

**City Council
Agenda Memo**



**City Council
Meeting Date: 08/08/13**

TO: Larry D. Gilley, City Manager
FROM: Megan R. Santee, Director of Public Works
SUBJECT: Extended Term Street Use License Agreement with Abilene Country Club for use of Fairway Oaks Blvd. right-of-way, between Muirfield and Pinehurst

GENERAL INFORMATION

Abilene Country Club has submitted an Extended Term Street Use License (SUL) application for use of a portion of the public right-of-way on Fairway Oaks Blvd., between the south right-of-way line of Muirfield and the north right-of-way line of Pinehurst. The applicant wishes to bore underneath and install one new eight (8) inch effluent irrigation line in one specific location under Fairway Oaks Blvd., for irrigation of applicant's golf course. The specific location for this line is identified on the attached Exhibit "A"/construction drawings, as part of the Extended Term SUL Agreement. No other private property owners or business tenants will be affected by this request. The Extended Term SUL Agreement will be for a term of ten (10) years from the date of execution, and the City may cancel the License Agreement at any time should it become necessary.

STAFF RECOMMENDATION

Staff has reviewed this request and recommends that City Council, by oral resolution, authorize the Mayor to execute the attached Extended Term Street Use License Agreement with Abilene Country Club for use of a portion of the Fairway Oaks Blvd. public right-of-way.

ATTACHMENTS

Street Use License Agreement, Extended Term
Exhibit "A"/Construction Drawings

Prepared by:

Name: Travis McClure

Title: Land Agent

Item No. _____

Disposition by City Council

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

City Secretary

THE STATE OF TEXAS

STREET USE LICENSE AGREEMENT
EXTENDED TERM

COUNTY OF TAYLOR

THIS STREET USE LICENSE AGREEMENT, hereinafter referred to as "License", executed this ____ day of _____, A.D., 2013, by and between the CITY OF ABILENE, a municipal corporation situated in Taylor and Jones Counties, Texas, hereinafter referred to as "City", and Abilene Country Club, hereinafter referred to as "Licensee".

WITNESSETH:

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

Fairway Oaks Blvd., between the south right-of-way line of Muirfield and the north right-of-way line of Pinehurst, in one specific location as shown on the attached Exhibit "A".

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

I. Purpose:

The purpose of this License is to permit Licensee to:

Bore underneath and install one new 8 inch High Density Polyethylene (HDPE) effluent irrigation supply line encased within a 12 inch HDPE sleeve in one specific location under Fairway Oaks Blvd., for irrigation of Licensee's golf course. Said specific location being identified on the attached Exhibit "A"/Construction Drawings.

II. Indemnity:

A. **Definitions**

For the purpose of this section the following definitions apply:

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

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

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

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

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

injury or damage to any property or right

injury, damage, or death to any person or entity

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

all other costs and expenses of litigation

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

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

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

B. Indemnity

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

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

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

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

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

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

III. Insurance

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

| <u>Type</u> | <u>Amount</u> |
|--|--|
| Comprehensive General Liability to include (but not limited to) the following: | \$250,000 -----Per Person |
| a) Premises/Operations Coverage | \$500,000 -----Per Occurrence for Bodily Injury, and |
| a) Contractual Liability Coverage | \$100,000 -----Per Occurrence for Property Damage |

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

All insurance policies or certificates shall contain the following provisions:

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

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

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

IV. License Requirements and Restrictions:

- I. During the term of this License, Licensee shall maintain the premises licensed herein in a good and safe condition at all times. If the street surface, parkway, or facilities in the parkway,

including landscaping, are damaged or disturbed by any activity associated with this License, the Licensee shall at its expense, restore the same to as good a condition as before the activity, to the satisfaction of the Director of Public Works or designee.

2. The construction signing and barricading requirements of the Texas Manual On Uniform Traffic Control Devices shall be met for all work done in the public right-of-way.

3. The Licensee shall be responsible for locating, protecting, and repairing (if damaged) all utilities within the area permitted and shall pay all costs associated with adjustments to utilities including street lights that are necessitated by the permitted use.

4. Permitted facilities shall be installed in accordance with all applicable laws, regulations, and codes.

5. The Licensee shall relocate its facilities at its own expense to accommodate public improvements in the right-of-way.

6. If Street Use License regulations change, the Licensee shall agree to any new requirements or shall remove all constructed facilities from the right-of-way.

7. Upon termination the Licensee shall restore the property at its expense, to a good workmanlike condition and in a manner satisfactory to the Director of Public Works or designee.

8. The City Manager, Police Chief, Fire Chief, or a designee of such officials, shall have the authority to order immediate removal of any objects or materials placed on the premises by Licensee if, in the City's opinion, removal is necessary to protect the health, safety, or welfare of the public. If the Licensee fails to comply with the order, the City shall remove the materials, and the Licensee shall reimburse the City for the cost of compliance. The Licensee may appeal the removal order to the Abilene City Council by filing written notice with the City Secretary within 5 days of the order; provided, however that ANY APPEAL SHALL NOT STAY THE OFFICIAL'S ORDER OR THE REMOVAL PROCEDURE.

V. Termination

1. This License shall automatically terminate ten (10) years from the date of execution.

2. The City shall have the right to cancel this License at any time by giving Licensee thirty (30) days notice of its cancellation. The notice shall be in writing delivered to Licensee by certified mail.

3. In the event Licensee shall permit any City of Abilene, Abilene Independent School District, West Central Texas Municipal Water District, or any other taxes assessed against it to become delinquent, this License shall automatically terminate and become null and void.

4. This License may not be assigned or conveyed; any attempt by Licensee to do either shall automatically terminate the License. In the event Licensee (the property owner) should sell the property for which the License has been granted, this License shall automatically terminate.

CITY OF ABILENE, TEXAS

NAME OF LICENSEE:

Mayor

ABILENE COUNTRY CLUB

ATTEST:

By: _____

City Secretary

Signature

EDWARD BROTHAUS Cm/COO
Printed Name and Title

APPROVED:

Business Address: 4039 S. TREADAWAY BLVD,

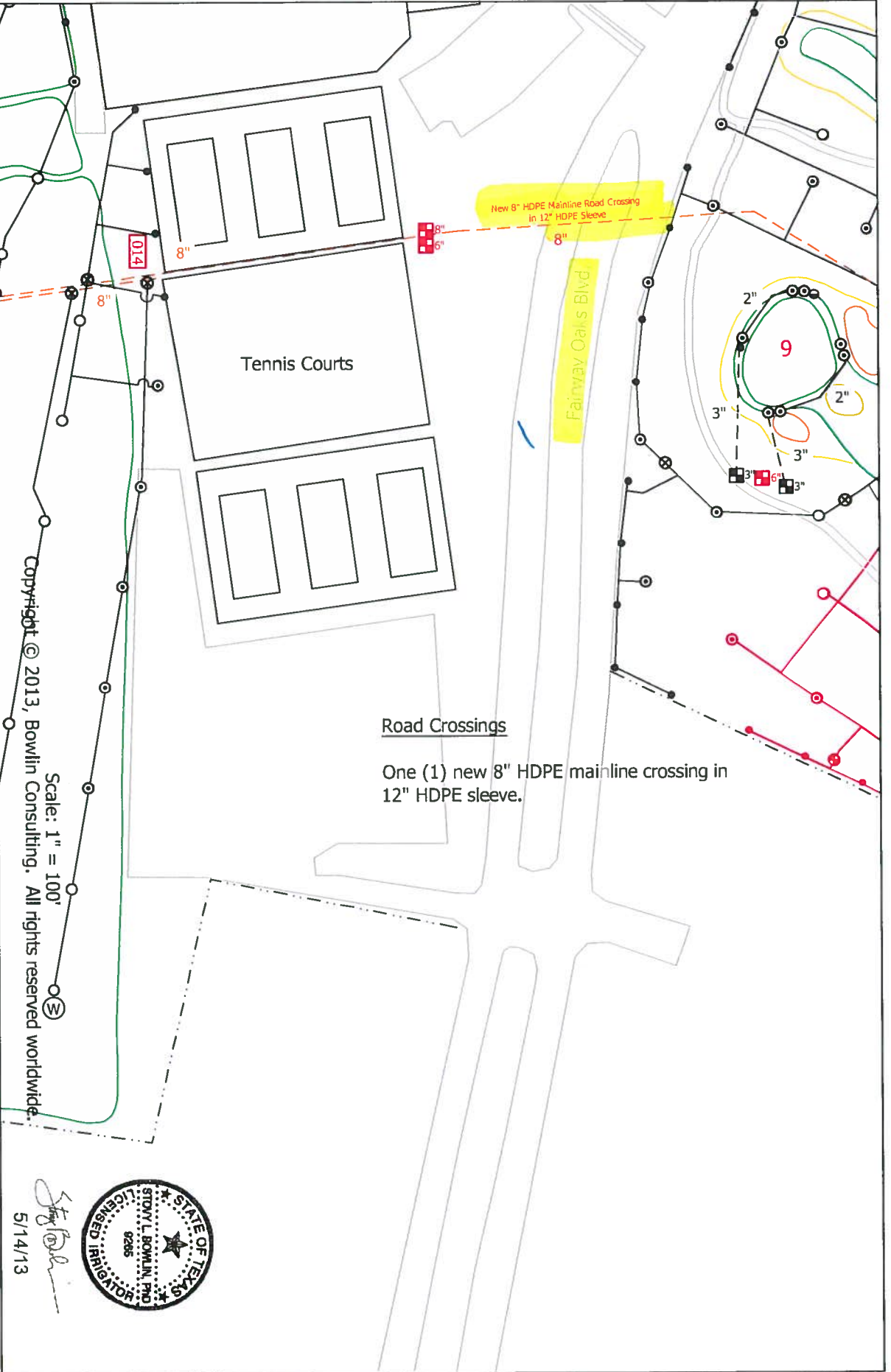
City Attorney

**STREET USE LICENSE AGREEMENT
WITH ABILENE COUNTRY CLUB**

CONDITIONS AND COVENANTS

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

1. If any work planned within and/or under the permitted public right-of-way during the term of this License Agreement will result in blocking traffic lanes, the Licensee shall submit a Temporary Traffic Control Plan, signed and dated by the preparer, to the Traffic & Transportation Administrator for approval before beginning the work.
2. The Licensee shall barricade any excavation in the right-of-way to prevent pedestrian and/or vehicular access while excavation is unattended. Barricades shall be lighted at night.
3. The permitted boring underneath Fairway Oaks Blvd. for the installation of Licensee's effluent irrigation line shall use twelve (12) inch Schedule 40 steel or HDPE pipe sleeve from right-of-way limit to right-of-way limit. The pipe shall be placed a minimum of 24 inches below the surface of the street.
4. Licensee shall install permanent markers at each end of the roadway crossing.



Road Crossings

One (1) new 8" HDPE mainline crossing in 12" HDPE sleeve.

ABILENE COUNTRY CLUB - FAIRWAY COURSE - OPTION 2B
MAINLINE CROSSINGS H6 - H9

CONSTRUCTION DRAWINGS

Prepared By: Stovy L. Bowlin, PhD, CGIA, CID
(O) 512-303-7680 (F) 512-303-7681 (C) 512-560-0010

Scale: 1" = 100'
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Stovy L. Bowlin
5/14/13



PROPERTY LINE / ROW

APPROX. 5 FT. FROM CURB

ROAD SURFACE

DEPTH OF COVER AS PER LOCAL CODES AND REGULATIONS

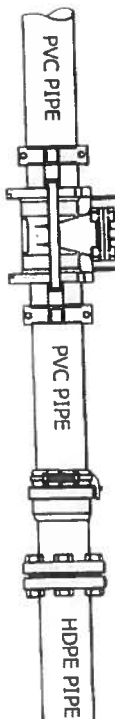
PIPE MATERIAL SHALL BE HDPE OR PER PLANS AND SPECIFICATIONS
Schedule 40 Steel or PVC NOT TO SCALE

APPROX. 5 FT. FROM CURB

PROPERTY LINE / ROW

PVC PIPE
MAINLINE GATE VALVE AND JOINT RESTRAINTS AS PER PLANS AND SPECS

PVC PIPE
LEEMCO DUCTILE IRON FLANGE x GASKET ADAPTER (LINE SIZE) RF-XFXB



PIPE MATERIAL

DEPTH

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CONSTRUCTION DETAILS

ROAD CROSSING DETAIL

CONSTRUCTION DRAWINGS

Prepared By: Stovy L. Bowlin, PhD, CGIA, CID
(O) 512-303-7680 (F) 512-303-7681 (C) 512-560-0010
Email: stovy@bowlinconsulting.com Web: www.bowlinconsulting.com

11 JANUARY 2010

Stovy L. Bowlin



BOWLIN CONSULTING
Planning • Design • Mapping



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/4/2012

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

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

| | | |
|--|---|--|
| PRODUCER CBS Insurance, LLP 3005 South Treadaway Blvd Abilene TX 79602 | CONTACT NAME: Phyllis Hollenbeck, CIC PHONE (A/C, No, Ext): (325) 695-0222 FAX (A/C, No): (325) 695-0228 E-MAIL ADDRESS: phollenbeck@cbsins.com | |
| | INSURER(S) AFFORDING COVERAGE NAIC # | |
| INSURED Abilene Country Club 4039 South Treadaway Abilene TX 79602 | INSURER A: The Cincinnati Indemnity | |
| | INSURER B: | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

COVERAGES **CERTIFICATE NUMBER:** 12-13 **REVISION NUMBER:**

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------------------------------|------------------------------|---------------|-------------------------|-------------------------|--|
| A | GENERAL LIABILITY | | | GCC0006562 | 11/1/2012 | 11/1/2013 | EACH OCCURRENCE \$ 1,000,000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 |
| | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | | | | | | MED EXP (Any one person) \$ 10,000 |
| | | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE \$ 2,000,000 |
| | <input checked="" type="checkbox"/> POLICY | <input type="checkbox"/> PRO-JECT | <input type="checkbox"/> LOC | | | | PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A | AUTOMOBILE LIABILITY | | | GCC0006562 | 11/1/2012 | 11/1/2013 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 |
| | <input checked="" type="checkbox"/> ANY AUTO | | | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | <input type="checkbox"/> | SCHEDULED AUTOS | | | | BODILY INJURY (Per accident) \$ |
| | <input type="checkbox"/> HIRED AUTOS | <input type="checkbox"/> | NON-OWNED AUTOS | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | Garage Keepers Legal Liab \$ 1,000,000 |
| | UMBRELLA LIAB | | OCCUR | | | | EACH OCCURRENCE \$ |
| | EXCESS LIAB | | CLAIMS-MADE | | | | AGGREGATE \$ |
| | DED | | RETENTION \$ | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | WC STATUTORY LIMITS |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | | <input type="checkbox"/> Y/N | N/A | | | OTHER |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. EACH ACCIDENT \$ |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
City of Abilene is an additional insured as respects General Liability

CERTIFICATE HOLDER

CANCELLATION

City of Abilene
P O Box 60
Abilene, TX 79604

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Ken Baker/PHOLLE

Ken Baker