the products and services that Ceridian HCM, Inc. provides.

Human Capital Management (HCM)

Payroll processing for customers consists of preparing and furnishing employee payroll checks, direct deposit advices, and supporting journals and summaries. For certain customers, Ceridian HCM, Inc. remits customer payroll funds to the customer's employees. Ceridian HCM, Inc. also supplies quarterly and annual social security, Medicare and federal, state, and local income tax withholding reports and forms that are required to be filed by employers and employees.

Ceridian provides cloud based products Dayforce Human Capital Management (HCM) and PowerPay (Canada only). Ceridian also provides a number of bureau payroll products (Latitude, Redwood Freedom, and Signature). SOC reports are provided separately for the General Information Technology Controls, and the products/services listed below. Ceridian HCM, Inc.'s Dayforce Human Capital Management (HCM) is an end-to-end SaaS-based solution that includes human resource (HR), payroll, time and attendance, workforce management (labor scheduling, labor forecasting, labor budgeting, task management), benefits, and employee self-service. By automating and streamlining HR processes in one system, Ceridian HCM, Inc. customers have the ability to focus less on administration and more on their core business.

Ceridian Redwood Freedom is a web-based, front-end solution with integrated back-end payroll processing engine. Redwood is a fully integrated customer-facing web-based front end application for Human Resources and payroll management. Freedom is the fully integrated back-end payroll processing engine used by Ceridian to process data submitted from the customer via the Redwood application.

Tax Filing and Payment Solution Services

Ceridian HCM, Inc.'s payroll tax filing services for customers in the United States consist of collecting funds for federal, state, and local employment taxes from customers based on payroll information provided by the customers, remitting funds collected to the appropriate taxing authorities, filing applicable returns, and handling related regulatory correspondence and amendments. Tax filing services are provided not only to employers who utilize Ceridian HCM, Inc.'s payroll processing service, but also to local and regional payroll processors and directly to employers as standalone tax services.

Ceridian HCM, Inc.'s payroll tax filing services for customers in Canada consists of collecting funds for Federal and Provincial taxes from customers based on payroll information provided by the customers, remitting funds collected to the taxing authorities with which Ceridian has a remittance arrangement, filing Federal Returns, and handling related regulatory correspondence by special request only.

This report is intended solely for the information and use of the management of Ceridian HCM, Inc., its user organizations, and the independent auditors of its user organizations.

Ceridian Canada Ltd. is a human resources solutions provider that helps clients optimize their workforce, reduce costs and save time by finding, paying, deploying, developing and engaging their talent. With 40 years of experience, Ceridian provides professional services to approximately 45,000 Canadian customers. Ceridian Canada Ltd. is part of Ceridian HCM, Inc. and operates as part of the North American Ceridian HCM operating segment.

Ceridian Canada delivers a suite of HR solutions using either Cloud based SaaS products (PowerPay and Dayforce HCM) or Bureau products (Insync, Latitude, Payflex). The services delivered include:

- Finding Talent: Recruitment process outsourcing, recruiting-on-demand, recruiting automation, staffing and pre-employment screening.
- Paying Talent: Partial and fully-managed payroll, HRIS, and time and workforce management.
- Deploying Talent: Ceridian Workforce Management, Ceridian Time Solutions. Either separately or as part of Ceridian Dayforce HCM.
- Developing Talent: Employee learning & development, performance management, succession management and training.

DAYFORCE HCM SERVICES PROVIDED

Ceridian HCM, Inc. develops its proprietary Dayforce HCM system for use by companies of all sizes in a wide variety of industry verticals to help them manage their workforce more effectively and efficiently. The Dayforce HCM system includes modules developed by Ceridian HCM, Inc. including, but not limited to, HR, Payroll, Benefits, Self-Service, and Workforce Management. Ceridian HCM, Inc. delivers the software to its clients as Software as a Service (SaaS) offering. Hosting of the system and certain support services have been outsourced to Navisite and Microsoft Azure in the United States, United Kingdom, Australia and Canada. Separate disaster recovery (DR) hot sites are also maintained in each jurisdiction.

Alongside its development expertise, Ceridian HCM, Inc. provides further services to clients to assist them with the most effective use of the software. These services which are listed below, are not included in the scope of this report:

- Implementation Services– Ceridian HCM, Inc. offers a full range of implementation services including planning, discovery, design, configuration, testing, and deployment.
- Education Services – Ceridian HCM, Inc. offers a full range of education services including needs analysis, courseware development, end-user training, administrator training, and train-the-trainer training.
- Post Go-Live Support Services – Ceridian HCM, Inc. offers a wide range of services to support our clients' post go-live.
- Professional Services - Ceridian HCM, Inc. offers various professional services that clients may require which fall outside the scope of support services. Ceridian HCM, Inc. offers consulting services related to implementation, including planning, discovery, design, configuration, testing and deployment. Consulting services relating to implementation are not in scope of this report.
- Managed Services - Ceridian offers Managed Services for Dayforce HCM customers to allow them to focus on their core business activities. Ceridian provides a combination of technology support, benefit administration, payroll administration including limited data entry and transmission and employee inquiry services as part of its Managed Services offering.

This report is intended solely for the information and use of the management of Ceridian HCM, Inc., its user organizations, and the independent auditors of its user organizations.

PRINCIPLE SERVICE COMMITMENTS AND SYSTEM REQUIREMENTS

Ceridian designs its processes and procedures related to its Dayforce HCM System to meet its objectives for Dayforce HCM System processing. Those objectives are based on the service commitments Ceridian makes to user entities of the Dayforce HCM services; laws and regulations that may govern the provision of services; and the financial, operational, and compliance requirements Ceridian has established for the services.

Security, availability, processing integrity, confidentiality and privacy commitments to user entities are documented and communicated in Master Service Agreements, Data Processing Addendum and Service Particulars Addenda, HR Processing General Terms and Conditions, and other customer agreements as well as in the description of the service offering. Ceridian's security, availability, processing integrity, confidentiality and privacy commitments and system requirements are standardized and include the following:

Category	Service Commitments	System Requirements
Security	Information and systems are protected against unauthorized access, unauthorized disclosure of information, and damage to systems that could compromise the availability, processing integrity, confidentiality, and privacy of information or systems.	Common configurations controlled by Ceridian meet industry standards. Additionally, systems allow the Client to configured settings to protect information based on their requirements during its collection or creation, use, processing, transmission, and storage. Controls over security prevent or detect the breakdown and circumvention of segregation of duties, system failure, incorrect processing, theft or other unauthorized removal of information or system resources, misuse of in-scope application systems, and improper access to or use of, alteration, destruction, or disclosure of information. Physical access to systems is restricted to authorized personnel. System Administrator access to systems is restricted to authorized Ceridian system administrators.
Availability	The Dayforce web-based application interface for the production environment accessed through Client URL, shall be available, on average, 99.5% of the time each calendar	Dayforce is designed with a number of high-availability components to help ensure availability of the system. Components include:

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Category	Service Commitments	System Requirements
	month, except for regular maintenance, and unavailability due to improper configuration of the software caused by the Client or Client's use of unsupported hardware or software.	- System-level hardware redundancies - Redundant storage architecture - Redundant network architecture - Diverse internet providers - Disaster recovery replication
Processing integrity	Ceridian communicates functionality and applicability by region. For common functions system processing is complete, valid, accurate, timely, and authorized to meet the entity's objectives. For Client Unique configurations and functions, features are provided (e.g. reports test environments) to facilitate client validation of completeness, validity, accuracy, timeliness, and authorization of system processing. Ceridian communicates the division of responsibilities in the Master Service Agreement (MSA) and Statement of Work (SOW).	Dayforce provides error handling routines, exception reports and alert mechanisms help ensure the processing integrity of client payroll. Ceridian provides two primary guides to allow our clients to exercise their obligations in the achievement of processing integrity: - Fixed Format Reporting Guide – this guide lists the standard reports offered in Dayforce - Ad Hoc Reporting Guide – this guide gives the customer the information to create custom reporting Ceridian provides a test environment to allow clients to test and validate new and existing features within the system. Ceridian provides and tests common functionality against the specifications summarized for Clients in the 'Dayforce Software Functionality and Global Use Guide' document.
Confidentiality	Ceridian access is restricted to authorized employees using the principle of "least privilege" and is granted in connection with a day to day business requirement for access.	Clients are provided single tenant databases encrypted at rest. Client data in transit is encrypted either through Secure File Transfer Protocols (SFTP), or encrypted browser sessions.

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Category	Service Commitments	System Requirements
		Client data retention is facilitated to accommodate unique client requirements. Ceridian only purges or removes client data on termination, or for data covered under specific regulation/legislation such as Taxing authority files/data.
Privacy	Ceridian is a custodian, as the data subject relationship is owned by Ceridian's clients. Ceridian does not own any client data. Ceridian facilitates its Client's activities to help ensure that personal information is collected, used, retained, disclosed, and disposed to meet the entity's objectives. Ceridian commits to only act on the instruction or authorization of the Client, (which may include standing authorization in a client agreement). Ceridian commits to refer Privacy related inquiries to the client-specific Data Owner, and maintains a Privacy complaint/request process to assist client-specific Data Owners and supplement client-specific Data Owner's processes for the same. Data requests shall be referred to the client-specific Data Owner(s) unless such referral is prohibited, for example, by court order.	Collection: Ceridian's clients are responsible for collecting personal information, and Ceridian provides the system functionality to support our clients to collect the minimum information required for this purpose. Use, retention, and disposal: Ceridian provides the system functionality to support the Client to limit the use, retention, and disposal of personal information to meet its objectives related to privacy. Access: Ceridian provides a system requirement that allows Clients to control and provide data subjects with access to their personal information for review and correction (including updates) to meet our client's objectives related to privacy. Disclosure and notification: Ceridian only acts on the instruction or authorization of our Clients, which may include standing authorization in the Master Services Agreement. The system requirements provided allows our Client to disclose personal information with the consent of the data subjects to meet their objectives related to privacy. Notification of breaches and incidents is provided to affected Clients and/or data subjects, regulators, and others to meet our objectives related to privacy, and facilitates Client(s) to do the same.

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Category	Service Commitments	System Requirements
		Quality: The system provides reports and the ability for reconciliation and verification such that the Client is empowered to collect and maintain accurate, up-to-date, complete and relevant personal information to meet their objectives related to privacy. Monitoring and enforcement: Ceridian provides a feature in Dayforce Personal Data Management (PDM) that allows our customers the ability to delete or retain data in accordance with their policies and help facilitate Clients to meet their objectives related to privacy, including procedures to address privacy-related inquiries, complaints, and disputes.

Ceridian establishes operational requirements that support the achievement of security, availability, processing integrity, confidentiality and privacy commitments, relevant laws and regulations, and other system requirements. Such requirements are communicated in Ceridian's system policies and procedures, system design documentation and contracts and agreements with customers. Information security policies define an organization-wide or business-wide approach to how systems and data are protected. These include policies which outline how the service is designed and developed, how the system is operated, how the internal business systems and network are managed and how employees are hired and trained. In addition to these policies, standard operations procedures have been documented to outline how manual and automated processes required in the operation and development of the Dayforce HCM system are carried out.

COMPONENTS OF THE SYSTEM USED TO PROVIDE THE SERVICES

Infrastructure

Depicted in Exhibit 1 and in the descriptions that follow is an overview of the significant systems and their interfaces used at Ceridian HCM, Inc.

The Dayforce HCM production systems are located at multiple data centers to serve our clients. Ceridian HCM, Inc. utilizes Hosting partners (Navisite and Microsoft Azure) as an Infrastructure as a Service (IaaS) provider. In addition to hosting service in their own facilities, Navisite also provides infrastructure services on Azure to Ceridian (Navisite - "Managed Cloud Service"). Ceridian encrypts data to protect against unauthorized access, including IaaS providers. The IaaS providers do not have access to the data layer which is maintained in a separate access domain. Data is encrypted at rest and the IaaS providers do not have access to the encryption keys.

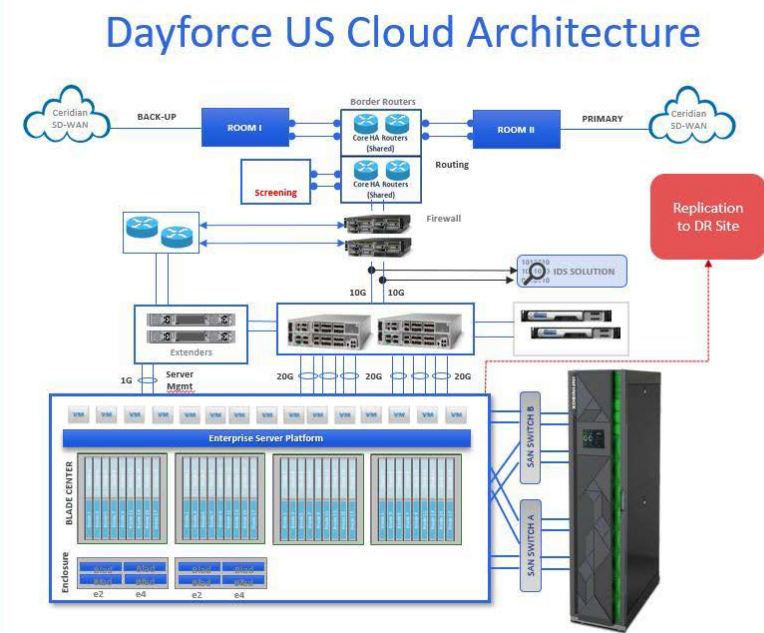
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Description of the Dayforce HCM
System

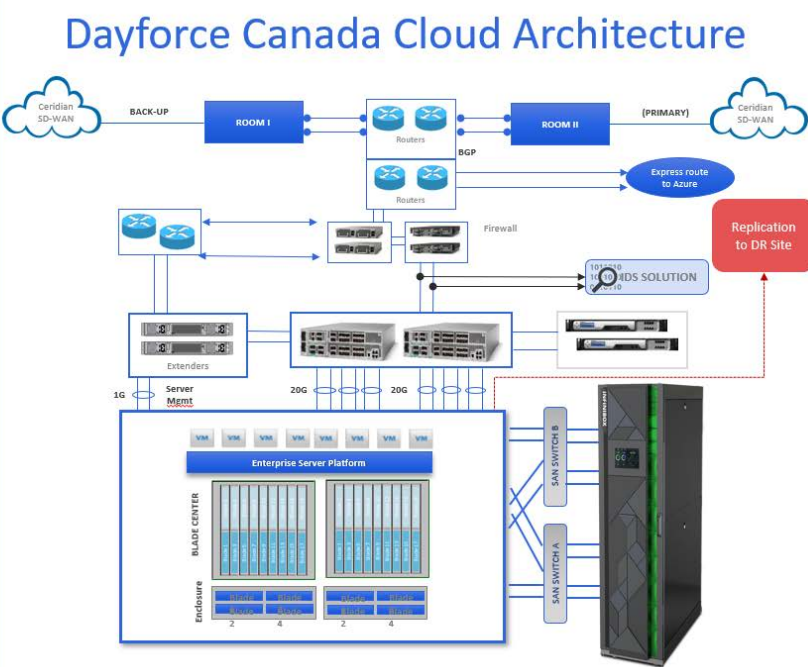
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Exhibit 1 – Key Production IT Systems

- Six Blade Chassis
- Redundant SAN Architecture
- Enterprise-grade Cloud Infrastructure
- Redundant Networking
- 10G Internet Bandwidth with 5 Diverse Providers
- 10G P2P with 3G EPL backup for DR replication



- Four Blade Chassis
- Redundant SAN Architecture
- Enterprise-grade Cloud Infrastructure
- Redundant Networking
- 10G Internet Bandwidth with 5 Diverse Providers
- 10G P2P with 3G EPL backup for DR replication



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Description of the Dayforce HCM System

Two Blade Chassis

Redundant SAN Architecture

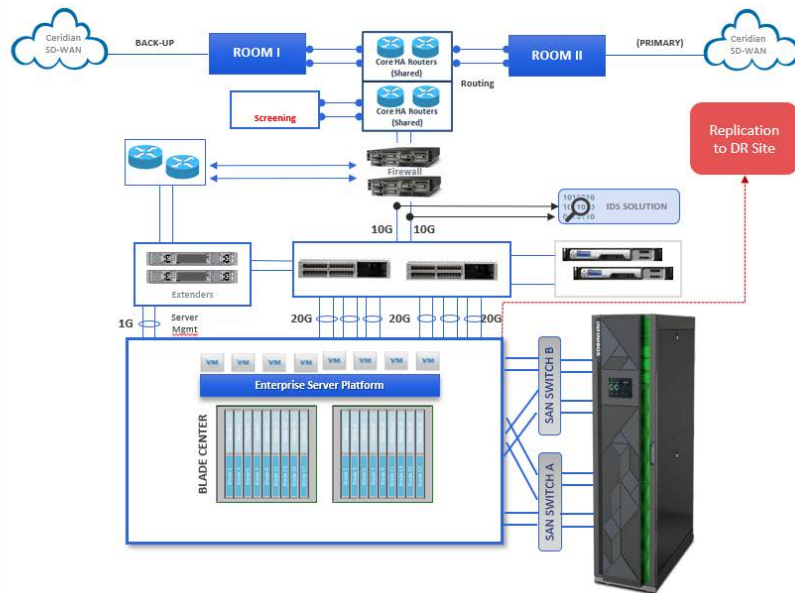
Enterprise-grade Cloud Infrastructure

Redundant Networking

10G Internet Bandwidth with 5 Diverse Providers

10G P2P with 3G EPL backup for DR replication

Dayforce UK Cloud Architecture



Network

- VPN Gateway
- Traffic Manager
- Internal and External Load Balancers
- Network Security Groups

Compute

- Reserved Instances
- Mobile Intelligence
- Availability Sets

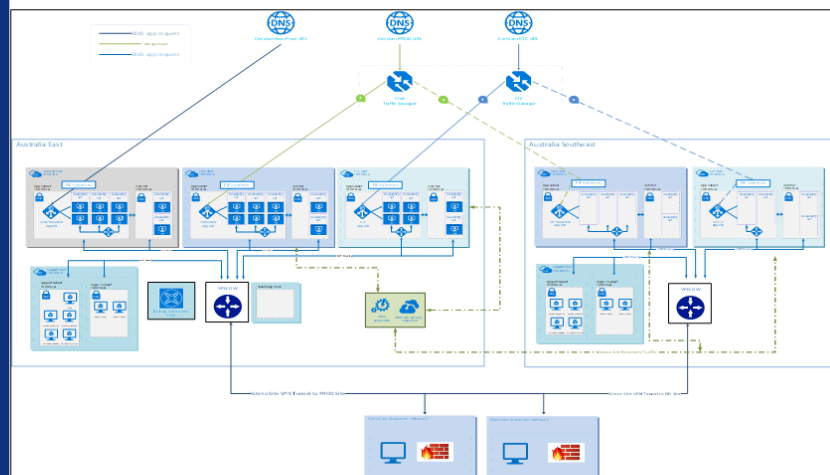
Storage

- Mix of Standard HDD's and Premium SSD's

Disaster Recovery

- Replication using native site
- Recovery to offsite native location

Dayforce Australia Cloud Architecture



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Description of the Dayforce HCM System

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Application Server

The Application Servers are the front-end to Ceridian HCM, Inc. serving both the Dayforce HCM application and the Ceridian HCM, Inc. Web Services. Incoming connections from the client are received using the HTTPS protocol using signed certificates. Client users interact with the system via sessions initiated at their PC workstations using an internet browser.

The Application Servers run Microsoft Windows Server, running Internet Information Server and Windows Communication Foundation in a virtual environment.

Database Server

The Database Servers house all production client data. Clients do not have direct access to the database in any environment. Access to data is managed through the Web Server when the user interacts with the application via the browser.

The Database Servers run Microsoft Windows Server, running Microsoft SQL Server and both physical and virtual environments.

All databases are encrypted at rest using SQL Server Transparent Data Encryption (TDE) technology.

Interface Server

The Interface Servers provide data integration access for third-party client systems. Incoming data from the client are received using secure transmission methods including SFTP and/or PGP. The Interface Server expects XML or CSV formatted files for processing. The operating system of the Interface Server is Microsoft Windows Server, running Microsoft MQ and a SFTP Server in a virtual environment.

Software

The Dayforce application is developed internally by Ceridian HCM, Inc. and written primarily in C#. JavaScript, HTML, CSS, XAML and SQL are also heavily utilized to bring the application to production. The software utilized to support hosting operations is Windows Server Enterprise 64-bit and SQL Enterprise. Additional tools listed below are mentioned in Sections III and IV of this report and may support some facets of the delivery of the services described.

These systems are covered within the report only to the extent that they are relevant and important to achieving the control objectives.

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<i>Application</i>	<i>Purpose</i>
Active Directory	Governs access to the Ceridian and production network.
Service Management tool	Service management tool utilized for tracking client requests, incidents, and other client events requiring documentation.
ServiceNow	Corporate service management tool utilized for tracking of internal requests, such as user access additions, modifications and terminations, on-boarding / off-boarding of personnel.
Team Foundation Server (TFS)	Service management tool that provides source code management, reporting, requirements management, project management, automated builds, lab management, testing and release management capabilities. It covers the entire application lifecycle, and enables collaboration and communications of both software developers and other information technology professionals while automating the process of software delivery and infrastructure changes.

The following provides an overview of the Time and Attendance, Payroll, Taxes, and Benefits solutions provided by Ceridian HCM, Inc.

Time and Attendance

Dayforce Time and Attendance provides organizations with tools to automate data capture, streamline timesheet maintenance, and automate the calculation of gross pay.

Time clocks, such as the Dayforce HCM touch clock, provides a mechanism for capturing employee time and attendance data. The clock allows for any combination of validation options, including PIN, magnetic stripe cards, biometric verification and facial recognition.

The Dayforce HCM touch clock validates time punches against schedules and provides near real-time feedback as time punches are recorded. Time punches are auditable allowing the employee or employer to review all modifications made to the timesheet, helping to ensure complete and accurate time capture.

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Description of the Dayforce HCM System

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Payroll

The Dayforce HCM payroll module increases the accuracy of payroll processing by giving administrators the ability to preview and fix records near real-time and identify errors with configurable edits.

The payroll module has a number of configurable ad-hoc reports for payroll review and analysis to identify pay issues and resolve those issues before pay is committed. The Dayforce HCM application allows clients to configure their own audit reports. This helps administrators identify and resolve the specific types of issues they are looking for.

Several preview screens provide administrators with an organizational level view of all earnings, taxes and deductions as well as the same information on an employee by employee basis. Administrators can preview payroll, perform audits and make corrections during the pay cycle. Employees can access both current and historical earning statements to review consistency and accuracy.

Payroll Taxes

The Dayforce HCM application supports tax calculations and filing requirements for jurisdictions across the US, UK, AUS and Canada. This includes full support for multi-jurisdictional taxes. Tax tables are automatically updated with effective dating as legislation changes. Ceridian refers to this as 'Native Payroll'

Benefits

The Benefits module helps ensure accurate, compliant and accessible employee benefit plans across the client organization. The benefit module provides administrators with online tools that can be utilized to manage open enrollment, calculate, test and analyze eligibility, support an unlimited number of plan types and easily add third party and system payees.

The Benefit Election Details screen allows managers and administrators to view a real-time snapshot of benefit elections by plan type or by employee. The data displayed on the screen is configurable and at any point a snapshot of the employee's profile can be viewed.

The open enrollment guided process takes employees through a step-by-step decision making process as they make their benefit elections. Employees can enter life events during the enrollment process, and plan eligibility is dynamically updated in near real-time. The structure of the guided process is completely configurable according to the client's requirements. The employee constraints, which are configurable within the system, helps ensure that employees are only able to sign-up for benefits that they are eligible for.

Data

The Dayforce HCM application is a configurable, integrated SaaS solution that manages the end to end human resource experience. Ceridian HCM, Inc. contracts with its customers to implement the solution and works with its customers in configuring the software based on the customers' requirements.

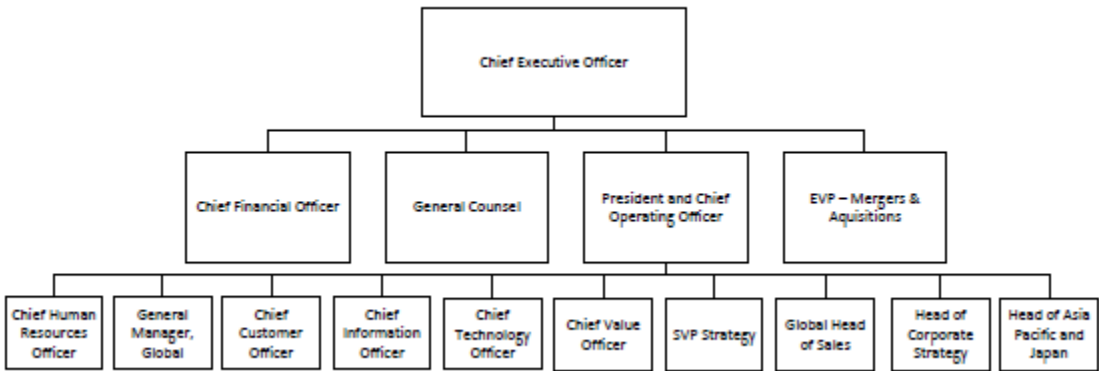
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Data received from clients can be in a variety of file formats including CSV, XML or XLS. The common files received are HR Imports, which would include data such as employee name, address and SSN or SIN numbers and Organization imports, including data such as departments, docket, jobs and positions. The files can be imported to the application by implementation professionals, system administrators or other users with appropriate access rights in the application. The import file, which must conform to Dayforce specifications is sent via SFTP or through functionality built into the application. If uploaded through the application the HR import tool analyzes the file for common problems and returns on any errors that are found including: invalid XML format, duplicate employee cross-reference codes, state and country mismatch in employee addresses and duplicate SSN or SIN values as example. During an SFTP import, once the transfer is complete, it is accessed by the background job engine (BJE) server remotely on the SFTP server. Once the file is processed it is moved to an error or archive folder(s). The file remains in the folder until an auto purge job removes the file after a pre-determined number of days.

People

Ceridian HCM, Inc. is headquartered in Minneapolis, Minnesota with other offices across Canada, The United States, The United Kingdom, the commonwealth of Australia and Mauritius. Ceridian HCM, Inc. is organized functionally with responsibilities spread throughout the management team as detailed below. The management team regularly meets to help ensure consistent goals, execution, and security across the company. The organization is global, supplemented with local expertise in areas such as HR and Legal. No separate leadership structures or business units exist by jurisdiction. There is one single global IT CyberSecurity team, and one global ISMS (Information Security Management System) for example.

Ceridian HCM Organization



Procedures

General Information Technology Controls

General Information Technology (IT) Controls establish the control environment for which computer application systems are developed and operated. Therefore, the general computer control environment

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has an impact on the effectiveness of controls in application systems, including those used by Ceridian HCM, Inc.

The following describes the general controls related to the Dayforce HCM application and the allocation of responsibility between Ceridian HCM, Inc., and Navisite. The processes performed by Navisite are not within the scope of this report.

- Systems development and change management – Ceridian HCM, Inc. is responsible for all systems development and maintenance to the production application and for operating system software upgrade. Navisite is responsible for the maintenance of the technical infrastructure supporting the production system at each respective data center. Navisite using the Managed Cloud Service performs these activities on Ceridian's behalf where Azure acts as the IaaS (except for the Tax environment). In this way both the IaaS provided by Microsoft and Navisite, are managed with a single relationship and a single process globally. Changes within the Dayforce HCM environment are documented within a software ticketing tool. Ceridian HCM, Inc. is responsible for all changes made to the production application. Navisite, is responsible for technical infrastructure maintenance and upgrades at each respective data center with approval from Ceridian HCM, Inc.
- Logical access to information systems – Ceridian HCM, Inc. is responsible for the logical access measures designed and integrated into the production environment except for the network infrastructure which is managed by Navisite.
- Data transmission – Communications are made through Secure File Transfer Protocol [SFTP] over Secure Shell [SSH]. Connections to the application are made with secured HTTPS connections using TLS encryption.
- Computer Operations and System Support – Navisite and Ceridian HCM, Inc. are jointly responsible for the monitoring of the production environment and incident management. The division of responsibilities is the same whether Navisite uses their own data centers or Azure data centers to provide the IaaS. Ceridian HCM, Inc. is responsible for the backup policy and data replication design for off-site storage of production data. Navisite is responsible for the execution of backup and DR replication. Navisite's backup process is within scope of their SOC1 report.
- Physical Access - Navisite hosts the production environment in the US and UK and is responsible for the physical security of these data centers. Navisite, using Azure and Cologix in AUS and CAN respectively, is responsible for monitoring the minimum Ceridian developed standards and requirements delivered by Microsoft Azure and Cologix (the data center owners). Microsoft Azure is responsible for the security of the underlying infrastructure powering the Azure environment.

Systems Development and Maintenance

Responsibility for Dayforce HCM application system development is internal to Ceridian. All development activities affecting the Dayforce HCM production application are managed through a change request process which guides the evaluation, analysis, design, construction and testing, and implementation.

Ceridian HCM, Inc. follows the Agile methodology for major enhancements to the systems. The Agile Development Method (ADM) is in place which includes documentation supporting the initiation, approval,

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prioritization, and the execution phases of developing new versions of the application, performing maintenance and enhancements for the existing application.

Separate environments are maintained for development, testing and production. Major changes are subject to unit, functional and regression testing. Test plans and test results are prepared and maintained in Team Foundation Server (TFS). For minor changes, testing is performed as required and test results are maintained in TFS, or the Ceridian HCM, Inc. service management tool.

Once code has been tested, only certain authorized personnel can promote changes to production. Promotion of changes is performed using an automated build process established within TFS. Only the Ceridian HCM, Inc. Support team has access to move the code from staging to production.

Approvals are required prior to implementation of application changes to production. Ceridian reviews and remediates findings from an external third party scan of the application code for each major release into the production environment. This scan includes the top 20 Open Web Application Security Project (OWASP) identified risks. Where relevant, clients are notified of changes to production prior to implementation. Change Management.

Change requests for systems, including applications, hardware, and operating system software, follow a documented change management process. The following describes the Change management process:

- Change management process documentation is reviewed and approved by Technology Management on an annual basis.
- Only change requests that have been approved by the Management team from Hosting Operations, or members of the Client Support Management team are authorized for implementation, as described on the request.
- Change Management verifies that required approvals have been obtained.
- Changes are implemented during a scheduled maintenance window according to the plan or per the instruction on the approved change request.
- Developers do not have update access to the production environment.
- After the change is installed and before the change request is closed a post implementation review is performed to help ensure that the change performs as expected in production.
- The change request is closed out when the Post Review is completed.
- Emergency change requests are submitted as after-the-fact change requests to document changes made to a production environment that were needed to resolve a Severity 1, 2 or 3 level incident ticket.

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Physical Access to Information Systems

Navisite hosts the production environment in the US and UK and is responsible for the physical security of these data centers. Navisite, using Azure and Cologix in AUS and CAN respectively, is responsible for monitoring the minimum Ceridian developed standards and requirements delivered by Microsoft Azure and Cologix (the data center owners).

Logical Access to Information Systems

Information security encompasses those controls that prevent and detect unauthorized access to information resources. The primary goal of information security is to help ensure access to application programs, on-line transactions, data files and other computer resources are restricted to authorized users.

Logical access to the Dayforce HCM system is achieved at the network, operating system and application levels. Network security is achieved through restriction of access to authorized users from both internal and external sources. Navisite manage the network gear (switches, firewalls and routers) and Ceridian HCM, Inc. manages domain access and access to servers. Internally, users are restricted by Windows domain access controls that validate the users accessing the internal Ceridian HCM, Inc. network and provide access to resources on the Windows network such as developer workstations. External users such as VPN users or FTP/web site users are validated as authorized. Hardware and software control such as firewalls and routers authenticate external users prior to providing access to resources they are authorized to. Internal network security is managed by Ceridian HCM, Inc., while external network security is managed by Navisite and changes to network security settings are approved by appropriate Ceridian HCM, Inc. Hosting Operations management team.

All aspects of operating systems security are managed by the Ceridian HCM, Inc. IT Department as well as administrative processes such as adding new users. Navisite manages physical access security and logical security to firewalls, switches, and anti-virus for their respective data centers. Changes of logical security for firewalls, switches and anti-virus must be approved by appropriate Ceridian HCM, Inc. Hosting Operations management team, prior to implementation by Navisite

Application level security within Dayforce is the responsibility of the client.

Computer Operations and System Support

Computer operations consist of systems monitoring and backup of program and data files and incident management. System monitoring and incident management is performed jointly by Ceridian HCM, Inc. and Navisite.

First line support for the server infrastructure and application performance is performed by the Network Operations Center (NOC) at each respective data center and by the Hosting Operations team at Ceridian HCM, Inc. Backups are performed multiple times per day. Production libraries, data and the backups themselves are sent off-site on a daily basis. The responsibility for sending backups off-site is with Navisite.

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Clients have direct access to Ceridian HCM, Inc.'s support services via web, email, and telephone communication channels. For concerns, clients log incidents via web portal or email support requests to Ceridian HCM, Inc.'s support department. Each incident is logged into Ceridian's service management tool and tracked until the issue is resolved. To assist in resolving incidents, the support department has direct channels of communication into the development department.

Email communications with clients, vendors, and other external parties are electronically stored.

Systems support consists of system hardware and software maintenance, database administration, communications and network management, and other technical and administrative support functions.

Navisite provides support for the technical infrastructure supporting the production systems at each respective data center. These groups provide:

- Support for the network infrastructure.
- Support for the operating systems and related systems software (except for upgrade of operating system software).
- Support for the Windows environment on which the servers and workstations reside.

Operating systems are updated quarterly at scheduled intervals through the implementation of patches and fixes provided by Microsoft or infrequently through complete version upgrades. Changes and implementation of new versions are performed after an evaluation and prioritization has been performed. Senior IT management consider the support window for the operating system version provided by Microsoft, the length of time the new version has been in common use and the best timing for the business.

The Ceridian HCM, Inc. Hosting Operations team performs the upgrade on production systems. The upgraded operating system is implemented on the non-production environment before going into production. Ceridian HCM, Inc. does not perform specific/separate testing on operating system upgrades but does check the successful implementation and usefulness of the upgrade on non-production systems.

Data Transmissions

The data transmission systems utilized by the Dayforce HCM application are hosted and supported by Navisite. Direct VPN access to production is not available.

The design of the production network incorporates security and redundancy features. Primary and standby firewalls are installed on the Ceridian HCM, Inc. production network to provide perimeter protection from external sources. The type of network traffic allowed into the internal network segment is restricted by access control lists implemented on the firewall. In the event that the primary firewall suffers a failure, network communications will failover to the secondary (standby) firewall.

An Intrusion Detection and Prevention system (IDS/IPS) is in place to monitor the connection. The Ceridian HCM, Inc. Hosting Operations team and Navisite security groups are responsible for periodically reviewing IDS/IPS alerts for anomalies at each respective data center. The IDS is installed to scan the

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production network for abnormal behavior, suspicious traffic patterns, and known vulnerabilities (such as specific signatures in network packets). The IDS is configured to automatically issue email alerts based on critical parameters configured in the IDS subsystem.

Use of Third Parties

Ceridian uses various vendors and contractors to maintain its Managed Hosting facilities and systems. Ceridian relies on hosting providers meet some of its principle service commitments and system requirements for the Dayforce HCM System. Subservice organizations and complementary subservice organization controls are identified in the following section of this report.

Identified System Incidents

There were no identified system incidents that were the result of controls that were not suitably designed or operating effectively and/or resulted in a significant failure in the achievement of one of more of the service commitments and system requirements for the Managed Hosting Services System during the period April 1, 2019 to March 31, 2020.

COMPLEMENTARY USER ENTITY CONTROLS

Ceridian HCM, Inc. controls, including the automated controls that are built in the Dayforce HCM application, were designed under the assumption that certain controls would be implemented by clients. The application of such controls by clients is necessary to achieve certain control objectives identified in this report.

This section describes certain controls that clients should implement to achieve the control objectives identified in this report. This section should not be taken as a complete list of controls that are required at the client's environment.

<i>Related Criteria</i>	<i>Complementary User Entity Control</i>
CC2.3 The entity communicates with external parties regarding matters affecting the functioning of internal control.	User entities must review release notes and other communication of system changes in a timely manner.
CC6.1 The entity implements logical access security software, infrastructure, and architectures over protected information assets to protect them from security events to meet the entity's objectives.	User entity-defined password settings for client application and database are properly and securely configured. Passwords are changed on a periodic basis and user IDs are updated for personnel changes.
CC6.2 Prior to issuing system credentials and granting system access, the entity registers and authorizes new internal and external users whose access is administered by the entity. For those users whose access is administered by the entity, user system credentials are removed when user access is no longer authorized.	User entities' new user and modified user access to Dayforce HCM application/system must approved by authorized personnel before the access is implemented. Roles and features are granted according to job requirements. User entities' roles must be appropriately defined at configuration to help ensure adequate segregation of duties.
CC6.3 The entity authorizes, modifies, or removes access to data, software, functions, and other protected information assets based on roles, responsibilities, or the system design and changes, giving consideration to the concepts of least privilege and	Terminated users at user entities must be removed from the Dayforce HCM application/system in a timely manner. Ceridian HCM, Inc. support staff immediately must be notified immediately in the event of a change to the client's authorized contact.

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<i>Related Criteria</i>	<i>Complementary User Entity Control</i>
segregation of duties, to meet the entity's objectives.	User entities' user access to Dayforce HCM application/system must be periodically reviewed, and any changes must be implemented immediately.
CC6.4 The entity restricts physical access to facilities and protected information assets (for example, data center facilities, back-up media storage, and other sensitive locations) to authorized personnel to meet the entity's objectives.	Laptops, desktops and other network devices that connect to the Dayforce HCM application are authorized, logically and physically secure and utilize up to date security software.
CC6.7 The entity restricts the transmission, movement, and removal of information to authorized internal and external users and processes, and protects it during transmission, movement, or removal to meet the entity's objectives.	Passwords to user entities' SFTP accounts must be complex and changed on a periodic basis. Passwords must be changed on a periodic basis for clients who choose to use Single Sign-On (SSO). Failed login attempts to the client's own Dayforce HCM applications must be monitored and followed up as required.
CC7.3 The entity evaluates security events to determine whether they could or have resulted in a failure of the entity to meet its objectives (security incidents) and, if so, takes actions to prevent or address such failures.	Alerts to identify transmission failures (heartbeats) between the clocks and the Dayforce HCM servers must be adequately configured, reviewed and escalated to the support team as necessary.
PI1.4: The entity implements policies and procedures to make available or deliver output completely, accurately, and timely in accordance with specifications to meet the entity's objectives.	Access to electronic output is restricted based on client security roles configured within Dayforce HCM. Clients must carefully configure the security roles to restrict access to output to authorized client users. Audit reports must be run and modifications that have been made to time and attendance records must be reviewed and investigated. Payroll register reports and payroll summary reports must be reviewed for unexpected discrepancies.

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<i>Related Criteria</i>	<i>Complementary User Entity Control</i>
	Payroll commitment errors must be reported to the support team responsible for the Dayforce HCM application in a timely manner.

SUB-SERVICE ORGANIZATIONS

Ceridian HCM, Inc. uses the services of the following sub-service organizations in the provision of the Dayforce HCM system.

The following table provides the criteria that are dependent on the processes and controls at the sub-service organizations. The processes and controls at these sub-service organizations are not included in the scope of this report.

<i>Sub-service organization</i>	<i>Services Provided</i>	<i>Trust Services Criteria Intended to be Met by the Controls at the Sub-service Organization</i>	<i>Example of Controls Expected to be in place at the Sub-service Organization</i>
Navisite Microsoft Azure	Navisite and Microsoft Azure provide IaaS. Navisite and Microsoft Azure are responsible for managing physical access to computer equipment, protecting the data center from environmental hazards, network administration and monitoring, and backup.	CC6.3 The entity authorizes, modifies, or removes access to data, software, functions, and other protected information assets based on roles, responsibilities, or the system design and changes, giving consideration to the concepts of least privilege and segregation of duties, to meet the entity's objectives.	Access to databases is not provided to the IaaS partners. Operating systems access is restricted to authorized members of Navisite and Microsoft Azure. Activities of users with powerful privileges are logged and monitored.

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Description of the Dayforce HCM System

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<i>Sub-service organization</i>	<i>Services Provided</i>	<i>Trust Services Criteria Intended to be Met by the Controls at the Sub-service Organization</i>	<i>Example of Controls Expected to be in place at the Sub-service Organization</i>
		CC6.4 The entity restricts physical access to facilities and protected information assets (for example, data center facilities, back-up media storage, and other sensitive locations) to authorized personnel to meet the entity's objectives.	Physical access to the data center hosting IT systems is restricted based on job responsibility. Environmental conditions within the data center hosting key IT systems are monitored and controlled using the following: • Fire Detection and Suppression System • Uninterruptible Power Supply (UPS)/Generator • Heating, Ventilation and Air Conditioning (HVAC) units • Temperature Monitoring • Moisture/Water Monitoring Preventative and corrective maintenance contracts have been executed for critical environmental protection systems. Periodic maintenance activities are performed for environmental protection equipment.

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<i>Sub-service organization</i>	<i>Services Provided</i>	<i>Trust Services Criteria Intended to be Met by the Controls at the Sub-service Organization</i>	<i>Example of Controls Expected to be in place at the Sub-service Organization</i>
		CC6.6 The entity implements logical access security measures to protect against threats from sources outside its system boundaries.	Access to the network infrastructure is restricted to authorized Navisite and Microsoft Azure personnel. Network gear (switches, firewalls and routers, anti-virus software) has been configured to secure the system from unauthorized access. Security patches are applied timely. Vulnerabilities are identified and resolved.
		CC6.7 The entity restricts the transmission, movement, and removal of information to authorized internal and external users and processes, and protects it during transmission, movement, or removal to meet the entity's objectives.	Navisite and Microsoft Azure managed servers and network gear are configured to provide secure transmission between Ceridian and its clients.
		CC7.3 The entity evaluates security events to determine whether they could or have resulted in a failure of the entity to meet its objectives (security incidents) and, if so, takes actions to prevent or address such failures.	Notify Ceridian HCM of any breaches affecting security, confidentiality and availability. Backups are performed on a timely basis in accordance with retention requirements and stored off site. Operational procedures for the technical infrastructure supporting the production

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<i>Sub-service organization</i>	<i>Services Provided</i>	<i>Trust Services Criteria Intended to be Met by the Controls at the Sub-service Organization</i>	<i>Example of Controls Expected to be in place at the Sub-service Organization</i>
			systems have been defined and implemented.
		All criteria within "Security"	Microsoft Azure is responsible for protecting the infrastructure that runs all of the services offered in the Azure Cloud. This infrastructure is composed of the hardware, software, networking, and facilities that run Microsoft Azure Cloud services.

Monitoring Effectiveness of Subservice Provider Controls

The effective design, implementation, and operation of controls at the subservice organizations is component of the overall control environment needed by Ceridian HCM, Inc. to deliver its services to its clients. To monitor the controls and activities over subservice organizations Ceridian HCM, Inc. performs some or all of the following oversight activities below, as required:

- Review of subservice organization's SOC reports
- On-site inspections of subservice organization facilities
- Regular meetings with hosting partner management team
- Vendor Standard Information Gathering (SIG) documentation completed
- Reviewing and approving change tickets
- Monitoring system software for capacity and usage constraints

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Section IV – Trust Services Criteria, Related Controls, Test Procedures, and Results

COMMON CRITERIA

CC1.0 Common Criteria Related to Control Environment

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC1.1	COSO Principle 1: The entity demonstrates a commitment to integrity and ethical values.		
1.1.1	The Company has implemented and effectively communicated a comprehensive Code of Conduct that is intended to inform employees in the Company of the Company's expectations and of employees' legal and ethical responsibilities and obligations.	Inspected Ceridian's "Code of Conduct" document to determine whether the board of directors and management set Ceridian's integrity and ethical values through a "Code of Conduct" document. Inspected the Ceridian Intranet site to determine whether the "Code of Conduct" document has been published and is available to employees and contractors. Inspected the Ceridian's Education Center to determine whether Ceridian provides training on the Code of Conduct policy to employees at the time of hire and also on a yearly basis.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
1.1.2	The Board of Directors reviews its composition and the composition of the committees of the Board annually to determine whether the Board and committees have members with necessary skills, expertise and diversity of viewpoints for the Board and committees to operate effectively.	Inspected a selection of biographies of Board and Audit Committee members to determine whether the Board and Audit Committee is comprised of members with the necessary skills and expertise and whom are independent of management. Inspected the roster of executive management and board of directors to determine whether the board is independent of management. Inspected a selection of Board of Directors meeting minutes to determine whether the board reviewed its compensation and its compensation of the committees of the board.	No exceptions noted.
1.1.3	The Company maintains a toll-free fraud and ethics hotline and an Internet site, which are available 24 hours a day to report, anonymously or not, actual or suspected misconduct, ask questions or raise concerns about business ethics and compliance matters, without fear of retaliation. Calls to the hotline are reviewed and investigated promptly and appropriate remedial measures are taken. The Audit Committee of the Board of Directors is timely notified of calls related to financial reporting or involving officers of the Company. Periodic	Inspected the Ceridian toll-free fraud and ethics hotline description to determine whether third parties and employees can anonymously call the ethics hotline or submit a report on a dedicated website. The ethics hotline phone numbers and link to the Ethics Point website are located on the legal page of Ceridian Intranet site. Observed the Code of Conduct page located in https://www.ceridian.com/company/corporate/code-conduct to determine whether the phone number and	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	reports are also provided to the Audit Committee of other matters raised through this hotline.	guides of the fraud and ethics hotline were provided to the public. KPMG called the ethics hotline phone number to determine whether the phone number was valid and the process was functioning.	
1.1.4	Contractor and Vendor MSA includes terms and conditions which establishes standards of conduct, and define the obligations for evaluating adherence and addressing deviations. MSA includes confidentiality, security and other obligations. Agreements with Contractor/Vendor/Partner include (if applicable) a VDPA which specifies the security obligations, privacy obligations and/or confidentiality obligations of the parties.	Inspected a selection of Master Service Agreements (MSA) and Vendor Data Processing Addendums (VDPA) to determine whether the documents contained provisions regarding Security, Privacy, Confidentiality requirements and obligations for contractors and vendors.	No exceptions noted.
CC1.2	COSO Principle 2: The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control.		
1.2.1	The Board of Directors reviews its composition and the composition of the committees of the Board annually to determine whether the Board and committees have members with necessary skills, expertise and diversity	Inspected a selection of biographies of Board and Audit Committee members to determine whether the Board and Audit Committee is comprised of members with the necessary skills and expertise and whom are independent of management.	No exceptions noted.

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	of viewpoints for the Board and committees to operate effectively.	Inspected a selection of Board of Directors meeting minutes to determine whether the board reviewed its compensation and its compensation of the committees of the board. Inspected a selection of Audit Committee minutes to determine whether the Audit Committee periodically meets with internal and external auditors to discuss and challenge the reasonableness of the financial reporting, internal control processes and systems and risk framework.	
1.2.2	The Compensation Committee charter sets forth the responsibilities of the Compensation Committee. Under the charter, the Compensation Committee is responsible for reviewing and approving all compensation plans and programs, including salary, annual incentive targets, equity compensation awards, and the achievement of performance goals for the named executive officers. The Compensation Committee meets multiple times in order to review and approve these matters, and these meetings are documented in the minutes of the Compensation Committee.	Inspected the Compensation Committee (CC) Charter to determine whether the committee is responsible for reviewing and approving all compensation plans and programs. Inspected a selection of CC meeting minutes to determine the committee meets multiple times throughout the year to discuss topics including Governance and Approval, Employee Stock Purchase Program and Equity awards to new hires, promotions and high performers.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
1.2.3	The Audit Committee and Risk Steering Committee review the results of the Enterprise Risk Assessment. The Enterprise Risk Assessment includes all significant lines of business and significant processes within these lines of business, including IT.	Inspected Ceridian risk management documentation to determine whether the Audit Committee and the Risk Steering Committee review the results of the Enterprise Risk Assessment. Inspected ERM documentation to determine whether the Risk Steering Committee includes members from business, IT, and other Ceridian functions. Inspected a selection of Audit Committee meeting minutes to determine whether the risk reports were regularly reviewed by Audit Committee.	No exceptions noted.
1.2.4	The Ceridian Board of Directors operates independently from management.	Inspected the roster of the executive management and the board of directors to determine whether the board is independent of management. Inspected the Delegation of authority policy to determine whether it contained the Consolidated Approval Matrix (CAM) and Delegation of Authority (DOA), which sets out the control activities at various levels in the entity.	No exceptions noted.
CC1.3	COSO Principle 3: Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives.		

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1.3.1	The Company maintains and reviews the DOA policy on a periodic basis. The DOA outlines the approvals needed of company personnel to take certain actions.	Inspected the Ceridian Intranet site to determine whether the Delegation of Authority (DOA) policy is published and available to all employees. Inspected the DOA policy document to determine whether the DOA applies to all Ceridian operations worldwide and is applied at an overall corporate perspective as well as at a business unit level, which outlines the authority of company personnel.	No exceptions noted.
1.3.2	Contractor and Vendor MSA includes terms and conditions which establishes standards of conduct, and define the obligations for evaluating adherence and addressing deviations. MSA includes confidentiality, security and other obligations. Agreements with Contractor/Vendor/Partner include (if applicable) a VDPA which specifies the security obligations, privacy obligations and/or confidentiality obligations of the parties.	Inspected a selection of MSA and VDPA documents to determine whether the documents contained provisions regarding Security, Privacy, Confidentiality requirements and obligations for contractors and vendors.	No exceptions noted.
1.3.3	Ceridian has documented their organization structures and reporting lines in corporate organization charts.	Inspected a selection of corporate organization charts to determine whether management has documented the structures and reporting lines within the organization charts.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC1.4	COSO Principle 4: The entity demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives.		
1.4.1	The Compensation Committee charter sets forth the responsibilities of the Compensation Committee. Under the charter, the Compensation Committee is responsible for reviewing and approving all compensation plans and programs, including salary, annual incentive targets, equity compensation awards, and the achievement of performance goals for the named executive officers. The Compensation Committee meets multiple times in order to review and approve these matters, and these meetings are documented in the minutes of the Compensation Committee.	Inspected the CC Charter to determine whether the committee is responsible for reviewing and approving all compensation plans and programs. Inspected a selection of CC meeting minutes to determine the committee meets multiple times throughout the year to discuss topics including Governance and Approval, Employee Stock Purchase Program and Equity awards to new hires, promotions and high performers.	No exceptions noted.
1.4.2	The Company hires personnel that have the qualifications and experience needed to perform key job functions for their position by documenting core competencies and job descriptions for positions. Additionally, the Company provides access to training so personnel remain current on new regulations and guidelines that are key to their position.	Inspected a selection of biographies and resumes of Ceridian leadership to determine whether they possess the background and competency to serve in their assigned roles. Inspected a selection of recruitment documents to determine whether a written job description is a fundamental element of the recruitment activities, and the core competencies of the position being recruited are included in the job description.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Observed a selection of online documents to determine whether the job descriptions posted by Ceridian include job duties, responsibilities, and the corresponding requirements and qualifications. Observed Ceridian's e-Learning platform to determine whether Ceridian provides various training programs to employees and contractors. Inspected a selection of new-hire training documents to determine whether Ceridian provides business and products related training for their new-hires over the course of their first month.	
1.4.3	The Board of Directors reviews its composition and the composition of the committees of the Board annually to determine whether the Board and committees have the appropriate mix of members with necessary skills, expertise and diversity of viewpoints for the Board and committees to operate effectively.	Inspected a selection of biographies of Board and Audit Committee members to determine whether the Board and Audit Committee is comprised of members with the necessary skills and expertise and whom are independent of management.	No exceptions noted.
1.4.4	Ceridian HCM Inc. performs an individual performance review using the situational leadership framework to set individual employee goals and to track their accomplishments against those goals. Annually performance is summarized into the Dayforce HCM tool, as part of the annual merit program. Serious deviations	Inspected a selection of performance review procedure documents to determine whether Ceridian has established a formal employee performance review process.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	are handled via engagement of the People and Culture representatives.	Inspected a selection of employee performance reviews to determine whether individual goals were set by the employee and manager, reviewed annually and serious deviations involved People and Culture representatives as needed.	
1.4.5	Ceridian new hire training includes both general and role based training on Dayforce systems and systems operations. Additionally, Ceridian internal training is available on the Ceridian Education Centre (CEC) and training is available as part of user training such as Dayforce Pro training.	Inspected a selection of training program documents to determine whether Ceridian provides in-depth and detailed training for their new hires over the course of their first month. Observed Ceridian's e-Learning platform to determine whether Ceridian provides various training programs to employees and contractors.	No exceptions noted.
CC1.5	COSO Principle 5: The entity holds individuals accountable for their internal control responsibilities in the pursuit of objectives.		
1.5.1	The Compensation Committee charter sets forth the responsibilities of the Compensation Committee. Under the charter, the Compensation Committee is responsible for reviewing and approving all compensation plans and programs, including salary, annual incentive targets, equity compensation awards, and the achievement of performance goals for the named executive officers. The Compensation Committee meets multiple times in order to review and approve these matters, and these	Inspected the CC Charter to determine whether the committee is responsible for reviewing and approving all compensation plans and programs. Inspected a selection of CC meeting minutes to determine the committee meets multiple times throughout the year to discuss topics including Governance and Approval, Employee Stock Purchase	No exceptions noted.

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	meetings are documented in the minutes of the Compensation Committee.	Program and Equity awards to new hires, promotions and high performers.	
1.5.2	Ceridian HCM Inc. performs an individual performance review using the situational leadership framework to set individual employee goals and to track their accomplishments against those goals. Annually performance is summarized into the Dayforce HCM tool, as part of the annual merit program. Serious deviations are handled via engagement of the People and Culture representatives.	Inspected a selection of performance review procedure documents to determine whether Ceridian has established a formal employee performance review process. Inspected a selection of employee performance review documents to determine whether the individual goals were set by the employee and manager, reviewed annually and serious deviations involved People and Culture representatives as needed.	No exceptions noted.
1.5.3	The Company maintains a toll-free fraud and ethics hotline and an Internet site, which are available 24 hours a day to report, anonymously or not, actual or suspected misconduct, ask questions or raise concerns about business ethics and compliance matters, without fear of retaliation. Calls to the hotline are reviewed and investigated promptly and appropriate remedial measures are taken.	Inspected the Ceridian toll-free fraud and ethics hotline description to determine whether third parties and employees can anonymously call the ethics hotline or submit a report on dedicated website. The ethics hotline phone numbers and link to the Ethics Point website are located on the legal page of Ceridian Intranet site. KPMG called the ethics hotline phone number to determine whether the phone number was valid and the process was functioning.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
1.5.4	The Audit Committee, The Board of Directors and the Risk Steering Committee review the results of the Enterprise Risk Assessment. The Enterprise Risk Assessment includes all significant lines of business and significant processes within these lines of business, including IT.	Inspected Ceridian risk management documentation to determine whether the Audit Committee and the Risk Steering Committee review the results of the Enterprise Risk Assessment. Inspected ERM documentation to determine whether the Risk Steering Committee includes members from business, IT, and other Ceridian functions. Inspected a selection of Audit Committee meeting minutes to determine whether the risk reports were regularly reviewed by Audit Committee.	No exceptions noted.

CC2.0 Common Criteria Related to Communications

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC2.1	COSO Principle 13: The entity obtains or generates and uses relevant, quality information to support the functioning of internal control.		

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
2.1.1	Ceridian HCM, Inc. Compliance team conducts internal testing on a regular basis to monitor General IT Controls related to security, availability, processing integrity, confidentiality and privacy to maintain compliance with the established policies and procedures within the organization. Email updates are communicated to senior management and any potential findings are reported and addressed accordingly.	Inspected a selection of internal testing documents to determine whether Ceridian's Compliance team conducted internal testing on a regular basis to monitor General IT Controls. Results of the assessments were provided to senior management. Observed a selection of Internal Audit documents to determine whether an audit process has been established to identify internal control requirements, manage and document the compliance, and addressed the potential gaps.	No exceptions noted.
2.1.2	Internal Audit develops a risk assessment in conjunction with management's input to identify and evaluate barriers to achieving Company-wide objectives. Internal Audit uses risk assessments to evaluate and rank the identified risks throughout the various functions within the Company. This assessment drives the development of the Company's Internal Audit program. The risk assessment, results and audit plans are reviewed by the Audit Committee and Management periodically.	Inspected the Ceridian Audit Universe to determine whether risk assessments were conducted on all areas of the company and the results were used to develop the Company's Internal Audit program. Inspected a selection of the Audit Committee meeting minutes to determine whether the risk assessment results and Internal Audit plan were reviewed by the Audit Committee and Management.	No exceptions noted.
2.1.3	In addition to Internal Audit's evaluations, annual Cyber Security and application scanning assessments are performed by third parties to provide objective feedback to management.	Inspected a selection of cyber security assessments and application scan reports to determine whether results are documented and issues are identified and remediated.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC2.2	COSO Principle 14: The entity internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control.		
2.2.1	Quarterly, process owners certify the following related to the controls within Dayforce processes: • process narratives are accurate • they are not aware of any significant or anticipated changes in business process/internal controls • no significant deficiencies exist • they have not been asked to override internal controls.	Inspected a selection of quarterly control certifications to determine whether process owners certify that the controls and process documentation are accurate, they are not aware of any significant or anticipated changes in business process/internal controls, no significant deficiencies exist, they have not been asked to override internal controls.	No exceptions noted.
2.2.2	The Company maintains and reviews the DOA policy on a periodic basis. The DOA outlines the approvals needed of company personnel to take certain actions.	Observed a selection of intranet websites to determine whether the DOA policy is published and available to all employees. Inspected the DOA policy document to determine whether the DOA applies to all Ceridian operations worldwide and is applied at an overall corporate perspective as well as at a business unit level, which outlines the authority of company personnel.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
2.2.3	All policies and standards are centrally stored and distributed (Policy Central) in a location available to all staff, and links to the location are distributed through various means. The Policy Management Process document defines responsibility for communication of new and revised policies.	Observed Ceridian's online policy repository to determine whether policies and standards have been published in Ceridian's intranet and are available to all staff and contractors. Inspected Ceridian's Policy Management Process document to determine whether the roles and responsibilities has been defined for Ceridian policy communication strategies, approaches and plans.	No exceptions noted.
2.2.4	Periodically, the Audit Committee meets separately with management and the independent auditors to discuss business, financial, or legal issues that may significantly impact the Company's internal control systems, which would include the Dayforce environment.	Inspected a selection of Audit Committee meeting minutes to determine whether the Audit Committee met quarterly throughout the year. Inspected a selection of Audit Committee meeting minutes to determine whether regular updates for identified risks, accompanying mitigation and remediation plans were discussed.	No exceptions noted.
2.2.5	Internal Audit develops a risk assessment in conjunction with management's input to identify and evaluate barriers to achieving Company-wide objectives. Internal Audit uses risk assessments to evaluate and rank the identified risks throughout the various functions within the Company. This assessment drives the development of the Company's Internal Audit program. The risk assessment, results and Internal Audit plans are	Inspected the Ceridian Audit Universe to determine whether risk assessments were conducted on strategic areas of the company and the results were used to develop the Company's Internal Audit program. Inspected a selection of the Audit Committee Meeting minutes to determine whether the risk assessment	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	reviewed by the Audit Committee and Management periodically.	results and Internal Audit plan were reviewed by the Audit Committee and Management.	
2.2.6	The Company maintains a toll-free fraud and ethics hotline and an Internet site, which are available 24 hours a day to report, anonymously or not, actual or suspected misconduct, ask questions or raise concerns about business ethics and compliance matters, without fear of retaliation. Calls to the hotline are reviewed and investigated promptly and appropriate remedial measures are taken.	Inspected the Ceridian toll-free fraud and ethics hotline description to determine whether third parties and employees can anonymously call the ethics hotline or submit a report on dedicated website. The ethics hotline phone numbers and link to the Ethics Point website are located on the legal page of Ceridian Intranet site. KPMG called the ethics hotline phone number to determine whether the phone number was valid and the process was functioning.	No exceptions noted.
2.2.7	The Company has implemented and effectively communicated a comprehensive Code of Conduct that is intended to inform employees in the Company of the Company's expectations and of employees' legal and ethical responsibilities and obligations.	Inspected Ceridian's "Code of Conduct" document to determine whether the board of directors and management set Ceridian's integrity and ethical values through a "Code of Conduct" document. Inspected the Ceridian intranet site to determine whether the "Code of Conduct" document has been published and is available to employees and contractors. Inspected the Ceridian Education Center to determine whether Ceridian provides training on the Code of	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Conduct policy to employees at the time of hire and also on a yearly basis.	
2.2.8	Ceridian HCM, Inc. has established an Information Security Policy and Standards based on ISO27002 that outlines Ceridian's security principles, roles and responsibilities for internal control to help ensure client data receives the appropriate standards of protection and care.	Inspected Ceridian's Information Security Management System documents to determine whether Ceridian has established a global security management system aligned with ISO27001 to protect the information and data processed by Ceridian.	No exceptions noted.
2.2.9	Annual security and privacy awareness training is supplemented with more frequent and topical messaging and email blasts reinforce and improve security and privacy knowledge and awareness.	Inspected a selection of corporate communication documents to determine whether Ceridian utilized multiple ways to communicate the security and privacy topics with its employees. Inspected a selection of awareness training program documents to determine whether a security and privacy awareness training program is deployed to all Ceridian employees on a regular basis.	No exceptions noted.
2.2.10	Ceridian new hire training includes general and role based training on Dayforce systems and systems operations. Additionally, Ceridian internal training is available on the company intranet and training is available as part of user training such as "Dayforce Pro training".	Inspected a selection of training program documents to determine whether the training process for new hire has been established to ensure new hires will be trained in a timely manner.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Observed Ceridian's e-Learning platform to determine whether Ceridian provides various training programs to employees and contractors.	
2.2.11	Internally, Ceridian HCM, Inc. utilizes various methods to communicate company policies, employee roles/responsibilities, and significant events within a timely manner. These methods include orientation and training programs for newly hired employees; the use of electronic mail messages to communicate time-sensitive messages; ongoing training programs for existing employees; regular team meetings and training sessions; and the organization's intranet.	Inspected the Policy Management Process document to determine whether the roles and responsibilities of communication regarding Ceridian policies are defined. Observed a selection of intranet websites to determine whether Ceridian shares important information with employees via Ceridian's intranet to support them in performing their duties. Observed Ceridian's e-Learning platform to determine whether Ceridian provides various training to employees and contractors to support them in performing their duties. Inspected a selection of training program documents to determine whether the new-hire training process has been established to deliver the company, business, processes and products information to new hires in a timely manner. Inspected a selection of email communications to determine whether significant events were communicated through email to employees, and	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		whether those communications included policy releases, compliance program updates, critical changes of technology or staff position, corporate events and training program updates.	
2.2.12	Product documentation, including application functionality updates and screenshots, is updated as part of a new system release.	Inspected a selection of product documents to determine whether Ceridian published, maintained, and updated product documents for major product release. Inspected a selection of intranet websites to determine whether updated product documentation has been published internally to support relevant personnel in performing their duties.	No exceptions noted.
CC2.3	COSO Principle 15: The entity communicates with external parties regarding matters affecting the functioning of internal control.		
2.3.1	Ceridian HCM, Inc. communicates with external stakeholders in a number of ways: Release notes are issued to clients in advance of every release and include a list of new features.	Inspected a selection of product documents to determine whether Ceridian published, maintained, and updated product documents for major product releases. Inspected a selection of client communication documents to determine whether clients are informed about maintenance, upgrade, and other activities related	No exceptions noted.

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	- Product documentation, including application functionality updates and screenshots, is updated as part of a new system release. - Client Support issues bulletins at regular intervals and informs clients about maintenance, upgrade, and other activities related to the service on an as needed basis.	to the service on an as needed basis via support bulletins.	
2.3.2	Clients have direct access to communicate failures, incidents, concerns, and other complaints to Ceridian HCM, Inc.'s support services via support portal interface, email, and telephone. Ceridian HCM Inc. has implemented an Incident Response Plan which includes roles, responsibilities and processes to deal with security incidents.	Inspected Ceridian's support portal to determine whether clients have direct access to communicate failures, incidents, concerns, and other complaints to Ceridian HCM, Inc.'s support services via support portal interface, in addition to email, and telephone contacts. Inspected Ceridian Security Incident Response process documents to determine whether the plan includes roles, responsibilities and processes to deal with security incidents.	No exceptions noted.
2.3.3	Reported Priority 1 issues are recorded and prioritized in ticketing systems and are responded to in a timely manner.	Inspected a selection of incident tickets in the ticketing system to determine whether the Priority 1 incidents were documented, prioritized, and followed up in a timely manner.	No exceptions noted.

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2.3.4	Periodically, the Audit Committee meets separately with management and the independent auditors to discuss business, financial, or legal issues that may significantly impact the Company's internal control systems, which includes the Dayforce environment.	Inspected a selection of Audit Committee meeting minutes to determine whether the Audit Committee met quarterly throughout the year. Inspected a selection of Audit Committee meeting minutes to determine whether regular updates for identified risks, accompanying mitigation and remediation plans were discussed.	No exceptions noted.
2.3.5	The Company maintains a toll-free fraud and ethics hotline and an Internet site, which are available 24 hours a day to report, anonymously or not, actual or suspected misconduct, ask questions or raise concerns about business ethics and compliance matters, without fear of retaliation. Calls to the hotline are reviewed and investigated promptly and appropriate remedial measures are taken.	Inspected the Ceridian toll-free fraud and ethics hotline description to determine whether third parties and employees can anonymously call the ethics hotline or submit a report on dedicated website. The ethics hotline phone numbers and link to the Ethics Point website are located on the legal page of Ceridian Intranet site. KPMG called the ethics hotline phone number to determine whether the phone number was valid and the process was functioning.	No exceptions noted.
2.3.6	A description of the services provided by Ceridian HCM Inc. to its customers is published on the company's website. The description outlines the offerings/features of Ceridian HCM Inc. and details the modules available within the Ceridian offered applications such as: Payroll,	Inspected Ceridian's client contract portal to determine whether the service particulars documents of Dayforce are published on the company's website. Inspected a selection of service particulars documents to determine whether the documents outline the offerings/features of Dayforce and details the modules	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	Time & Attendance, Benefits, Workforce Management and Performance Management.	available within the Ceridian offered applications such as: Payroll, Time & Attendance, Benefits, Workforce Management and Performance Management.	

CC3.0 Common Criteria Related to Risk Assessment

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC3.1	COSO Principle 6: The entity specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives.		
3.1.1	The Risk Steering Committee reviews the results of the Enterprise Risk Assessment. The Enterprise Risk Assessment includes all significant lines of business and significant processes within these lines of business, including IT.	Inspected Ceridian risk management documentation to determine whether the Audit Committee and the Risk Steering Committee review the results of the Enterprise Risk Assessment. Inspected ERM documentation to determine whether the Risk Steering Committee includes members from business, IT, and other Ceridian functions.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of Audit Committee meeting minutes to determine whether the risk reports were regularly reviewed by Audit Committee.	
3.1.2	Annually company objectives are established. These goals are grouped into areas such as financial, customer, compliance.	Inspected a selection of Ceridian Scorecard documents to determine whether Ceridian sets its goals annually, covering finance, technology, compliance, security and customer relations and consider security, availability, processing integrity, confidentiality and privacy elements.	No exceptions noted.
3.1.3	A tolerance for risk/opportunity is documented on behalf of the executive and communicated as part of the ERM program.	Inspected a selection of risk management documents to determine whether Ceridian has a formal statement guiding management in considering risk tolerance in their risk management processes.	No exceptions noted.
3.1.4	Risks are assessed and evaluated within the groupings identified by the corporate goals, and are assessed with respect to the articulated tolerance.	Inspected a selection of risk management documents to determine whether the corporate goals and risk appetite were considered in the risk management process.	No exceptions noted.
3.1.5	Functional Unit dashboards are created and used to support submissions for Short Range Planning (SRP) resource requests, and more significant initiatives are funded (if applicable) via strategic initiatives. These cross	Inspected a selection of risk dashboards to determine whether they were used to track the function-wise risk events, their risk score, risk source, risk status and remediation strategy.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	functional initiatives are identified by the ERM assessments, and managed by ERM.	Inspected a selection of risk management documents to determine whether ERM framework aligns with the business objectives and corporate values. Inspected a selection of risk assessment process documents to determine whether the process included preparing risk inventory, and updating functional scorecards.	
3.1.6	Ceridian HCM, Inc. has identified applicable standards and frameworks such as but not necessarily limited to ISO/IEC 27000 series (27002, 27017, 27018, and 27036) GAAP, GAAS, SOC 1/2, SOX, COSO, and NIST which are used as input to select controls and develop policies.	Inspected a selection of management documents to determine whether Ceridian has identified the relevant standards and frameworks and has adopted them in business processes and internal controls.	No exceptions noted.
3.1.7	Quarterly, process owners certify the following related to the controls within Dayforce processes - process narratives are accurate. - they are not aware of any significant or anticipated changes in business process/internal controls. - no significant deficiencies exist. - they have not been asked to override internal controls.	Inspected a selection of quarterly control certifications to determine whether process owners certify that the controls and process documentation are accurate, they are not aware of any significant or anticipated changes in business process/internal controls, no significant deficiencies exist, they have not been asked to override internal controls.	No exceptions noted.

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3.1.8	Adequate feedback mechanisms exist to enable management to periodically assess the extent to which company-wide objectives have been achieved.	Inspected a selection of monthly manager meetings and weekly summary of business reports to determine whether management periodically assessed the status of company-wide objectives, including those related to the Dayforce environment.	No exceptions noted.
3.1.9	Internal legal and compliance resources review the Company's compliance with laws and regulations and implements changes, if necessary.	Inspected a selection of compliance documents to determine whether the internal legal and compliance team is responsible for monitoring and responding to changes in external laws and regulations and facilitating implementation of the changes.	No exceptions noted.
CC3.2	COSO Principle 7: The entity identifies risks to the achievement of its objectives across the entity and analyzes risks as a basis for determining how the risks should be managed.		
3.2.1	The Risk Steering Committee reviews the results of the Enterprise Risk Assessment. The Enterprise Risk Assessment includes all significant lines of business and significant processes within these lines of business, including IT.	Inspected Ceridian risk management documentation to determine whether the Audit Committee and the Risk Steering Committee review the results of the Enterprise Risk Assessment. Inspected ERM documentation to determine whether the Risk Steering Committee includes members from business, IT, and other Ceridian functions.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of Audit Committee meeting minutes to determine whether the risk reports were regularly reviewed by Audit Committee.	
3.2.2	Ceridian has deployed a COSO based ERM framework which involves senior levels of management.	Inspected a selection of risk management documents to determine whether Ceridian has established a COSO-based, enterprise-wide risk management mechanism and requires cross-functional management / departments to be involved in risk management activities.	No exceptions noted.
3.2.3	Ceridian's ERM assessment considers both internal and external risks and opportunities.	Inspected a selection of risk management documents to determine whether they contained the methodology of risk framework, risk categories, key risk areas (KRAs), risk tolerance, risk assessment, risk monitoring, and composition of risk steering committee and alignment of ERM with business objectives. Risk management scope covers internal, customer and vendor risks and other external factors.	No exceptions noted.
3.2.4	Risks are evaluated against tolerance and using a methodology that analyzes the significance of the risk.	Inspected a selection of risk management documents to determine whether Ceridian has established an industry-standard risk assessment approach to analyze the risks. Inspected a selection of risk assessment documents to determine whether the significance of the risks was	No exceptions noted.

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		considered on the basis of parameters, including likelihood, severity, detectability, velocity, priority and risk appetite.	
3.2.5	Ceridian's Risk framework includes consideration to how the risks should be managed. For example whether to accept, avoid, reduce or share the risk.	Inspected a selection of risk management documents to determine whether Ceridian has established an industry-standard risk management approach to manage the risks. Inspected a selection of risk assessment documents to determine whether the risk response options has been identified and defined in Ceridian's risk management process.	No exceptions noted.
3.2.6	Ceridian has a defined process to address Vendor/Supplier Risk Management. Risk identification and assessment are performed on an annual basis. This assessment also helps to address any changes within the Standard Information Gathering process (SIG).	Inspected a selection of vendor management process documents to determine whether Ceridian has established a process to manage the risks from vendors. Inspected a selection of vendor risk assessment reports to determine whether Ceridian performed annual vendor assessments.	No exceptions noted.
CC3.3	COSO Principle 8: The entity considers the potential for fraud in assessing risks to the achievement of objectives.		

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
3.3.1	Fraud, both internal and external are explicitly addressed in the risk assessment.	Inspected a selection of risk assessment documents to determine whether Internal Audit regularly conducts SOX risk assessment against the susceptibility to fraud. Inspected a selection of risk register documents to determine whether the fraud risks were included in Ceridian's risk register documents.	No exceptions noted.
CC3.4	COSO Principle 9: The entity identifies and assesses changes that could significantly impact the system of internal control.		
3.4.1	The Ceridian Risk Framework includes consideration of - Changes in the External Environment - Changes in the Business Model - Changes in Leadership - Changes in Systems and Technology - Changes in Vendor and Business Partner Relationships	Inspected a selection of risk management documents to determine whether Ceridian's risk management approach has taken into account the risks posed by changes in external, business, leadership, systems, technology, and supplier relationships. Inspected a selection of vendor risk management process documents to determine whether vendors are subject to an initial vendor risk assessment when contracting with Ceridian, as well as annual reassessment for those vendors deemed critical.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
3.4.2	The risk identification process considers changes in vendor and business partner relationships focusing on critical vendors, but new vendors, and single point of failure vendors are prioritized.	Inspected a selection of Ceridian's risk management process documents to determine whether Ceridian's risk management approach includes the consideration of the risk posed by critical supplier relationship changes. Inspected a selection of Ceridian's vendor management documents to determine whether all vendors are subject to an initial vendor risk assessment when contracting with Ceridian, as well as annual re-assessments for those vendors deemed critical. Inspected a selection of vendor management documents to determine whether vendor assessments were performed which included the evaluation of internal processes, controls and security programs relating to Ceridian's key risk categories.	No exceptions noted.
3.4.3	Ceridian has a defined process to address Vendor/Supplier Risk Management. Risk identification and assessment are performed on an annual basis. This assessment also helps to address any changes within the Standard Information Gathering process (SIG).	Inspected a selection of vendor management process documents to determine whether Ceridian has established a process to manage the risks from vendors.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of vendor risk assessment reports to determine whether Ceridian performed regular vendor assessments.	

CC4.0 Common Criteria Related to Monitoring Controls

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Design and Implementation Performed by KPMG	Results of Tests
CC4.1	COSO Principle 16: The entity selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning.		
4.1.1	Ceridian HCM, Inc. Compliance team conducts internal testing on a regular basis to monitor General IT Controls related to security, availability, processing integrity, confidentiality and privacy to maintain compliance with the established policies and procedures within the organization.	Inspected a selection of internal testing documents to determine whether Ceridian's Compliance team conducted internal testing on a regular basis to monitor General IT Controls. Results of the assessments were provided to senior management. Observed a selection of Internal Audit documents to determine whether an audit process has been established to identify internal control requirements,	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Design and Implementation Performed by KPMG	Results of Tests
	Email updates are communicated to senior management and any potential findings are reported and addressed accordingly.	manage and document the compliance, and addressed the potential gaps.	
4.1.2	Internal Audit performs financial, compliance, operational, and information technology audits and certain analytical procedures. Management reviews the audit report prior to issuance, confirms the findings and provides a management response with target dates for remediation. The results of these audits are monitored by management and reported quarterly to the Audit Committee. Significant issues not remediated within the agreed-upon remediation period are reported to the Audit Committee quarterly. The Company has consistent internal controls across the operations that are tested during the audits.	Inspected the Internal Audit Charter to determine whether Internal Audit performs financial, compliance, operational and information technology audits. Inspected a selection of Internal Audit reports to determine whether management reviewed the audit before issuance, confirmed its findings and provided target dates for remediation. Inspected a selection of Audit Committee documents to determine whether Internal Audit provides quarterly updates to the Audit Committee. Inspected a selection of Internal Audit documents to determine whether management has communicated the updates (remediated, pending remediation, open, closed) on the corrective action / implementation activity. Inspected a selection of Internal Audit documents to determine whether the Internal Audit department follows up on the issues rectification status.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Design and Implementation Performed by KPMG	Results of Tests
4.1.3	In addition to Internal Audit's evaluations, annual Cyber Security and application scanning assessments are performed by external third parties to provide objective feedback to management.	Inspected a selection of cyber security assessment documents to determine whether various technical tests have been conducted, documented and the finding issues have been followed up.	No exceptions noted.
4.1.4	Ceridian performs and reviews the results of annual cyber security testing and application vulnerability scanning in order to identify and remediate vulnerabilities to systems and applications.	Inspected a selection of external penetration and web application scan documents to determine whether technical tests were performed and identified vulnerabilities from tests were followed up.	No exceptions noted.
CC4.2	COSO Principle 17: The entity evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the board of directors, as appropriate.		
4.2.1	Internal Audit performs financial, compliance, operational, and information technology audits and certain analytical procedures. Management reviews the audit report prior to issuance, confirms the findings and provides a management response with target dates for remediation. The results of these audits are monitored by management and reported quarterly to the Audit Committee. Significant issues not remediated within the agreed-upon remediation period are reported to the Audit Committee quarterly. The Company has consistent internal controls across the operations that are tested during the audits.	Inspected the Internal Audit Charter to determine whether internal audit performs financial, compliance, operational and information technology audits. Inspected a selection of Internal Audit reports to determine whether management reviewed the audit before issuance, confirmed its findings and provided target dates for remediation.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Design and Implementation Performed by KPMG	Results of Tests
		Inspected a selection of Audit Committee documents to determine whether Internal Audit provides quarterly updates to the Audit Committee. Inspected a selection of Internal Audit documents to determine whether management has communicated the updates (remediated, pending remediation, open, closed) on the corrective action / implementation activity. Inspected a selection of Internal Audit documents to determine whether the Internal Audit department follows up on the issues rectification status.	
4.2.2	Periodically, the Audit Committee meets separately with management and the independent auditors to discuss business, financial, or legal issues that may significantly impact the Company's internal control systems, which would include the Dayforce environment.	Inspected a selection of Audit Committee meeting minutes to determine whether the Audit Committee met quarterly throughout the year. Inspected a selection of Audit Committee meeting minutes to determine whether regular updates for identified risks, accompanying mitigation and remediation plans were discussed.	No exceptions noted.

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CC5.0 Common Criteria Related to Control Activities

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC5.1	COSO Principle 10: The entity selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels		
5.1.1	Risk Remediation is tracked and reported on, including target date for the activity and remediation date target.	Inspected a selection of risk documents to determine whether risk remediation activities were assigned a unique ID and were being tracked on the basis of risk description, risk score, remediation status, owning function, activity start date and remediation target date.	No exceptions noted.
5.1.2	Ceridian has deployed a COSO based ERM framework. The framework is an effective risk assessment mechanisms that involve appropriate levels of management.	Inspected a selection of risk management documents to determine whether Ceridian has established a COSO-based, enterprise-wide risk management mechanism and requires cross-functional management / departments to be involved in risk management activities.	No exceptions noted.
5.1.3	Ceridian HCM, Inc. has identified applicable standards and frameworks such as but not necessarily limited to ISO/IEC 27000 series (27002, 27017, 27018, and 27036) GAAP, GAAS, SOC 1/2, SOX, COSO, and NIST	Inspected a selection of management documents to determine whether Ceridian has identified the relevant standards and frameworks and has adopted them in business processes and internal controls.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	which are used as input to select controls and develop policies.		
5.1.4	Management has established a DOA policy which includes control activities at various levels in the entity.	Observed a selection of intranet websites to determine whether the DOA policy is published and available to all employees. Inspected the DOA policy document to determine whether the DOA applies to all Ceridian operations worldwide and is applied at an overall corporate perspective as well as at a business unit level, which outlines the authority of company personnel.	No exceptions noted.
5.1.5	Management segregates incompatible duties, and evaluates this on an ongoing basis in response to changing regulation, client expectation, and guidance received from auditors. For example the ability to develop/edit code is segregated from the ability to promote code. The ability to create a payroll, and to authorize/process a payroll are segregated.	Inspected Ceridian's DOA and supporting documents to determine whether segregation of duties (SoD) are defined and enforced, including segregation in areas such as code development and payroll processing.	No exceptions noted.
CC5.2	COSO Principle 11: The entity also selects and develops general control activities over technology to support the achievement of objectives.		

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5.2.1	Ceridian HCM, Inc. has identified applicable standards and frameworks such as but not necessarily limited to ISO/IEC 27000 series (27002, 27017, 27018, and 27036) GAAP, GAAS, SOC 1/2, SOX, COSO, and NIST which are used as input to select controls and develop policies.	Inspected a selection of management documents to determine whether Ceridian has identified the relevant standards and frameworks and has adopted them in business processes and internal controls.	No exceptions noted.
5.2.2	All policies and standards are centrally stored and distributed (Policy Central) in a location available to all staff, and links to the location are distributed through various means. The Policy Management Process document defines responsibility for communication of new and revised policies.	Observed Ceridian's online policy repository to determine whether policies and standards have been published in Ceridian's intranet and are available to all staff and contractors. Inspected Ceridian's Policy Management Process document to determine whether the roles and responsibilities has been defined for Ceridian policy communication strategies, approaches and plans.	No exceptions noted.
CC5.3	COSO Principle 12: The entity deploys control activities through policies that establish what is expected and in procedures that put policies into action.		
5.3.1	Responsibility for policies is assigned via the DOA, and execution is assigned, within the policy and within the Policy Management Process and the Policy Framework.	Inspected the DOA policy document to determine whether the responsibility for developing and implementing the corresponding policies is assigned to different positions, depending on the business area.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of policy management process documents to determine whether the process owners are responsible for reviewing and updating the process related policy documents and ensuring that the policies are approved by management.	
5.3.2	All policies and standards are centrally stored and distributed (Policy Central) in a location available to all staff, and links to the location are distributed through various means. The Policy Management Process document defines responsibility for communication of new and revised policies.	Observed Ceridian's online policy repository to determine whether policies and standards have been published in Ceridian's intranet and are available to all staff and contractors. Inspected Ceridian's Policy Management Process document to determine whether the roles and responsibilities have been defined for Ceridian policy communication strategies, approaches and plans.	No exceptions noted.
5.3.3	Internal Audit performs financial, compliance, operational, and information technology audits and certain analytical procedures. Management reviews the audit report prior to issuance, confirms the findings and provides a management response with target dates for remediation. The results of these audits are monitored by management and reported quarterly to the Audit Committee. Significant issues not remediated within the agreed-upon remediation period are reported to the Audit Committee quarterly. The Company has	Inspected the Internal Audit Charter to determine whether internal audit performs financial, compliance, operational and information technology audits. Inspected a selection of Internal Audit reports to determine whether management reviewed the audit before issuance, confirmed its findings and provided target dates for remediation.	No exceptions noted.

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	consistent internal controls across the operations that are tested during the audits.	Inspected a selection of Audit Committee documents to determine whether Internal Audit provides quarterly updates to the Audit Committee. Inspected a selection of Internal Audit documents to determine whether management has communicated the updates (remediated, pending remediation, open, closed) on the corrective action / implementation activity. Inspected a selection of Internal Audit documents to determine whether the Internal Audit department follows up on the issues rectification status.	
5.3.4	Roles and responsibilities are defined in a written job description and updated/created as required. Job descriptions provide an overview of duties and responsibilities, reporting relationship, qualifications and/or required knowledge/skills for the position. Hiring managers of Ceridian HCM, Inc. prepare job descriptions based upon requirements of the position. Potential candidates are screened and processed through a multi-phased interview process, reflecting soft and technical skills.	Inspected a selection of recruitment documents to determine whether a written job description is a fundamental element of the recruitment activities, and the core competencies of the position being recruited was included in the job description. Observed a selection of websites to determine whether the job descriptions posted by Ceridian include job duties, responsibilities, and the corresponding requirements and qualifications.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
5.3.5	The Company hires personnel that have the qualifications and experience needed to perform key job functions for their position. Additionally, the Company provides access to trainings so personnel remain current on new regulations and guidelines that are key to their position.	Inspected a selection of biographies and resumes of Ceridian leadership to determine whether they possess the background and competency to serve in their assigned roles. Inspected a selection of recruitment documents to determine whether the background check has been completed to ensure that hired candidates meet the requirements. Observed a selection of websites to determine whether the job descriptions posted by Ceridian include job duties, responsibilities, and the corresponding requirements and qualifications. Observed Ceridian's e-Learning platform to determine whether Ceridian provides various training program to employees and contractors. Inspected a selection of new-hire training documents to determine whether Ceridian provides business and products related training for their new-hires over the course of their first month.	No exceptions noted.

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<i>Ref #</i>	<i>Descriptions of Controls Specified by Ceridian</i>	<i>Tests of Operating Effectiveness Performed by KPMG</i>	<i>Results of Tests</i>
5.3.6	Ceridian HCM, Inc. Compliance team conducts internal testing on a regular basis to monitor the General IT Controls related to logical access, change management, and security to maintain compliance with the established policies and procedures within the organization. Email updates are communicated to senior management and any potential findings are reported and addressed accordingly.	Inspected a selection of internal testing documents to determine whether Ceridian's Compliance team conducted internal testing on a regular basis to monitor General IT Controls. Results of the assessments were provided to senior management. Observed a selection of Internal Audit documents to determine whether an audit process has been established to identify internal control requirements, manage and document the compliance, and addressed the identified gaps.	No exceptions noted.

CC6.0 Common Criteria Related to Logical and Physical Access Controls

<i>Ref #</i>	<i>Descriptions of Controls Specified by Ceridian</i>	<i>Tests of Operating Effectiveness Performed by KPMG</i>	<i>Results of Tests</i>
CC6.1	The entity implements logical access security software, infrastructure, and architectures over protected information assets to protect them from security events to meet the entity's objectives.		

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
6.1.1	An information classification policy has been created which identifies the information protection measures required for different information sensitivity levels.	Inspected a selection of information security standard documents to determine whether Ceridian sets information classification criteria and corresponding protection requirements.	No exceptions noted.
6.1.2	The HPUD (HP Universal Discovery) scans run once a day and scan for hardware including: • Servers • Network devices • Hosts & Virtual hosts Scans are configured to search at the IP level and use credentials for specific protocols including: • SNMP • WMI • Shell • NTCMD	Inspected a selection of HPUD scan reports to determine whether a scan to identify hardware is performed on a daily basis.	No exceptions noted.
6.1.3	Mobile devices are authenticated and access is restricted to authorized devices.	Inspected a selection of information security management documents to determine whether mobile devices are required to be authorized and approved	No exceptions noted.

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		by management and security hardened prior to connecting to Ceridian's network. Inspected the configuration of Ceridian's Mobile Device Management (MDM) system to determine whether the local storage of the managed mobile devices is encrypted. Inspected a selection of configurations of WLAN management systems to determine whether the MAC address filtering has been enabled to restrict the connection of unauthorized mobile devices.	
6.1.4	Access is role based and least privilege, in compliance with the policies and standards.	Inspected a selection of information security management documents to determine whether the policies and the standards contain specifications over role based access, least privilege, and security configuration requirements for client facing applications. Observed a selection of system configuration within the Dayforce product to determine whether Dayforce has the capability to allow customers to implement their own role-based security mechanisms in the Dayforce account management.	No exceptions noted.

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6.1.5	The Dayforce application provides clients with the ability to enforce password policies, such as password history, maximum age, minimum length, complexity requirements, account lockout duration, and account lockout threshold. Not all rules are optional, but are customizable by the client. For clients who choose federated authentication service, the Dayforce native rules do not apply. Establishing access and segregation of duties is the responsibility of the customer. Authenticating the identity of data subjects is primarily a customer responsibility. Ceridian requires all access to the system be by user ID and password.	Inspected a selection of the Dayforce product documents to determine whether a configurable password policy management feature is available in Dayforce to meet client security needs. Observed a selection of system configurations within the Dayforce product to determine whether clients are able to implement their own identification and authentication mechanisms in Dayforce, including Single Sign-on (SSO). Observed a selection of system configurations within the Dayforce product to determine whether Dayforce has the capability to allow customers to implement their own role-based security mechanisms in Dayforce account management.	No exceptions noted.
6.1.6	Identification and authentication requirements are established and documented for Ceridian personnel. Clients manage their access and are provided information and a security page to configure their access requirements.	Inspected a selection of information security management documents to determine whether Ceridian has established and documented security requirements for managing the identification and authentication of its products and IT systems. Inspected a selection of Dayforce configuration screens to determine whether Clients are provided security page to configure their access requirements.	No exceptions noted.

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6.1.7	Active Directory is deployed throughout the organization, including an integrated multifactor VPN for remote access.	Inspected the configuration of Ceridian's Active Directory settings to determine whether it is deployed throughout the organization and includes integrated multifactor VPN for remote access.	No exceptions noted.
6.1.8	Dayforce Client data is encrypted at rest.	Inspected the configuration of the Ceridian Dayforce client databases to determine whether data is encrypted.	No exceptions noted.
6.1.9	Routers and firewalls have been implemented to create separate networks of differing trust levels. The Dayforce application is deployed using a tiered approach with web application firewalls (WAF), a demilitarized zone (DMZ), and load balancers acting as initial contact point. Ceridian monitors for unauthorized access attempts.	Inspected a selection of network diagrams and network device configurations to determine whether routers, firewalls and web application firewalls had been implemented by Ceridian to segregate networks based on an assigned trust level. Inspected a selection of router and firewall configurations and determined they were configured to block and monitor for unauthorized access attempts. Inspected the network diagram to determine whether the firewalls were located at the network ingress points	No exceptions noted.

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6.1.10	Points of access have been identified and documented. The DayforceLink team, Privacy team and Architecture team have defined the points of access.	Inspected a selection of network diagram documents to determine whether the access nodes, the links between access nodes, and the security zones in which the nodes are located have been identified and inventoried. Inspected a selection of network device configurations to determine whether the diagrams reflected the network layout. Inspected a selection of system data flow documents to determine whether the access points, the privacy data passing through those access points, and stakeholders using those access points have been identified and documented.	No exceptions noted.
6.1.11	Dayforce certificates are managed and controlled utilizing DigiCert as a managed PKI.	Observed a selection of public key infrastructure (PKI) management system configurations to determine whether digital certificates are managed and controlled in a PKI management system.	No exceptions noted.
6.1.12	Data loss prevention (DLP) tools are used to monitor data movement within Ceridian to identify potential unauthorized data transfers.	Inspected the configuration of Ceridian's DLP software to determine whether it is configured to block the egress of several categories of sensitive information, including: credit cards	No exceptions noted.

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	Ceridian prohibits the transmission of PII-related data through email.	- social insurance numbers / national insurance numbers - source code	
CC6.2	Prior to issuing system credentials and granting system access, the entity registers and authorizes new internal and external users whose access is administered by the entity. For those users whose access is administered by the entity, user system credentials are removed when user access is no longer authorized.		
6.2.1	Access is role based and least privilege, in compliance with the policies and standards.	Inspected a selection of information security management documents to determine whether the policies and the standards contain specifications over role based access, least privilege, and security configuration requirements. Observed a selection of system configurations within Dayforce to determine whether Dayforce has the capability to allow customers to implement their own role-based security mechanisms in the Dayforce account management system.	No exceptions noted.
6.2.2	In compliance with the Access and Authentication for Customer Facing Applications and the Account and Password Management policies, the following password settings are in place to restrict access to authorized personnel:	Inspected a selection of information security management documents to determine whether Ceridian has set minimum complexity, age and other requirements of passwords to reduce the risk	No exceptions noted.

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	- Length (number of characters) - Complexity (type of characters required) - Expiration Period - Lockout Threshold (invalid attempts prior to lockout)	associated with compromising authentication information. Observed a selection of configurations within Dayforce to determine whether a password management function that complies with the Ceridian standard is available in Dayforce to allow customers to implement their own password policies.	
6.2.3	Additions and changes of access to in-scope systems follow a formal request process, are approved by user management and are implemented in accordance with the approved request.	Inspected a selection of logical access additions and changes to determine whether the requests followed the formal request process, were approved prior to being implemented, and were executed promptly.	No exceptions noted.
6.2.4	Administrative access to in-scope systems is restricted based on job function.	Inspected a selection of accounts with administrative access to determine whether they were restricted to properly authorized Ceridian system administrators.	No exceptions noted.
6.2.5	The use of shared or generic user accounts is limited to circumstances when there are system constraints that require their use. For shared accounts, access is tracked in a spreadsheet and limited to authorized personnel and passwords are changed on a periodic basis and when the authorized users leave the organization.	Inspected a selection of generic accounts to determine whether generic accounts were not configured for use by end-users. Inspected a selection of account management documents to determine whether the shared/generic accounts were tracked, the account owners were	No exceptions noted.

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		identified, and the purpose of each shared/generic account was documented and approved.	
6.2.6	Removals of access to in-scope systems are executed by a combination of automated IAM tools and/or security administrators upon termination of an employee or contractor.	Inspected a selection of terminated employees and contractors from in-scope systems to determine whether removal requests were executed by security administrators and were implemented in accordance with the approved request.	No exceptions noted.
6.2.7	Privileged access to in-scope systems is reviewed and approved by the managers of in-scope systems at least quarterly.	Inspected a selection of logical access reviews of privileged access to critical systems to determine whether they were performed by the managers of the in-scope system on a quarterly basis and if changes identified during the reviews were actioned.	No exceptions noted.
CC6.3	The entity authorizes, modifies, or removes access to data, software, functions, and other protected information assets based on roles, responsibilities, or the system design and changes, giving consideration to the concepts of least privilege and segregation of duties, to meet the entity's objectives.		
6.3.1	Access is role based and least privilege, in compliance with the policies and standards.	Inspected a selection of information security management documents to determine whether the policies and the standards contain specifications over role based access, least privilege, and security configuration requirements.	No exceptions noted.

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		Observed a selection of system configurations within Dayforce to determine whether Dayforce has the capability to allow customers to implement their own role-based security mechanisms in the Dayforce account management system.	
6.3.2	In compliance with the Access and Authentication for Customer Facing Applications and the Account and Password Management policies, the following password settings are in place to restrict access to authorized personnel: - Length (number of characters) - Complexity (type of characters required) - Expiration Period - Lockout Threshold (invalid attempts prior to lockout)	Inspected a selection of information security management documents to determine whether Ceridian has set minimum complexity, age and other requirements of passwords to reduce the risk associated with compromising authentication information. Observed a selection of configurations within the Dayforce product to determine whether a password management function that complies with the Ceridian standard is available in Dayforce to allow customers to implement their own password policies.	No exceptions noted.
6.3.3	Additions and changes of access to in-scope systems follow a formal request process, are approved by user management and are implemented in accordance with the approved request.	Inspected a selection of logical access additions and changes to determine whether the requests followed the formal request process, were approved prior to being implemented, and were executed promptly.	No exceptions noted.

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6.3.4	Administrative access to in-scope systems is restricted based on job function.	Inspected a selection of accounts with administrative access to determine whether they were restricted to properly authorized Ceridian system administrators.	No exceptions noted.
6.3.5	The use of shared or generic user accounts is limited to circumstances when there are system constraints that require their use. For these accounts, access is limited to authorized personnel and passwords are changed on a periodic basis and when authorized users leave the organization.	Inspected a selection of generic accounts to determine whether generic accounts were not configured for use by end-users. Inspected a selection of account management documents to determine whether the shared/generic accounts were tracked, the account owners were identified, and the purpose of each shared/generic account was documented and approved.	No exceptions noted.
6.3.6	Removals of access to in-scope systems are executed by a combination of automated IAM tools and/or security administrators upon termination of an employee or contractor.	Inspected a selection of logical access removals to determine whether they followed the formal process and were executed.	No exceptions noted.
CC6.4	The entity restricts physical access to facilities and protected information assets (for example, data center facilities, back-up media storage, and other sensitive locations) to authorized personnel to meet the entity's objectives.		

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6.4.1	Access to secure facilities is based on job function and approved by technology management or facilities management	For a selection of datacenters, inspected a selection of access lists to determine whether physical access was approved and based on job function. During tours of a selection of Ceridian locations, attempted to access sensitive areas using a guest proximity card, to determine whether access was not granted.	No exceptions noted.
6.4.2	Visitors to data centers sign in and out on a visitor log and are escorted.	For a selection of data centers, inspected a selection of visitor logs to determine whether visitor logs are maintained.	No exceptions noted.
6.4.3	Removals of access to the data centers are executed by card key administrators upon termination of an employee or contractor.	Inspected a selection of terminated employees and contractors to determine whether access to data centers was removed in a timely manner. Inspected the list of facilities coordinators to determine whether a coordinator exists for all production sites.	No exceptions noted.
6.4.4	Access to data centers is reviewed and approved at least quarterly by the respective managers.	Inspected a selection of review documents of physical access to Ceridian secure facilities to determine whether the reviews identified any corrective actions and access was restricted to authorized employees.	No exceptions noted.

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CC6.5	The entity discontinues logical and physical protections over physical assets only after the ability to read or recover data and software from those assets has been diminished and is no longer required to meet the entity's objectives.		
6.5.1	On a monthly basis, the Configuration Management team collects notifications received and sends an internal email for non-production environments flagged to be decommissioned. The Implementation team and/or Client Support Team validate and/or confirm to keep the non-production environment active by submitting a ticket in the Ceridian Service Management tool. Upon confirmation, a decommissioned ticket is created on the same day that the inactive environments are decommissioned. Ceridian's Asset Management policy requires media containing non-public data to be securely destroyed after use or securely wiped (sanitized) prior to reuse. All hardware is sent to a centralized internal collection environment and then securely distributed to a third party vendor for verified destruction.	Inspected a selection of production decommission procedure documents to determine whether Ceridian has established a process for handling client production decommissioning cases. Inspected a selection of information security management documents to determine whether Ceridian has set minimum requirements for disposing the physical media used to store Ceridian information and data. Inspected a selection of Ceridian's IT management standard operating procedures (SOP) to determine whether Ceridian has established a process for media destruction. Inquired with Ceridian Management and was informed that no media or hardware was identified for destruction by the third party vendor during the audit period.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC6.6	The entity implements logical access security measures to protect against threats from sources outside its system boundaries.		
6.6.1	Cryptographic protocols (Transport Layer Security (TLS), Secure Shell (SSH), etc.) are deployed and used to protect communication between Dayforce and Ceridian clients over the Internet.	Inspected the configuration of the communication protocols between Dayforce and clients to determine whether HTTPS and SFTP are used to secure transmissions. Inspected a selection of websites to determine whether the valid digital certificates were used to ensure the end-to-end communication protection. Inspected a selection of web server configurations to determine whether unencrypted connections are redirected to encrypted channels.	No exceptions noted.
6.6.2	For non-HTTPS data transmission, Ceridian provides secure FTP (SFTP). The SFTP servers are configured to use encryption.	Inspected the configuration of a selection of SFTP servers to determine whether they are configured to use encryption to protect data transmissions.	No exceptions noted.
6.6.3	Initial passwords are sent as single use and passwords are not sent, stored, or displayed in clear text. Passwords are hashed when displayed and encrypted when transmitted.	Inspected a selection of information security management documents to determine whether Ceridian has set the requirements that passwords must be stored and transmitted in an encrypted format.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	Hash algorithms are used to store passwords.	Inspected the login process of the Dayforce application to determine whether passwords are not displayed in clear text, and are encrypted when transmitted. Inspected a selection of system configurations within Dayforce to determine whether it provides the ability for customers to force "Require Reset on Login".	
6.6.4	For Ceridian elevated or privileged accounts, access from outside the Ceridian network requires two factor authenticated VPN.	Inspected a selection of network diagrams to determine whether connections from outside the Ceridian network require multi-factor authenticated VPN for privileged accounts. Inspected the configuration of VPN devices to determine whether multi-factor authentication was enabled.	No exceptions noted.
6.6.5	Routers and firewalls have been implemented to create separate networks of differing trust levels. The Dayforce application is deployed using a tiered approach with web application firewalls (WAF), a demilitarized zone (DMZ), and load balancers acting as initial contact point.	Inspected a selection of network diagram documents to determine whether firewalls and routers are used to segregate the network into different security zones. Inspected network diagrams and a selection of network device configurations to determine whether the application is deployed using a tiered approach with WAFs, a DMZ and firewalls located at the	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	Ceridian monitors for unauthorized access attempts.	network ingress points configured to restrict unauthorized access. Inspected a selection of system logs to determine whether unauthorized access attempts were monitored.	
CC6.7	The entity restricts the transmission, movement, and removal of information to authorized internal and external users and processes, and protects it during transmission, movement, or removal to meet the entity's objectives.		
6.7.1	Data loss prevention (DLP) tools are used to monitor data movement within Ceridian to identify potential unauthorized data transfers. Ceridian prohibits the transmission of PII-related data through email.	Inspected the configuration of Ceridian's DLP software to determine whether it is configured to block the egress of several categories of sensitive information, including: • credit cards • social insurance numbers / national insurance numbers • source code	No exceptions noted.
6.7.2	Cryptographic protocols (Transport Layer Security (TLS), Secure Shell (SSH), etc.) are deployed to protect communication between Ceridian and clients over the Internet.	Inspected network architecture diagrams to determine whether secure transmission mechanisms (HTTPS, SSL, SFTP) are used to protect communications over the internet between Ceridian Clients and the Dayforce application.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of web server and SFTP server configurations to determine whether secure protocols were enabled.	
6.7.3	For non-HTTPS data transmission, Ceridian provides SFTP. The SFTP servers are configured to use robust encryption.	Inspected network architecture diagrams to determine whether SFTP servers are deployed for non-HTTPS data transmissions. Inspected a selection of web server and SFTP server configurations to determine whether secure protocols were enabled.	No exceptions noted.
6.7.4	Ceridian HCM, Inc. has a Media Handling Standard for removable media by which sensitive data must be encrypted prior to copying data to external media or removal device.	Inspected the Ceridian Media Handling Standard to determine whether Ceridian has documented a set of requirements to protect information stored on media from unauthorized disclosure, modification, removal, or destruction. Inspected a selection of domain group policies to determine whether USB removable disks have been disabled by default for notebooks and laptops.	No exceptions noted.
6.7.5	Ceridian HCM Inc. has deployed encryption software on workstations and laptops.	Inspected the Ceridian Cryptographic Controls Standard to determine whether Ceridian has documented its encryption requirements for	No exceptions noted.

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		infrastructure components including workstations and laptops. Inspected the configuration of the software encryption tools deployed for workstations and laptops to determine whether encryption is enabled to protect workstations, laptops and removable media.	
6.7.6	Ceridian has deployed a restriction through group policy settings of Active Directory (AD) to prevent the use of removable/USB disks.	Inspected a selection of domain group policies to determine whether removable USB disks have been restricted from being used on the systems.	No exceptions noted.
CC6.8	The entity implements controls to prevent or detect and act upon the introduction of unauthorized or malicious software to meet the entity's objectives.		
6.8.1	Local admin access has been restricted/removed by default. Groups requiring access such as Development are provided unique local admin credentials. Generic local admin rights are restricted to the Service Desk.	Inspected system configuration process documentation to determine whether local administrator access is restricted by default, and provided only as required by business need and approval. Inspected a selection of IT service request tickets to determine whether the special request for the local administrator accounts followed the formal process	No exceptions noted.

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		and were approved before being assigned to the applicants.	
6.8.2	Antivirus/Anti-Malware software is deployed to production network end points including desktops, laptops and servers.	Inspected a selection of antivirus system reports to determine whether malware protection was installed and updated on a selection of production servers, as well as workstations. Inspected a selection of Ceridian production servers to determine whether virus protection software is installed, and agents were up to date.	No exceptions noted.
6.8.3	Change management and development projects follow a documented process and/or lifecycle.	Inspected Ceridian's Change Management policy and SDLC workflow to determine whether they are current and contain procedures to manage changes to core payroll applications and IT infrastructure and IT infrastructure. Inspected the Change Management Policy to determine whether it is reviewed and approved by technology management. Inspected a selection of change management and development projects to determine whether they	No exceptions noted.

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		followed the documented Change Management Policy.	

CC7.0 Common Criteria Related to System Operations

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC7.1	To meet its objectives, the entity uses detection and monitoring procedures to identify (1) changes to configurations that result in the introduction of new vulnerabilities, and (2) susceptibilities to newly discovered vulnerabilities.		
7.1.1	Ceridian HCM, Inc. references benchmarks established by the Centre for Internet Security (CIS) as a guideline for the hardening for servers and desktop: - A standard image for server configurations has been defined which considers the security configuration for production servers. - Documented configuration standards exist for key network and security infrastructure components.	Inspected a selection of standard build documentation to determine whether Ceridian has established a standard and process for hardening servers and workstations.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
7.1.2	System audit facilities are activated and configured to generate alerts. Windows event logging is enabled on the production Windows domain. The logs are analyzed for security sensitive violation events by an automated monitoring tool and where parameters or thresholds are exceeded, alerts are sent to Ceridian HCM, Inc. for corrective actions if necessary.	Inspected a selection of domain group policies to determine whether event logging is enabled on the production Windows servers. Inspected the configuration for selected monitoring tools to determine whether security-related incidents and events are collected from in-scope production systems and analyzed.	No exceptions noted.
7.1.3	Antivirus/Anti-Malware software is deployed to production network endpoints including desktops, laptops and servers.	Inspected a selection of antivirus system reports to determine whether malware protection was installed and updated on production servers, as well as workstations and laptops.	No exceptions noted.
7.1.4	Ceridian performs hardware identification scanning which runs once a day and scans for hardware including: • Servers • Network devices • Hosts & Virtual hosts	Inspected a selection of hardware scan reports to determine whether a scan to identify hardware is performed on a daily basis and issues were followed-up to resolution.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	Scans are configured to search at the IP level and use credentials for specific protocols including: • SNMP • WMI • Shell • NTCMD		
7.1.5	Ceridian performs and reviews the results of annual cyber security testing and application vulnerability scanning in order to identify and remediate vulnerabilities to systems and applications.	Inspected a selection of external penetration and web application scan documents to determine whether technical tests were performed and identified vulnerabilities from tests were followed up.	No exceptions noted.
CC7.2	The entity monitors system components and the operation of those components for anomalies that are indicative of malicious acts, natural disasters, and errors affecting the entity's ability to meet its objectives; anomalies are analyzed to determine whether they represent security events.		
7.2.1	Ceridian utilizes intrusion detection systems (IDS) to monitor for anomalies that affect production systems. In the event of an issue, the events are investigated and escalated according to the Incident Response standard.	Inspected the configuration of the IDS to determine whether IDS are deployed at the network perimeter. Inspected a selection of IDS reports to determine whether incidents were investigated and escalated as outlined in Ceridian's Incident Response standard.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC7.3	The entity evaluates security events to determine whether they could or have resulted in a failure of the entity to meet its objectives (security incidents) and, if so, takes actions to prevent or address such failures.		
7.3.1	A security incident response and handling process exists to guide Ceridian's procedure for responding to security incidents.	Inspected a selection of incident management documents to determine whether it contains the roles, responsibilities and procedures to handle security incidents. Inspected a selection of incident reports to determine whether incidents were reviewed and resolved in a timely manner. Inspected a selection of IDS reports to determine whether incidents were investigated and escalated as outlined in Ceridian's Incident Response standard.	No exceptions noted.
7.3.2	Security incidents are logged and incidents are reviewed and actioned until resolution.	Inspected a selection of incident reports to determine whether incidents were reviewed and resolved in a timely manner. Inspected a selection of IDS reports to determine whether incidents were investigated and escalated as outlined in Ceridian's Incident Response standard.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
7.3.3	Significant events are brought into the Major Incident Response process which includes ERM, who track these 'emerging risks' and communicate them to Senior Leadership.	Observed a selection of ERM dashboards to determine whether there is an option to classify the risk events as incidents under the risk source group 'emerging risks'. Inspected a selection of incident management documents to determine whether significant events are tracked in the ERM risk register and communicated to Senior Leadership. Inspected a selection of Ceridian risk register documents to determine whether urgent incidents were added to the risk register.	No exceptions noted.
CC7.4	The entity responds to identified security incidents by executing a defined incident response program to understand, contain, remediate, and communicate security incidents, as appropriate.		
7.4.1	A security incident response and handling process exists to guide Ceridian's procedure for responding to security incidents.	Inspected a selection of incident management documents to determine whether it contains the roles, responsibilities and procedures to handle security incidents. Inspected a selection of incident reports to determine whether incidents were reviewed and resolved in a timely manner.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of IDS reports to determine whether incidents were investigated and escalated as outlined in Ceridian's Incident Response standard.	
7.4.2	As incidents emerge they are added to the risk register, and risks are periodically reviewed to determine the need for system changes.	Inspected a selection of incident management documents to determine whether significant events are tracked in the ERM risk register and communicated to Senior Leadership. Inspected a selection of Ceridian risk register documents to determine whether urgent incidents were added to the risk register. Inspected a selection of Ceridian incident reports to determine whether the critical incidents were reviewed periodically.	No exceptions noted.
7.4.3	Ceridian Security and Privacy Incident Response Policy and Procedures include communication to data subjects, authorities and others as required.	Inspected a selection of incident management documents to determine whether Ceridian requests to communicate to data subjects, authorities and others for the incident related to security and privacy.	No exceptions noted.
7.4.4	Ceridian Security and Privacy Incident Response Policy and Procedures include sanctions or other appropriate actions against those responsible and acting under the authority of Ceridian.	Inspected a selection of incident management documents to determine whether it includes a section regarding sanctions or other punitive actions against	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		those responsible and acting under the authority of Ceridian.	
CC7.5	The entity identifies, develops, and implements activities to recover from identified security incidents.		
7.5.1	A security incident response and handling process exists to guide Ceridian's procedure for responding to security incidents.	Inspected a selection of incident management documents to determine whether they contain the roles, responsibilities and procedures to handle security incidents. Inspected a selection of incident reports to determine whether incidents were reviewed and resolved in a timely manner. Inspected a selection of IDS reports to determine whether incidents were investigated and escalated as outlined in Ceridian's Incident Response standard.	No exceptions noted.
7.5.2	Ceridian Security and Privacy Incident Response Policy and Procedures include required communications externally, and internal documentation and communication (via ERM) to mitigate possible recurrence.	Inspected a selection of incident management documents to determine whether it includes a section regarding required internal and external communications, including to the ERM team, to mitigate possible recurrence of the incident.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of incident records to determine whether incidents were assessed and communicated with the ERM team for mitigation tracking purposes.	
7.5.3	Significant events are brought into the Major Incident Response process which includes ERM, who track these 'emerging risks' and communicate them to Senior Leadership.	Observed a selection of ERM dashboards to determine whether there is an option to classify the risk events as incidents under the risk source group 'emerging risks'. Inspected a selection of Ceridian incident reports to determine whether the critical incident are reviewed periodically. Inspected a selection of incident management documents to determine whether significant events are tracked in the ERM risk register and communicated to Senior Leadership. Inspected a selection of Ceridian risk register documents to determine whether urgent incidents were added to the risk register.	No exceptions noted.
7.5.4	Annual testing of the Business Continuity Plan is performed to help ensure that regular operation of business critical applications can be reestablished in the event of a disaster.	Inspected a selection of business continuity management documents to determine whether Ceridian is required to perform a test of the Business Continuity Plan on an annual basis.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of business continuity management documents to determine whether business continuity testing procedures and criteria were defined, relevant communications and resources were defined based on different disaster scenarios and that there is an authorization framework for top management. Inspected a selection of business continuity reports to determine whether an annual recovery exercise for Dayforce was conducted and the test result was communicated to the clients.	

CC8.0 Common Criteria Related to Change Management

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC8.1	The entity authorizes, designs, develops or acquires, configures, documents, tests, approves, and implements changes to infrastructure, data, software, and procedures to meet its objectives.		

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
8.1.1	Change management and development projects follow a documented process and/or lifecycle.	Inspected Ceridian's Change Management policy and SDLC workflow to determine whether they are current and contain procedures to manage changes to applications and IT infrastructure. Inspected a selection of change management and development projects to determine whether they followed the documented management procedure.	No exceptions noted.
8.1.2	Requests for changes to applications and infrastructure, including those for legislative and emergency changes, are authorized as per a change management policy and documented change procedures prior to being implemented to production.	Inspected a selection of application and infrastructure changes, including emergency and legislative changes, to determine whether changes were authorized by management, prior to implementation into production, as per the change management policy and documented change procedures.	No exceptions noted.
8.1.3	Development projects include a functional story board system design document that is approved by designated stakeholders prior to the commencement of work.	Inspected a selection of development projects to determine whether functional story board design documents were approved by designated stakeholders prior to commencement of work.	No exceptions noted.
8.1.4	Product documentation, including application functionality updates and screenshots, is updated as part of a new system release.	Inspected a selection of product documents to determine whether Ceridian published, maintained, and updated product documents for major product releases.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Observed a selection of intranet websites to determine whether updated product documentation has been published internally to support relevant personnel in performing their duties.	
8.1.5	Testing (functional, quality assurance (QA), user acceptance testing (UAT), and/or system integration) is completed based on a test plan and is approved by business stakeholders and/or technology management as applicable.	Inspected a selection of change request documents to determine whether test plans were included and results documented, as applicable; and approvals were obtained by business stakeholders or technology management prior to implementation.	No exceptions noted.
8.1.6	A separate testing environment has been established and is utilized for testing program changes.	Inspected the existence of separate production, pre-production, and testing environments to determine whether segregated environments are maintained.	No exceptions noted.
8.1.7	A post-implementation review is performed and approved as per the Change Management Policy after a change is installed and prior to closing the change request. The review verifies that the change was implemented according to the implementation plan.	Inspected a selection of changes to determine whether a post-implementation verification took place by business or technology management after a change was installed and prior to closing the change request.	No exceptions noted.
8.1.8	Developers have no ability to promote code to production.	Inspected a selection of production logical access permissions to determine whether developers do not have access to promote code to production.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
8.1.9	A compliance group monitors regulatory and legislative changes as they relate to Ceridian products.	Inspected a selection of change documents to determine whether regulatory and legislative changes were identified by the compliance group and implemented to applications using Ceridian's change process.	No exceptions noted.
8.1.10	Clients have direct access to communicate failures, incidents, concerns, and other complaints to Ceridian HCM, Inc.'s support services via support portal interface, email, and telephone. Ceridian HCM Inc. has implemented an Incident Response Plan which includes roles, responsibilities and processes to deal with security incidents.	Inspected Ceridian's support portal to determine whether clients have direct access to communicate failures, incidents, concerns, and other complaints to Ceridian HCM, Inc.'s support services via support portal interface, in addition to email, and telephone contacts. Inspected a selection incident management documents to determine whether the plan includes roles, responsibilities and processes to deal with security incidents.	No exceptions noted.
8.1.11	Reported Priority 1 issues are recorded and prioritized in ticketing systems and are responded to in a timely manner.	Inspected a selection of incident tickets in the ticketing system to determine whether the Priority 1 incidents were documented, prioritized, and followed up in a timely manner.	No exceptions noted.
8.1.12	Ceridian Security, ERM and Privacy Incident Response Policy and Procedures include procedures	Inspected a selection of incident management process documents to determine whether Ceridian	No exceptions noted.

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	to implement changes to prevent and detect recurrences as applicable.	establish the post incident process to implement changes to prevent and detect recurrences.	
8.1.13	Production data is not used in system design or testing unless obfuscated or made unidentifiable.	Inspected a selection of information security management documents to determine whether the production data is prohibited to be used for system design or testing purposes unless obfuscated. Inspected a selection of information security management documents to determine whether a data desensitization procedure has been established. Observed a selection of test data to determine whether the system is used to manage and record the data desensitization tasks.	No exceptions noted.

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CC9.0 Common Criteria Related to Risk Mitigation

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC9.1	The entity identifies, selects, and develops risk mitigation activities for risks arising from potential business disruptions.		
9.1.1	The Business continuity management program periodically assesses risks, and develops plans that mitigate risks arising from potential business disruptions.	Inspected a selection of business continuity management (BCM) documents to determine whether Ceridian has established the business continuity management process. Inspected a selection of business continuity event reports to determine whether the BCM team periodically identifies, documents and communicates the environmental risks. Inspected a selection of business continuity reports to determine whether Ceridian had a list of incidents and their description along with a status of either closed or monitoring.	No exceptions noted.
9.1.2	Ceridian Corporate Governance together with Finance put in place appropriate levels of insurance.	Inspected a selection of commercial insurance policy documents to determine whether Ceridian used commercial insurance to mitigate the financial impact of relevant loss events.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
CC9.2	The entity assesses and manages risks associated with vendors and business partners.		
9.2.1	Ceridian operates a Vendor Due Diligence program (within ERM) which assesses risk of vendors and establishes lines of communication and requirements for the vendor.	Inspected a selection of vendor risk management program documents to determine whether Ceridian has established a vendor due diligence program to: • set the compliance requirements for the supplier • assess the risk of supplier relationships. • create the communication and resolution protocols for the services and products issues related to suppliers Inspected a selection of vendor risk management program documents to determine whether vendors are subject to an initial vendor risk assessment when contracting with Ceridian, as well as annual reassessments for those vendors deemed critical. Inspected a selection of vendor management reports to determine whether vendor assessments were conducted to include vendors' internal processes,	No exceptions noted.

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		controls, security programs and other items related to key risk categories.	
9.2.2	The Contractor and Vendor MSA includes terms and conditions which establish standards of conduct, and define the obligations for evaluating adherence and addressing deviations. The MSA includes confidentiality, security and other obligations. Agreements with Contractor/Vendor/Partner include (if applicable) a VDPA which specifies the security obligations, privacy obligations and/or confidentiality obligations of the parties.	Inspected a selection of MSA and VDPA documents to determine whether the documents contained provisions regarding Security, Privacy, Confidentiality requirements and obligations for contractors and vendors.	No exceptions noted.
9.2.3	On a quarterly basis, Ceridian holds business review meetings with key vendors to assess the achievement of service level agreements.	Inspected a selection of vendor performance review documents to determine whether Ceridian reviews the performance of the vendor and achievement of service level targets.	No exceptions noted.
9.2.4	Periodically as part of Vendor Due Diligence and Global Partners and Alliances the entity assesses compliance by vendors and business partners.	Inspected a selection of vendor risk management program documents to determine whether Ceridian has established a vendor due diligence program to: • set the compliance requirements for the supplier • assess the risk of supplier relationships, and	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		create the communication and resolution protocols for the services and products issues related to suppliers Inspected a selection of vendor risk management program documents to determine whether vendors are subject to an initial vendor risk assessment when contracting with Ceridian, as well as annual reassessments for those vendors deemed critical. Inspected a selection of vendor management reports to determine whether vendor assessments were conducted to include vendors' internal processes, controls, security programs and other items related to key risk categories.	
9.2.5	Ceridian has a defined process to address Vendor/Supplier Risk Management. Risk identification and assessment are performed on an annual basis. This assessment also helps to address any changes within the Standard Information Gathering process (SIG).	Inspected a selection of vendor management process documents to determine whether Ceridian has established a process to manage the risks from vendors. Inspected a selection of vendor risk assessment reports to determine whether Ceridian performed regular vendor assessments.	No exceptions noted.

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<i>Ref #</i>	<i>Descriptions of Controls Specified by Ceridian</i>	<i>Tests of Operating Effectiveness Performed by KPMG</i>	<i>Results of Tests</i>
9.2.6	Ceridian has a vendor risk scoring tool in place to analyze, monitor and review vendor security scores, where required.	Inspected the risk management tool to determine whether vendor risks are monitored, managed and scored.	No exceptions noted.
9.2.7	Ceridian issues termination notifications to vendors/suppliers as dictated by the notice requirements in the contractual agreement (i.e. via email, regular mail, certified mail, etc.). The contracts in place dictate how Ceridian terminates the service/product with the vendors/suppliers.	Inspected a selection of supplier contract documents to determine whether the termination procedure has been established in supplier relationship documents.	No exceptions noted.
9.2.8	The VRM team facilitates deliverables between requestor, legal, risk, privacy and vendor and schedules follow up calls and meetings as needed. The VRM team obtains approvals for contract deviations and legal confirms deviations prior to finalizing the contract.	Inspected a selection of supplier management process documents to determine whether Ceridian has established a vendor management process to handle the deviations and exceptions in supplier relationships.	No exceptions noted.

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A 1.0 Criteria related to Availability

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
A1.1	The entity maintains, monitors, and evaluates current processing capacity and use of system components (infrastructure, data, and software) to manage capacity demand and to enable the implementation of additional capacity to help meet its objectives.		
A1.1.1	Current processing capacity and usage are maintained, monitored, and evaluated to manage capacity demand and to enable the implementation of additional capacity to help meet Ceridian's availability commitments and system requirements. Organic Client growth generates minimal capacity constraints, sales/implementations are provided to the hosting partner and hosting operations to plan for and forecast capacity requirements.	Inspected the Ceridian Cybersecurity Standard - Operational Procedures and Responsibilities to determine whether Information system resources are required to be managed to ensure current and future capacity requirements are maintained to meet required system performance and future growth. Inspected a selection of capacity review documents to determine whether the capacity of Dayforce system components is being monitored, measured and forecasted. Inspected a selection of hosting service performance review documents to determine whether Ceridian reviews the hosting performance and capacity regularly.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
A1.2	The entity authorizes, designs, develops or acquires, implements, operates, approves, maintains, and monitors environmental protections, software, data back-up processes, and recovery infrastructure to meet its objectives.		
A1.2.1	The Business Continuity Management Program periodically assesses risks, and develops plans that mitigate risks arising from potential business disruptions.	Inspected a selection of BCM documents to determine whether Ceridian has established a business continuity management process. Inspected a selection of business continuity event reports to determine whether the BCM team periodically identifies, documents and communicates environmental risks. Inspected a selection of business continuity reports to determine whether Ceridian had a list of incidents and their description along with a status of either closed or monitoring.	No exceptions noted.
A1.2.2	The Business Continuity Management Program monitors various sources to identify and warn of possible environmental threat events.	Inspected a selection of BCM process documents to determine whether it included provisions for business continuity planning, implementing a continuity plan, and evaluating a continuity plan.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected the BCM process documents to determine whether the BCM team monitors reports from the local authorities in Ceridian's countries of operation. Inspected a selection of BCM reports to determine whether the BCM team tracked the events that occurred throughout the audit period.	
A1.2.3	A backup policy has been created. Daily and weekly backups of customer application files and database files are performed.	Inspected a selection of backup policies to determine whether relevant applications and data are backed up, and that backup job failures are managed appropriately. Inspected a selection of backup configurations to determine whether daily and weekly backups of application files are performed.	No exceptions noted.
A1.2.4	Data is transferred off-site via a virtual replication process. Data necessary to recover business processing in the event of a disaster is available at alternate location(s) for business activity resumption through the use of near real-time data replication software.	Inspected a selection of backup and recovery tests performed by Ceridian during the period, to determine whether management regularly conducts recovery scenario testing to determine if data necessary to recover business processing in the event of a disaster is available at alternate location(s) for business activity resumption.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
A1.3	The entity tests recovery plan procedures supporting system recovery to meet its objectives.		
A1.3.1	Annual testing of the Business Continuity Plan is performed to help ensure that regular operation of business critical applications can be reestablished in the event of a disaster.	Inspected a selection of business continuity management documents to determine whether Ceridian is required to perform a test of the Business Continuity Plan on an annual basis. Inspected a selection of business continuity management documents to determine whether business continuity testing procedures and criteria were defined, relevant communications and resources were defined based on different disaster scenarios, and that there is an authorization framework for top management. Inspected a selection of business continuity reports to determine whether an annual recovery exercise for Dayforce was conducted and the test result was communicated to the clients.	No exceptions noted.

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C 1.0 Criteria related to Confidentiality

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
C1.1	The entity identifies and maintains confidential information to meet the entity's objectives related to confidentiality.		
C1.1.1	An information classification policy has been created, and a customer data retention policy has been developed which specifies the period over which confidential information is to be retained.	Inspected a selection of information security management documents and data retention policies to determine whether policies specify the period over which confidential information is to be retained.	No exceptions noted.
C1.1.2	A backup policy has been created. Daily and weekly backups of customer application files and database files are performed. Backup job failures (as defined by the backup process) of in-scope systems are managed to completion through an incident management process.	Inspected a selection of backup policies to determine whether relevant applications and data are backed up, and that backup job failures are managed appropriately. Inspected a selection of backup configurations to determine whether daily and weekly backups of application and database files are performed.	No exceptions noted.
C1.1.3	Ceridian provides access audit reports and a security management screen that allows clients to create roles, to audit access, and to apply variable access security requirements, such as multi-factor authentication for privileged roles.	Inspected a selection of Dayforce product documents to determine whether changes to employee data in Dayforce are being monitored and recorded within access audit reports and security management screens.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Inspected a selection of Dayforce security configuration screens to determine whether clients can apply variable access security requirements, including multi-factor authentication for privileged roles.	
C1.2	The entity disposes of confidential information to meet the entity's objectives related to confidentiality.		
C1.2.1	For production environment decommission, a ticket is submitted by the Cancellation Team in the Ceridian HCM, Inc. Service Management Tool. The Configuration Management Team completes the decommissioning upon receiving approval from the Cloud Operations Team.	Inspected the Production Decommission Process policy to determine whether the decommission process uses the ticketing system to track validation by authorized department personnel prior to the production environment being destroyed.	No exceptions noted.
C1.2.2	On a monthly basis, the Configuration Management team collects notifications received and sends an internal email for non-production environments flagged to be decommissioned. The Implementation team and/or Client Support Team validate and/or confirm to keep the non-production environment active by submitting a ticket in the Ceridian Service Management tool.	Inspected the Production Decommission Process policy to determine whether the decommission process uses the ticketing system to track validation by authorized department personnel prior to the production environment being destroyed.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	Upon confirmation of decommission request, a decommissioned ticket is created on the same day that the inactive environments are decommissioned. The Ceridian Asset Management policy requires media containing non-public data to be securely destroyed after use or securely wiped (sanitized) prior to reuse. All hardware is sent to a centralized internal collection environment and then securely distributed to a third party vendor. Ceridian verifies the destruction by reviewing destruction certificates provided by the third party vendor.	Inspected Cybersecurity Standard - Media Handling to determine whether the following requirements are set to deal with media disposal: 1. The logging of disposal of sensitive information assets to maintain an audit trail. 2. The use of secure disposal bins for hard copies (e.g. paper) of Confidential (level 3) or Restricted (level 4) information. 3. The use of approved, NAID certified (or local equivalent) third parties for off-site secure disposal. Inspected Ceridian Computer Hardware Assets & Peripherals Management SOP to determine whether destruction events are scheduled as needed. A third-party vendor is engaged to dispose of the equipment. Certificates of destruction are stored within the Asset Management SharePoint site after the equipment has been disposed.	

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PI 1.0 Criteria related to Processing Integrity

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
PI1.1	The entity obtains or generates, uses, and communicates relevant, quality information regarding the objectives related to processing, including definitions of data processed and product and service specifications, to support the use of products and services.		
PI1.1.1	Dayforce HCM is configured with baseline calculations and configurations such as for gross and net pay. This baseline is modified by the client implementation and coding deployed and applied by individual clients taking into consideration their own accounting policies, and labor agreements. Client specific modifications fall under the CUECs for this control and are specific to the baseline calculation only. Ceridian makes available reports to allow clients to reconcile the completeness, accuracy and timeliness of their processing.	Inspected a selection of Dayforce product documents to determine whether Dayforce provides reports to enable clients to recalculate and reconcile pay data or data accuracy and compliance with their accounting policies and obligations. Inspected a selection of Dayforce product documents to determine whether Dayforce has the capability to define system processing specifications and evaluate data input. Re-performed pay calculations for a selection of payrolls in a Dayforce to determine whether the generated total pay amount on the reports matched the value in the timesheet module of Dayforce.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
PI1.1.2	Ceridian has a partial data dictionary and documented guidance that describes the tables/columns in Dayforce so that users can design their own reports for reconciliations or other monitoring activities.	Inspected a selection of Dayforce technical documents to determine whether there is a data dictionary document to describe the tables and columns in the Dayforce database.	No exceptions noted.
PI1.2	The entity implements policies and procedures over system inputs, including controls over completeness and accuracy, to result in products, services, and reporting to meet the entity's objectives.		
PI1.2.1	Edit checks are configurable, during implementation, or by the client to flag invalid, inaccurate or missing information. Error messages are generated for missing or invalid mandatory fields set during the implementation process. Drop down menus are made available for fields which have predictable values in relation to personal details, employment status and employee details.	Inspected a selection of Dayforce product documents to determine whether Dayforce has the capability to define system processing specifications and evaluate data input. Observed a selection of data entry pages within Dayforce to determine whether key fields are marked as mandatory fields with a red star symbol and limited the type of text input by using field data controls. Observed the application's edit checks in operation to determine whether missing mandatory fields or invalid input data will show an alert box to remind the user to fix the problem.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
PI1.2.2	The Dayforce application gives authorized users, the ability to run an “HR Audit Report” that tracks and identifies changes made to key fields related to employee compensation. The report details the person who made the change, the time of the change and the state of the modification, both before and after	Inspected a selection of Dayforce product documents to determine whether the application tracks historical changes made to employees' records, and contains HR audit reports to report the changes of personal data.	No exceptions noted.
PI1.3	The entity implements policies and procedures over system processing to result in products, services, and reporting to meet the entity's objectives.		
PI1.3.1	The processing specifications for each module/process are defined, and are communicated via training to the Client, to the extent that the client has not customized or configured the requirements. Customer requirements are the responsibility of the Client to document and deploy.	Inspected a selection of Dayforce product documents to determine whether the specifications of Dayforce processes are defined, documented and published. Inspected a selection of product documents to determine whether Ceridian published, maintained, and updated product documents for major product releases. Observed a selection of intranet sites to determine whether updated product documentation has been published internally to support relevant personnel in performing their duties.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
PI1.3.2	Edit checks are configurable, during implementation, or by the client to flag invalid, inaccurate or missing information. Error messages are generated for missing or invalid mandatory fields set during the implementation process. Drop down menus are made available for fields which have predictable values in relation to personal details, employment status and employee details.	Inspected a selection of Dayforce product documents to determine whether Dayforce has the capability to define system processing specifications and evaluate data input. Observed a selection of data entry pages within Dayforce to determine whether key fields are marked as mandatory fields with a red star symbol and limited the type of text input by using field data controls. Observed the application's edit checks in operation to determine whether missing mandatory fields or invalid input data show an alert box to remind the user to fix the problem.	No exceptions noted.
PI1.3.3	An 'audit log' and 'audit history' are maintained for those fields identified as requiring tracking. This creates a record of input activity, system activity and/or processing activity for auditable fields. Ceridian provides access audit reports and a security management screen that allows clients to create roles, to audit access and to apply variable access security requirements (such as Multi-factor authentication (MFA) for privileged roles).	Inspected the SQL audit process document to determine whether the procedure for creating and maintaining records of system input activities is in place. Inspected the SQL job configuration settings for audit logs to determine whether key fields are tracked.	No exceptions noted.

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	The Dayforce application gives authorized users the ability to run an Employee Audit report that tracks and identifies changes made to key fields related to employee compensation. The report details the person who made the change, the time of the change and the state of the modification, both before and after.	Inspected the SQL jobs to determine whether AuditTrace scripts run as a SQL Server Agent job to capture any direct SQL access activity. Inspected a selection of audit logs to determine whether audit logs for fields requiring tracking are recorded. Inspected the Dayforce Implementation Guide and observed Dayforce functionality to determine whether the application tracks historical changes made to employees' records. Users are able to run the Employee Audit Report for a listing of the changes made to any employee record within Dayforce. Inspected the Dayforce Implementation Guide and observed Dayforce functionality to determine whether Dayforce provides a function to user to view or generated audit reports to trace the personal information modification in Dayforce.	
PI1.3.4	Dayforce HCM is configured with baseline calculations and configurations such as for gross and net pay. This baseline is modified by the client implementation and coding deployed and applied by individual clients taking into consideration their own accounting policies, and labor agreements. Client	Inspected a selection of Dayforce product documents to determine whether Dayforce provides reports to enable clients to recalculate and reconcile pay data or data accuracy and compliance with their accounting policies and obligations.	No exceptions noted.

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	specific modifications fall under the CUECs for this control and are specific to the baseline calculation only. Ceridian makes available reports to allow clients to reconcile the completeness, accuracy and timeliness of their processing.	Inspected a selection of Dayforce product documents to determine whether Dayforce has the capability to define system processing specifications and evaluate data inputs. Re-performed pay calculations for a selection of payrolls in a Dayforce to determine whether the generated total pay amount on the reports matched the value in the timesheet module of Dayforce.	
PI1.4	The entity implements policies and procedures to make available or deliver output completely, accurately, and timely in accordance with specifications to meet the entity's objectives.		
PI1.4.1	An 'audit log' and 'audit history' are maintained for those fields identified as requiring tracking. This creates a record of input activity, system activity and/or processing activity for auditable fields. Ceridian provides access audit reports and a security management screen that allows clients to create roles, to audit access and to apply variable access security requirements (such as MFA for privileged roles). The Dayforce application gives authorized users, the ability to run an Employee Audit report that tracks	Inspected the SQL audit process document to determine whether the procedure for creating and maintaining records of system input activities is in place. Inspected the SQL job configuration settings for audit logs to determine whether key fields are tracked. Inspected the SQL jobs to determine whether AuditTrace scripts run as a SQL Server Agent job to capture any direct SQL access activity.	No exceptions noted.

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	and identifies changes made to key fields related to employee compensation. The report details the person who made the change, the time of the change and the state of the modification, both before and after.	Inspected a selection of audit logs to determine whether audit logs for fields requiring tracking are recorded. Inspected the Dayforce Implementation Guide and observed Dayforce functionality to determine whether the application tracks historical changes made to employees' records. Users are able to run the Employee Audit Report for a listing of the changes made to any employee record within Dayforce. Inspected the Dayforce Implementation Guide and observed Dayforce functionality to determine whether Dayforce provides a function to user to view or generated audit reports to trace the personal information modification in Dayforce.	
PI1.5	The entity implements policies and procedures to store inputs, items in processing, and outputs completely, accurately, and timely in accordance with system specifications to meet the entity's objectives.		
PI1.5.1	Access is role based and least privilege, in compliance with the policies and standards.	Inspected a selection of information security management documents to determine whether the policies and the standards contain specifications over role based access, least privilege, and security configuration requirements.	No exceptions noted.

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		Observed a selection of system configurations within Dayforce to determine whether Dayforce has capability to allow customers to implement their own role-based security mechanisms in the Dayforce account management system.	
PI1.5.2	Dayforce Client data is encrypted at rest.	Inspected the configuration of the Ceridian Dayforce client databases to determine whether data is encrypted at rest.	No exceptions noted.
PI1.5.3	The Dayforce application provides clients with the ability to enforce password policies, such as password history, maximum age, minimum length, complexity requirements, account lockout duration, and account lockout threshold. Not all rules are optional, but are customizable by the client. For clients who choose federated authentication service, the Dayforce native rules do not apply.	Inspected the Dayforce Implementation Guide to determine whether various security settings are used in Dayforce to define access rights. Inspected the Dayforce password configuration pages to determine whether users are able to create various password policies for different purposes/roles. Three elements are mandatory to Dayforce users who are using the default identification and authentication mechanisms - password length, failed login attempts before lockout, and account lockout for A period of time. Password complexity, password history, minimum password age and two-factor authentication are optional. Observed a selection of configuration settings in Dayforce to determine whether the client admin can	No exceptions noted.

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		define/set features and authorizations to create roles for specific job functions.	
PI1.5.4	An 'audit log' and 'audit history' are maintained for those fields identified as requiring tracking. This creates a record of input activity, system activity and/or processing activity for auditable fields. Ceridian provides access audit reports and a security management screen that allows clients to create roles, to audit access and to apply variable access security requirements (such as MFA for privileged roles). The Dayforce application gives authorized users the ability to run an Employee Audit report that tracks and identifies changes made to key fields related to employee compensation. The report details the person who made the change, the time of the change and the state of the modification, both before and after.	Inspected the SQL audit process document to determine whether the procedure for creating and maintaining records of system input activities is in place. Inspected the SQL job configuration settings for audit logs to determine whether key fields are tracked. Inspected the SQL jobs to determine whether AuditTrace scripts run as a SQL Server Agent job to capture any direct SQL access activity. Inspected a selection of audit logs to determine whether audit logs for fields requiring tracking are recorded. Inspected the Dayforce Implementation Guide and observed Dayforce functionality to determine whether the application tracks historical changes made to employees' records. Users are able to run the Employee Audit Report for a listing of the changes made to any employee record within Dayforce.	No exceptions noted.

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		Inspected the Dayforce Implementation Guide and observed Dayforce functionality to determine whether Dayforce provides a function to user to view or generated audit reports to trace the personal information modification in Dayforce.	

P1.0 Criteria related to Notice and Communication of Objectives Related to Privacy

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P1.1	The entity provides notice to data subjects about its privacy practices to meet the entity's objectives related to privacy. The notice is updated and communicated to data subjects in a timely manner for changes to the entity's privacy practices, including changes in the use of personal information, to meet the entity's objectives related to privacy.		
P1.1.1	The Dayforce Privacy Notice made available to clients online and in agreements is written in a clear language and describes Ceridian's activities.	Inspected a selection of privacy policies to determine whether Ceridian requires: Privacy notices must be made available and be easily accessible	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Privacy notices must be clear, concise transparent, and appropriately disclose Ceridian's personal data practices Inspected a selection of websites to determine whether Ceridian's privacy notice documents were published and are accessible by the public.	
P1.1.2	The Dayforce Privacy Notice provides a statement to clients to inform them that Ceridian uses third parties that perform services on Ceridian's behalf.	Inspected a selection of privacy documents to determine whether Ceridian states that it will use the services from third parties to process part of the data. Inspected a selection of Ceridian websites to determine whether Ceridian's privacy notice documents were published and accessible. Inspected a selection of Ceridian client contract documents to determine whether Ceridian states that it will use the services from third parties to process part of the data.	No exceptions noted.

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P2.0 Privacy Criteria related to Choice and Consent

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P2.1	The entity communicates choices available regarding the collection, use, retention, disclosure, and disposal of personal information to the data subjects and the consequences, if any, of each choice. Explicit consent for the collection, use, retention, disclosure, and disposal of personal information is obtained from data subjects or other authorized persons, if required. Such consent is obtained only for the intended purpose of the information to meet the entity's objectives related to privacy. The entity's basis for determining implicit consent for the collection, use, retention, disclosure, and disposal of personal information is documented.		
P2.1.1	This criteria does not apply to Ceridian, as Ceridian does not own any client data. It is the client's responsibility to communicate choices available regarding the collection, use, retention, disclosure, and disposal of personal information to their data subjects and the consequences, if any, of each choice.		

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P3.0 Privacy Criteria related to Collection

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P3.1	Personal information is collected consistent with the entity's objectives related to privacy.		
P3.1.1	The Global privacy notice, Privacy Standard and/or Personal data handling policy contains statements on: - the principle of purpose limitation and data minimization - the principle of fairness and transparency and Lawful processing	Inspected a selection of privacy management documents and privacy notices to determine whether the privacy principles regarding fairness and transparency, lawful processing, purpose limitation, data minimization, accuracy, retention, security, individual rights, cross board transfers, and accountability were covered. Inspected Ceridian's website to determine whether a Ceridian Global Privacy Notice and Ceridian's Ten Privacy Principles documents were published and accessible.	No exceptions noted.
P3.1.2	Customers sign an MSA and supporting DPA prior to providing Ceridian with data.	Inspected a selection of MSAs and DPAs to determine whether the consensual collection of data from the client is outlined in the signed MSA and DPA documents. Inspected Ceridian's client contract portal to determine whether the MSA, DPA and Service	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
		Particulars documents are made available to customers.	
P3.2	For information requiring explicit consent, the entity communicates the need for such consent, as well as the consequences of a failure to provide consent for the request for personal information, and obtains the consent prior to the collection of the information to meet the entity's objectives related to privacy.		
P3.2.1	This criteria does not apply to Ceridian, as Ceridian does not own any client data. It is the client's responsibility to communicate the need for such explicit consent, as well as the consequences of a failure to provide consent for the request for personal information, and obtain the consent prior to the collection of the information to meet the client's objectives related to privacy.		

P4.0 Privacy Criteria related to Use, Retention, and Disposal

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P4.1	The entity limits the use of personal information to the purposes identified in the entity's objectives related to privacy.		

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P4.1.1	The Global privacy notice, Privacy Standard and/or Personal data handling policy contains statements on: - the principle of purpose limitation and data minimization - the principle of fairness and transparency and lawful processing	Inspected a selection of privacy management documents and privacy notices to determine whether the privacy principles regarding fairness and transparency, lawful processing, purpose limitation, data minimization, accuracy, retention, security, individual rights, cross board transfers, and accountability were covered. Inspected Ceridian's website to determine whether a Ceridian Global Privacy Notice and Ceridian's Ten Privacy Principles documents were published and accessible.	No exceptions noted.
P4.2	The entity retains personal information consistent with the entity's objectives related to privacy.		
P4.2.1	The Global privacy notice, Privacy Standard and/or Personal data handling policy contains statements on: - the principle of purpose limitation and data minimization - the principle of fairness and transparency and lawful processing	Inspected a selection of privacy management documents and privacy notices to determine whether the privacy principles regarding fairness and transparency, lawful processing, purpose limitation, data minimization, accuracy, retention, security, individual rights, cross board transfers, and accountability were covered. Inspected Ceridian's website to determine whether a Ceridian Global Privacy Notice and Ceridian's Ten	No exceptions noted.

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		Privacy Principles documents were published and are accessible.	
P4.2.2	Ceridian provides a feature in Dayforce Personal Data Management (PDM) that allows its customers the ability to delete or retain data in accordance with their policies.	Inspected a selection of Dayforce product documents to determine whether the personal data management feature is available to customer to manage personal information, and implement their own data retention/deletion policy in Dayforce. Observed the operation of Personal Data Management functions in Dayforce to determine whether a feature to allow clients to delete or retain data is provided.	No exceptions noted.
P4.2.3	Ceridian has deployed a restriction through group policy settings of Active Directory (AD) to prevent the use of removable/USB disks.	Inspected a selection of domain group policies to determine whether removable USB disks have been restricted from being used on the systems.	No exceptions noted.
P4.2.4	Ceridian has established an automated process that periodically checks and purges all temporary files in the Ceridian Data Exchange (CDX) systems. These temporary files may contain PII information exchanged from / to clients, banks, authorities, and other third parties.	Inspected a selection of batch job records of data exchange systems to determine whether the temporary files under specific folders have been purged as planned.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P4.3	The entity securely disposes of personal information to meet the entity's objectives related to privacy.		
P4.3.1	Client identification and authentication are in place for incoming client calls at Ceridian HCM Inc. Identity of all callers is authenticated, and for those not authorized, they are directed back to the Clients' internal admin/support/payroll personnel.	Inspected a selection of Ceridian Call Center procedure documents to determine whether the identity and permissions of the caller can be verified to provide corresponding services. During site tours, observed Ceridian support staff identifying and authenticating callers.	No exceptions noted.
P4.3.2	Ceridian provides a feature in Dayforce Personal Data Management (PDM) that allows our customers the ability to delete data in accordance with their policies.	Inspected a selection of Dayforce product documents to determine whether the personal data management feature is available to customers to manage personal information, and implement their own data retention/deletion policy in Dayforce. Observed the Dayforce functionality to determine whether it allows customers to delete or retain data in accordance with their policies.	No exceptions noted.

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P5.0 Privacy Criteria related to Access

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P5.1	The entity grants identified and authenticated data subjects the ability to access their stored personal information for review and, upon request, provides physical or electronic copies of that information to data subjects to meet the entity's objectives related to privacy. If access is denied, data subjects are informed of the denial and reason for such denial, as required, to meet the entity's objectives related to privacy.		
P5.1.1	The Dayforce application provides clients with the ability to enforce password policies, such as password history, maximum age, minimum length, complexity requirements, account lockout duration, and account lockout threshold. Not all rules are optional, but are customizable by the client. For clients who choose federated authentication service, the Dayforce native rules do not apply. Establishing access and segregation of duties is the responsibility of the customer.	Inspected a selection of Dayforce product documents to determine whether a configurable password policy management feature is available in Dayforce to meet client security requirements. Observed a selection of system configurations within Dayforce to determine whether clients are able to implement their own identification and authentication mechanisms in Dayforce, including SSO. Observed a selection of system configurations within Dayforce to determine whether Dayforce has the capability to allow customers to implement their own role-based security mechanisms in the Dayforce account management.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P5.1.2	Client identification and authentication are in place for incoming client calls at Ceridian HCM Inc. Identity of all callers is authenticated, and for those not authorized, they are directed back to the Clients' internal admin/support/payroll personnel.	Inspected a selection of Ceridian Call Center procedure documents to determine whether the identity and permissions of the caller can be verified to provide corresponding services.	No exceptions noted.
P5.1.3	Data Subjects are provided direct access to update their information within Dayforce.	Observed a selection of personal data entry pages within Dayforce to determine whether direct access is provided for the data subject to update their personal information.	No exceptions noted.
P5.2	The entity corrects, amends, or appends personal information based on information provided by data subjects and communicates such information to third parties, as committed or required, to meet the entity's objectives related to privacy. If a request for correction is denied, data subjects are informed of the denial and reason for such denial to meet the entity's objectives related to privacy.		
P5.2.1	The MSA, service particulars and DPA identifies that the Choice and Consent principles (which includes Denial of Access) are the Responsibilities of our customers.	Inspected a selection of MSA, DPA and Service Particulars documents to determine whether the customers' responsibilities regarding the choice and consent principles were outlined in these signed documents. Inspected Ceridian's client contract portal to determine whether the MSA, DPA and Service Particulars are made available to customers.	No exceptions noted.

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P5.2.2	Data Subjects are provided direct access to update their information within Dayforce.	Observed a selection of personal data entry pages within Dayforce to determine whether direct access is provided for the data subject to update their personal information.	No exceptions noted.
P5.2.3	The Dayforce application provides clients with the ability to enforce password policies, such as password history, maximum age, minimum length, complexity requirements, account lockout duration, and account lockout threshold. Not all rules are optional, but are customizable by the client. For clients who choose federated authentication service, the Dayforce native rules do not apply. Establishing access and segregation of duties is the responsibility of the customer.	Inspected a selection of Dayforce product documents to determine whether a configurable password policy management feature is available in Dayforce to meet client security needs. Observed a selection of system configurations within the Dayforce product to determine whether clients are able to implement their own identification and authentication mechanisms in the Dayforce, including SSO. Observed a selection of system configurations within the Dayforce product to determine whether Dayforce has capability to allow customers to implement their own role-based security mechanisms.	No exceptions noted.

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P6.0 Privacy Criteria related to Disclosure and Notification

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P6.1	The entity discloses personal information to third parties with the explicit consent of data subjects, and such consent is obtained prior to disclosure to meet the entity's objectives related to privacy.		
P6.1.1	Contractor and Vendor MSA includes terms and conditions which establishes standards of conduct, and define the obligations for evaluating adherence and addressing deviations. The MSA includes confidentiality, security and other obligations. Agreements with Contractor/Vendor/Partner include (if applicable) a VDPA which specifies the security obligations, privacy obligations and/or confidentiality obligations of the parties.	Inspected a selection of MSA and VDPA to determine whether the documents contained provisions regarding Security, Privacy, Confidentiality requirements and obligations for contractors and vendors.	No exceptions noted.
P6.1.2	The MSA, service particulars and DAP identifies that the Choice and Consent principles (which includes Denial of Access) are the responsibilities of our customers.	Inspected a selection MSA, DPA and Service Particulars documents to determine whether the customers' responsibilities regarding the choice and consent principles were outlined in these signed documents. Inspected Ceridian's client contract portal to determine whether the MSA, DPA and Service Particulars are made available to customers.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P6.1.3	Ceridian creates a data flow which identifies the disclosures required as part of the services. This is available to clients through various means, including product training.	Inspected a selection of personal information data flows to determine the flows are designed to identify privacy information disclosure requirement within the Ceridian service.	No exceptions noted.
P6.1.4	Ceridian has created, maintained and published a Dayforce Sub-processor List in the Ceridian Due Diligence site. The list contains the name, category, relevant PII processes/data, and geographic information related to the PII data processing. This list is only available to registered audiences/clients.	Inspected a selection of Dayforce sub-processor lists to determine whether Ceridian has maintained an authorized vendor list who may process the PII relevant data on behalf of Ceridian. Observed the Ceridian Client portals to determine whether the Dayforce sub-processor list has been published and is accessible to Ceridian customers.	No exceptions noted.
P6.2	The entity creates and retains a complete, accurate, and timely record of authorized disclosures of personal information to meet the entity's objectives related to privacy.		
P6.2.1	Ceridian creates a data flow which identifies the disclosures required as part of the services. This is available to clients through various means, including product training.	Inspected a selection of Dayforce personal information data flow diagrams to determine whether mandatory disclosures of pre-defined personal data to government agencies, tax authorities, pension/benefits plan providers, customer banks are documented and provided to clients.	No exceptions noted.

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P6.2.2	Disclosures not part of the services such as subpoenas are directed to legal and tracked by Ceridian's legal team.	Inspected the Personal Data Request and Complaint Resolution Procedure to determine whether Ceridian has a procedure for directing non-service related disclosures to the legal and privacy team.	No exceptions noted.
P6.3	The entity creates and retains a complete, accurate, and timely record of detected or reported unauthorized disclosures (including breaches) of personal information to meet the entity's objectives related to privacy.		
P6.3.1	Ceridian HCM, Inc. has established an Information Security Policy and Standards based on ISO27002 that outlines Ceridian's security principles to help ensure client data receives the appropriate standards of protection and care.	Inspected Ceridian's Information Security Management System documents to determine whether Ceridian has established a global security management system aligned with ISO27002 to protect the information and data processed by Ceridian.	No exceptions noted.
P6.3.2	Significant events are brought into the Major Incident Response process which includes ERM, who track these 'emerging risks' and communicate them to Senior Leadership. This includes any required notifications to regulators and others.	Observed a selection of ERM dashboards to determine whether there is an option to classify the risk events as incidents under the risk source group 'emerging risks'. Inspected a selection of Ceridian incident reports to determine whether the critical incidents are reviewed periodically. Inspected a selection of incident management documents to determine whether significant events	No exceptions noted.

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		are tracked in the ERM risk register and communicated to Senior Leadership. Inspected a selection of Ceridian risk register documents to determine whether urgent incidents were added to the risk register.	
P6.4	The entity obtains privacy commitments from vendors and other third parties who have access to personal information to meet the entity's objectives related to privacy. The entity assesses those parties' compliance on a periodic and as-needed basis and takes corrective action, if necessary.		
P6.4.1	Contractor and Vendor MSA includes terms and conditions which establishes standards of conduct, and define the obligations for evaluating adherence and addressing deviations. The MSA includes confidentiality, security and other obligations. Agreements with Contractor/Vendor/Partner include (if applicable) a VDPA which specifies the security obligations, privacy obligations and/or confidentiality obligations of the parties.	Inspected a selection of MSAs and VDPAs to determine whether the documents contained provisions regarding Security, Privacy, Confidentiality requirements and obligations for contractors and vendors.	No exceptions noted.
P6.4.2	Ceridian operates a Vendor Due Diligence program (within ERM) which assesses the risk of vendors and establishes lines of communication and requirements for the vendor.	Inspected a selection of vendor risk management program documents to determine whether Ceridian has established a vendor due diligence program to:	No exceptions noted.

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		• set the compliance requirements to the supplier • assess the risk of supplier relationships, and • create the communication and resolution protocols for the services and products issues related to suppliers Inspected a selection of vendor risk management program documents to determine whether vendors are subject to an initial vendor risk assessment when contracting with Ceridian, as well as annual reassessments for those vendors deemed critical. Inspected a selection of vendor management reports to determine whether vendor assessments were conducted to cover vendors' internal processes, controls, security programs and other items related to key risk categories.	
P6.4.3	Ceridian has created, maintained and published a Dayforce Sub-processor List in the Ceridian Due Diligence site. The list contains the name, category, relevant PII processes/data, and geographic information related to PII data processing. This list is only available to registered audiences/clients.	Inspected a selection of Dayforce Sub-processor lists to determine whether Ceridian has maintained an authorized vendor list who may process the PII relevant data on behalf of Ceridian. Observed a selection of Ceridian Client portals to determine whether the Dayforce Sub-Processor list	No exceptions noted.

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		has been published and is accessible to Ceridian customers.	
P6.5	The entity obtains commitments from vendors and other third parties with access to personal information to notify the entity in the event of actual or suspected unauthorized disclosures of personal information. Such notifications are reported to appropriate personnel and acted on in accordance with established incident response procedures to meet the entity's objectives related to privacy.		
P6.5.1	Ceridian operates a Vendor Due Diligence program (within ERM) which assesses the risk of vendors and establishes lines of communication and requirements for the vendor.	Inspected a selection of vendor risk management program documents to determine whether Ceridian has established a vendor due diligence program to: • set the compliance requirements to the supplier • assess the risk of supplier relationships, and • create the communication and resolution protocols for the services and products issue related to suppliers. Inspected a selection of vendor risk management program documents to determine whether vendors are subject to an initial vendor risk assessment when	No exceptions noted.

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		contracting with Ceridian, as well as annual reassessments for those vendors deemed critical. Inspected a selection of vendor management reports to determine whether vendor assessments were conducted to cover vendors' internal processes, controls, security programs and other items related to key risk categories.	
P6.5.2	Contractor and Vendor MSA includes terms and conditions which establishes standards of conduct, and define the obligations for evaluating adherence and addressing deviations. The MSA includes confidentiality, security and other obligations. Agreements with Contractor/Vendor/Partner include (if applicable) a VDPA which specifies the security obligations, privacy obligations and/or confidentiality obligations of the parties.	Inspected a selection of MSA and VDPA to determine whether the documents contained provisions regarding Security, Privacy, Confidentiality requirements and obligations for contractors and vendors.	No exceptions noted.
P6.6	The entity provides notification of breaches and incidents to affected data subjects, regulators, and others to meet the entity's objectives related to privacy.		
P6.6.1	Ceridian operates a Vendor Due Diligence program (within ERM) which assesses risk of vendors and	Inspected a selection of vendor risk management program documents to determine whether Ceridian has established a vendor due diligence program to:	No exceptions noted.

This report is intended solely for the information and use of the management of Ceridian HCM, Inc., its user organizations, and the independent auditors of its user organizations.

Criteria, Controls,
Test Procedures, and Results

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	establishes lines of communication and requirements for the vendor.	- set the compliance requirements to the supplier - assess the risk of supplier relationships, and - create the communication and resolution protocols for the services and products issue related to suppliers. Inspected a selection of vendor risk management program documents to determine whether vendors are subject to an initial vendor risk assessment when contracting with Ceridian, as well as annual reassessments for those vendors deemed critical. Inspected a selection of vendor management reports to determine whether vendor assessments were conducted to cover vendors' internal processes, controls, security programs and other items related to key risk categories.	
P6.6.2	Ceridian has developed a Security Incident Response policy consistent with ISO27002. The policy and procedure are reviewed annually. The process includes determining impact on personal information and determining if any PII was disclosed/breached.	Inspected a selection of incident management documents to determine whether t they are consistent with ISO27002 and include a process to determine the impact of a security incident on personal information and determining if any PII was disclosed or breached.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P6.6.3	Significant events are brought into the Major Incident Response process which includes ERM, who track these emerging risks and communicate them to Senior Leadership. This includes any required notifications to regulators and others. Ceridian's responsibility to disclose is limited to our customers, who must then disclose to data subjects.	Observed a selection of ERM dashboards to determine whether there is an option to classify the risk events as incidents under the risk source group "emerging risks". Inspected a selection of Ceridian incident reports to determine whether the critical incidents are reviewed periodically. Inspected a selection of incident management documents to determine whether significant events are tracked in the ERM risk register and communicated to Senior Leadership. Inspected a selection of Ceridian risk register documents to determine whether urgent incidents were added to the risk register.	No exceptions noted.
P6.7	The entity provides data subjects with an accounting of the personal information held and disclosure of the data subjects' personal information, upon the data subjects' request, to meet the entity's objectives related to privacy.		
P6.7.1	Ceridian refers Privacy related inquiries to the client-specific Data Owner, including requests for an accounting of personal information and maintains a	Inspected a selection of client contract documents to determine whether the documents include clauses to state that Ceridian refers the data subject to their	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
	Privacy complaint/request process to assist client-specific Data Owners.	authorized client contact when data subjects contact Ceridian directly. Inspected a selection of client contract documents to determine whether the documents include clauses regarding Ceridian's ability to assist authorized client contacts with requests for consultation and correction of personal data in instances where personal data is not made available for self-service by clients.	
P6.7.2	Data Subjects are provided direct access to update their information within Dayforce.	Observed a selection of personal data entry pages within Dayforce to determine whether direct access is provided for the data subject to update their personal information.	No exceptions noted.

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P7.0 Privacy Criteria related to Quality

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P7.1	The entity collects and maintains accurate, up-to-date, complete, and relevant personal information to meet the entity's objectives related to privacy.		
P7.1.1	Data Subjects are provided direct access to update their information within Dayforce.	Observed a selection of personal data entry pages within Dayforce to determine whether direct access is provided for the data subject to update their personal information.	No exceptions noted.
P7.1.2	Ceridian provides a feature in PDM that allows our customers the ability to delete or retain data in accordance with their policies.	Inspected a selection of Dayforce product documents to determine whether the personal data management feature is available to customers to manage personal information, and implement their own data retention/deletion policy in Dayforce.	No exceptions noted.

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P8.0 Privacy Criteria related to Monitoring and Enforcement

Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P8.1	The entity implements a process for receiving, addressing, resolving, and communicating the resolution of inquiries, complaints, and disputes from data subjects and others and periodically monitors compliance to meet the entity's objectives related to privacy. Corrections and other necessary actions related to identified deficiencies are made or taken in a timely manner.		
P8.1.1	Ceridian has published a Privacy dispute and resolutions process.	Inspected a selection of privacy management documents to determine whether Ceridian established a privacy dispute and resolutions process. Inspected a selection of Ceridian websites to determine whether the privacy dispute and resolutions procedure documents are published.	No exceptions noted.
P8.1.2	Disclosures not part of the services such as subpoenas are directed to Ceridian's legal team for tracking.	Inspected a selection of privacy management documents to determine whether Ceridian established a process to record, manage and track the non-service related privacy disclosure requests.	No exceptions noted.

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Ref #	Descriptions of Controls Specified by Ceridian	Tests of Operating Effectiveness Performed by KPMG	Results of Tests
P8.1.3	Ceridian has developed a Privacy Impact Assessment Process which includes management reporting, remediation plans, reporting and monitoring.	Inspected a selection of privacy management documents to determine whether Ceridian has developed a privacy impact assessment process, including the provisions for management reporting and remediation plans. Inspected a selection of privacy management documents to determine whether Ceridian has taken into account the data of EU and non-EU data subjects, and specify what processes are required for different levels of data risk.	No exceptions noted.

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GLOSSARY OF ABBREVIATIONS

<i>Acronym</i>	<i>Definition</i>
AD	Active Directory
ADFS	Active Directory Federation Services
ADM	Agile Development Method
BCM	Business Continuity Management
BSI	Business Software Inc.
CAM	Consolidated Approval Matrix
CC	Compensation Committee
CEC	Ceridian Education Centre
CIS	Centre for Internet Security
CSIRP	Ceridian Security Incident Response Plan
CTC	Ceridian Transmission Centre
COBRA	Consolidated Omnibus Budget Reconciliation Act
DLP	Data Loss Prevention
DMZ	Demilitarized Zone
DOA	Delegation of Authority
DPA	Data Processing Addendum
EAP	Employee assistance programs
ERM	Enterprise Risk Management
HCM	Human Capital Management
HIPPA	Health Insurance Portability and Accountability Act
HPUD	HP Universal Discovery
HR	Human Resource
HRIS	Human Resource Information Systems
HTTPS	Hypertext Transfer Protocol Secure
IDS	Intrusion detection system
IPS	Intrusion prevention system
ISP	Information Security Policy

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<i>Acronym</i>	<i>Definition</i>
IT	Information Technology
KRAs	Key Risk Areas
MDM	Mobile Device Management
MFA	Multi-Factor Authentication
MPLS	Multi-Protocol Label Switching
MSA	Master Service Agreement
OS	Operating System
PCR	Production Change Request
PDM	Personal Data Management
PGP	Pretty Good Privacy
PKI	Public Key Infrastructure
PIN	Personal Identification Number
QA	Quality Assurance
RFC	Request For Change
SaaS	Software As A Service
SFTP	Secure File Transfer Protocol
SoD	Segregation of Duties
SOP	Standard Operating Procedure
SQL	Structured Query Language
SRP	Short Range Planning
SSH	Secure Shell
SSO	Single Sign-On
TFS	Team Foundation Server
TLS	Transport Layer Security
UAT	User Acceptance Testing
VDPA	Vendor Data Processing Addendum
VRM	Vendor Risk Management
WAF	Web Application Firewall

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Resolution: Human Capital Management (HCM) System



Human capital management consists of managing the entire life cycle of an employer's workforce, including:

- Employee recruiting, applications processing, selection, background screening and new hire onboarding
- Employee records management
- City staffing management, position control and tracking
- Timekeeping, with hourly scheduling
- Leave management, including FMLA and workers compensation
- Payroll calculations, deductions, and payroll tax reporting
- Transactional and global reporting at all levels
- Employee development and learning
- Performance management
- Compensation management
- Employee benefits enrollment and administration



Background

- **HR uses the following HCM systems that are partially integrated**
 - Infor Lawson (since 2010) - a web-hosted HR/payroll system
 - NeoGov (since 2013) - web-hosted recruitment/hiring system
 - Kronos (since 2014) - web-hosted timekeeping system
 - Direct Path - web-hosted employee benefits admin system
(being replaced with Businessolver October 2020)
- **The systems are antiquated & challenging to maintain**
 - Involves separate releases for patches, upgrades and testing throughout the year
 - Frequently experience integration errors
 - Duplicate entry between systems consumes tremendous staff time, adds unnecessary steps, creates errors and significantly slows processes across the City
 - Extracting and combining related data from different systems takes massive effort



Background

- **Infor Lawson is the main HR system**
 - Houses majority of employee data
 - Generates the City's \$77.9 million payroll
 - Contract expires December 2021
 - Replacement system requires at least nine (9) months to implement
 - Need to begin implementation in January 2021
- **The expiration of the Infor Lawson contract provides an opportunity to combine the multiple systems into a single dynamic system “under one roof”**



Due Diligence

- **Starting in mid-2018, staff began to research and identify potential replacement systems for Infor Lawson**
- **Over the 2-year period, HR and IT staff held eight (8) on-site, in-person demonstrations with management**



Identified Required Attributes

System Structure

- Innovative leader in the HCM market - not a secondary system to Finance
- Single system for core HR functions, excluding benefits management
 - Fewer third-party integrations
 - Fewer software patches, upgrades and testing required
- Multi-tenant SaaS (Software as a Service) system
 - All clients are always on the same software version
- Cloud-hosted software – accessed by subscription fees
- Data security - housed within the US



Identified Required Attributes

Manager / Supervisor Functionality

- True real time workflow processes throughout, built to reduce repetitive data entry in different modules
- User-friendly timekeeping system
- Capability to electronically initiate and monitor HR and payroll transactions
- Ability to work in future periods
- Intuitive and ability to easily manage staffing, overtime, payroll
- Access to data-rich graphical dashboards
- Ability to drill down into employee data



Identified Required Attributes

HR Staff Functionality

- True real time workflow processes throughout, built to reduce repetitive data entry in different modules
- Strong support team provided
- System will accurately process a complex municipal payroll (multiple work schedules and Civil Service rules)
- Ability to work efficiently and increase speed
- Displays HR's internal work-in-progress
- Ability to work in future periods
- Easy usability, with data-rich metrics and graphical dashboards
- Ability to manage workflow rule changes, with minimal external re-programming
- Enhanced functionality, reporting options and auditing tools
- Position control features



Selection Process

- Notices were published for RFP #CB-2073 on August 9 and August 16, 2020, with proposals due August 27, 2020
- Six (6) companies responded to the RFP
- The rating criteria consisted of the following:

1)	Successful experience in SaaS-based HCM	15%
2)	Quality and design of features and transformational / operational work flows	50%
3)	Ease of use / ability for HR staff to manage system	10%
4)	Overall cost	20%
5)	Quality of implementation and ongoing technical support	<u>5%</u>
		100%



IT Summary Review – Ceridian (Dayforce)

- **Latest security audit – no trouble found**
 - Security Operations Center (SOC) audit by KPMG, April 1, 2019-March 31, 2020, 155 pages.
- **Data Breaches, Cyber Attacks and Security Report**
 - Ceridian, “Data Breaches and Security News” <https://www.upguard.com/security-report/ceridian>
- **City’s internal system and application review checklist**
 - Approximately 110 topics reviewed by City’s Chief Information Officer, including, but not limited to: availability/recovery, architecture, contractual, costs and pricing, documentation, interface, maintainability, performance, reliability, security, reporting data out, training, warranty and support, vendor history
- **Vendor’s implementation and project plans**
 - Roles and responsibilities defined better than most
- **Ceridian since 1932 (IBM’s Service Bureau Corporation)**
 - 1973 payroll service passed to Control Data Corporation, spinoff came from Control Data Corporation in 1992 as “Ceridian”, acquired cloud-based “Dayforce” in 2012



Rating and Cost Comparisons for Human Capital Management (HCM) System

Category	Ceridian Dayforce	HR Strategies Consulting- SAP Workforce Suite	Phoenix Business Consulting- SAP Workforce Suite	Tyler Technologies Munis	Kronos Workforce Ready	Infor CloudSuite
Proposal Rating Scores	84	75	72	71	71	60
One-time implementation costs	\$194,213.48	\$946,560.00	\$1,521,202.20	\$399,065.00	\$251,000.00	\$1,709,527.00
First year annual recurring costs	\$269,256.60	\$213,460.00	\$192,142.00	\$99,696.00	\$232,628.00	\$106,309.00
Total projected 5-year costs	\$1,595,435.64	\$2,013,860.00	\$2,481,912.20	\$897,545.00	\$1,414,140.00	\$2,247,493.00
See comments below	1	2	3	4	5	6

1 - Ceridian: Submitted on current employee census of 1,335, includes indexed price increases, includes new timeclocks and maintenance, excludes est. travel time and expense

2 - HR Strategies Consulting: Submitted on 1,300 employees. One-time cost excludes new timeclocks.

3 - Phoenix Business Consulting: One-time costs exclude est. travel of \$143,490, includes \$86,302 new timeclocks

4 - Tyler Technologies: Costs listed not all encompassing and only allows 150 concurrent users. One-time costs included \$105,425 of 3rd party timeclocks and software (ExecuTime), excludes est. travel of \$73,980

5 - Kronos: Submitted on 1,300 employees. One-time cost includes a \$100,000 discount if executed by 9/30/20, excludes new timeclocks, excludes est. travel time and exp

6 - Infor: One-time costs excludes est. travel of \$73,100, excludes new time clocks and no time clock solution was offered.



The most advantageous proposal received -

Ceridian HCM, Inc. Dayforce System

- > Innovative HCM leader
- > Provides the required attributes at a competitive cost
- > Projected go-live start date October 1, 2021



QUESTIONS ?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: 20. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Modifying and Extending the Declaration of Local Disaster Issued August 27, 2020 (*Robert Hanna*)

GENERAL INFORMATION

On August 27, 2020, the City Council adopted a Further Modification and Extension of Declaration of Local Disaster due to the COVID-19 pandemic. That extension lasts through September 24, 2020.

On July 2, 2020, the Governor of the State of Texas issued his Executive Order GA-29, relating to the use of face coverings during the COVID-19 disaster.

On September 7, 2020, the Governor of the State of Texas extended the State of Disaster for all counties in Texas due to the continuing COVID-19 pandemic.

On September 17, 2020, the Governor of the State of Texas issued his Executive Order GA-30, relating to the continued response to the COVID-19 disaster as Texas reopens, and which is effective state-wide until modified, amended, rescinded, or superseded by the Governor.

SPECIAL CONSIDERATIONS

The Governor's Executive Orders GA-29 and GA-30 supersede any conflicting order issued by local officials in response to the COVID-19 disaster. This includes Mayors and City Councils. A local order may not restrict essential services or reopened services allowed by the Governor's orders. A local order may not allow gatherings prohibited by the Governor's orders. A local

order may not expand the list of essential services or the list or scope of reopened services as set forth in the Governor's orders.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 10th Resolution Extending Declaration of Local Disaster COVID-19 redline draft
2. proc09072020
3. EO-GA-29-use-of-face-coverings-during-COVID-19-IMAGE-07-02-2020
4. GA-30
5. Disaster Declaration PPT

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL, CITY OF ABILENE, TEXAS, FURTHER MODIFYING ITS EXTENSION OF DECLARATION OF DISASTER ISSUED ON AUGUST 27~~JULY 23~~, 2020.

WHEREAS, on March 16, 2020, the Mayor of the City of Abilene, by proclamation, issued a Declaration of Local Disaster; and

WHEREAS, on March 23, 2020, the City Council issued its Resolution Renewing and Continuing the Mayor's Declaration of Disaster Issued on March 16, 2020, which prohibited the social gathering of more than 10 persons; and

WHEREAS, on March 30, 2020, the City Council issued its Resolution Modifying its Extension of Declaration of Disaster, which created a limited shelter in place through 11:59 p.m., April 14, 2020; and

WHEREAS, on April 13, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued the limited shelter in place through 11:59 p.m., April 30, 2020; and

WHEREAS, on April 30, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-18; and

WHEREAS, on May 15, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-21; and

WHEREAS, on June 1, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-23, which was effective until June 25, 2020; and

WHEREAS, on June 25, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-26, which was effective until July 23, 2020; and

WHEREAS, on July 23, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-28, as amended, and Executive Order GA-29, which was effective until August 27, 2020; and

WHEREAS, on August 27, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued to adopt the regulations and restrictions issued in the Governor's Executive Order GA-28, as amended, and Executive Order GA-29, which was effective until September 24, 2020; and

~~WHEREAS, on June 26, 2020, the Governor of the State of Texas issued his Executive Order GA-28, effective until it is modified, amended, rescinded, or superseded by the Governor, and which was a targeted response to the COVID-19 disaster as part of the reopening of Texas; and~~

~~WHEREAS, on July 2, 2020, the Governor of the State of Texas issued a Proclamation which amended his Executive Order GA-28 relating to mass gatherings in Texas during the disaster posed by the novel coronavirus; and~~

WHEREAS, on July 2, 2020, the Governor of the State of Texas issued his Executive Order GA-29, effective until it is modified, amended, rescinded, or superseded by the Governor, and which related to the use of face coverings during the COVID-19 disaster; and

WHEREAS, on September 7~~August 8~~, 2020, the Governor of the State of Texas renewed his disaster proclamation for all countiiesy in Texas due to COVID-19 continuing a state of disaster; and

WHEREAS, on September 17, 2020, the Governor of the State of Texas issued his Executive Order GA-30, effective until it is modified, amended, rescinded, or superseded by the Governor, and which relates to the continued response to the COVID-19 disaster as Texas reopens; and

WHEREAS, because of the continuing risk of the rapid spread of the COVID-19 virus, the need to protect the most vulnerable members of the community, the intent to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services and commerce to continue, and the desire to slow the spread of COVID-19 to maximum extent possible, this Order is required; and

WHEREAS, this Order is issued based on evidence of increasing occurrence of COVID-19 within the City of Abilene and Taylor County, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; and

WHEREAS, the City Council has determined that extraordinary and immediate measures must continue to be taken to respond quickly to prevent and slow down community spread of COVID-19 in the City of Abilene; and

WHEREAS, the City Council finds that it is in the public interest to authorize additional authority as described herein pursuant to the Texas Disaster Act of 1975, as amended, Texas Government Code, and provide rules to protect the health of persons in the City of Abilene, pursuant to the Texas Government Code and Texas Health and Safety Code.

NOW THEREFORE, IT IS HEREBY RESOLVED AND DECLARED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

1. The foregoing recitals as incorporated herein and made findings of fact.

2. That the City Council, effective immediately, hereby renews and continues the local state of disaster for the City of Abilene, Texas, pursuant to Section 418.108(b) of the Texas Government Code.
3. Pursuant to Section 418.108(c) of the Government Code, this renewal and continuation of the declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
4. Pursuant to Section 418.108(d) of the Government Code, this renewal and continuation of the declaration of a local state of disaster continues activation of the emergency management plan for the City of Abilene. The furnishing of aid and assistance under the declaration is hereby authorized. The appropriate preparedness and response aspects of the plan are continued.
5. The use of all available resources of the City of Abilene that are reasonably necessary to cope with this disaster are hereby authorized.
6. To the extent permitted by law, any local ordinance or administrative rule prescribing the procedures for conduct of City business or any local ordinance or administrative rule that would in any way prevent, hinder, or delay necessary action in coping with this disaster, including any local ordinance or administrative rule regarding contracting or procurement with would impede the City's emergency response necessary to cope with this declared disaster, are hereby suspended, but only for the duration of this declared local disaster and only for that limited purpose.
7. Pursuant to Section 418.108(g) of the Government Code, the City of Abilene may control ingress to and egress from a disaster area within the incorporated limits of the City of Abilene and control the movement of persons and the occupancy of premises in that area.
8. Pursuant to Section 122.006 of the Texas Health and Safety Code, the City of Abilene may adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease.
9. The intent of this Order is to protect the physical health and well-being of City of Abilene residents, to protect the financial health and well-being of City of Abilene residents and businesses, and to slow the spread of COVID-19 to the maximum extent possible while safeguarding the Constitutional liberties of City of Abilene residents by utilizing the least restrictive means possible and encouraging the highest level of personal responsibility.

All persons should follow the CDC recommended guidelines to protect themselves from exposure and to protect the public from further community spread.

10. The City of Abilene hereby adopts and incorporates herein Governor Greg Abbott's Executive Order GA-298, ~~as amended~~, and Executive Order GA-3029, the same as if they were copied and set forth at length herein. The City of Abilene will follow and enforce the conditions and restrictions as set forth in GA-298 and GA-3029, and adopts and incorporates any further Proclamations modifying, amending or superseding GA-298 or GA-3029 during the term of Abilene's declaration of local disaster.

The City Manager is authorized without further Council action to enforce these provisions to the fullest extent allowed by law.

11. In the event the Governor of the State of Texas amends or modifies his Executive Order GA-298 or GA-3029, this Declaration and Order is automatically amended or modified without further Council action to reflect said amendments or modifications to the Governor's Executive Order. It being the express intent of the City Council and this Declaration and Order to follow the Governor's Executive Order.
12. All public, private and commercial laboratories operating within the City of Abilene and performing COVID-19 testing shall report by 5:00 p.m. each day for the prior 24-hour period to the Abilene-Taylor County Public Health District the following information:
 - (a) The number of COVID-19 tests performed;
 - (b) The number of positive COVID-19 tests; and
 - (c) The patient names and demographic information of positive COVID-19 tests.

This information will be used solely for public health purposes to monitor the testing conducted in the City of Abilene, and mitigate and contain the spread of COVID-19.
13. That any City ordinance or regulation imposing a time requirement for payment, filing or appealing a decision, may be extended by the Mayor without further confirmation by the City Council.
14. That the Mayor may suspend or modify any other ordinance or regulation of the City of Abilene for a period of not more than seven days from the date of this resolution unless continued or renewed by the City Council.
15. That the City Manager or designee of the City Manager is authorized, without further approval of the City Council, to:

- (a) Make application for local, state and federal assistance as necessary and/or applicable;
- (b) Accept on behalf of the City services, gifts, grants, equipment, supplies, and/or materials whether from private, nonprofit, or governmental sources;
- (c) Enter into Interlocal cooperation agreements or memorandums of understanding with other cities, counties, or jurisdictions to provide for law enforcement assistance or other shared services to assist in this Resolution or the COVID-19 pandemic;
- (d) Contract for expenditures for budgeted items and emergency expenditures in an amount not to exceed \$250,000; and
- (e) Defer any fines or fees imposed by the City.

After cessation of this emergency and state of disaster, the City Manager shall provide the City Council a list of all actions taken under this paragraph.

16. That although not required by law and out of an abundance of caution, the City Manager is authorized to (and any prior acts in response to the COVID-19 pandemic are ratified):

- (a) Close, including closure to the public, of any City offices, facilities, or properties, including parks, playgrounds, or playground equipment; and
- (b) Provide city services by means other than in-person delivery, such as accepting permit applications online or by mail only, and/or to cease any city service that are not required by state or federal law.

17. That any ordinances, rules, or regulations of the City of Abilene, Texas, that conflict with this Resolution are hereby suspended, such suspension to remain in effect until the state of disaster is terminated or until there is a subsequent Resolution of this Council, whichever occurs first.

18. That pursuant to Section 418.020(d) of the Texas Government Code, the City of Abilene is authorized to:

- (a) Temporarily or permanently acquire by lease, purchase, or other means sites required for installation of temporary housing units or emergency shelters for disaster victims; and
- (b) Enter into arrangements necessary to prepare or equip the site to use the housing units or shelters, including arrangements for the purchase of temporary housing units or shelters and the payment of transportation charges.

19. That failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.

20. Pursuant to Section 418.173, Government Code, failure to comply with this Order is an offense punishable by a fine not to exceed \$1,000. Pursuant to the Governor's Executive Order GA-29, failure to wear a face covering as required in GA-29 is punishable by a fine not to exceed \$250 for a second violation and each subsequent violation.
21. That any violation of this Resolution, Declaration and Order can be enjoined by the City of Abilene by a suit filed in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Resolution, Declaration and Order or in the Code of Ordinances, City of Abilene, Texas.
22. That nothing in this Resolution, Declaration and Order shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this Resolution.
23. All provisions of this Resolution, Declaration and Order should be interpreted to effectuate its intent.
24. That this Declaration and Order is effective immediately and continues until 11:59 p.m. October 22~~September 24~~, 2020 unless otherwise modified, terminated or extended.
25. That the terms and provisions of this Resolution, Declaration and Order shall be deemed to be severable and that if any section, subsection, sentence, clause, phrase or word herein shall be declared to be invalid or unconstitutional, the same shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word herein, and the remainder of this Resolution, Declaration and Order shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

ADOPTED this 27~~24~~th day of September~~August~~, 2020.

ATTEST:

Anthony Williams, Mayor

Shawna Atkinson, City Secretary

APPROVED:

Stanley Smith, City Attorney



GOVERNOR GREG ABBOTT

September 7, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:00 PM O'CLOCK

SEP 07 2020

[Signature]
Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

[Signature]
Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 512-463-2000 (VOICE) DIAL 7-1-1 FOR RELAY SERVICES

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

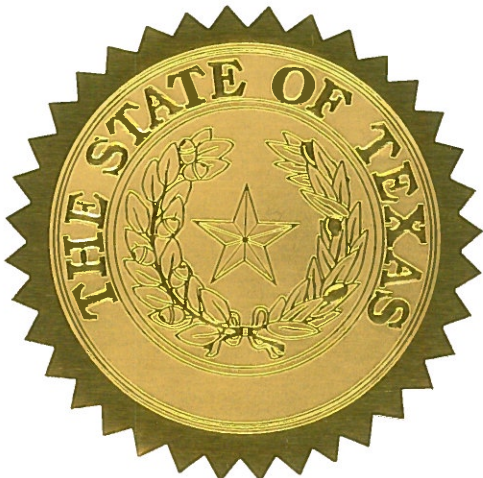
WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 7th day of September, 2020.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:00 PM O'CLOCK

SEP 07 2020

Governor Greg Abbott
September 7, 2020

Proclamation
Page 2

ATTESTED BY:



RUTH R. HUGHS
Secretary of State

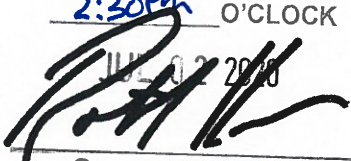
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SEP 07 2020



GOVERNOR GREG ABBOTT

July 2, 2020

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SECRETARY OF STATE
2:30 PM O'CLOCK
JUL 02 2020

Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

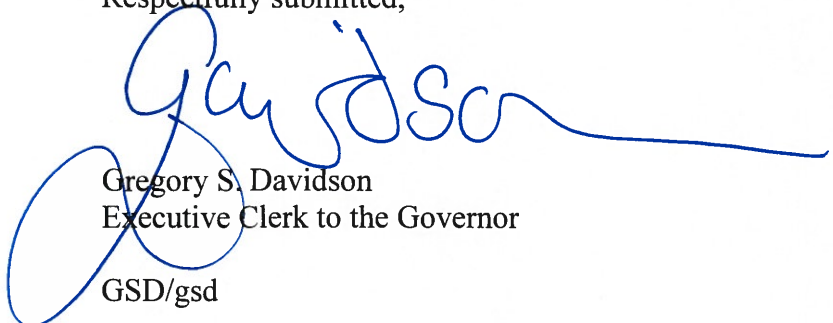
Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-29 relating to the use of face coverings during the
COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 512-463-2000 (VOICE) DIAL 7-1-1 FOR RELAY SERVICES

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 2, 2020

EXECUTIVE ORDER GA 29

Relating to the use of face coverings during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texans safe is for all people to consistently follow good hygiene and social-distancing practices; and

WHEREAS, due to recent substantial increases in COVID-19 positive cases, and increases in the COVID-19 positivity rate and hospitalizations resulting from COVID-19, further measures are needed to achieve the least restrictive means for reducing the growing spread of COVID-19, and to avoid a need for more extreme measures; and

WHEREAS, I have joined the medical experts in consistently encouraging people to use face coverings, and health authorities have repeatedly emphasized that wearing face coverings is one of the most important and effective tools for reducing the spread of COVID-19; and

WHEREAS, given the current status of COVID-19 in Texas, requiring the use of face coverings is a targeted response that can combat the threat to public health using the least restrictive means, and if people follow this requirement, more extreme measures may be avoided; and

WHEREAS, wearing a face covering is important not only to protect oneself, but also to avoid unknowingly harming fellow Texans, especially given that many people who go into public may have COVID-19 without knowing it because they have no symptoms; and

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SECRETARY OF STATE
2:30pm O'CLOCK

JUL 02 2020

WHEREAS, the “governor is responsible for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by fine;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective at 12:01 p.m. on July 3, 2020:

Every person in Texas shall wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain six feet of social distancing from another person not in the same household; provided, however, that this face-covering requirement does not apply to the following:

1. any person younger than 10 years of age;
2. any person with a medical condition or disability that prevents wearing a face covering;
3. any person while the person is consuming food or drink, or is seated at a restaurant to eat or drink;
4. any person while the person is (a) exercising outdoors or engaging in physical activity outdoors, and (b) maintaining a safe distance from other people not in the same household;
5. any person while the person is driving alone or with passengers who are part of the same household as the driver;
6. any person obtaining a service that requires temporary removal of the face covering for security surveillance, screening, or a need for specific access to the face, such as while visiting a bank or while obtaining a personal-care service involving the face, but only to the extent necessary for the temporary removal;
7. any person while the person is in a swimming pool, lake, or similar body of water;
8. any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election, but wearing a face covering is strongly encouraged;
9. any person who is actively providing or obtaining access to religious worship, but wearing a face covering is strongly encouraged;
10. any person while the person is giving a speech for a broadcast or to an audience; or
11. any person in a county (a) that meets the requisite criteria promulgated by

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SECRETARY OF STATE
2:30 PM O'CLOCK

JUL 02 2020

the Texas Division of Emergency Management (TDEM) regarding minimal cases of COVID-19, and (b) whose county judge has affirmatively opted-out of this face-covering requirement by filing with TDEM the required face-covering attestation form—provided, however, that wearing a face covering is highly recommended, and every county is strongly encouraged to follow these face-covering standards.

Not excepted from this face-covering requirement is any person attending a protest or demonstration involving more than 10 people and who is not practicing safe social distancing of six feet from other people not in the same household.

TDEM shall maintain on its website a list of counties that are not subject to this face-covering requirement pursuant to paragraph number 11. The list can be found at: www.tdem.texas.gov/ga29.

Following a verbal or written warning for a first-time violator of this face-covering requirement, a person's second violation shall be punishable by a fine not to exceed \$250. Each subsequent violation shall be punishable by a fine not to exceed \$250 per violation.

Local law enforcement and other local officials, as appropriate, can and should enforce this executive order, Executive Order GA-28, and other effective executive orders, as well as local restrictions that are consistent with this executive order and other effective executive orders. But no law enforcement or other official may detain, arrest, or confine in jail any person for a violation of this executive order or for related non-violent, non-felony offenses that are predicated on a violation of this executive order; provided, however, that any official with authority to enforce this executive order may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner.

This executive order hereby prohibits confinement in jail as a penalty for the violation of any face-covering order by any jurisdiction.

Executive Order GA-28 is hereby amended to delete from paragraph number 15 the phrase: “, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.”

The governor may by proclamation amend this executive order or add to the list of people to whom this face-covering requirement does not apply.

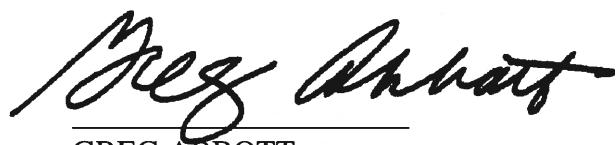
This executive order does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, GA-27, or GA-28 as amended. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

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SECRETARY OF STATE
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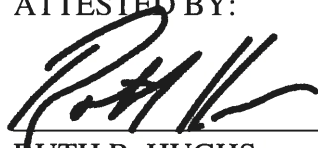


Given under my hand this the 2nd
day of July, 2020.



GREG ABBOTT
Governor

ATTESTED BY:



RUTH R. HUGHS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:30pm O'CLOCK
JUL 02 2020



GOVERNOR GREG ABBOTT

September 17, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

11:30AM O'CLOCK

SEP 17 2020

[Signature]
Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-30 relating to the continued response to the COVID-19
disaster as Texas reopens.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

[Signature]
Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 512-463-2000 (VOICE) DIAL 7-1-1 FOR RELAY SERVICES

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
September 17, 2020

EXECUTIVE ORDER GA 30

Relating to the continued response to the COVID-19 disaster as Texas reopens.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to reopen Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from the Texas Department of State Health Services (DSHS); and

WHEREAS, in June 2020, Texas experienced substantial increases in COVID-19 cases and hospitalizations, necessitating targeted and temporary adjustments to the reopening plan to achieve the least restrictive means for reducing the growing spread of COVID-19 and the resulting imminent threat to public health, and to avoid a need for more extreme measures; and

WHEREAS, I therefore issued Executive Orders GA-28 and GA-29 in late June and early

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11:30am O'CLOCK

SEP 17 2020

July 2020, respectively, and amended Executive Order GA-28 by proclamation on July 2, 2020; and

WHEREAS, due to improved medical treatments for COVID-19 patients, substantial increases in testing, abundant supplies of personal protective equipment, and Texans' adherence to safe practices like social distancing, hand sanitizing, and use of face coverings, the spread of COVID-19 and the number of new COVID-19 cases and hospitalizations have steadily and significantly declined since late July; and

WHEREAS, as Texas continues to reopen, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, other medical advisors, the White House, and the CDC, do hereby order the following on a statewide basis effective at 12:01 a.m. on September 21, 2020:

Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment; provided, however, that:

1. There is no occupancy limit for the following:
 - a. any services listed by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 4.0 or any subsequent version;
 - b. religious services, including those conducted in churches, congregations, and houses of worship;
 - c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;
 - d. child-care services;
 - e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths;
 - f. recreational sports programs for youths and adults;

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SEP 17 2020

- g. any public or private schools, and any public or private institutions of higher education, not already covered above; and
 - h. drive-in concerts, movies, or similar events, under guidelines that facilitate appropriate social distancing, that generally require spectators to remain in their vehicles, and that minimize in-person contact between people who are not in the same household or vehicle.
2. The following types of business establishments may operate at up to 75 percent of the total listed occupancy of the establishment, except for those establishments in areas with high hospitalizations as defined below:
- a. in-store, non-CISA retail establishments;
 - b. dine-in restaurants, as defined below in paragraph No. 7;
 - c. non-CISA office buildings;
 - d. non-CISA manufacturers;
 - e. museums and libraries; and
 - f. gyms and exercise facilities and classes.

“Areas with high hospitalizations” means any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of all hospitalized patients exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of all hospitalized patients is 15 percent or less. A current list of areas with high hospitalizations will be maintained at www.dshs.texas.gov/ga3031.

3. Except as provided below by paragraph No. 6, this 50 percent occupancy limit does not apply to outdoor areas, events, or establishments, except that the outdoor areas or outdoor venues identified in paragraph No. 2 of Executive Order GA-28 shall operate at no more than the percentage of normal operating limits as was set forth in Executive Order GA-28.
4. There is no occupancy limit for the following establishments that operate with at least six feet of social distancing between work stations:
- a. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;
 - b. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and
 - c. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services.
5. Amusement parks shall operate at no more than 50 percent of the normal operating limits as determined by the owner.
6. For any outdoor gathering in excess of 10 people, other than those set forth above in paragraph Nos. 1, 2, 3, or 5, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order.
7. Only restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, and whose customers eat or drink only while seated, may offer dine-in services.
8. People shall not visit bars or similar establishments that hold a permit from the

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SECRETARY OF STATE
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SEP 17 2020

Texas Alcoholic Beverage Commission (TABC) and are not restaurants as defined above in paragraph No. 7; provided, however, that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC.

9. People shall not use commercial rafting or tubing services, including rental of rafts or tubes and transportation of people for the purpose of rafting or tubing.
10. For any business establishment that is subject to a 50 percent “total listed occupancy” limit or “normal operating limit,” and that is in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, the business establishment may operate at up to 75 percent of the total listed occupancy or normal operating limit of the establishment.
11. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed.
12. Staff members are not included in determining operating levels, except for manufacturing services and office workers.
13. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people shall not be in groups larger than 10 and shall maintain six feet of social distancing from those not in their group.
14. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.
15. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS.
16. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services.
17. People may visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible; and
18. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts

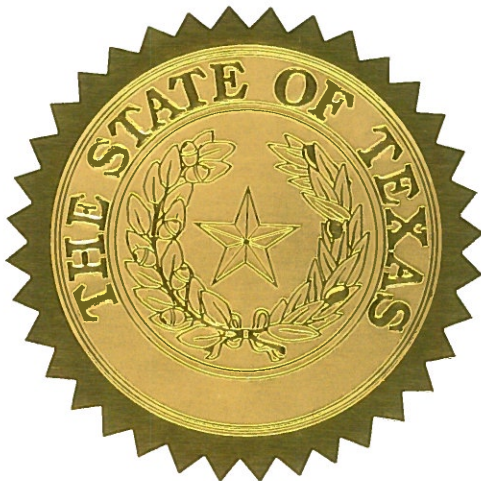
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SEP 17 2020

services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-28, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, GA-27, or GA-29. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 17th
day of September, 2020.

A handwritten signature in black ink, reading "Greg Abbott", written over a horizontal line.

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink, reading "Ruth R. Hughs", written over a horizontal line.

RUTH R. HUGHS
Secretary of State

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SECRETARY OF STATE
11:30 AM O'CLOCK

SEP 17 2020

Resolution:
**Modifying & Extending the
Local Disaster Declaration**



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: 21. Oral Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Letter Sent to the Governor of Texas Regarding Support of Local Businesses and Local Control of COVID-19 Response (Robert Hanna)

GENERAL INFORMATION

For presentation only. Presentation of the letter City staff crated to the Governor of Texas in support of local businesses and local control of COVID-19 response. This letter was approved by the committee of Mayor Williams, Mayor Pro-tem Hurt & Councilmember Price before being sent to the Governor and State Legislators.

SPECIAL CONSIDERATIONS

None - presentation only.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

None

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Letter to Gov Regarding COVID-19 Local Control

Presentation: Letter Sent to the Governor of Texas Regarding Local Businesses and Local Control of COVID-19 Response



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO: Honorable Mayor & Members of City Council

FROM: Stanley Smith, City Attorney

SUBJECT: 22. 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. **Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No. P-8277-83-CV, In the 83rd Judicial District Court, Pecos County, Texas; filed September 11, 2020**
13. **Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020**
14. **Governor's Executive Orders COVID-19**

B. 551.072 (Deliberations about Real Property)

1. **Clyde Water**
2. **200 Block of Walnut Street**

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

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

E. 551.076 (Deliberations about Security Devices)

F.551.087 (Business Prospect/Economic Development)

1. **Abilene Convention Center Hotel Project**

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None



**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO:

FROM:

**SUBJECT: 23. Oral Resolution: Receive a Report, Hold a Discussion and Public Hearing,
and Take Action on the Evaluation of the Municipal Court Judge**

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 Muni Court Judge

Oral Resolution: Evaluation of the Municipal Court Judge



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 9/24/2020

TO:

FROM:

**SUBJECT: 24. 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: 9/24/2020

TO: Honorable Mayor & Members of City Council

FROM: Misty Mayo

SUBJECT: **25. Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Resolution Approving an Agreement with Project ERG-9 (*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-9.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

Up to \$502,576

STAFF RECOMMENDATION

The DCOA staff's recommendation is to approve a Resolution approving an Agreement with Project ERG-9.

BOARD OR COMMISSION RECOMMENDATION

The DCOA Board's recommendation is to approve a Resolution approving an Agreement with

Project ERG-9.

ATTACHMENTS:

1. Resolution No. for Project ERG 9
2. FINAL - City Council.DCOA Project ERG-9 General Session

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-9 ("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-9 will support Company's business retention efforts; and,

WHEREAS, on July 30, 2020 the DCOA approved Resolution No. DCOA-2020.39 (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 \$502,576 (the "Incentive") in exchange for the Company's retention of 100 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 100 FTEs for 1 year, the DCOA to provide the Company with an incentive in an amount not to exceed \$502,576, under the terms and as set forth in the DCOA Resolution.

PART 2. This Resolution takes effect immediately upon its adoption.

ADOPTED this 24th day of September, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

- Manufacturing: Manufactures and repairs oilfield products and machinery across the US
- Established in 1982
- Retention of 100 full-time employees
- Participates in the Business Retention & Expansion Program
- **\$502,576 to retain 100% of 100 jobs**