

City Council  
Agenda Memo



City Council  
Meeting Date: 06/23/2011

**TO:** Larry D. Gilley, City Manager

**FROM:** Jon James, AICP  
Director of Planning and Development Services

**SUBJECT:** First reading on an Ordinance for Case No. Z-2011-12, a request from Edward and Lea Schafer Holt to rezone property from RS-6 (Single Family Residential) to RS-6/H (Single Family Residential/Historic Overlay) zoning, located at 602 Sayles Blvd.; and setting a public hearing for July 14, 2011.

**GENERAL INFORMATION**

The property has been developed with a residential dwelling unit. The McDaniel/Batjer/Edward House was built in 1928. It reflects the Prairie Style of architecture that is attributed to Frank Lloyd Wright. The owners have requested Historic Overlay Zoning for this property, because they feel that the historic integrity of the house is intact. The house is in excellent condition, as it has been well preserved over the years by its owners. The surrounding properties have all been developed with residential dwelling units.

The Future Land Use section of the Comprehensive Plan designates this general area as low-density residential. The requested zoning is an overlay zoning that would not affect the underlying residential zoning and would be compatible with the surrounding land uses. There are several properties in the immediate area that have Historic Overlay zoning. In addition, the house is a contributing structure in the Historic Sayles District designated by the Texas Historical Commission.

**STAFF RECOMMENDATION**

Staff recommends approval as requested.

**LANDMARKS COMMISSION RECOMMENDATION**

Approval as requested, by a vote of five (5) in favor to none (0) opposed.

**BOARD OR COMMISSION RECOMMENDATION**

The Planning and Zoning Commission recommended approval as requested by a vote of six (6) in favor (Bixby, Yungblut, Glenn, Famble, Rosenbaum, & McClarty) and none (0) in opposition.

**ATTACHMENTS**

Ordinance  
Staff Report with Maps  
Public Comment Received

Prepared by:

Name: Matt Jones

Title: Planner II

June 9, 2011

Item No. 6.1

Disposition by City Council

- Approved      Ord/Res# \_\_\_\_\_
- Denied      \_\_\_\_\_
- Other      \_\_\_\_\_

\_\_\_\_\_  
City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART B, "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, Subpart E, 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 23<sup>rd</sup> day of June A.D. 2011.

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 18<sup>th</sup> day of May, 2011, 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 14<sup>th</sup> day of July, 2011 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 14<sup>th</sup> day of July, A.D. 2011.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_

EXHIBIT "A"

Rezone property from RS-6 (Single Family Residential) to RS-6/H (Single Family Residential/Historic Overlay) zoning.

Legal Description:

HIGHLAND ADDN, BLOCK 9, LOT 7-8&S30 LT 6

Location:

602 Sayles Blvd

-END-

# ZONING CASE Z-2011-12

## STAFF REPORT



### APPLICANT INFORMATION:

Edward and Lea Schafer Holt

### HEARING DATES:

Planning & Zoning Commission: June 6, 2011

City Council 1<sup>st</sup> Reading: June 23, 2011

City Council 2<sup>nd</sup> Reading: July 14, 2011

### LOCATION:

602 Sayles Blvd.

### REQUESTED ACTION:

Rezone property from RS-6 to RS-6/H



### SITE CHARACTERISTICS:

The subject property is approximately 0.42 acres and is currently zoned RS-6 (Single Family Residential). The property has been developed with a residential dwelling unit. The adjacent properties have RS-6 zoning to the north, east, and west with RS-12 zoning to the south.

### ZONING HISTORY:

The property was annexed in 1895 and was zoned RS-6 sometime after it was annexed.

### ANALYSIS:

- Current Planning Analysis

The property has been developed with a residential dwelling unit. The McDaniel/Batjer/Edward House was built in 1928. It reflects the Prairie Style of architecture that is attributed to Frank Lloyd Wright. The owners have requested Historic Overlay Zoning for this property, because they feel that the historic integrity of the house is intact. The house is in excellent condition, as it has been well preserved over the years by its owners. The surrounding properties have all been developed with residential dwelling units.

- Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this general area as low-density residential. The requested zoning is an overlay zoning that would not affect the underlying residential zoning and would be compatible with the surrounding land uses. There are several properties in the immediate area that have Historic Overlay zoning. In addition, the house is a contributing structure in the Historic Sayles District designated by the Texas Historical Commission.

**PLANNING STAFF RECOMMENDATION:**

Staff recommends approval as requested.

**LANDMARKS COMMISSION RECOMMENDATION:**

The Landmarks Commission recommended approval by a vote of five (5) in favor to none (0) in opposition.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

The Planning and Zoning Commission recommended approval as requested by a vote of six (6) in favor (Bixby, Yungblut, Glenn, Famble, Rosenbaum, & McClarty) and none (0) in opposition.

**NOTIFICATION:**

Property owners within a 200-foot radius were notified of the request.

<b>OWNER</b>	<b>ADDRESS</b>	<b>RESPONSE</b>
KIEL MARTHA	533 SAYLES BL	
PEQUENO MARIA LUZ HERNANDEZ	517 SAYLES BL	
FERREL DANA LYNN	525 SAYLES BL	
VANDENHOUTEN WALTER & SHARON	601 SAYLES BL	
TEMPLIN JERRY DON	541 SAYLES BL	
CAMPBELL KYLA M	510 SAYLES BL	
MOORE MICHAEL ALLEN	542 SAYLES BL	
BURSON DALE	609 HIGHLAND AV	
LEHRER CLINTON RUSSELL	543 HIGHLAND AV	
PUGH PEGGY S	601 HIGHLAND AV	
HELMS DONALD WRAY &	535 HIGHLAND AV	
FULLER CHARLIE J	2142 S 7TH ST	In favor
HIGHLAND CHURCH OF CHRIST	523 HIGHLAND AV	
BROWDER TERRY L & LAURA H	642 SAYLES BL	
HALL MICHAEL	618 SAYLES BL	
HIGHLAND CHURCH OF CHRIST	2143 S 5TH ST	
HIGHLAND CHURCH OF CHRIST	2133 S 5TH ST	
LEVESQUE GEORGE P & SIDNEY S	534 SAYLES BL	In favor
WILLIAMSON DOUGLAS A &	502 SAYLES BL	In favor
HOLT EDWARD L & LEA SCHAFFER	602 SAYLES BL	In favor

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











City Council  
Agenda Memo



City Council  
Meeting Date: 06/23/2011

**TO:** Larry D. Gilley, City Manager

**FROM:** Jon James, AICP  
Director of Planning and Development Services

**SUBJECT:** First reading on an Ordinance for Case No. Z-2011-13, a request from Vanessa Gwen Hollabaugh to rezone property from RS-6 (Single Family Residential) to RS-6/H (Single Family Residential/Historic Overlay) zoning, located at 802 Meander Street.; and setting a public hearing for July 14, 2011.

**GENERAL INFORMATION**

Currently the property is zoned RS-6 and has been developed with a residential dwelling unit. The Collins/St. John/Givens House was built in 1921. This house is a classic example of Craftsman Architecture. The owner has requested Historic Overlay Zoning for this property, because she feels that the historic integrity of the house is intact. The house has been well maintained and is in good condition. The surrounding properties have all been developed with residential dwelling units.

The Future Land Use section of the Comprehensive Plan designates this general area as low-density residential. The requested zoning is an overlay zoning that would not affect the underlying residential zoning and would be compatible with the surrounding land uses. There are several properties in the immediate area that have Historic Overlay zoning.

**STAFF RECOMMENDATION**

Staff recommends approval as requested.

**LANDMARKS COMMISSION RECOMMENDATION**

Approval as requested, by a vote of five (5) in favor to none (0) opposed.

**BOARD OR COMMISSION RECOMMENDATION**

The Planning and Zoning Commission recommended approval as requested by a vote of six (6) in favor (Bixby, Yungblut, Glenn, Famble, Rosenbaum, & McClarty) and none (0) in opposition.

**ATTACHMENTS**

Ordinance  
Staff Report with Maps  
Public Comment Received

Prepared by:

Name: Matt Jones

Title: Planner II

June 9, 2011

Item No. 6.2

Disposition by City Council

- Approved      Ord/Res# \_\_\_\_\_  
 Denied      \_\_\_\_\_  
 Other      \_\_\_\_\_

\_\_\_\_\_  
City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART B, "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, Subpart E, 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 23<sup>rd</sup> day of June A.D. 2011.

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 18<sup>th</sup> day of May, 2011, 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 14<sup>th</sup> day of July, 2011 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 14<sup>th</sup> day of July, A.D. 2011.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_

EXHIBIT "A"

Rezone property from RS-6 (Single Family Residential) to RS-6/H (Single Family Residential/Historic Overlay) zoning.

Legal Description:

ALTA VISTA, BLOCK 5, LOT 1 & 2

Location:

802 Meander St.

-END-

# ZONING CASE Z-2011-13

## STAFF REPORT



### APPLICANT INFORMATION:

Vanessa Gwen Hollabaugh

### HEARING DATES:

Planning & Zoning Commission: June 6, 2011

City Council 1<sup>st</sup> Reading: June 23, 2011

City Council 2<sup>nd</sup> Reading: July 14, 2011

### LOCATION:

802 Meander St.

### REQUESTED ACTION:

Rezone property from RS-6 to RS-6/H



### SITE CHARACTERISTICS:

The subject property is approximately 0.34 acres and is currently zoned RS-6 (Single Family Residential). The property has been developed with a residential dwelling unit. The adjacent properties have RS-6 zoning to the south, east, and west with MD (Medium Density Residential) zoning to the north.

### ZONING HISTORY:

The property was annexed in 1895 and was zoned RS-6 sometime after it was annexed.

### ANALYSIS:

- Current Planning Analysis

Currently the property is zoned RS-6 and has been developed with a residential dwelling unit. The Collins/St. John/Givens House was built in 1921. This house is a classic example of Craftsman Architecture. The owner has requested Historic Overlay Zoning for this property, because she feels that the historic integrity of the house is intact. The house has been well maintained and is in good condition. The surrounding properties have all been developed with residential dwelling units.

- Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this general area as low-density residential. The requested zoning is an overlay zoning that would not affect the underlying residential zoning and would be compatible with the surrounding land uses. There are several properties in the immediate area that have Historic Overlay zoning.

**PLANNING STAFF RECOMMENDATION:**

Staff recommends approval as requested.

**LANDMARKS COMMISSION RECOMMENDATION:**

The Landmarks Commission recommended approval by a vote of five (5) in favor to none (0) in opposition.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

The Planning and Zoning Commission recommended approval as requested by a vote of six (6) in favor (Bixby, Yungblut, Glenn, Famble, Rosenbaum, & McClarty) and none (0) in opposition.

**NOTIFICATION:**

Property owners within a 200-foot radius were notified of the request.

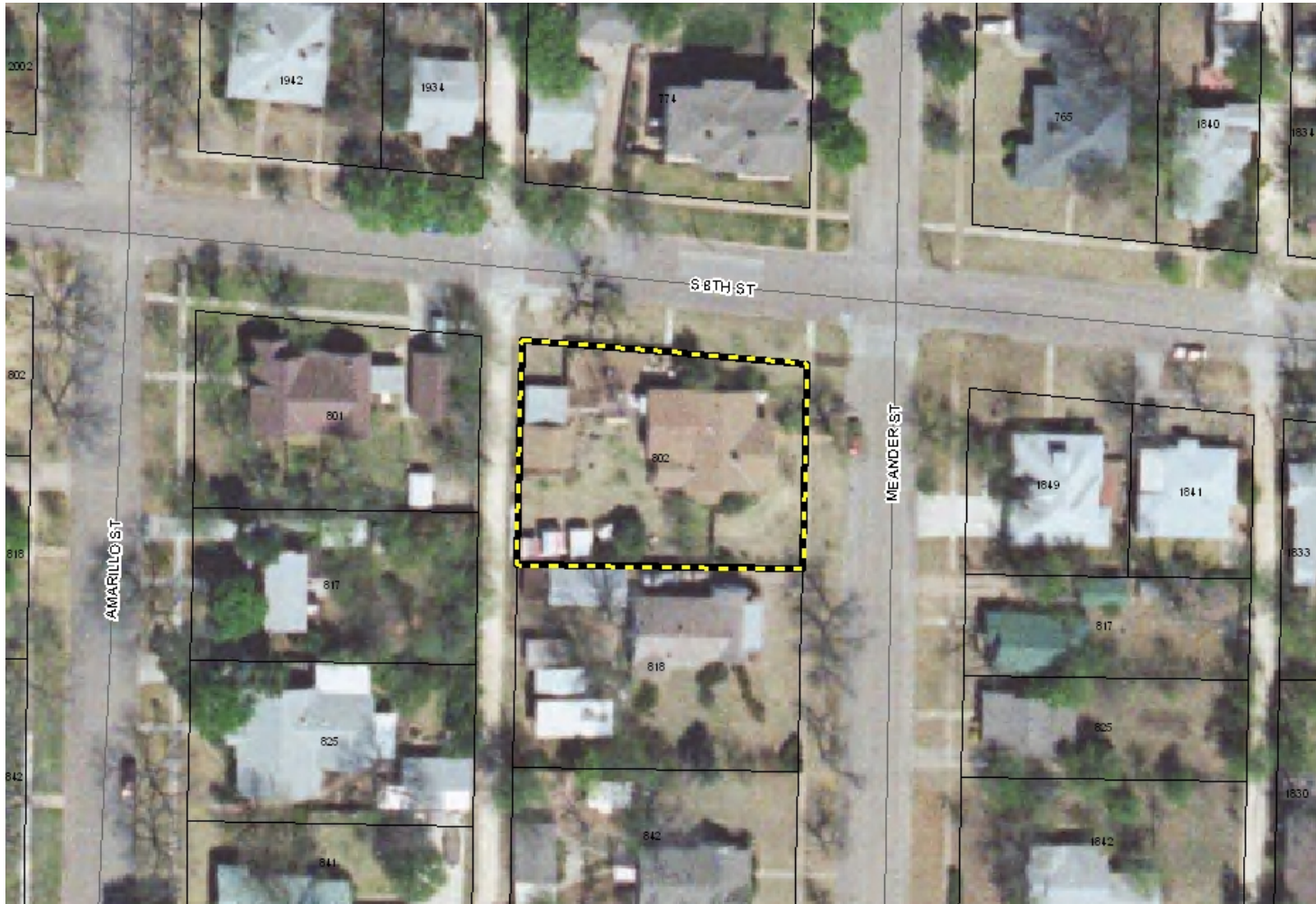
OWNER	ADDRESS	RESPONSE
AUSTIN LOU ELLA	1842 IDLEWILD ST	
THYNE CHARLES J II & ANNA F	841 AMARILLO ST	
FOLWELL LAWRENCE J	757 AMARILLO ST	
LEE MATTHEW S	842 MEANDER ST	
COOK JAMES BEARDEN	817 AMARILLO ST	
RAY LINNIE	825 MEANDER ST	
WOMACK JEROD & MINDI	1840 S 8TH ST	
BENNETT JON W & TERRIE P	774 MEANDER ST	
VESCO PROPERTIES LLC	1934 S 8TH ST	
BENNETT DONALD R	818 MEANDER ST	In favor
LAYTON MARK E & DIANA S	825 AMARILLO ST	
SMITH ANNE & CLEO L CUDE	1849 S 8TH ST	In favor
BOWSER THOMAS E & DIANA E	801 AMARILLO ST	
HOLLABAUGH VANESSA GWEN	802 MEANDER ST	
BLAGG ROBERT K & MARCIA G	742 MEANDER ST	
LEVRETS GREGORY R & DEBRA	765 MEANDER ST	
MOROPOULOS GEORGE L &	1942 S 8TH ST	
MASTERS OPAL	1841 S 8TH ST	In favor
MORTON CAROLE WILSON &	817 MEANDER ST	

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













ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART B, "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, Subpart E, 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 23<sup>rd</sup> day of June A.D. 2011.

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 18<sup>th</sup> day of May, 2011, 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 14<sup>th</sup> day of July, 2011 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 14<sup>th</sup> day of July, A.D. 2011.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_

EXHIBIT "A"

Rezone property from RS-8 (Single Family Residential) to RS-8/H (Single Family Residential/Historic Overlay) zoning.

Legal Description:

BELMONT ADDN, BLOCK 8, LOT 1

Location:

1702 Belmont Blvd.

-END-

# ZONING CASE Z-2011-14

## STAFF REPORT



### APPLICANT INFORMATION:

Jon and Theresa James

### HEARING DATES:

Planning & Zoning Commission: June 6, 2011  
City Council 1<sup>st</sup> Reading: June 23, 2011  
City Council 2<sup>nd</sup> Reading: July 14, 2011

### LOCATION:

1702 Belmont Blvd.

### REQUESTED ACTION:

Rezone property from RS-8 to RS-8/H



### SITE CHARACTERISTICS:

The subject property is approximately 0.20 acres and is currently zoned RS-8 (Single Family Residential). The property has been developed with a residential dwelling unit. The adjacent properties have RS-8 zoning to the north, south, and east with HC (Heavy Commercial) zoning to the west.

### ZONING HISTORY:

The property was annexed in 1926 and was zoned RS-8 sometime after it was annexed.

### ANALYSIS:

- Current Planning Analysis

Currently the property is zoned RS-8 and has been developed with a residential dwelling unit. The Brumley/McEachern/James House was built in 1931. This house exhibits an eclectic mix of architectural styles based upon the Bungalow that was derived from the popular Craftsman Style during the 1930's, and in addition integrates the Spanish/Mission and French Provincial Revival styles of that period. The owners have requested Historic Overlay Zoning for this property, because they feel that the historic integrity of the house is intact. The house has been well maintained and is in good condition. The surrounding properties have all been developed with residential dwelling units except for businesses to the west along Butternut Street.

- Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this general area as low-density residential. The requested zoning is an overlay zoning that would not affect the underlying residential zoning and would be compatible with the surrounding land uses. A few other properties in the area have received the overlay and this request could encourage other properties to seek the Historic Overlay zoning.

**PLANNING STAFF RECOMMENDATION:**

Staff recommends approval as requested.

**LANDMARKS COMMISSION RECOMMENDATION:**

The Landmarks Commission recommended approval by a vote of five (5) in favor to none (0) in opposition.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

The Planning and Zoning Commission recommended approval as requested by a vote of six (6) in favor (Bixby, Yungblut, Glenn, Famble, Rosenbaum, & McClarty) and none (0) in opposition.

**NOTIFICATION:**

Property owners within a 200-foot radius were notified of the request.

OWNER	ADDRESS	RESPONSE
THAXTON ERIC & JANLYN	1625 BELMONT BL	
WOODY MILDRED M	1718 BELMONT BL	
SALVATION ARMY THE	1713 BUTTERNUT ST	
BLACKSTOCK ROLAND B & KATHLEEN	1717 BUTTERNUT ST	
LEWIS DARRELL K	1734 BELMONT BL	
CAMPBELL ROYCE FRANK	1633 BELMONT BL	
LANGFORD KELLY ELANIE	1710 BELMONT BL	
HERRERA RAYMOND R & AMELIA	1641 BELMONT BL	
JAMES JON & THERESA W	1702 BELMONT BL	
HARRISON EDDIE & REBECCA	1626 BELMONT BL	
REED CHARLES &	1633 BUTTERNUT ST	
TYLER TAMMY	1609 BELMONT BL	
THORNTON MIKE	1641 BUTTERNUT ST	
SALVATION ARMY THE	1709 BUTTERNUT ST	
PAGE JAMES A & DEBRA G	1618 BELMONT BL	
CORPIAN GARY LEE & MARILU LEE	1649 BUTTERNUT ST	
THE SALVATION ARMY	1229 S 17TH ST	
CHAMBERS MATHEW JOHN &	1649 BELMONT BL	

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











**City Council  
Agenda Memo**



**City Council  
Meeting Date: 06/23/11**

**TO: Larry D. Gilley, City Manager**

**FROM: Jon James, Director  
Planning and Development Services**

**SUBJECT: Resolution authorizing the City Manager to enter into an advanced funding agreement with the Texas Department of Transportation, in relation to a 2009 Statewide Transportation Enhancement project for improvements along South 1<sup>st</sup> street from Locust Street to Butternut Street.**

**GENERAL INFORMATION**

The Transportation Enhancement Program offers funding to expand transportation choices and enhance non-traditional activities related to surface transportation. The program is federally funded through the Surface Transportation Program (STP), administered by TxDOT for the Federal Highway Administration (FHWA). Projects must relate to one of 12 surface transportation categories. Projects under this program are reimbursed at 80% of allowable costs with a 20% local match and 100% of any overruns paid by the recipient. Projects are selected through a highly competitive application process.

The Texas Transportation Commission awarded Abilene one such project for improvements along S 1<sup>st</sup> Street that will include medians, sidewalks crosswalks, landscaping and similar enhancements. The total estimated project cost is \$877,094. The federal reimbursement at 80% would cover up to \$701,675 of this project cost with local 20% match of \$175,419.

This resolution will allow City Staff move forward with the project so that we can design and begin obtaining all necessary permits and clearances. No reimbursement is available for any work done prior to the enactment of this agreement. Bid awards for any construction will be processed normally, including City Council review.

**SPECIAL CONSIDERATIONS**

None

**FUNDING/FISCAL IMPACT**

This is a cost reimbursement program with federally funding capped at \$701,675. The City will be responsible for any costs overruns. The City will be providing design, engineering, and construction letting for this project.

**STAFF RECOMMENDATION**

Approval

**ATTACHMENTS**

Resolution  
AFA Agreement

Prepared by:

Name: Edward S. McRoy  
Title: Assistant Director,  
Planning and Development  
Services

Item No. 6.4

Disposition by City Council

- Approved Ord/Res#
- Denied
- Other

\_\_\_\_\_  
City Secretary

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE TO CERTIFY FUNDING AND SUPPORT FOR THE STATEWIDE TRANSPORTATION ENHANCEMENT PROGRAM AND AUTHORIZE THE CITY MANAGER TO ENTER INTO AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS ALONG S. 1<sup>ST</sup> STREET FROM LOCUST STREET TO BUTTERNUT STREET AUTHORIZED BY SAID PROGRAM.**

**WHEREAS**, an effective and efficient transportation system for the movement of people, goods and services is an essential component of a municipality; and,

**WHEREAS**, improvements to the transportation infrastructure along S. 1<sup>st</sup> Street for vehicular, pedestrian and bicycle traffic will enhance the safety, efficiency attractiveness and economic viability of this critical corridor within the community; and,

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number 112342 dated July 29, 2010 awarding funding for improvements along S. 1<sup>st</sup> Street in the 2009 Program Call of the Transportation Enhancement Program;

**NOW THEREFORE, BE IT RESOLVED:**

**PART 1:** That the City of Abilene agrees to commit to the development, implementation, construction, management, financing and maintenance of certain improvements along S 1<sup>st</sup> Street from Locust St. to Butternut St.

**PART 2:** That the City agrees to provide a required local match at 20% or greater of the total project cost. The City agrees to fund all non-federally fundable items and 100 percent of any overruns as needed.

**PART 3:** That the City Manager is authorized to enter into an advanced funding agreement with the Texas Department of Transportation specifying details of said improvements and the responsibilities of the parties involved.

**PART 4:** That this resolution is effective immediately.

PASSED this 23th day of June A.D. 2011.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
For a Transportation Enhancement (TE) Project**

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

**WITNESSETH**

**WHEREAS**, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

**WHEREAS**, the Local Government prepared and submitted to the State a nomination form for consideration under the Transportation Enhancement Program for the project which is briefly described as South 1<sup>st</sup> Street Improvements, called the Project; and

**WHEREAS**, the Texas Transportation Commission (the Commission) passed Minute Order Number 112342 dated July 29, 2010 awarding funding for projects in the 2009 Program Call of the Transportation Enhancement Program, including the Project; and

**WHEREAS**, the rules and procedures for the selection and administration of the Transportation Enhancement Program are established in 43 TAC Sections 11.200 et seq.; and

**WHEREAS**, the governing body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated \_\_\_\_\_, which is attached to and made a part of this LPAFA as Attachment A;

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

**AGREEMENT**

**1. Period of the Agreement**

The period of this LPAFA is as stated in the Master Agreement, without exception.

**2. Termination of this LPAFA**

The termination of this LPAFA shall extinguish all rights, duties, obligations, and liabilities of the State under this LPAFA. This LPAFA shall be terminated under the conditions as stated in the Master Agreement or for the conditions, and in the manner, described in this LPAFA.

**A.** If the potential termination of the LPAFA is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible

breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

- B. If the Local Government withdraws from the Project after the LPAFA is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
- C. A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this LPAFA will be appropriately terminated. A project may be eliminated from the program if:
  - 1. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §11.200 et seq.
  - 2. The implementation of the Project would involve significant deviation from the activities as proposed in the nomination form.
  - 3. The Local Government withdraws from participation in the Project.
  - 4. The Project is not implemented within a reasonable time, as determined by the State in consultation with the Local Government. In absence of information suggesting that a shorter or longer period is appropriate, four years or less from the date the project was approved for TE funding by Minute Order, will be presumed to be a reasonable time. The project must therefore, be awarded to contract before July 29, 2014.
  - 5. The State determines that federal funding may be lost due to the Project not being implemented and completed.
  - 6. Funds are not appropriated, in which case this LPAFA shall be terminated immediately with no liability to either party. Payment under this LPAFA beyond the current fiscal biennium is subject to availability of appropriated funds.
  - 7. The Local Government fails to attend bi-annual progress meetings as scheduled by the State.

### 3. Amendments

Amendments of this LPAFA shall be made as described in the Master Agreement, without exception.

### 4. Scope of Work, Use of Project, and Project Location

The scope of work for the Project, which is shown in Attachment B, the Project Location Map, described in the nomination form and as approved by the Texas Transportation Commission, consists of: On South 1<sup>st</sup> street (BI 20-R) from Locust street to Butternut street in the City of Abilene. New sidewalks with special pavement accents, ADA ramps, pedestrian lighting, and landscaping which will include crosswalks and a landscaped raised median providing a safe zone for pedestrians

Any project changes proposed must be submitted in writing by the Local Government to the State. Changes may also require an amendment to the LPAFA and the approval of the Federal Highway Administration (FHWA), the State, or the Commission. Any changes undertaken without written approval and agreement amendment may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

### 5. Right of Way and Real Property Acquisition

Right of way and real property acquisition shall be the responsibility of the Local Government, as stated in the Master Agreement unless otherwise provided below:

- A.** Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of the Project site under this LPAFA, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- B.** The Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- C.** The Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- D.** In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this LPAFA and before federal spending authority is approved.
- E.** The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- F.** The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage, and recommended compensation. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market value.
- G.** Condemnation shall not be used to acquire real property for this enhancement Project.



- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this LPAFA. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of each parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Any costs associated with the relocation of displaced persons and personal property, as well as incidental expenses incurred in acquiring property to implement a TE project, will be the responsibility of the Local Government and current property owner at no cost to the State.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this LPAFA. The separate agreement must establish that the Project will be dedicated for public use for a period of time commensurate with the federal investment, but not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed separate agreement shall be provided to the State.
- J. The Local Government agrees to execute individually or produce a legal document as necessary to provide for the Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- K. Local governments receiving federal funds must retain an inventory of funded items and monitor projects in accordance with 23 CFR 710 and 49 CFR 18, and with the procedures provided in the State's Local Government Project Procedures manual. The Local Government agrees to monitor the Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the federal funds, as appropriate.
  - 1. The Local Government agrees to the review of their Project accounts and site visits by the State during the development of the Project at any time;
  - 2. Upon Project completion, the State will continue to perform periodic visits to confirm the Project's continued use and upkeep.
- L. Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired.

## 6. Utilities

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

stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction begins.

## 7. Environmental Assessment and Mitigation

- A. Environmental assessment and mitigation will be carried out as stated in the Master Agreement, unless otherwise specified in the Transportation Enhancement Nomination form and approved by the State. These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the nominating form and approved by the State.
- B. Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all environmental problems have been remediated. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

## 8. Architectural and Engineering Services

Architectural and engineering services will be provided by the Local Government. Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement.

- A. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's *Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites* and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the two American Association of State Highway Transportation Officials' (AASHTO) publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.
- B. When architectural and engineering services are provided by or through the Local Government, then the following Items 1 and 2 apply.
  - 1. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
  - 2. The Local Government shall submit to the State all documentation relating to authorized costs incurred for providing architectural and engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed **eighty** percent (**80%**) of the eligible authorized costs.

- C. When architectural and engineering services are provided by or through the State, then the following applies:  
The State is responsible for the delivery and performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the Project purposes. The State will cooperate fully with the Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

## 9. Construction Responsibilities

- A. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.
- C. All contract change order review and approval procedures must be approved by the State prior to start of construction.
- D. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- E. For federally funded contracts, the parties to this LPAFA will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Part 635, Subpart B.
- F. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this LPAFA of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

## 10. Project Maintenance

- A. Upon completion of the Project the Local Government will be responsible for maintaining the landscape items only for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period of time commensurate with the federal investment. Should the Local Government at any time after Project completion decide it can no longer maintain and operate the Project for its intended purpose, the Local Government shall return the federal funds in accordance with CFR federal recapture requirements. Should the Local Government consider conveying the property, the State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction detailing any required recapture, must be obtained from FHWA prior to the

transaction. Advance notice from the Local Government of their intended action must be submitted to the State for an FHWA review a minimum of sixty (60) days prior to any action being taken by the Local Government. The Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from the Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

- B. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this LPAFA.
- C. Should the Local Government derive any income from the development and operation of the Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property, shall be set aside for future maintenance. A project income report shall be submitted to the State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures established under OMB-133 and with the property management standards established in Title 49 CFR §18.32.
- D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of the Project.

#### **11. Local Project Sources and Uses of Funds**

- A. A Project Budget Estimate is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, utilities, environmental assessments and remediation, architectural and engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the nomination form approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated. Costs may be shifted between work categories after receiving written approval from the State.
- B. If the Local Government will perform any work under this LPAFA for which reimbursement will be provided by or through the State, the Local Government must complete training *in Local Government Procedures Qualification for the Texas Department of Transportation* before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has

been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- C. A Source of Funds estimate based on the budget provided in the project nomination form is included as Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to the Project by state and local sources, as well as the maximum amount in federal Transportation Enhancement Funds assigned by the Commission to the project. The parties agree that this agreement may be amended from time to time as required to meet the funding commitments based on revisions to the Transportation Improvement Program, FPAA, or other federal document.
- D. The Local Government will be responsible for all non-federal participation costs associated with the Project, including any overruns in excess of the Project cost estimate and any operating or maintenance expenses. Donations of real property, materials, and services required for the development of the Project may be eligible to count towards the local funding share of a project as in-kind contributions, if provided for in the original Transportation Enhancement Nomination's authorized budget. In order to be considered eligible, in-kind contributions must be provided from sources other than the Local Governmental nominating the project. The value of the allowable in-kind contributions of real property, materials, or services will be based on verification of their fair market value at donation. In-kind contribution of services are limited to preparation of plans, specifications, and estimates. The maximum allowable in-kind contribution to a project is twenty percent (20%) of the eligible Project's cost; however in-kind contributions may not be used to match the cost of any direct or indirect TxDOT Administrative cost incurred. The estimate amount of in-kind contribution provided in the project's budget is \$0 for the items of none. If a remaining balance of the Local Government's required match is due after the in-kind contribution's value is applied, the remainder must be provided in cash. The Local Government may also provide other property, services, or materials to reduce the overall cost of a Project, but it will not be considered as an in-kind contribution.
- E. The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed eighty percent (80%) of the actual cost of the work up to the amount of funds approved for the Project by the Texas Transportation Commission. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- F. Following execution of this LPAFA, but prior to the performance of any review work by the State, the Local Government will pay to the State the amount sufficient to cover the estimated cost for the State's review. The Local Government shall advance to the State twenty percent (20%) of the State's administrative and associated cost for review of the plans, specifications, and estimate. The Local Government must also advance to the State not applicable percent (not applicable%) of the Project's estimated preliminary engineering cost, if the State is administering the architectural or engineering contract. The estimated amount of this advance for this Project's preliminary engineering is \$ 4,306, including cash and allowable in-kind contributions. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government must advance to the State twenty percent (20 %) of the State's administrative and associated costs for letting and construction. The Local Government shall also remit its remaining financial share for the

Project's estimated construction and construction engineering costs if the State is letting the project. The amount to be advanced for this Project's Construction is estimated to be \$ 1,400, including cash and allowable in-kind contributions.

- G. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government is responsible for twenty percent (20%) of the authorized Project cost and one hundred percent (100%) of any overruns above the federally authorized amount. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- H. Whenever funds are paid by the Local Government to the State under this LPAFA, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project.
- I. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- J. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- K. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal Regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
- L. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this LPAFA or indirectly through a contract or subcontract under this LPAFA. Acceptance of funds directly under this LPAFA or indirectly through a contract or subcontract under this LPAFA acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- M. The State will not pay interest on any funds provided by the Local Government.
- N. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this LPAFA.
- O. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State

no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

## **12. Inspection of Books and Records**

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

## **13. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

## **14. Lobbying Certification**

The parties to this LPAFA reaffirm that no federal funds were used to lobby for Project funds, but that if any lobbying occurred, it has been reported to the State, pursuant to the requirements of the Master Agreement.

## **15. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar format. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in which the activity will be completed in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

## **16. Incorporation**

The Master Agreement is incorporated into this LPAFA as if fully set forth in this LPAFA.

## **17. Insurance**

If this LPAFA authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons

and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**18. Debarment Certification**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this LPAFA, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this LPAFA shall require any party to a contract, subcontract, or purchase order awarded under this LPAFA to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

**19. Civil Rights Compliance**

The Local Government shall comply with the regulations of the U.S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**20. Disadvantaged Business Enterprise Program Requirements**

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://txdot.gov/business/business\\_outreach/mou.htm](http://txdot.gov/business/business_outreach/mou.htm).
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this LPAFA. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this



LPAFA. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

## 21. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient or sub-recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B. For sub-awards greater than \$25,000, the Local Government, as a recipient of federal funding, agrees that it shall:
1. Obtain and provide to the State and the federal government, a Central Contracting Registry (CCR) number with the federal government (Federal Acquisition Regulation, Part 4, Sub-part 4.1100). The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
  2. Obtain and provide to the State and the federal government, a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  3. Report the total compensation and names of its top executives to the State and federal government if:
    - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and
    - ii. Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

## 22. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at [http://www.txdot.gov/contact\\_us/audit.htm](http://www.txdot.gov/contact_us/audit.htm).

CSJ #0006-18-054 Fed.# STP 2011(260)TE  
District #08-Abilene  
Code Chart 64 #00150  
Project: South 1<sup>st</sup> Street Improvements  
Federal Highway Administration  
CFDA # 20.250  
Not Research and Development

- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the LPAFA, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

**23. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

\_\_\_\_\_  
Janice Mullenix  
Director of Contract Services  
Texas Department of Transportation

\_\_\_\_\_  
Date

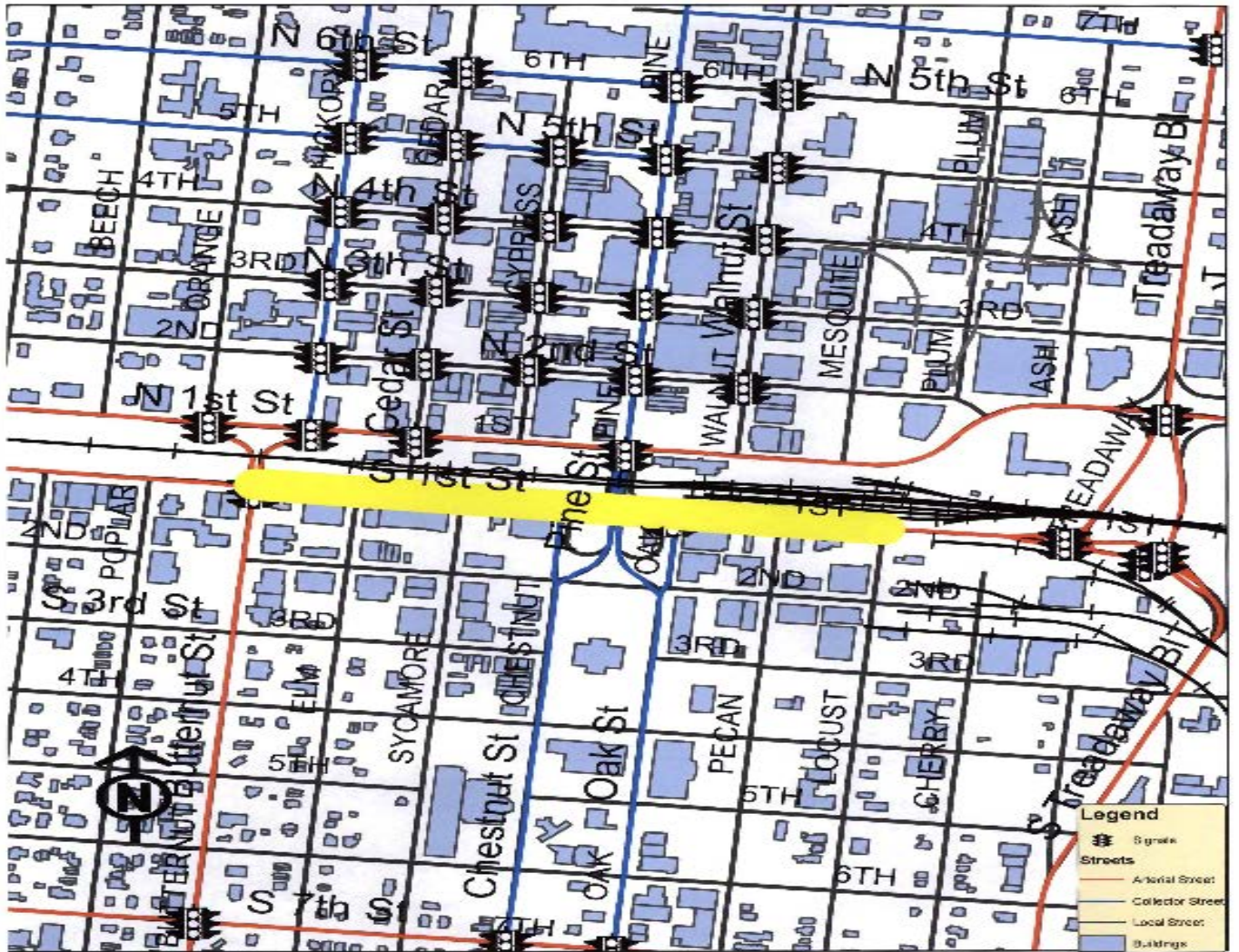
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**ATTACHMENT A  
RESOLUTION OF LOCAL GOVERNMENT  
APPROVING THIS LPAFA**

**(Insert approved resolution)**

### ATTACHMENT B PROJECT LOCATION MAP

Attachment A  
Project Description and Location  
South 1st Street Downtown Pedestrian Improvements



12/11/2009

CSJ #0006-18-054 Fed.# STP 2011(260)TE

District #08-Abilene

Code Chart 64 #00150

Project: South 1<sup>st</sup> Street Improvements

Federal Highway Administration

CFDA # 20.250

Not Research and Development

### ATTACHMENT C

#### PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

##### On System - TE Project Budget Estimate -LG Performs PE Work or Hires Consultant / Local Lets Project to Construction

Description of Project Cost and credit to be incurred:	Total Estimated Cost or Value = Authorized Amount	Federal Participation (80% or <) Max TE \$701,675		State Participation = 0		Local Participation (20% or greater)		
		%	Cost	%	Cost	%	Cost	
Locals will retain their local match for those services administered/contracted themselves.								
Direct Project PE Cost								
PE – includes design, planning, PS&E, clearances & administration by LG	\$40,000	80%	\$32,000		0	20%	\$8,000	
Environmental Cost - by LG	\$5,000	80%	\$4,000		0	20%	\$1,000	
ROW–Acquisition and associated costs by LG	\$0		0				0	
Subtotal thru PE by Local Gov't	\$45,000	80%	\$36,000	0%	\$0	20%	\$9,000	
TxDOT Administrative cost incurred - PE:	Based on 3% of estimated construction cost in Nomination's budget						*Due within 30 days	
TxDOT - PE Phase – Direct State Cost reviews, clearances, admin., coordination, etc.	\$21,531	80%	\$17,225			20%	*\$4,306	
TxDOT Administrative cost incurred - CE:	Based on 1% of estimated construction cost in Nomination's budget						**Due 60 days prior	
TxDOT - Construction Phase – Direct State Costs-oversight, inspection, site visits, etc.	\$7,000	80%	\$5,600	0%	\$0	20%	**\$1,400	
Direct Project Construction COST	Locals retain their local participation below to apply to project cost directly							
Construction Contract – work bid items, letting fees, clearances, permits, etc. ,CE	\$803,563	80%	\$642,850	0%	\$0	20%	\$160,713	
Subtotal Construction	\$803,563	80%	\$642,850	0%	\$0	20%	\$160,713	
<b>TOTAL</b>	<b>\$877,094</b>	<b>80%</b>	<b>\$701,675</b>	<b>0%</b>	<b>\$0</b>	<b>20%</b>	<b>\$175,419</b>	

The Estimated Total Participation by the Local Government is \$175,419, plus 100% of overruns. Payment of the Local's share of TxDOT's ADM PE Cost to be incurred is \$4,306, due within 30 days from execution of the AFA contract. Payment of the Local's share of TxDOT's ADM Cost for Construction to be incurred is \$1,400, due 60 days prior to the Construction contract being advertised for bids. This is an estimate. The eligible percent of required local match as stated in the nomination is 20% or greater. The final amount of Local Government participation will be based on actual costs and values. The Maximum TE federal funds available for the project are \$701,675.



City Council  
Agenda Memo

TO: Larry D. Gilley, City Manager

City Council  
Meeting Date: 06/23/11

FROM: Ken Dozier, Fire Chief

SUBJECT: Fireworks Display

**GENERAL INFORMATION**

The Fire Marshal has received an equest from AM Pyrotechnics for City Council approval (City Code Sec. 20-25) to conduct a fireworks display at 2070 Zoo Lane & Transformer Trail on July 4, 2011. An alternate rain date is set for July 5, 2011.

**SPECIAL CONSIDERATIONS**

AM Pyrotechnics will comply with all applicable codes. Provisions will be made to provide fire personnel at the display site. Abilene Police Department Traffic Division has been notified.

**FUNDING/FISCAL IMPACT**

No fiscal impact to the City is anticipated.

**STAFF RECOMMENDATION**

Staff recommends approval.

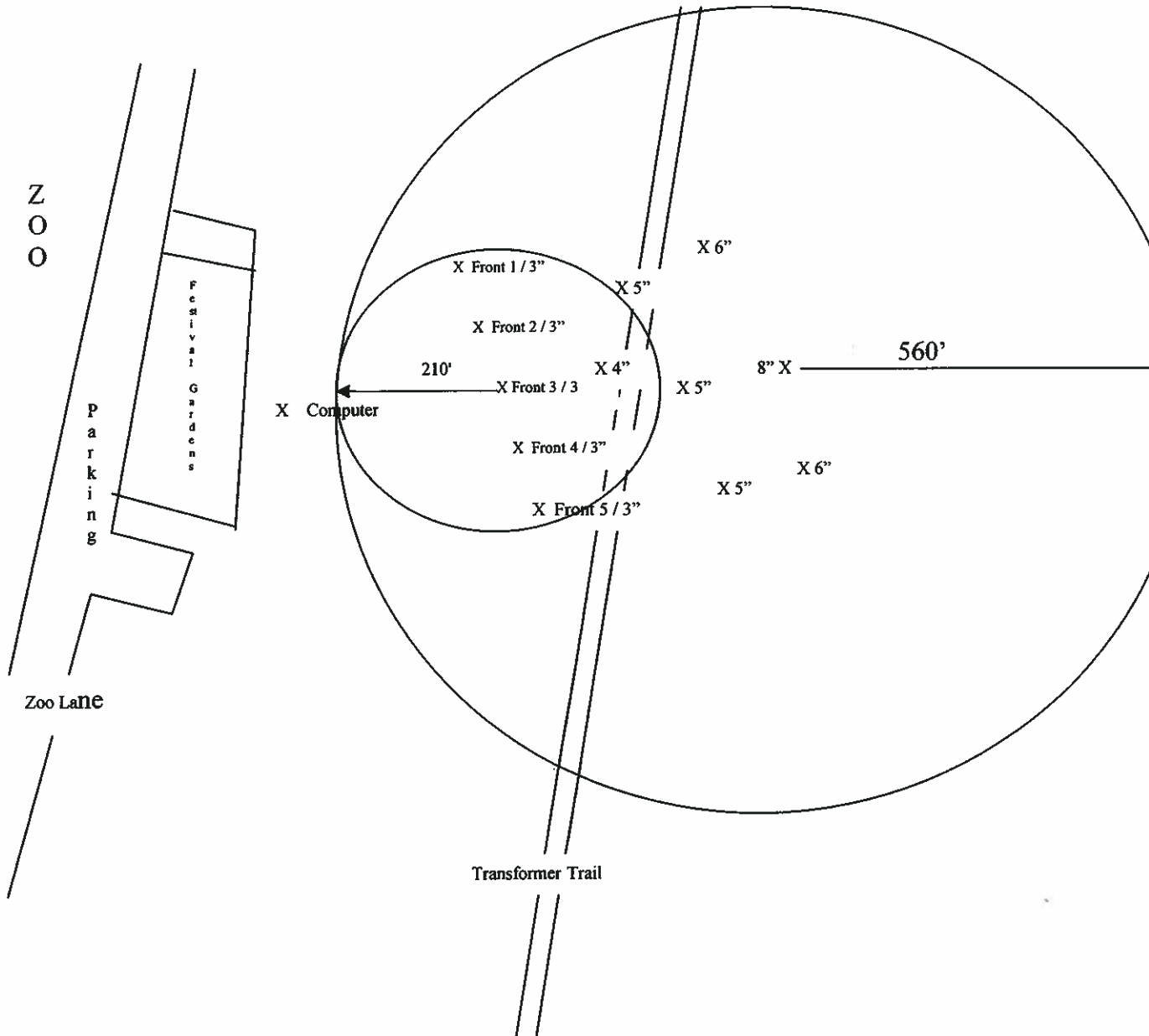
**BOARD OR COMMISSION RECOMMENDATION**

**ATTACHMENTS**

Display Site Map  
Certificate of Insurance

<p><b>Prepared By:</b></p>  <p>Name <u>Ken Dozier</u>  Title <u>Fire Chief</u></p>	<p><b>Item No.</b> <u>6.5</u></p>	<p><b>Disposition by City Council</b></p> <p><input type="checkbox"/> Approved      <input type="checkbox"/> Denied  <input type="checkbox"/> Other      Ord/Res # _____</p> <p>_____</p> <p><b>City Secretary</b></p>
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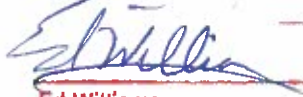
City of Abilene  
2070 Zoo Lane/Transformer Lane  
Abilene Texas, 7960



1. Area is securing a minimum of 600ft. from center of shoot site.
2. Audience will remain in designated area during show. Fences, barricade tape, and security will be used for crowd control.
3. All cultivated land will be mowed or plowed prior to display.
4. The area to the North West and South will be mowed prior to display.
5. Transformer Trail will be closed before, during, and after display, until display area is cleared.
6. There are no healthcare facilities, schools, churches, or hazmat within 1400ft.
7. Winds will normally be from the South, Southwest.
8. Parking is to the South and West of the shoot site. Traffic will exit to the south.

**City of Abilene Fire Department**  
This stamp is not a building permit or an approval of the violation of local, state or federal law.

Accepted       Accepted with Conditions  
 Attached       Listed

  
 Ed Williams      5/31/2011  
 Date





**City Council  
Agenda Memo**



**TO:** Larry D. Gilley, City Manager

**City Council  
Meeting Date: Jun 23, 2011**

**FROM:** Rodney Taylor, Assistant Director of Water Utilities

**SUBJECT:** Purchase of Digital Imaging Particle Analyzer for the Abilene Environmental Laboratory.

**GENERAL INFORMATION**

The Abilene Environmental Laboratory (AEL) regularly tests both drinking water and non-potable water for bacteria, algae, and particle content. Non-potable water can be raw lake water, wastewater, or other water of unknown quality. Particle analyses typically involves laboratory technicians using conventional microscopes in a tedious and time consuming process of identifying and counting specific types of microbes and/or particles within a sample. The Digital Imaging Particle Analyzer (DIPA) is capable of automatically performing those same functions in a fraction of the time. The DIPA specified uses powerful pattern recognition algorithms to identify and quantify in just a few seconds the individual particle types within a heterogeneous sample. The DIPA would be used for routine analysis of lake waters, drinking water, wastewater, and effluent of the Hamby Wastewater Treatment Plant.

In April 2011 the City of Abilene rebid for a DIPA. Two vendors were invited to bid on item CB-1126, but only one bid was received. The single bid was for a FlowCam model DIPA. The bid was evaluated by staff and found to comply with the specifications. Staff was able to verify the value of the single bid by comparing it with the three responses from an initial bidding attempt for a similar instrument in February 2011. It is recommended by staff that City Council award the bid to Fluid Imaging Technologies of Yarmouth, ME in the amount of \$93,035.00 for the purchase of a FlowCam model DIPA.

**FUNDING/FISCAL IMPACT**

Funds for the purchase are included in the FY 2011 Operating Budget of the Water Department under Division 8080 Quality Control.

**STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the purchase of the DIPA as described above.

**ATTACHMENTS**

N/A

Prepared by:  Name <u>Rodney Taylor</u>  Title <u>Asst. Water Director</u>	Item No. <u>6.6</u>	Disposition by City Council <input type="checkbox"/> Approved    Ord/Res# <input type="checkbox"/> Denied        _____ <input type="checkbox"/> Other  _____ City Secretary
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City Council  
Agenda Memo

**TO:** Larry D. Gilley, City Manager **City Council Meeting Date: 06-23-2011**  
**FROM:** Mindy Patterson, Director of Finance *MWP*  
**SUBJECT:** Award of Bid – Utility Trucks For Various Divisions, Bid CB-1127

**GENERAL INFORMATION**

Fleet Management seeks approval to purchase replacement vehicles for four Utility Trucks that are worn out and no longer cost effective to maintain. Two units will be assigned to Water Distribution, one unit will be placed in-service at the Airport, and the remaining unit will be dedicated to Fleet Maintenance.

Advertisements were published on May 1, 2011 and May 8, 2011. Bids were opened on May 17, 2011 at 11:00 A.M. Seventeen (17) bid invitations were requested with three (3) vendors responding.

**SPECIAL CONSIDERATIONS**

Holiday Ford of Whitesboro, Texas was the outright low bidder. All bidding vendors met specifications.

**FUNDING/FISCAL IMPACT**

Funds for these purchases are to be provided by the Fleet Replacement Fund.

**STAFF RECOMMENDATION**

It is recommended that Bid CB-1127 be awarded to Holiday Ford, in the amount of \$113,859.60.

**BID TABULATION**

See attached.

<b>Prepared By:</b> <b>Name</b> <u>Cheri Carter</u> <b>Title</b> <u>Fleet Analyst</u>	<b>Item No.</b> <u>6.7</u>	<b>Disposition by City Council</b> <input type="checkbox"/> <b>Approved</b> <input type="checkbox"/> <b>Denied</b> <input type="checkbox"/> <b>Other</b> <b>Ord/Res #</b> _____  _____ <b>City Secretary</b>
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City Council  
Agenda Memo



City Council  
Meeting Date: 06/23/11

**TO:** Larry D. Gilley, City Manager  
**FROM:** Megan R. Santee, Interim Director of Public Works  
**SUBJECT:** Award Bid #CB-1131 – Sidewalk Construction on Judge Ely Blvd III

**GENERAL INFORMATION**

This project involves the construction of a proposed eight-foot (8') concrete path with curb ramps along the East side of Judge Ely from East Highway 80 to ES 11<sup>th</sup> and along ES 11<sup>th</sup> from Cal Young Park to Nelson Park.

**FUNDING/FISCAL IMPACT**

Funding is available from previously authorized Certificates of Obligation.

**STAFF RECOMMENDATION**

Staff recommends that the City Council award Bid #CB-1131 to Bontke Bros. Construction Company, Abilene, Texas in the amount of \$459,814.91.

**ATTACHMENTS**

Bid Tabulation Sheet

Prepared by:

Name: **Chad Carter**

Title: **City Engineer**

Item No. 6.9

Disposition by City Council

- Approved      Ord/Res# \_\_\_\_\_  
 Denied  
 Other

\_\_\_\_\_  
City Secretary

