CITY OF ABILENE

City of Abilene
City Council Agenda

Shane Price, Council Member Bruce Kreitler, Council Member Kyle McAlister, Council Member Robert Hanna, City Manager	Norm Archibald, Mayor	Anthony Williams, Mayor Pro-tem Vacant Place 4 Steve Savage, Council Member Stanley Smith, City Attorney Danette Dunlap, City Secretary

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on Thursday, March 23, 2017 at 8:30 AM at 555 Walnut Street, 2nd Floor Council Chambers, 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.

1. CALL TO ORDER

2. INVOCATION

1. Invocation Councilman Shane Price

3. PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

4. PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

1. **Employee Service Award:**
   Andrew Knox Fire Fighter 25 Years
2. **Presentation:**
   Recognize Tim McClarty for service to the City of Abilene
3. **Proclamation:**
   Work Zone Awareness

5. MINUTES

1. Approval of the Minutes from the Regular Called Meeting March 9th 2017.

6. 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.

1. **Resolution:** Authorizing the Lease of the Maintenance Facility at Lee Park to the Abilene Independent School District and the Acceptance of Donation of Real

Property from the Abilene Independent School District for Construction of a Fire Station. ***(Lesli Andrews)***

2. **Resolution:** Ratifying the Meet and Confer Agreement between the City of Abilene and the Abilene Professional Fire Fighters Association. ***(Ronnie Kidd)***

3. **Resolution**: Authorizing the City Manager to enter into a Consulting Services Contract for Employee Benefits Consulting **CB#1715**. ***(Ronnie Kidd)***

4. **Ordinance**: *(First Reading)* Case **#Z-2017-05** A request from Terry J. Adams, to rezone property from AO (Agricultural Open Space) to LI (Light Industrial), to allow for Wholesale and Storage (Indoors) Located at 3558 E Hwy 80; and setting a public hearing for April 13th 2017. ***(Dana Schoening).***

5. **Ordinance:** *(First Reading)* **Case #Z-2017-06** A request from Orange Theory Fitness., agent Enprotec/Hibbs & Todd, to amend the terms and conditions of PD77 (Planned Development 77) to allow for Indoor Recreation as a permitted use. Located at 3934 and 3950 Catclaw Drive; and setting a public hearing for April 13, 2017. ***(Dana Schoening)***

7. REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

1. **Ordinance & Public Hearing**: **REMOVE FROM TABLE** *(Final Reading)* Amending Chapter 19 "Nuisances and Illegal Dumping," Article III, "Nuisance Enforcement," Section 19-34 "Administrative Procedure for Junked Vehicles" and Section 19-35 "Penalties, Costs and Fees for Section 19-1: Junked Vehicle". ***(Dana Schoening)***

2. **Presentation and Discussion:** By Fugro Roadware Inc., for the City of Abilene Pavement Condition Survey 2017 ***(Michael Rice)***

8. EXECUTIVE SESSION

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, as authorized by Texas Government Code Sections

1. 551.071 (Consultation with Attorney)

A) Regional Water Supply

The following pending litigation subjects which may be discussed are:
1. City of Abilene, Texas v. Aurora Bumgarner; 104th Judicial District Court, Taylor County, Texas; filed November 17, 2011
2. Chad Carter v. City of Abilene, Texas; Cause No. 10138-D, In the 350th Judicial District Court, Taylor County, Texas, filed June 17, 2014
3. Gary Lee and Marilu Lee Corpian v. City of Abilene, Cause No. 48,766-A in the 42nd District Court, filed August 7, 2014
4. Margarita Mitchell, et al. v. The City of Abilene, et al., filed in the 350th Judicial District Court, Taylor County, Texas, on October 21, 2015
5. Susan Lewis King & Austin King MD vs Ken Paxton, Attorney General of Texas and the City of Abilene. Cause No. D-1-GN-16-001160, filed March 16, 2016
6. Abilene Matera LLC v. Board of Building Standards for the City of Abilene and City of Abilene, Cause No. 10696-D. March 17, 2016.

7. 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

8. E.G., et al. v. Barry Bond, City of Abilene, and Abilene Independent School District, Case 1:16-cv-00068-BL, U.S. District Court, Northern District, Abilene Division, filed April 28, 2016

9. Gary Corpian and Marilu Lee Corpian v. City of Abilene, Texas, Cause No. 49451-A, In the 42nd Judicial District Court, Taylor County, Texas, filed June 24, 2016

10. 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

11. City of Abilene and Development Corporation of Abilene v. Texas Municipal League Governmental Risk Pool, Cause No. 11018-D In the 350th Judicial District Court, Taylor County, Texas, filed January 9, 2017

2. 551.072 (Deliberations about Real Property)

A) Regional Water Supply
B) K-Mart Building

3. 551.073 (Deliberations about Gifts and Donations)

4. 551.074 (Personnel Matters)

City Council may consider appointment, employment, 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.

The following Boards and Commissions may be discussed:

Abilene Economic Development Company, Inc.
Abilene Health Facilities Development Corp.
Abilene Higher Education Facilities Corporation
Abilene-Taylor County Events Venue District
Board of Adjustments
Board of Building Standards
Civic Abilene, Inc.
Civil Service Commission
Development Corporation of Abilene, Inc.
Firemen's Pension Fund Board
Friends of Safety City Board
Frontier Texas! Board of Directors
Abilene Housing Authority
Landmarks Commission
Library Board
Mechanical/Plumbing/Electrical & Swimming Pool Board of Appeals
Mental Health-Mental Retardation Board of Trustees
9-1-1 Emergency Communications District Board of Managers
Parks & Recreation Board
Planning and Zoning Commission
Taylor County Appraisal District
West Central Texas Municipal Water District

Tax Increment Reinvestment Zone Board

5. 551.087 (Business Prospect/Economic Development)
A) Hotel Proposals

6. 551.076 (Deliberations about Security Devices)

9. RECONVENE

1. Action if needed from Executive Session

10. REGULAR AGENDA

1. **Resolution:** Appointing members to various boards and commissions per the City Charter. ***(Danette Dunlap)***
   - *Keep Abilene Beautiful*
   - *Board of Adjustment*
   - *Landmarks Commission*
   - *Board of Building Standards*

2. **Oral Resolution**: Discussion and possible action related to annual performance evaluations of City Attorney, and City Secretary.

11. 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 contact Danette Dunlap, City Secretary, at 325-676-6202.

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the _____ day of March, 2017, at _____.

_____

Danette Dunlap, City Secretary

CITY COUNCIL MEETING
March 9th, 2017, 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 March 9th, 2017, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Archibald was present and presiding with Councilmen Shane Price, Bruce Kreitler, Anthony Williams, Kyle McAlister and Steve Savage. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, City Secretary Danette Dunlap, and various members of the City staff.

Mayor Archibald gave the invocation.

Mayor Archibald introduced Kate Watts who is a 5th grade student from Taylor Elementary. Kate led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

EMPLOYEE SERVICE AWARDS

Mayor Archibald was assisted by City Manager Robert Hanna in recognizing the following City Employees for their years of service to the City of Abilene:

Candelario Flores Jr.	Deputy Fire Chief	25 Years
James Walker	Police Officer	30 Years
Billy Schulle	Fire Fighter	35 Years
David Standard	Fire Fighter	35 Years

PROCLAMATION

Mayor Archibald presented the following proclamation:

One-Hundredth Anniversary, Volunteers of America Texas
Elizabeth Valdez, Community Administrator for Carver Plaza Apartments accepted the proclamation.

AWARDS PRESENTATIONS

Leslie Andrews Director of Community Services joined with Mayor Archibald to recognize the following awards to the City of Abilene and First Financial Bank.

Texas Recreation and Park Society Leisure and Aging Cool Idea Award
This was awarded on behalf of the City of Abilene Senior Services Division and First Financial Bank for their annual Day of Service on October 10, 2016.

Texas Recreation and Park Society Gold Medal Award
This is the highest honor that a Parks and Recreation Department can receive from the State.

DISPOSITION OF MINUTES

5.0 Mayor Archibald stated Council has been given the minutes from the February 21st Workshop Special Called Meeting and the February 23rd Regular Meeting there being no deletions, no additions, and no corrections. Councilman Williams made a motion to approve the minutes as presented. Councilman Price seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, and Mayor Archibald
NAYS: Councilman Savage

CONSENT AGENDA

Councilman Savage pulled item 6.2. Councilman McAlister made the motion to approve items 6.1 and 6.3 as presented by staff. Councilman Savage seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

Resolutions:

6.1 **Oral Resolution:** The city council authorized the extended term street use license request by EE& G, Inc. on behalf of Skinny's LLC.

They will install one groundwater monitoring well in the right of way necessary in the area bounded by Erie Street to the east, Buffalo Gap Road to the west, South 39th Street to the north and South 41st Street on the south. EE&G, Inc. is conducting additional site assessment of the groundwater at and around the former Skinny's (7-Eleven) located at 4001 Buffalo Gap Road, pursuant to the Texas Commission on Environmental Quality (TCEQ) requirement.

6.2 **Resolution**: Approving the purchase for a replacement tractor 3377 for the Water Department through BuyBoard Cooperative Purchasing in the amount of $71,203.24. *Councilman Savage pulled item 6.2.*

6.3 **Resolution**: The city council approved the Resolution supporting the Application for CityLink's 5310 Grant funds.

TXDOT administers a grant program to assist with a transit system's operational costs under FTA's Section 5310. TXDOT now requires that the sponsoring agency (City of Abilene) demonstrate official support for the application of 5310 Grant funds and a City Council resolution is one of the accepted methods of support for CityLink's upcoming grant application

Resolution: **#27-2017**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS SUPPORTING CITYLINK'S APPLICATION FOR A GRANT UNDER TEXAS DEPARTMENT OF TRANSPORTATION'S 5310 TRANSIT GRANT PROGRAM

ITEM PULLED FROM CONSENT

6.2 **Resolution**: Approving the purchase for a replacement tractor 3377 for the Water Department through BuyBoard Cooperative Purchasing in the amount of $71,203.24. *Councilman Savage pulled item 6.2.*

Council and Staff discussion included: 1) diesel costs; 2) type of tractor; 3) the batwing mower that the tractor is pulling is larger and is causing the tractor to operate at or near its mechanical limits; and 4) this unit mows from the water plant south of Abilene to the lake.

Councilman McAlister made the motion to approve the purchase the Kubota 4WD Farm Tractor from BuyBoard Cooperative Purchasing at a price of $71,203.24. Councilman Price seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#28-2017**

A RESOLUTION OF THE CITY OF ABILENE, TEXAS REPLACING TRACTOR 3377 WITH A KUBOTA FOUR-WHEEL DRIVE FARM-RATED TRACTOR PURCHASED THROUGH THE BUYBOARD COOPERATIVE PURCHASING

REGULAR ITEMS

7.1 Dana Schoening Director of Planning and Development Services briefed the city council on the Ordinance to amend Chapter 19 "Nuisances and Illegal Dumping," Article III, "Nuisance Enforcement," Section 19-34 "Administrative Procedure for Junked Vehicles" and Section 19-35 "Penalties, Costs and Fees for Section 19-1: Junked Vehicle".

19-34(1) – The Texas Transportation Code requires that if an individual who receives notice of a junked vehicle violation requests a hearing, such hearing must be held not earlier than the 11th day after the date of the service of notice. § 683.076(b). The current City Ordinance requires that a hearing be held within ten (10) days of the date of citation, which conflicts with state law.

19-34(2) First Paragraph – In order to comply with the above State Law provision, the proposed change to the ordinance is for the hearing to be held within 21 calendar days after a request for hearing but not earlier than the 11th day after citation or notice to the alleged violator. See Tex. Loc. Gov't Code 54.044(b)(1); Tex. Trans. Code § 683.076.

19-34(2) Third Paragraph – This proposed change inserts a required State law provision that a junked vehicle may not be made operable again after code enforcement officers have removed the vehicle and provided notice to the state. See Tex. Trans. Code § 683.074.

19-34(2) Fourth Paragraph – This section inserts an optional provision allowed by State law that helps code enforcement officers with enforcement of junked vehicle regulations. Code enforcement officers sometimes encounter the problem where a junked vehicle owner, once he or she receives notice of violation, will move the junked vehicle to another location within the City. This proposed provision provides that a junked vehicle remains a public nuisance whether or not it is subsequently moved to another location in order to avoid enforcement. This section provides that the procedural timetables for enforcement are not reset if a vehicle is moved to a new location. See Tex. Trans. Code § 683.074(g).

Council and Staff discussion included: 1) the hearing provision, 2) hearing officer – appeal to Municipal Court; 3) classic cars and more information needed on these type of vehicles; and 4) to bring city code into compliance with State law.

Mayor Archibald made the motion to TABLE the Ordinance to amend Chapter 19 "Nuisances and Illegal Dumping," Article III, "Nuisance Enforcement," Section 19-34 "Administrative Procedure for Junked Vehicles" and

Section 19-35 "Penalties, Costs and Fees for Section 19-1: Junked Vehicle" so that staff can bring back more information to council. Councilman Kreitler second the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

7.2 Dana Schoening Director of Planning and Development Services briefed the city council on the Ordinance for Case **#TC-2016-03** A request from Abilene Independent School District, Agent Tal Fillingim, to abandon an unimproved L-shaped strip of land in center of block bounded by Industrial Blvd., Amarillo, Vine and South 36th Streets.

The applicant is requesting to abandon the street right-of-way (ROW) area for future development. The street was dedicated to the public by a deed filed at the Courthouse is 1929 and has never been improved or platted. The abandonment will clean up the property records and allow the applicant to include the land into a replat of the surrounding properties they own. Additionally, the closure of this right-of way does not create any violations to the maximum block length in this area

Based on Title Opinion of the applicant's legal counsel, upon abandonment the easement would be split 50% each to AISD and Eric White who are current owners of property abutting on the easement. In addition, Eric White currently owns multiple tracts in common ownership abutting the easement. As tracts are owned in common ownership by Mr. White, the entire property holding of Mr. White along the easement would not be landlocked as property is accessible from Vine Street.

Plat Review Committee:
The applicant must replat upon development of the properties.

Staff Recommendation:
Approval of abandonment request on condition abandonment does not remove legal access rights/requirements for abutting property tracts.

Board or Commission Recommendation:
Mr. Bixby moved to approve this request per Plat Review Committee and staff recommendation, and Mr. Smith seconded the motion. The vote was approved by four (Famble, Smith, Bixby, and Calk) with none in opposition.

Council and Staff discussion included: 1) the plat process; 2) the ownership of the property; and 3) Councilman Savage noted that some of the page numbers were wrong in the council packet for this item.

Mayor Archibald opened the public hearing and the city council heard from the following:

- Tal Fillingim – agent for AISD, spoke in favor

There being no one else present and desiring to be heard the public hearing was closed

Councilman Price made the motion to approve the Ordinance for Case **#TC-2016-03** A request from Abilene Independent School District, Agent Tal Fillingim, to abandon an unimproved L-shaped strip of land in center of block bounded by Industrial Blvd., Amarillo, Vine and South 36th Streets. Councilman Kreitler seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald

NAYS: None

Ordinance: **#07-2017**

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF PUBLIC RIGHT OF WAY; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING

7.3 Dana Schoening Director of Planning and Development Services briefed the city council on the Ordinance for Case **#Z-2017-03** A request from Ramsey Leasing Inc., agent Enprotect/Hibbs & Todd, to rezone property from AO (Agricultural Open Space) to GC (General Commercial), being 60.29 acres, located at 302 E. Overland Trail.

The subject parcel is up to 60.29 acres in size. (The legal description provided by the applicant's agent indicates a parcel size of 60.29 acres; the Taylor Central Appraisal District uses a figure of 52.43 acres in their appraisal of the property. The exact size of the parcel will not be known until a survey is completed on the property.) There is a single-family residence on the subject parcel, and a substantial portion of the property has been used for agricultural purposes.

Staff Recommendation:
Staff recommends approval of the requested rezoning.

Board or Commission Recommendation:
Mr. Bixby made the motion to approve this rezoning request, and Mr. Smith seconded the motion. However, the motion was not approved due to a lack of four eligible votes. Three Commissioners voted to approve (Famble, Smith, and Bixby,) but Mr. Calk abstained from the vote.

Mayor Archibald opened the public hearing and the city council heard from the following:

- David Todd – agent for Ramsey Leasing Inc., spoke in favor

There being no one else present and desiring to be heard the public hearing was closed

Councilman Williams made the motion to approve the Ordinance for Case **#Z-2017-03** A request from Ramsey Leasing Inc., agent Enprotect/Hibbs & Todd, to rezone property from AO (Agricultural Open Space) to GC (General Commercial), being 60.29 acres, located at 302 E. Overland Trail. Councilman Kreitler seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

Ordinance: **#08-2017**

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE

Location: being 60.29 acres, located at 302 E. Overland Trail

7.4 Michael Rice Director of Public Works briefed the city council on the Resolution awarding bid **#CB-1730** – South of Downtown area roadway improvements phase I.

This contract involves two different types of construction, the first type of construction is a mill and overlay on S. 2nd St. from Chestnut St. to Cherry St, S. 4th St. from Sycamore St. to Treadaway Blvd., S. 5th St. from Butternut St. to Willow St., Locust St. from S. 7th St. to S. 1st St., and Willow St. from S. 5th St. to S. 3rd St. The second type of construction is a rehabilitation on S. 2nd St. from butternut St. to Chestnut St., and on S. 4th St. from Butternut St. to Sycamore St. The contract will also include an underseal on all areas with a mill and overlay section.

The South of Downtown Area streets project is one of the street projects scheduled for this year as part of Proposition 1 of the voter approved 2015 Bond Program. Staff will be working with both the contractor and CityLink to coordinate the construction.

Councilman Kreitler made the motion to approve the Resolution authorizing the City Manager to execute a Construction Contract with Nobles Road Construction, Inc. for South of Downtown area roadway improvements phase I in the amount of $800,236.95. Councilman Price seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#29-2017**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING BID TO NOBLES ROAD CONSTRUCTION, INC., ABILENE, TEXAS

7.5 Mike Rains Director of Finance briefed the city council on the Financial Workshop. Giving an overview of the Government Wide Financial Statements for the Net Position for September 30, 2016. An overview of the Balance Sheets for the Governmental Funds and the Proprietary Funds.

General Fund

Revenues Exceeding Estimates:	
▪ Property taxes	$216,175
▪ Sales tax	257,218
▪ Charges for services	143,064
▪ Interest & miscellaneous	99,017
▪ All other revenue	269,206
Revenues Not Exceeding Estimates:	
▪ Fines & forfeitures	(93,157)
	$891,523

Expenditures Below Estimates:	
▪ Personnel services	$561,744
▪ Supplies	314,469
▪ Maintenance	196,583
▪ Other services and charges	604,439
▪ Capital outlay	11,431
	$1,688,666

GENERAL FUND
2015 - 2016
Approved Revised Budget

	Approved Revised Budget	Final Budget	Difference
100 GENERAL GOVERNMENT	$2,302,490	$2,302,490	-
150 ADMINISTRATIVE SERVICES	3,039,650	3,039,650	-
200 FINANCE	11,508,410	11,508,410	-
250 PLANNING & DEVELOPMENT SERVICES	2,273,970	2,273,970	-
305 PUBLIC WORKS	6,536,380	6,536,380	-
500 POLICE	26,199,720	26,199,720	-
550 FIRE	19,069,600	19,069,600	-
600 TRANSPORTATION SERVICES	2,602,690	2,602,690	-
700 COMMUNITY SERVICES	13,895,210	13,895,210	-
TOTAL EXPENDITURES INCLUDING TRANSFERS OUT	$87,428,120	$87,428,120	-

Cara Hilbrich with Davis Kinard & Co presented the FY 2016 Comprehensive Annual Financial Report and gave a clean opinion. No audit adjustments this year and no comments.

Council and Staff discussion included: 1) cost of the audit is $83,000 with a 5 year contract with Davis Kinard & Co.

Councilman Kreitler made the motion to approve the Resolution accepting the Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2016. Councilman Price seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#30-2017**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS ACCEPTING THE COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2016.

General Fund
FY 2016 Fund Balance – Budget Basis $23,977,597 or 3.2 months
Per Policy FY 2016 Fund Balance $22,228,150 or 3.0 months
$1,749,447

Council and Staff discussion included: 1) recommendation by staff of $1,000,000 to the Self Insurance Fund and $700,000 for fire stations #3,#4 and #7; 2) the construction and design of the fire stations; 3) fire apparatus fund; 4) fleet fund; 5) health claims and real property insurance claims; and 6) street maintenance funds.

Mayor Archibald made the motion to approve the Resolution approving the expenditure of General Fund FY 2016 Fund Balance in Excess of the three-month reserve requirement with $1,000,000 to the Self Insurance Fund and $700,000 for the fire stations. Councilman Price seconded the motion, motion failed.

AYES: Councilmen Price, McAlister, and Mayor Archibald
NAYS: Councilmen Kreitler, Williams and Savage

Councilman Williams made the motion to approve the Resolution approving the expenditure of General Fund FY 2016 Fund Balance in Excess of the three-month reserve requirement with $500,000 to the Self-Insurance Fund, $500,000 Street Maintenance and $700,000 for the fire stations. Councilman Savage seconded the motion, motion carried.

AYES: Councilmen Price, Williams, Savage and Mayor Archibald
NAYS: Councilmen Kreitler, and McAlister

Resolution: **#31-2017**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE EXPENDITURE OF GENERAL FUND FY 2016 FUND BALANCE IN EXCESS OF THE THREE MONTH RESERVE REQUIREMENT

Council and Staff discussion of the Investment Policy included: 1) written policy per Government Code Chapter 2256; and 2) must be reviewed and approved annually by the council.

Councilman Kreitler made the motion to approve the Resolution approving the Investment Policy. Councilman McAlister seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#32-2017**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE INVESTMENT POLICY

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session at 11:43 a.m. pursuant to the Open Meetings Act for the following:

Consultation with Attorney - Section 551.071

A) Regional Water Supply

3) Gary Lee and Marilu Lee Corpian v. City of Abilene, Cause No. 48,766-A in the 42nd District Court, filed August 7, 2014

5) Susan Lewis King & Austin King MD vs Ken Paxton, Attorney General of Texas and the City of Abilene. Cause No. D-1-GN-16-001160, filed March 16, 2016

6) Abilene Matera LLC v. Board of Building Standards for the City of Abilene and City of Abilene, Cause No. 10696-D. March 17, 2016

8) E.G., et al. v. Barry Bond, City of Abilene, and Abilene Independent School District, Case 1:16-cv-00068-BL, U.S. District Court, Northern District, Abilene Division, filed April 28, 2016

9) Gary Corpian and Marilu Lee Corpian v. City of Abilene, Texas, Cause No. 49451-A, In the 42nd Judicial District Court, Taylor County, Texas, filed June 24, 2016

Deliberations about Real Property – Section 551.072

A) Regional Water Supply

Business Prospect/Economic Development – Section 551.087

A) DCOA additional support of the New Texas State Technical College Abilene Campus

The Council reconvened in Open Session at 12:19 p.m. and reported no votes or action was taken in Executive Session.

10.1 **Resolution**: Appointing members to various boards and commissions per the City Charter:

Councilman Savage made the motion to approve the Resolution appointing members to various boards and commissions per the city charter and listed below. Councilman Price seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#33-2017**

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

Airport Development Board

Member Appointment of the following:

- Kathy Keane, Texas Midwest Community Network Nov. 2017 (unexpired term)

10.2 Kent Sharp, CEO of the Development Corporation of Abilene, Inc. briefed the city council on the Resolution of support for additional funding for the new Texas State Technical College (TSTC) – Abilene Campus.

In order to serve anticipated expanding growth in Abilene in the services, mining, manufacturing and trade industries, TSTC received in 2016 authorization from the state to issue $12,000,000 in tuition revenue bonds to construct a new Abilene campus.

TSTC requested from the community $6,000,000 in match grant funds over 10 years, including about 50 acres of land on Loop 322 in the NW quadrant of the Abilene Regional Airport. Phase I construction will consist of site development and Building One to house Industrial Maintenance and Welding. The site will be designed for multiple buildings and 13-15 technical programs.

The actual amount of acreage being purchased by TSTC from the City's excess airport land is 51.891, which is located on the west side of the airport at the corner of Loop 322 frontage road and Navajo Trail. An appraisal performed in 2015 valued the land at $3,000 per acre, or $155,673. FAA required a second appraisal in 2016, which values the land at $8,961.09 per acre, or $465,000. A third appraisal received in February values the land at $8,479.31 per acre, or $440,000; however, FAA requires the highest value be applied to airport land being sold.

TSTC will increase its budget for land purchase to $5,500 per acre, or $285,400, and requested the DCOA provide the difference of $3,461.09 per acre ($8,961.09 - $5,500.00), or $179,600 total. The additional funds will be paid to TSTC upon approval by City Council and execution of a contract addendum in order for the funds to be made available for closing of the land purchase in March.

Council and Staff discussion included: 1) the amount of acreage in the request; 2) sizes of other TSTC campuses – Rick Denbow with TSTC discussed the proposed campus with the council; and 3) the number of buildings to be built and possible time frame of when that might happen.

Councilman McAlister made the motion to approve the Resolution approving the Development Corporation of Abilene, Inc. (DCOA) additional funding to support the new Texas State Technical College (TSTC) Abilene Campus. Councilman Savage seconded the motion, motion carried.

AYES: Councilmen Price, Williams, McAlister, Savage and Mayor Archibald
NAYS: Councilman Kreitler

Resolution: **#34-2017**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC. ("DCOA") ADDITIONAL FUNDING TO SUPPORT THE NEW TEXAS STATE TECHNICAL COLLEGE ("TSTC") ABILENE CAMPUS

There being no further business the meeting was adjourned at 12:54 p.m.

_____
Danette Dunlap, TRMC
City Secretary

_____
Norm Archibald
Mayor

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Robert Hanna, City Manager**

FROM: **Lesli Andrews, Director of Community Services**

SUBJECT: **Resolution: Authorizing the Lease of the Maintenance Facility at Lee Park to the Abilene Independent School District and the Acceptance of Donation of Real Property from the Abilene Independent School District for Construction of a Fire Station. *(Lesli Andrews)***

GENERAL INFORMATION

The City of Abilene has requested that the Abilene Independent School District (AISD) donate to the City a 3.2660 acre tract of land located at Jefferson Middle School. The City intends to construct its new Fire Station #3 at this location. AISD has agreed to donate the land to the City for the purpose of constructing a fire station.

Further, AISD has requested the City to lease to AISD a maintenance facility located at Lee Park for a period of five (5) years. The City of Abilene no longer uses the maintenance facility at Lee Park.

SPECIAL CONSIDERATIONS

The lease of the Lee Park maintenance facility will promote and maintain the public purpose of ensuring the facility will be used and maintained by the Abilene Independent School District for the benefit of citizens of Abilene.

By Resolution dated February 13, 2017, AISD has approved the donation of the Property to the City and the Lease of the Lee Park maintenance facility from the City.

FUNDING/FISCAL IMPACT

AISD will pay the City of Abilene the nominal amount of One Dollar ($1) annually for the duration of the lease. In addition, the City will not be required to maintain the facility, i.e. mowing and repairs, during the term of the lease.

STAFF RECOMMENDATION

City staff recommends the City Council approve the resolution.

BOARD OR COMMISSION RECOMMENDATION

The City of Abilene Parks and Recreation Board, during its March 7, 2017 meeting, approved the recommendation to the City Council for the lease of the maintenance facility at Lee Park.

ATTACHMENTS:

Description	Type
Resolution	Resolution Letter
Exhibit A	Exhibit
Lease	Backup Material
Deed	Backup Material
AISD Resolution	Backup Material
Slide	Presentation

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE LEASE OF THE MAINTENANCE FACILITY AT LEE PARK TO ABILENE INDEPENDENT SCHOOL DISTRICT AND THE ACCEPTANCE OF DONATION OF REAL PROPERTY FROM ABILENE INDEPENDENT SCHOOL DISTRICT FOR CONSTRUCTION OF A FIRE STATION

WHEREAS, the City of Abilene has asked Abilene Independent School District (AISD) to donate to the City real property containing approximately 3.2660 acres (the "Property"); and

WHEREAS, the City of Abilene has requested the donation of the Property for the purpose of constructing a fire station; and

WHEREAS, the City of Abilene no longer uses the maintenance facility at Lee Park for park maintenance purposes, as shown in Exhibit A; and

WHEREAS, the AISD has requested to lease the Lee Park maintenance facility for a term of five (5) years for a lease payment of One Dollar ($1.00) per year (the "Lease"); and,

WHEREAS, the lease of the Lee Park maintenance facility to AISD will promote and maintain a public purpose of the City of Abilene; and

WHEREAS, by Resolution dated February 13, 2017, AISD has approved the donation of the Property to the City and the Lease of the Lee Park maintenance facility from the City; and

WHEREAS, the City of Abilene Parks and Recreation Board, during its March 7, 2017 meeting, approved the recommendation to the City Council for the lease of the maintenance facility at Lee Park to AISD.

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

PART 1. That the Lease of the Lee Park maintenance facility promotes and maintains a public purpose of the City of Abilene by ensuring the facility will be used and maintained by the Abilene Independent School District for the benefit of citizens of Abilene.

PART 2. That the City Manager is authorized to negotiate terms and execute the Lease of the Lee Park maintenance facility to the Abilene Independent School District for a term of five (5) years.

PART 3. That the City Manager is authorized to negotiate terms and execute all necessary documents to accept donation of the Property for the purpose of constructing a fire station.

PART 4. That this resolution shall be effective immediately upon passage.

ADOPTED this 23rd day of March, 2017.

ATTEST:

_____
City Secretary

_____
Mayor

APPROVED:

_____
City Attorney

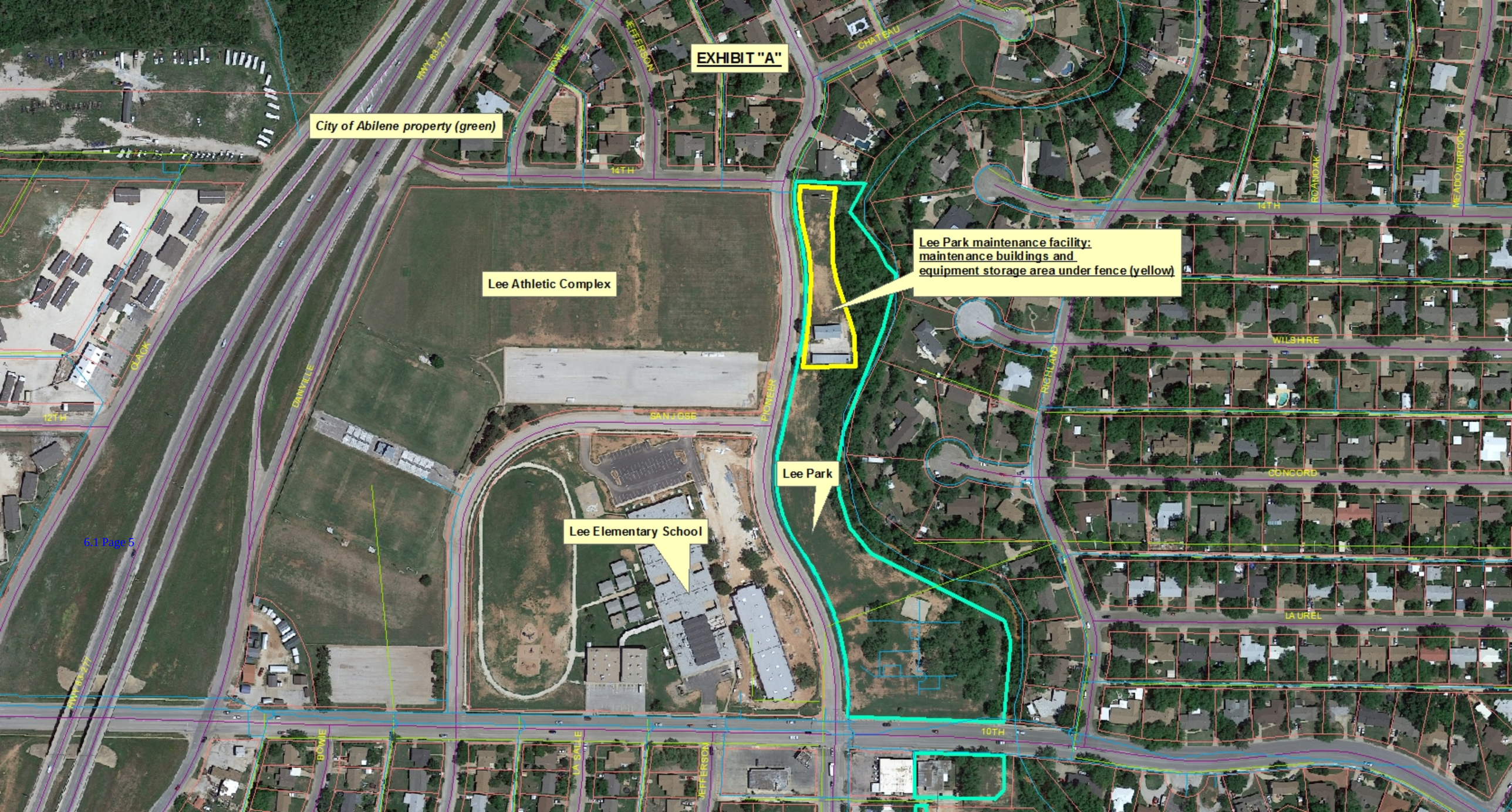


EXHIBIT "A"
City of Abilene property (green)
Lee Athletic Complex
Lee Park maintenance facility:
maintenance buildings and
equipment storage area under fence (yellow)
Lee Park
Lee Elementary School
HWY 83-277
BOWIE
JEFFERSON
CHATEAU
14TH
ROANOAK
MEADOWBROOK
WILSHIRE
RICHLAND
CONCORD
LAUREL
CLACK
DANIELLE
12TH
SAN JOSE
PIONEER
10TH
LA SALLE

LEASE AGREEMENT

FOR THE MAINTENANCE FACILITY AT LEE PARK

THIS AGREEMENT, made this _____day of March, 2017, by and between the City of Abilene, (hereinafter referred to as "Lessor"), and the Abilene Independent School District, (hereinafter referred to as "Lessee").

The terms "Lessor" and "Lessee" shall be construed in the singular or plural, as they may respectively represent one or more parties.

WITNESSETH:

That for and in consideration of the covenants, promises, and agreements herein set forth, it is mutually agreed as follows:

ARTICLE I

PREMISES, PURPOSE, AND RESTRICTIONS

A. DESCRIPTION OF PREMISES LEASED

Lessor hereby leases and demises unto the Lessee the following described property, to-wit:

The Lee Park maintenance facility, including buildings, and storage area within the fenced perimeter, as shown on Exhibit “A” attached.

B. PURPOSE OF LEASE AND RESTRICTIONS

The premises herein leased shall be used solely for the purpose AISD maintenance activities.

C. IMPROVEMENTS

Lessee shall not construct any improvements upon the leased premises without the prior written approval of Lessor. Any plans or specifications for any improvements to be constructed upon the leased premises shall be submitted to Lessor for its written approval not less than thirty (30) days prior to the beginning of such construction, and said construction shall not begin unless and until Lessor's written approval is obtained.

D. SIGNS

Lessee shall not place any signs at, on, or about the premises except as and where first approved in writing by the Lessor.

ARTICLE II
OBLIGATIONS OF LESSEE

A. MAINTENANCE

Lessee shall, at its sole cost and expense, and throughout the term of this Lease, maintain the lease premises, maintain the grounds, improvements and the appurtenances thereto in good condition and repair and in a safe and presentable condition. Subject to Article IV, section A, Lessee shall repair any damages to the lease premises. Lessee shall allow the Lessor access to inspect the buildings and property. All maintenance, repairs and replacement shall be of quality equal to the original in materials and workmanship. Upon the termination or expiration of this Lease, all of the improvements upon the premises shall revert to and become the property of Lessor and shall be surrendered with the premises as a part thereof.

B. UTILITIES

Lessee hereby covenants to be responsible for and to pay for all utilities used in the leased premises and to be responsible for their proper care.

C. INDEMNITY

1. INDEMNITY

It is agreed for all purposes hereunder, Lessee shall not, with respect to its acts or omissions, be deemed an agent or employee of the Lessor.

To the extent permitted by applicable law, but without waiver or expansion of any limits established by the Texas Tort Claims Act, each party to this Agreement will indemnify and hold harmless the other parties and their trustees, officers, employees and agents, from and against any and all claims proximately caused by negligence, breach, or other act or omission by the indemnifying party or its trustees, officers, employees, or agents.

Lessee further agrees that it shall at all times exercise reasonable

precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, customers, visitors, licensees, invitees and other persons, as well as their property, while in or on the leased premises. It is expressly understood and agreed that Lessor shall not be liable or responsible for the negligence of Lessee, including but not limited to its officers, agents, servants, employees, customers, visitors, licensees, invitees and other persons.

Further, Lessor 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 Lessee.

It is further agreed with respect to the above indemnity, that Lessor and Lessee will provide the other prompt and timely notice of any event which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or Lessor, and Lessor shall have the right to compromise and defend the same to the extent of its own interests.

D. COMPLIANCE WITH LAWS

Lessee shall observe and obey all federal, state, and local laws and regulations and shall further not permit the violations of such laws by persons upon the said premises.

ARTICLE III
ASSIGNMENT AND TERMINATION

A. ASSIGNMENT, TRANSFER

The Lessee shall not assign or transfer this Agreement or any interest therein nor sublet the said premises or any part thereof without the prior written consent of the Lessor.

B. TERMINATION

Upon the violation of any material terms or conditions, to this agreement which shall continue for thirty (30) successive days following notice of said violation from Lessor to Lessee and opportunity to cure, the Lessor may declare this Lease forfeited at its discretion without further notice and its agents or attorney shall have the power to enter and hold, occupy and repossess the entire premises hereinbefore described, as before the execution of this Agreement.

ARTICLE IV
GENERAL PROVISIONS

A. DAMAGE OR DESTRUCTION OF PREMISES.

In the event the Leased Premises shall be damaged or destroyed by fire, storm, explosion, earthquake, or any other peril or casualty, then either Lessor or Lessee may cancel this Lease, provided written notice of such cancellation is given one to the other, within thirty (30) days, from the date of said destruction or damage. If neither party serves notice of cancellation on the other within said time, the parties shall negotiate in good faith, the responsibility for repair. If the parties fail to resolve the responsibility for repair within ninety (90) days from the date of said destruction or damage, the lease shall automatically terminate. In no event shall Lessor be obligated to provide or reimburse Lessee for temporary facilities.

B. TERM OF LEASE

The term of this lease shall be five (5) years, beginning March 1, 2017 and ending at midnight February 28, 2022. Lessee may renew this Lease for two additional successive five (5) year terms by giving Lessor written notice of option to renew at least 60 days prior to the termination date of this initial term or any successive terms. Lessor has the right to reject Lessee's option to renew the Lease by giving Lessee written notice of rejection within 30 days of receiving Lessee's written notice of option to renew.

C. TERMINATION

Lessee may terminate this agreement without cause by giving written notice six (6) months prior to the date of termination.

D. AGENT

The agent for Lessor shall be the City of Abilene Land Agent. The agent for Lessee shall be the Superintendent of Schools.

E. PAYMENT

Lessee agrees to pay to Lessor the sum of One Dollar ($1.00) annually and other good and valuable consideration for this Lease.

F. BANKRUPTCY

In the event that Lessee shall become bankrupt, or shall make a voluntary

assignment for the benefit of creditors, or in the event that a receiver of the Lessee shall be appointed, then at the option of the Lessor and upon written notice to the Lessee of the exercise of such option, this Lease shall be automatically terminated.

G. NOTICE

All notices required to be given hereunder shall be in writing, mailed by Certified Mail Return Receipt Requested, and addressed as follows:

To Lessee:	To Lessor:
Attn: Superintendent of Schools Abilene Independent School District P.O. Box 981 Abilene, TX 79604	Attn: Land Agent City of Abilene 555 Walnut Abilene, TX 79604

H. AMENDMENT

This Agreement may not be amended except in writing, executed by the parties hereto.

Executed this _____ day of _____, 2017.

LESSOR:

CITY OF ABILENE

.

By:_____
City Manager

LESSEE:

ABILENE INDEPENDENT SCHOOL DISTRICT

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
City Secretary

APPROVED:

By:_____
Risk Manager

By: _____
City Attorney

SPECIAL WARRANTY DEED

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

THE STATE OF TEXAS	§	
	§	**KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF TAYLOR	§	

Date: March ____, 2017

Grantor: Abilene Independent School District

Grantor's address: P.O. Box 981
Abilene, Taylor County, Texas 70604

Grantee: City of Abilene

Grantee's address: P.O. Box 60
Abilene, Taylor County, Texas 79604

Consideration: One dollar ($1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements): 3.2660 Acre Tract of land made up of the following smaller tracts: Lots 1-6, Block 1, Memorial Park Subdivision, Abilene, Abilene, Taylor County, Texas as shown per plat recorded in Book 2, Page 164, Plat Records of Taylor County, Texas and containing 1.6546 acre of land; Lots 1-8, Block 6, South Fairmont Addition, Abilene, Taylor County, Texas as shown per plat recorded in Book 1, Page 428 of said Plat records 1, Taylor County, Texas and containing 1.3220 acre of land; the alley between said Block 1 and Block 6, and the alley within said Block 1 with both alleys totaling 0.2894 acre of land. Said 3.2660 acre tract is more particularly described on the attached Exhibit A.

Fee Simple Determinable Condition:

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this conveyance shall be effective (1) only if the Grantee constructs a fire station on the Property not later than twenty-four (24) months after the date of this deed and (2) thereafter only so long as Grantee uses the Property for a fire station and does not execute a document that purports to convey the Property.

Reservations and Exceptions from Conveyance:

Exceptions to Conveyance and Warranty:

Validly existing easements, rights-of-way, and prescriptive rights of record; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from and existing by reason of any Taylor County water or utility district.

THE PROPERTY IS SOLD AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT THE SALES PRICE REFLECTS SUCH CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, THE SALE OF THE PROPERTY IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (I) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (II) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (III) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (IV) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (V) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (VI) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER. GRANTEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE. GRANTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS.

AFTER CLOSING, AS BETWEEN GRANTEE AND GRANTOR, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, GRANTEE RELEASES GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM

ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **GRANTEE RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVES.** GRANTEE RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

Grantor, for the consideration and subject to the reservations from conveyance and exceptions to conveyance and warranty, grants, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, its beneficiaries, successors and assigns for as long as the Fee Simple Determinable Condition is satisfied, and if the Fee Simple Determinable Condition is not satisfied, the Property will automatically revert to and be owned by Grantor without the necessity of any further act on the part of Grantor, it being the Grantor's intent to convey a fee simple determinable estate to Grantee. Grantor binds itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, its beneficiaries, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this _____ day of _____, 2017.

ABILENE INDEPENDENT SCHOOL DISTRICT
GRANTOR

_____
By: Dr. Danny Wheat, President

ACKNOWLEDGMENT

BEFORE ME, a Notary Public, on this day personally appeared Dr. Danny Wheat, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is the President of the Board of Trustees of the Abilene Independent School District; that he was authorized to execute such instrument pursuant to resolution of the Board of Trustees adopted on February 13, 2017; and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

_____
Notary Public, State of Texas

ACKNOWLEDGED AND APPROVED:

CITY OF ABILENE,
GRANTEE

_____
Robert Hanna,
City Manager

ACKNOWLEDGMENT

This instrument was acknowledged before me on _____, 2017, by _____, City Manager of City of Abilene, Texas, a Municipal Corporation, on behalf of said Corporation.

_____
Notary Public, State of Texas

Return to Grantee's Address:
City of Abilene
P.O. Box 60
Abilene, Texas 79604

THE BOARD OF TRUSTEES OF THE ABILENE INDEPENDENT SCHOOL DISTRICT

RESOLUTION AUTHORIZING DONATION OF REAL PROPERTY TO THE CITY OF ABILENE FOR CONSTRUCTION OF A FIRE STATION

WHEREAS, the Abilene Independent School District ("District") owns that certain tract of real property containing approximately 3.2660 acres described by metes and bounds in Exhibit A, attached hereto and incorporated herein for all purposes (the "Property");

WHEREAS, the City of Abilene ("City") has asked the District to donate the Property to the City for construction of a fire station;

WHEREAS, pursuant to Texas Local Government Code section 272.001(l), the District has the authority to donate land to another political subdivision if the land will be used in carrying out a purpose that benefits the District; and

WHEREAS, as additional consideration for the donation, the City has offered to lease the Lee Park maintenance area to the District for a term of five (5) years for a total lease payment of One Dollar ($1.00) per year.

NOW THEREFORE BE IT

RESOLVED, that the findings and recitals in the preamble of this Resolution are hereby found to be true and correct and are hereby approved and adopted.

RESOLVED, that the Property is not necessary for the construction of facilities to meet the current and foreseeable needs of the District for educational purposes.

RESOLVED, that the donation of the Property to the City for a fire station will benefit the District by (1) providing emergency services in close proximity to the District's school facilities, (2) providing educational opportunities at the fire station for the District's students and (3) providing for the lease of the Lee Park maintenance area to the District at a nominal cost.

RESOLVED, that the Board of Trustees authorizes the conveyance of the Property to the City subject to reversion of title to the Property to the District if the City (1) fails to construction a fire station within twenty-four (24) months after the conveyance or (2) ceases use of the Property for a fire station.

RESOLVED, that the Board President is authorized to execute and deliver a deed and other instruments conveying the Property to the City subject to the reversionary interests described above.

RESOLVED, that the Superintendent of Schools is authorized to execute a lease of the Lee Park maintenance area to the District.

RESOLVED, that it is hereby found, determined and declared that sufficient written notice

of the date, time, place and subject of the meeting of the Board of Trustees of the Abilene Independent School District at which this Resolution was adopted was posted at a place convenient and readily accessible at all times to the general public for the time required by law preceding this meeting, as required by Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter thereof has been discussed, considered and formally acted upon. The Board of Trustees further ratifies, approves and confirms such written notice and posting thereof.

CERTIFICATE FOR RESOLUTION

I hereby certify that the foregoing Resolution was presented to the Board of Trustees of the Abilene Independent School District during a meeting on February 13, 2017. A quorum of the Board of Trustees being then present, it was then duly moved and seconded that the Resolution be adopted, and such Resolution was then adopted according to the following vote:

Ayes: 7
Nays: 0
Abstentions: —

To certify which, witness my hand and the official seal of the District this 13th day of February, 2017.

By: _____
Dr. Danny Wheat, President

ATTEST:

By: _____
Cindy Earles, Secretary

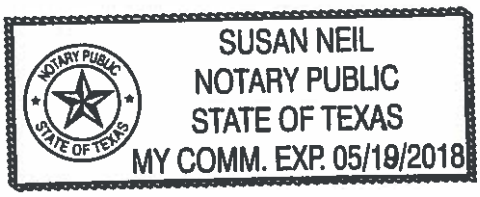
(*Acknowledgment on following page.*)

THE STATE OF TEXAS §
§ ACKNOWLEDGMENT
COUNTY OF TAYLOR §

BEFORE ME, a Notary Public, on this day personally appeared DANNY WHEAT, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is the President of the Board of Trustees of the Abilene Independent School District; that he was authorized to execute such instrument pursuant to Resolution of the Board of Trustees adopted on February 13, 2017; and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 13th day of February, 2017.

Susan Neil
Notary Public, State of Texas



JACOB | MARTIN

3465 Curry Lane Abilene, Texas
325-695-1070 www.jacobmartin.com
Firm # 10024300

EXHIBIT "A"
PAGE 1 OF 3

METES AND BOUNDS DESCRIPTION
3.2660 ACRE TRACT

BEING a 3.2660 Acre Tract of land made up of the following smaller tracts: Lots 1 – 6, Block 1, Memorial Park Subdivision, Abilene, Taylor County, Texas as shown per plat recorded in Book 2, Page 164, Plat Records of Taylor County, Texas and containing 1.6546 acre of land; Lots 1 – 8, Block 6, South Fairmont Addition, Abilene, Taylor County, Texas as shown per plat recorded in Book 1, Page 428 of said Plat Records 1, Taylor County, Texas and containing 1.3220 acre of land; the alley between said Block 1 and Block 6, and the alley within said Block 1 with both alleys totaling 0.2894 acre of land. Said 3.2660 acre tract is more particularly described in metes and bounds as follows:

BEGINNING at a set 1/2 inch rebar rod with cap stamped "J&M BOUNDARY", (henceforth called a "set rebar rod") on the east boundary line of said Block 1, same being the west right-of-way line of Jeanette Street (platted 60' wide), from which a 1/2 rebar rod found on the east right-of-way line of said Jeanette Street, for a lot corner of Lot 2, Block 2, of said Memorial Park Addition, bears S85°14'17"E 60.70 feet and said point of beginning being the beginning of a curve to the right having a radius of 30.00 feet, an arc length of 47.07 feet, a delta angle of 89°53'25" and subtended by a long chord which bears S45°52'24"W 42.39 feet;

THENCE along said right-of-way line and curve to the right, said arc length of 47.07 feet to a "set rebar rod" for the end of said curve and being on the north right-of-way line of South 17th Street (platted 54' wide), same being the south line of said Block 1, and from said point a 1/2 inch rebar rod found on the south right-of-way line of South 17th Street, for a lot corner of Lot 1, Block 5 of said Memorial Park Subdivision bears S00°38'42"W 54.00 feet and from said found 1/2 inch rebar rod, a 1/2 inch rebar rod found on said south right-of-way line, for the northeast corner of Lot 39, Block 5 of said Memorial Park Subdivision bears N89°04'19"W 105.21 feet;

THENCE N89°04'19"W along the said south line of Block 1 and north right-of-way line of South 17th Street 373.00 feet to a "set rebar rod" for the beginning of a curve to the right, having a radius of 30.00 feet, an arc length of 47.18 feet, a delta angle of 90°06'34" and subtended by a long chord which bears N44°07'36"W 42.47 feet, and from said point a 1/2 inch rebar rod, for the southeast corner of Block 6, McMurry Park Addition to said City of Abilene, as shown per plat recorded in Book 1, Page 266 of said Plat Records, bears N89°05'28"W 89.92 feet;

THENCE along said right-of-way line and curve to the right, said arc length of 47.18 feet, to a chiseled "X" in concrete, set for the end of said curve and being on the east right-of-way line of Vine Street, same being the west line of said Block 1;

THENCE N00°49'07"E along said right-of-way line and west line of Block 1, at 144.87 feet pass a point for the northwest corner of said Block 1 and the southwest corner of an alley, at 165.39 feet pass a point for the northwest corner of said alley and the southwest corner of said Block 6, South Fairmont Addition, at 269.89 feet pass a point from which a 1/2 inch rebar rod found at the northeast corner of said Block 6, McMurray Addition bears N89°10'53"W 60.58 feet, and continuing a total distance of 298.39 feet to a "set rebar rod" for the northwest corner of said Block 6, South Fairmont Addition, and for the intersection of said east right-of-way line of Vine Street and the south right-of-way line of South 16th Street;

THENCE S89°21'14"E 433.00 feet along the north line of said Block 6, South Fairmont Addition and said south right-of-way line of South 16th Street to a "set rebar rod" for the northeast corner of said Block 6, South Fairmont Addition and being on said west right-of-way line of Jeanette Street;

THENCE S00°49'07"W along the east line of said Block 6, South Fairmont Addition and said west right-of-way line of Jeanette Street, at 133.00 feet pass a point for the southeast corner of said Block 6, South Fairmont Addition and the northeast corner of said alley, at 183.52 feet pass the southeast end of the curved portion of the south line of said alley, and northeast boundary corner of said Block 1, and continuing a total distance of 300.52 feet to the **POINT OF BEGINNING** and containing 3.2660 acres of land.

The foregoing metes and bounds description was prepared from a survey performed on the ground under my supervision during the months of September and October, 2016. Bearings, distances and coordinates shown herein are grid and referenced to the Texas State Plane Coordinate System, North Central Zone, NAD83 and GPS field observations.

Mark T. Brown 10-07-2016

Mark T. Brown, R.P.L.S. No. 4247

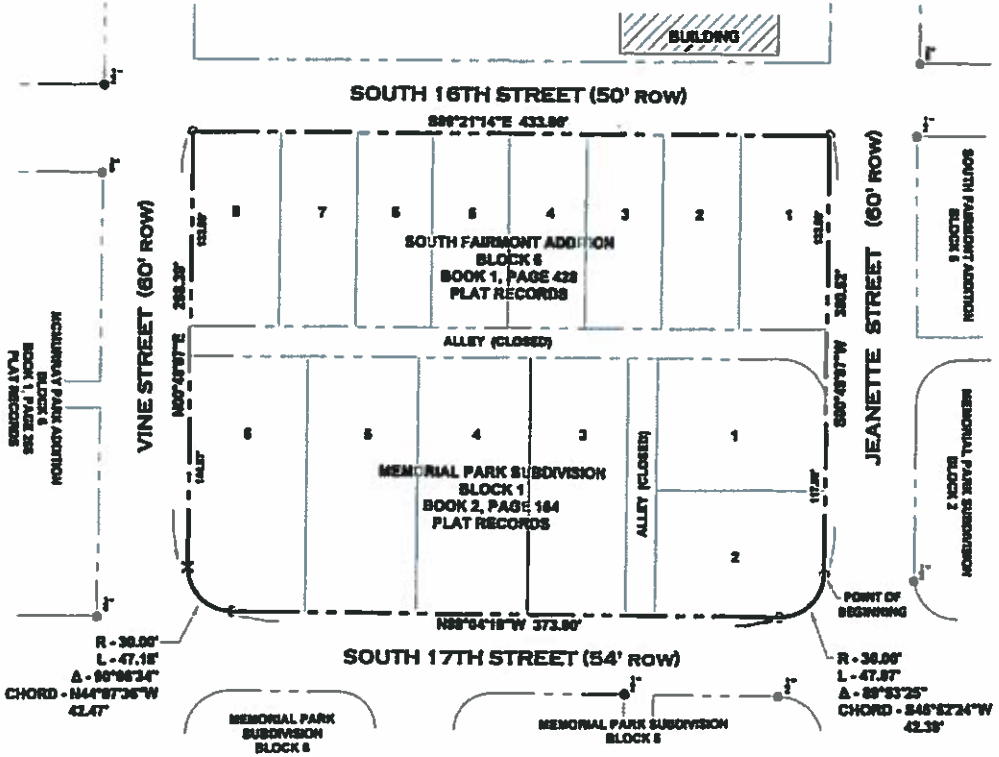
SEE ATTACHED SURVEY DRAWING, PAGE 3 OF 3

JACOB MARTIN
3485 CURRY LANE
ABILENE TX 79606
325-695-1070
1500 SANTA FE DR, STE 204
WEATHERFORD TX 76086
817-594-9600
FIRM # 10448

EXHIBIT "A"

PAGE 3 OF 3

SURVEYED FOR:
ABILENE INDEPENDENT SCHOOL DISTRICT



NORTH

0 50 100 200

SCALE: 1" = 100'

SURVEY NOTES:

1. Bearings, distances and coordinates shown hereon are grid and referenced to the Texas State Plane Coordinate System, North Central Zone, NAD83 as determined from GPS field observations.

2. The Texas State Plane Coordinates of the POINT OF BEGINNING are: N=6,841,414.93' and E=1,534,881.34'

- ● FOUND #5BAR ROD, DIAMETER NOTED
- ○ SET ½" REBAR ROD WITH CAP STAMPED "J&M BOUNDARY"
- × CHISELED "X" IN CONCRETE (SET)
- BOUNDARY OF SUBJECT TRACT (BOLD)

BOUNDARY SURVEY OF 3.2660 ACRES
BEING LOT NOS. 1 - 6, BLOCK 1, MEMORIAL PARK SUBDIVISION, CITY OF ABILENE, TAYLOR COUNTY, TEXAS - 1.8546 ACRE AND BEING LOT NOS. 1 - 6, BLOCK 6, SOUTH FAIRMONT ADDITION, CITY OF ABILENE, TAYLOR COUNTY, TEXAS - 1.1220 ACRE AND BEING THE ALLEYS LOCATED WITHIN AND ADJACENT TO SAID BLOCKS - 0.2894 ACRE

Mark T. Brown

STATE OF TEXAS REGISTERED
MARK T. BROWN
4247
PROFESSIONAL LAND SURVEYOR

10-07-2016

DRAWING COMPLETED: OCTOBER 7, 2016
FIELD SURVEY COMPLETED: OCTOBER 6, 2016

SEE ATTACHED METES AND BOUNDS DESCRIPTION, PAGES 1 AND 2

C:\Users\mtt\Desktop\Jefferson Learning Center\Jefferson Elem_16515_Final Survey 1 6.dwg

Resolution between City of Abilene and AISD

- City of Abilene has asked Abilene Independent School District (AISD) to donate 3.2660 acres of land for a new fire station.
- AISD has asked to lease the maintenance facility at Lee Park for five (5) years at a cost of one dollar ($1) per year.
- City staff and the Parks and Recreation Board recommend approval.

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Robert Hanna, City Manager**

FROM: **Ronnie Kidd, Managing Director for Administration**

SUBJECT: **Resolution: Ratifying the Meet and Confer Agreement between the City of Abilene and the Abilene Professional Fire Fighters Association. *(Ronnie Kidd)***

GENERAL INFORMATION

Texas Local Government Code Chapter 142 provides for the meet and confer process. The Meet and Confer Agreement currently in effect between the City of Abilene (the City) and the Abilene Professional Fire Fighters Association (APFFA) was for the period October 1, 2013 through September 30, 2016. We are currently in the automatic extension period of that agreement until it is superceded by a new agreement or April 1, 2017, whichever occurs first. Accordingly, a team representing the City and a team representing the APFFA have been in negotiation for the last several months to reach a new agreement with an effective date of October 1, 2016.

Attached is a summary of the key points and/or changes reflected in the new agreement. The agreement covers the three year period October 1, 2016 through September 30, 2019 (fiscal years 2017, 2018 and 2019).

We have received notification from the APFFA president that ratification of the agreement by a majority of APFFA membership has been accomplished.

SPECIAL CONSIDERATIONS

The agreement builds upon previous agreements and provides for preemption of Chapter 143 Civil Service regulations as agreed upon by both parties.

FUNDING/FISCAL IMPACT

Based upon tentative agreement terms, there will be an additional $207,348 in compensation in year two of the agreement and an additional $526,538 in additional compensation in year three of the agreement, to be addressed in those respective fiscal year budget processes.

STAFF RECOMMENDATION

Staff recommends that the City Council ratify the Meet and Confer agreement between the City and APFFA for the period October 1, 2016 through September 30, 2019.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

	Description	Type
🗋	Resolution Ratifying Fire Meet and Confer	Resolution Letter
🗋	Summmary of Changes	Executive Summary
🗋	Redlined Articles - Fire Meet & Confer	Backup Material
🗋	Final Draft - Fire Meet and Confer Agreement	Backup Material
🗋	Summary Presentation	Presentation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS RATIFYING THE MEET AND CONFER AGREEMENT BETWEEN THE CITY OF ABILENE AND THE ABILENE PROFESSIONAL FIRE FIGHTERS' ASSOCIATION FOR THE PERIOD OCTOBER 1, 2016 THROUGH September 30, 2019

WHEREAS, Texas Local Government Code Chapter 142 provides for the meet and confer process; and

WHEREAS, representatives of the City of Abilene and the Abilene Professional Fire Fighters' Association have negotiated a proposed meet and confer agreement for the period effective October 1, 2016 through September 30, 2019 to supersede the current meet and confer agreement; and

WHEREAS, the proposed agreement has been ratified by a majority of the membership of the Abilene Professional Fire Fighters' Association.

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

Part 1: The City Council of the City of Abilene, Texas hereby ratifies the proposed meet and confer agreement between the City of Abilene and the Abilene Professional Fire Fighters' Association for the period October 1, 2016 through September 30, 2019.

ADOPTED this 23rd day of March, 2017.

ATTEST:

_____
Danette Dunlap, City Secretary

_____
Norman Archibald, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

Summary of Changes to the Meet and Confer Agreement between the City of Abilene (City) and the Abilene Professional Fire Fighters Association (APFFA) for the period October 1, 2016 through September 30, 2019

- Article 3 – Hiring
  - provides hold harmless language for each party, mutually, pertaining to the classification and appointment of fire fighters
  - provides adjustments to the probationary period relative to paramedic certification
- Article 4 – Promotions
  - changes reflect accruing seniority points through the completion of the Assessment Center exercises during a promotional process
  - extends the life of promotional eligibility lists from one year to two years beginning October 1, 2018.
- Article 7 – Base Salary Step Pay and Other Pay
  - provides for a minimum 1.5% across-the-board increase in base salary in years two and three of the agreement
    Fiscal Impact: Approximately $207,348 in year two and an additional $210,458 in year three
  - provides for increasing monthly longevity pay in years 10 through 30 of service, capping in year 30 of service. *Change effective October 1, 2018*
    Fiscal Impact: Approximately $135,540 in year three
  - provides for increasing Texas Commission on Fire Protection Certification Pay to the following amounts, *change effective October 1, 2018*
    - Intermediate Officer $75 monthly
    - Advanced Officer $155 monthly
    - Master Officer $275 monthly

    Fiscal Impact: Approximately $65,540 in year three
  - provides for other certification pay when a firefighter holds five or more approved certifications. *Change effective October 1, 2018*
    Fiscal Impact: Approximately $115,000 maximum in year three
- Article 12 – Miscellaneous Provisions
  - Adds language to address minimum staffing levels (four person staffing)
- Article 14 – Association Business Leave
  - Provides for an annual opportunity to voluntarily donate leave to the association business leave pool
- Article 15 – Term of Agreement
  - Removes budget reopener language since compensation adjustments are addressed in Article 7

ARTICLE 3

HIRING

Section 1. Select Application of Chapter 143 Procedures

In adopting this article, the parties mutually agree to hold each other harmless, including their agents, officers and employees, from any and all claims from Association members or third parties arising from the application of or use of the modifications from TLGC 143, subchapter B Classification and Appointment. Further, the parties agree to preempt the TLGC Chapter 143, Subchapter B Classification and Appointment procedures Sections 143.021, 143.032, 143.024, 143.025, 143.0251, 143.026, and 143.027 except as stated in this article. In preempting Chapter 143, the parties recognize the need for more flexibility in the hiring process to meet the needs of the Department and believe it improves the selection process and provides candidates a fair opportunity to display skills and abilities that serve as additional good indicators that they will perform well in the Department. Further, this article preempts, to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the Department head or the commission.

Section 2. Classification

Classification under TLGC Section 143.021 (a)-(b)-(c) shall apply, except that an existing or future position or classification may be filled only according to the Department's hiring process in accordance with the Agreement and not from a written examination under Chapter 143 of the TLGC.

Section 3. Definition of Vacant Position

For purposes of this article, vacant position shall mean a vacant position in the Fire Fighter classification.

Section 4. Physical Requirements and Examination

The physical requirements and physical/mental examinations under TLGC Section 143.022 shall apply to fill vacant positions in the Department.

Section 5. Eligibility for Vacant Position

The eligibility requirements under TLGC Sections 143.023(b), 143.023(d), and 142.023(f) shall apply to fill vacant positions in the Department. A person is not eligible to apply for a vacant position in the Department unless the person meets minimum eligibility requirements for a firefighter as outlined in the local rules.

Section 6. Reappointment After Resignation

The commission shall adopt rules to allow a fire fighter who voluntarily resigns from the Department and meets the eligibility requirements for a vacant position to be reappointed to the Department at the sole discretion of the Department head.

Section 7. Procedure for Filling Vacant Positions

With the elimination of the mandatory written examination, the commission shall adopt rules to fill vacant positions through the Department's hiring process in accordance with this Agreement.

(a) Rank on the eligibility list

If an applicant is selected to proceed to the oral interview board, the applicant will be ranked on the eligibility list based upon their score from the oral interview board. The eligibility list shall expire up to 90 days after completion of the Department's orientation academy on a date to be determined by the Department head.

(b) Appointment to a vacant position

(i) When a vacancy occurs in a vacant position in the Department, the Department head shall request in writing from the commission the names of suitable persons from the eligibility list. The director shall certify to the Department head the names of the persons on the eligibility list. From the names certified, the Department head shall appoint the person having the highest score unless there is a valid reason why the person having the highest score should not be appointed.

(ii) If the Department head does not appoint the person having the highest score, the Department head shall clearly set forth in writing the good and sufficient reason why the person having the highest score was not appointed.

(iii) The reason required by subsection (ii) shall be filed with the commission and a copy provided to the person having the highest score.

Section 8. Probationary Period

(a) Probationary Period

A person appointed to a vacant position in the Department must serve a minimum probationary period of twelve ~~twenty-four~~ months. In the event that the person appointed to a vacant position in the Department has not obtained his/her EMT-Paramedic certification within the minimum twelve-month probationary period, such person's probationary period shall be extended for such time until he obtains his/her EMT-Paramedic certification, or for an additional twelve-month period, whichever occurs sooner.

(b) Membership in Employee Organizations

TLGC Section 143.027(c) shall apply.

(c) Civil Service Protection

A firefighter who was appointed through the Department's hiring process and who serves the entire applicable probationary period automatically becomes a full-fledged civil service employee and has full civil service protection except as modified by this Agreement.

ARTICLE 4

PROMOTIONS

Section 1. Intent

In adopting this article, the Parties agree to implement a promotional system using an Assessment Center component in addition to the written examination. The Parties believe an assessment component to the selection process has improved the selection process and provides promotional candidates a fair opportunity to display skills and abilities that serve as additional good indicators that they will perform well in the position of Fire Lieutenant, Fire Captain or Battalion Chief.

Section 2. Promotional Examination Procedure

(a) The promotional examination procedure will consist of two parts:

1. a written examination, as defined in this article, consisting of one-hundred (100) multiple choice questions; and, upon passing the written examination part of the promotional examination procedure;
2. participation in an Assessment Center.

(b) The minimum passing score on the written examination is 70 percent.

(c) The commission shall adopt rules governing the promotional examination procedure and promotional eligibility lists in accordance with this article and in accordance with Appendix A for the promotional positions of Fire Lieutenant, Fire Captain, and Battalion Chief. Further, the commission may adopt rules to provide for the efficient administration of a promotional examination to eligible promotional candidates who are members of the armed forces serving on active military duty which may include using only the written examination for each candidate for one hundred percent (100%) of all promotional candidates' final scores. If a written examination is offered to an active military candidate, and that candidate receives a minimum passing score, the remaining candidates shall only be required to take the written portion of the promotional process and **Article 4, Section 2 (a) 2** shall not apply to the examination. If the active military candidate does not receive a minimum passing score, Article 4, Section 2 (a) 2 shall still apply.

Section 3. Joint Labor/Management Committee

(a) A joint Labor/Management Committee (the Committee) shall be established for the purpose of providing feedback and/or mutually agreed upon adjustments to the promotional process outside the regular meet and confer negotiation cycle. Each Party shall designate four (4) representatives to serve on the Committee. A minimum of six (6) members of the Committee including three (3) from labor and three (3) from management must be present for a meeting to be held.

(b) Committee may be convened prior to an Assessment Center process to provide input to the City regarding the selection of a consultant to prepare and administer the Assessment Center portion of the Promotional Examination Procedure. The parties, through the director and the Association President, may mutually agree it is unnecessary to convene the committee prior to an Assessment Center to provide feedback regarding the consultant.

(c) The Committee may be convened to evaluate an Assessment Center process at its conclusion. The parties, through the director and the Association President, may mutually agree it is unnecessary to convene the committee following an Assessment Center to evaluate the process.

(d) The Committee may be convened to amend the promotional process by mutual agreement of the Committee and with approval from the commission.

Section 4. Written Examination

(a) The term "written examination" in this article means the written examination provided for under Chapter 143 of the Texas Local Government Code and does not mean any written part of the Assessment Center. The promotional candidate's score on the written examination shall constitute the candidate's written score.

(b) For a promotional candidate applying for the Fire Lieutenant classification, sixty percent (60%) of a promotional candidate's composite score will be based on the written score.

(c) For a promotional candidate applying for the Fire Captain classification, fifty percent (50%) of a promotional candidate's composite score will be based on the written score.

(d) For a promotional candidate applying for the Battalion Chief classification, forty percent (40%) of a promotional candidate's composite score will be based on the written score.

Section 5. Assessment Center

(a) For a promotional candidate applying for the Fire Lieutenant classification, forty percent (40%) of a promotional candidate's composite score will be based on an Assessment Center.

(b) For a promotional candidate applying for the Fire Captain classification, fifty percent (50%) of a promotional candidate's composite score will be based on an Assessment Center.

(c) For a promotional candidate applying for the Battalion Chief classification, sixty (60%) percent of a promotional candidate's composite score will be based on an Assessment Center.

(d) The parties agree that certain circumstances may present themselves in a promotional process whereby the promotional candidates may voluntarily choose to waive his/her right to the Assessment Center process, upon recommendation by the Joint Labor/Management Committee. In such situations, ALL candidates must unanimously agree to the voluntary waiver. If so, the parties mutually agree to utilize the "**WAIVER OF RIGHT TO**

ASSESSMENT CENTER PROCESS" form included as Appendix C to this Agreement. If all candidates do not agree to waive the Assessment Center, then it will proceed as set forth.

Section 6. Procedure for Making Promotional Appointments

(a) For promotional candidates applying for the Fire Lieutenant classification, the final score to be placed on the eligibility list for each candidate shall be computed by taking the candidate's written score and multiplying the written score by .60 to account for sixty percent (60%) of the candidate's composite score; by taking the candidate's Assessment Center score and multiplying that score by .40 to account for forty percent (40%) of the composite score; by adding the products together to equal the composite score; and by adding any applicable seniority points, not to exceed ten (10) seniority points, to the composite score to compute the final score (see below).

(Passing Score on Written Examination x 60%) + (Assessment Center Score x 40%) = Composite Score

Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score *

* The Parties mutually agree that the Seniority Points shall be calculated at their accrued value through the day that the Assessment Center exercises are completed.

(b) For promotional candidates applying for the Fire Captain classification, the final score to be placed on the eligibility list for each candidate shall be computed by taking the candidate's written score and multiplying the written score by .50 to account for fifty percent (50%) of the candidate's composite score; by taking the candidate's Assessment Center score and multiplying that score by .50 to account for fifty percent (50%) of the composite score; by adding the products together to equal the composite score; and by adding any applicable seniority points, not to exceed ten (10) seniority points, to the composite score to compute the final score (see below).

(Passing Score on Written Examination x 50%) + (Assessment Center Score x 50%) = Composite Score

Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score *

* The Parties mutually agree that the Seniority Points shall be calculated at their accrued value through the day that the Assessment Center exercises are completed.

(c) For promotional candidates applying for the Battalion Chief classification, the final score to be placed on the eligibility list for each candidate shall be computed by taking the candidate's written score and multiplying the written score by .40 to account for forty percent (40%) of the candidate's composite score; by taking the candidate's Assessment Center score and multiplying that score by .60 to account for sixty percent (60%) of the composite score; by adding the products together to equal the composite score; and by adding any applicable seniority points, not to exceed ten (10) seniority points, to the composite score to compute the final score (see below).

(Passing Score on Written Examination x 40%) + (Assessment Center Score x 60%) = Composite Score

Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score *

* The Parties mutually agree that the Seniority Points shall be calculated at their accrued value through the day that the Assessment Center exercises are completed.

(d) Prior to October 1, 2018, eEach promotional eligibility list remains in existence for one year after the date on which the Assessment Center is completed, unless the eligibility list is exhausted prior to the end of the one year period. At the expiration of the one-year period, the eligibility list expires and a new examination may be held. The Department head shall appoint the eligible promotional candidate having the highest final score on the eligibility list unless the Department head has a valid reason for not appointing the person as provided for under Section 143.036(f) and (g) of the Texas Local Government Code.

(e) The parties agree that effective October 1, 2018, each promotional eligibility list remains in existence for two (2) years after the date on which the Assessment Center is completed, unless the eligibility list is exhausted prior to the two (2) year period. At the expiration of the two-year period, the eligibility list expires and a new examination may be held. The Department head shall appoint the eligible promotional candidate having the highest final score on the eligibility list unless the Department head has a valid reason for not appointing the person as provided for under Section 143.036(f) and (g) of the Texas Local Government Code.

Section 7. Effect of an Eligibility List Created Under this Article

A promotional eligibility list in existence at the time of the effective date of this Agreement shall continue in effect until its expiration pursuant to Article 4 of the 2011-2013 Meet and Confer Agreement. Any promotional eligibility list created under this article will take effect upon the expiration of any eligibility list in existence on the effective date of this Agreement.

Section 8. Appeal

(a) Written Examination

A promotional candidate may appeal the multiple choice written examination under section 143.034 of the Texas Local Government Code. The invalidation of any question or any component of the written examination shall not invalidate the remainder of the written examination.

(b) Assessment Center

A promotional candidate may not appeal, or dispute the Assessment Center or scoring of the Assessment Center to an administrative or judicial body except for fraud committed by an assessor.

(c) Passover

The appeal provisions of Texas Local Government Code 143.036 (f) and (g) apply to a person having the highest overall score if they are not appointed by the Department head.

Section 9. Statutory Override

This article supersedes the following sections of the Local Government Code: sections 143.032(a), 143.032(b), 143.032(c), and 143.032(d) to provide for an Assessment Center process as part of the promotional selection process and posting of the Assessment Center; section 143.032(f) to provide for more flexibility for the timing of scoring; section 143.032(g) to provide for a consultant to administer an Assessment Center as part of the promotional selection process; section 143.033(a) to provide for scoring of the Assessment Center component outside the presence of the promotional candidates; section 143.033(c) to provide for an Assessment Center score as part of the promotional process so that the score is not based solely on the written examination; section 143.033(d) to provide for more time to compute and post the scores of the eligibility list; section 143.034 to provide for an Assessment Center and preclude appeal except for fraud; sections 143.036 (a), 143.036(b), and 143.036(h) to provide for the promotional process in accordance with this article; and section 143.037 to allow the information to be maintained in multiple records retained in the civil service files.

ARTICLE 7

BASE SALARY ~~AND~~ STEP PAY AND OTHER PAY

Section 1. Base Salary and Step Pay Qualifications

a. Year One of the Agreement (October 1, 2016~~3~~ – September 30, 2017~~4~~)

Pursuant to the City Council approved Fiscal Year 2017 budget, no compensation adjustments are included in the 2017 budget. ~~Effective December 29, 2013 base salary will be increased by 3% across the board.~~

b. Year Two of the Agreement (October 1, 2017~~4~~ – September 30, 2018~~5~~)
An adjustment to the b~~B~~ase salary step pay plan for firefighters of 1.5% across the board will be granted in the first pay period of fiscal year 2018. Further the parties agree that if other City employees receive an across-the-board increase greater than 1.5% of base salary, firefighters will receive an additional incremental increase to equate to other City employees' percentage at the effective date of the other City employees' increase. There will not be any retroactive application of the incremental increase.

~~changes for year two, as well as paramedic pay and certification pay, will be considered during the City's fiscal year budgeting process for fiscal year 2015.~~

c. Year Three of the Agreement (October 1, 2018~~5~~ – September 30, 2019~~6~~)

An adjustment to the base salary step pay plan for firefighters of 1.5% across the board will be granted in the first pay period of fiscal year 2019. Further the parties agree that if other City employees receive an across-the-board increase greater than 1.5% of base salary, firefighters will receive an additional incremental increase to equate to other City employees' percentage at the effective date of the other City employees' increase. There will not be any retroactive application of the incremental increase.

Section 2. Longevity Pay

Parties agree that effective October 1, 2018 a firefighter will receive $4 per month per year of service for one (1) through nine (9) years of service. Beginning in service year ten (10), a firefighter will receive $8 per month per year of service through thirty (30) years of service. Longevity pay will maximize at $240 per month ($2,880 per year) for service year 30 and beyond. The longevity pay schedule is reflected in Appendix D of this Agreement.

Section 3. Texas Commission on Fire Protection Certification Pay

Parties agree that effective October 1, 2018 firefighters who hold certifications from the Texas Commission on Fire Protection will receive monthly certification pay as follows:

Intermediate Officer	$75
Advanced Officer	$155
Master Officer	$275

Certification pay is level specific and does not accumulate.

Section 4. Other Certification Pay

The parties agree that effective October 1, 2018, firefighters who hold five (5) or more special duty certifications that are on the approved list of certifications maintained by Fire Administration will receive $100 per month for the special duty certifications. A firefighter must have at least five (5) approved certifications in order to receive the certification pay. Further, the certification pay is limited to $100 per month regardless of the number of certifications in excess of five (5) held. The firefighter is responsible for obtaining any required periodic recertifications.

~~Base salary changes for year three, as well as paramedic pay and certification pay, will be considered during the City's fiscal year budgeting process for fiscal year 2016.~~

Section 5~~2~~. Exemption for Deputy Fire Chief Classification

The increases outlined in Section 1 do not apply to the classification of Deputy Fire Chief. Base salary and step pay for the classification of Deputy Fire Chief will be determined by the City and will apply across the board to the rank of Deputy Fire Chief.

Section 6~~3~~. Temporary Duties in Higher Classification

Out of classification pay will be paid at the hourly rate based upon the base salary of the higher classification plus EMT-Intermediate/Paramedic step pay for which the person is qualified, and no other step pay of the higher classification shall apply.

Section 7~~4~~. Statutory Override

This article supersedes Texas Local Government Code: sections 141.033(a) and 143.041(b) as this article establishes more than one base salary in each classification; section 143.038(b) to pay out of classification pay at the hourly rate based upon the base salary of the higher classification plus EMT-Intermediate/Paramedic pay for which the person is qualified and excludes any other step pay of the higher classification; and sections 143.041(c) and 143.044 as this article established step pay qualifications within each classification and will be paid only according to those qualifications within each classification.

ARTICLE 12

MISCELLANEOUS PROVISIONS

Section 1. Funding Obligation

(a) The City presently intends to continue this Agreement each fiscal year through its term, to pay all amounts due, and to fully and promptly perform the obligations of the City under this Agreement. All obligations of the City shall be paid only out of current revenues or any other funds lawfully available for those obligations, including tax revenues reasonably anticipated at equal or higher total gross amounts as were collected in fiscal year 2015, and appropriated for such purpose by the City Council in compliance with the Texas Constitution, Article 11, Sections 5 and 7.

(b) In the event the City cannot meet its funding obligations after exhausting all reasonably available recurring revenue as provided in the State Constitution, this Agreement shall terminate and shall be null and void in its entirety on the first date that such funding is not met pursuant to this Agreement. If at any time during the term of this Agreement, or any extension thereof, the electorate of the City subjects the government of the City to a rollback election; and, as a result of such rollback election, the City suffers a reduction in revenues due to a reduction in the tax rate, the Association agrees to reopen the salary and other compensation provisions of this Agreement for the purpose of renegotiating the same. If sixty (60) days after these negotiations begin, no agreement has been reached, this Agreement shall terminate and be null and void in its entirety.

Section 2. No Petition

The Parties agree to the salary provided for in Article 7 and override section 141.034 of the Texas Local Government Code to preclude a petition to increase salaries during the term of this Agreement. The Association further agrees it will not support or seek any proposed Charter amendment or initiative election that would provide for any increase in wages, salary, pay, or benefits during the term of this Agreement.

Section 3. Minimum Staffing

The parties agree that, excluding the Battalion Chief and Field Resource Medic (FRM) positions, forty-four (44) "at work and available" personnel will be considered minimum staffing for each shift of the Abilene Fire Department (AFD). This staffing level provides eleven (11) frontline pieces of equipment with four (4) personnel. "At work and available" is defined as possessing Personal Protective Equipment (PPE) and having an apparatus available on which to respond to calls for service. Minimum staffing will be maintained with the exception of brief time periods for staffing transitions (i.e. training, meetings, callback of over-timers, etc.). These time periods will not exceed four (4) hours in length. Apparatus will never be staffed with less than three (3) personnel. General Order 04 addresses situations in which a crew is working with reduced staffing.

Further, the parties agree that if additional frontline equipment pieces are added or deleted from the base number of eleven (11), then four (4) personnel per piece of equipment will be added or deleted from the base number of forty-four (44).

ARTICLE 14

ASSOCIATION BUSINESS LEAVE

Section 1. Creation of Association Business Leave. Authorized Association Representatives shall be permitted to have paid time off, designated as Association Business Leave (ABL), to conduct Association business under the conditions specified in this Article.

Section 2. Permitted Uses of ABL. ABL may be used for activities that directly support the mission of the Department or the Association, or are deemed mutually beneficial to both the Department and Association, but do not otherwise violate the specific terms of this article. It is specifically understood and agreed that no paid time off shall be utilized for political lobbying at the local, state, or national level.

Section 3. Written Request Required

(a) All requests for ABL must be made in writing by the Association President and submitted to the Department head at least five (5) calendar days in advance of the date of the requested leave. To be considered timely, the request must be received in person, by fax, or by electronic mail by noon of the day notice is due. The Department head, in his/her discretion, may approve a late request for leave if he/she determines that circumstances warrant approval and it does not disrupt operations of the Department. All requests are subject to approval of the Department head who will designate the number of days' leave granted.

(b) Administrative procedures and details regarding the implementation of this Article shall be specified in Departmental policy.

Section 4. Establishment of Association Business Leave Balance

It is the desire of both Parties to sustain a reasonable balance in the Association Business Leave pool. To facilitate this goal, a firefighter who has in excess of 1080 hours of accrued sick leave (shift personnel) or 720 hours of accrued sick leave (staff personnel) may make an annual ~~one-time~~ donation of up to 24 hours of sick leave (shift) or 20 hours of sick leave (staff) toward the ABL balance. A firefighter who does not have the previously stated threshold balances of accrued sick leave may make an annual ~~one time~~ donation of up to 12 hours of vacation or holiday leave (shift) or 10 hours of vacation or holiday leave (staff) toward the ABL balance. This annual ~~one-time~~ donation must be submitted on forms developed for this purpose to Human Resources no later than October 21~~29, 2013~~ of each year. To further sustain the fund, at retirement a firefighter who has in excess of 1080 hours of accrued sick leave (shift personnel) or 720 hours of accrued sick leave (staff personnel) may make a one-time donation of up to 96 hours of sick leave (shift) or 80 hours of sick leave (staff). Both Parties agree that the usage of Association Business Leave by Association members will be capped at one thousand (1,000) hours per year.

ARTICLE 15

TERM OF AGREEMENT

Section 1. Term

This Agreement shall have an effective date of October 1, 2016, and shall remain in full force and effect through September 30, 2019, and extended thereafter until superceded by a new agreement or until April 1, 2020, whichever occurs first.

~~(Section 2. Reopener for Budget Process~~

~~Both Parties mutually agree to reopen the agreement solely for the purpose of discussing base salary, as well as paramedic pay and certification pay, during the City's budget process for fiscal years 201 and 201.~~

~~[KR1]~~**Section**~~[KR2]~~ 2. **Notice of Intent to Negotiate**

Association shall provide to City notice of intent to negotiate, pursuant to Section 2 of this Article, no later than May 15 of each year of the Agreement.

Meet and Confer Agreement
between
The City of Abilene
and
Abilene Professional Fire Fighters Association, IAFF Local 1044

Fiscal Years 2016-2017, 2017-2018 and 2018-2019

TABLE OF CONTENTS

Definitions....1

Article 1 – Parties and Purpose of Meet and Confer....2

Article 2 – Recognition....3

Article 3 – Hiring....4

Article 4 – Promotions....7

Article 5 – Appointment of Personnel....12

Article 6 – Disciplinary Action and Appeals....13

Article 7 – Base Salary and Step Pay....18

Article 8 – Pension....20

Article 9 – Contract Interpretation Dispute Resolution Procedure....21

Article 10 – Civil Service Commission....23

Article 11 – Wellness....24

Article 12 – Miscellaneous....25

Article 13 – EMS Reopener....27

Article 14 – Association Business Leave....28

Article 15 – Term of Agreement....29

Article 16 – Savings Clause and Preemption Provision....30

Appendix A – Abilene Fire Department Amendment to the Civil Service Promotion System for Promotion to All Ranks....32

Appendix B – Forms: Contract Dispute Resolution....37

Appendix C – Waiver of Right to Assessment Center Process Form....42

Appendix D – Fire Longevity Pay....45

DEFINITIONS

1. "Agreement" means the Meet and Confer Agreement entered between the Abilene Professional Fire Fighters Association and the City of Abilene.

2. "Association" means the Abilene Professional Fire Fighters Association, (IAFF Local 1044), its elected leaders and its collective membership.

3. "City" means the City of Abilene, its mayor, city council members, city manager, fire chief and those persons designated by the City of Abilene to manage the city and its fire department.

4. The term "commission" means the City of Abilene Firefighters' and Police Officers' Civil Service Commission.

5. The term "day" or "days" shall mean calendar days unless otherwise specified.

6. The term "Department" means the Abilene Fire Department.

7. The term "Department head" means the Chief of the Abilene Fire Department, his or her designee, or an acting Chief of the Abilene Fire Department.

8. The term "director" means the Director of the City of Abilene Firefighters' and Police Officers' Civil Service Commission.

9. The term "firefighter" means a firefighter employed by the Fire Department by the City of Abilene.

10. The term "local rules" means the Local Rules and Regulations promulgated by the City of Abilene Firefighters' and Police Officers' Civil Service Commission.

11. "Parties" means the City of Abilene and the Abilene Professional Fire Fighters Association and "Party" means the City of Abilene or the Abilene Professional Fire Fighters Association.

ARTICLE 1

PARTIES AND PURPOSE OF MEET AND CONFER

The Parties to this Agreement are the CITY OF ABILENE, TEXAS, a home rule municipality organized under Texas law and the ABILENE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL NO. 1044, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS.

It is the intent and purpose of the Meet and Confer negotiations and this Agreement, entered into by and between the CITY OF ABILENE, and the ABILENE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL NO. 1044, to achieve and maintain harmonious relations between the Parties related to the salaries, working conditions and other conditions of employment in accordance with Subchapter C of 142 Texas Local Government Code and not deny local control by the City except as provided by this Agreement.

ARTICLE 2

RECOGNITION

The CITY OF ABILENE recognizes the ABILENE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL NO.1044, as the sole and exclusive bargaining agent for the covered firefighters described in the petition for recognition, excluding the head of the fire department and excluding the employees exempt under Subsection (b), in accordance with subchapter C of Chapter 142 of the Texas Local Government Code. The Parties understand and agree the provisions of this Agreement do not extend to employees outside of the Department.

ARTICLE 3

HIRING

Section 1. Select Application of Chapter 143 Procedures

In adopting this article, the parties mutually agree to hold each other harmless, including their agents, officers and employees, from any and all claims from Association members or third parties arising from the application of or use of the modifications from TLGC 143, subchapter B Classification and Appointment. Further, the parties agree to preempt the TLGC Chapter 143, Subchapter B Classification and Appointment procedures Sections 143.021, 143.032, 143.024, 143.025, 143.0251, 143.026, and 143.027 except as stated in this article. In preempting Chapter 143, the parties recognize the need for more flexibility in the hiring process to meet the needs of the Department and believe it improves the selection process and provides candidates a fair opportunity to display skills and abilities that serve as additional good indicators that they will perform well in the Department. Further, this article preempts, to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the Department head or the commission.

Section 2. Classification

Classification under TLGC Section 143.021 (a)-(b)-(c) shall apply, except that an existing or future position or classification may be filled only according to the Department's hiring process in accordance with the Agreement and not from a written examination under Chapter 143 of the TLGC.

Section 3. Definition of Vacant Position

For purposes of this article, vacant position shall mean a vacant position in the Fire Fighter classification.

Section 4. Physical Requirements and Examination

The physical requirements and physical/mental examinations under TLGC Section 143.022 shall apply to fill vacant positions in the Department.

Section 5. Eligibility for Vacant Position

The eligibility requirements under TLGC Sections 143.023(b), 143.023(d), and 142.023(f) shall apply to fill vacant positions in the Department. A person is not eligible to apply for a vacant position in the Department unless the person meets minimum eligibility requirements for a firefighter as outlined in the local rules.

Section 6. Reappointment After Resignation

The commission shall adopt rules to allow a fire fighter who voluntarily resigns from the Department and meets the eligibility requirements for a vacant position to be reappointed to the Department at the sole discretion of the Department head.

Section 7. Procedure for Filling Vacant Positions

With the elimination of the mandatory written examination, the commission shall adopt rules to fill vacant positions through the Department's hiring process in accordance with this Agreement.

(a) Rank on the eligibility list

If an applicant is selected to proceed to the oral interview board, the applicant will be ranked on the eligibility list based upon their score from the oral interview board. The eligibility list shall expire up to 90 days after completion of the Department's orientation academy on a date to be determined by the Department head.

(b) Appointment to a vacant position

(i) When a vacancy occurs in a vacant position in the Department, the Department head shall request in writing from the commission the names of suitable persons from the eligibility list. The director shall certify to the Department head the names of the persons on the eligibility list. From the names certified, the Department head shall appoint the person having the highest score unless there is a valid reason why the person having the highest score should not be appointed.

(ii) If the Department head does not appoint the person having the highest score, the Department head shall clearly set forth in writing the good and sufficient reason why the person having the highest score was not appointed.

(iii) The reason required by subsection (ii) shall be filed with the commission and a copy provided to the person having the highest score.

Section 8. Probationary Period

(a) Probationary Period

A person appointed to a vacant position in the Department must serve a minimum probationary period of twelve months. In the event that the person appointed to a vacant position in the Department has not obtained his/her EMT-Paramedic certification within the minimum twelve-month probationary period, such person's probationary period shall be extended for such time until he obtains his/her EMT-Paramedic certification, or for an additional twelve-month period, whichever occurs sooner.

(b) Membership in Employee Organizations

TLGC Section 143.027(c) shall apply.

(c) Civil Service Protection

A firefighter who was appointed through the Department's hiring process and who serves the entire applicable probationary period automatically becomes a full-fledged civil service employee and has full civil service protection except as modified by this Agreement.

ARTICLE 4

PROMOTIONS

Section 1. Intent

In adopting this article, the Parties agree to implement a promotional system using an Assessment Center component in addition to the written examination. The Parties believe an assessment component to the selection process has improved the selection process and provides promotional candidates a fair opportunity to display skills and abilities that serve as additional good indicators that they will perform well in the position of Fire Lieutenant, Fire Captain or Battalion Chief.

Section 2. Promotional Examination Procedure

(a) The promotional examination procedure will consist of two parts:

1. a written examination, as defined in this article, consisting of one-hundred (100) multiple choice questions; and, upon passing the written examination part of the promotional examination procedure;
2. participation in an Assessment Center.

(b) The minimum passing score on the written examination is 70 percent.

(c) The commission shall adopt rules governing the promotional examination procedure and promotional eligibility lists in accordance with this article and in accordance with Appendix A for the promotional positions of Fire Lieutenant, Fire Captain, and Battalion Chief. Further, the commission may adopt rules to provide for the efficient administration of a promotional examination to eligible promotional candidates who are members of the armed forces serving on active military duty which may include using only the written examination for each candidate for one hundred percent (100%) of all promotional candidates' final scores. If a written examination is offered to an active military candidate, and that candidate receives a minimum passing score, the remaining candidates shall only be required to take the written portion of the promotional process and **Article 4, Section 2 (a) 2** shall not apply to the examination. If the active military candidate does not receive a minimum passing score, Article 4, Section 2 (a) 2 shall still apply.

Section 3. Joint Labor/Management Committee

(a) A joint Labor/Management Committee (the Committee) shall be established for the purpose of providing feedback and/or mutually agreed upon adjustments to the promotional process outside the regular meet and confer negotiation cycle. Each Party shall designate four (4) representatives to serve on the Committee. A minimum of six (6) members of the Committee including three (3) from labor and three (3) from management must be present for a meeting to be held.

(b) Committee may be convened prior to an Assessment Center process to provide input to the City regarding the selection of a consultant to prepare and administer the Assessment Center

portion of the Promotional Examination Procedure. The parties, through the director and the Association President, may mutually agree it is unnecessary to convene the committee prior to an Assessment Center to provide feedback regarding the consultant.

(c) The Committee may be convened to evaluate an Assessment Center process at its conclusion. The parties, through the director and the Association President, may mutually agree it is unnecessary to convene the committee following an Assessment Center to evaluate the process.

(d) The Committee may be convened to amend the promotional process by mutual agreement of the Committee and with approval from the commission.

Section 4. Written Examination

(a) The term "written examination" in this article means the written examination provided for under Chapter 143 of the Texas Local Government Code and does not mean any written part of the Assessment Center. The promotional candidate's score on the written examination shall constitute the candidate's written score.

(b) For a promotional candidate applying for the Fire Lieutenant classification, sixty percent (60%) of a promotional candidate's composite score will be based on the written score.

(c) For a promotional candidate applying for the Fire Captain classification, fifty percent (50%) of a promotional candidate's composite score will be based on the written score.

(d) For a promotional candidate applying for the Battalion Chief classification, forty percent (40%) of a promotional candidate's composite score will be based on the written score.

Section 5. Assessment Center

(a) For a promotional candidate applying for the Fire Lieutenant classification, forty percent (40%) of a promotional candidate's composite score will be based on an Assessment Center.

(b) For a promotional candidate applying for the Fire Captain classification, fifty percent (50%) of a promotional candidate's composite score will be based on an Assessment Center.

(c) For a promotional candidate applying for the Battalion Chief classification, sixty (60%) percent of a promotional candidate's composite score will be based on an Assessment Center.

(d) The parties agree that certain circumstances may present themselves in a promotional process whereby the promotional candidates may voluntarily choose to waive his/her right to the Assessment Center process, upon recommendation by the Joint Labor/Management Committee. In such situations, ALL candidates must unanimously agree to the voluntary waiver. If so, the parties mutually agree to utilize the "**WAIVER OF RIGHT TO ASSESSMENT CENTER PROCESS"** form included as Appendix C to this Agreement. If all candidates do not agree to waive the Assessment Center, then it will proceed as set forth.

Section 6. Procedure for Making Promotional Appointments

(a) For promotional candidates applying for the Fire Lieutenant classification, the final score to be placed on the eligibility list for each candidate shall be computed by taking the candidate's written score and multiplying the written score by .60 to account for sixty percent (60%) of the candidate's composite score; by taking the candidate's Assessment Center score and multiplying that score by .40 to account for forty percent (40%) of the composite score; by adding the products together to equal the composite score; and by adding any applicable seniority points, not to exceed ten (10) seniority points, to the composite score to compute the final score (see below).

(Passing Score on Written Examination x 60%) + (Assessment Center Score x 40%) = Composite Score

Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score *

* The Parties mutually agree that the Seniority Points shall be calculated at their accrued value through the day that the Assessment Center exercises are completed.

(b) For promotional candidates applying for the Fire Captain classification, the final score to be placed on the eligibility list for each candidate shall be computed by taking the candidate's written score and multiplying the written score by .50 to account for fifty percent (50%) of the candidate's composite score; by taking the candidate's Assessment Center score and multiplying that score by .50 to account for fifty percent (50%) of the composite score; by adding the products together to equal the composite score; and by adding any applicable seniority points, not to exceed ten (10) seniority points, to the composite score to compute the final score (see below).

(Passing Score on Written Examination x 50%) + (Assessment Center Score x 50%) = Composite Score

Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score *

* The Parties mutually agree that the Seniority Points shall be calculated at their accrued value through the day that the Assessment Center exercises are completed.

(c) For promotional candidates applying for the Battalion Chief classification, the final score to be placed on the eligibility list for each candidate shall be computed by taking the candidate's written score and multiplying the written score by .40 to account for forty percent (40%) of the candidate's composite score; by taking the candidate's Assessment Center score and multiplying that score by .60 to account for sixty percent (60%) of the composite score; by adding the products together to equal the composite score; and by adding any applicable seniority points, not to exceed ten (10) seniority points, to the composite score to compute the final score (see below).

(Passing Score on Written Examination x 40%) + (Assessment Center Score x 60%) = Composite Score

Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score *

* The Parties mutually agree that the Seniority Points shall be calculated at their accrued value through the day that the Assessment Center exercises are completed.

(d) Prior to October 1, 2018, each promotional eligibility list remains in existence for one year after the date on which the Assessment Center is completed, unless the eligibility list is exhausted prior to the end of the one year period. At the expiration of the one-year period, the eligibility list expires and a new examination may be held. The Department head shall appoint the eligible promotional candidate having the highest final score on the eligibility list unless the Department head has a valid reason for not appointing the person as provided for under Section 143.036(f) and (g) of the Texas Local Government Code.

(e) The parties agree that effective October 1, 2018, each promotional eligibility list remains in existence for two (2) years after the date on which the Assessment Center is completed, unless the eligibility list is exhausted prior to the two (2) year period. At the expiration of the two-year period, the eligibility list expires and a new examination may be held. The Department head shall appoint the eligible promotional candidate having the highest final score on the eligibility list unless the Department head has a valid reason for not appointing the person as provided for under Section 143.036(f) and (g) of the Texas Local Government Code.

Section 7. Effect of an Eligibility List Created Under this Article

A promotional eligibility list in existence at the time of the effective date of this Agreement shall continue in effect until its expiration pursuant to Article 4 of the 2011-2013 Meet and Confer Agreement. Any promotional eligibility list created under this article will take effect upon the expiration of any eligibility list in existence on the effective date of this Agreement.

Section 8. Appeal

(a) Written Examination

A promotional candidate may appeal the multiple choice written examination under section 143.034 of the Texas Local Government Code. The invalidation of any question or any component of the written examination shall not invalidate the remainder of the written examination.

(b) Assessment Center

A promotional candidate may not appeal, or dispute the Assessment Center or scoring of the Assessment Center to an administrative or judicial body except for fraud committed by an assessor.

(c) Passover

The appeal provisions of Texas Local Government Code 143.036 (f) and (g) apply to a person having the highest overall score if they are not appointed by the Department head.

Section 9. Statutory Override

This article supersedes the following sections of the Local Government Code: sections 143.032(a), 143.032(b), 143.032(c), and 143.032(d) to provide for an Assessment Center process as part of the promotional selection process and posting of the Assessment Center; section 143.032(f) to provide for more flexibility for the timing of scoring; section 143.032(g) to provide for a consultant to administer an Assessment Center as part of the promotional selection process; section 143.033(a) to provide for scoring of the Assessment Center component outside the presence of the promotional candidates; section 143.033(c) to provide for an Assessment Center score as part of the promotional process so that the score is not based solely on the written examination; section 143.033(d) to provide for more time to compute and post the scores of the eligibility list; section 143.034 to provide for an Assessment Center and preclude appeal except for fraud; sections 143.036 (a), 143.036(b), and 143.036(h) to provide for the promotional process in accordance with this article; and section 143.037 to allow the information to be maintained in multiple records retained in the civil service files.

ARTICLE 5

APPOINTMENT OF PERSONNEL

The two existing positions above Battalion Chief at the time of the 2009 Agreement were addressed such that they could be filled by appointment by the Department head pursuant to the process provided for in section 143.014 of the Texas Local Government Code. The appointment would be made when a vacancy in the current tested position occurred. Subsequently, due to budget constraints and departmental reorganization that occurred in FY 2010, only one position above the rank of Battalion Chief remains. However, should the second Deputy Chief position be reinstated, then both positions may be filled by appointment by the Department head pursuant to the process provided for in section 143.014 of the Texas Local Government Code.

This article supercedes section 143.014(b) and section 143.014(c) of the Texas Local Government Code.

ARTICLE 6

DISCIPLINARY ACTION AND APPEALS

Section 1. Suspensions of Three (3) Days or Less

Appealable and Non-Appealable Suspensions

It is understood that some firefighters will make some errors during their career involving rule violations, including those who are good, professional firefighters. The Parties agree that written reprimands and short disciplinary suspensions are for the purpose of reinforcing the need for compliance with departmental standards and not necessarily as punishment.

The Parties agree that when a firefighter is suspended for 1, 2 or 3 days, the firefighter may choose one of two methods of dealing with the suspensions as listed below.

A. **Suspensions that may not be appealed.** The firefighter may forfeit vacation or holiday time equal to the length of the suspension, to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement or promotion. The forfeited vacation or holiday time will not constitute hours worked. In the event a firefighter has received a disciplinary suspension within the preceding 24-month period, the firefighter may only forfeit vacation or holiday time with the Department head's permission. The firefighter must agree that there is no right to appeal if this method of suspension is chosen and sign a waiver of appeal.

B. **Suspensions that may be appealed.** The firefighter may appeal the suspension solely to the commission. If the firefighter chooses to appeal the suspension, the hearing will be conducted as set forth in Texas Local Government Code Section 143.053.

Consideration of Suspensions of Three (3) Days or Less

The Parties agree that disciplinary suspensions of three days or less that were imposed on or after October 1, 2006, will no longer be considered for purposes of transfer or promotion after a specific period of time has passed. The specific period of time required will be equal to one year plus an additional six months for each day of suspension. This section does not apply to appealed suspensions.

After the appropriate passage of time, the Department head shall notify the commission in writing. A copy of the notification document shall be included in both the sections 143.089 (a) and (g) files, and the Department shall enter a notation in these files reflecting this. The Parties agree that the Department and the commission will not alter, destroy, conceal, or remove, any documents related to the temporary suspension, including but not limited to the letter of temporary suspension that was filed with the commission as required by Texas Local Government Code section 143.052(c), or the section 143.089 (a) or 143.089 (g) files. The original suspension paperwork shall still be subject to open records request and as evidence to negate any civil liability claim.

Section 2. Suspensions of Four (4) to Fifteen (15) Days

The Parties agree that when a firefighter is suspended for 4-15 days, the firefighter may choose one of two methods of dealing with the suspension as listed below.

A. **Suspensions that are not appealed.** The firefighter may request to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The firefighter must agree that there is no right to appeal if this method of suspension is approved by the Department head.

If requested by the firefighter, the Department head may allow a firefighter to forfeit vacation or holiday time equal to the length of the suspension to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement or promotion. The forfeited vacation or holiday time will not constitute hours worked. Approval of use of vacation or holiday time will be noted in the suspension paperwork. The firefighter must agree that there is no right to appeal if this method of suspension is chosen and sign a waiver of appeal.

B. **Suspensions that may be appealed.** The firefighter may appeal the suspension to the commission or a Hearing Examiner as provided in Texas Local Government Code Sections 143.010 and 143.057.

Section 3. Suspensions of Sixteen (16) to Ninety (90) Days

A. **Mutually Agreed.** Either the Department head may offer to impose, or the firefighter facing discipline may propose to accept, a suspension without pay for a period from sixteen (16) to ninety (90) days. If the firefighter accepts the mutually agreed suspension, there shall be no right of appeal and the firefighter must sign a waiver of appeal. It is also understood and agreed that if the Department head permits the firefighter to forfeit vacation days for suspension, such vacation or holiday time shall be considered as equal punishment to unpaid days of suspension. In no case will sick leave be forfeited for unpaid days of suspension. The forfeited vacation or holiday time will not constitute hours worked.

B. **Non Agreed.** If the Department head imposes a suspension under this section the firefighter may appeal to the commission or to a Hearing Examiner as provided in Texas Local Government Code, sections 143.010 and 143.057.

Section 4. Alternative Discipline by the Department Head

In considering appropriate disciplinary action the Department head may require that a firefighter be evaluated by a qualified professional (within the City's Employees Assistance Program ("E.A.P.")). If that professional recommends a program of counseling and/or rehabilitation for the firefighter, the Department head may, as an alternative to demotion, or temporary or indefinite suspension, or in combination with a demotion or temporary suspension, require that the firefighter successfully complete the recommended program. The program of counseling and/or rehabilitation will be completed on the firefighter's off-duty time, unless the Department head approves the use of accrued vacation leave or sick leave. The firefighter shall be

responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by City's E.A.P. or the firefighter's health insurance plan. If the firefighter's misconduct involves alcohol or substance abuse-related behavior, the Department head may require that the firefighter submit to mandatory alcohol or drug testing, when ordered by the Department head, for a specified period of time not to exceed twelve (12) months.

If, after entering the program of counseling and/or rehabilitation, the firefighter fails or refuses to complete the program, the firefighter may be suspended up to and including an indefinite suspension. The firefighter has the right to appeal by filing an appeal notice in accordance with the provisions of Chapter 143. The suspension may be appealed to a Texas Local Government Code Hearing Examiner or the commission. On appeal, the commission, or 143 Hearing Examiner shall have the same duties and powers set forth in Chapter 143, but shall not have the power to substitute a program of counseling and/or rehabilitation different from the program imposed by the Department head or to substitute any period of suspension for the required program of counseling and/or rehabilitation.

Section 5. Alternative Discipline by Agreement

The Department head may offer the firefighter the opportunity to enter into an alternative disciplinary agreement under which the firefighter would accept a temporary suspension of up to ninety (90) days and if applicable, agree to successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the City's E.A.P. policy. The program of counseling and/or rehabilitation will be completed during the time off for discipline or on the firefighter's off duty time, unless the Department head approves the use of accrued vacation leave or sick leave. The firefighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the City's E.A.P. program or firefighter's health insurance plan. If the firefighter's misconduct involved alcohol or substance abuse related behavior, the Department head may require that the firefighter submit to mandatory alcohol or drug testing, when ordered by the Department head, for a specified period of time not to exceed twelve (12) months. If the firefighter accepts the opportunity for agreed alternative discipline, the firefighter may not appeal any terms of the Agreement nor the disciplinary action.

If the firefighter fails to successfully complete the program of counseling and/or rehabilitation, the firefighter may be suspended up to and including an indefinite suspension without right of appeal and without right to bring any contract dispute under Article 9 regarding the Agreement or the disciplinary action, before any administrative or judicial body.

Section 6. Last Chance Agreement

In considering appropriate disciplinary action, the Department head may require that a firefighter be evaluated by a qualified professional (within the City's E.A.P). If that professional recommends a program of counseling and/or rehabilitation for the firefighter, the Department head may offer the firefighter, as an alternative to indefinite suspension, the opportunity to enter into a last chance agreement. The agreement may include the following provisions in addition to any other provisions agreed upon by the firefighter and the Department head.

A. The firefighter shall successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Department head.

B. The program of counseling and/or rehabilitation will be completed on the firefighter's off-duty time, unless the Department head approves the use of accrued vacation leave or sick leave. The firefighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation, which are not covered by the City's E.A.P. policy or the firefighter's health insurance plan.

C. The firefighter shall agree to a probationary period not to exceed one (1) year, with the additional requirement that if, during the probationary period, the firefighter commits the same or a similar act of misconduct, the firefighter will be indefinitely suspended without right of appeal.

If the firefighter's misconduct involves alcohol or substance abuse related behavior, the Department head may require that the firefighter submit to mandatory alcohol or drug testing, upon order by the Department head, for a specified period of time not to exceed one (1) year. If the firefighter accepts the opportunity for a last chance agreement, the firefighter may not appeal any terms of the agreement. If the firefighter fails to successfully complete the agreed upon program, the firefighter may be indefinitely suspended without right of appeal.

Section 7. Local Government Code Section 143.057 Hearing Examiner Retained for Suspension In Excess of 3 Days or for Indefinite Suspension

The City recognizes that during the term of this Agreement firefighters have the right to an appeal of an indefinite suspension before a Hearing Examiner as provided in section 143.057 of the Texas Local Government Code. During the term of this Agreement, the Parties specifically agree to retain this right of appeal, as modified herein, notwithstanding any change to section 143.057 which may occur as a result of court or legislative action. This section does not limit a firefighter's ability to appeal a suspension of four (4) to ninety (90) days in the event a suspension is not mutually agreed.

Section 8. Procedures for Hearings Before Civil Service Commission and Independent Hearing Examiners

It is expressly agreed that commission hearings and hearings before Hearing Examiners under Texas Local Government Code 143.057, are informal administrative hearings. Specifically it is understood that neither the Texas Rules of Evidence ("TRE") or the Texas Rules of Court ("TRC") apply to such hearings. The burden of proof shall be by a preponderance of the evidence.

Section 9. Preemption review

The provisions of this Article preempt all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision, including a civil service commission.

It is the specific intent of the Parties to this Agreement, that any express written provision that specifically provides for a procedure, a standard, or a practice other than what is provided for in Subchapter D of Texas Local Government Code 143, is intended to override the applicable statutory provision as allowed by Subchapter C of Texas Local Government Code chapter 142.

Section 10. Expenses

It is agreed that the City and a firefighter disciplined under this article shall share the fees and expenses equally for the hearing examiner. The expenses incurred by or for a witness are paid by the party who calls the witness. In the event a Party desires a court reporter, that Party shall bear that cost 100%. In the event the firefighter is not a member of the Association, and therefore financially responsible for his/her share of any fees; the firefighter shall deposit with the director his/her anticipated share of the fees and expenses (the amount deposited shall equal the fees and expenses for one full day) three (3) days prior to the hearing examiner's deadline to cancel. Failure to deposit the funds timely shall result in the appeal being dropped and acceptance of the discipline imposed.

In the event the fees and expenses for a hearing exceed the deposited amount, the non-association member shall pay the remaining amount due within thirty (30) days of receipt of the bill or authorize, in writing, the City to deduct the amount due from his/her next four (4) paychecks.

ARTICLE 7

BASE SALARY STEP PAY AND OTHER PAY

Section 1. Base Salary and Step Pay Qualifications

a. Year One of the Agreement (October 1, 2016 – September 30, 2017)

Pursuant to the City Council approved Fiscal Year 2017 budget, no compensation adjustments are included in the 2017 budget.

b. Year Two of the Agreement (October 1, 2017 – September 30, 2018)
An adjustment to the base salary step pay plan for firefighters of 1.5% across the board will be granted in the first pay period of fiscal year 2018. Further the parties agree that if other City employees receive an across-the-board increase greater than 1.5% of base salary, firefighters will receive an additional incremental increase to equate to other City employees' percentage at the effective date of the other City employees' increase. There will not be any retroactive application of the incremental increase.

c. Year Three of the Agreement (October 1, 2018 – September 30, 2019)

An adjustment to the base salary step pay plan for firefighters of 1.5% across the board will be granted in the first pay period of fiscal year 2019. Further the parties agree that if other City employees receive an across-the-board increase greater than 1.5% of base salary, firefighters will receive an additional incremental increase to equate to other City employees' percentage at the effective date of the other City employees' increase. There will not be any retroactive application of the incremental increase.

Section 2. Longevity Pay

Parties agree that effective October 1, 2018 a firefighter will receive $4 per month per year of service for one (1) through nine (9) years of service. Beginning in service year ten (10), a firefighter will receive $8 per month per year of service through thirty (30) years of service. Longevity pay will maximize at $240 per month ($2,880 per year) for service year 30 and beyond. The longevity pay schedule is reflected in Appendix D of this Agreement.

Section 3. Texas Commission on Fire Protection Certification Pay

Parties agree that effective October 1, 2018 firefighters who hold certifications from the Texas Commission on Fire Protection will receive monthly certification pay as follows:

Intermediate Officer	$75
Advanced Officer	$155

Master Officer $275

Certification pay is level specific and does not accumulate.

Section 4. Other Certification Pay

The parties agree that effective October 1, 2018, firefighters who hold five (5) or more special duty certifications that are on the approved list of certifications maintained by Fire Administration will receive $100 per month for the special duty certifications. A firefighter must have at least five (5) approved certifications in order to receive the certification pay. Further, the certification pay is limited to $100 per month regardless of the number of certifications in excess of five (5) held. The firefighter is responsible for obtaining any required periodic recertifications.

Section 5. Exemption for Deputy Fire Chief Classification

The increases outlined in Section 1 do not apply to the classification of Deputy Fire Chief. Base salary and step pay for the classification of Deputy Fire Chief will be determined by the City and will apply across the board to the rank of Deputy Fire Chief.

Section 6. Temporary Duties in Higher Classification

Out of classification pay will be paid at the hourly rate based upon the base salary of the higher classification plus EMT-Intermediate/Paramedic step pay for which the person is qualified, and no other step pay of the higher classification shall apply.

Section 7. Statutory Override

This article supersedes Texas Local Government Code: sections 141.033(a) and 143.041(b) as this article establishes more than one base salary in each classification; section 143.038(b) to pay out of classification pay at the hourly rate based upon the base salary of the higher classification plus EMT-Intermediate/Paramedic pay for which the person is qualified and excludes any other step pay of the higher classification; and sections 143.041(c) and 143.044 as this article established step pay qualifications within each classification and will be paid only according to those qualifications within each classification.

ARTICLE 8

PENSION

The Parties agree to discuss pension issues in the next cycle of negotiations. However, the City intends to continue gathering information, analyzing pension issues, and studying options and the City may act upon that information at any time.

ARTICLE 9

CONTRACT INTERPRETATION DISPUTE RESOLUTION PROCEDURE

Scope of Procedure. The City and Association recognize that from time to time disagreements between the Parties may arise as to the application or interpretation of this Agreement. The Parties therefore agree that the purpose of this dispute resolution procedure is to provide a just and equitable method for resolving disagreements between the Parties regarding the application or interpretation of the provisions of this Agreement. Matters involving the interpretation, application, or alleged violations of a specific provision of this Meet and Confer Agreement shall be subject to this dispute resolution procedure. The Parties agree the provisions of this article do not apply to disciplinary actions.

Application of Procedure. If either the City or the Association has a dispute with the other Party regarding this Agreement, that Party should reduce the dispute to writing and deliver it to the other's designated representative, who for the Association shall be its President and for the City shall be its Department Head or City Manager. A firefighter may not file a request for contract dispute resolution directly with the City; all resolution requests must be approved and come from the Association.

Each matter shall state the factual basis for the dispute, identify the applicable sections of this Agreement and identify the specific remedy sought. Any claim or dispute by an employee or group of employees under this Agreement, which includes a claim for pay or benefits for any past pay periods, must be filed by the employee with the Association within ten (10) working days of the date when the employee knew or reasonably should have known of the claim. The Department Head may require by policy for submission of contract disputes within the Chain of command, but shall have a duty to determine the matter within thirty (30) days of its receipt from the Association.

If the Association does not accept the decision by the Department Head, it shall have five (5) days to notify the Department Head. The Parties shall then again attempt to resolve the matter. It is intended that during this resolution process that the labor/management group that assisted in the formation of the Agreement will provide input to their respective sides as to what was intended. If the representatives have not been successful in resolving the issue within ten (10) days from the Association's notification, the matter shall proceed to mediation or arbitration.

Mediation. If the dispute is not resolved after thirty (30) days from the Association's notification, either Party shall have the right to seek mediation of the dispute by requesting mediation in writing within ten (10) days. The mediation will proceed before a mutually agreed mediator. If a mediator is not mutually agreed upon, or if mediation is not successful, either party may elect to proceed with arbitration within ten (10) days after mediation if it is not successful. In the event the Parties resolve the dispute as a result of mediation, the mediated resolution will be in writing and will be final and binding.

Arbitration. The Parties agree the director will contact the American Arbitration Association to obtain a panel of qualified arbitrators from which to select an arbitrator.

The arbitration shall be held at the earliest available date. The hearing shall be held at a location which is convenient for all Parties and the arbitration shall be conducted informally, without strict evidentiary or procedural rules. The arbitrator shall consider and decide only the issue(s) in the dispute statement or as submitted in writing by agreement of the Parties. The hearing shall be concluded as expeditiously as possible. The arbitrator shall attempt to render a bench ruling, but in the event is unable to do so, the arbitrator shall render a written decision upon the matter within thirty (30) days after the close of the hearing.

Decision Final and Binding. The Parties specifically agree that the arbitrator's authority shall be strictly limited to interpreting and applying the explicit provisions of this Agreement. The arbitrator shall not have authority to modify the agreement or create additional provisions not included in the Agreement. The Parties agree that neither the City nor the Association shall have *ex parte* communications with the arbitrator concerning any matter involved in the grievance submitted to the arbitrator.

The written decision of the arbitrator shall be final and binding on both Parties and may not be appealed by either Party, except for any decision procured by fraud or collusion or which exceeds the arbitrator's jurisdiction, or which is based on legal conclusions or interpretations which are clearly contrary to existing law.

Expenses. Each Party shall be responsible for its own expenses in preparing for and representing itself at arbitration including witness fees, but the fees and expenses of the arbitrator shall be borne equally by the Parties. In the event a Party desires a court reporter, that Party shall bear that cost 100%.

Non-Association Members and Expenses. Dispute Resolution Requests of Non-Association members must follow the same procedure outlined by this article and in accordance with the law will be pursued by the Association, if accepted, until final resolution is reached.

However, should the request of a Non-Association member require that Association resources be used, the Non-Association member will be required to pay 100% of all expenses incurred while pursuing final disposition.

The Non-Association member shall deposit with the director his/her anticipated share of the fee (the amount deposited shall equal the fee for one full day) twenty (20) business days or such shorter period to avoid additional cancellation fees, prior to hearing date. Failure to deposit the funds shall result in the appeal being dropped.

In the event the fee for a hearing exceeds the deposited amount, the Non-Association member shall pay the remaining amount due within thirty (30) days of receipt of the bill or authorize in writing the City to deduct the amount due from his/her next four (4) paychecks.

ARTICLE 10

CIVIL SERVICE COMMISSION

Section 1. Commission

It is the desire of the City and the Association to include the Association's suggestions for members of the commission. As part of the process to appoint commissioners under section 143.006 of the Texas Local Government Code, upon the commencement of the term of this Agreement, the Association will maintain a list of three (3) names of eligible candidates with the director to serve as potential members of the commission in the event a vacancy arises for an appointment or reappointment of the commission during the term of this Agreement.

At the first meeting of the commission of the calendar year, the commission shall elect a chairperson and a vice-chairperson.

Section 2. Statutory Override

This Article supersedes section 143.006(e) Texas Local Government Code to allow for the election of a chairperson and vice-chairperson outside the month of January.

ARTICLE 11

WELLNESS

It is the desire of the City and the Association to maintain the highest standards of health in the Fire Department. Toward that goal, an annual physical examination will be conducted for each firefighter at no cost to the firefighter. It is also the desire of both parties to improve the physical well being of Department employees and that any program development take into consideration the IAFC/IAFF Wellness/Fitness initiative.

ARTICLE 12

MISCELLANEOUS PROVISIONS

Section 1. Funding Obligation

(a) The City presently intends to continue this Agreement each fiscal year through its term, to pay all amounts due, and to fully and promptly perform the obligations of the City under this Agreement. All obligations of the City shall be paid only out of current revenues or any other funds lawfully available for those obligations, including tax revenues reasonably anticipated at equal or higher total gross amounts as were collected in fiscal year 2016, and appropriated for such purpose by the City Council in compliance with the Texas Constitution, Article 11, Sections 5 and 7.

(b) In the event the City cannot meet its funding obligations after exhausting all reasonably available recurring revenue as provided in the State Constitution, this Agreement shall terminate and shall be null and void in its entirety on the first date that such funding is not met pursuant to this Agreement. If at any time during the term of this Agreement, or any extension thereof, the electorate of the City subjects the government of the City to a rollback election; and, as a result of such rollback election, the City suffers a reduction in revenues due to a reduction in the tax rate, the Association agrees to reopen the salary and other compensation provisions of this Agreement for the purpose of renegotiating the same. If sixty (60) days after these negotiations begin, no agreement has been reached, this Agreement shall terminate and be null and void in its entirety.

Section 2. No Petition

The Parties agree to the salary provided for in Article 7 and override section 141.034 of the Texas Local Government Code to preclude a petition to increase salaries during the term of this Agreement. The Association further agrees it will not support or seek any proposed Charter amendment or initiative election that would provide for any increase in wages, salary, pay, or benefits during the term of this Agreement.

Section 3. Minimum Staffing

The parties agree that, excluding the Battalion Chief and Field Resource Medic (FRM) positions, forty-four (44) “at work and available” personnel will be considered minimum staffing for each shift of the Abilene Fire Department (AFD). This staffing level provides eleven (11) frontline pieces of equipment with four (4) personnel. “At work and available” is defined as possessing Personal Protective Equipment (PPE) and having an apparatus available on which to respond to calls for service. Minimum staffing will be maintained with the exception of brief time periods for staffing transitions (i.e. training, meetings, callback of over-timers, etc.). These time periods will not exceed four (4) hours in length. Apparatus will never be staffed with less than three (3) personnel. General Order 04 addresses situations in which a crew is working with reduced staffing.

Further, the parties agree that if additional frontline equipment pieces are added or deleted from the base number of eleven (11), then four (4) personnel per piece of equipment will be added or deleted from the base number of forty-four (44).

ARTICLE 13

EMS REOPENER

The Parties agree to reopen the provisions of this Agreement for the purpose of renegotiating the same in the event the City Council takes formal action establishing the Department as the provider for emergency medical transport services and the City no longer contracts with a third party vendor for emergency medical transport services. If the Parties fail to reach an agreement within 90 days of the date negotiations begin or by the last day of any mutually agreed extension period(s) then this Agreement shall terminate and be null and void except any hiring or promotional eligibility list in effect at that time under Article 3 and Article 4 of this Agreement shall continue to be valid until the expiration of each respective list as outlined in Article 3 and Article 4.

ARTICLE 14

ASSOCIATION BUSINESS LEAVE

Section 1. Creation of Association Business Leave. Authorized Association Representatives shall be permitted to have paid time off, designated as Association Business Leave (ABL), to conduct Association business under the conditions specified in this Article.

Section 2. Permitted Uses of ABL. ABL may be used for activities that directly support the mission of the Department or the Association, or are deemed mutually beneficial to both the Department and Association, but do not otherwise violate the specific terms of this article. It is specifically understood and agreed that no paid time off shall be utilized for political lobbying at the local, state, or national level.

Section 3. Written Request Required

(a) All requests for ABL must be made in writing by the Association President and submitted to the Department head at least five (5) calendar days in advance of the date of the requested leave. To be considered timely, the request must be received in person, by fax, or by electronic mail by noon of the day notice is due. The Department head, in his/her discretion, may approve a late request for leave if he/she determines that circumstances warrant approval and it does not disrupt operations of the Department. All requests are subject to approval of the Department head who will designate the number of days' leave granted.

(b) Administrative procedures and details regarding the implementation of this Article shall be specified in Departmental policy.

Section 4. Establishment of Association Business Leave Balance

It is the desire of both Parties to sustain a reasonable balance in the Association Business Leave pool. To facilitate this goal, a firefighter who has in excess of 1080 hours of accrued sick leave (shift personnel) or 720 hours of accrued sick leave (staff personnel) may make an annual donation of up to 24 hours of sick leave (shift) or 20 hours of sick leave (staff) toward the ABL balance. A firefighter who does not have the previously stated threshold balances of accrued sick leave may make an annual donation of up to 12 hours of vacation or holiday leave (shift) or 10 hours of vacation or holiday leave (staff) toward the ABL balance. This annual donation must be submitted on forms developed for this purpose to Human Resources no later than October 21 of each year. To further sustain the fund, at retirement a firefighter who has in excess of 1080 hours of accrued sick leave (shift personnel) or 720 hours of accrued sick leave (staff personnel) may make a one-time donation of up to 96 hours of sick leave (shift) or 80 hours of sick leave (staff). Both Parties agree that the usage of Association Business Leave by Association members will be capped at one thousand (1,000) hours per year.

ARTICLE 15

TERM OF AGREEMENT

Section 1. Term

This Agreement shall have an effective date of October 1, 2016, and shall remain in full force and effect through September 30, 2019, and extended thereafter until superceded by a new agreement or until April 1, 2020, whichever occurs first.

Section 2. Notice of Intent to Negotiate

Association shall provide to City notice of intent to negotiate, pursuant to Section 2 of this Article, no later than May 15 of each year of the Agreement.

ARTICLE 16

SAVINGS CLAUSE AND PREEMPTION PROVISION

Section 1.

If any provision of this Agreement is rendered invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement, which shall continue to be in full force and effect for the duration of the Agreement, and the Parties shall meet as soon as possible to agree on a substitute provision. However, if the Parties are unable to agree within thirty (30) days following commencement of the initial meeting, then the matter shall be postponed until Meet and Confer negotiations are resumed. To this end, the provisions of this Agreement are severable. This Agreement may be amended by written mutual agreement.

Section 2.

The provisions of this Agreement shall supercede the provisions of any statute, Executive Order, local ordinance, or rule, which are in conflict herewith, including for example and not by way of limitation, the contrary provisions of Chapter 143; Ordinances of the City of Abilene, Texas; and Rules and Regulations of the Firefighter's Civil Service Commission for the City of Abilene, Texas. This preemption provision is authorized by section 142.117 of the Texas Local Government Code, and the Parties have expressly agreed that each and every provision involving or creating such a conflict shall have the effect of superceding the statutory standard or result which would otherwise obtain, in the absence of this Agreement.

SIGNATURE & EXECUTION PAGE

THE FOREGOING INSTRUMENT AS BEEN DULY NEGOTIATED, REVIEWED, AND APPROVED BY EACH OF THE SIGNATORIES INDICATED BELOW:

THE CITY OF ABILENE, TEXAS
(Approved by Abilene City Council on the _____ day of March, 2017)

By: _____ Dated: _____
ROBERT HANNA
CITY MANAGER

ATTEST:

_____
DANETTE DUNLAP
CITY SECRETARY

APPROVED: APPROVED AS TO FORM:

_____ _____
LARRY BELL, FIRE CHIEF STANLEY SMITH, CITY ATTORNEY

THE ABILENE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL #1044
(Ratified by APFFA Membership on the _____ day of March, 2017).

By: _____
JIMMY HALL
PRESIDENT, APFFA - IAFF LOCAL #1044

By: _____ Dated: _____
CHUCK GALCO
SECRETARY, APFFA – IAFF LOCAL #1044

APPENDIX A

ABILENE FIRE DEPARTMENT AMENDMENT TO THE CIVIL SERVICE PROMOTION SYSTEM FOR PROMOTION TO ALL RANKS

I. Promotional Examination Notification

(a) The director shall publicize each vacancy and shall complete promotional examinations to fill the vacancies within ninety (90) days after the date the vacancy occurs or a new position is created if no eligibility list exists. If an eligibility list exists on the date a vacancy occurs, the vacancy shall be filled from the eligibility list within sixty (60) days after the date the vacancy occurs.

(b) No later than ninety (90) days prior to the date a promotional examination is to be held the commission shall post a notice which lists the sources from which the examination questions will be taken. The notice shall include the name of each source to be used for the examination and the chapters used from each source. The official notice will be posted in the hallway of City Hall continuously, but may be revised from time to time to include new sources and/or delete sources that are out-of-date. Changes shall be posted at least ninety (90) days prior to the examination date. Efforts will be made to post the notices at each fire station.

(c) Thirty (30) days prior to the date a promotional examination is held, the commission shall post a notice of the examination in plain view in the hallway of City Hall and at each fire station for a minimum of five (5) days. The notice must state the position to be filled for which the examination is being held, the date, time and place of the examination.

(d) A Firefighter may take a promotional examination for the first tested position if he/she has served in the Department for three continuous years from the time of their hire date. Those who hold the rank of Firefighter will be eligible for promotion to the first tested position of the Department once the person has served in the Department for five continuous years. For promotions beyond the first tested position, the candidate must have held the previous rank for a minimum of two years to be eligible for testing and promotion to the next rank.

II. Promotional Examination Procedure

The Promotional Examination Procedure will consist of two parts.

(a) A written examination, as defined in Article 4 of the Agreement, consisting of one-hundred (100) multiple choice questions; and upon passing the written examination part of the promotional examination procedure,

(b) Participation in an Assessment Center.

III. Promotional Written Examination Criteria

All promotional candidates shall be given a written examination in accordance with the requirements of this Amendment and Article 4 of the agreement.

The City will contract with a consultant for preparation of the written examination. The consultant will develop the written examination from sources determined by the Department and the prerequisites of this Amendment.

The written examination shall be prepared so as to test the knowledge of the eligible promotional candidates concerning information and facts, or the application of information and facts, based upon material drawn from the sources listed on the Notice of Source Materials for the Written Examination posted by the commission no later than ninety (90) days prior to the examination.

The specific titles of the source materials will be selected and announced in accordance with the ninety (90) day notice. The written examination Source Material shall be of reasonably current and revised publication. It is the responsibility of the candidate to obtain the source materials for the written exam.

All eligible promotional candidates shall be given the written examination in the presence of each other. An exception will be made for a qualified promotional candidate who is serving on active military duty outside of this state or in a location that is not within reasonable geographic proximity to the location where the test is being administered. In this case, the provisions of the Texas Local Government Code §143.032 (b) will be followed and the commission may adopt rules providing for the efficient administration of promotional examinations to eligible promotional candidates who are members of the armed forces serving on active military duty. If the promotional candidate will continue to be on active military duty on the date(s) of the scheduled Assessment Center, the candidate will not be required to participate in the Assessment Center and the written examination score shall account for one-hundred percent (100%) of all promotional candidates' examination scores.

All of the questions asked in the written examination shall be prepared and composed in such a manner that the scoring of examination papers can be promptly completed immediately following the examination. The written examination questions shall be based upon the duty requirements for the position being tested.

Each written examination shall be scored with a mechanical or electronic scoring system immediately upon a candidates' completion of the examination. The scoring may be completed by hand if the mechanical or electronic scoring system fails or malfunctions.

The scoring of each written examination shall be completed at the examination site and in the presence of the candidate who requests it.

The score of seventy percent (70%) on the written examination shall be considered passing. Those who do not pass the written examination shall be eliminated from further consideration.

Candidates possessing the top scores from the written examination shall participate in the Assessment Center based upon the following formula:

(a) For the position of Fire Lieutenant: Four (4) candidates for each anticipated position, as determined by the Department head, but not less than twelve (12) shall attend the Assessment Center. In the event that less than twelve (12) persons pass the written examination, only the passing number of candidates will participate in the Assessment Center.

(b) For the positions of Fire Captain and Fire Battalion Chief: Four (4) candidates for each anticipated position, as determined by the Department head, but not less than eight (8) shall attend the Assessment Center. In the event that less than eight (8) persons pass the written examination, only the passing number of candidates will participate in the Assessment Center.

TIE BREAKER - When two (2) or more candidates have the equal scores on the written examination for the last position and, as a result, a tie exists on the list to attend the Assessment Center, all of the candidates tied for last position will attend the Assessment Center.

IV. Promotional Examination Assessment Center Criteria

The Assessment Center shall be administered by a consultant independent of the Department and the City.

The City will contract with the consultant to design and administer an Assessment Center promotional process for the Department according to the prerequisites of this Amendment. The consultant is responsible for the preparation and security of each promotional Assessment Center.

The consultant of the Assessment Center shall be an individual or company with proven expertise in the field of administering the entire Assessment Center process. The consultant will be mutually agreed upon by the Department head and director.

The consultant will develop not less than three exercises for the Assessment Center that test the candidate's possession of the seven dimensions listed below and must include at least one Fire Ground Tactical Scenario:

1. **Problem Solving/Decision Making**

2. **Planning and Organization**

3. **Oral Communication**

4. **Leadership/Supervision**

5. **Adaptability**

6. **Interpersonal Skills**

7. **Written Communication Skills**

It is understood that not all dimensions listed above may be tested in an exercise.

The consultant will make available at least two (2) separate orientation sessions covering the same material to explain the Assessment Center Process, not less than seven (7) days prior to the first day that the Assessment Center is convened. Any candidate who took the test will be invited and encouraged to attend. The orientations will provide information, examples, and explanations on all aspects of the Assessment Center Process.

The consultant will select as many assessors as it requires within the following guidelines. In this section, Fire Officer shall refer to any firefighter holding the rank of Fire Lieutenant or higher.

(a) Assessors selected must have a well-established background in the following areas: Personnel Administration; Behavioral Science; Fire Administration and Operations; and Fire Ground Command and Tactics.

(b) There must be at least two (2) certified Fire Officer Assessors for every one (1) civilian Assessor appointed by the consultant.

(c) All certified Fire Officer members of the Assessor board shall be of any rank equal to or higher than the position sought.

(d) Certified Fire Officer Assessors must come from a department having a population jurisdiction of not less than fifty-thousand (50,000).

(e) Prior to the commencement of the Assessment Center, each Assessor will certify by a signed and witnessed affidavit that he or she has not talked to or corresponded with ANY PERSON about any candidate's abilities, personality, or qualifications for promotion.

V. Tabulation of Final Scores

(a) Written Examination: The written score of a promotional candidate will comprise the percentage of the composite score as indicated below by rank:

1. Lieutenant – sixty percent (60%)

2. Captain – fifty percent (50%)
3. Battalion Chief – forty percent (40%)

(b) Assessment Center: The assessment center score of a promotional candidate will comprise the percentage of the composite score as indicated below by rank:

1. Lieutenant – forty percent (40%)
2. Captain – fifty percent (50%)
3. Battalion Chief – sixty percent (60%)

(c) Seniority Points: Applicable seniority points (not to exceed 10 seniority points) will be added to the composite score of the written examination and assessment center to compute the final score. (See below for rank specific examples)

1. Lieutenant
(Passing score on Written Examination x 60%) + (Assessment Center Score x 40%) = Composite Score
Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score

2.Captain
(Passing score on Written Examination x 50%) + (Assessment Center Score x 50%) = Composite Score
Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score

3.BattalionChief
(Passing score on Written Examination x 40%) + (Assessment Center Score x 60%) = Composite Score
Composite Score + Seniority Points (not to exceed 10 seniority points) = Final Score

(d) When two or more candidates have the same final score, Section 33 (b) of the local rules will prevail.

Candidates shall be placed on an eligibility list according to their final score, highest to lowest. The list will be presented to the Department head as soon as possible after tabulation. The eligibility list will be effective for one year after the date on which the Assessment Center is completed unless the eligibility list is exhausted.

The multiple choice written examination portion of the promotional process remains subject to appeals as set forth in Section 34 of the commission's Local Rules and Regulations. A promotional candidate may not appeal, or dispute, the Assessment Center or scoring of the Assessment Center to an administrative or judicial body except for fraud committed by an assessor. The invalidation of any question or any component of the written examination shall not invalidate the remainder of the written examination.

The Department head shall retain discretion for promotions as set forth in Chapter 143 of the Texas Local Government Code.

APPENDIX B

FORMS: CONTRACT DISPUTE RESOLUTION

(forms follow next four pages)

Case No. _____

CITY OF ABILENE
FIRE DEPARTMENT CONTRACT DISPUTE RESOLUTION FORM
FIREFIGHTER'S STATEMENT

Name	Address	City/State	Phone

Shift/Station	Title/Rank	Phone

Statement

Briefly Describe the Issue. Include the Section or Article of the Contract in question. Use additional page if necessary.

_____

_____

_____

_____

_____

_____

REMEDY OR ADJUSTMENT SOUGHT: Use additional page if necessary.

_____

_____

_____

_____

_____

_____

_____ _____
Firefighter Date

Deliver to: Association
Received by Association: Signature and Date_____

Case No. _____

CITY OF ABILENE
FIRE DEPARTMENT CONTRACT DISPUTE RESOLUTION FORM
ASSOCIATION COMMITTEE FINDINGS AND RECOMMENDATION

Committee Members Refer to case number for employee's statement of facts.

_____
Name
_____
Name
_____
Name
_____
Name

Association Committee Statement

The Association Committee met and reviewed the above referenced contract dispute request and reached the following conclusion(s) on the subject.

_____
_____
_____
_____
_____
_____

ASSOCIATION COMMITTEE RECOMMENDATION

Solve Internally _____ **Reject _____** **Forward_____**

_____ _____
Committee Representative Date

_____ _____
Association Officer Date

Date forwarded to administration (if applicable) _____

Case No. _____

CITY OF ABILENE
CONTRACT DISPUTE RESOLUTION
FIRE DEPARTMENT

CITY'S RESPONSE

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

CITY RECOMMENDATION

Leave as is:

_____

_____

_____

Solve by the following action:

_____

_____

_____

City Representative_____ Date _____

Case No. _____

CITY OF ABILENE
CONTRACT DISPUTE RESOLUTION
FIRE DEPARTMENT

ADDITIONAL INFORMATION/SUPPLEMENT SHEET

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Employee's Signature_____ Date _____

Association Committee Representative Signature_____ Date_____

APPENDIX C
WAIVER OF RIGHT TO ASSESSMENT CENTER PROCESS FORM

(form follows next two pages)

WAIVER OF RIGHT TO ASSESSMENT CENTER PROCESS PER ARTICLE 4 OF THE 2017 MEET AND CONFER AGREEMENT BETWEEN THE CITY OF ABILENE AND THE ABILENE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1044.

I understand that per the Meet and Confer Agreement between the City of Abilene and the Professional Fire Fighters Association IAFF Local 1044, dated left blank, Article 4, Promotions, all promotions to the rank of _____ are accomplished through a written exam and an assessment center process. By executing this document, I am agreeing to waive my right to participate in an assessment center prior to promotion to the rank of _____.

I hereby agree and waive my right to participation in the assessment center in accordance with each of the following conditions:

I agree that the City of Abilene, the Abilene Fire Department or its' current or former members have not made any promise or offer to induce or persuade me to waive my rights to an assessment center.

I understand that with this waiver, scoring for this promotional process will be written exam plus seniority points.

I understand that waiving my right to the assessment center may affect my future promotional opportunities and I am entitled and encouraged to seek legal counsel before signing this wavier. I agree that the City of Abilene and the Abilene Fire Department are not responsible for any of my costs, expenses, and attorney's fees, if any, incurred in connection with any claim or the review and signing of this document.

I understand that I have **5 days** from insert date to seek counsel and execute this waiver.

I understand that I have **7 days** after executing this waiver where I may revoke the waiver. This waiver shall not become effective or enforceable until the revocation period has expired. I understand that I must provide written notice to the Civil Service Director should I decide to revoke my waiver

I understand that this agreement shall be governed by the laws of the State of Texas and the City of Abilene without effect to conflicts of law principles.

THIS WAIVER BECOMES NULL AND VOID AND OF NO FURTHER FORCE OR EFFECT IF THE CIVIL SERVICE DIRECTOR DOES NOT RECEIVE THE EXECUTED WAIVER ON OR BEFORE THE FIFTH (5th) DAY AFTER CANDIDATE FOR PROMOTION IS PRESENTED WITH THIS DOCUMENT.

IN WITNESS WHEREOF, I have placed my signature this ____ day of _____ ,

[NAME AND RANK]

_____

On this _____ day of _____ , 201__, before me, _____, the undersigned, personally appeared [NAME], known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

_____

My commission expires:_____

Date Received: _____ By:_____

APPENDIX D

FIRE LONGEVITY PAY
Effective October 1, 2018

# of Years	(Maximum $240/month at 30 Years)			
	Longevity $ / Year	# Years Tenure	$ / Month	$ / Year
1	$4	1	$4	$48
2	$4	2	$8	$96
3	$4	3	$12	$144
4	$4	4	$16	$192
5	$4	5	$20	$240
6	$4	6	$24	$288
7	$4	7	$28	$336
8	$4	8	$32	$384
9	$4	9	$36	$432
10	$8	10	$80	$960
11	$8	11	$88	$1,056
12	$8	12	$96	$1,152
13	$8	13	$104	$1,248
14	$8	14	$112	$1,344
15	$8	15	$120	$1,440
16	$8	16	$128	$1,536
17	$8	17	$136	$1,632
18	$8	18	$144	$1,728
19	$8	19	$152	$1,824
20	$8	20	$160	$1,920
21	$8	21	$168	$2,016
22	$8	22	$176	$2,112
23	$8	23	$184	$2,208
24	$8	24	$192	$2,304
25	$8	25	$200	$2,400
26	$8	26	$208	$2,496
27	$8	27	$216	$2,592
28	$8	28	$224	$2,688
29	$8	29	$232	$2,784
30	$8	30	$240	$2,880
>30	$8	30	$240	$2,880

Resolution Ratifying the Meet and Confer Agreement between the City of Abilene and the Abilene Professional Fire Fighters Association

- The proposed agreement is for a three year term, October 1, 2016 through September 30, 2019
- The Fire Fighters' Association has ratified the proposed agreement
- Proposed changes are as reflected in the Summary of Changes Exhibit
- Fiscal impact is approximately $733,000 over the three year term
- Staff recommends ratification of the proposed agreement by City Council

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Robert Hanna, City Manager**

FROM: **Ronnie Kidd, Managing Director for Administration**

SUBJECT: **Resolution: Authorizing the City Manager to enter into a Consulting Services Contract for Employee Benefits Consulting CB#1715. *(Ronnie Kidd)***

GENERAL INFORMATION

The City has maintained a 10-year relationship with our current employee benefits consultant, Holmes Murphy & Associates of Dallas, TX. To consider the consulting services available in the current market environment, requests for proposals were issued on December 2, 2016 and advertised on December 4 and December 11. The employee benefits consultant performs important and necessary services supporting the ongoing administration of the City's employee health and wellness plans. Services include, but are not limited to:

- Evaluating and recommending plan designs appropriate for the City's employees;
- Marketing, bidding and negotiating multiple lines of health coverages, TPA networks and stop loss coverage for the City's self-insured plan;
- Performing complex analytics of ongoing medical and drug claims;
- Recommending short-term and long-term cost control strategies;
- Budgeting, financial modeling and trend projections;
- Consulting on multiple Federal compliance and regulatory requirements;
- Reviewing our self-insured plan performance, benchmarking and reporting;
- Providing ongoing support and employee communications.

SPECIAL CONSIDERATIONS

The City received six (6) proposals from qualified firms having significant experience with large public entity groups as follows:

- McGriff, Seibels & Williams of Texas, Addison TX
- Holmes Murphy & Associates, Dallas TX
- Arthur J. Gallagher & Co., Houston, TX
- IPS Advisors, Dallas, TX
- Higginbotham & Associates, Fort Worth, TX
- Marsh & McLennan Agency-SW Region, Dallas, TX

The proposals were rated by a six-member selection team, based on multiple criteria in the categories of overall quality (10%), qualifications and demonstrated experience of the firm's team members (40%), demonstrated

ability to deliver the services specified (40%), as well as cost of services (10%). The top three ranked firms were interviewed in person.

FUNDING/FISCAL IMPACT

The fixed annual consulting fee is $65,000 and will be funded through the Self-Insurance Fund. With a start date of April 1, 2017, the prorated budget impact will be $32,500 for FY 2017 and $65,000 for FY 2018. The funds for this agreement are currently budgeted at $40,000 for FY 2017, with Holmes Murphy already receiving 2 quarter billing periods. We anticipated over spending this line item by $15,000 for FY 2017. We also anticipate being able to cover the additional $15,000 in this line item within current appropriated budget amounts for the City.

STAFF RECOMMENDATION

Staff recommends accepting the proposal received from McGriff, Seibels & Williams of Texas, Addison, TX and finalizing the standard consulting services contract for an initial three-year period effective April 1, 2017, with an option to renew annually for up to three additional years by mutual written agreement by both parties.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

Description	Type
Resolution Awarding Contract	Resolution Letter
Consulting Services Contract	Backup Material
Summary Presentation	Presentation

RESOLUTION NO._____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING THE PROPOSAL FOR EMPLOYEE BENEFITS CONSULTING SERVICES TO McGRIFF, SEIBELS & WILLIAMS OF TEXAS

WHEREAS, proposals were solicited for the City of Abilene for Employee Benefits Consulting Services; and

WHEREAS, the consultant will evaluate and recommend plan design, perform complex analytics of claims, recommend short-term and long-term cost control strategies, provide budgeting, financial modeling and trend projections, consult on regulatory compliance, review plan performance, provide reporting, market, bid and negotiate lines of coverage, and provide ongoing support and communications; and

WHEREAS, advertisements were published on December 4 and 11, 2016 in the Abilene Reporter News; and

WHEREAS, six (6) vendors submitted proposals, as follows:

Holmes, Murphy & Associates
McGriff, Seibels & Williams of Texas
Arthur J. Gallagher & Co.
IPS Advisors
Higginbotham & Associates
Marsh & McLennan Agency; and

WHEREAS, the following criteria were used to determine the most advantageous proposal for the City of Abilene: (a) overall quality of proposal, (b) qualifications and demonstrated experience, (c) demonstrated ability to deliver services, and (d) fees/cost of service; and

WHEREAS, McGriff, Seibels & Williams of Texas provided the most advantageous proposal for the City of Abilene.

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

PART 1: The City recommends contracting with McGriff, Seibels & Williams of Texas for employee benefits consulting services.

PART 2: The contract is for an initial term of three years, and may be renewed annually for up to three additional years by mutual written agreement by both parties.

PART 3: The fixed annual fee is $65,000.

PART 4: That this Resolution shall take effect immediately from and after passage.

Adopted the ____ day of March, 2017

ATTEST:

_____
Danette Dunlap, City Secretary

_____
Norm Archibald, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

CITY OF ABILENE

CONSULTING SERVICES CONTRACT

This contract is between the City of Abilene ("City"), and McGriff, Seibels & Williams of Texas ("Consultant").

The Consultant will provide services as stated in Attachment A, Scope of Work.

I. TERM

In consideration of the compensation stated in Paragraph II., the Consultant must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The contract is for an initial three-year period beginning April 1, 2017. The contract may be renewed annually for up to three additional years by mutual written agreement by both parties.

II. PAYMENT

Payment is according to Attachment B.

III. ASSIGNMENT

The Consultant may not assign in whole or in part any rights, duties, obligations or interest arising from this agreement without the City's prior written consent.

IV. 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.

V. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of documents and materials is according to Attachment C.

VI. NONDISCLOSURE

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

VII. 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.

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

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

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

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

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

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

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

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

VIII. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates shall:

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

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

C. TYPES AND AMOUNT OF INSURANCE

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

Type	Amount
_X_ 1. Workers' Compensation Employer's Liability	Statutory $100,000 per occurrence
_X_ 2. Commercial (Public) Liability including, but not limited to: . Premises/Operations . Independent Contractors . Products/Completed Operations . Contractual Liability (Insuring above indemnity) and where the exposures exist . Explosion Collapse and Underground	$500,000 combined single limit for bodily injury and property damage (per occurrence)
_X_ 3. Business Automobile Liability to include coverage for: . Owned/Leased Autos . Non-Owned Autos . Hired Cars	$500,000 combined single limit for bodily injury and property damage (per occurrence)
_X_ 4. Professional Liability or E&O	$500,000 combined single limit (per occurrence)

IX. 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.

X. TERMINATION

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

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

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

XI. PROJECT REPRESENTATION

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

XII. 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: Ronnie C. Kidd**
Managing Director for Administration
City of Abilene
P.O. Box 60
Abilene, TX 79604-0060

Consultant - ATTN: Scott Gibbs
Senior Vice President
McGriff Seibels and Williams of Texas
5080 Spectrum Dr., Suite 900E
Addison, TX 75001

XIII. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XIV. NO INDEBTEDNESS

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

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

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

XV. 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.

XVI. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

g. Negotiate and review vendor contracts (with assistance from Human Resources and the City's Legal Department).

h. Assist in obtaining City Council review and approval as needed on such new or renewal agreements.

i. Provide recommendations/considerations to plans or contributions.

j. Final decisions regarding the terms of such contracts will be made solely by the City of Abilene.

2. Consultant will make various presentations to internal employee groups, such as the Benefits Committee, the City's management team, City Council, and other groups as needed, to help encourage understanding and transparency.

3. Consultant will provide strong support during the annual enrollment process, up to and including serving as a liaison between the City and the enrollment vendors to the extent requested.

4. Consultant will regularly provide training materials, current industry information and technical support to City's staff regarding the latest news and updates as it pertains to the Affordable Care Act (ACA), Center for Medicaid/Medicare Services (CMS), HIPAA, COBRA and any other relevant laws governing benefit plan administration.

5. Consultant will regularly remind the City's staff regarding reporting and compliance deadlines, and other requirements as it pertains to the ACA, CMS, HIPAA, COBRA and any other relevant laws governing benefit plan administration.

6. Consultant will serve as a liaison between the City and all benefit vendor partners to the extent needed.

7. Consultant will review plan amendments and summary plan descriptions to ensure plans are compliant with federal standards and the City's objectives. Consultant shall work with vendors to correct any deficiencies prior to sending to the City for review. Consultant shall complete modifications and review promptly and in advance of plan start date. Final approval of such documents is the responsibility of City of Abilene.

E. PERFORMANCE REVIEWS, MONITORING and REPORTING

1. On a monthly basis, Consultant shall provide to the City a detailed medical plan performance review and detailed analysis, as compared to the prior year's data relative to claims, plan enrollment, large claim review and any other key information to consider in evaluating plan effectiveness and to determine future strategies to control costs, plan design changes and maintain market competitiveness.

ATTEST:

_____
City Secretary

ATTEST: (If Corporation)

_____
Corporation's Secretary

Corporate Seal (if available):

APPROVED:

_____
City Attorney

_____
Risk Manager

ATTACHMENT A

SCOPE OF SERVICES

A. COMMUNICATION/RESPONSIVENESS

1. Consultant shall be responsive and available to the City's management team as needed. The primary contact point shall be through Human Resources.

2. The City desires its Consultant to serve as an active advisor and business partner to the City's Human Resources office and management team. The Consultant is expected to aggressively service the City's account.

3. It is expected that when contacted by the City, the Consultant makes contact via email, telephone or voice mail the same day when possible or within 24 hours of a call/email to acknowledge receipt and schedule time to discuss or handle the issue/question at hand or to determine if urgency exists for resolution. If the primary consultant is not available, it is expected that another knowledgeable consultant would be available to assist the City on any issues that arise.

4. Consultant shall keep the City informed of current trends, healthcare breakthroughs, legislative issues, compliance requirements, and other training available or topics of interest related to employee benefits, health or wellness.

B. PLAN DESIGN and INNOVATIVE SOLUTIONS

1. The Consultant will constantly stay abreast of the latest plan design concepts and municipal industry trends in employee benefit plan designs and cost sharing. It is expected that the Consultant will not be satisfied with status quo and will operate in a state of continuous quality improvement and innovation for striking a balance between cost savings and plan services for City employees.

2. The Consultant will provide to the City evidence of extensive research, written reports of benchmarking and creativity in recommending plan designs to the City.

3. The Consultant will maintain high level, extensive knowledge of the local area healthcare market, including the Hendrick Health System and Abilene Regional Medical Center and fostering relationships with them.

4. The Consultant will closely evaluate health insurance networks and advise the City on potential cost differences.

5. The Consultant will carefully evaluate the array of group products available in the market, as well as individual products, and advise the City on their availability.

6. The Consultant will demonstrate its utilization of innovative solutions and evaluate multiple alternatives of best practices when advising the City.

C. BUDGETING and CONTRIBUTION MODELING

1. Consultant will actively assist the City in budgeting for benefit plans, including the self-funded health insurance plan.

2. Consultant will perform ongoing, complex analysis of medical and drug claim expenses by numerous data categories, prepare and maintain historical comparative data, evaluate and communicate trends and forecast expected claims exposure.

3. Consultant will perform detailed modeling of alternative scenarios and recommend employee and City contribution models for the self-funded benefit plans, assisting in plan/claim cost projections or forecasts for all health or wellness related costs, and any cost saving measures or recommendations determined necessary.

4. Consultant will recommend innovative changes in plan design and offerings to achieve City's performance objectives.

5. Budget involvement will include actively participating and making presentations to the City's staff, management team, all employees and/or City Council.

D. PLAN MANAGEMENT and VENDOR MANAGEMENT

1. The Consultant will manage new vendor selections and/or existing vendor renewal agreements in close coordination with Human Resources staff on all plan benefits. The Consultant will:

   a. Notify the City of renewal rates from current insurers or vendors no less than 120 days prior to the effective date.

   b. Prepare RFPs to go to markets as needed or required for a variety of benefit needs (medical TPA, stop loss carriers, dental, vision, life, voluntary benefits, FSA, etc.), as well as benefit platform and other partners, wellness, COBRA, or other related programs/plans.

   c. Compile and provide standardized vendor responses for review to the City.

   d. Review, verify, and provide analytical due diligence on financial proposals and projections, including new or renewal contracts.

   e. Negotiate with vendors at various stages.

   f. Interview finalists and coordinate closely with the City.

g. Negotiate and review vendor contracts (with assistance from Human Resources and the City's Legal Department).

h. Assist in obtaining City Council review and approval as needed on such new or renewal agreements.

i. Provide recommendations/considerations to plans or contributions.

j. Final decisions regarding the terms of such contracts will be made solely by the City of Abilene.

2. Consultant will make various presentations to internal employee groups, such as the Benefits Committee, the City's management team, City Council, and other groups as needed, to help encourage understanding and transparency.

3. Consultant will provide strong support during the annual enrollment process, up to and including serving as a liaison between the City and the enrollment vendors to the extent requested.

4. Consultant will regularly provide training materials, current industry information and technical support to City's staff regarding the latest news and updates as it pertains to the Affordable Care Act (ACA), Center for Medicaid/Medicare Services (CMS), HIPAA, COBRA and any other relevant laws governing benefit plan administration.

5. Consultant will regularly remind the City's staff regarding reporting and compliance deadlines, and other requirements as it pertains to ACA, CMS, HIPAA, and COBRA.

6. Consultant will serve as a liaison between the City and all benefit vendor partners to the extent needed.

7. Consultant will review plan amendments and summary plan descriptions to ensure plans are compliant with federal standards and the City's objectives. Consultant shall work with vendors to correct any deficiencies prior to sending to the City for review. Consultant shall complete modifications and review promptly and in advance of plan start date. Final approval of such documents is the responsibility of City of Abilene.

E. PERFORMANCE REVIEWS, MONITORING and REPORTING

1. On a monthly basis, Consultant shall provide to the City a detailed medical plan performance review and detailed analysis, as compared to the prior year's data relative to claims, plan enrollment, large claim review and any other key information to consider in evaluating plan effectiveness and to determine future strategies to control costs, plan design changes and maintain market competitiveness.

2. Consultant shall travel to the City as needed at no additional charge, at a frequency of no less than quarterly, and also at annual enrollment time, to consult with staff and make presentations.

3. Within ninety (90) days after the end of the plan year, the consultant shall provide a report of the preceding plan year with detail necessary to properly review each plan and its performance.

   a. This review shall be comprehensive and will assist the City in reviewing all aspects of the plan to determine any considerations for changes to plan structure, type, market competitiveness, contribution structure, trends, etc.

   b. The carrier/insurer/TPA may be invited to attend this plan review with the Consultant and City staff.

   c. This report is formal, bound and utilizes data from the carrier/insurer/TPA.

F. **Employee Health Clinic** – Consultant will assist the City in its ongoing evaluation of the cost effectiveness of the City's employee health clinic (COACH).

G. **Wellness Program** – The Consultant is expected to review and recommend program offerings and multiple incentives, setting targets for future year comparisons and to assess the program's overall effectiveness. Programming should focus on changing employee behaviors to improve their lifestyle and lower health risks.

H. **COBRA Administration** - The Consultant is expected to evaluate options for consideration and develop/analyze service proposals requested by the City.

I. **Other Services**

The services listed above outline the scope expected, but are not intended to be all inclusive. If, during the term of this contract, additional services are identified as needed that are not specifically itemized herein, the City and Consultant shall execute a written amendment to this contract that will define the terms, scope and fees for the additional services prior to commencement of those services.

ATTACHMENT B

PAYMENT SCHEDULE

Payment for services rendered is a fixed annual fee amount of $65,000, payable in quarterly installments of $16,250 due as follows:

Service Period	Fee Due Date
April 1 – June 30	June 30
July 1 – September 30	September 30
October 1 – December 31	December 31
January 1 – March 31	March 31

Fee is payable upon completion of the quarter's work and approval by the City's Managing Director for Administration.

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.

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option1)_____

All documents and materials prepared by Consultant under the terms of this contract are the City's property from the time of preparation, and Consultant must deliver the documents and materials to the City or make them available for inspection whenever requested. Consultant 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)____X___

All documents and materials prepared by the Consultant remain the property of the Consultant; however, Consultant must furnish City, at no additional cost, one copy of all documents prepared by the Consultant 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 Consultant'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 Consultant has undertaken to perform on the project, regardless of whether that person contracted directly with the Consultant 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 Consultant 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 Consultant providing services on the project, for the duration of the project.

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

d. If the coverage period shown on the Consultant 's current certificate of coverage ends during the duration of the project, the Consultant 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. Consultant 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 Consultant, 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 Consultant shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

g. The Consultant shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Consultant 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 Consultant 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 Consultant 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 Consultant, 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 Consultant, 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 Consultant:

(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 Consultant is representing to the City that all employees of the Consultant 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 Consultant to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2017-180867

Date Filed:
03/21/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
McGriff, Seibels & Williams of Texas, Inc
Addison, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
City of Abilene

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
CB - 1715
Employee Benefit Consulting

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
McGriff, Seibels & Williams of Texas, Inc	Addison, TX United States		X

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

NOTARY PUBLIC STATE OF TEXAS
JUDY GERTRUDE CLINE
Notary ID # 8156586
My Commission Expires
November 6, 2020

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Tracy Butler, this the 21 day of March, 20 17, to certify which, witness my hand and seal of office.

Signature of officer administering oath | Judy G Cline — Printed name of officer administering oath | notary — Title of officer administering oath

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

McGriff, Seibels and Williams of Texas, Inc.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

Tracy Butler

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

3/16/2017

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

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(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Resolution Accepting Proposal for Employee Benefits Consultants (#CB 17-15)

- Request for Proposals issued December 2, 2016 and advertised December 4 and 11
- Employee benefits consulting to include plan design and administration, claims analysis, financial modeling, rate setting, regulatory compliance, marketing, bidding and negotiating
- Six (6) qualified vendors responded
- Three (3) finalists were interviewed
- Staff recommends accepting the proposal from McGriff, Seibels and Williams for three year initial term with option to renew annually for three additional years.
- Fixed annual fee of $65,000

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Robert Hanna, City Manager**

FROM: **Mr. Dana L. Schoening, Director/Planning and Development Services**

SUBJECT: **Ordinance:** ***(First Reading)*** **Case #Z-2017-05 A request from Terry J. Adams, to rezone property from AO (Agricultural Open Space) to LI (Light Industrial), to allow for Wholesale and Storage (Indoors) Located at 3558 E Hwy 80; and setting a public hearing for April 13th 2017.** ***(Dana Schoening).***

GENERAL INFORMATION

LOCATION:
3558 E Hwy 80, on the north side of E. Highway 80 approx. 700 feet east of Bandera Park Dr.

REQUESTED ACTION:
Rezone property from AO (Agricultural Open Space) to LI (Light Industrial) zoning.

SITE CHARACTERISTICS:
The subject parcel is one acre in size. The property is undeveloped, but there are miscellaneous items being stored on the property. A seven-foot high metal fence along the front property line screens the property from E Highway 80. The parcel has 100 feet of frontage along E Highway 80 with a paved driveway.

The surrounding properties are zoned Light Industrial (LI) to the west and south across E Highway 80 and Agricultural Open Space (AO) to the north and east. Current uses of the surrounding area are:

West:	Undeveloped with an unused 1950-era motel
South:	Cabinet / counter-top manufacturing, automobile repair
East:	Undeveloped
North:	Single family residences

ZONING HISTORY:
The property was annexed in 1964 and was zoned AO at that time.

SPECIAL CONSIDERATIONS

Current Planning Analysis

The Agricultural Open Space (AO) district is typically used as a "holding zone" for land annexed to the City of Abilene, until an applicant requests and the City considers a more intensive zoning district of the land. The applicant is requesting rezoning to the Light Industrial (LI) zoning district to construct a building for personal

storage (allowed as wholesale and storage [indoor]) for the immediate future and to accommodate storage and industrial uses in the future. The LI zoning district provides for a wide range of manufacturing, wholesale and medium intensity activities subject to limitations intended to protect nearby residential and commercial districts.

The southerly 170 feet of the property is located in a 100-year floodplain, but this area of shallow flooding will not impede access to or development of the subject parcel. Industrial uses on the subject parcel may create compatibility issues with the residential uses and zoning to the north and south may create compatibility issues. However, the Land Development Code requires a 50-foot setback between uses on this parcel and the properties to the west and east (because they are zoned AO). The Development Code also requires landscaping and other screens and buffers on this property. It is staff's opinion that the requested rezoning and future development will not have substantial adverse effects on surrounding properties.

Comprehensive Planning Analysis

The *Future Land Use and Development Plan* map of the Comprehensive Plan designates this general area as part of a 'Gateway/Business-Industrial' designation. The Thoroughfare Plan designates East Highway 80 an 'arterial' roadway. Most of the properties along E Highway 80 between Loop 322 and Interstate 20 have been rezoned Industrial (LI, HI) with some properties still zoned Agricultural Open Space (AO). The following table lists the percentage of the street frontage of E Highway 80 (east of Loop 322) that is in each zoning classification:

Zoning Classification	**Percentage of Street Frontage in Zoning Classification**
Industrial (LI, HI)	74%
Commercial (HC, GC)	7%
Planned Development (PD)	4%
Agricultural Open Space (AO)	15%

Because this area is identified in the Comprehensive Plan for industrial uses and most properties along this section of E Highway 80 have already been zoned Industrial, it is staff's opinion that the requested rezoning is consistent with the Comprehensive Plan.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval of the requested rezoning.

BOARD OR COMMISSION RECOMMENDATION

Mr. Famble moved to approve this request, and Mr. Dunnahoo seconded the motion. The vote was approved by seven (Famble, Smith, Bixby, Calk, Dunnahoo, Rosenbaum, and McClarty) with none in opposition.

ATTACHMENTS:

Description Type

- Ordinance Cover — Ordinance
- Ordinance Exhibit — Exhibit
- Staff Report — Backup Material
- PowerPoint — Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL 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 23, part known as the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

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

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 this 23rd day of March, A.D. 2017.

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 17th day of February, 2017, 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 13th day of April, 2017 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 13th day of April, A.D. 2017.

ATTEST:

_____
CITY SECRETARY

_____
MAYOR

APPROVED:

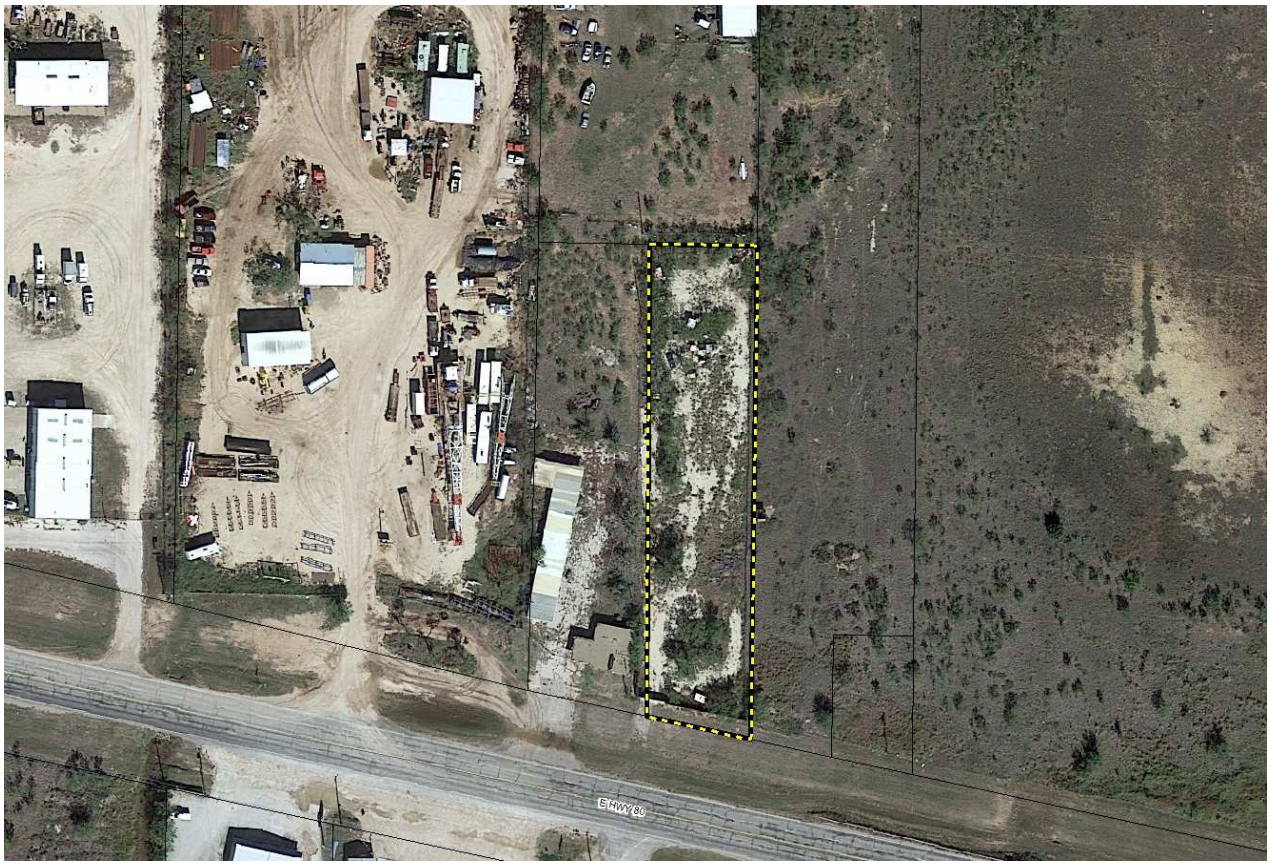
_____
CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT "A"

Rezone property from AO (Agricultural Open Space) to LI (Light Industrial).

Legal Description: East 1.00 acre of Block A, Silver Spur Addition.



Location: 3558 E Hwy 80.

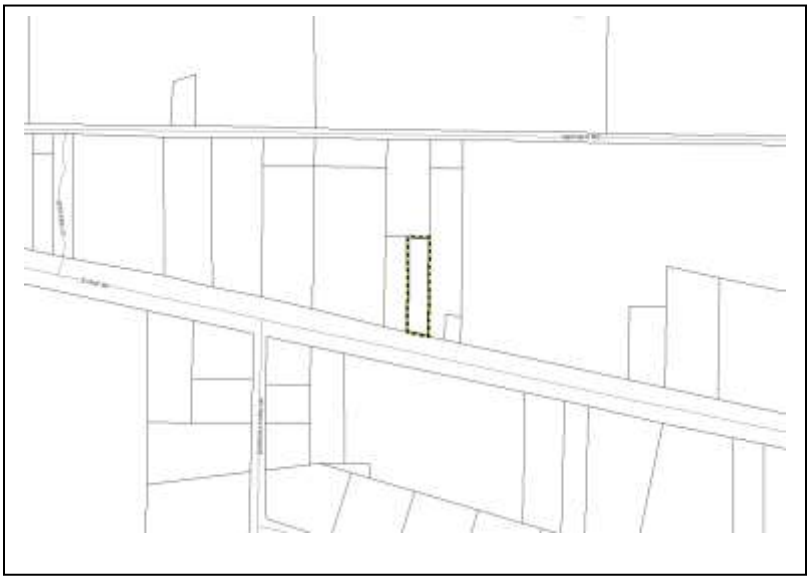
-END-

ZONING CASE Z-2017-05
STAFF REPORT

APPLICANT INFORMATION:
Terry J. Adams

HEARING DATES:
P & Z Commission: March 6, 2017
City Council 1st Reading: March 23, 2017
City Council 2nd Reading: April 13, 2017

LOCATION:
3558 E Hwy 80, on the north side of E. Highway 80 approx. 700 feet east of Bandera Park Dr.



REQUESTED ACTION:
Rezone property from AO (Agricultural Open Space) to LI (Light Industrial) zoning.

SITE CHARACTERISTICS:
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The surrounding properties are zoned Light Industrial (LI) to the west and south across E Highway 80 and Agricultural Open Space (AO) to the north and east. Current uses of the surrounding area are:

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South:	Cabinet / counter-top manufacturing, automobile repair
East:	Undeveloped
North:	Single family residences

ZONING HISTORY:
The property was annexed in 1964 and was zoned AO at that time.

ANALYSIS:

Current Planning Analysis

The Agricultural Open Space (AO) district is typically used as a "holding zone" for land annexed to the City of Abilene, until an applicant requests and the City considers a more intensive zoning district of the land. The applicant is requesting rezoning to the Light Industrial (LI) zoning district to construct a building for personal storage (allowed as wholesaling and storage [indoor]) for the immediate future and to accommodate storage and industrial uses in the future. The LI zoning district provides for a wide

range of manufacturing, wholesale and medium intensity activities subject to limitations intended to protect nearby residential and commercial districts.

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Comprehensive Planning Analysis

The *Future Land Use and Development Plan* map of the Comprehensive Plan designates this general area as part of a 'Gateway/Business-Industrial' designation. The Thoroughfare Plan designates East Highway 80 an 'arterial' roadway. Most of the properties along E Highway 80 between Loop 322 and Interstate 20 have been rezoned Industrial (LI, HI) with some properties still zoned Agricultural Open Space (AO). The following table lists the percentage of the street frontage of E Highway 80 (east of Loop 322) that is in each zoning classification:

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Agricultural Open Space (AO)	15%

Because this area is identified in the Comprehensive Plan for industrial uses and most properties along this section of E Highway 80 have already been zoned Industrial, it is staff's opinion that the requested rezoning is consistent with the Comprehensive Plan.

PLANNING STAFF RECOMMENDATION:

Staff recommends approval of the requested rezoning.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

On March 6, 2017, the Planning and Zoning Commission considered and recommended approval of this request by a vote of seven (7) in favor (Bixby, Calk, Dunnahoo, Famble, McClarty, Rosenbaum, and Smith), and none (0) opposed.

NOTIFICATION:

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

OWNER	SITUS	RESPONSE
ADAMS TERRY J	3558 E HWY 80	
CABINETTECH INC	3400 E HWY 80	In Favor

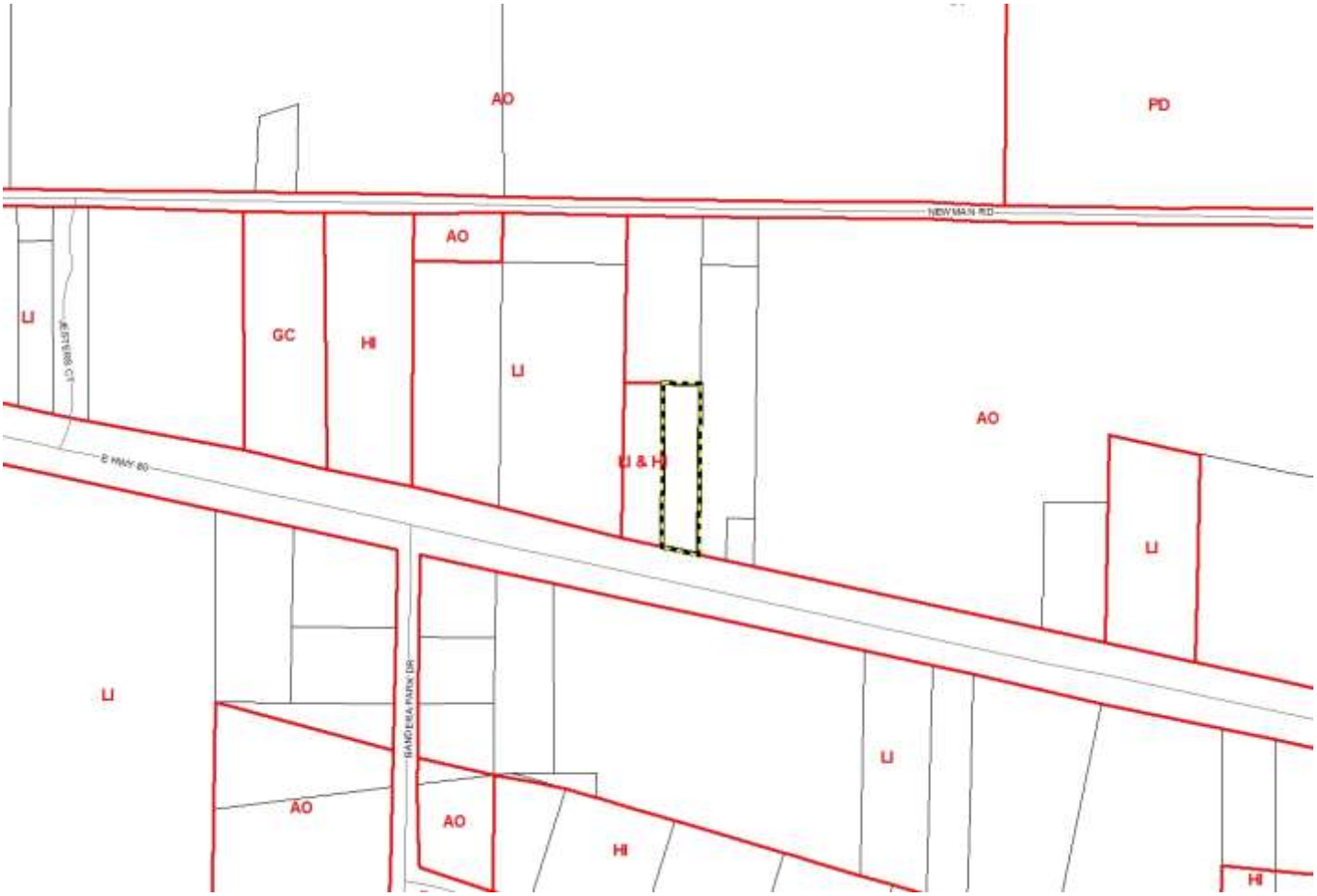
HENNIG W R	3518 E HWY 80	
MC GUIRE TOM	3925 NEWMAN RD	
MC GUIRE TOM	E HWY 80	
MC MILLIN ELLIS	3965 NEWMAN RD	
RICHARDS TIMOTHY A & PATTY R	3901 NEWMAN RD	
SHOMANSUROFF BOKHODIR &	3550 E HWY 80	

PROPERTY OWNER NOTIFICATION MAP

1 in Favor- **Y**
0 Opposed- **N**

As of March 13, 2017

ZONING MAP



AERIAL IMAGERY OF SUBJECT PARCEL

AERIAL IMAGERY OF SURROUNDING AREA

100-YEAR FLOODPLAIN MAP

SUBJECT PARCEL

View of subject parcel across E Highway 80

Rear portion of subject parcel behind fence

SURROUNDING PROPERTIES

Industrial zoned property west of subject parcel

Agricultural Open Space zoned property east of subject parcel

Industrial business south of subject parcel across E Highway 80

Industrial and commercial businesses southwest of subject parcel across E Highway 80

Z-2017-05

Applicant: Terry Adams

Request: Rezone from AO to LI

Location: 3558 E Hwy 80

Notification: 1 in favor, 0 opposed

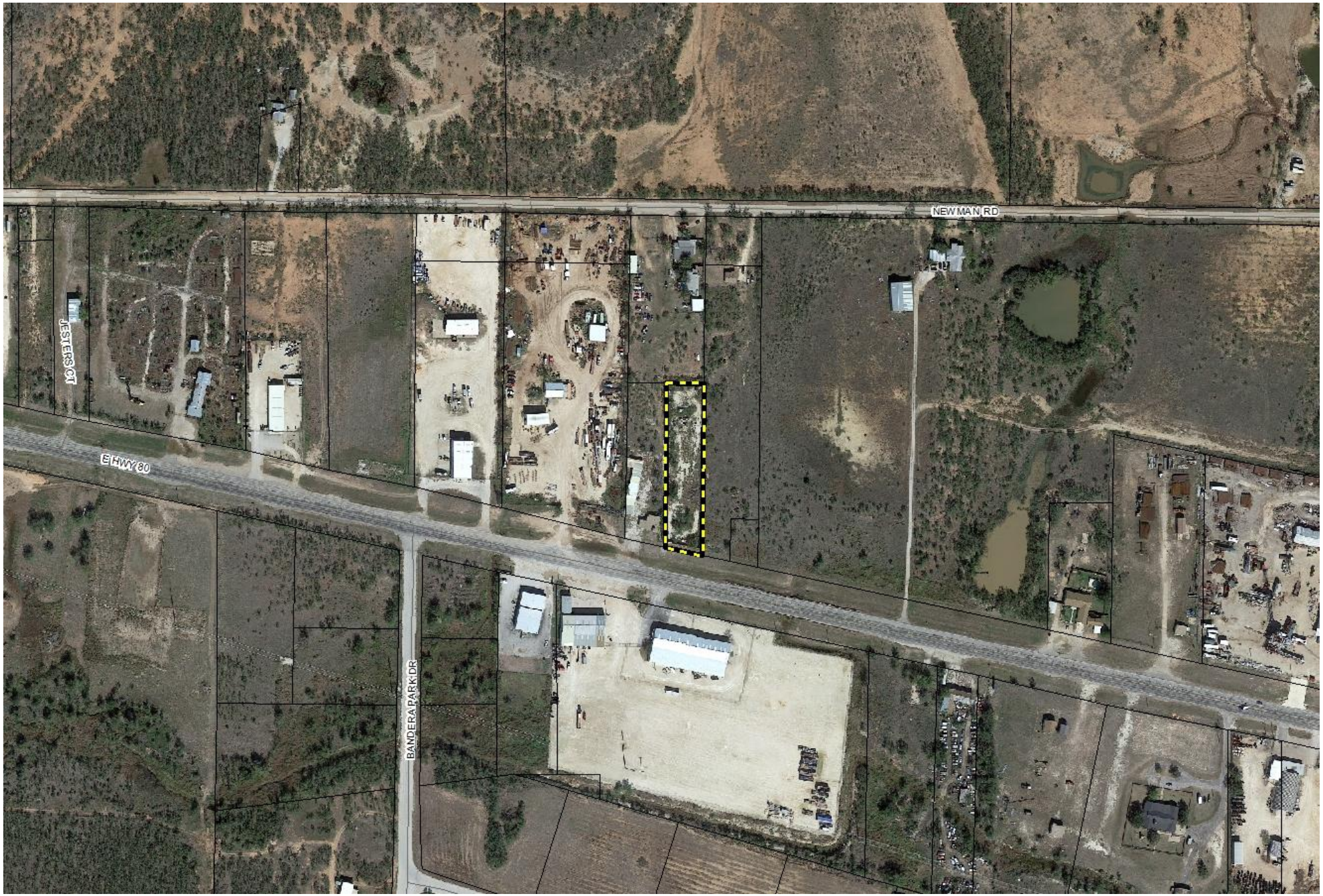
Staff Recommendation:

Approval of AO to LI as requested

P & Z Recommendation:

Approval of AO to LI as requested

Z-2017-05 AERIAL IMAGERY



Z-2017-05 ZONING MAP

Z-2017-05 AERIAL IMAGERY

Z-2017-05 100-YEAR FLOOD MAP

View of Subject Parcel

View to West Along E Highway 80

View to East Along E Highway 80

Land Uses Across E Highway 80 from Subject Parcel

Zoned LI
Cabinet Tech

Zoned LI
Auto Repair and Adult Entertainment Business

Land Uses Next to Subject Parcel

To the west
Zoned LI / HI
Abandoned motel

To the east
Zoned AO
Undeveloped

Permitted Uses in AO Zoning

RESIDENTAL USES:

C	Bed & Breakfast
P	Dwelling– Industrialized Housing Unit
P	Dwelling – Single-Family Detached
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	Animal Lot
P	Day Care Operation – Home-Based
P	Dwelling – Accessory
TP	Field Office or Construction Office (temporary)
P	Garage Sale
P	Home Occupation
C	Mobile Home (permanent security residence)
C	Mobile Home (temporary security residence)
TP	Subdivision Sales Office (temporary)
P	Swimming Pool, Private (accessory to residential use)
P	Tennis Court, Private (accessory to residential use)

CULTURAL AND RECREATIONAL USES:

p	Civic, Social, and Fraternal Organization
P	Fairgrounds/Rodeo
C	Motorized Racing
C	Recreation – Outdoors (active)
P	Recreation – Outdoors (passive)
P	Zoo

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

P	Community Home
C	Correction, Detention, or Penal Facilities
P	Fire/Police Station
C	Military and Armed Forces Reserve Center
C	Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

C	Cemetery, Crematorium, and Mausoleum
P	Church or Place of Worship
P	School: Public/Private

SERVICE

C	Kennel (with outdoor pens)
P	Kennel (without outdoor pens)
P	Veterinary Service (all size animals)

TRADE – RETAIL USES

C	Liquor Store (on premises consumption) (Defined under Liquor Store)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

C	Airport, Heliport and Flying Field Terminals – Commercial
C	Antenna Tower – Commercial
P	Public Utility Facility
C	Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

P	Farming, Ranching & Livestock, Hatchery
C	Mining
C	Petroleum or Gas Well

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**

Permitted Uses in LI Zoning

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-Through Facility
TP	Field Office or Construction Office (temporary)
P	Freight Container
P	Fuel Sales
TP	Itinerant Business
P	Manufacturing (incidental)
C	Mobile Home (permanent security residence)
TP	Mobile Home (temporary security residence)
P	Mobile Home or Temporary Building (office for sales and service)
P	Recreation Building, Multipurpose
P	Recycling Collection Point
P/SE	Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

P	Adult Entertainment Enterprise
C	Cultural Facilities
P	Drive-in Theater
C	Motorized Racing
P	Recreation – Outdoors (passive)

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

P	Ambulance Service
P	Correction, Detention, or Penal Facilities
P	Fire/Police Station
P	Homeless/Emergency Shelter
P	Medical/Dental Laboratory
P	Military and Armed Forces Reserve Center
P	Post Office
C	Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

C	Cemetery, Crematorium, and Mausoleum
P	Church or Place of Worship
P	Educational and Scientific Research
P	School: Public/Private
P	Trade/Business School

SERVICE

P/C	Automobile Wash
P	Contractor Services
P	Funeral Home/ Mortuary/Morgue
P	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	Printing, Copying, Reproduction, Publishing
P	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)
P	Repair and Maintenance Services (outdoors)
P	Repair and Maintenance Services (truck and other large vehicles)
P	Scales (public)
P	Storage - Self-Service Units
P	Tattoo Parlor
P	Taxidermist
P	Veterinary Service (all size animals)
P	Veterinary Service (small animals)
P	Wrecker/Towing

TRADE – RETAIL USES

P	Aircraft and Accessories
P	ATM's, Self-Serve Kiosks, and Similar Facilities
P	Fuel Sales
P	Head Shop
P	Liquor Store (Off Premises Consumption) *(Defined under Liquor Store)*
P	Liquor Store (On Premises Consumption) *(Defined under Liquor Store)*
P	Retail Sales/Rental (automobile/small truck)
P	Retail Sales/Rental (indoor)
P	Retail Sales/Rental (outdoors, non-vehicle)
P	Retail Sales/Rental (trucks and other large vehicles and equipment)

TRADE – WHOLESALE USES

P	Liquor, Wholesale/Distribution
C	Livestock – Wholesale or Auction
P	Wholesaling and Storage (indoor)
P	Wholesaling and Storage (outdoors)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

P	Airport, Heliport and Flying Field Terminals - Commercial (passenger and freight)
P	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
P	Railroad Switching and Marshaling Yard
P	Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

C	Mining
P	Petroleum or Gas Well
P	Liquor
P	Manufacturing (light)
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**

Current Planning Analysis

- Front portion of parcel located in 100-year floodplain
- Frontage on E Highway 80
- Light Industrial zoning and uses to west and south
- Potential conflicts with residential areas to north and northeast
  - Properties zoned AO
  - Setback of 50-feet from AO properties
  - Development Code requires landscaping and other screening and buffering from AO properties

Comprehensive Planning Analysis

- Area along E Highway 80 is designated “Gateway/Business - Industrial”
- Extensive Industrial zoning along E Highway 80 between Loop 322 and I-20

Z-2017-05

Planning & Zoning Commission Recommendation

- March 6, 2017 Public Hearing

- Commission, by a 7-0 vote, recommends approval of rezoning request to Light Industrial (LI) zoning

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Robert Hanna, City Manager**

FROM: **Mr. Dana L. Schoening, Director/Planning and Development Services**

SUBJECT: **Ordinance: *(First Reading)* Case #Z-2017-06 A request from Orange Theory Fitness., agent Enprotec/Hibbs & Todd, to amend the terms and conditions of PD77 (Planned Development 77) to allow for Indoor Recreation as a permitted use. Located at 3934 and 3950 Catclaw Drive; and setting a public hearing for April 13, 2017. *(Dana Schoening)***

GENERAL INFORMATION

LOCATION:
3934 and 3950 Catclaw Drive. Approximately 335' south of Curry Lane.

REQUESTED ACTION:
To amend the terms and conditions of PD77 (Planned Development 77) to allow for Indoor Recreation as a permitted use on Lot 1, Block A, PAK Addition.

SITE CHARACTERISTICS:
The entire PD-77, made up of 4 parcels total approximately 8.25 acres and is currently zoned PD-77 (Planned Development). There has been a retail space and an office space developed within the PD on approximately 4.598 acres and the rest of the subject parcel is 3.652 acres in size, located in the center of the PD, is currently undeveloped. The adjacent properties have AO (Agricultural Open Space) zoning to the west, MF (Multi Family) to the east, and PD-77 (Planned Development) zoning to the north and south. Current uses of the surrounding area are:

West: Regional Detention Facility
South: Restaurant Use
East: Apartments
North: Retail and Medical Uses

ZONING HISTORY:
The property was annexed in 1963 and was later zoned to PDD-77 in 2002.

SPECIAL CONSIDERATIONS

The purpose of the amendment to the PD zoning is to allow for a physical fitness use in the center lot of PD-77 (Described as Lot 1, Block A, PAK Addition).

Currently, the subject property is zoned PDD-77 and has not been developed. The properties to the north are

zoned PDD-77 for retail space (Dollar General) and a medical office space (Dr. J's Emergency Care). The remaining area of the PD to the south is developed with a restaurant use (Taylor County Tap House). The properties to the east are apartments. The property to the west is a regional drainage and detention area and is undevelopable.

The northwestern corner of the subject lot is in the 100-year floodplain.

COMPATIBILITY ISSUES, ACCESS, ETC.

It is staff's opinion that the requested rezoning and future development will not have substantial adverse effects on surrounding properties.

Comprehensive Planning Analysis

The *Future Land Use and Development Plan* map of the Comprehensive Plan designates this general area as restricted open space. However, the area is also part of a Major Commercial/Business Center. Catclaw Drive is designated as a 'minor-arterial' roadway. There is a 100-year flood hazard area that only affects the north-western most portion of the property. The applicant is requesting to amend the PD zoning in order to allow for "indoor recreation/physical fitness". Currently the PD zoning has a base zoning of NR (Neighborhood Retail) and does not allow for "indoor recreation/physical fitness" by right. The requested amendment would be compatible with the surrounding commercial and multi-family uses as well as the Comprehensive Plan.

FUNDING/FISCAL IMPACT

NA

STAFF RECOMMENDATION

Staff recommends approval of the requested PDD-77 amendment.

BOARD OR COMMISSION RECOMMENDATION

Mr. Rosenbaum moved to approve this request, and Mr. Calk seconded the motion. The vote was approved by seven (Famble, Smith, Bixby, Calk, Dunnahoo, Rosenbaum, and McClarty) with none in opposition.

ATTACHMENTS:

Description	Type
Ordinance Amendment	Ordinance
Staff Report With Maps	Exhibit
PowerPoint Presentation	Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART B, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, CONCERNING PDD-77 AND ORDINANCE NO. 38-2002 A 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 B, known as the Land Development Code of the City of Abilene, is hereby amended by changing Ordinance No. 38-2002, as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

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

PASSED ON FIRST READING this 23rd day of March, A.D. 2017.

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 17th day of February, 2017, 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 13th day of April, 2017, 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 13th day of April, A.D. 2017.

ATTEST:

_____ _____

CITY SECRETARY MAYOR

APPROVED:

_____

CITY ATTORNEY

Exhibit ‘A’

3rd Amendment to Ordinance No. 38-2002:

PART 5: Legal Description:
Lot 1, Block A, PAK Addition. Being a parcel of 3.652 acres in size. Located at 3934 and 3950 Catclaw Drive.

ADD:

PART 7: Specific Modifications

ADD: a. Permitted Uses: Mixed Use Strip Mall (Neighborhood Retail)

- Indoor Recreation (Active)

-END-

ZONING CASE Z-2017-06
STAFF REPORT

APPLICANT INFORMATION:
Orange Theory Fitness
Agent: David Todd, EH-T

HEARING DATES:
P & Z Commission: March 6, 2017
City Council 1st Reading: March 23, 2017
City Council 2nd Reading: April 13, 2017

LOCATION:
3934 and 3950 Catclaw Drive. Approximately 335' south of Curry Lane.

REQUESTED ACTION:
To amend the terms and conditions of PD77 (Planned Development 77) to allow for Indoor Recreation as a permitted use on Lot 1, Block A, PAK Addition.

SITE CHARACTERISTICS:
The entire PD-77, made up of 4 parcels total approximately 8.25 acres and is currently zoned PD-77 (Planned Development). There has been a retail space and an office space developed within the PD on approximately 4.598 acres and the rest of the subject parcel is 3.652 acres in size, located in the center of the PD, is currently undeveloped. The adjacent properties have AO (Agricultural Open Space) zoning to the west, MF (Multi Family) to the east, and PD-77 (Planned Development) zoning to the north and south. Current uses of the surrounding area are:

West:	Regional Detention Facility
South:	Restaurant Use
East:	Apartments
North:	Retail and Medical Uses

ZONING HISTORY:
The property was annexed in 1963 and was later zoned to PDD-77 in 2002.

ANALYSIS:

Current Planning Analysis

Currently the property is zoned PDD-77 and has not been developed. Currently, the properties to the north are zoned PD-77 as well and are developed with a retail space (Dollar General) and a medical office space (Dr. J's Emergency Care) and the remaining area of the PD to the south is developed with a restaurant use (Taylor County Tap House). The properties to the east are developed with apartments. The property to the west is a regional drainage and detention area and is undevelopable. The purpose of

the amendment to the PD zoning is to allow for a physical fitness use in the center lot of PD-77 (Described as Lot 1, Block A, PAK Addition).

North-westerly corner is in the 100-year floodplain

COMPATIBILITY ISSUES, ACCESS, ETC.

It is staff's opinion that the requested rezoning and future development will not have substantial adverse effects on surrounding properties.

Comprehensive Planning Analysis

The *Future Land Use and Development Plan* map of the Comprehensive Plan designates this general area as restricted open space. However, the area is also part of a Major Commercial/Business Center. Catclaw Drive is designated as a 'minor-arterial' roadway. There is a 100-year flood hazard area that only affects the north-western most portion of the property. The applicant is requesting to amend the PD zoning in order to allow for "indoor recreation/physical fitness". Currently the PD zoning has a base zoning of NR (Neighborhood Retail) and does not allow for "indoor recreation/physical fitness" by right. The requested amendment would be compatible with the surrounding commercial and multi-family uses as well as the Comprehensive Plan.

PLANNING STAFF RECOMMENDATION:

Staff recommends approval of the requested PD 77 amendment.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

On March 6, 2017, the Planning and Zoning Commission considered and recommended approval of this request by a vote of seven (7) in favor (Bixby, Calk, Dunnahoo, Famble, McClarty, Rosenbaum, and Smith), and none (0) opposed

NOTIFICATION:

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

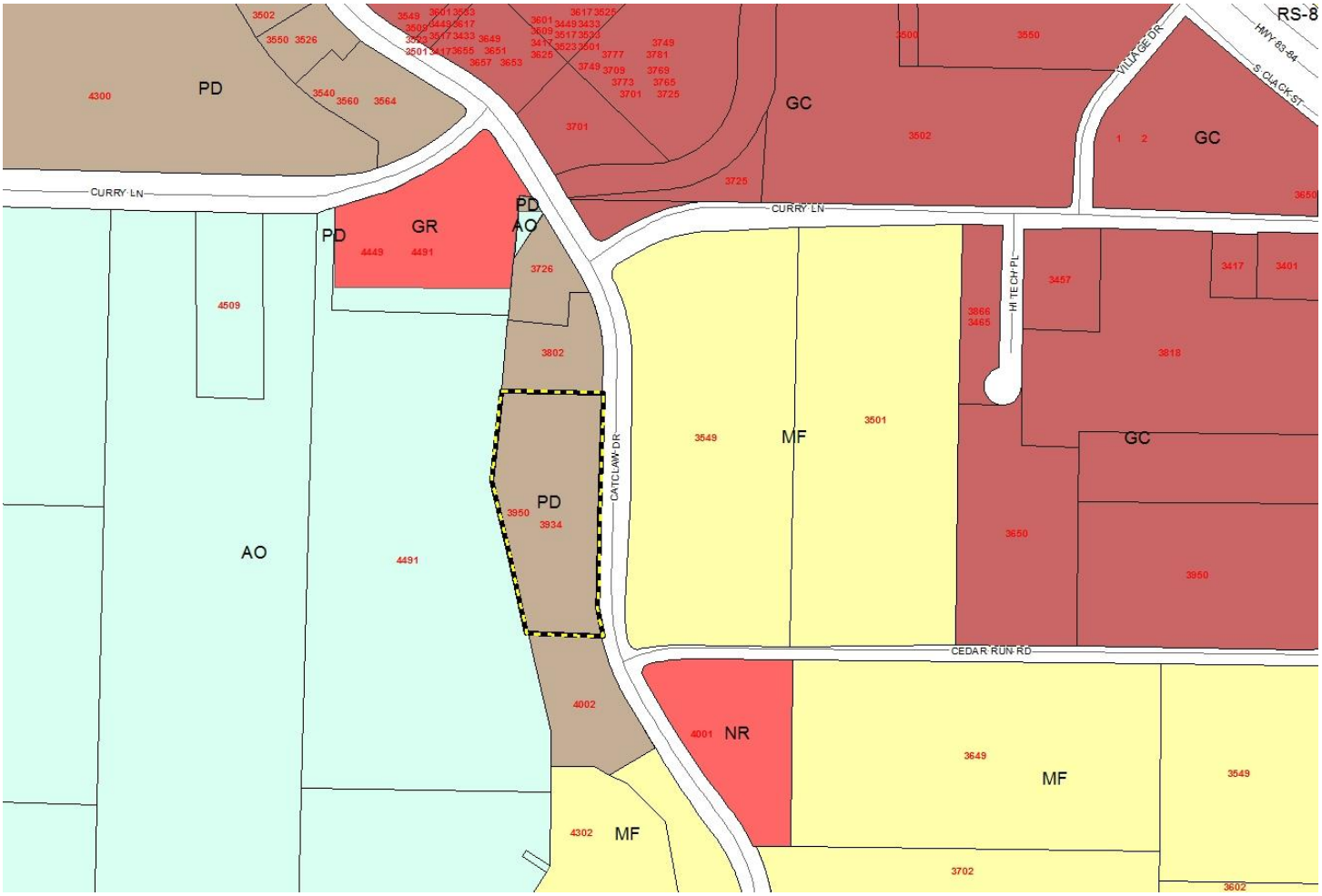
OWNER	SITUS	RESPONSE
ABILENE FEDERAL CREDIT UNION	3726 CATCLAW DR	
BRAZORIA SMITH LEASE LLC	4491 CURRY LN	
CATCLAW & CURRY LLC	3549 CURRY LN	
CATCLAW & CURRY LLC	3950 CATCLAW DR	
MORRISON & HALLMARK LP	3934 CATCLAW DR	
PAK HARRIS ENTERPRISES LTD	4491 CURRY LN	
PLOWMAN & WU PROPERTY	4449 CURRY LN	
PLOWMAN & WU PROPERTY	4001 CATCLAW DR	
RED ARMADILLO LTD	4002 CATCLAW DR	
SAHF II LIMITED PTSH & CURRY JUNCTION LLC	3802 CATCLAW DR	

PROPERTY OWNER NOTIFICATION MAP

0 in Favor- **Y**
0 Opposed- **N**

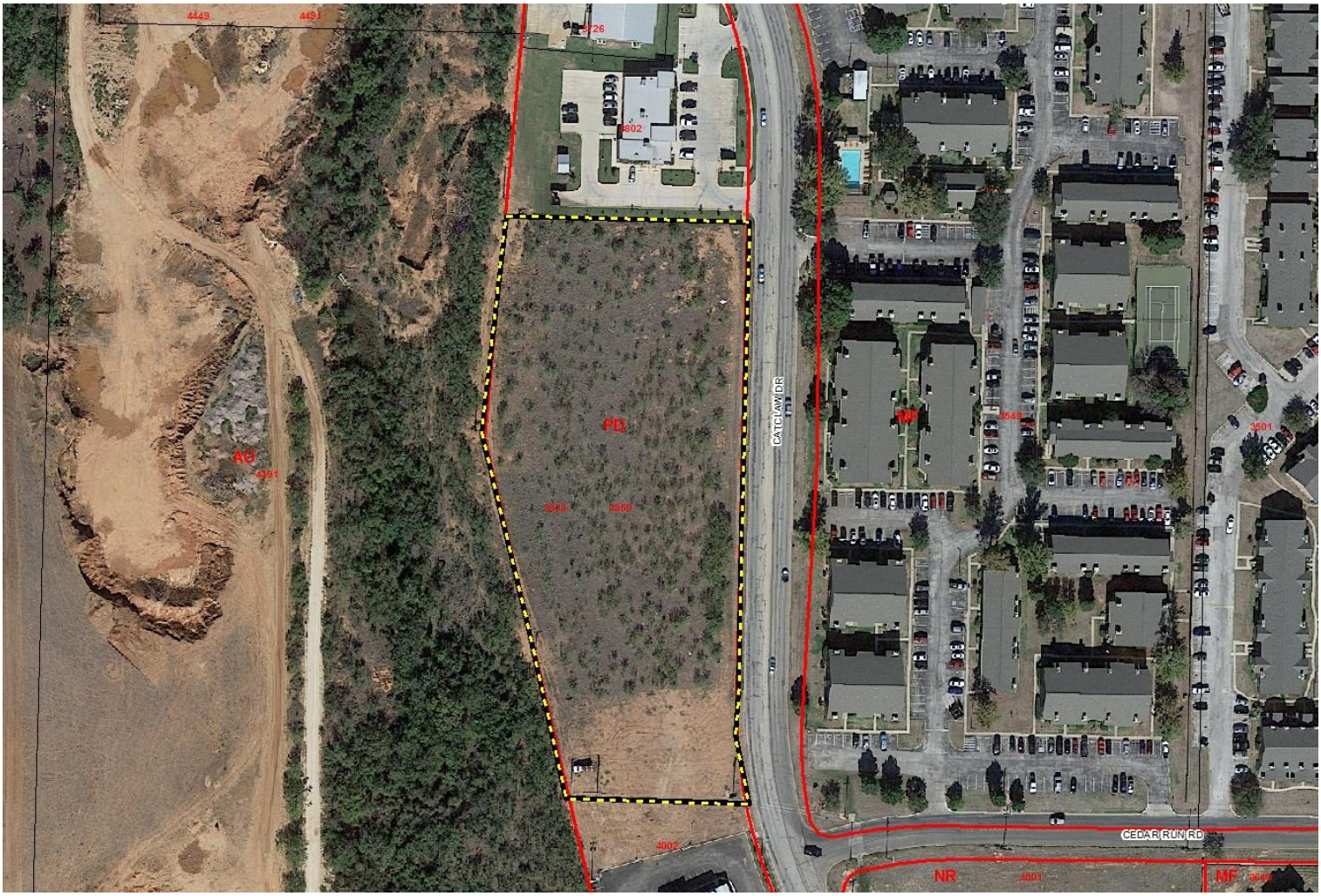
As of February 21, 2017

ZONING MAP



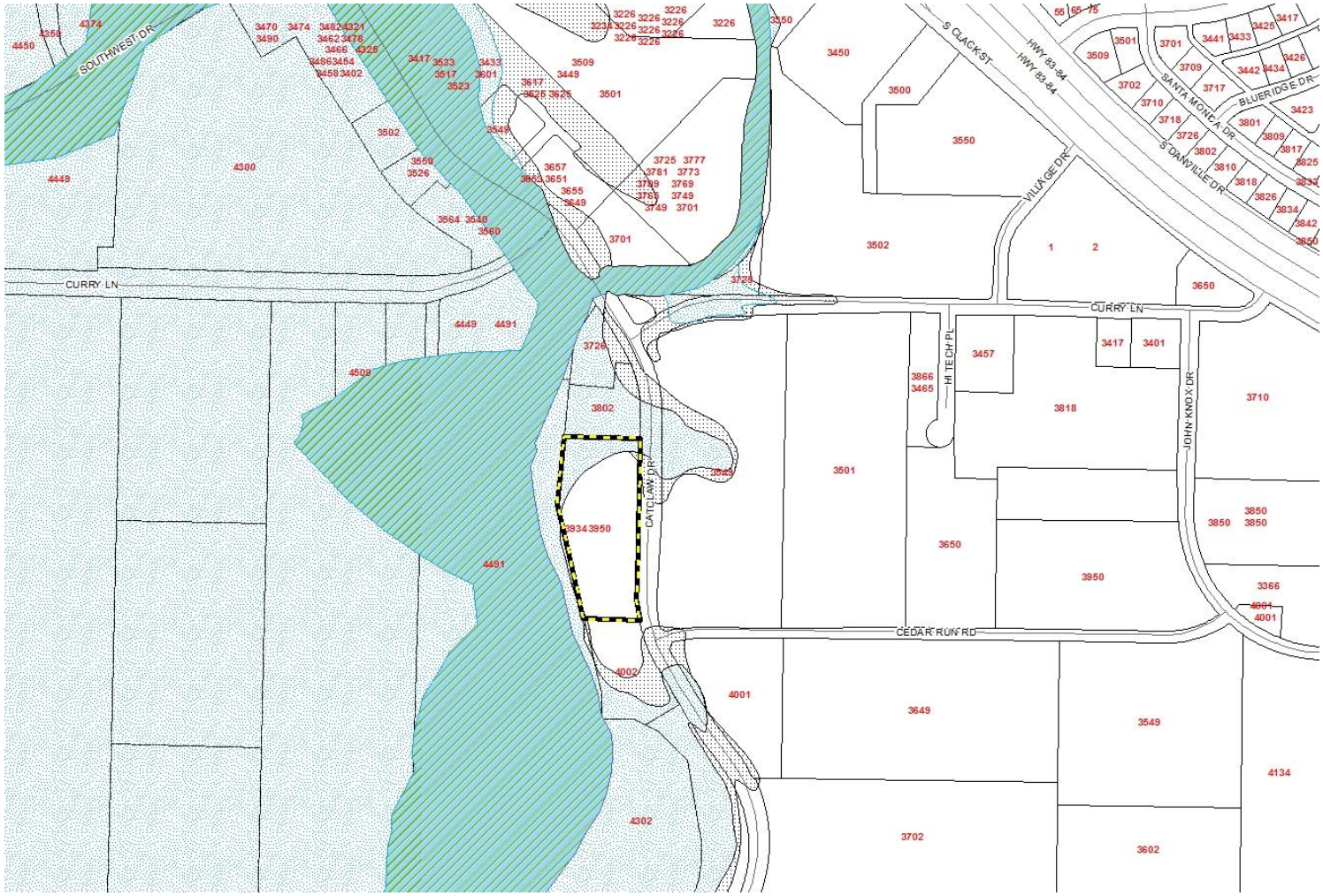
PD
GC
GR
AO
MF
NR
CURRY LN
CATCLAW DR
CEDAR RUN RD
HI TECH PL
VILLAGE DR
S CLACK ST
HWY 83-84
RS-8

AERIAL IMAGERY OF SUBJECT PARCEL



AERIAL IMAGERY OF SURROUNDING AREA

FLOODPLAIN MAP



SUBJECT PARCEL

View to west showing the subject parcel

SUBJECT PARCEL AND SURROUNDING AREA

Doctor's Office development to the north

Multi-Family development to the east

Restaurant development to the south

Z-2017-06

Applicant: Orange Theory Fitness

Agent: David Todd, Enprotec/ Hibbs & Todd

Request: To amend the terms and conditions of PD77 (Planned Development 77) to allow for Indoor Recreation as a permitted use

Location: 3934 and 3950 Catclaw Drive

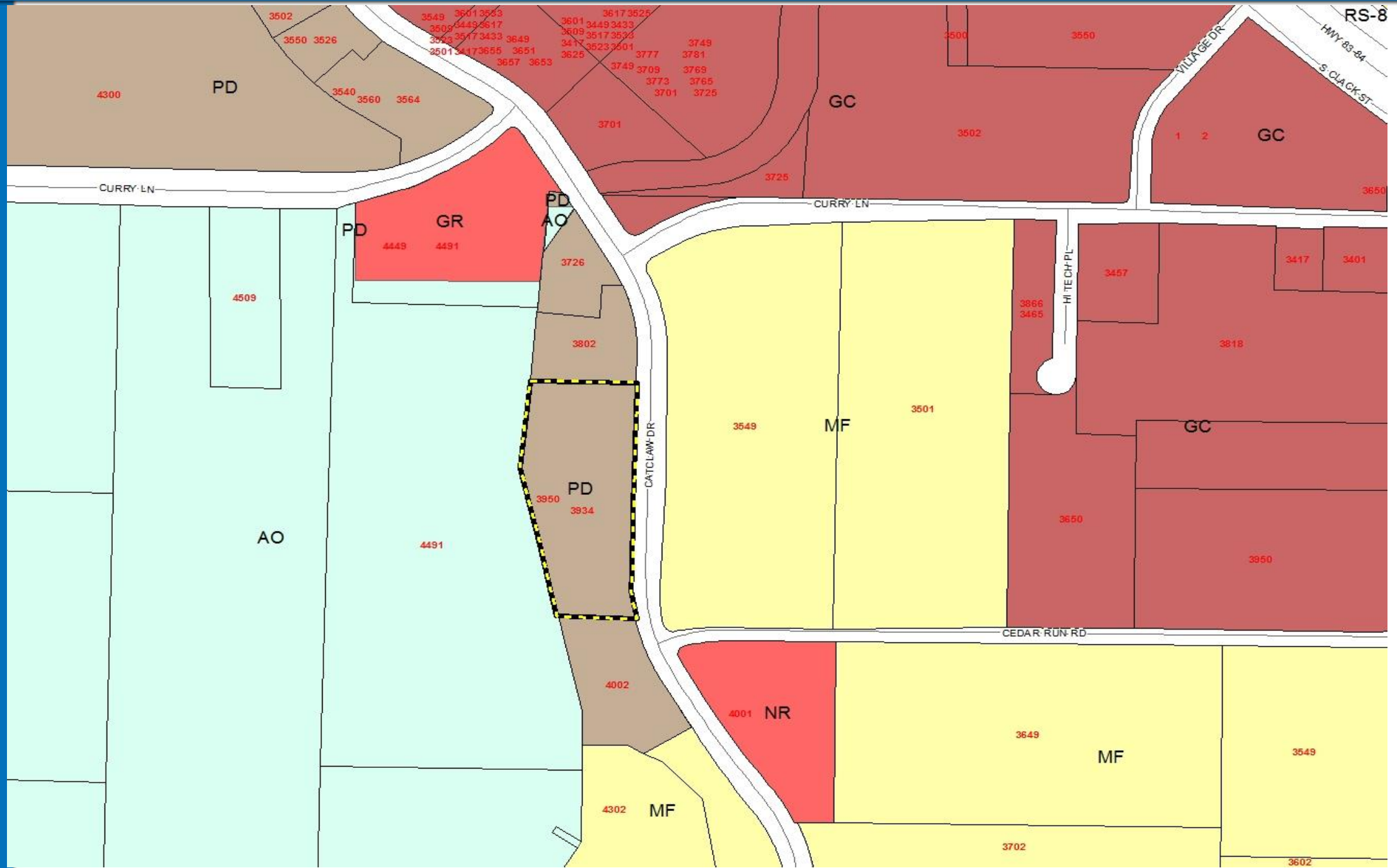
Notification: 0 in favor, 0 opposed

Staff Recommendation: Approval of the amendment to PD77 as requested

P & Z Recommendation: Approval of the amendment to PD77 as requested

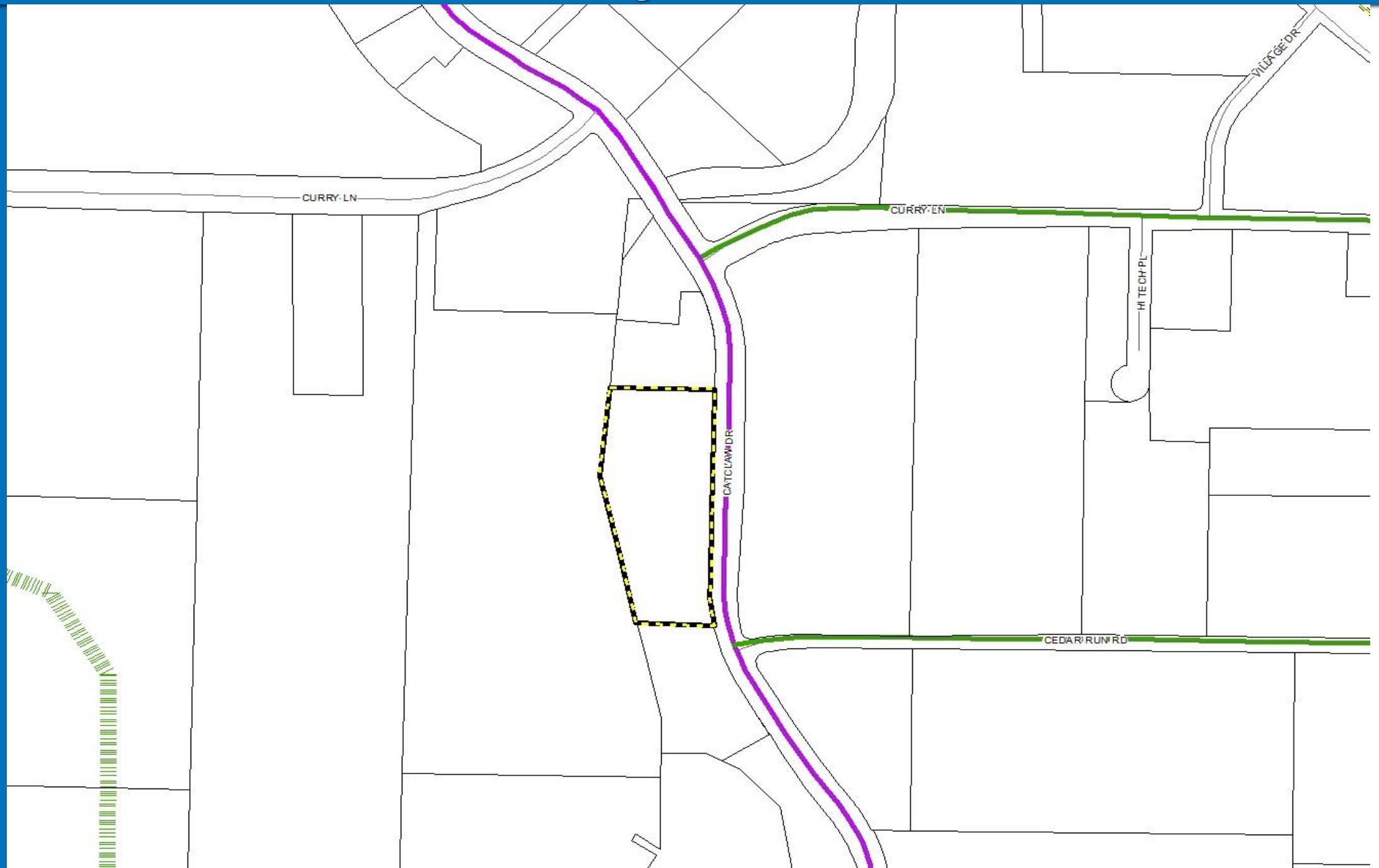
Z-2017-06 AERIAL IMAGERY

Z-2017-06 ZONING MAP

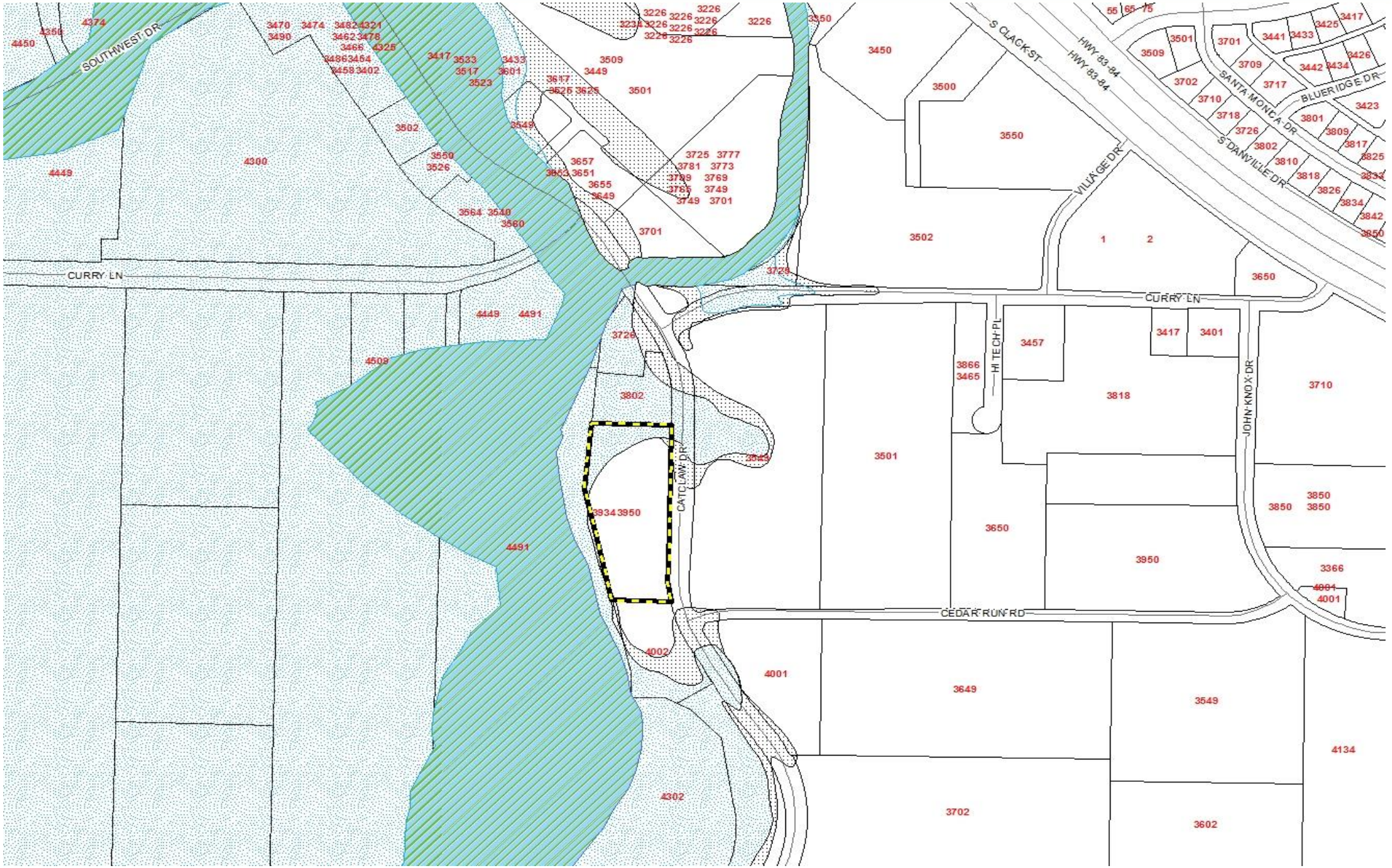


Z-2017-06 AERIAL IMAGERY

Master Thoroughfare Plan



Z-2017-06 FLOOD MAP



View to North Along Catclaw Dr.

This property is
subject to a
zoning request
For More Information Call 676-6237

View to the Southwest along Catclaw Dr.

View to the South of the subject property

View to the South from subject property

View to the South

View to East from subject property

Permitted Uses in NR Zoning

RESIDENTAL USES:

- P Bed & Breakfast
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Institutional
- P Dwelling – Multiple-Family
- P Dwelling – Single Family Detached
- C 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
- C Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Fuel Sales
- P Garage Sales
- P Home Occupation
- C Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- C Recycling Collection Point
- P Subdivision Sales Office (temporary)
- P Swimming Pools, Private (accessory to residential use)
- P Tennis Courts, Private (accessory to residential use)

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- C Cultural Facilities
- P Recreation – Outdoors (passive)
- C Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Fire/Police Station
- C 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 School: Public/Private

SERVICE

- C Automobile Wash
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- C Printing, Copying, Reproduction, Publishing
- 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
- C Fuel Sales
- P Liquor Store (Off Premises Consumption) *(Defined under Liquor Store)*
- C Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (indoor)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Broadcast Studio
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well

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

Current Planning Analysis

- Approx. 90% of site located outside 100-year floodplain
- Currently within an approved PD with a base commercial zoning
- Commercial uses to north and south, multi-family developments to the east
- Commercial development will not have substantial adverse effects on the properties

Z-2017-06

0 in Favor-
0 Opposed-
CURRY LN
CATCLAW DR
CEDAR RUN RD
HI TECH
4491
4449
3726
4509
3802
3465
3866
3818
3549
3501
3934
3950
3650
4491
4002
4001
3649
4302

Staff Recommendation

- Future development compatible with and will not substantially affect surrounding properties
- Commercial zoning on subject parcel appropriate as part of commercial corridor along Catclaw Drive

- Staff recommends the Commission recommend approval of the requested PD 77 amendment to the City Council

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Robert Hanna, City Manager**

FROM: **Dana Schoening, Director of Planning and Development Services, and Stanley Smith, City Attorney**

SUBJECT: **Ordinance & Public Hearing: REMOVE FROM TABLE *(Final Reading)* Amending Chapter 19 "Nuisances and Illegal Dumping," Article III, "Nuisance Enforcement," Section 19-34 "Administrative Procedure for Junked Vehicles" and Section 19-35 "Penalties, Costs and Fees for Section 19-1: Junked Vehicle". *(Dana Schoening)***

GENERAL INFORMATION

State law provides a procedure that a city may adopt for the abatement of junked vehicles. Such procedures have previously been adopted in Section 19-34 of the Abilene Municipal Code. State law requires any adopted procedures to comply with Chapter 683 of the Texas Transportation Code and Chapter 54 of the Local Government Code. In order to ensure compliance with procedures established by state law, Code Enforcement and the Legal department have reviewed the notice and hearing provisions for the abatement of junked vehicles established in the City's Ordinances. In conjunction with such review, the following changes are proposed to Section 19-34 of the Municipal Code.

19-34(1) – The Texas Transportation Code requires that if an individual who receives notice of a junked vehicle violation requests a hearing, such hearing must be held *not earlier than the 11th day after the date of the service of notice*. § 683.076(b). The current City Ordinance requires that a hearing be held within ten (10) days of the date of citation, which conflicts with state law.

19-34(2) First Paragraph – In order to comply with the above State Law provision, the proposed change to the ordinance is for the hearing to be held within 21 calendar days after a request for hearing but not earlier than the 11th day after citation or notice to the alleged violator. *See* Tex. Loc. Gov't Code 54.044(b)(1); Tex. Trans. Code § 683.076.

19-34(2) Third Paragraph – This proposed change inserts a required State law provision that a junked vehicle may not be reconstructed or made operable after code enforcement officers have removed the vehicle and provided notice to the state. *See* Tex. Trans. Code § 683.074(b)(1). After a vehicle has been declared a junked vehicle, has been removed from the property, and the City has notified the state of the removal, state law prohibits **anyone** from reconstructing or making that vehicle operable again for certificate of title purpose.

19-34(2) Fourth Paragraph – This section inserts an optional provision allowed by State law that helps code enforcement officers with enforcement of junked vehicle regulations. Code enforcement officers sometimes encounter the problem where a junked vehicle owner, once he or she receives notice of violation, will move the junked vehicle to another location within the City. This proposed provision provides that a junked vehicle

remains a public nuisance whether or not it is subsequently moved to another location in order to avoid enforcement. This section provides that the procedural timetables for enforcement are not reset if a vehicle is moved to a new location. *See* Tex. Trans. Code § 683.074(g)

The above amendments are requested in order to update the current ordinance to comply with State law. These changes will streamline the junked vehicle enforcement procedures and ensure both citizens and code enforcement officers with procedural safeguards in enforcement of junked vehicle standards.

SPECIAL CONSIDERATIONS

According to state law, a junked vehicle is any motor vehicle that is (a) wrecked, dismantled or partially dismantled, or discarded, or (b) inoperable and has remained inoperable for more than 72 consecutive hours if on public property or 30 consecutive days if on private property, and does not have attached to it an unexpired license plate and a valid inspection certificate. Additionally, a junked vehicle must not be visible from a public place or a public right-of-way.

A junked vehicle does not include an "antique" or "special interest" vehicle if the vehicle is stored on private property by a motor vehicle collector and screened from public view. An antique vehicle is a vehicle which is at least 25 years old. A special interest vehicle is a vehicle that has not been modified from its original condition and has historic value.

The junked vehicle ordinance does not apply to a licensed vehicle dealer or a junkyard.

In 2016 the City opened 344 cases for junked vehicles. 211 were voluntarily abated by owner, 10 were abated by the City, and 4 were donor tow. Approximately 61 complaints had no violation at the time of inspection, and other cases were closed for various reasons. The City issued 13 notices of violation. One owner admitted violation and was assessed a $50.00 civil penalty, 4 cases were dismissed by the hearing officer, and 8 owners owing $520 collectively are currently in collections.

In 2017 the City has opened 177 junked vehicle cases. 29 have been voluntarily abated by owner, and 2 were donor tows. 6 cases have been closed due to no violation. 114 cases are pending.

FUNDING/FISCAL IMPACT

There is no anticipated funding or fiscal impact.

STAFF RECOMMENDATION

Staff recommends approval of the amendments to the ordinance.

BOARD OR COMMISSION RECOMMENDATION

Not applicable.

ATTACHMENTS:

Description	Type
Ordinance	Ordinance
Ordinance Exhibit -redline	Exhibit
Ordinance Exhibit Clean	Exhibit
PowerPoint	Presentation

ORDINANCE NO._____

AN ORDINANCE AMENDING CHAPTER 19, "NUISANCES AND ILLEGAL DUMPING," ARTICLE III, "NUISANCE ENFORCEMENT," SECTION 19-34, "ADMINISTRATIVE PROCEDURE FOR JUNKED VEHICLES," AND SECTION 19-35, "PENALTIES, COSTS AND FEES FOR SECTION 19-1: JUNKED VEHICLE", OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY

WHEREAS, the Texas Transportation Code, Chapter 683, provides for a procedure that a municipality may adopt for the abatement of junked vehicles; and

WHEREAS, the City has previously adopted an alternative procedure, in Section 19-34 of its ordinances, in compliance with Chapter 54 of the Texas Local Government Code, for the abatement of junked vehicles, as defined in by State Law; and

WHEREAS, in order to comply with requirements of State Law for the procedure for the abatement of junked vehicles, certain amendments to Section 19-34 are required; and

WHEREAS, the heading of section 19-35 references an incorrect previous section, which needs to be corrected, but otherwise the substance of section 19-35 will remain unchanged.

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

PART 1: That Chapter 19, "Nuisances and Illegal Dumping", Sections 19-34 and 19-35 of the Abilene Municipal Code be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force or effect.

PART 3: That any persons, firm, or corporation violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than Two Hundred Dollars ($200.00). 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, a provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 23rd day of February, A.D., 2017.

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 __19__ day of March, 2017, 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 23rd day of March, 2017, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 23RD day of March, A.D., 2017.

ATTEST:

_____ _____

City Secretary Mayor

APPROVED:

City Attorney

EXHIBIT "A"

Sec. 19-34. Administrative procedure for junked vehicles.

Pursuant to Chapter 683 of the Texas Transportation Code, the following alternative procedure for administrative hearings will be used.

(1) Notice. A person charged with violating section 19-2 of this ordinance shall be entitled to request a hearing within ten (10) days of the date of citation or notice to the person charged. A citation issued as part of a procedure adopted under this section must: (a) notify the person charged with violating the ordinance that the person has the right to a hearing and (b) provide information as to the time and place of the hearing.

(2) Hearing. If timely requested in accordance with subsection (1), a hearing shall be held within 21 calendar days after such request, but not earlier than the 11th day after the date of citation or notice to the person charged. The hearing will be conducted by a hearing officer appointed by the municipal court clerk with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents. The original or a copy of the citation shall be kept as a record in the ordinary course of business of the municipality and is rebuttable proof of the facts it states. The person who issued the citation is not required to attend a hearing under this section.

The judge of the municipal court may enforce an order of a hearing officer compelling the attendance of a witness or the production of a document. A person charged with violating section 19-2 of this chapter who fails to appear at a hearing authorized under this section is considered to admit liability for the violation charged.

The hearing officer shall issue an order stating: (1) whether the person charged with violating section 19-2 of this chapter is liable for the violation and (2) the amount of a penalty, cost, or fee assessed against the person. A determination by the hearing officer that section 19-2 of this chapter has been violated may result in the removal of the vehicle by the City of Abilene and the assessment of all related penalties, costs, and fees including towing charges. An order issued under this section will be filed with the municipal court clerk, and the order shall be kept in a separate index and file from other municipal court citations. After removal, a vehicle is prohibited from being reconstructed or made operable. Notice identifying the vehicle or part of the vehicle shall be given to the department not later than the fifth day after the date of removal.

Relocation of a junked vehicle that is a public nuisance to another location within the City after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(3) Appeal. A person who is found by a hearing officer to have violated section 19-2 of this chapter may appeal the determination by filing a petition in municipal court before the 31st day after the date the hearing officer's determination is filed. An appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond in the amount set forth in the hearing officer's order with the municipal court.

Sec. 19-35. Penalties, costs and fees for section 19-2: junked vehicles.

(a) Any person, firm, or corporation who violates any provision of this Code related to junked vehicles shall be assessed a civil penalty in an amount not exceeding five hundred dollars ($500.00) for each offense, the amount to be determined by the hearing officer in his reasonable discretion, subject to review on appeal.

(b) Unless higher amounts are required by state law or a lesser amount is determined by the hearing officer or judge of the municipal court, the minimum penalties for junked vehicle violations shall be as follows:

(1) 1st offense of failure to abate each junked vehicle in authorized time limit . . . $50.00

(2) 2nd offense of failure to abate each junked vehicle within a six (6) month period . . . 75.00

(3) 3rd and all subsequent offenses of failure to abate each junked vehicle within a six (6) month period . . . 100.00

(c) In addition to the minimum penalty, charges for towing of the vehicle shall be added.

(d) All penalties, costs, and fees shall be deposited in the proper account of the general fund of the city, unless otherwise directed by resolution of the city council.

EXHIBIT "A"

Sec. 19-34. Administrative procedure for junked vehicles.

Pursuant to Chapter 683 of the Texas Transportation Code, the following alternative procedure for administrative hearings will be used.

(1) Notice. A person charged with violating section 19-2 of this ordinance shall be entitled to request a hearing within ten (10) days of the date of citation or notice to the person charged. A citation issued as part of a procedure adopted under this section must: (a) notify the person charged with violating the ordinance that the person has the right to a hearing and (b) provide information as to the time and place of the hearing.

(2) Hearing. If timely requested in accordance with subsection (1), a hearing shall be held within 21 calendar days after such request, but not earlier than the 11th day after the date of citation or notice to the person charged. The hearing will be conducted by a hearing officer appointed by the municipal court clerk with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents. The original or a copy of the citation shall be kept as a record in the ordinary course of business of the municipality and is rebuttable proof of the facts it states. The person who issued the citation is not required to attend a hearing under this section.

The judge of the municipal court may enforce an order of a hearing officer compelling the attendance of a witness or the production of a document. A person charged with violating section 19-2 of this chapter who fails to appear at a hearing authorized under this section is considered to admit liability for the violation charged.

The hearing officer shall issue an order stating: (1) whether the person charged with violating section 19-2 of this chapter is liable for the violation and (2) the amount of a penalty, cost, or fee assessed against the person. A determination by the hearing officer that section 19-2 of this chapter has been violated may result in the removal of the vehicle by the City of Abilene and the assessment of all related penalties, costs, and fees including towing charges. An order issued under this section will be filed with the municipal court clerk, and the order shall be kept in a separate index and file from other municipal court citations. After removal, a vehicle is prohibited from being reconstructed or made operable. Notice identifying the vehicle or part of the vehicle shall be given to the department not later than the fifth day after the date of removal.

Relocation of a junked vehicle that is a public nuisance to another location within the City after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(3) Appeal. A person who is found by a hearing officer to have violated section 19-2 of this chapter may appeal the determination by filing a petition in municipal court before the 31st day after the date the hearing officer's determination is filed. An appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond in the amount set forth in the hearing officer's order with the municipal court.

Sec. 19-35. Penalties, costs and fees for section 19-2: junked vehicles.

(a) Any person, firm, or corporation who violates any provision of this Code related to junked vehicles shall be assessed a civil penalty in an amount not exceeding five hundred dollars ($500.00) for each offense, the amount to be determined by the hearing officer in his reasonable discretion, subject to review on appeal.

(b) Unless higher amounts are required by state law or a lesser amount is determined by the hearing officer or judge of the municipal court, the minimum penalties for junked vehicle violations shall be as follows:

(1) 1st offense of failure to abate each junked vehicle in authorized time limit . . . $50.00

(2) 2nd offense of failure to abate each junked vehicle within a six (6) month period . . . 75.00

(3) 3rd and all subsequent offenses of failure to abate each junked vehicle within a six (6) month period . . . 100.00

(c) In addition to the minimum penalty, charges for towing of the vehicle shall be added.

(d) All penalties, costs, and fees shall be deposited in the proper account of the general fund of the city, unless otherwise directed by resolution of the city council.

Amending Administrative Procedure for Junked Vehicles

March 23, 2017

CITY OF ABILENE TEXAS

- State law provides that a City may adopt an administrative procedure for the abatement of junked vehicles.

- The City of Abilene previously adopted such a procedure as Section 19-34, code of ordinances.

- The requested amendments to the City's administrative procedure are needed to mirror state law procedures.

- The first request is to amend the hearing provision of the ordinance to read that, if timely requested by the vehicle's owner, a hearing must be held *"not earlier than the 11th day after the date of the service of citation"*. State law provides that the vehicle owner has 10 days from the date of service of the citation or notice to request a hearing.

- The ordinance currently reads that the hearing must be held within 10 days of the date of the citation, which conflicts with state law.

- The second request is to amend the hearing provision of the ordinance to require that a hearing be held within 21 days after the date the vehicle owner requests a hearing, but not earlier than the 11th day after the citation or notice is served on the vehicle owner.

- The ordinance currently reads that the hearing must be held within 10 days of the date of the citation, which conflicts with state law.

- The third request is to amend the ordinance to provide that a junked vehicle may not be made operable again after code enforcement officers have removed the vehicle and provided notice to the state. This would only occur after the hearing if one is timely requested by the vehicle owner.

- This provision is requested to comply with Section 683.074 of the Texas Transportation Code.

- The fourth request is to amend the ordinance to provide that once a vehicle owner receives a citation or notice of violation, if that owner then moves the vehicle to another location in the City, and the vehicle remains a junked vehicle at the new location, the time period for enforcement of the junked vehicle provisions continue and are not reset.

- This provision is allowed by Section 683.074(g) of the Texas Transportation Code and will assist code enforcement officers in enforcing the law.

- The final request is to amend the ordinance to reference section 19-2 in the heading of section 19-35 pertaining to civil penalties for violation of the junked vehicle ordinance.

- The civil penalty provisions of section 19-35 will remain the same.

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Robert Hanna, City Manager**

FROM: **Michael G. Rice, Director of Public Works**

SUBJECT: **Presentation and Discussion: By Fugro Roadware Inc., for the City of Abilene Pavement Condition Survey 2017** ***(Michael Rice)***

GENERAL INFORMATION

On September 8, 2016 the city council awarded a contract to FUGRO Roadware, Inc. for a Roadway Network Inventory. This contract included the following tasks: collect pavement surface distress information, collect digital images of the roadways, collect roadway attributes data, create shape files for use in Abilene's GIS system, pavement analysis data, provide output data to Abilene for upload into the Cartegraph Pavement Management System Software, creation of a written technical memorandum, and an oral presentation and maintenance plan for the city council.

The oral presentation will be provided by Paul McLandrich with FUGRO, and he will discuss the results of their information collection efforts, recommendations on roadway maintenance strategies and their costs, and a proposed maintenance budget strategy for the future.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

At this point in time, staff recommends that Council digest this information and identify what process or additional information may be needed to determine the target investment amount, and what is needed to solicit public input as part of that determination and the subsequent discussions on how to generate the target revenue.

BOARD OR COMMISSION RECOMMENDATION

City Council
Agenda Memo

City Council Meeting Date: 3/23/2017

TO: **Mayor & City Council**

FROM: **Danette Dunlap, City Secretary**

SUBJECT: **Resolution: Appointing members to various boards and commissions per the City Charter.** ***(Danette Dunlap)***

- ***Keep Abilene Beautiful***
- ***Board of Adjustment***
- ***Landmarks Commission***
- ***Board of Building Standards***

GENERAL INFORMATION

The Keep Abilene Beautiful has had a member resign, this is a recommendation from the .

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

Description	Type
Resolution	Resolution Letter
Resolution Exhibit A	Resolution Letter

- Keep Abilene Beautiful Suggestion — Backup Material
- Ashton Anderson Application — Backup Material
- Landmarks Commission Application — Backup Material
- Board of Adjustment Application — Backup Material
- Board of Building Roster — Backup Material

RESOLUTION NO._____-2017

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

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

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

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

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

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

PASSED this 9th day of March, A.D. 2017.

ATTEST:

_____
Danette Dunlap, TRMC
City Secretary

_____
Norm Archibald
Mayor

APPROVED:

_____
Stanley Smith
City Attorney

RESOLUTION NO. _____

EXHIBIT "A"

Landmarks Commission

Member	Appointment of the following:		
• Jamie Dalzell		Nov. 2017	(unexpired term)

Board of Adjustments

Member	Appointment of the following:	
• Mark Odle	(Regular)	Nov. 2018

Board of Building Standards

Member	Appointment of the following:	
• Gary Webb	(Alternate Banker)	Nov. 2018

Keep Abilene Beautiful

Member	Appointment of the following:	
• Ashton Anderson		Sept. 2018

New Appointment Form

M E M O R A N D U M

Date

TO: **Danette Dunlap, City Secretary**

FROM: **Nicole Eaves**

SUBJECT: Board **Appointment** Recommendation

Board: Keep Abilene Beautiful (KAB), 3 year term or until their successors are appointed, must complete 6 service hours per quarter and miss no more than 3 meetings annually.

Synopsis of vacancies: Previous member unable to fulfill term

Board Chair: Martin Garcia

Board Chair Recommendation: I support this applicant and feel his experience as a Master Gardener will be an asset to our board.

Staff Contact: Nicole Eaves

Staff Recommendation: Ashton, being a Master Gardener, would be a wealth of knowledge to our board and would allow us to expand on educational opportunities.

Recommendation:

Appoint:

Name/Title: Ashton Anderson
Place of Employment: Anderson Law
Mailing Address: 4910 Velta Lane, Abilene Texas 79606

Home Address:

Home Phone:
Business Phone: 214-726-2537
Race: White
Gender: Male

Position Previously Held by: Shane Johnson

Vacancy Due to: Shane and his family are relocating to El Paso, TX.

Service as Alternate: No alternates for this board, this is a new applicant

Date Potential Board Member was contacted: Application received on 2-3-2017

Comments: A full board will allow future applicants to fill vacancies left by a member who successfully complete their 3 year term for the first time in many years.

Name: Ashton Anderson

Home Address: 4910 Velta Ln., Abilene, TX 79606

Mailing Address: same City Limits? Yes (X) No ( )

Home Phone Number: — Cell Phone Number: 214-726-2537

Occupation: (if retired list former occupation) Attorney

Employer: self Business Phone Number: 325-261-3005

Business Address: 1053 S. 3rd St, Abilene, TX 79602 E-Mail Address: ara@ashtonanderson law.com

Number of years as an Abilene resident: 4½ years

Voter Registration Number: _____

Previous experience on boards, commissions, or other civic organizations:

Board or Organization	City, State	Dates	Your Role
Abilene Young Lawyers Assn.	Abilene, TX	2015 - 2017	2015 - secretary 2016 - VP 2017 - President

Please describe your education, professional affiliations, special knowledge, qualifications or expertise that relates to your possible appointment:

I am an attorney practicing in Texas for almost 9 years
I have completed the Master Gardener training through the Taylor County Extension office

Please give a brief statement why you would like to be appointed to a Board or Commission:

I would like to serve on the Keep Abilene Beautiful Board so that I can share my knowledge, assist in furthering KAB's mission, & to engage with like minded people that care about Abilene's community environment.

Please Note: While there is no guarantee of an appointment, all applications will be considered equally. Applications will be kept on file for one year and then either updated or withdrawn by the applicant. Please list the boards you are interested in serving: Keep Abilene Beautiful

Recognizing that serving on a Board or Commission is often time consuming, most meet on a monthly basis, are you committed to attending all regularly scheduled meetings? Yes

I have attended one or more meetings of the board or commission for which I have applied: No

Applicants Signature: [signature] **Date:** 2/2/17

FOR OFFICE USE ONLY
Date Application Received **2-03-2017** New Applicant? **x** Yes ___ No
If no, applicant previously served on _____ Board
Applicant appointed to _____ Term Expires _____

JAMIE DALZELL

dalzellrealtors.jamie@gmail.com

March 08, 2017

Danette Dunlap
City of Abilene, City Secretary
P.O Box 60
Abilene , Tx 79604
3256766439
danette.dunlap@abilenetx.com

Dear Danette Dunlap,

I'm contacting you in regards to the Board of Realtors Rep. position withthe Landmarks Commission-City of Abilene, advertised on the Abilene Chamber of Commerce Young Professional website on February 28th, 2017.

My relevant qualifications include my involvement with the Abilene Association of Realtors, Texas Association of Realtors and the National Association of Realtors. Also of note is one of my recent positions as the Texas Association Region 2 Director for Texas Association of Realtors. In this role, I am responsible for amending the association's bylaws, electing officers, approving expenditures from general reserves that exceed 10% of the annual budget, approving the association's strategic plan, approving an increase in membership dues, and defining regional boundaries

With my skill set and proven track record, I can be a valuable addition to Landmarks Commission-City of Abilene. I can be reached for an interview at your convenience.

Sincerely,
Jamie Dalzell
325.733.5636
dalzellrealtors.jamie@gmail.com

Name: Jamie DaRell

Home Address: 1006 Chriswood, Abilene, Tx. 79601

Mailing Address: 1006 Chriswood, City Limits? Yes (X) No ( )

Home Phone Number: 325-733-5636 Cell Phone Number: 325-733-5636

Occupation: (if retired list former occupation) Realtor

Employer: DaRell, Realtors. Business Phone Number: 325-677-2246

Business Address: 809 E. Hwy 80 E-Mail Address: darellrealtors.jamie@gmail.com

Number of years as an Abilene resident: born, raised, moved back in 2000

Voter Registration Number: 2127274945

Previous experience on boards, commissions, or other civic organizations:

Board or Organization	City, State	Dates	Your Role
Abilene Assoc. of Realtors.	Abilene (AAOR)	2009-current	Board of Dir. & 3 chair pos.
Texas Assoc. of Realtors	Texas (TAR)	2009-current	Region 2 Director
Abilene Chamber.	Abilene	2016-current	2 committees
National Assoc. of Realtors.	Nationwide (NAR)	2009-current	member

Please describe your education, professional affiliations, special knowledge, qualifications or expertise that relates to your possible appointment: TAR-Region 2 director, committee member of Professional Standards, Young Pros. Advisory, & Housing Initiatives. AAOR- on the Board of Directors, Chair Prof. Standards 2015-current, Chair. Housing Opportunities 2014; teach Prof. Standards to new members. Was Appointed the "Ray Scott" Distinguished Service Award &R 2016. Abilene Chamber YP event committee & Chamber. Planning committee &R Salute to small business.

Please give a brief statement why you would like to be appointed to a Board or Commission:

I like the idea of the City has been coming up with lately and would love to see some of our historical locations become more prevalent. Which would help the home sales and a bigger draw to move here.

Please Note: While there is no guarantee of an appointment, all applications will be considered equally. Applications will be kept on file for one year and then either updated or withdrawn by the applicant. Please list the boards you are interested in serving: Office of Neighborhood Services & Abilene Housing Authority

Recognizing that serving on a Board or Commission is often time consuming, most meet on a monthly basis, are you committed to attending all regularly scheduled meetings? YES.

I have attended one or more meetings of the board or commission for which I have applied: NO.

Applicants Signature: [signature] **Date:** 3/8/17

FOR OFFICE USE ONLY

Date Application Received_____ New Applicant? _____Yes____ __No

If no, applicant previously served on _____Board

Applicant appointed to _____Term Expires _____

February 17, 2017

Danette Dunlap, City Secretary
City of Abilene
P.O. Box 60
Abilene, Texas 79604

Dear Ms. Dunlap,

Please accept this correspondence as an expression of my interest in serving on an advisory or regulatory board with the City of Abilene. Enclosed is the required documentation.

I have expressed my interest in serving to the Mayor, City Manager and a Counsel Member. I look forward to the opportunity to be of service and involved in the Abilene community.

Please contact me if any further information is needed.
Thank you.

Sincerely,

Mark L. Odle
325-794-1013
325-513-6437

Name: Mark L. Odle

Home Address: 641 Cynthia Ct. Abilene, Texas 79602

Mailing Address: Same City Limits? Yes (X) No ( )

Home Phone Number: 325-513-6437 Cell Phone Number: 325-513-6437

Occupation: (if retired list former occupation) Commercial Banking

Employer: Prosperity Bank Business Phone Number: 325-794-1013

Business Address: 402 Cypress Abilene, Texas 79601 E-Mail Address: mark.odle@prosperitybankusa.com

Number of years as an Abilene resident: 1

Voter Registration Number: 1074689394

Previous experience on boards, commissions, or other civic organizations:

Board or Organization	City, State	Dates	Your Role
ISD Site Base	Big Spring, Boerne		Member
Soil & Water Cons. Dist.	Roswell, NM		State Board Member
Rotary	Big Spring, Boerne, Abilene		Board Member, Treasurer

Please describe your education, professional affiliations, special knowledge, qualifications or expertise that relates to your possible appointment: B.S. from Abilene Christian Univ. Texas Bankers Association, Independent Bankers Association, Risk Management Association. Knowledge of local real estate market. Knowledge of legal and regulatory environment.

Please give a brief statement why you would like to be appointed to a Board or Commission:
To serve the City of Abilene. To promote the change, growth and continued viability of the City.

Please Note: While there is no guarantee of an appointment, all applications will be considered equally. Applications will be kept on file for one year and then either updated or withdrawn by the applicant. Please list the boards you are interested in serving: DCOA, Planning & Zoning, Board of Adjustment, Building Standards.

Recognizing that serving on a Board or Commission is often time consuming, most meet on a monthly basis, are you committed to attending all regularly scheduled meetings? Yes.

I have attended one or more meetings of the board or commission for which I have applied: Yes

Applicants Signature: _____ **Date:** 02-17-2017

FOR OFFICE USE ONLY
Date Application Received_____ New Applicant? _____Yes____ __No
If no, applicant previously served on _____Board
Applicant appointed to _____Term Expires _____