

**City Council
Agenda Memo**



**City Council
Meeting Date: 09/25/2014**

TO: Larry D. Gilley, City Manager
FROM: Megan R. Santee, Director of Public Works
SUBJECT: Oral Resolution – Extended Term Street Use License Agreement with Abilene Christian University for use of a portion of the right-of-way of Judge Ely Blvd.

GENERAL INFORMATION

Abilene Christian University has applied for an Extended Term Street Use License (SUL) to use a portion of the City right-of-way on Judge Ely Blvd. for the installation and maintenance of a 36” storm sewer drain. This area is shown on the attached map. 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 the City Council, by oral resolution, authorize the Mayor to execute the attached Extended Term Street Use License Agreement with Abilene Christian University for use of a portion of the City’s right-of-way on Judge Ely Blvd.

ATTACHMENTS

Street Use License Agreement, Extended Term
Exhibit “A”/Location Map

Prepared by:

Name: Megan R. Santee

Title: Director, Public Works

Item No. 6.13

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., 2014, by and between the CITY OF ABILENE, a municipal corporation situated in Taylor and Jones Counties, Texas, hereinafter referred to as "City", and Abilene Christian University, 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:

5 foot wide segment of Judge Ely Blvd as described in 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 B incorporated by reference for all purposes herein.

I. Purpose:

The purpose of this License is to permit Licensee to:

Install a 36" in diameter storm sewer drain underneath Judge Ely Boulevard by steel encased bore.

II. Indemnity:

A. **Definitions**

For the purpose of this section the following definitions apply:

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

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

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

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

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

injury or damage to any property or right

injury, damage, or death to any person or entity

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

all other costs and expenses of litigation

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

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

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

B. Indemnity

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

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

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

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

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

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

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:

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

2. 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. 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, all such claim for damage or injury being expressly waived by Licensee.

7. 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.

8. 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.

9. 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 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 should sell the property adjacent to the area for which the License has been granted, this License shall automatically terminate.

CITY OF ABILENE, TEXAS

Mayor

ATTEST:

City Secretary

APPROVED:

City Attorney

NAME OF LICENSEE:

Abilene Christian University

By: Scot Colley
Signature

Scot Colley Executive Director Construction
Printed Name and Title

Business Address: 1241 E. Timber
Abilene Tx 79699

Exhibit "A"

**RIGHT-OF-WAY INCLUDED IN
STREET USE LICENSE AGREEMENT
WITH
ABILENE CHRISTIAN UNIVERSITY**

A 5' wide segment of Judge Ely Boulevard centered on the following line:

BEGINNING at a point on the west right-of-way line of Judge Ely Boulevard for the west end of the line. Said point bears 201.58 feet South 30 degrees 08 minutes 46 seconds East from a Texas Department of Transportation right-of-way disk at the intersection of the south right-of-way line of State Highway 351 with the west right-of-way line of Judge Ely Boulevard.

THENCE North 83 degrees 44 minutes 30 seconds East for a distance of 104.96 feet to a point on the east right-of-way line of Judge Ely Boulevard for the east end of the line.

EXHIBIT "A"

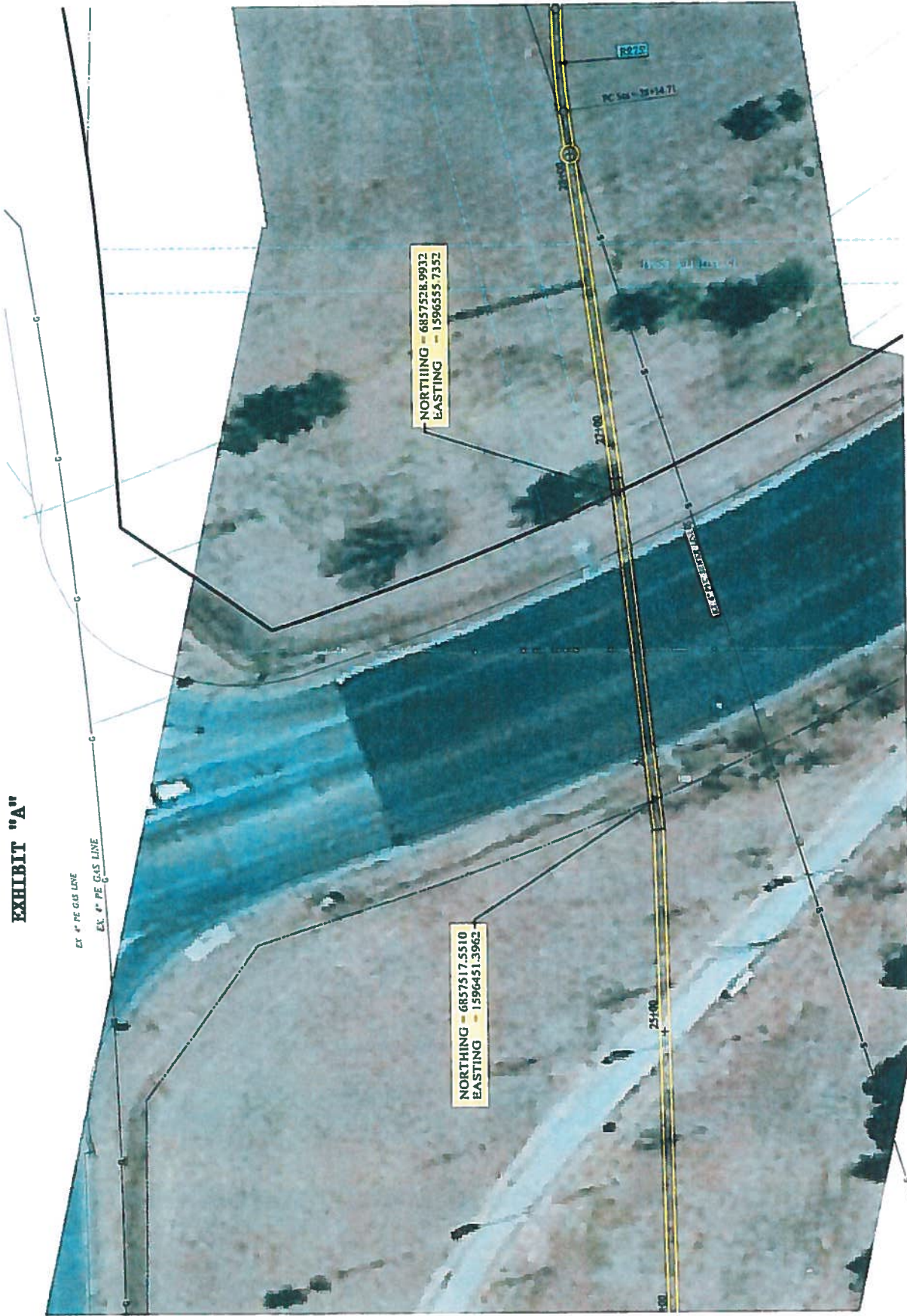


Exhibit "B"

**STREET USE LICENSE AGREEMENT
WITH**

Abilene Christian University

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

1. The Licensee shall contact the city's Engineering Division (676-6281) prior to commencing any work in the right-of-way.
2. The Licensee shall submit a traffic control plan to the Traffic and Transportation Division (676-6281) for approval before beginning any work that will result in blocking traffic lanes.
3. The Licensee shall contact the Traffic Signal Shop (676-6066) or the Traffic Engineering office (676-6281) for location of traffic signal facilities and shall contact the Water Utilities Department (676-6425) for location of water and sewer lines before beginning excavation in the right-of-way.
4. The Licensee shall contact the city of Abilene Building Inspections (676-6232) regarding any necessary permits for the installation of the requested facility.
5. The Licensee shall ensure all underground utilities are identified and marked prior to any excavation.
6. The Licensee shall barricade any excavation in the right-of-way to prevent pedestrian and/or vehicular access while excavation is unattended. Any barricades left in the right-of-way overnight must be lighted.
7. The Licensee shall promptly repair all signs, pavement markings, and other traffic control devices damaged by its work in the right-of-way.
8. If the City determines that the subject right-of-way is needed for purposes that would be adversely impacted by the permitted facility, the Licensee shall remove the permitted facility within sixty (60) days notice of cancellation.
9. The steel encasement shall extend a minimum of five (5) feet beyond the back of curb of the street pavement.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/20/2014

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 1-713-623-2330 Arthur J. Gallagher Risk Management Services, Inc. 1900 West Loop South Suite 1600 Houston, TX 77027 Norman Henley INSURED Abilene Christian University ACU Box 28106 Abilene, TX 79699	CONTACT NAME: Penny Carrizales PHONE (A/C, No, Ext): 713-358-5928 FAX (A/C, No): 713-358-5929 E-MAIL ADDRESS: Penny_Carrizales@ajg.com														
<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: UNITED EDUCATORS INS RRG INC</td> <td>10020</td> </tr> <tr> <td>INSURER B: CHURCH MUT INS CO</td> <td>18767</td> </tr> <tr> <td>INSURER C: TEXAS MUT INS CO</td> <td>22945</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: UNITED EDUCATORS INS RRG INC	10020	INSURER B: CHURCH MUT INS CO	18767	INSURER C: TEXAS MUT INS CO	22945	INSURER D:		INSURER E:		INSURER F:	
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COVERAGES **CERTIFICATE NUMBER:** 41083289 **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 <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			CGL201400001100	07/01/14	07/01/15	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Hired Car			05011909701067	05/31/14	05/31/15	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB OCCUR CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 1,000,000			GLX201400001100	07/01/14	07/01/15	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	TSF0011206202	06/01/14	06/01/15	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	License Professional Liab			LPD201400001100	07/01/14	07/01/15	Each Claim: 1,000,000 Annual Aggregate: 3,000,000

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 to the General Liability policy, pursuant to and subject to the policy's terms, definitions, conditions and exclusions.

CERTIFICATE HOLDER City of Abilene P.O. Box 60 Abilene, TX 79604 USA	CANCELLATION 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 
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SUPPLEMENT TO CERTIFICATE OF INSURANCE

DATE
08/20/2014

NAME OF INSURED: Abilene Christian University

Additional Description of Operations/Remarks from Page 1

Named Insureds:

Abilene Christian University;

ACIMCO, Inc.;

ACU in Oxford;

Abilene Christian Schools, Inc.;

Abilene Christian University, Inc. DBA ACU Athletics;

Abilene Christian University, Inc. DBA ACU Campus Store;

Abilene Christian University, Inc. DBA ACU Theatre;

Abilene Christian University, Inc. DBA Women for ACU;

Stone-Campbell Restoration Movement Publishers Inc. DBA ACU Press/Hillcrest Publishing/Leafwood Press;

The ACU Foundation;

ACU Connected Consulting, Inc. DBA Connected Consulting;

ACU with a DBA of Abilene Christian University Press and Leafwood Publishers

Additional Information: