

City Council
Agenda Memo



City Council
Meeting Date: 09-27-12

TO: Larry D. Gilley, City Manager
FROM: Richard Burdine, Assistant City Manager for Economic Development
SUBJECT: Annual Contract Renewals – Development Corporation of Abilene, Inc.

GENERAL INFORMATION

The Development Corporation of Abilene, Inc. (DCOA) approved a budget for FY2013 that includes contract renewals with the City of Abilene for Business Services and the Airport Business Development Management program, the Abilene Industrial Foundation, Inc., Chamber of Commerce Military Affairs Committee, and Texas Tech University Small Business Development Center. Most of these agencies have been funded either wholly or in part by the DCOA since 1990.

SPECIAL CONSIDERATIONS

See page 2.

FUNDING/FISCAL IMPACT

Maximum amount to be paid by the DCOA under FY13 contracts:

City of Abilene Business Services (Acct Unit 7602752760)	\$ 641,363
Property Maintenance (Acct Unit 7602752775)	\$ 186,320
Property Maint. Life Sciences (Acct Unit 7602752765)	\$ 614,646
Property Damage Ins. Premium (Acct Unit 7602752775)	\$ 122,484
City of Abilene Airport Business Dev. Mgmt (Acct Unit 1006006060)	\$ 181,630
TOTAL	\$1,746,443 Paid by DCOA

STAFF RECOMMENDATION

Staff recommends the City Council approve, by oral resolution, the annual renewal contracts between the City and DCOA for Business Services and Airport Business Development Management. Staff also recommends City Council authorize the City Manager to execute the contracts on behalf of the City.

BOARD OR COMMISSION RECOMMENDATION

The DCOA Board approved the FY2013 budget and contract renewals on August 28, 2012.

ATTACHMENTS

Renewal contract with City of Abilene for Airport Business Development Management Program
Renewal contract with City of Abilene for Business Services Division

Prepared by: Kim Tarrant, Business Services Manager Name: Richard Burdine Title: Asst. City Manager for Economic Development	Item No. <u>6.1</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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SPECIAL CONSIDERATIONS

The contracts referenced above are being renewed for one year beginning 10-1-12. All agencies are evaluated each year to determine compliance with the current contract performance objectives. The Project Evaluation Committee of the DCOA reviewed the audits and made a report to the Board with recommendations to renew the contracts. The Budget & Finance Committee of the DCOA reviewed all funding requests and made a recommendation to the DCOA for FY13 funding levels. All agencies are reimbursed for actual expenses. The two contracts with the City of Abilene are being submitted for approval.

Business Services (Economic Development) contract for FY13 includes all administrative expenses for the Development Corporation of Abilene in the amount of \$641,363, which includes a staff of 5 in the Economic Development Department. Also included in the contract are \$186,320 for maintenance and other up-keep expenses for DCOA-owned properties, \$614,646 for operations and maintenance of the Abilene Life Sciences Accelerator and lab on Pine St., and \$122,484 for property damage insurance premiums to cover all DCOA-owned properties under the City's self-insurance program. The total FY13 funding authorization is \$1,746,443. The current FY12 contract amounts are \$630,041 for operating, \$230,417 for DCOA-owned properties maintenance, \$825,910 for Life Sciences properties operations and maintenance, and \$141,900 for insurance premiums for a total amount of \$1,828,268.

Airport Business Development Management contract for FY13 is in the amount of \$181,630 for salary support for the Business Development Manager, consulting services to expand current air service, and marketing services through various medium. The current FY12 contract amount is \$160,813.

THE STATE OF TEXAS X
 X KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TAYLOR X

THIS AGREEMENT, effective the 1st day of October, 2012, by and between the **City of Abilene**, a municipal corporation, situated in Taylor and Jones Counties, Texas, acting by and through its City Manager, (hereinafter referred to as "CITY"), and the **Development Corporation of Abilene, Inc.** (hereinafter referred to as "DCOA") acting by and through its President and in accordance with the Development Corporation Act of 1979, as amended:

WITNESSETH:

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

I. PURPOSE

That the City agrees to provide staffing for administrative and program support and legal services (hereinafter referred to as "the Staff") to the DCOA as requested by the Board of Directors of the DCOA (hereinafter referred to as "Board"). For purposes of this contract, the City's Assistant City Manager for Economic Development shall serve as Chief Executive Officer of the DCOA as described in section 5.09 of the DCOA Bylaws (herein referred to as Bylaws).

II. DUTIES

A. CITY AGREES:

1. To follow the provisions of the Bylaws, which are incorporated herein by reference, as may be amended, including but not limited to those Bylaws associated with short and long-term planning, specifically Section 4.04 of the Bylaws, as closely as possible to ensure the DCOA's economic development efforts are in line with the evolving economic development needs of the Abilene community. The Staff will solicit input from other Develop Abilene Team members (i.e. Abilene Industrial Foundation, Abilene Chamber of Commerce, Texas Tech University Small Business Development Center) in order to encourage a cohesive and coordinated effort on behalf of the community. Efforts are to be made to conduct at least once each year a planning session with the Board to determine policy changes needed in the Staff's efforts to stay competitive in the dynamic economic development environment.

2. Consistent with Section 5.09 of the Bylaws, the Chief Executive Officer of DCOA (otherwise known as the Director of Economic Development) shall recommend policies and procedures to the Board for adoption by the Corporation as needed, including financial, accounting, and purchasing policies and procedures. Unless

otherwise stipulated, the Staff shall follow the policies and procedures of the City's Department of Finance when conducting DCOA financial business. The policies and procedures of the City's Purchasing Department shall be followed as closely as is feasible for any DCOA project, except in cases where it is more advantageous to follow state law regarding bids and purchases for development corporations.

3. To provide all necessary accounting and financial management services through the City's Finance Department. The Finance Department will work with the Staff to keep complete and current books and records of all DCOA activities and provide the DCOA monthly reports of its fund balance and sales tax revenue.

The Staff will continue to revise, as needed, the internal tracking system for all of the DCOA's operating and project contracts to ensure requests for payment are recorded and contract amounts are not exceeded.

4. To negotiate, administer and monitor all contracts on behalf of the DCOA with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks. The City's Internal Auditor shall conduct an annual review of this contract.
5. To prepare a budget for the forthcoming year for review and final approval by the Board. The budget shall be prepared in accordance with the procedures prescribed for all City departments and included with the proposed overall City budget for approval by the Abilene City Council.
6. To provide all of the staff necessary for the operation of DCOA programs. The City shall be responsible for the hiring, evaluation, and/or termination of personnel, who shall be City of Abilene employees and subject to all personnel policies thereof. The foregoing notwithstanding, the City Manager or his designate shall meet with the Board, as requested from time to time in executive session regarding personnel matters to receive the Board's input regarding such matters.
7. To ensure that the Staff carries out responsibilities and duties as specified by the Board and accepted by the City.
8. Review the existing incentive guidelines, loan program and related lending policies as needed, make recommendations to the Board to ensure that such guidelines, programs and policies are in compliance with all relevant local, state and federal requirements and to serve the needs of the community.
9. In accordance with Guidelines for Public Assistance and Administrative Policy and Incentive Guidelines, adopted by the Board, review and recommend to the Board approval or denial of all eligible applications for financial assistance. The DCOA's Guidelines for Public Assistance and Administrative Policy does apply and is

incorporated by reference herein for all purposes.

10. Continue to build upon existing relationships with local financial institutions to promote the development of new and existing businesses.
11. To maintain records of DCOA activities in accordance with the same state-mandated records retention schedule that is followed by the City.
12. To provide information on local, state, and federal permit and licensing requirements and act as a liaison between the clients and other City departments.
13. Inform/report quarterly to the Board the status of the DCOA's loan portfolio.
14. Administer the Enterprise Zone, Tax Abatement, and other state incentive programs as well as other programs as directed by the Board when directly related to programs and projects of the DCOA.
15. Continue to coordinate with local trade schools, colleges and universities, and the Texas Tech Small Business Development Center to identify and develop programs to meet the training, educational and business counseling needs of the Abilene business community.

B. DCOA AGREES TO:

1. Provide the City funding in the amount of \$641,363 for the one-year period ending September 30, 2013, for the operational activities (including provision of the Staff) of the Business Services Division of the Department of Economic Development.
2. Provide to the City funding in the amount of \$186,320 for the one-year period ending September 30, 2013 for the maintenance and upkeep of and other expenses related to all DCOA-owned facilities and other properties, as needed, whether vacant or occupied, in accordance with any existing lease agreement. In addition, provide funding in the amount of \$122,484 for property damage insurance premiums for covering the DCOA-owned properties under the City's self-insurance plan.
3. Provide to the City funding in the amount of \$614,646 for the one-year period ending September 30, 2013 for the maintenance and upkeep of and other expenses related to the Abilene Life Sciences Accelerator at 1325 Pine St., parking lot at 1342 Walnut St., and Laboratory at 842 Pine St., in accordance with the Master Lease Agreement dated April 29, 2009 between the DCOA and Abilene Life Sciences Foundation, Inc. (760-275-2765). Also included is maintenance and upkeep of the adjacent property located at 922 N. 13th St., otherwise known as the Stone Shop.
4. Grant authority to its Chief Executive Officer to disburse funds and incur expenses

on behalf of the DCOA as approved from time to time by the Board.

5. Develop budget priorities and recommendations for City Council consideration with respect to the economic development programs of the DCOA, as specified in the Corporation's Bylaws.

III. LEGAL SERVICES

The City Attorney, or an assistant City Attorney designated by the City Attorney, shall be legal advisor of, and attorney for, the DCOA and its Board and committee members. Such legal services shall include representation in litigation and legal proceedings, and review of documents, contracts and legal instruments as to form and legality. The DCOA retains the right to hire an attorney of its own choice at its own expense.

IV. ASSISTANT CITY MANAGER FOR ECONOMIC DEVELOPMENT

It is expressly understood by the City and the DCOA that the DCOA reserves and retains the right to hear all appeals of any issues which may arise under this contract. Under the terms of this contract, the Chief Executive Officer shall report to the Board and to the City Manager in administering the joint economic development programs of the DCOA and the City.

The Assistant City Manager for Economic Development shall act as the DCOA's Chief Executive Officer and is hereby expressly given the right and power by the DCOA to sign all applications, and documents as approved by the Board, in determining the joint economic development program of the DCOA and the City.

It is expressly understood that the DCOA retains the right to pursue other avenues for economic development, when it is determined to be in the best interest of the DCOA to do so, and this Agreement shall not limit the DCOA's right to pursue such interests.

V. PROGRAM INCOME

All program income resulting from the use of DCOA funds as provided under this agreement shall be returned to the unobligated fund balance of the DCOA.

VI. TERMINATION

This Agreement may be terminated by the DCOA or the City, in whole, or from time to time, in part, whenever such termination is determined by the Board or the City Council, as the case may be, to be in the best interest of the DCOA or the City. Termination will be effective sixty (60) days after delivery of Notice of Termination specifying to what extent performance or work under the contract has been terminated and specifying that the Agreement shall be terminated sixty (60) days after receipt by the notified party.

If no notice of termination is received from either party prior to August 2, 2013, this contract expires without notification on September 30, 2013.

VII. OFFICIALS NOT TO BENEFIT

No public official of the governing body of the City or the DCOA who exercises any functions or responsibilities in the review or the approval of the undertaking or carrying out of any project hereunder, shall participate in any decision relating to the contract which affects his personal interest, nor shall he have any personal or pecuniary interest direct or indirect in this contract or proceeds thereof.

VIII. MINORITY AND SMALL BUSINESSES

The City will encourage and utilize small businesses and minority suppliers and services to the extent possible under present law for use in completion of this contract.

IX. EQUAL EMPLOYMENT OPPORTUNITIES

During the performance of this contract, the City agrees as follows:

The City will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The City will take affirmative action to ensure that applicants and their employees are treated equally without regard to race, color, religion, sex, national origin, or disability. The City agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause. The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.

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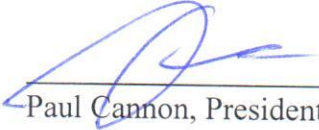
X. AGREEMENT:

This Agreement shall constitute the sole agreement between the City and the DCOA relating to the object of this Agreement and correctly sets forth the complete rights, duties, and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

WITNESS our hands to this AGREEMENT this _____ day of _____, 2012.

DEVELOPMENT CORPORATION OF ABILENE, INC.
174 Cypress, Ste. 301
Abilene, Texas 79601

CITY OF ABILENE
P.O. Box 60
Abilene, Texas 79604



Paul Cannon, President

Larry D. Gilley, City Manager

ATTEST:

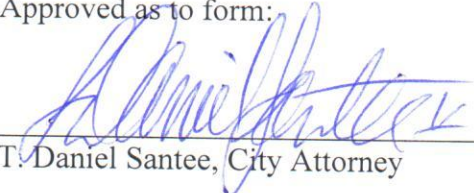
ATTEST:



Marelyn Shedd, Secretary/Treasurer

Danette Dunlap, City Secretary

Approved as to form:



T. Daniel Santee, City Attorney

THE STATE OF TEXAS X
 X KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TAYLOR X

THIS AGREEMENT, effective the 1st day of October, 2012, by and between the **City of Abilene**, a municipal corporation, situated in Taylor and Jones Counties, Texas, acting by and through its City Manager, (hereinafter referred to as "CITY"), and the **Development Corporation of Abilene, Inc.** (hereinafter referred to as "DCOA") acting by and through its President and in accordance with the Development Corporation Act of 1979, as amended:

WITNESSETH:

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

I. PURPOSE

That the City agrees to administer the Airport Business Development Management Program designed to build activity within the Abilene Regional Airport’s business segments. For purposes of this contract, the City's Assistant City Manager for Economic Development shall serve as the Chief Executive Officer described in section 5.09 of the DCOA Bylaws.

The City also agrees to provide, for no additional amount of assistance from the DCOA, access to the number of parking spaces in the Airport’s covered parking lot at the far north end needed to accommodate parking by employees of Eagle Aviation Services, Inc. (“EASI”).

II. DUTIES

A. CITY AGREES TO:

1. Continue to develop the Business Development Management Program at the Abilene Regional Airport by:
 - a. Participating in major area trade shows and continuing the community outreach efforts by seeking speaking engagements to civic groups throughout our 16 county catchment area that highlight the operations of the airport, construction updates, air service needs and fare comparisons, and
 - b. Marketing the airport amenities and upgrades using a variety of medium including television, radio, newspaper ads, billboards, sponsorships, a new web site, and social networking, and
 - c. Continuing the ABI-VIP Passenger Rewards Program and Passenger Appreciation Days to encourage air travel from Abilene.
 - d. Continuing to work with the air service consultant to retain the current air service and explore new service.

2. Submit a written report to DCOA by April 10, 2013 of progress made through the activities specified in Sec. A. 1., above, since October 1, 2012. The report shall also be presented orally to the DCOA during the April 2013 board meeting, or the first board meeting to occur subsequent to April 10, 2013.

In addition, a second written report will be submitted by October 10, 2013 of progress made since April 2013. Likewise, the report shall be presented orally to the DCOA during the October 2013 board meeting, or the first board meeting to occur subsequent to October 10, 2013.

3. Provide the number of needed parking spaces in the Airport's covered parking lot at the far north end to the DCOA for use by employees of Eagle Aviation Services, Inc. ("EASI").
4. Enforce all parking rules and regulations directly with EASI and notify the DCOA of any recurring problems or violations.
5. Continue policing the subject parking spaces as with the remainder of the parking lot and maintaining the covered awnings.

B. DCOA AGREES TO:

Provide the City funding in the total amount of One Hundred Eighty-One Thousand Six Hundred Thirty and no/100's Dollars (\$181,630) for the one-year period ending September 30, 2013, for the following:

- a. \$64,390 – operating support for the Business Development Management Program division of the Abilene Regional Airport, including a 3% salary increase.
- b. \$24,000 – consulting services for retaining current and exploring new air service
- c. \$70,000 – marketing airport services, amenities and upgrades using variety of medium including television, radio and newspaper ads to Catchment Area of 16 counties.
- d. \$19,240 – to contract with Pink Goose Media for video, audio and graphic production for a new marketing campaign; Airport web design, development, hosting and maintenance; VIP Program development and maintenance.
- e. \$4,000 – expenses for 2 staff members to attend the Network USA 2013 conference.
- f. pay for all supplies necessary to allow EASI employees access to the parking lot and for all improvements and upgrades necessary to the parking spaces and surrounding area. The City shall provide the DCOA copies of invoices/receipts evidencing eligible expenses.

Funding amounts listed above may be moved from one category to the other only with the written authorization of the CEO.

III. TERMINATION

This contract may be terminated by the DCOA or the City, in whole, or from time to time, in part, upon good cause and whenever such termination is in the best interest of the DCOA or the City. Termination will be effective sixty (60) days after delivery of Notice of Termination specifying to what extent performance or work under the contract has been terminated and specifying that the contract shall be terminated sixty (60) days after receipt by the notified party.

If no notice of termination is received from either party prior to August 2, 2013, this contract expires without notification on September 30, 2013.

IV. OFFICIALS NOT TO BENEFIT

No public official of the governing body of the City or the DCOA who exercises any functions or responsibilities in the review or the approval of the undertaking or carrying out of any project hereunder, shall participate in any decision relating to the contract which affects his personal interest, nor shall he have any personal or pecuniary interest direct or indirect in this contract or proceeds thereof.

V. MINORITY AND SMALL BUSINESSES

The City will encourage and utilize small businesses and minority suppliers and services to the extent possible under present law for use in completion of this contract.

VI. EQUAL EMPLOYMENT OPPORTUNITIES

During the performance of this contract, the City agrees as follows:

The City will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The City will take affirmative action to ensure that applicants and their employees are treated equally without regard to race, color, religion, sex, national origin, or disability. The City agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause. The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.


VII. AGREEMENT:

This Agreement shall constitute the sole agreement between the City and the DCOA relating to the object of this Agreement and correctly sets forth the complete rights, duties, and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

WITNESS our hands to this AGREEMENT this _____ day of _____, 2012.

**DEVELOPMENT CORPORATION OF
ABILENE, INC.**
174 Cypress, Ste. 301
Abilene, Texas 79601

CITY OF ABILENE
P.O. Box 60
Abilene, Texas 79604

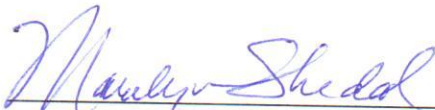


Paul Cannon, President

Larry D. Gilley, City Manager

ATTEST:

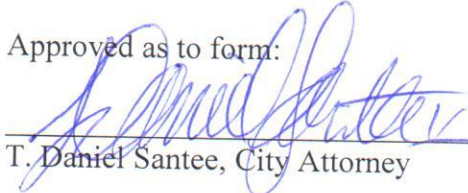
ATTEST:



Marelyn Shedd, Secretary/Treasurer

Danette Dunlap, City Secretary

Approved as to form:



T. Daniel Santee, City Attorney

**City Council
Agenda Memo**



**City Council
Meeting Date: Sept. 27, 2012**

TO: Larry D. Gilley, City Manager

FROM: Jon James, Director of Planning and Development Services

SUBJECT: TxDOT/Abilene MPO Transportation Policy Board/City of Abilene Planning Agreement

GENERAL INFORMATION:

There has been a formal written Planning Contract between TxDOT, the Transportation Policy Board of the Abilene Metropolitan Planning Organization (MPO), and the City of Abilene for many years. The Agreement is required since Federal funds flow to, and through, TxDOT to the City of Abilene and the Abilene MPO. The current contract expires on September 30, 2012. TxDOT has changed the wording to say "Agreement" rather than "Contract" in the proposed new document.

SPECIAL CONSIDERATIONS:

TxDOT has been working with the Texas MPOs (TEMPO) over the past several months in reviewing the language in the agreement and addressing some of the concerns of the MPOs. MPO staff and City staff have proposed modifications to the agreement. This agreement was reviewed by the City Legal Department.

STAFF RECOMMENDATION:

Staff recommends authorizing the City Manager to execute a Planning Agreement with the Texas Department of Transportation and the Transportation Policy Board of the Abilene Metropolitan Planning Organization.

BOARD OR COMMISSION RECOMMENDATION:

The MPO Transportation Policy Board approved this agreement at their September 18, 2012 meeting.

ATTACHMENTS

Please see the attached draft Planning Agreement.

Prepared by:

Name E'Lisa Smetana
Title Executive Director, Abilene
MPO

Item No. 6.2

Disposition by City Council

- Approved Ord/Res# _____
- Denied _____
- Other _____

City Secretary

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT WITH METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, called the “Department,” the Transportation Policy Board , and the City of Abilene, which has been designated as the Metropolitan Planning Organization (MPO) of the Abilene urbanized area, and which serves as the Fiscal Agent for the MPO.

W I T N E S S E T H

WHEREAS, 23 United States Code (USC) §134 and 49 USC §5301 et seq. require that MPOs, in cooperation with the Department and transit agencies, develop transportation plans and programs for urbanized areas of the State; and

WHEREAS, 23 USC §104(f) authorizes Metropolitan Planning funds and 49 USC §5301 et seq. authorizes funds to be made available to MPOs designated by the Governor to support the urban transportation planning process; and

WHEREAS, the federal share payable for authorized activities using 49 USC §5303 and Metropolitan Planning funds is eighty percent (80%) of allowable costs; and

WHEREAS, Texas Transportation Code §221.003 authorizes the Department to expend federal and state funds for improvements to the state highway system; and

WHEREAS, Texas Transportation Code §201.703 authorizes the Department to expend federal funds and to provide state matching funds for allowable costs necessary for the improvement of roads not in the state highway system; and

WHEREAS, Metropolitan Planning funds, and other federal transportation funds that may be used for planning (e.g., Surface Transportation Program, National Highway System, Congestion Mitigation and Air Quality, etc.) and 49 USC §5303 funds are to be used in conjunction with work conducted under the terms of this agreement; and

WHEREAS, the Governor of the State of Texas has designated the City of Abilene, acting through their Transportation Policy Board, as the MPO for the above-mentioned urbanized area; and

WHEREAS, the Governor of the State of Texas and the City of Abilene have executed an agreement pursuant to the MPO designation; and

WHEREAS, an area equal to or larger than the above-mentioned urbanized area has been delineated in accordance with federal and state guidelines where required metropolitan transportation planning activities may take place; and

WHEREAS, 23 Code of Federal Regulations (CFR) §420.117(a) requires that in accordance with 49 CFR §18.40, the Department shall monitor all activities performed by its staff or by sub-recipients with Federal Highway Administration (FHWA) planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met; and

NOW THEREFORE, it is agreed as follows:

A G R E E M E N T

Article 1. Agreement Period

- A.** This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. The Department shall not continue its obligation to the MPO under this agreement if the Governor's designation of the MPO is withdrawn; if federal funds cease to become available; or if the agreement is terminated as provided below.
- B.** This agreement expires on September 30, 2018. No fewer than one hundred and twenty (120) days before the expiration date, the Department or the City of Abilene may exercise in writing an option to extend the agreement by a period of no more than 2 years. The Department or the City of Abilene may exercise this option no more than 2 times. If all terms and conditions of this agreement remain viable and no amendment to the existing agreement or new agreement is required, a letter from the Department to the MPO, or from the MPO to the Department, shall constitute renewal of this agreement subject to all terms and conditions specified in this agreement. However, an amendment or a new agreement may be executed, if necessary.

Article 2. Responsibilities of the Department

The responsibilities of the Department are as follows:

- A.** Make available to the MPO its share of all federal metropolitan planning funds and provide the required non-federal match as authorized by the Texas Transportation

Commission. The Department will distribute federal transportation planning funds to the MPO based on a formula developed by the Department, in consultation with and approved by the MPO, and approved by FHWA, the Federal Transit Administration (FTA), and other applicable federal agencies.

- B.** Provide to the MPO, as appropriate, technical assistance and guidance for the collection, processing, and forecasting of socio-economic data needed for the development of traffic forecasts, plans, programs, and planning proposals within the metropolitan area, including collecting, processing, and forecasting vehicular travel volume data in cooperation with the MPO, as appropriate.
- C.** Jointly promote the development of the intermodal transportation system within the metropolitan area by identifying points in the system where access, connectivity, and coordination between the modes and inter-urban facilities would benefit the entire system.
- D.** Share with the MPO information and information sources concerning transportation planning issues that relate to this agreement.

Article 3. Responsibilities of the MPO

The MPO is an organization created to ensure that existing and future expenditures on transportation projects and programs are based on a continuing, cooperative, and comprehensive planning process. The responsibilities of the MPO are as follows:

- A.** Document planning activities in a UPWP to indicate who will perform the work, and the products that will be produced. In cooperation with the Department and public transportation operators as defined by 23 CFR Part 450, the MPO must annually or biennially develop a UPWP that meets federal requirements.
- B.** Prepare and submit to the Department an annual performance and expenditure report of progress no later than December 31 of each year. A uniform format for the annual report will be established by the Department, in consultation with the MPO.
- C.** Use funds provided in accordance with 43 Texas Administrative Code (TAC) §16.52 and Article 2 (Responsibilities of the Department) of this agreement to develop and maintain a comprehensive regional transportation planning program in conformity with the requirements of 23 USC §134, 49 USC §5303.
- D.** Develop a Metropolitan Transportation Plan (MTP), a Transportation Improvement Program (TIP), and a UPWP for the Metropolitan Planning Area (MPA), all of which are consistent with the Statewide Long-Range Transportation Plan (SLRTP), as required by the state and federal law. At a minimum, the MPO shall consider in their planning process the applicable factors outlined in 23 USC §134.

- E. Assemble and maintain an adequate, competent staff with the knowledge and experience that will enable them to perform all appropriate MPO activities required by law.
- F. Forecast, collect, and maintain appropriate socio-economic, roadway, and travel data on a timely basis, in cooperation with the Department.
- G. Prepare all required plans, programs, reports, data, and obtain required certifications in a timely manner.
- H. Share information and information sources concerning transportation planning issues.

Article 4. Responsibilities of the Transportation Policy Board

The Transportation Policy Board is the policy body that is the forum designated under 23 USC §134 with the responsibility for establishing overall transportation policy for the MPO and for making required approvals. The Transportation Policy Board is comprised of those governmental agencies identified in the original designation agreement and those agencies or organizations subsequently added to the membership of the committee. The responsibilities of the Transportation Policy Board are as follows:

- A. Ensure that requirements of 23 USC §§134 and 135 and 49 USC, Chapter 53, are carried out.
- B. Use funds provided in accordance with Article 2 (Responsibilities of the Department) of this agreement to develop and maintain a comprehensive regional transportation planning program in accordance with requirements of 23 USC §134 and 49 USC §5303.
- C. Develop and adopt an MTP for the MPA that is consistent with the SLRTP required by state and federal laws; a TIP and a UPWP; and other planning documents and reports that may be required by state or federal laws or regulations.
- D. Exercise joint responsibility with the MPO to hire, supervise, evaluate, and terminate the MPO Executive Director.
- E. Provide planning policy direction to the MPO Executive Director.

Article 5. Responsibilities of the Fiscal Agent

The Fiscal Agent for the MPO is the entity responsible for providing fiscal, human resource, and staff support services to the MPO. The responsibilities of the Fiscal Agent are as follows:

- A. Maintain required accounting records for state and federal funds consistent with current federal and state requirements.
- B. Provide all appropriate funding, as identified by fiscal year in the UPWP, to allow the MPO staff to effectively and efficiently operate the program.
- C. Provide human resource services to the MPO.
- D. Provide benefits for the MPO staff that shall be the same as the Fiscal Agent normally provides its own employees; or as determined through an agreement between the MPO and the Fiscal Agent. Costs incurred by the Fiscal Agent for these benefits may be reimbursed by the MPO.
- E. Establish procedures and policies for procurement and purchasing, when necessary, in cooperation with the MPO.

Article 6. Responsibilities of the MPO Executive Director

The responsibilities of the MPO Executive Director are as follows:

- A. Administer the MPO's UPWP. The Director shall serve in a full-time capacity and shall take planning policy direction from and be responsible to the designated MPO Policy Committee.
- B. Act as a liaison to the Department, relevant to the Department's transportation planning activities.
- C. Oversee and direct all MPO transportation planning staff work performed using MPO funds.
- D. Prepare and submit all required plans, programs, reports, data, and certifications in a timely manner.
- E. Develop and present to the Transportation Policy Board an MTP for the MPA that is consistent with the SLRTP required by state and federal laws; a TIP and a UPWP; and other planning documents and reports that may be required by state or federal laws or regulations.
- F. Share information and information resources concerning transportation planning issues.

Article 7. Unified Planning Work Program

- A. Either annually or biennially, the MPO shall submit to the Department a program of work that includes goals, objectives, and tasks required by each of the several

agencies involved in the metropolitan transportation planning process. This program of work is to be called the Unified Planning Work Program (UPWP), or any successor name. The UPWP shall be approved by the Transportation Policy Board, in accordance with 23 CFR §450.314.

- B.** The UPWP will be prepared for a period of one (1) year or two (2) years unless otherwise agreed to by the Department and the MPO. The UPWP shall reflect only that work that can be accomplished during the time period of the UPWP, in accordance with TAC §16.52.
- C.** The UPWP shall reflect transportation planning work tasks to be funded by federal, state, or local transportation, or transportation related (e.g. air quality) planning funds. The budget and statement of work will be included in the UPWP. The MPO may not incur costs until final approval of the UPWP is granted. The maximum amount payable will not exceed the budget included in the UPWP.
- D.** The effective date of each UPWP will be October 1st of each year or the date of approval from the appropriate oversight agency, whichever occurs later. On that date, the UPWP shall constitute a new federal project and shall supersede the previous UPWP.
- E.** The UPWP shall comply with all applicable federal and state requirements and will describe metropolitan transportation and transportation-related planning activities anticipated in the area.
- F.** The use of federal metropolitan transportation planning funds shall be limited to transportation planning activities affecting the transportation system within the boundaries of a designated metropolitan planning area. If an MPO determines that data collection and analysis activities relating to land use, demographics, or traffic or travel information, conducted outside its boundaries, affects the transportation system within its boundaries, then those activities may be undertaken using federal planning funds, if the activities are specifically identified in an approved UPWP. Any other costs incurred for transportation planning activities outside the boundaries of a designated metropolitan planning area are not eligible for reimbursement.
- G.** Travel outside the State of Texas by MPO staff and other agencies participating in the MPO planning process must be approved by the Department if funded with federal transportation planning funds. The MPO must receive approval prior to incurring any costs associated with the actual travel (e.g., registration fee). This provision will not apply if the travel is at the request of the Department.
- H.** The cost of travel incurred by elected officials serving on the Transportation Policy Board is eligible for reimbursement with federal transportation planning funds in accordance with 43 TAC §16.52.

- I. The use of federal transportation planning funds is limited to corridor/subarea level planning or multimodal or system-wide transit planning studies. Major investment studies and environmental studies are considered corridor level planning. Unless otherwise authorized by federal law or regulation, the use of such funds beyond environmental document preparation or for specific project level planning and engineering (efforts directly related to a specific project instead of a corridor) is not allowed.
- J. Failure to adhere to the time line developed by the Department may result in a delay in the authorization to the MPO to proceed in incurring costs.
- K. A UPWP may not be approved if it is submitted in a format other than the standard format developed by the Department. The UPWP and subsequent amendments may be submitted electronically.
- L. The MPO shall not incur any costs for work outlined in the UPWP or any subsequent amendments (i.e., adding new work tasks or changing the scope of existing work tasks) prior to receiving approval from the Department. Any costs incurred prior to receiving Department approval are not eligible for reimbursement from federal transportation planning funds.
- M. Costs incurred by the MPO shall not exceed the total budgeted amount of the UPWP without approval of the Transportation Policy Board. Costs incurred on individual work tasks shall not exceed that task budget by 25 percent without approval of the Transportation Policy Board. If the costs exceed 25 percent of the task budget, the UPWP shall be revised, approved by the Transportation Policy Board, and submitted to the Department for approval.
- N. The Transportation Policy Board shall approve the UPWP and any subsequent revisions, and may not delegate the approval authority, except for corrective actions. Corrective actions do not change the scope of work, result in an increase or decrease in the amount of task funding, or affect the overall budget. Examples include typographical, grammatical, or syntax corrections.
- O. Should any conflict be discovered between the terms of this agreement and the UPWP, the terms of this agreement shall prevail.
- P. The MPO is not authorized to request payment for any work it may perform that is not included in the current UPWP.

Article 8. Compensation

The Department's payment of any cost incurred under this agreement is contingent upon all of the following:

- A.** Federal funds are available to the Department- for making payments.
- B.** The incurred cost is authorized in the UPWP. The maximum amount payable under this agreement shall not exceed the total budgeted amount outlined in the UPWP in accordance with 43 TAC §16.52.
- C.** The cost has actually been incurred by the MPO and meets the following criteria:
1. Is verifiable from MPO records;
 2. Is not included as match funds for any other federally-assisted program;
 3. Is necessary and reasonable for the proper and efficient accomplishment of program objectives;
 4. Is the type of charge that would be allowable under OMB Circular A-87 Revised, "Cost Principles for State, Local, and Indian Tribal Governments"; and
 5. Is not paid by the Department or federal government under another assistance program unless authorized to be used as match under the other federal or state agreement and the laws and regulations to which it is subject.
- D.** After October 1st of each year, the Department will issue a work order to the MPO establishing the effective date of work and the total funds authorized. If the UPWP is subsequently revised, necessitating a revision to the original work order, or the Department deems a revision necessary, a revised work order may be issued at any time throughout the fiscal year. If the amount in the UPWP differs from the amount in the work order, the amount in the work order prevails.
- E.** The MPO is authorized to submit requests for payment of authorized costs incurred under this agreement on a semi-monthly basis, but no more than twenty four (24) times a year and no less than monthly as expenses occur. Each request for payment shall be submitted in a manner acceptable to the Department, which includes, at a minimum, the following information:
1. UPWP budget category or line item;
 2. Description of the cost;
 3. Quantity;
 4. Price;
 5. Cost extension; and
 6. Total costs
- F.** The MPO shall submit the final bill from the previous fiscal year to the Department no later than December 31st of the calendar year in which that fiscal year ended. Any bills submitted after December 31 for a fiscal year in which the funds have been de-obligated will be processed against the current year's UPWP.
- G.** Noncompliance may result in cancellation of authorized work and suspension of payments after a thirty (30) day notification by the Department to the MPO.

Article 9. Reporting

To permit program monitoring and reporting, the MPO shall submit reports as required in Article 3 (Responsibilities of the MPO) of this agreement. If task expenditures overrun or underrun a budgeted task amount by twenty-five percent (25%) or more, the annual performance and expenditure report must include an explanation for the overrun or underrun.

Article 10. Indemnification

- A.** To the extent allowed under state law, the MPO shall save harmless the Department and its officers and employees from all claims and liability that are due to activities of the MPO, its agents, or its employees performed under this agreement and that are caused by or result from error, omission, or negligent act of the MPO or of any person employed by the MPO.
- B.** Further, to the extent allowed under state law, the MPO shall also save harmless the Department from any and all expenses that may be incurred by the Department in litigation or otherwise resisting claims or liabilities that may be imposed on the Department as a result of the activities of the MPO, its agents, or its employees performed under this agreement.

Article 11. Inspection of Work and Retention of Documents

- A.** The Department and, when federal funds are involved, the U. S. Department of Transportation (USDOT), and their authorized representatives shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this agreement and the premises on which it is being performed.
- B.** If any inspection or evaluation is made on the premises of the MPO or a subcontractor, the MPO shall provide or require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in a manner that will not unduly delay the work.
- C.** The MPO agrees to maintain all books, documents, papers, computer generated files, accounting records, and other evidence pertaining to costs incurred and work performed under this agreement, and shall make those materials available at its office during the time period covered and for four (4) years from the date of final payment under the UPWP. Those materials shall be made available during the specified period for inspection by the Department, the USDOT, and the Office of the Inspector General of the USDOT and any of their authorized representatives for the purpose of making audits, examinations, excerpts, and transcriptions.

- D. The state auditor may conduct an audit or investigation of any entity receiving funds from the Department directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement 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.

Article 12. Work Performance

All work performed under this agreement shall be carried out in a professional and orderly manner, and the products authorized in the UPWP shall be accurate and exhibit high standards of workmanship.

Article 13. Disputes

The MPO shall be responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of work under this agreement. In the event of a dispute between the Department and the MPO concerning the work performed under this agreement in support of the urban transportation planning process, the dispute shall be resolved through non-binding arbitration. Furthermore, the arbiter shall be mutually acceptable to the Department and the MPO.

Article 14. Non-collusion

The MPO shall warrant that it has not employed or retained any company or person, other than a bona fide employee working for the MPO, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. If the MPO breaches or violates this warranty, the Department shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of the fee, commission, brokerage fee, gift, or contingent fee.

Article 15. Subcontracts

- A. Any subcontract for services rendered by individuals or organizations not a part of the MPO's organization shall not be executed without prior authorization and approval of the subcontract by the Department and, when federal funds are involved, the USDOT. If the work for the subcontract is authorized in the current approved UPWP, and if the MPO's procurement procedures for negotiated contracts have been approved by the Department either directly or through self-certification by the

MPO, the subcontract shall be deemed to be authorized and approved, provided that the subcontract includes all provisions required by the Department and the USDOT.

- B. Subcontracts in excess of \$25,000 shall contain all required provisions of this agreement.
- C. No subcontract will relieve the MPO of its responsibility under this agreement.

Article 16. Termination

- A. The Department may terminate this agreement at any time before the date of completion if the Governor withdraws his designation of the MPO. The Department or the MPO may seek termination of this agreement pursuant to Article 13 (Disputes) if either party fails to comply with the conditions of the agreement. The Department or the MPO shall give written notice to all parties at least ninety (90) days prior to the effective date of termination and specify the effective date of termination.
- B. The Department may terminate this agreement for reasons of its own, subject to agreement by the MPO.
- C. The parties to this agreement may mutually terminate this agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the parties shall agree upon the termination conditions.
- D. Upon termination of this agreement, whether for cause or at the convenience of the parties, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the MPO shall, at the option of the Department, be delivered to the Department.
- E. The Department shall reimburse the MPO for those eligible expenses incurred during the agreement period that are directly attributable to the completed portion of the work covered by this agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The MPO shall not incur new obligations for the terminated portion after the effective date of termination.

Article 17. Force Majeure

Except with respect to defaults of subcontractors, the MPO shall not be in default by reason of failure in performance of this agreement in accordance with its terms (including any failure by the MPO to progress in the performance of the work) if that failure arises out of causes beyond the control and without the default or negligence of the MPO. Those causes may include but are not limited to acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and

unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the MPO.

Article 18. Remedies

- A.** Violation or breach of agreement terms by the MPO shall be grounds for termination of the agreement. Any costs incurred by the Department arising from the termination of this agreement shall be paid by the MPO.
- B.** This agreement shall not be considered as specifying the exclusive remedy for any dispute, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Article 19. Gratuities

- A.** Employees of the Department or the MPO shall not accept any benefits, gifts, or favors from any person doing business with, or who may do business with the Department or the MPO under this agreement.
- B.** Any person doing business with, or who may do business with the Department or the MPO under this agreement, may not make any offer of benefits, gifts, or favors to Department or the MPO employees. Failure on the part of the Department or the MPO to adhere to this policy may result in termination of this agreement.

Article 20. Compliance with Laws

The parties to this agreement shall comply with all federal and state laws, statutes, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the MPO shall furnish the Department with satisfactory proof of its compliance.

Article 21. Successors and Assigns

No party shall assign or transfer its interest in this agreement without written consent of the other parties.

Article 22. Debarment Certifications

The MPO is prohibited from making any award or permitting 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 agreement, the MPO 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 knowingly and intentionally 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 MPO shall require any party to a subcontract or purchase order awarded under this agreement as specified in 49 CFR Part 29 (Debarment and Suspension) to certify its eligibility to receive federal funds and, when requested by the Department, to furnish a copy of the certification.

Article 23. Equal Employment Opportunity

The parties to this agreement agree to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR §60).

Article 24. Nondiscrimination

During the performance of this agreement, the MPO, its assigns and successors in interest, agree to the following:

- A. Compliance with Regulations:** The MPO shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the USDOT, 49 CFR Part 21 and 23 CFR Part 200, as they may be amended from time to time (the "Regulations"), which are incorporated by reference and made a part of this agreement.
- B. Nondiscrimination:** The MPO, with regard to the work performed during the agreement, shall not discriminate on the grounds of race, color, sex, national origin, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MPO shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Part 21, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the MPO for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the MPO of the MPO's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age or disability.
- D. Information and Reports:** The MPO shall provide all information and reports required by the Regulations, or directives issued pursuant to the Regulations, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined to be pertinent by the Department or the USDOT to be pertinent to ascertain compliance with those Regulations or directives. Where any information required of the MPO is in the exclusive possession of another who

fails or refuses to furnish this information, the MPO shall so certify to the Department or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance:** In the event of the MPO's noncompliance with the nondiscrimination provisions of this agreement, the Department shall impose sanctions that it or the USDOT may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the MPO under the agreement until the MPO complies; and/or
 2. Cancellation, termination, or suspension of the agreement in whole or in part.
- F. Incorporation of Provisions:** The MPO shall include the provisions of subsections A-E of this article in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant those Regulations. The MPO shall take action with respect to any subcontract or procurement as the Department may direct as a means of enforcing these provisions including sanctions for noncompliance; provided, however, in that event, the MPO may request the United States to enter into the litigation to protect the interests of the United States.

Article 25. Nondiscrimination on the Basis of Disability

The MPO agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under this agreement. The MPO shall ensure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth in 49 CFR Part 27, and any amendments to it.

Article 26. Disadvantaged Business Enterprise (DBE) Program Requirements

The parties agreement that, pursuant to the letter dated July 26, 2012 from Michael T. Leary, Director, Planning and Program Development, U.S. Department of Transportation, Federal Highway Administration, Texas Division, planning activities covered by this agreement using FHWA PL funding are not subject to the DBE requirements. A copy of that letter is attached to this agreement.

Article 27. Procurement

- A.** The MPO shall maintain approved written procurement procedures that meet or exceed the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" - as may

be revised or superseded. These procedures shall be used for all acquisitions authorized in any UPWP.

- B.** The MPO agrees to comply with applicable Buy America requirements set forth in the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599) §401 and the FTA's Buy America regulations in 49 CFR Part 661.

Article 28. Environmental Protection and Energy Efficiency

- A.** The MPO agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 USC §7602; Section 508 of the Clean Water Act 33 USC §1368; Executive Order 11738 and Title 40 CFR, "Protection of Environment." The MPO further agrees to report known violations to the Department.
- B.** The MPO agrees to recognize standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

Article 29. Property Management

The MPO shall maintain written property management procedures that meet or exceed the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments" - as - may be revised or superseded. These procedures shall be used for any property acquired in whole or in part with federal and state funds provided through this agreement.

Article 30. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief at the time of execution, that:

- A.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants,

loans, or cooperative agreements, the signatory for the MPO shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Article 31. Amendments

Any change to one or more of the terms and conditions of this agreement shall not be valid unless made in writing and agreed to by the parties before the change is implemented.

Article 32. Distribution of Products

- A.** The MPO shall provide a number of copies to be specified by the Department of all information, reports, proposals, brochures, summaries, written conclusions, graphic presentations, and similar materials developed by the MPO and financed, in whole or in part, as provided in this agreement. All reports published by the MPO shall contain the following prominent credit reference to the Department, USDOT, FHWA, and FTA: *Prepared in cooperation with the Texas Department of Transportation and the U.S. Department of Transportation, Federal Highway Administration, and Federal Transit Administration.*
- B.** Upon termination of this agreement, all documents prepared by the MPO or furnished to the MPO by the Department, shall be delivered to the Department. All documents, photographs, calculations, programs, and other data prepared or used under this agreement may be used by the Department without restriction or limitation of further use.

Article 33. Legal Construction

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

Article 34. Sole Agreement

This agreement constitutes the sole agreement between the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this agreement.

Article 35. Copyrights

The Department and the USDOT shall, with regard to any reports or other products produced under this agreement, reserve a royalty-free, nonexclusive and irrevocable

right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.

Article 36. Single Audit Report

- A.** The parties shall comply with the requirements of the Single Audit Act of 1984, Pub. 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 MPO's fiscal year, the MPO must submit a Single Audit Report and Management Letter (if applicable) to the Department's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact the Department's Audit Office at http://www.txdot.gov/contact_us/audit.htm.
- C.** If expenditures are less than \$500,000 during the MPO's fiscal year, the MPO is not required to have a single audit performed or submitted.
- D.** For each year the project remains open for federal funding expenditures, the MPO will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

Article 37. Notices

All notices to any party by the other parties required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to the party at the following addresses:

POLICY BOARD:	Abilene Metropolitan Planning Organization Transportation Policy Board 400 Oak Street, Suite 102 Abilene, Texas 79602
MPO/Fiscal Agent:	City of Abilene City Manager P.O. Box 60 Abilene, Texas 79604
Department:	Director, Transportation Planning & Programming Division Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided in this agreement. Any party may change the above address by sending written notice of the change to the other parties. Any party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other parties.

Article 38. Signatory Warranty

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

Contract # _____
Federal Highway Administration
CFDA # _____
Not Research and Development

THIS AGREEMENT IS EXECUTED by the Department, the Transportation Policy Board, and the MPO/Fiscal Agent in triplicate.

Transportation Policy Board

MPO/FISCAL AGENT

Signature

Signature

Typed or Printed Name

Typed of Printed Name

Title

Title

Date

Date

DEPARTMENT

Signature

Typed of Printed Name

Director, Transportation Planning and Programming Division
Texas Department of Transportation

Date

**City Council
Agenda Memo**



TO: Larry D. Gilley, City Manager

**City Council
Meeting Date: 09/27/12**

FROM: Megan R. Santee, Director of Public Works

SUBJECT: Procurement of Ten (10) Paratransit Vans Through the Minnesota DOT Cooperative Procurement Program.

GENERAL INFORMATION

CityLink Transit requests authorization to purchase ten (10) Type III paratransit vans. These vehicles will be used for the CityLink ADA Paratransit service and the Evening Demand Response service. These vans meet ADA standards and are equipped with three (3) wheelchair positions and thirteen (13) seats for ambulatory passengers. The new vans will replace nine CityLink paratransit vehicles that have surpassed their Federal Transit Administration normal useful life. One van will be used as a fleet spare vehicle.

The vans will be purchased through the Minnesota DOT Cooperative Procurement Program. The Minnesota DOT Cooperative Procurement Program is the only cooperative purchasing program with Type III paratransit vans that meet the CityLink requirements. Other Texas transit agencies have used this procurement program. The vendor for this purchase is Alliance Bus Group.

FUNDING/FISCAL IMPACT

The unit cost of each van is \$66,645 with a total cost of \$666,450. The funding will come from these sources: FY09 5309 Congressional Earmark (\$456,000) matched with Transportation Development Credits previously awarded by TxDOT and FY10 5309 Congressional Earmark (\$174,674) matched with \$35,766 in City funds.

STAFF RECOMMENDATION

Staff recommends the Council authorize by oral resolution the purchase of ten (10) El Dorado National Type III paratransit vans through the Minnesota DOT Cooperative Procurement Program.

ATTACHMENTS

FY2012 Vehicle Order Form MNDOT Cooperative Procurement

Prepared by:

Name Ben Herr

Title CityLink General Manager

Item No. 6.3

Disposition by City Council

Approved Ord/Res#

Denied

Other _____

City Secretary

FY 2012 VEHICLE ORDER FORM

MN/DOT COOPERATIVE PROCUREMENT FOR SMALL, MID-SIZED & MEDIUM DUTY ACCESSIBLE BUSES

Quantity: 10
(For identical vehicle orders only)

Contract Maximum Amount: \$ \$666,450.00

Legal Name: Abilene - Citylink
 Address: 1189 S. 2nd Street
 City, State, Zip: Abilene, TX 79602
 Contact Name: Ben Herr

Phone Number: 325-676-6399
 Fax Number: 325-676-6407
 Email Address: ben.herr@abilenetx.com

Vendor Name: Alliance Bus Group
 Vendor Contact: Jason Roy
 Bus Manufacturer: EIDorado National - Kansas
 Model: Aerotech

Bus GVRW: 14500
 Chassis Manufacturer: Ford
 Chassis Wheelbase: 176"
 Vehicle Length: 240

Vehicle Spec. # 10. 15 13 # of Passenger seats (drivers seat not included)
3 # of WC Position(s)

Lift Manufacturer: Braun Position: Front _____ Rear X

Wheelchair Securements Manufacturer & Model: Q'Straint, Q-8300-A1-MAX-LTRK

Floor Plan Attached: Yes x No _____

Inspection Site/Location: _____

BASE PRICE (includes freight - manufacturer to vendor & all rebates)	\$ <u>51220.00</u>
TOTAL OPTIONS (from page 2)	\$ <u>9445.00</u>
TOTAL OPTIONS (from page 3)	\$ <u>5980.00</u>
DELIVERY CHARGE (vendor to recipient)	\$ _____
LICENSE & TRANSFER FEES	\$ _____
EXTENDED WARRANTIES	\$ _____
EXCISE TAX (if applicable)	\$ _____
VEHICLE TOTAL	\$ <u>66,645.00</u>

Recipient Signature: _____ Date: _____

Vendor Signature: _____ Date: _____

**City Council
Agenda Memo**



**City Council
Meeting Date: September 27, 2012**

TO: Larry D. Gilley, City Manager
FROM: T. Daniel Santee, City Attorney
SUBJECT: Purchase of Property

GENERAL INFORMATION

The City of Abilene has the opportunity to acquire property located at 533 Cedar Street, Abilene, Taylor County, Texas 79601. The property currently has a structure located on most of the tract. This is the former location of the Greyhound bus service in Abilene.

SPECIAL CONSIDERATIONS

Acquisition of this property would allow for the potential expansion of much needed parking for the Civic Center and the adjacent City offices in the future. Closing of the purchase should occur only after receiving the results of a phase one environmental study as well as an asbestos survey.

FUNDING/FISCAL IMPACT

Approximately \$235,000 plus closing costs.

STAFF RECOMMENDATION

Staff recommends the City Council authorize, by oral resolution, the purchase the subject property contingent upon the completion and review of an acceptable phase one environmental study and asbestos survey, for an amount not to exceed \$235,000, plus closing cost. Further, the City Council authorizes the City Manager to execute all necessary documents to complete the purchase.

Prepared by:

Name: T. Daniel Santee

Title: City Attorney

Item No. 6.4

Disposition by City Council

- Approved Ord/Res# _____
 Denied
 Other

City Secretary



City Council
Agenda Memo

TO: Larry D. Gilley, City Manager

City Council
Meeting Date: 09-27-12

FROM: Mindy Patterson, Director of Finance

SUBJECT: Resolution Directing Publication of Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation for Water System Improvements; and Resolving Other Matters Related Thereto

GENERAL INFORMATION

The Drinking Water State Revolving Fund (DWSRF) provides loans at interest rates lower than the market offers to finance projects for public drinking water systems that facilitate compliance with primary water regulations or otherwise significantly further the health protection objectives of the federal Safe Drinking Water Act. The City of Abilene is seeking funding for two projects with the DWSRF. The projects are: Distribution Line Replacement and Clearwell Roof Replacement. In August, the City was notified of the approval of the Drinking Water SRF financing in the amount of \$2,500,000. The loan will be evidenced by the Texas Water Development Board (TWDB) purchase of \$2,500,000 Combination Tax and Revenue Certificates of Obligation for Water System Improvements, Series 2012.

FUNDING/FISCAL IMPACT

The payments of such Certificates of Obligation will be paid from the revenues of the City’s waterworks and sewer system.

STAFF RECOMMENDATION

Staff recommends the City Council approve the Resolution directing the publication of Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation for Water System Improvements, Series 2012 in the amount of \$2,500,000; and resolving other matters related thereto.

ATTACHMENTS

Resolution

Prepared By: Name <u>Mindy Patterson</u> Title <u>Director of Finance</u>	Item No. <u>6.5</u>	Disposition by City Council <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> Other Ord/Res # _____ _____ City Secretary
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RESOLUTION NO. _____

DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION FOR WATER SYSTEM IMPROVEMENTS; AND RESOLVING OTHER MATTERS RELATING TO THE SUBJECT

THE STATE OF TEXAS	§
COUNTIES OF TAYLOR AND JONES	§
CITY OF ABILENE	§

WHEREAS, this City Council deems it advisable to give notice of intention to issue certificates of obligation of the City of Abilene Texas (the "City"), as hereinafter provided;

WHEREAS, the City expects to pay, or have paid on its behalf, expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit A hereto (the "Projects") prior to the issuance of tax-exempt obligations for which a prior expression of intent to finance or refinance is required by federal or state law (collectively and individually, the "Obligations") to finance the Projects;

WHEREAS, the City finds, considers, and declares that the reimbursement for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention to reimburse itself for such payments at such time as it issues Obligations to finance the Projects; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Resolution was passed, was open to the public and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

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

1. Attached hereto is a form of the Notice of Intention to issue Combination Tax and Revenue Certificates of Obligation for Water System Improvements, the form and substance of which is hereby adopted and approved.

2. The City Secretary shall cause said notice to be published in substantially the form attached hereto, in a newspaper, as defined by Subchapter C, Chapter 2051, Texas Government Code, of general circulation in the area of said City, once a week for two consecutive weeks, the date of the first publication thereof to be at least 30 days prior to the date tentatively set for the adoption of the ordinance authorizing the issuance of such Obligations as shown in said notice.

3. All costs to be reimbursed pursuant hereto will be capital expenditures. No Obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

4. The foregoing notwithstanding, no Obligation will be issued pursuant to this statement more than three years after the date any expenditure which is to be reimbursed is paid.

5. This Resolution shall become effective immediately upon adoption.

APPROVED AND ADOPTED this September 27, 2012

ATTEST:

City Secretary

Mayor

APPROVED:

City Attorney

[CITY SEAL]

CITY OF ABILENE, TEXAS
NOTICE OF INTENTION TO ISSUE COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION FOR WATER SYSTEM IMPROVEMENTS

NOTICE IS HEREBY GIVEN that the City Council of the City of Abilene, Texas, at its meeting to commence at 8:30 A.M. on November 15, 2012, at its regular meeting place in the City Hall, 555 Walnut, Abilene, Texas, tentatively proposes to adopt an ordinance authorizing the issuance of interest bearing certificates of obligation, in one or more series, in an amount not to exceed \$2,500,000 for paying all or a portion of the City's contractual obligations incurred in connection with (i) constructing, acquiring, installing and equipping improvements to the City's water system including distribution line replacement and water storage tank rehabilitation, and other related improvements to the City's water system; and (ii) legal, fiscal and engineering fees in connection with such projects. The City proposes to provide for the payment of such certificates of obligation from the levy and collection of ad valorem taxes in the City as provided by law and from a pledge of surplus revenues of the City's waterworks and sewer system, remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve, and other requirements in connection with all of the City's revenue bonds or other obligations (now or hereafter outstanding), which are payable from all or any part of the net revenues of the City's waterworks and sewer system. The certificates of obligation are to be issued, and this notice is given, under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271.

CITY OF ABILENE, TEXAS

Exhibit "A"

Constructing, acquiring installing and equipping improvements to the City's water system including distribution line replacement and water storage tank rehabilitation, and other related improvements to the City's water system.

City Council
Agenda Memo



City Council
Meeting Date: 9/27/2012

TO: Larry D. Gilley, City Manager

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

SUBJECT: First reading of an ordinance for Case No. Z-2012-22, a request from Simon Moreno, Sr., to rezone property from LI (Light Industrial) to MD (Medium Density), located at 441 & 501 Bois D'Arc Street; and setting a public hearing for October 11, 2012.

GENERAL INFORMATION

Currently the properties are zoned LI but had been developed with single-family residential homes. The surrounding properties had been developed similarly. This site and surrounding properties were previously zoned RM-2 (Multi-Family Residential) and developed with single-family homes. The zoning was changed to LI (Light Industrial) in December of 1977 making residential uses no longer permitted. The existing home has been considered a legal non-conforming use of this property. As such, a home cannot be reconstructed at this same location if damaged more than 50% of the building's appraised value. A recent fire at this home has completely destroyed it.

The Future Land Use section of the Comprehensive Plan designates this general area for heavy commercial/industrial activity. However, the primary uses in the immediate area have remained residential. Staff has begun a review of the existing zoning districts city-wide and determined that the zoning for this area could be reconsidered to change from LI to the MD (Medium Density) zoning given the lack of interest shown for industrial development in this area. The requested zoning would be compatible with the surrounding uses and would be more appropriate with the existing residential uses in the immediate area.

STAFF RECOMMENDATION

Staff recommends approval as requested.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Bixby, Famble, Rosenbaum, Todd, Yungblut, and McClarty) and none opposed.

ATTACHMENTS

Ordinance
Staff Report with Maps
Petition

Prepared by: Name: <u>Ben Bryner</u> Title: <u>Planning Services Manager</u> September 14, 2012	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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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "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 27th day of September, A.D. 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 the 17th day of August, 2012, 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 11th day of October, 2012 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 11th day of October, A.D. 2012.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT "A"

Rezone property from LI (Light Industrial) to MD (Medium Density) District.

Legal Description:

Lot 7, Block 174, OT ABL
Lot 12 & N1/2 of Lot 11, Block 173, OT ABL

Location:

441 & 501 Bois D'Arc Street

-END-

Petition to rezone a Light Industrial area into a Medium Density area

Target: Planning and Zoning Commission

Petition Background:

I, Simon Moreno along with my wife Estella Moreno would like for the planning and zoning commission to reconsider allowing us to rebuild our home where it previously stood at 441 and 501 Bois D'arc Abilene, TX 79601. We lost our home due to a fire on August 1, 2012. We have lived at the residence for more than 50 years.

Petition:

We, the undersigned are concerned neighbors who urge our zoning commission to act now to rezone 441 and 501 Bois D'arc Abilene, TX 79601 to a Medium Density zone. That will allow Mr. & Mrs. Simon Moreno to rebuild there home that was lost to a fire. This family has resided at this residence for more than 50 years.

Printed Name	Signature	Address	Comment	Date
Rosita Garcia	<i>Rosita Garcia</i>	302 N. 5th	yes we need it changed so they can rebuild and more people will live in this neighborhood	8-29-12
Jamie Garcia	<i>Jamie Garcia</i>	302 N. 5th	yes so we can have more houses around here	8-29-12
Eddie Rodriguez	<i>Eddie Rodriguez</i>	578 Bois d'arc		8-29
Tom Gonzales		430 Bois d'arc	We need the whole neighborhood to be residential for growing neighborhood	
Adolfo Ortiz	<i>Adolfo Ortiz</i>	302 Bois d'arc	- NO FLOOD SINCE 81	8-31-2012
Don P. Datin	<i>Don P. Datin</i>	234 Bois d'arc		8-31-2012
Johnny	<i>Johnny</i>	616 Cottwood	Satisfied neighborhood	8-31-2012
Ester Castro	<i>Ester Castro</i>	318 North 6th	to rebuild all our homes for safety of families growing up here	9-1-2012
Pedro Castro	<i>Pedro Castro</i>	318 N. 6th ST	to improve our Barrio so people can move back if they want to.	9-1-2012

Printed Name	Signature	Address	Comment	Date
Michael Castro	<i>Michael Castro</i>		I myself would like to build a home in ALEP	9-1-12
Barbara Barrios	<i>Barbara Barrios</i>		to improve the neighborhood & some of us can build there in the future	
Joe Garcia	<i>Joe Garcia</i>	525 Cottonwood	to help the area with cottonwood family wanted	
Sebastian Barrios	<i>Sebastian Barrios</i>		request for more houses to be built in area for a growing neighborhood	
Traci Flores	<i>Traci Flores</i>		let them to build keep house because they like this area	
PETE FLORES	<i>Pete Flores</i>		WE NEED TO REBUILD BECAUSE OUR FAMILIES CAN GROW	9-2-2012
Timmie Morgan	<i>Timmie Morgan</i>	North Project of Martene	We need it why not rebuild it "Come On"	
Estrella Perez	<i>Estrella Perez</i>	1542 Locust St	this people has lived all there lives in the	
Manuel Perez	<i>Manuel Perez</i>	1542 Locust St	Barrio the deserve to rebuild there.	
Marissa Flores	<i>Marissa Flores</i>	334 Green 03	This area is a residential area and should continue to be.	9-2-12
Janet Flores	<i>Janet Flores</i>	334 Green		9-2-12
Esperanza Flores	<i>Esperanza Flores</i>	1602 Westwood	Have been longtime residents of this area	9-2-12
Daniel O. Flores	<i>Daniel O. Flores</i>	1602 Westwood	This Family has lived there since I was a kid	9-2-12
Josie C. Cisneros	<i>Josie Cisneros</i>	1458 Fannin	this family has lived here for a long time	9-2-12
Margaret Villanueva	<i>Margaret Villanueva</i>	2017 Clinton ST	Lived in area many years	9-2-12
KIRIA Gonzalez	<i>Kiria Gonzalez</i>	2017 Clinton ST	Lived in area for a long time	9-2-12
Elnen Villanueva	<i>Elnen Villanueva</i>	2017 Clinton ST	Lived in area for a long time	9-2-12
VILLARREAL DOMINGO	<i>Domingo Villarreal</i>		Knows Simon all my life	9-2-12
Johnny Gallego	<i>Johnny Gallego</i>	525 Cottonwood		9-3-12
Joe Estrada	<i>Joe Estrada</i>	602 Bis DARC		9-3-12
THEODORA Estrada	<i>Theodora Estrada</i>	602 Bis DARC	Rebuilt Barrio	9-2-12
Zeke Benitez	<i>Zeke Benitez</i>	1789 Pasadena Ave	OK to Rebuild	9-3-12
John Paul	<i>John Paul</i>	233 Cottonwood St		9-3-12

ZONING CASE Z-2012-22

STAFF REPORT



APPLICANT INFORMATION:

Simon Moreno, Sr.

HEARING DATES:

Planning & Zoning Commission: September 4, 2012

City Council 1st Reading: September 27, 2012

City Council 2nd Reading: October 11, 2012

LOCATION:

441 & 501 Bois D'Arc Street

REQUESTED ACTION:

Rezone property from LI to MD



SITE CHARACTERISTICS:

The subject properties equal approximately 0.40 acres and are currently zoned LI (Light Industrial). The properties are currently vacant with the home at 501 Bois D'Arc Street being recently burned completely. The adjacent vacant properties have LI zoning to the east, west, north, and south.

ZONING HISTORY:

The property was part of the 1895 original town limits and was zoned LI in 1977.

ANALYSIS:

- Current Planning Analysis

Currently the properties are zoned LI but had been developed with single-family residential homes. The surrounding properties had been developed similarly. This site and surrounding properties were previously zoned RM-2 (Multi-Family Residential) and developed with single-family homes. The zoning was changed to LI (Light Industrial) in December of 1977 making residential uses no longer permitted. The existing home has been considered a legal non-conforming use of this property. As such, a home cannot be reconstructed at this same location if damaged more than 50% of the building's appraised value. A recent fire at this home has completely destroyed it.

- Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this general area for heavy commercial/industrial activity. However, the primary uses in the immediate area have remained residential. Staff has begun a review of the existing zoning districts city-wide and determined that the zoning for this area could be reconsidered to change from LI to the MD (Medium Density) zoning given the lack of interest shown for industrial development in this area. The requested zoning would be compatible with the surrounding uses and would be more appropriate with the existing residential uses in the immediate area.

PLANNING STAFF RECOMMENDATION:

Staff recommends approval as requested.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Bixby, Famble, Rosenbaum, Todd, Yungblut, and McClarty) and none opposed.

NOTIFICATION:

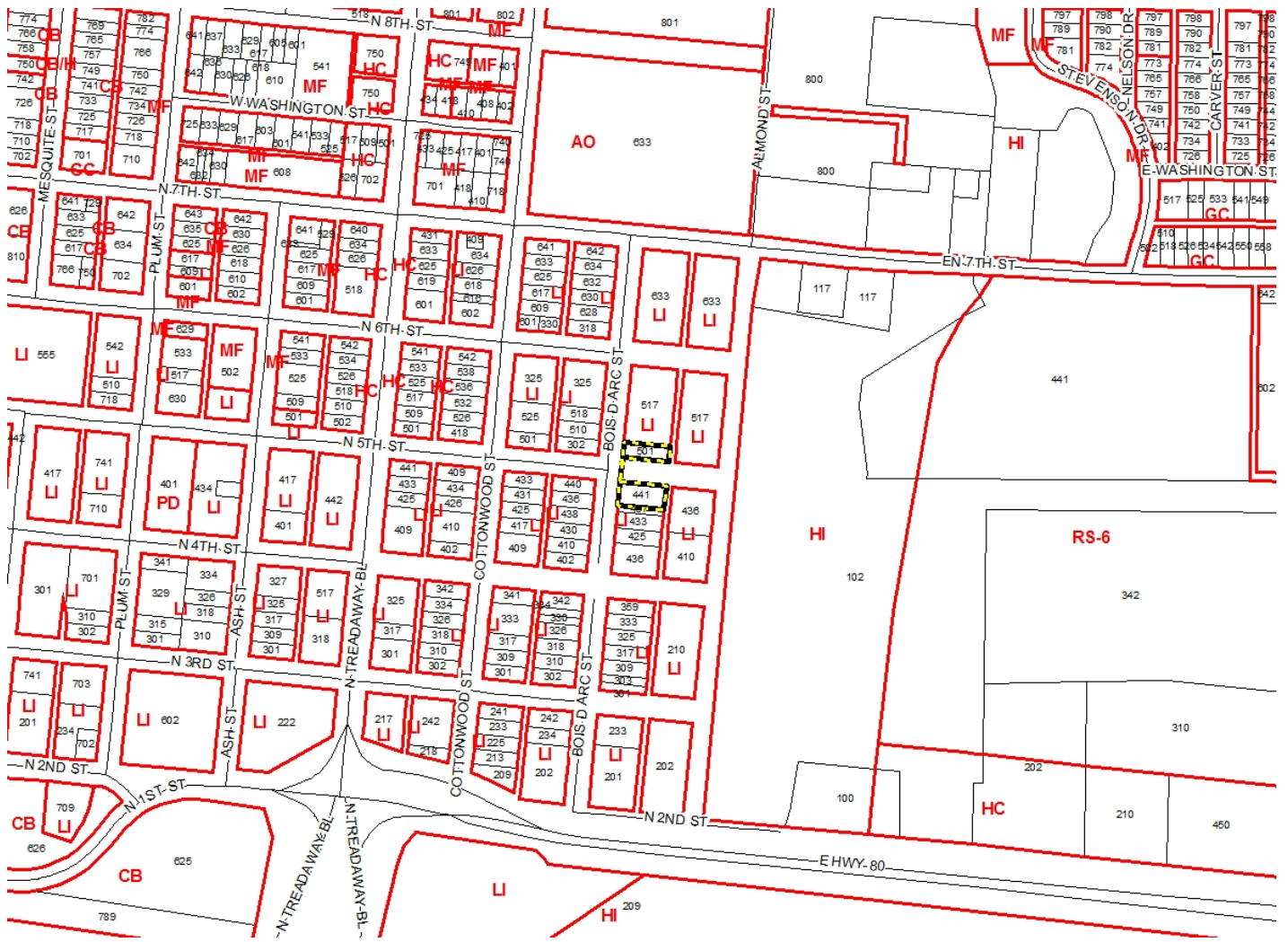
Property owners within a 200-foot radius were notified of the request.

OWNER	ADDRESS	RESPONSE
GARCIA ROSITA	510 BOIS D ARC ST	In Favor
RODRIGUEZ EDDIE	518 BOIS D ARC ST	
LONE STAR RAILROAD INC	410 ALMOND ST	
CITY OF ABILENE	517 BOIS D ARC ST	
MORENO SIMON	501 BOIS D ARC ST	In Favor
GARCIA ROSITA	302 N 5TH ST	In Favor
LONE STAR RAILROAD INC	436 ALMOND ST	
MUNOZ JESSIE	410 BOIS D ARC ST	
CORPIAN GARY LEE & MARILU LEE	325 N 6TH ST	
LONE STAR RAILROAD INC	436 ALMOND ST	
HAUGHTS TREE SERVICE INC	430 BOIS D ARC ST	
HAUGHTS TREE SERVICE INC	438 BOIS D ARC ST	
QAZI IBAAD AHMA	425 BOIS D ARC ST	
CITY OF ABILENE	437 BOIS D ARC ST	
VALLEY VIEW MISSIONARY BAPTIST CHURCH	433 BOIS D ARC ST	
HAUGHTS TREE SERVICE INC	402 BOIS D ARC ST	
VILLARREAL DOMINGO III	436 BOIS D ARC ST	
HAUGHTS TREE SERVICE INC	440 BOIS D ARC ST	
CITY OF ABILENE	517 BOIS D ARC ST	
MORENO SIMON	441 BOIS D ARC ST	In Favor

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



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City Council
Agenda Memo



City Council
Meeting Date: 9/27/2012

TO: Larry D. Gilley, City Manager

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

SUBJECT: First reading of an ordinance for Case No. Z-2012-23, a request from Bill Ortega & Elisa Bontke, to rezone property from MD (Medium Density) to MD/H (Medium Density/Historic Overlay), located at 782 Palm Street; and setting a public hearing for October 11, 2012.

GENERAL INFORMATION

The property is zoned MD and has been developed with a residential dwelling unit. The 1-1/2 story Queen Anne Victorian Cottage was built in 1909 by Wesley E. Hargrove. The large framed structure has an irregular design with a hipped roof, dormer and gable windows, and a columned wrap-around porch with a characteristic rounded corner. Recently, the current owners, Bill Ortega & Elisa Bontke, have begun restoring the interior of the home and are planning to begin work on the exterior. They are requesting Historic Overlay Zoning after gaining more information regarding the responsibilities and benefits of the zoning.

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. Other properties in the area have received Historic Overlay Zoning, and this request could encourage other properties to do the same.

STAFF RECOMMENDATION

Staff recommends approval as requested.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Bixby, Famble, Rosenbaum, Todd, Yungblut, and McClarty) and none opposed.

ATTACHMENTS

Ordinance
Staff Report with Maps

Prepared by:

Name: Ben Bryner

Title: Planning Services Manager

September 14, 2012

Item No. 6.7

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 E, "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 27th day of September, A.D. 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 the 17th day of August, 2012, 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 11th day of October, 2012 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 11th day of October, A.D. 2012.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT "A"

Rezone property from MD (Medium Density) to MD/HO (Medium Density/Historic Overlay) District.

Legal Description:

Lot 11 & N19 of Lot 12, Block 186, Johnson & McCord OT ABL

Location:

782 Palm Street

-END-

ZONING CASE Z-2012-23

STAFF REPORT



APPLICANT INFORMATION:

Bill Ortega & Elisa Bontke

HEARING DATES:

Planning & Zoning Commission: September 4, 2012
City Council 1st Reading: September 27, 2012
City Council 2nd Reading: October 11, 2012

LOCATION:

782 Palm Street

REQUESTED ACTION:

Rezone property from MD to MD/H



SITE CHARACTERISTICS:

The subject property is approximately 0.22 acres and is currently zoned MD (Medium Density). The property has been developed with a residential dwelling unit. The adjacent properties have MD zoning to the north, south, east and west.

ZONING HISTORY:

The property was part of the original town created in 1895 and was zoned MD sometime after.

ANALYSIS:

- Current Planning Analysis

The property is zoned MD and has been developed with a residential dwelling unit. The 1-1/2 story Queen Anne Victorian Cottage was built in 1909 by Wesley E. Hargrove. The large framed structure has an irregular design with a hipped roof, dormer and gable windows, and a columned wrap-around porch with a characteristic rounded corner. Recently, the current owners, Bill Ortega & Elisa Bontke, have begun restoring the interior of the home and are planning to begin work on the exterior. They are requesting Historic Overlay Zoning after gaining more information regarding the responsibilities and benefits of the zoning.

- 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. Other properties in the area have received Historic Overlay Zoning, and this request could encourage other properties to do the same.

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 recommends approval by a vote of 6 in favor (Bixby, Famble, Rosenbaum, Todd, Yungblut, and McClarty) and none opposed.

NOTIFICATION:

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

OWNER	ADDRESS	RESPONSE
SINSEL THOMAS	1517 S 8TH ST	
MIHALE ION	1534 S 8TH ST	
DURRINGTON WALLS LLC	766 PALM ST	
MAYFIELD MARK ANTHONY	818 PALM ST	
BAILEY ROBERT J JR & LYDIA LONG	741 PEACH ST	
SANDERS BRUCE EDWARD	810 PALM ST	
CIZEK CLAUDIA ANN	750 PALM ST	In Favor
MARR LUTHER T	749 PEACH ST	In Favor
ORTEGA BILL JUAREZ & BONTKE ELISA	782 PALM ST	
HAGINS JORITA	758 PALM ST	In Favor
RODRIGUEZ NORA H DEL RIO & HERNANDEZ CHRISTINA DEL RIO	1429 S 8TH ST	
MUNOZ MARCO ANTONIO & DIANA	817 PEACH ST	
RAMOS ELMER JR & RUTH ANN	1542 S 8TH ST	
SILVA JAMES D	765 PEACH ST	
LEIJA ALBERTO ORNELAS	817 PALM ST	
MARR CARMONCITA	757 PEACH ST	In Favor
PFEIFER MICHAEL MOST REV	1541 S 8TH ST	
LOPEZ IRMA S	802 PALM ST	
SALAZAR JOHN JR & ANGELA M	774 PALM ST	
INGRAM MIKE R	1441 S 8TH ST	
SOUTHSIDE BAPTIST CHURCH	1425 S 7TH ST	

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







City Council
Agenda Memo



City Council
Meeting Date: 9/27/2012

TO: Larry D. Gilley, City Manager

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

SUBJECT: First reading on an ordinance amending the Land Development Code related to Urban Gardens; and setting a public hearing for October 11, 2012.

GENERAL INFORMATION

Urban farming has gained popularity recently as a way to use under-utilized property while supporting a self-sustaining land use. Several inquiries have been made to staff about community gardens and urban farms being located on vacant lots throughout the city. Currently, community gardens and urban farms are not permitted. Specifically, the City's ordinances do not allow for a water meter to be issued for a vacant lot.

Staff is proposing to allow community gardens/urban farms by right in the majority of the zoning districts so long as they meet specific regulations to mitigate potential negative impacts. The use would allow for cultivation of fruits, flowers, vegetables, or ornamental plants by one or more person or family, to include organizations such as non-profits or churches.

The use is currently not listed in the Land Use Matrix. It is proposed to be included and identified as 'Urban Garden'. The sections proposed for amendment are Section 2.4.2.1 –Land Use Matrix, Section 2.4.3.3 – Specific Requirements, and Section 5.1.1.3 – Land Use Definitions.

STAFF RECOMMENDATION

Staff recommends approval as presented.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Bixby, Famble, Rosenbaum, Todd, Yungblut, and McClarty) and none opposed.

ATTACHMENTS

Ordinance

Prepared by:

Name: Ben Bryner

Title: Planning Services Manager

September 14, 2012

Item No. 6.8

Disposition by City Council

Approved Ord/Res# _____

Denied _____

Other _____

City Secretary

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART B, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

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

PART 1: That Chapter 23, Subpart B, "Land Development Code," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 27th day of September A.D. 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 the 17th day of August, 2012, 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 11th day of October, 2012, 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 11th day of October, A.D. 2012.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT “A”

AMEND: Section 2.4.2.1 The Land Use Matrix

ADD: Add the ‘Urban Garden’ use to be permitted in designated districts

LEGEND: P-Permitted, Blank-Not Permitted, C-Conditional Use Permit, TP-Requires a Temporary Permit, ☑-Conditions Apply See Ch.2 Art.5 Div.3

Permitted Uses	Agricultural Open Space	Rural Residential RR-5 & RR1	Residential Single-Family	Residential Single-Family Patio Home	Residential Townhouse	Residential Medium Density	Residential Multi-Family	Manufacture/Mobile Home	College & University	Neighborhood Office	Office	Neighborhood Retail	General Retail	Medical Use	Central Business	Mixed Use	General Commercial	Heavy Commercial	Light Industrial	Heavy Industrial	Parking Requirements (also refer to Chapter 4, Article 2, Division 1)
	AO	RR	RS	PH	TH	MD	MF	MH	CU	NO	O	NR	GR	MU	CB	MX	GC	HC	LI	HI	
Resource Production & Extraction																					
Urban Garden	☑	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

AMEND: Section 2.4.3.3 All Other Uses with Specific Requirements

CHANGE: Add requirements for ‘Urban Garden’ to the list of uses and renumber as needed.

(a) **Specific Requirements.**

- (58) **Urban Garden:** In all zoning districts where such use is permitted by right, the following criteria shall be met:
 - a. A water meter will be allowed for the cultivation and growing of plant material even when a primary structure does not exist.
 - b. No on-site sales of plant material shall be permitted.
 - c. No building shall be allowed that requires a building permit, electricity or plumbing. Only one such building shall be allowed on any lot or tract.
 - d. Only mechanical equipment designed for household use may be stored on an urban garden.

AMEND: Section 5.1.1.3 Land Use Definitions

CHANGE: Add the definition for ‘Urban Garden’ and renumber as needed.

(a) **Land Use Definitions & Matrix Correlation**

- (187) **URBAN GARDEN:** ☑ A private or public facility for cultivation of fruits, flowers, vegetables, herbs, or ornamental plants.

City Council
Agenda Memo



City Council
Meeting Date: 09/27/12

TO: Larry D. Gilley, City Manager
FROM: Megan R. Santee, Director of Public Works
SUBJECT: Award Bid #CB-1240 – Miscellaneous Residential Streets (Phase III)

GENERAL INFORMATION

This contract involves rehabilitation of the existing pavement as well as constructing new sidewalks with curb ramps and replacing concrete curb and gutter, valley gutters to include the following streets:

- Richmond, Fairmount and Waldemar Streets between South Pioneer and South Danville
- South Leggett Drive between South 14th and South 7th
- Potomac Avenue between South Pioneer and South Leggett
- Buccaneer Street between Potomac and South 7th
- South 7th and Leggett Intersections

FUNDING/FISCAL IMPACT

Funding is available from GO Bond funds.

STAFF RECOMMENDATION

The staff recommends that the Council award Bid #CB-1240, to Bontke Brothers Co., Abilene, Texas in the amount of \$1,356,161.62.

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

CITY OF ABILENE PURCHASING DIVISION TABULATION OF BIDS

DEPARTMENT: ENGINEERING		BONTKE BROTHERS CO		CONTRACT PAVING CO		EPIC CONSTRUCTION CO		NOBLES ROAD CONST.		J.H. STRAIN & SONS			
BID NO.: CB - 1240		ABILENE, TX		TYE, TX		ABILENE, TX		ABILENE, TX		TYE, TX			
TIME OF OPENING: 11:00													
DATE OF OPENING: SEPTEMBER 18, 2012													
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION		
1	MISC. RESIDENTIAL STREETS PHASE III				\$1,356,161.62		\$1,477,058.99		\$1,674,740.09		\$1,715,115.57		\$1,874,894.48
BASE BID													
DISCOUNT													
TOTAL BID					*1,356,161.62								

*NOTES: INDICATES RECOMMENDED AWARD