

**City Council  
Agenda Memo**



**City Council  
Meeting Date: 3/8/2012**

**TO:** Larry D. Gilley, City Manager  
**FROM:** Mindy Patterson, Director of Finance

**SUBJECT: FIRST READING OF AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF ABILENE, TAYLOR COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.**

**GENERAL INFORMATION**

In 1967, the City of Abilene entered into a franchise agreement with Lone Star Gas Company ("Lone Star"). This agreement allowed Lone Star to use the streets, alleys, highways, public places and thoroughfares of the City for the purpose of distributing and selling gas. That franchise agreement was amended in 1981, 1989, 1991, 2003, and 2008. During that period Lone Star assigned their rights under the franchise agreement to TXU gas company, who then assigned the rights to Atmos Energy Corporation ("Atmos Energy"). The 1967 franchise agreement along with the amendments has expired.

The attached Franchise Ordinance has been negotiated and agreed upon by Atmos Energy and City of Abilene staff. It maintains the purpose of the 1967 franchise while clarifying the responsibilities of the parties, particularly as those responsibilities relate to the moving of lines when required for construction of City utilities, streets and affected street rights-of-way. The ordinance also simplifies the franchise fee payment calculation with no significant reduction in the fee paid to the City.

Because this is a franchise ordinance, the City of Abilene Charter requires that it shall be read and passed at two regular meetings of the Council, that a public hearing be held, and that it shall be passed with at least five affirmative votes. A presentation of the ordinance is planned for the second reading of this ordinance.

**STAFF RECOMMENDATION**

Staff recommends approval

**ATTACHMENT**

Franchise Ordinance

Prepared by:

Name Mindy Patterson/Theresa James

Title Director of Finance/Asst. City Atty.

Item No. 6.1

Disposition by City Council

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

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

ORDINANCE NO: \_\_\_\_\_

**AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF ABILENE, TAYLOR COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.**

WHEREAS, Atmos Energy Corporation, a Texas and Virginia Corporation, has given due notice of its intention to apply to the City Council of the City of Abilene, Texas for a franchise to use to occupy the present and future streets, alleys, highways, public utility easements, public ways, and other public places in the City of Abilene, Texas, to construct, maintain, and operate pipelines and equipment for the transportation, delivery, sale, and distribution of natural gas in, out of, and through the City of Abilene, as is provided in Section 111 of the Charter said City; therefore,

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

SECTION 1. GRANT OF AUTHORITY: The City of Abilene, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places ("Public Rights-of-Way"), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2030.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

- A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment so as to comply with the ordinances, rules, and regulations of the City that are

not in conflict with this ordinance and so as to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and promptly clean up and restore to approximate original condition all Public Rights-of-Way that it may disturb at its cost. Atmos shall maintain any repairs related to its activity in the Public Rights-of-Way for a period of one year. Public Rights-of-Way shall not be encumbered longer than necessary to execute the work. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with then existing facilities of Atmos Energy and shall require other users of Public Rights-of-Way to minimize interference with existing facilities of Atmos Energy. The location of all mains, pipes, laterals and other appurtenant equipment shall be fixed under the supervision of the City Engineer or designee. In the event of a conflict between the location of the proposed facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, the City Engineer or designee shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way. Unless otherwise specifically addressed in this ordinance, City shall retain all of the powers of regulation of its streets and alleys given to it either by the Constitution of this State, by general law or charter.

Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way. City shall provide Atmos Energy with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's facilities located in the Public Rights-of-Way. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practically possible with respect to the scope of the project. Unless otherwise agreed, Atmos Energy shall not be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City.

- B. If City, in constructing its sewers, drainage, water lines, streets including affected adjacent street right-of-way, or utilities, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of

beautification or to accommodate a private developer. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. Except in extraordinary circumstances as agreed by the City and Atmos Energy, Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet or the current depth of the facilities that are to be relocated, whichever is greater, unless prior agreement is obtained from Atmos Energy.

When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. Upon receipt of reimbursement from a federal or state agency, the City shall remit to the Company, within thirty (30) days of receipt, its portion related to the relocation or removal of its facilities.

If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, streets including affected adjacent street right-of-way, or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

- C. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs.

Notwithstanding any provision of this agreement, the City shall have the right to participate and challenge any other capital costs or expenses of the Company and request full documentation to the full extent provided by state law.

- D. If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Atmos Energy to remove or relocate its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.
- E. If Atmos Energy employees damage the facilities owned by City within the Public Rights-of-Way of City, City agrees to repair the damage to its facilities at no cost to Atmos Energy. Atmos Energy agrees to notify the appropriate City official as soon as reasonably possible after the occurrence of such damage. If City employees damage facilities owned by Atmos Energy within the Public Rights-of-Way of City, Atmos Energy agrees to repair the damage to its facilities at no cost to City. City agrees to notify the appropriate personnel of Atmos Energy as soon as reasonably possible after the occurrence of such damage.

SECTION 3. INDEMNITY & INSURANCE: Atmos Energy shall fully indemnify and save harmless the City from any and all damage, loss, action or cause of action arising in whole or in part from Company's exercise of any of its rights, privileges, franchises and obligations hereunder, except to the extent arising out of the City's sole negligence or willful misconduct. In the event of joint and concurrent negligence or fault of both Atmos Energy and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. It is understood that it is not the intention of the parties hereto to

create liability for the benefit of third parties, but that this section shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise, to any person or entity.

Atmos Energy shall, at its sole cost and expense, obtain, maintain, and provide, throughout the term of this Franchise Agreement, insurance or provide Self-Insurance against all claims for injuries to person or damages to property that may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Atmos, its agents, representatives or employees in accordance with the following minimum coverage:

- A. Commercial general or excess liability on an occurrence or claims made from with minimum limits of five million dollars (\$5,000,000.00) per occurrence and ten million dollars (\$10,000,000.00) aggregate. To the extent that coverage is maintained on a claims made form, the minimum limits are ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) aggregate. This coverage shall include the following:
  - (1) Products/completed operations to be maintained for two (2) years;
  - (2) Personal and advertising injury;
  - (3) Contractual liability; and,
  - (4) Explosion, collapse, or underground hazards
  
- B. Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000.00) combined single limit. This coverage shall include all owned, hired and non-owned automobiles.
  
- C. Workers' compensation and employers' liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000.00) Coverage B employers' liability is required.
  
- D. Atmos Energy will provide the necessary proof of insurance within 30 days of the effective date of this Franchise Agreement. Atmos will not be required to furnish separate proof when applying for permits. Atmos will provide 30 days advance written notice to City of cancellation or material change to the insurance policies.

- E. Atmos Energy's insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under an Atmos Energy plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 5. PAYMENTS TO CITY:

- A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the 1st day of April, 2012 and on or before the same day of each succeeding year during the term of this franchise the last payment being made on the 1st day of April, 2030 a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B below, received by Atmos Energy during the preceding calendar year.
- B. "Gross Revenues" shall mean:
  - (1) all revenues received by Atmos Energy from the sale of gas to all classes of customers;
  - (2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City;
  - (3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales"), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed;

(4) “Gross Revenues” shall also include fees collected pursuant to this agreement and the following “miscellaneous charges”: State gross receipts fees, charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the City.

(5) “Gross Revenues” shall not include:

- (a) revenues billed but not ultimately collected or received by Atmos Energy;
- (b) contributions in aid of construction;
- (c) the revenue of any affiliate or subsidiary of Atmos Energy;
- (d) sales tax paid to the City;
- (e) interest or investment income earned by Atmos Energy;
- (f) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way; and
- (g) any revenues related to the value of gas sold or transported to another gas utility not affiliated with Atmos Energy that resells the gas to customers within the City of Abilene.

The initial payment for the rights and privileges herein provided shall be for the privilege period January 1 through December 31, 2012.

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's



obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public Rights-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its reasonable discretion, such waiver. Such waiver shall not be withheld except for good cause. Requesting such waiver shall not bind the City to a decision to accept or reject any franchise ordinance terms.

E. Atmos Energy Franchise Fee Recovery Tariff

- (1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.
- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

F. Lease of Facilities Within City's Rights-of-Way. Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City's public rights-of-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 6. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 7. PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 8. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of \_\_\_\_\_.

**PASSED ON FIRST READING the 23rd day of February, 2012.**

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 18th day of March, 2012, 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 22<sup>nd</sup> day of March, 2012, to permit the public to be heard. Said Ordinance, being a franchise ordinance, becomes effective thirty (30) days after its publication in the newspaper, as provided by Section 112 of the Charter of the City of Abilene.

**PASSED ON SECOND AND FINAL READING after public hearing this 22<sup>nd</sup> day of March, 2012.**

ATTEST:

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

\_\_\_\_\_  
Mayor  
City of Abilene, Texas

STATE OF TEXAS §  
COUNTY OF TAYLOR §  
CITY OF ABILENE §

I, \_\_\_\_\_, City Secretary of the City of Abilene, Taylor County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Abilene, Texas, at a \_\_\_\_\_ session, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, as it appears of record in the Minutes in Book \_\_\_\_\_, page \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF SAID CITY, this the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
City Secretary  
City of Abilene, Texas

**City Council  
Agenda Memo**



**City Council  
Meeting Date: March 8, 2012**

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

**FROM: Ken Dozier, Fire Chief**

**SUBJECT: Oral Resolution Authorizing the City Manager to enter into a Charitable Solicitation Agreement Between the Muscular Dystrophy Association and the City of Abilene for the Fill the Boot Campaign.**

**GENERAL INFORMATION**

The Muscular Dystrophy Association (“MDA”) has a yearly campaign in the City of Abilene (“City”) where volunteers solicit funds in the City right-of-ways as part of the MDA’s “Fill the Boot Campaign” (“Campaign”). The money raised during the event allows the MDA to provide services to over 400 clients in the City of Abilene that includes financial assistance for wheelchairs, leg braces, communication devices, support groups, summer camps for children, and research grants to find treatments and cures.

In order to utilize the City right-of-ways the City and the MDA enter into a Charitable Solicitation Agreement in which the City gives permission to the MDA to use designated portions of the City right-of-way to conduct the Campaign.

**FUNDING/FISCAL IMPACT**

None.

**STAFF RECOMMENDATION**

Staff recommends approval.

**ATTACHMENTS**

Charitable Solicitation Agreement

Prepared by:

Name: Theresa James

Title: Assistant City Attorney

Item No. 6.2

Disposition by City Council

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

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

## CHARITABLE SOLICITATION AGREEMENT

The following is an agreement between the City of Abilene, Texas, a municipal corporation chartered under the laws of the State of Texas, ("City") and the Muscular Dystrophy Association, ("the MDA") for the purpose of allowing the MDA and its various volunteers and to solicit funds within the City owned/maintained public right-of-way for a specified period of time.

**WHEREAS**, the MDA is desirous of utilizing various sections of the public right-of-way owned/maintained by the City,

**WHEREAS**, the City finds that it is in the best interest of the community that that Association be allowed to use these sections of the public right-of-way,

**THEREFORE**, in consideration of the hereafter mentioned covenants, the parties agree as follows:

1.

That MDA may use those portions of the public right-of-way, designated by the City, for the purposes of conducting charitable solicitations. These solicitations may be conducted between the hours of 11:00 a.m. and 7:00 p.m. from May 10, 2012, through May 12, 2012, as agreed to by the MDA and the City.

2.

That charitable solicitations under this agreement may be conducted only at locations authorized as follows:

The intersection of South 27<sup>th</sup> Street and Clack not including any state maintained and controlled right-of-way, and

The intersection of North 10<sup>th</sup> and Judge Ely.

3.

**That for all purposes hereunder, the MDA, their employees, agents, representatives, participants, volunteers, volunteer agencies and invitees, regardless of employment status with the City, shall not, with respect to their acts or omissions under this agreement, be deemed agents or employees of the City. Further, the MDA shall indemnify, hold harmless and defend the City from and against any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses (including court costs, attorney's fees, and other reasonable costs) arising out of or incidental to the MDA, their employees, agents, representatives,**

**participants, volunteers, volunteer agencies and invitees use of said public right-of-way as authorized in this agreement.**

5.

That the MDA shall be solely responsible for the safety and health of all participants involved in solicitations. It is expressly understood and agreed that the MDA is solely responsible for any damages they may cause to the public right-of-way.

6.

That the MDA will provide all necessary equipment for solicitations, unless otherwise agreed to by the parties.

7.

That participants in these solicitations, including the MDA's employees, agents, representatives, participants, and volunteers, shall wear reflective vests while conducting solicitations.

8.

That during charitable solicitations under this agreement, the MDA will not infringe or solicit upon right-of-way owned/maintained by the State of Texas and accepts sole responsibility for any action taken by the State of Texas against such solicitation. The MDA further agrees to cease operations under this agreement if requested to do so by an officer of the City of Abilene Police Department.

9.

That the City may cancel this agreement at any time if the City determines that it is in its best interest to do so.

10.

That the MDA agrees to provide the City with a Certificate of Insurance showing that the Association has insurance or self-insurance coverage for General Liability in an amount not less than \$1,000,000. Said Certificate shall name the City of Abilene as an additional insured.

Entered into this \_\_\_\_ day of \_\_\_\_\_, 2011.

**For the MDA:**

**For the City of Abilene:**

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(Signature)

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(Printed Name)

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(Title)

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(Signature)

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(Printed Name)

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(Title)

**Approved as to form:**

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City Attorney



City Council  
Agenda Memo



City Council  
Meeting Date: 03/08/12

**TO:** Larry D. Gilley, City Manager  
**FROM:** Megan R. Santee, Director of Public Works  
**SUBJECT:** Street Use License Agreement with the Center for Contemporary Arts for "Carwalk" Artwalk

**GENERAL INFORMATION**

The Center for Contemporary Arts has submitted a Street Use License (SUL) application to hold a public event described as "Carwalk" Artwalk within the public right-of-way on Cypress Street. The applicant wishes to close Cypress Street from the north right-of-way line of North 2<sup>nd</sup> Street to the south right-of-way line of North 6<sup>th</sup> Street for this event, including the intersections at Cypress Street and North 3<sup>rd</sup>, North 4<sup>th</sup> and North 5<sup>th</sup> Streets. The event will take place on Thursday, March 8<sup>th</sup>, 2012 from 5:00 p.m. until 8:30 p.m., and the applicant wishes to close the street between the hours of 4:00 p.m. and 9:00 p.m. on this date. However, the aforementioned intersections must remain open until 5:30 p.m. in order to allow for the safe dispersal of downtown traffic at the end of the business day. The applicant has obtained the approval of all affected property owners and/or business tenants for this event. The event will include a car show and associated street activities, vendors, etc.

**STAFF RECOMMENDATION**

Staff has reviewed this request and recommends that the City Council, by oral resolution, authorize the Mayor to execute the attached Street Use License Agreement with the Center for Contemporary Arts for "Carwalk" Artwalk.

**ATTACHMENTS**

Street Use License Agreement, Short Term

<p>Prepared by:  Name: <u>Travis McClure</u>  Title: <u>Land Agent</u></p>	<p>Item No. <u>6.3</u></p>	<p>Disposition by City Council <input type="checkbox"/> Approved      Ord/Res# _____ <input type="checkbox"/> Denied <input type="checkbox"/> Other  _____ City Secretary</p>
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THE STATE OF TEXAS

**STREET USE LICENSE AGREEMENT  
SHORT TERM**

COUNTY OF TAYLOR

THIS STREET USE LICENSE AGREEMENT, hereinafter referred to as "License", executed this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2012, by and between the CITY OF ABILENE, a municipal corporation situated in Taylor and Jones Counties, Texas, hereinafter referred to as "City", and Center for Contemporary Arts hereinafter referred to as "Licensee".

WITNESSETH:

That City, pursuant to Chapter 29, "Streets and Sidewalks", Article V, "Street Use License", does hereby grant to Licensee the privilege of using the following described public property, to-wit:

Closure of Cypress Street from the north right-of-way line of North 2<sup>nd</sup> Street to the south right-of-way line of North 6<sup>th</sup> Street, and

Closure of North 3<sup>rd</sup> Street, from the east right-of-way line of Cedar Street to the west right-of-way line of Pine Street,

Closure of North 4<sup>th</sup> Street, from the east right-of-way line of Cedar Street to the west right-of-way line of Pine Street,

Closure of North 5<sup>th</sup> Street, from the east right-of-way line of Cedar Street to the west right-of-way line of Pine Street,

to provide for closure of the intersections at Cypress Street and North 3<sup>rd</sup> Street, Cypress Street and North 4<sup>th</sup> Street, and Cypress Street and North 5<sup>th</sup> Street.

for and in consideration of THREE HUNDRED AND NO/100 (\$300.00) DOLLARS, commencing the date of execution unless otherwise specified, and upon the conditions and covenants set forth in this License and in Exhibit A, incorporated by reference for all purposes herein.

I. Purpose:

The purpose of this License is to permit Licensee to:

Stage a motorized vehicle exhibition and associated street festival activities, known as "Carwalk" Artwalk.

II. Term of Agreement/Termination

I. This License shall be in effect only for the following time period:

From 4:00 p.m. to 9:00 p.m. on March 8, 2012

2. The City shall have the right to cancel this License at any time.

II. 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.

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

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

“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:

injury or damage to any property or right

injury, damage, or death to any person or entity

attorneys fees, witness fees, expert witness fees and expenses, and

all other costs and expenses of litigation

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

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

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

B. Indemnity

The Licensee agrees to indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Licensee's occupancy or use of the premises described above and/or activities conducted in connection with this License.

Licensee must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Licensee'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 Licensee or Licensee's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects which may now exist or which may hereafter arise on the premises, whether or not caused in whole or in part by improvements constructed by the Licensee. Responsibility for all such defects is expressly assumed by the Licensee.

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

BOTH CITY AND LICENSEE EXPRESSLY INTEND THIS LICENSE'S INDEMNITY PROVISION TO REQUIRE LICENSEE 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.

IV. Insurance.

Licensee agrees to secure and maintain the following types and amount of insurance, for the term of this license:

<u>Type</u>	<u>Amount</u>
Comprehensive General Liability to include (but not limited to) the following:	\$250,000 - Per Person \$500,000 - Per Occurrence for Bodily Injury, and \$500,000 - Per Occurrence for Property Damage
a) Premises/Operations Coverage	
b) Contractual Liability Coverage (insuring above indemnity provision)	

The preceding insurance requirements notwithstanding, the City reserves the right to revise the types and amounts of insurance required by this License prior to approval of the

CITY OF ABILENE, TEXAS

NAME OF LICENSEE:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED:

\_\_\_\_\_  
City Attorney

By: Burgess "Bird" Thomas  
Signature

BURGESS "BIRD" THOMAS  
Printed Name and Title

Business Address: 220 Cypress St.,  
Abilene, Tx 79601

**STREET USE LICENSE AGREEMENT  
WITH CENTER FOR CONTEMPORARY ARTS FOR USE OF  
CYPRESS STREET RIGHT-OF-WAY**

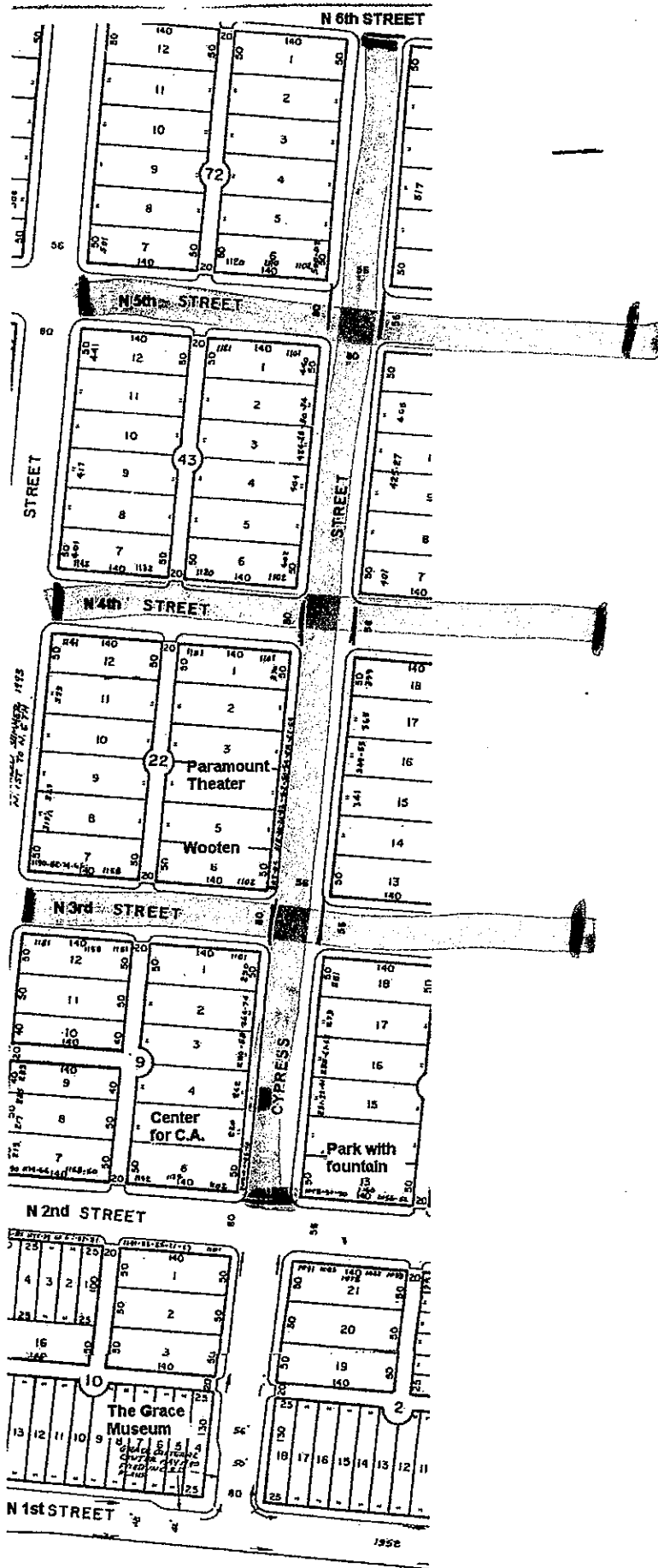
**CONDITIONS AND COVENANTS**

**EXHIBIT A**

The Street Use license Agreement is subject to the following conditions and covenants:

1. The Licensee may take control of the permitted portion of the streets on Thursday, March 8, 2012, as follows:
  - a. Control of the on-street parking spaces on Cypress Street beginning at 4:00 p.m., except for the on street parking spaces on the west side of the 500 block of Cypress Street which must remain open until 5:00 p.m. to provide citizen access to the City of Abilene Water Billing and Housing Offices. At 5:00 p.m., licensee may take control of these spaces.
  - b. Control of the full width of the streets beginning at 5:00 p.m., EXCEPT for the intersections at Cypress St. and N. 3<sup>rd</sup> St., Cypress St. and N. 4<sup>th</sup> St. and Cypress St. and N. 5<sup>th</sup> St. which must remain open until 5:30 p.m. in order to allow for the safe dispersal of downtown traffic. At 5:30 p.m. said intersections may be closed.
2. **The Licensee shall submit a traffic control plan in compliance with the Texas Manual On Uniform Traffic Control Devices to the Traffic & Transportation Administrator (676-6279) for review by March 1<sup>st</sup>, 2012.**
3. The Licensee shall contact all property owners and/or business tenants of properties on Cypress Street from N 2<sup>nd</sup> Street to N 6<sup>th</sup> Street, and on North 3<sup>rd</sup> Street, North 4<sup>th</sup> Street and North 5<sup>th</sup> Street between Cedar Street and Pine Street that would normally be open any time between noon and midnight on March 8, 2012 to advise them of the proposed street closure and to work out arrangements to accommodate their access needs.
4. The Licensee shall designate an event command center and an event contact person(s). This information as well as contact phone numbers, shall be provided to the city Land Agent by March 1<sup>st</sup>, 2012. During the event, an event contact person shall be on-site at all times.
5. The Licensee shall obtain from the Fire Marshal a Fire Code outdoor carnival/fair permit. The Licensee shall insure that all food and beverage vendors associated with the event obtain a temporary food vendors permit from the Environmental Health office.
6. The Licensee shall insure that the event is conducted in conformance with all applicable laws and regulations, including the City noise ordinance and Texas Alcoholic Beverage Commission rules and regulations.

7. The Licensee shall prominently post notice at each entry into the controlled area that smoking is not permitted at the event and shall comply with the requirements of the City's smoking ordinance.
8. The Licensee shall provide sufficient portable toilets to accommodate the needs of event participants. At a minimum, there shall be at least four portable toilets distributed uniformly throughout the exhibition area. The portable toilets shall not be located within 10 feet of the door to any building nor shall they be located on the street side of any glass storefront.
9. The Licensee shall provide sufficient security forces, as determined by the Chief of Police, for crowd control and protection of property.
10. The Licensee shall provide for collection and disposal of solid waste created by the event. This shall include an adequate number of waste receptacles, collection of litter after the event, and delivery of the waste to the landfill. At a minimum this shall include one waste receptacle within 50 feet of each food vendor or beverage vendor and one waste receptacle within each block of Cypress Street that does not have a food or beverage vendor.
11. **The Licensee shall be responsible for obtaining, properly installing, and maintaining all necessary traffic control signs and barricades in compliance with the traffic control plan.**
12. The Licensee shall maintain free of obstructions a fire apparatus access lane at least 25 feet in width from end-to-end of all street segments and an access path at least 10 feet in width from the fire apparatus access lane to all fire service appliances (fire hydrants, fire service connections to building, etc.) at all times.
13. The Licensee shall make provisions for safe access to private property abutting the permitted/closed streets to any party desiring to access that property.
14. The Licensee shall protect traffic signal control equipment and related facilities, signs, pavement markings, and other traffic control devices within the permitted area and shall be responsible for prompt repair of any damage. The Licensee shall be responsible for all costs associated with adjustments to the City's traffic control devices that are necessary for the permitted activity.
15. The Licensee shall clear the sidewalks and pavement area of obstructions to pedestrian and vehicular traffic before ending control of the area. The Licensee assumes all responsibility for warning and/or protecting pedestrians and motorists from obstructions and hazards if they are allowed to enter the controlled area before it is cleared of such obstructions and hazards.



— = Barricades





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/21/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> CBS Insurance, LLP 3005 South Treadaway Blvd Abilene TX 79602		<b>CONTACT NAME:</b> Teresa Netz, ACSR <b>PHONE (A/C, No, Ext):</b> (325) 695-0222 <b>E-MAIL ADDRESS:</b> tnetz@cbsins.com <b>FAX (A/C, No):</b> (325) 695-0228	
<b>INSURED</b> Center for Contemporary Arts 220 Cypress Street Abilene TX 79601		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Great Divide Ins. Co. INSURER B: Travelers Cas. Ins. Co. of INSURER C: Texas Mutual Insurance Company 22945 INSURER D: INSURER E: INSURER F:	

**COVERAGES**      **CERTIFICATE NUMBER:** 12.13      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSR L WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		CLA1027134-14	2/8/2012	2/8/2013	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ excluded
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ 2,000,000
B	AUTOMOBILE LIABILITY		BA1127P227-11	10/15/2011	10/15/2012	PRODUCTS - COMP/OP AGG \$ 2,000,000
	ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$
	ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						Hired Combined Single Limit \$ 1,000,000
C	UMBRELLA LIAB	<input type="checkbox"/> OCCUR	SBP0001184389	10/15/2011	10/15/2012	EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	DED	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A			E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 RE: Art Walk  
 General & Liquor Liability policy includes "Blanket" Additional Insured per Company form SB146932B 03/2006.

<b>CERTIFICATE HOLDER</b>  City of Abilene P.O. Box 60 Abilene, TX 79604	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  Terry Riddle/TNETZ
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ACORD 25 (2010/05)

INS025 (01/10/05) 01

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ATTN: TRAVIS McCLUKE



STREET USE LICENSE AGREEMENT  
SHORT TERM

APPLICATION

Applicant: CENTER FOR CONTEMPORARY ARTS Phone: 325.677.8389

Address: 220 CYPRESS ST. ABILENE, TEXAS 79601

Agent: BIRD THOMAS (CCA) Phone: 677-0838  
GBS INSURANCE ~~325.695.0222~~

Event name: CARWALK Event type: ANNUAL ARTWALK & CAR SHOW

Description of public right-of-way proposed for the event/activity: CLOSE CYPRESS STREET  
from NORTH 2ND TO NORTH 6TH at the CIVIC CENTER

Activities that will occur in the public right-of-way: CAR SHOW ENTRANTS PARKED  
ALONG CYPRESS STREET from

Date & time period of event: MARCH 8, 2012 5pm to 8pm

Date & time period of street closure: MARCH 8, 2012 from 3pm - 9pm

Expected peak attendance: 2500

Circle items to be offered at event: Food Beverages Alcohol

Preferred City Council meeting for request to be considered: FEB 23, 2012

Application is not complete unless all of the following are included:

- Application Fee - \$300
- Certificate or other evidence of insurance
- A dimensioned drawing showing public right-of-way, adjacent property in the vicinity of the proposed event, and locations of activity in right-of-way.

Signature of Applicant or Agent  
BURGESS "BIRD" THOMAS

FEB 17, 2012

Date

Return Application to:  
Land Agent  
City of Abilene  
PO Box 60  
Abilene TX 79604

**City Council  
Agenda Memo**



**City Council  
Meeting Date: 03/08/12**

**TO:** Larry D. Gilley, City Manager  
**FROM:** Megan R. Santee, Director of Public Works  
**SUBJECT:** Street Use License Agreement with Abilene Independent School District for "Million Word Reader Celebration"

**GENERAL INFORMATION**

Abilene Independent School District (AISD) has submitted a Street Use License (SUL) application to hold an event entitled "Million Word Reader Celebration" within the public right-of-way on Cedar Street. The applicant wishes to close Cedar Street from the north right-of-way line of North 1<sup>st</sup> Street to the south right-of-way line of North 2<sup>nd</sup> Street for this event. The event will take place on Friday, May 4th, 2012, from 9:00 a.m. to 11:00 a.m.; however, the applicant wishes to close the street between the hours of 8:00 a.m. and 11:30 a.m. on this date. The applicant has obtained the approval of all affected property owners and/or business tenants for this event. The event will take place in the Abilene Public Library parking lot and on the permitted/closed portion of Cedar Street, and will include guest speakers, high school band performances, and other fun activities for more than 500 students in grades K-8 who achieved reading one million words during this school year.

**STAFF RECOMMENDATION**

Staff has reviewed this request and recommends that City Council, by oral resolution, authorize the Mayor to execute the attached Street Use License Agreement with Abilene Independent School District for the "Million Word Reader Celebration."

**ATTACHMENTS**

Street Use License Agreement, Short Term

<p>Prepared by:  Name: <u>Travis McClure</u>  Title: <u>Land Agent</u></p>	<p>Item No. <u>6.4</u></p>	<p>Disposition by City Council <input type="checkbox"/> Approved      Ord/Res# _____ <input type="checkbox"/> Denied <input type="checkbox"/> Other  _____ City Secretary</p>
--------------------------------------------------------------------------------------------	----------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**THE STATE OF TEXAS**

**STREET USE LICENSE AGREEMENT  
SHORT TERM**

**COUNTY OF TAYLOR**

THIS STREET USE LICENSE AGREEMENT, hereinafter referred to as "License", executed this \_\_\_\_ day of \_\_\_\_\_, A.D., 2012, by and between the CITY OF ABILENE, a municipal corporation situated in Taylor and Jones Counties, Texas, hereinafter referred to as "City", and Abilene Independent School District hereinafter referred to as "Licensee".

**WITNESSETH:**

That City, pursuant to Chapter 29, "Streets and Sidewalks", Article V, "Street Use License", does hereby grant to Licensee the privilege of using the following described public property, to-wit:

Closure of Cedar Street from the north right-of-way line of North 1st Street to the south right-of-way line of North 2nd Street.

commencing the date of execution unless otherwise specified, and upon the conditions and covenants set forth in this License and in Exhibit A, incorporated by reference for all purposes herein.

**I. Purpose:**

The purpose of this License is to permit Licensee to:

Hold the "Million Word Reader Celebration" event, for those students in grades K-8 involved in reading one million words during this school year. The event will take place in the Abilene Public Library parking lot and on the permitted/closed portion of Cedar Street. Activities which will occur in the closed portion of this public right-of-way include high school band performances, guest speakers, fun activities for students, etc.

**II. Term of Agreement/Termination**

I. This License shall be in effect only for the following time period:

From 8:00 a.m. to 11:30 a.m. on May 4th, 2012.

2. The City shall have the right to cancel this License at any time.

**III. 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.

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

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

“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:

injury or damage to any property or right

injury, damage, or death to any person or entity

attorneys fees, witness fees, expert witness fees and expenses, and

all other costs and expenses of litigation

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

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

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

## B. Indemnity

**The Licensee agrees to indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Licensee's occupancy or use of the premises described above and/or activities conducted in connection with this License.**

**Licensee must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Licensee'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 Licensee or Licensee's employees.**

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects which may now exist or which may hereafter arise on the premises, whether or not caused in whole or in part by improvements constructed by the Licensee. Responsibility for all such defects is expressly assumed by the Licensee.

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

BOTH CITY AND LICENSEE EXPRESSLY INTEND THIS LICENSE'S INDEMNITY PROVISION TO REQUIRE LICENSEE 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.

IV. Insurance.

Licensee agrees to secure and maintain the following types and amount of insurance, for the term of this license:

<u>Type</u>	<u>Amount</u>
Comprehensive General Liability to include (but not limited to) the following:	\$250,000 - Per Person \$500,000 - Per Occurrence for Bodily Injury, and \$500,000 - Per Occurrence for Property Damage
a) Premises/Operations Coverage	
b) Contractual Liability Coverage (insuring above indemnity provision)	

The preceding insurance requirements notwithstanding, the City reserves the right to revise the types and amounts of insurance required by this License prior to approval of the License or if the License is already in effect, to be effective thirty (30) days after notice is sent to the address provided herein.

All insurance policies or certificates shall contain the following provisions:

- a. That the City of Abilene, Texas, is named as an additional insured.
- b. That such insurance shall not be cancelled or materially changed without a minimum of thirty (30) day's advance notice in writing to the City.

All insurance policies shall be subject to the examination and approval of the Office of Risk

Management, City of Abilene, Texas, for their adequacy as to form and content, form of protection, and insurance company. Licensee shall furnish to City Secretary for her License file certificates or copies of the policies, plainly and clearly evidencing such insurance at the time of application, and thereafter, new certificates prior to the expiration date of any prior certificate.

Licensee understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirements of this article shall be a cause for termination of this License.

V. License Requirements and Restrictions:

1. During the term of this License, Licensee shall maintain the premises licensed herein in a good and safe condition at all times. If the street surface, parkway, or facilities in the parkway, including landscaping, are damaged or disturbed by any activity associated with this License, the Licensee shall at its expense restore the same to as good a condition as before the activity, to the satisfaction of the Director of Public Works or designee.

2. All traffic control signing and barricading in the public right-of-way shall comply with the Texas Manual On Uniform Traffic Control Devices.

3. In the performance or permitting of work consistent with its normal course of duty within the right-of-way, the City shall not be liable for any damages to the Licensee's facilities or equipment or injury to Licensee, all such claim for damage or injury being expressly waived by Licensee.

4. Control of the public right-of-way within the area included in this License shall not supersede the rights already granted by other permits and authorizations to other parties unless specifically stated herein.

5. The City Manager, Police Chief, Fire Chief, or a designee of such officials, shall have the authority to order immediate removal of any objects or materials placed on the premises by Licensee if, in the City's opinion, removal is necessary to protect the health, safety, and welfare of the public.

CITY OF ABILENE, TEXAS

NAME OF LICENSEE:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
By:

Signature

ATTEST:

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

\_\_\_\_\_  
Printed Name and Title

APPROVED:

Business Address: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

**STREET USE LICENSE AGREEMENT  
WITH ABILENE INDEPENDENT SCHOOL DISTRICT FOR USE OF  
CEDAR STREET RIGHT-OF-WAY**

**CONDITIONS AND COVENANTS**

**EXHIBIT A**

The Street Use license Agreement is subject to the following conditions and covenants:

1. The Licensee may take control of the full width of the permitted portion of the street from 8:00 a.m. until 11:30 a.m. on Friday, May 4, 2012.
2. **The Licensee shall submit a traffic control plan in compliance with the Texas Manual on Uniform Traffic Control Devices to the Traffic & Transportation Administrator (676-6279) for review by April 13, 2012.**
3. The Licensee shall contact all property owners and/or business tenants of properties on Cedar Street from N. 1st Street to N. 2nd Street that would normally be open any time between 7:00 a.m. and noon on May 4th, 2012 to advise them of the proposed street closure and to work out arrangements to accommodate their access needs.
4. The Licensee shall designate an event contact person(s). This information, as well as contact phone numbers, shall be provided to the City Land Agent by April 13, 2012. During the event, an event contact person shall be on-site at all times.
5. The Licensee shall insure that the event is conducted in compliance with all applicable laws and regulations, including City noise regulations.
6. The Licensee shall provide sufficient portable toilets to accommodate the needs of event participants and attendees, as determined by Licensee. Any/all portable toilets shall not be located within 10 feet of the door to any building nor shall they be located on the street side of any glass storefront.
7. The Licensee shall contact the Police Department to inform them of the event and shall provide sufficient security forces, as determined by the Chief of Police, for crowd control and protection of property.
8. The Licensee shall provide for collection and disposal of solid waste created by the event. This shall include an adequate number of waste receptacles, and collection and proper disposal of litter after the event.
9. **The Licensee shall be responsible for obtaining, properly installing, and maintaining all necessary traffic control signs and barricades in compliance with the traffic control plan.**


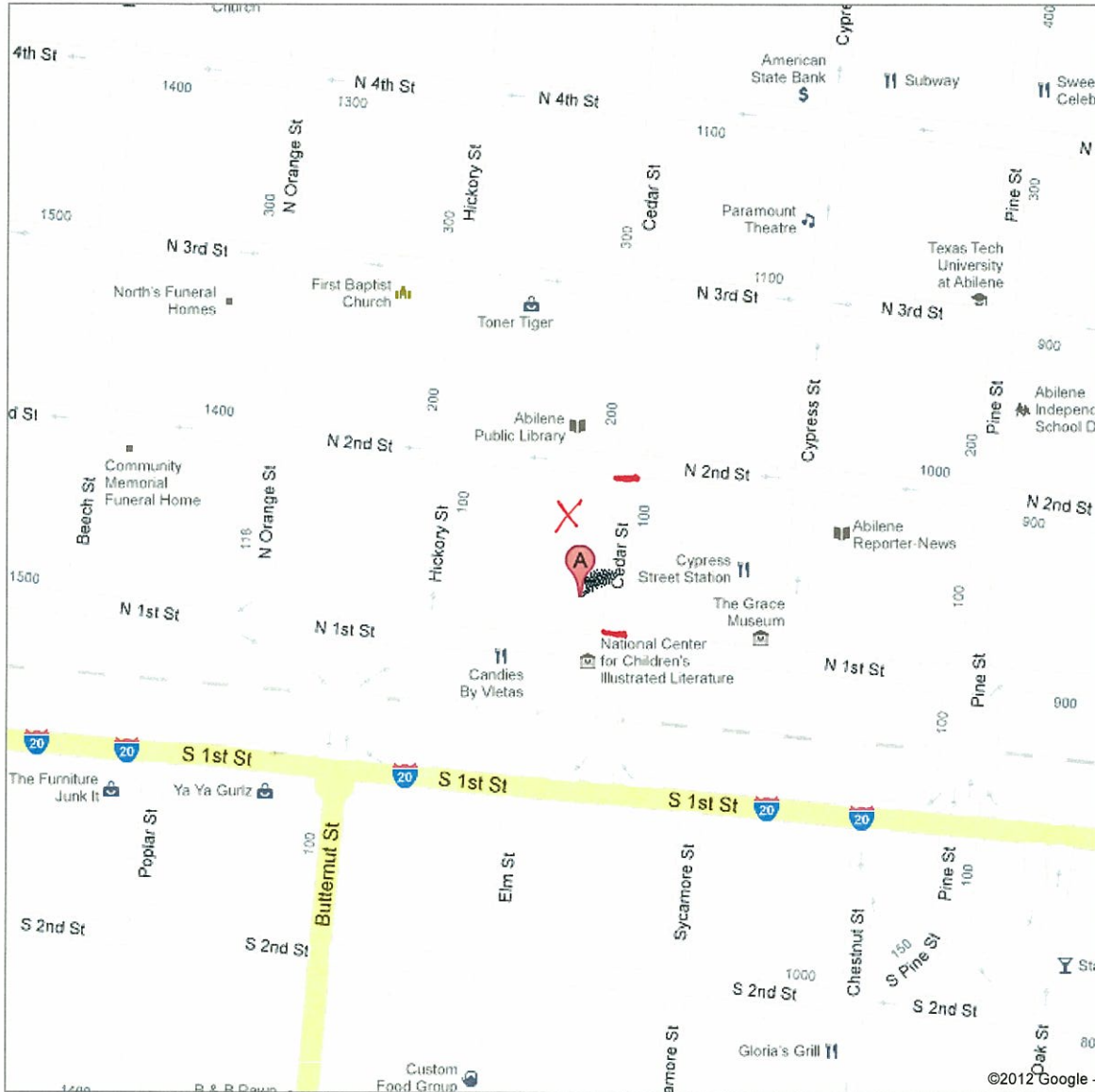


10. The Licensee shall maintain free of obstructions a fire apparatus access lane at least 20 feet in width from end-to-end of all street segments and an access path at least 10 feet in width from the fire apparatus access lane to all fire service appliances (fire hydrants, fire service connections to buildings, etc.) at all times.
11. The Licensee shall protect traffic signal control equipment and related facilities, signs, pavement markings, and other traffic control devices within the permitted area and shall be responsible for prompt repair of any damage. The Licensee shall be responsible for all costs associated with adjustments to the City's traffic control devices that are necessary for the permitted activity.
12. The Licensee shall clear the sidewalks and pavement area of obstructions to pedestrian and vehicular traffic before ending control of the area. The Licensee assumes all responsibility for warning and/or protecting pedestrians and motorists from obstructions and hazards if they are allowed to enter the controlled area before it is cleared of such obstructions and hazards.



Address 102 Cedar St  
Abilene, TX 79601

Get Google Maps on your phone  
Text the word "GMAPS" to 466453

*Close Cedar St. - from 1<sup>st</sup> St. to 2<sup>nd</sup> St.  
Students + teachers (Event) will be in the  
Public Library Parking Lot and on Cedar St.*

CERTIFICATE OF COVERAGE	DATE (MM/DD/YY) 02/10/2012
-------------------------	-------------------------------

PROGRAM ADMINISTRATOR:  North American Solutions P.O. Box 25928 Oklahoma City, OK 73125-0928  Phone: 800-880-0291      FAX: 800-788-8995	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED AS SHOWN BELOW.
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COVERED MEMBER  Abilene Independent School District P.O. Box 981 Abilene, TX 79604	<b>CARRIER AFFORDING COVERAGE</b>  CARRIER A: Property Casualty Alliance of Texas (PCAT)  CARRIER B:
------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------

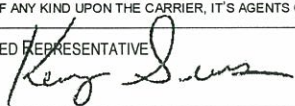
**COVERAGES**

THE COVERAGES LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGES DESCRIBED HEREIN ARE SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CARRIER LTR	TYPE OF COVERAGE	MEMBER NUMBER	COVERAGE EFFECTIVE DATE (MM/DD/YY)	COVERAGE EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$10,000 DEDUCT BI & PD <input type="checkbox"/> GENERAL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	PC221-901	02/01/2012	02/01/2013	EACH OCCURRENCE	\$ 3,000,000
	FIRE DAMAGE (Any one fire)				\$ 500,000	
	MED EXP (Any one person)				\$ 0	
	PERSONAL & ADV INJURY				\$ 3,000,000	
	GENERAL AGGREGATE				\$ 3,000,000	
	PRODUCTS    COMP/OP AGG				\$ 3,000,000	
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____				COMBINED SINGLE LIMIT (Each accident)    \$  BODILY INJURY (Per person)    \$  BODILY INJURY (Per accident)    \$  PROPERTY DAMAGE (Per accident)    \$	
	<b>OTHER</b>				\$ \$ \$	

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**  
 The City of Abilene is Additional Insured only as respects the Million Word Reader Celebration on Friday, May 4, 2012.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
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City of Abilene 555 Walnut Street P O Box 60 Abilene, TX 79604	SHOULD ANY OF THE ABOVE DESCRIBED COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING CARRIER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE CARRIER, IT'S AGENTS OR REPRESENTATIVES.  AUTHORIZED REPRESENTATIVE 
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**STREET USE LICENSE AGREEMENT  
SHORT TERM**

**APPLICATION**

Applicant: Abilene ISD Phone: 325-677-1444 ext 7807

Address: 241 Pine St. Abilene, TX 79601

Agent: Sandi Rainwater Phone: 325-677-1444 ext. 7807

Event name: Million Word Reader Celebration Event type: Student celebration for reading one million words in this school year

Description of public right-of-way proposed for the event/activity: Close Cedar Street from N. 1<sup>st</sup> to N. 2<sup>nd</sup> Streets

Activities that will occur in the public right-of-way: Music, 500 students (grades K-8), guest speakers, other fun activities for students.

Date & time period of event: Friday, May 4 – 9:00-11:00am

Date & time period of street closure: May 4, 8:00 – 11:30am

Expected peak attendance: 8:30-11:00am

Circle items to be offered at event: **Books** Food Beverages Alcohol

Preferred City Council meeting for request to be considered: \_\_\_\_\_

Application is not complete unless all of the following are included:

- Application Fee - \$300
- Certificate or other evidence of insurance
- A dimensioned drawing showing public right-of-way, adjacent property in the vicinity of the proposed event, and locations of activity in right-of-way.

*Sandi Rainwater*

Signature of Applicant or Agent

February 9, 2012  
Date

Return Application to:  
Land Agent  
City of Abilene  
PO Box 60  
Abilene TX 79604

**City Council  
Agenda Memo**



**City Council  
Meeting Date: March 8, 2012**

**TO: Larry D. Gilley, City Manager**  
**FROM: Don Green, Director of Aviation**  
**SUBJECT: Sweet Celebrations Operating Agreement**

**GENERAL INFORMATION**

The City conducted a Request For Proposals (RFP), CB-1214, with a submittal deadline of February 14, 2012. One proposal was received from Sherry Brown to operate Sweet Celebrations. Sweet Celebrations currently operates at 421 Pine Street and Ms. Brown plans to operate both. Airport staff has met with Ms. Brown and believes she is well-qualified to successfully operate this business. The operating agreement will be for a two-year term with no rent or fees due to the city during the term. Ms. Brown intends to apply for a state beer and wine permit, but that will likely be received sometime after opening the airport location. The restaurant is proposed to be open Sunday through Friday to accommodate the busiest travel days.

Ann's Airport Café operated in the airport terminal for over a year and was forced to close February 14 due to medical reasons of the owner/operator.

**FUNDING/FISCAL IMPACT**

The aviation department has not budgeted revenue from the restaurant; therefore, there is no fiscal impact.

**STAFF RECOMMENDATION**

Staff recommends that City Council approve the two-year operating agreement with Sherry Brown dba Sweet Celebrations

**BOARD OR COMMISSION RECOMMENDATION**

The Airport Development Board approved a recommendation to City Council at a special February 21 meeting.

<p>Prepared by: Name: <u>Don Green</u> Title: <u>Director of Aviation</u></p>	<p>Item No. <u>6.5</u></p>	<p>Disposition by City Council <input type="checkbox"/> Approved Ord/Res# <input type="checkbox"/> Denied <input type="checkbox"/> Other _____ _____ City Secretary</p>
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City Council  
Agenda Memo



City Council  
Meeting Date: 03/08/12

**TO:** Larry D. Gilley, City Manager  
**FROM:** Megan R. Santee, Director of Public Works  
**SUBJECT:** Award Bid #CB-1215 – Miscellaneous Seal Coat Project (2012)

**GENERAL INFORMATION**

This contract involves seal coating of existing pavement to include the following streets:

- Fannin, Burger, Green, Shelton, Westmoreland, Forrest, High, Park, Kirkwood, Graham, Lillius, Victoria, Clinton, Merchant, Reading, N. 2<sup>nd</sup>, N. 5<sup>th</sup>, Holbron, N. 7<sup>th</sup>, Parramore, N. 8<sup>th</sup>, State, and N. 9<sup>th</sup> between the limits of Mockingbird & Grape and N. 1<sup>st</sup> & N. 10<sup>th</sup>.
- Hartford, Stratford, Waldemar, Fairmount, Benbrook, Richmond, Monticello, Avondale, Hawthorne, Buccaneer, Westridge, Lexington, Clairmont, Rivercrest, Elmwood, Sylvan, Hollis, Glenwood, Grove, Albany, Davis, Blair, Woodridge, Edgewood, Bickley, S. 12<sup>th</sup>, Grissom Pl, Park Pl, S. 10<sup>th</sup>, S. 9<sup>th</sup>, S. 8<sup>th</sup>, and Ward between the limits of Pioneer & Willis and S. 7<sup>th</sup> & S. 14<sup>th</sup>.

Pavement failures will be repaired as directed by the City Engineer. Much of the work is located in the vicinity of Bonham Elementary School and Abilene High School.

**FUNDING/FISCAL IMPACT**

Funding is available from 2006 and 2007 GO Funds.

**STAFF RECOMMENDATION**

The staff recommends that the Council award Bid #CB-1215, to Contract Paving Co., Tye, Texas, in the amount of \$1,227,446.15.

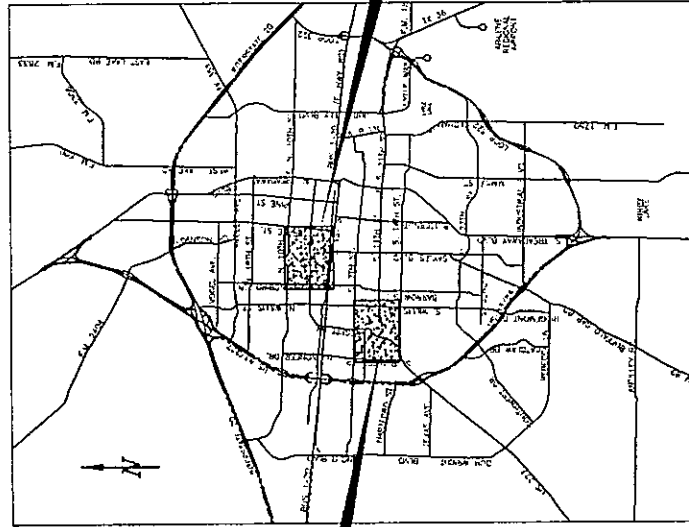
**ATTACHMENTS**

Bid Tabulation Sheet  
Project Location Map

Prepared by:  Name <u>Chad Carter</u>  Title <u>City Engineer</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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# MISCELLANEOUS SEAL COAT PROJECT (2012)



PROJECT AREA INCLUDES:  
STREETS BETWEEN  
PIONEER DR. AND WILLIS ST.  
AND S. 7TH ST. AND S. 14TH ST.

PROJECT AREA INCLUDES:  
STREETS BETWEEN  
MOCKINGBIRD LN. AND GRAPE ST.  
AND N. 1ST ST. AND N. 10TH ST.

PROJECT LOCATION MAP