

**ABILENE CITY COMMISSION - STUDY SESSION AGENDA**  
**DWIGHT D. EISENHOWER MUNICIPAL BUILDING - 419 N. BROADWAY STREET**  
**October 20, 2015 - 7:00 pm**

1. **PUBLIC COMMENTS.** Persons who wish to address the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three minutes. Any presentation is for informational purposes only. No action will be taken.
  
2. **ITEMS TO BE PLACED ON THE REGULAR AGENDA**
  - a. **A Resolution approving a Real Estate Donation Agreement with Abilene Highlands, LP concerning the conveyance of certain real property commonly known as the Abilene Highlands Addition to the Land Bank of the City of Abilene, Kansas**
  
3. **ITEMS PROPOSED FOR THE CONSENT AGENDA**
  - a. **Meeting Minutes: October 13, 2015 regular meeting**
  
  - b. **A Resolution approving Longevity Pay per Chapter 12, Section 16 of the Personnel Policy of the City of Abilene, Kansas**
  
  - c. **A Resolution providing for a Cost-of-Living Adjustment to the Pay Plan of the City of Abilene, Kansas**
  
  - d. **Third Quarter, 2015 Financial Report for the City of Abilene, Kansas**
  
4. **ITEMS FOR PRESENTATION AND DISCUSSION**
  - a. **STAR Bond Project Overview**
  
  - b. **Westar Energy Franchise Agreement**
  
  - c. **OpenAbilene Transparency Portal Overview**
  
5. **REPORTS**
  - a. **City Manager's Report**
  
6. **ANNOUNCEMENTS** (*Meetings at Abilene Public Library unless otherwise provided*)
  - a. **Commissioner Lunch, October 20 at 12:00 pm (Commissioners Weishaar and Payne)**
  - b. **Economic Development Council, October 20 at 4:00 pm**
  - c. **NW 11th Street Public Information Meeting, October 22 at 6:00 pm (Abilene Middle School)**
  - d. **City Commission Meeting, October 26 at 4:00 pm**
  - e. **Convention and Visitors Bureau, October 27 at 2:00 pm (Civic Center)**
  - f. **Tree Board, October 27 at 5:00 pm**
  - g. **Commission Study Session, November 3 at 7:00 pm (City Hall)**
  - h. **Board of Zoning Appeals, November 6th at 4:00 pm**

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Real Estate Donation Agreement for Abilene Highlands  
**DATE:** October 16, 2015

Harry Utzig, the property owner of real estate commonly known as the Abilene Highlands, has executed a proposed Real Estate Donation Agreement prepared by the City. The agreement sets forth the terms and conditions of the property to be transferred to the City's Land Bank in accordance with state law and local ordinance. A few points of consideration:

- The property will be donated at no cost to the City of Abilene. The property owner intends to claim the value of property as a non-cash charitable contribution, although it is understood by both parties that the property owner is responsible for seeking legal and tax advice to fully capitalize on this intent.
- The Land Bank will pay the following costs associated with the transaction: 1) 50% of the title insurance premium; 2) 50% of the escrow and closing fee, if any; 3) the cost of recording the deed; 4) the cost of obtaining an appraisal pursuant to Section 4 below, subject to Donor's reimbursement obligation as set forth therein; and 5) any attorneys' fees and expenses incurred by the Land Bank in the preparation and performance of this Agreement.
- The donor will pay the following costs associated with the transaction: 1) 50% of the title insurance premium; 2) 50% of the escrow and closing fee, if any; and 3) any attorneys' fees and expenses incurred by Donor in the preparation and performance of this Agreement.
- The City is preparing an appraisal of the property to be delivered to donor five days prior to the closing date. The City has contracted with the Simmons Company of Manhattan, Kansas to prepare the appraisal at a cost of \$4,500. If the donor is unable to provide title to the property, the Land Bank may terminate the Agreement and the donor will reimburse the cost of the appraisal to the City.
- First American Title Insurance Company of Abilene will serve as the escrow agent.
- The Land Bank will be provided owner's title insurance in an amount not to exceed the appraised value of the property.
- Closing date of the agreement will be on or before November 19, 2015, and includes the delivery to Land Bank of a warranty deed in proper recording form so as to transfer property to the Land Bank fee simple title free of all encumbrances as provided in the Agreement. The Land Bank shall take possession immediately following closing.

The Economic Development Council is in the process of reviewing a policy setting forth the conditions by which property will be administered by the Land Bank. The proposed policy will be forwarded to the Land Bank governing body following recommendation by the Economic Development Council.

## REAL ESTATE DONATION AGREEMENT

This Real Estate Donation Agreement ("Agreement") is entered into this \_\_\_\_ day of October, 2015, by Abilene Highlands, L.P. ("Donor"), and the City of Abilene Land Bank ("Land Bank").

1. **Donation and Acceptance.** Donor agrees to donate, convey, and transfer to Land Bank, and Land Bank agrees to receive and accept from Donor, the following described real estate in Saline County, Kansas:

See Exhibit A attached hereto,

together with all appurtenances, permanent improvements and fixtures (the "Property"), upon the terms and conditions of this Agreement.

2. **Donative Intent; Charitable Deduction.** The Property will be donated at no cost to Land Bank, subject to Land Bank's responsibility for the expenses set forth in Section 3 below. It is understood that Donor intends to claim the value of the Property as a noncash charitable contribution for tax purposes. Land Bank will sign the acknowledgment section of IRS Form 8283 that is correctly completed by Donor and its appraiser. In addition, Donor acknowledges and agrees that Donor's claimed deduction on the IRS Form 8283 shall reflect a "bargain sale" showing an "amount received" by Donor equal to the outstanding taxes and special assessments due and owing on the Property at the time of closing. Donor shall be solely responsible for any audits, costs, or liabilities that may arise from the charitable deduction claimed by Donor in this transaction and shall hold Land Bank and the City of Abilene, Kansas harmless for any claims related to the same. Donor is advised to seek its own legal and/or tax counsel of the gift contemplated in this Agreement and has not relied on any representation from Land Bank related to the gift provided in this Agreement. Land Bank makes no representation regarding the fair market value of the Property or any tax related consequences of the transaction contemplated in this Agreement.

3. **Payment of Expenses.** Expenses shall be allocated between the parties as follows:

3.1 **Land Bank.** Land Bank shall pay the following items:

- (a) One-half of the title insurance premium;
- (b) One-half of the escrow and closing fee, if any;
- (c) The cost of recording the deed;
- (d) The cost of obtaining an appraisal pursuant to Section 4 below, subject to Donor's reimbursement obligation as set forth therein; and
- (e) Any attorneys' fees and expenses incurred by the Land Bank in the preparation and performance of this Agreement.

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3.2 Donor. Donor shall pay the following items:

- (a) One-half of the title insurance premium;
- (b) One-half of the escrow and closing fee, if any;
- (c) Any attorneys' fees and expenses incurred by Donor in the preparation and performance of this Agreement.

4. Appraisal. As a condition to Donor's obligations at Closing, Land Bank shall obtain and deliver to Donor, at least five (5) days prior to the Closing Date, an appraisal for the Property prepared by The Simmons Company. The appraisal is not required to report any predetermined value or direction in value, and Land Bank shall be deemed to have fulfilled its obligations hereunder upon delivery of the appraisal to Donor, regardless of the ultimate appraised value. If Land Bank is unable or fails to deliver the appraisal to Donor as required hereunder, then Donor may terminate this Agreement. If Donor is unable or fails to furnish title or possession as agreed in this Agreement, then Land Bank may terminate this Agreement and Donor agrees to pay Land Bank the sum of \$4,500.00 as reimbursement for its appraisal fees and costs. Such amount shall be paid to Land Bank within ten (10) days of written demand by Land Bank.

5. Escrow Agent. First American Title Insurance Company, 315 Broadway, Abilene, Kansas, is designated as the Escrow Agent of the parties and shall hold this Agreement, the deed, the title insurance policy, and all other papers of transfer pending the complete fulfillment of this Agreement. The Escrow Agent shall receive and disburse all amounts to be paid under this Agreement.

6. Evidence of Title. As soon as reasonably possible after execution of this Agreement, Land Bank shall request the preparation of a commitment for an owner's title insurance policy in an amount not to exceed the appraised value of the Property, insuring Land Bank's title to the Property, subject only to liens, encumbrances, exceptions, or qualifications set forth in this Agreement, and those which shall be discharged by Donor at or before Closing. Land Bank shall have ten (10) business days after receipt to examine the title insurance commitment and to notify Donor in writing of any requirements to make the title marketable, in Land Bank's reasonable discretion.

7. Closing Date and Possession. The Closing Date shall be on or before November 19, 2015. "Closing" means the settlement of the obligations of Donor and Land Bank to each other under this Agreement, including the delivery to Land Bank of a warranty deed in a proper form for recording so as to transfer to Land Bank fee simple title to the Property, free of all encumbrances except as herein stated. Land Bank shall take possession of the Property immediately following the Closing.

8. Restrictions, Easements, Limitations, Taxes. Land Bank shall take title subject to zoning restrictions, covenants and matters appearing on the plat or of record; public utility easements of record; and taxes and special assessments for 2015 and all prior years.

9. **Conveyance.** Donor shall properly execute a general warranty deed conveying the Property to Land Bank free and clear of all liens and encumbrances whatsoever, except as herein provided, and shall place such deed in escrow with the Escrow Agent as soon as may be reasonably possible. At Closing, the Escrow Agent shall deliver the warranty deed and other documents to the Property to Land Bank.

10. **Mechanic's Liens.** Donor certifies that at Closing there will be no lien claimants, potential lien claimants, or improvements to the Property for 120 days prior to Closing Date.

11. **Condition of Property.** Except as otherwise provided herein, Donor is making no warranties of any kind regarding the condition of the Property, and Land Bank is not asking for any warranties from Donor. Therefore, Land Bank acknowledges that it has inspected the Property and agrees to accept it "as is."

12. **Default.** If Donor is unable or fails to furnish title or possession as agreed in this Agreement, Land Bank may terminate this Agreement by written notice to Donor and the parties shall be released from all obligations hereunder.

13. **Authority.** Donor represents and warrants that Donor has the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and neither the execution or delivery of this Agreement, nor the consummation of the conveyance contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions or provisions of any agreement or instrument to which Donor, or any partner or related entity or affiliate of Donor, is a party or by which Donor, or any partner or related entity or affiliate of Donor, or any of Donor's assets is bound. Donor agrees to execute such further documents and take such further actions as may be reasonably required to evidence and document the representations and warranties contained in this section.

14. **Assignment.** This Agreement or any right or interest in the Property shall not be assigned by either Donor or Land Bank.

15. **No Commission.** The parties stipulate that they have not consulted with any real estate broker or salesperson with respect to this transaction, and that no commissions arising from this transaction are due and owing.

16. **Real Estate Reporting Person.** The parties agree that the Escrow Agent is the real estate reporting person as that term is defined under Internal Revenue Code Section 6045(e). Donor agrees to provide Escrow Agent with a written statement, certified under penalties of perjury, setting forth Donor's correct name, address, and taxpayer identification number. The parties further agree that Escrow Agent shall be required to file the informational return required by Internal Revenue Code Section 6045.

17. **Representation of Parties.** Land Bank is represented by the law firm of Clark, Mize & Linville, Chartered, Salina, Kansas. Donor acknowledges that neither Land Bank nor Land Bank's legal counsel has provided legal or tax advice related to the transaction contemplated by this Agreement. Donor is advised that it has the right to such independent legal and/or tax counsel of its own choosing to represent it herein and to advise it with respect to this matter. Donor acknowledges that it has either consulted separate counsel of its own choosing or has elected to proceed without separate counsel.

18. **Time.** Time is of the essence of this Agreement.

19. **Persons Bound-Copies.** This Agreement shall extend to and bind the heirs, executors, administrators, trustees, successors, and authorized assigns of the parties, and may be executed in any number of counterparts, each of which shall be deemed an original, or in multiple originals, and all such counterparts or originals shall for all purposes constitute one agreement.

20. **Merger Clause.** These terms are intended by the parties as a complete, conclusive and final expression of all the conditions of their Agreement. No other promises, statements, warranties, agreements or understandings, oral or written, made before or at the signing thereof, shall be binding unless in writing and signed by all parties and attached hereto.

{Signature Page Follows}

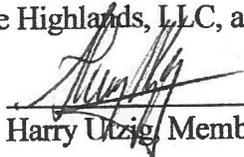


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

**“DONOR”**

**ABILENE HIGHLANDS, L.P.**

By: Abilene Highlands, LLC, a Kansas limited liability company, its sole General Partner

By:   
\_\_\_\_\_  
Harry Utzig, Member

**“LAND BANK”**

**CITY OF ABILENE LAND BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Penny Soukup, CMC, City Clerk

Form: \_\_\_\_\_  
Legal Counsel



**RECEIPT BY ESCROW AGENT**

The undersigned hereby acknowledges receipt of the executed original of this Agreement, and agrees to act as Escrow Agent and Real Estate Reporting Person as defined under Internal Revenue Code Section 6045(e). This receipt is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**FIRST AMERICAN TITLE INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

[To be provided]



**Abilene City Commission Minutes**  
**Abilene Public Library**  
**October 13, 2015 @ 4:00 p.m.**  
**Abilene, Kansas**

**1. Call to Order**

**2. Roll Call** – City Commission Present: Mayor Weishaar, Commissioners Ray, Marshall and Shafer. Absent: Commissioner Payne.

Staff Present: City Manager Dillner, Human Resources Director/City Clerk Soukup, Finance Director Rothchild, City Attorney Martin, Public Works Director Schrader, Community Development Director Shea, and Recreation Supervisor Timbrook.

Others Present: Mike Heronemus, children from K-8 After School Program, Lynda Alstrom, Debra L. Kamhi, Wendell Gugler, Wanda Pitney and Bruce Dale.

**3. Pledge of Allegiance** - Mayor Weishaar led the Pledge of Allegiance.

**Consent Agenda**

**4. Agenda Approval for the October 13, 2015 City Commission Meeting**

**5. Meeting Minutes: September 14, 2015, Regular Meeting**

**6. Appointment of Norman Schmidt to the Airport Advisory Committee to fill a vacancy with a term ending in May 2016.**

Motion by Commissioner Marshall, seconded by Commissioner Ray to approve the Consent Agenda as presented. Motion carried unanimously 4-0.

**Public Comments and Communications**

**7. Public Comments.** Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.

Mayor Weishaar asked for any comments or communications from the public that are not on the agenda.

Lynda Alstrom, 1511 SW 2<sup>nd</sup>, expressed her concerns about the property at SW 2<sup>nd</sup> Street and Old 40 Hwy that is owned by Randy Meier. She presented pictures of the property. She asked that the City get this property cleaned up.

Mayor Weishaar stated the matter will be turned over to staff to be taken care of.

Wendell Gugler, 805 N. Ash St., said he was surprised that the vote was to not consider the Police Department as being a possible addition to the county building. He has not visited with any of the departments but it seems logical to him that the police department be close to the jail and other facilities. He thinks there should be some

## Proclamations and Recognition

### **9. Lights on After School Program Proclamation**

Commissioner Marshall read the proclamation for October 22, 2015 as "Lights on After School" and presented it to participants in the K-8 After School Program.

### **10. Leadership Dickinson County Presentation.**

Drew Snitker and Matt McCCasey presented information on the project that the class of 2015 Leadership Dickinson County has planned. They plan to put signs in each town in Dickinson County displaying historical facts and population. This signs will be 3' x 5' aluminum signs. They hope or the signs to be done by next spring. They want the commission to approve what they put on the sign for Abilene and where it can be put in the city.

## Public Hearings

11. There were no public hearings.

## Old Business

12. There was no old business.

## New Business

### **13. Consideration of a Resolution approving an Agreement with APAC-Kansas, Inc., Shears Division concerning the 2015 KLINK Resurfacing Project.**

City Manager Dillner presented information regarding Resolution No. 101215-1 which would approve an agreement with APAC-Kansas, Inc., Shears Division for the 2015 KLINK Project. Work on the project is scheduled to begin on November 2<sup>nd</sup>.

Motion by Commissioner Marshall, seconded by Commissioner Shafer to approve Resolution No. 101215-1 **A RESOLUTION APPROVING AN AGREEMENT WITH APAC-KANSAS, INC., SHEARS DIVISION CONCERNING THE 2015 KLINK RESURFACING PROJECT.** Motion carried unanimously 4-0.

### **14. Consideration of a Resolution approving Supplemental Agreement No. 1 to an Agreement for Preliminary Engineering Services with Kaw Valley Engineering, Inc., dated March 5, 2015.**

City Manager Dillner presented information regarding Resolution No. 101215-2 which approves the Supplemental Agreement No. 1 for engineering services for the 2015 KLINK Resurfacing Project to ensure it is built as designed. The cost of the engineering services for this project is \$15,898.00.

Motion by Commissioner Shafer, seconded by Commissioner Marshall to approve Resolution No. 101215-2 **A RESOLUTION APPROVING SUPPLEMENTAL AGREEMENT NO. 1 TO AN AGREEMENT FOR PRELIMINARY ENGINEERING SERVICES WITH KAW VALLEY ENGINEERING, INC., DATED MARCH 5, 2015.** Motion carried unanimously 4-0.

**15. Consideration of a Resolution reaffirming the support of the National Eisenhower Memorial by the City of Abilene and urging Congress to fund the construction of the Memorial.**

City Manager Dillner explained this resolution would reaffirm the City's support of the National Eisenhower Memorial and ask Congress that the project be fully funded.

Motion by Commissioner Ray, seconded by Commissioner Shafer to approve Resolution No. 101215-3 **A RESOLUTION REAFFIRMING THE SUPPORT OF THE NATIONAL EISENHOWER MEMORIAL BY THE CITY OF ABILENE AND URGING CONGRESS TO FUND THE CONSTRUCTION OF THE MEMORIAL.** Motion carried unanimously 4-0.

**16. Consideration of a motion authorizing the Mayor to sign a Project Programming Request from the Kansas Department of Transportation concerning a Geometric Improvement Project at the intersection of Buckeye Avenue (K-15) and 14<sup>th</sup> Street.**

City Manager Dillner explained an application for funding was made to the Kansas Department of Transportation for the Geometric Improvement Project at the intersection of Buckeye (K-15) and 14<sup>th</sup> Street. The application has been approved. The City's cost of the project will be 10% of an estimated total cost of \$627,000.00.

Motion by Commissioner Shafer, seconded by Commissioner Marshall to authorize the Mayor to sign a Project Programming Request from the Kansas Department of Transportation concerning the Geometric Improvement Project at the intersection of Buckeye Avenue (K-15) and 14<sup>th</sup> Street. Motion carried unanimously 4-0.

## **Reports**

### **17. City Manager Reports**

City Manger Dillner said sales tax is up 4% compared to year to date last year. The City received \$108,461.00 compared to \$100,594.00 last year. Total receipts for the year are \$983,375.00 compared to \$945,143.00 last year.

City Manager Dillner said the franchise agreement with Westar Energy is renewing at the end of the year. Staff is in the process of reviewing that agreement to determine if any changes are warranted. We met with them this morning to do a preliminary review of the agreement.

City Manager Diller said the League of Kansas Municipalities concluded its annual conference yesterday. The 2016 Statement of Municipal Policy setting forth the legislative agenda for the upcoming legislative session was approved. Key areas include support of the Home Rule Authority, non-partisan elections separate from state and national elections, a repeal of the property tax lid, streamlined and expedited process to address blight, abandoned, nuisance and foreclosed housing and support of congressional action to implement mandatory collection of sales and use taxes on remote sales. The last item is actually a federal issue that city's are asking congress to look at. On-line sales have replaced many local retail sales and congressional authority is necessary to make sales tax collection with on-line sales level with brick and mortar stores, particularly on main street.

City Manager Dillner said another key item is streamlined and expedited process to address blight, abandoned, nuisance and foreclosed housing, this issue on SW 2<sup>nd</sup> has been a concern of the City for some time but one of the issues we do have is the process that the state has outlined for the cities to comply with takes a lot of time and if there is any part on the property owner to do any type of work, it resets that process. The League and

cities are asking the legislature to look at the processes for these nuisance violations to streamline them and more expeditious so we can address those concerns more expediently.

City Manager Dillner said we are going to be holding a public meeting to overview options for the NW 11<sup>th</sup> Street project which will be held at Abilene Middle School on October 22<sup>nd</sup> beginning at 6:00 p.m. The general public is invited to attend this meeting. We will go over options for the actual street layout and other issues that will be adjacent to the new Eisenhower Elementary School.

City Manager Dillner said the City was recently recognized by OCCK with an Outstanding Business Award for notable and continued support of individuals with disabilities.

City Manager Dillner said the City was also recognized as a Gold Star Recipient in the KMIT Loss and Prevention Certification Project. The city is a member of KMIT which is our workers comp program. By achieving the gold star designation, which we have for several years in a row, we are able to discount our workers comp premium every year which allows us to reduce our overall operating costs.

City Manager Dillner said the FAA recently completed the Papi Inspection and officially the Papi Lighting System at the airport. The system is now operational and can actually be controlled by pilots that are coming into the airport. The FAA will be scheduling the REIL Light Inspection soon. Those are two different types of lights that are used by pilots when they are coming into the airport. That is the last thing that remains on the airport runway project.

City Manager Dillner said the Dickinson County Economic Council has been meeting monthly to continue to get organized and to complete its strategic planning process. Most recently Cassie Wilson with Rawhide Portable Corral, Inc. was appointed to fill a vacancy on that board.

Public Works Director Schrader said the curb and gutter work will begin Thursday for the 2015 local street project.

#### **a. Expenditure Report**

#### **Adjournment**

#### **18. Consideration of a motion to adjourn the October 13, 2015 City Commission meeting.**

Motion by Commissioner Ray, seconded by Commissioner Marshall to adjourn at 4:44 p.m. Motion carried unanimously 4-0.

(Seal)

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Dennis P. Weishaar, Mayor

ATTEST:

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Penny L. Soukup, CMC  
City Clerk

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Pay Plan Adjustments and Longevity Pay  
**DATE:** October 16, 2015

The City's Pay Plan is periodically updated to reflect changes in the cost of living based on the Consumer Price Index for the Mountain Plains area. Updating the Pay Plan with cost-of-living adjustments (COLA) allows the City to ensure that its Pay Plan remains competitive and also helps ensure that employees' pay move up when inflationary forces would otherwise reduce the buying power of employee pay.

The City Manager is recommending an update to the Pay Plan of 1% based on the Consumer Price Index for the Mountain Plains area. The proposed adjustment to the Pay Plan would become effective as of January 1, 2016 if approved by the City Commission. In addition to the COLA, employees will also be eligible for a merit increase equal to a one-step increase on the Pay Plan based on annual performance reviews. The total estimated cost of the Pay Plan adjustment is \$36,905 and the total estimated cost of the merit increase is \$63,568.

Per the Personnel Policy, the City Commission may grant discretionary longevity pay permitting funds are available. Discretionary longevity pay is not guaranteed. If the City Commission elects to grant longevity pay, classified full-time employees will receive longevity pay provided they have completed at least five consecutive years of service with the City. Time of services shall be considered as of November 30<sup>th</sup> of the year that longevity pay is approved. Longevity pay shall be distributed to employees by December 31<sup>st</sup> based on years of service as follows:

**Years of Service:**

5 through 9:	\$200
10 through 14:	\$400
15 through 19:	\$600
20 through 24:	\$800
25 and over:	\$1,000

Longevity pay of \$16,800 was budgeted in the 2015 budget. The City Manager recommends authorization of longevity pay as outlined in this memorandum.

Another important item for the City Commission's information is the fact that there are twenty-seven payrolls in 2015. The City budgeted only twenty-six payrolls when the budget was adopted in 2014. As such, the City Manager plans to bring a budget amendment to the City Commission in November that would allow the City to pay the extra payroll in 2015.

A payroll is equal to about \$120,000, and staff estimates that an additional \$80,000 will be required in order to pay the additional payroll from what was actually budgeted in 2015. The City Manager recommends that the additional funds be paid from the applicable fund reserves. Not all employees are paid from the General Fund, so these funds will have to pay for the proportionate share of the additional payroll.

Per the City's General Budgetary and Financial Policies, the reserves may be used for "one-time expenditures which do not substantially increase recurring operating costs" with the approval of the City Commission. The aforementioned payroll situation will not substantially increase recurring operating costs and will be a one-time expense; a 27<sup>th</sup> payroll is a rare occurrence that is not expected to occur again for several years.

# 2016 Pay Plan

Position	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
<b>RANGE ONE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
Recreation Program Leader	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Recreation Specialist I	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Park Maint. Laborer I	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Police Dept Clerk I	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Recycling Center Laborer	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Street Laborer I	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Van Driver	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Water Laborer I	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Tourism Assistant	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
Clerk I	\$12.80	\$13.09	\$13.38	\$13.66	\$13.95	\$14.24	\$14.53	\$14.82	\$15.10	\$15.39	\$15.68	\$15.97	\$16.26	\$16.54	\$16.83	\$17.12
<b>RANGE TWO</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
Water Laborer II	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
Street Laborer II	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
Community Service Officer	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
Park Maint. Laborer II	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
Police Dept. Clerk II	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
Deputy City Clerk	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
Deputy Finance Director	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
Recreation Specialist II	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
WWTP Operator I	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
WTP Operator I	\$14.15	\$14.48	\$14.82	\$15.15	\$15.48	\$15.81	\$16.15	\$16.48	\$16.81	\$17.14	\$17.48	\$17.81	\$18.14	\$18.47	\$18.81	\$19.14
<b>RANGE THREE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
Administrative Assistant	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
Electrical/GIS Technician	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
WWTP Operator II	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
Street Crew Leader	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
Police Officer I	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
Firefighter I	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
Mechanic/Equipment Operato	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
WWTP Operator II	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
WTP Operator II	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67
Recreation Supervisor	\$15.30	\$15.66	\$16.02	\$16.37	\$16.73	\$17.09	\$17.45	\$17.81	\$18.16	\$18.52	\$18.88	\$19.24	\$19.60	\$19.95	\$20.31	\$20.67



# Memo

To: City Manager

From: Marcus Rothchild, Finance Director

Date: October 15, 2015

Re: 3<sup>rd</sup> Quarter Key Revenue & Expense

The 3<sup>rd</sup> quarter of 2015 is now in the books which includes all transactions from July 1, 2015-September 30, 2015. The City of Abilene received \$3,296,927 in revenue while disbursing \$4,641,998 in expenditures throughout the quarter.

## Revenue:

The Funds generating the most revenue this quarter were the Airport Fund, General Fund, Water Fund and Sewer Fund.

- Airport Fund brought in \$641,869 which was primarily FAA funding for the runway rehabilitation project.
- General Fund generated \$590,054 this quarter through various sources.

<u>Revenue Source</u>	<u>3<sup>rd</sup> Qtr 2015</u>	<u>3<sup>rd</sup> Qtr 2014</u>	<u>+/- Quarterly</u>	<u>Budget</u>
➤ Sales Tax	\$324,243	\$316,716	2%	79%
➤ Franchise Fees	\$174,545	\$180,408	(3%)	78%
➤ Property Tax	\$102,218	\$100,155	2%	103%
➤ Mun. Court Fines	\$43,069	\$30,625	41%	83%
➤ Licenses & Permits	\$9,163	\$3,488	163%	329%

- Water Fund generated \$416,374 in utility revenue.

➤ Metered Sales	\$377,691	\$452,175	(17%)	67%
➤ Penalty	\$5,923	\$6,420	(8%)	79%

- Sewer Fund brought in \$332,100 in revenue this quarter.

➤ Sewer Fee	\$297,955	\$311,899	(5%)	70%
➤ Sur Charge Sewer Fee	\$33,188	\$44,263	(25%)	82%

- Other Key Revenues.

➤ Liquor Control Tax	\$47,372	\$9,226	413%	138%
➤ Special Assessments	\$119,231	\$4,927	2,320%	155%
➤ Transient Guest Tax	\$65,857	\$39,691	66%	104%
➤ Arts Festival	\$18,580	\$1,811	926%	23%

## Expenditures:

The Funds which had the most significant impact on expenses this quarter were the Airport Fund, General Fund, Water Fund, Sewer Fund and the Bond/Interest Fund.

- General Fund disbursed \$1,047,607 in overall expenses this quarter.

<u>Department</u>	<u>3<sup>rd</sup> Qtr 2015</u>	<u>3<sup>rd</sup> Qtr 2014</u>	<u>+/- Quarterly</u>	<u>Budget</u>
➤ General Gov't	\$95,359	\$114,396	(17%)	11%
➤ Police	\$284,227	\$284,998	(0%)	33%
➤ Fire	\$167,335	\$172,912	(3%)	29%
➤ Streets & Ally	\$148,768	\$166,810	(11%)	32%
➤ Bindweed/Flood	\$25,500	\$25,809	(1%)	48%
➤ Parks & Rec	\$117,133	\$101,377	16%	27%
➤ Comm. Dev/Inspection	\$156,928	\$101,319	55%	0%
➤ Municipal Court	\$45,206	\$36,848	23%	19%
➤ Civic Center	\$7,129	\$6,438	11%	45%

- Airport Fund disbursed \$1,014,250 in overall expenses this quarter. \$1,009,821 was expensed for the FAA funded runway rehabilitation project.

- Water Fund compiled \$451,667 in expenses throughout the 3<sup>rd</sup> quarter.

➤ Distribution	\$145,254	\$122,403	19%	29%
➤ Wells	\$112,232	\$117,368	(4%)	31%
➤ Commercial	\$78,147	\$50,855	54%	42%
➤ Debt Service	\$91,846	\$92,534	(1%)	1%

- Sewer Fund had \$548,117 in expenses in the 3<sup>rd</sup> quarter.

➤ Collection System	\$40,713	\$49,144	(17%)	49%
➤ WWTP-Sewer Facility	\$100,744	\$102,604	(2%)	39%
➤ Commercial	\$89,207	\$40,935	118%	34%
➤ Bonded Debt	\$317,223	\$317,223	0%	0%

- Bond & Interest totaled \$659,414 over the quarter for payments involving the 1<sup>st</sup> Street project, Dawson Addition, Highlands and the 2013 refinance bonds.

➤ 1 <sup>st</sup> Street Project	\$229,059	\$231,001	(1%)	0%
➤ Cedar Ridge/Dawson 4	\$106,624	\$107,824	(1%)	0%
➤ Highlands	\$232,407	\$229,732	1%	0%
➤ 2013 Refinance Bonds	\$91,325	\$101,325	(10%)	(1%)

**CITY OF ABILENE**  
**CITY TREASURER'S QUARTERLY REPORT**

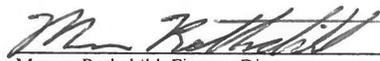
The statement below shows the standing of the various funds of the City of Abilene, Kansas for the quarter ending September 30, 2015.

		Beginning Balance	Revenues	Expenses	Ending Balance	Outstanding Obligations	Available Cash
General	1	\$ 2,311,876.05	\$ 590,053.58	\$ 1,047,606.83	\$ 1,854,322.80	\$ 500.35	\$ 1,853,822.45
Water	2	\$ 440,759.73	\$ 416,373.52	\$ 451,667.48	\$ 405,465.77	\$ 138.03	\$ 405,327.74
Recycle	3	\$ 236,862.20	\$ 88,878.56	\$ 110,984.93	\$ 214,755.83		\$ 214,755.83
Sewer	4	\$ 1,325,306.11	\$ 332,100.43	\$ 548,117.04	\$ 1,109,289.50		\$ 1,109,289.50
Airport	5	\$ 430,935.22	\$ 641,868.56	\$ 1,014,250.15	\$ 58,553.63		\$ 58,553.63
Bond & Interest	6	\$ 541,673.41	\$ 154,597.76	\$ 659,414.38	\$ 36,856.79		\$ 36,856.79
Fire Apparatus	7	\$ 90,998.80	\$ 3,846.62	\$ 47,273.75	\$ 47,571.67		\$ 47,571.67
Special Parks & Rec	8	\$ 35,819.71	\$ 22,737.34	\$ 9,367.18	\$ 49,189.87		\$ 49,189.87
Special Alcohol & Drug	9	\$ 55,938.63	\$ 15,777.41	\$ -	\$ 71,716.04		\$ 71,716.04
Self-Insured Health Account	10	\$ 96,091.64	\$ 143,175.82	\$ 135,380.84	\$ 103,886.62		\$ 103,886.62
Library	11	\$ 144,768.30	\$ 24,973.09	\$ 169,741.39	\$ -		\$ -
Tourism & Convention	13	\$ 21,336.51	\$ 100,257.46	\$ 68,519.04	\$ 53,074.93		\$ 53,074.93
Special Street	14	\$ 29,545.40	\$ 160,098.76	\$ 7,241.64	\$ 182,402.52	\$ 4,061.62	\$ 178,340.90
Recreation Commission	15	\$ 357,472.38	\$ 67,526.85	\$ 154,608.34	\$ 270,390.89		\$ 270,390.89
Capital Improvement	18	\$ 479,625.57	\$ 174.38	\$ -	\$ 479,799.95		\$ 479,799.95
Equipment Reserve	20	\$ 102,427.61	\$ 4.66	\$ 35,129.39	\$ 67,302.88		\$ 67,302.88
Storm Water	27	\$ 396,282.96	\$ 16,969.06	\$ 401.25	\$ 412,850.77		\$ 412,850.77
Water Equipment Reserve	28	\$ 159,774.35	\$ 8.42	\$ 2,313.47	\$ 157,469.30	\$ (1.00)	\$ 157,470.30
Sewer Equipment Reserve	29	\$ 631,032.68	\$ 33.63	\$ -	\$ 631,066.31		\$ 631,066.31
Public Building Commission-Hospital	32	\$ 580,272.08	\$ 217,536.61	\$ -	\$ 797,808.69		\$ 797,808.69
Special Revenue - Community Center	35	\$ 153,907.92	\$ 8.20	\$ -	\$ 153,916.12		\$ 153,916.12
Special Revenue - Lib-Pool Renov	36	\$ 112,603.34	\$ 138,783.91	\$ 9,891.25	\$ 241,496.00		\$ 241,496.00
Special Revenue - Streets	37	\$ 320,266.08	\$ 85,268.47	\$ -	\$ 405,534.55		\$ 405,534.55
Dawson Cottage Addition	46	\$ 29,732.72	\$ 67,639.04	\$ 164,194.61	\$ (66,822.85)		\$ (66,822.85)
Municipal Court Bonds	50	\$ 9,775.00	\$ 8,235.00	\$ 5,895.00	\$ 12,115.00		\$ 12,115.00
<b>Total</b>		<b>\$ 9,095,084.40</b>	<b>\$ 3,296,927.14</b>	<b>\$ 4,641,997.96</b>	<b>\$ 7,750,013.58</b>	<b>\$ 4,699.00</b>	<b>\$ 7,745,314.58</b>

**INDEBTEDNESS**

G.O. Bond Series 2008	\$ 395,000.00
WWTP State Loan 2008	\$ 6,068,617.11
G.O. Bond Series 2009	\$ 1,420,000.00
G.O. Bond Series 2010	\$ 3,500,000.00
G.O. Bond Series 2011	\$ 1,605,000.00
2011 PBC Bonds - Hospital	\$ 7,545,000.00
2012 PBC Bonds - Hospital	\$ 10,000,000.00
G.O. Bond Series 2013	\$ 1,150,000.00
G.O. Series 2015A	\$ 245,000.00
G.O. Series 2015B	\$ 1,365,000.00
<b>Total Indebtedness</b>	<b>\$ 33,293,617.11</b>

I hereby certify the above to be a true and correct copy of the City Treasurer's Financial Statement ending September 30, 2015.

  
 \_\_\_\_\_  
 Marcus Rothchild, Finance Director  
 City of Abilene, Kansas

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Potential STAR Bond Project  
**DATE:** October 16, 2015

The State of Kansas provides an opportunity for cities to capture the state's portion of sales tax receipts in addition to other local taxes for the payment of STAR bond project costs on projects that meet certain criteria and that have a major impact on economic development, particularly with respect to tourism. All projects must be approved by the Secretary of Commerce.

STAR bonds have been used as a financing tool for such projects as the Kansas Speedway/Village West in Kansas City, Kansas, the Heartland Park Racetrack in Topeka, the Kansas Underground Salt Museum in Hutchinson, and the Flint Hills Discovery Museum in Manhattan. Salina is in the process of developing a STAR bond project that will encompass an athletic fieldhouse and a car museum. Dodge City has also submitted an application for a STAR bond project for a revitalization of the Boot Hill Museum and surrounding area.

The concept of using STAR bonds is not new to Abilene. In 2004, the City looked at doing a STAR bond project to revitalize Old Abilene Town. This project did not move forward for various reasons.

The idea for another STAR bond project came from representatives of the Eisenhower Foundation in recent months. The Eisenhower Foundation is in the process of planning a major renovation to the Eisenhower Museum that is estimated to cost upwards of \$10 million. In conversations with the Kansas Department of Commerce, it is likely that most of the Eisenhower Foundation's project will not be eligible for STAR bond financing because exhibits are not an eligible project cost.

Even so, the Department of Commerce seems very open to the idea of a STAR bond project in Abilene as a way to leverage the investments planned by the Eisenhower Foundation. The Eisenhower Presidential Library, Museum, and Boyhood Home is considered a significant state and national attraction, and generates approximately 180,000 visitors each year. In addition, the remaining four members of the Five Star District provides additional tourism opportunities to further leverage with a STAR bond project.

One idea for an attraction of state and regional significance that could be considered for a STAR bond project is a National Chisholm Trail Museum that would complement the historical fact that Abilene is the terminus of the Chisholm Trail. The National Park Service is in the process of reviewing the feasibility of designating the Chisholm Trail and the Great Western Trail as National Historic Trails. A national museum that preserves the story of these great cowboy trails could be a great addition to Abilene. Another attraction may be equally enticing to visitors and a committee should be formed to research potential options for a significant tourism attraction to use STAR bonds if the City Commission desires to move forward.

A STAR bond project can be used to finance the development of a tourism attraction of state and regional significance. The revenue may also be used to finance related public improvements and some qualified private investments. There is also the potential to capture additional revenue if a Tax Increment Finance (TIF) District and Community Improvement District (CID) is overlaid over the STAR District. These two programs allow a City to capture the incremental increase in property taxes (TIF) and the increase in sales tax (CID) within the defined districts. If a hotel is also developed within the district, transient guest taxes may be included in the revenue to finance a STAR bond project. The districts may be organized so only new revenue is used to finance the projects.

The process for establishing a STAR bond project is relatively straightforward; the City must establish the geographic boundaries of the district and then prepare a project plan. Both of these exhibits are submitted to the Department of Commerce for review and approval.

The more detailed process is as follows:

1. Give notice and conduct a public hearing to consider the establishment of a STAR bond project district to include:
  - a. description of the proposed boundaries of the STAR bond project district; and
  - b. description of the STAR bond project district plan.
2. The city submits the proposed STAR bond project district to the secretary for a determination that the district is an eligible area.
3. Upon the conclusion of the public hearing and a finding by the secretary that the proposed project district is an eligible area, the governing body passes an ordinance that makes findings that the STAR bond project district proposed to be developed is a STAR bond project as defined by state law; contains a STAR bond project district plan that identifies all of the proposed STAR bond project areas and identifies in a general manner all of the buildings and facilities that are proposed to be constructed or improved in each STAR bond project area; and contains the legal description of the STAR bond project district and may establish the STAR bond project district.
4. Following the passing of said ordinance, the City prepares a feasibility study that provides information on the feasibility that the project will generate sufficient revenues to repay any bonds issued to finance the project.
5. The City conducts another public hearing on the project plan, and is required to provide notice to both the County and School District.
6. The governing body adopts an ordinance adopting the project plan. Following adoption, the project must commence work within two years, and the entire project must be completed within twenty years of adoption.

The STAR bond process provides an opportunity for the City to take a proactive approach to developing a tourism attraction to complement the existing Five Star District. Some improvements to the Five Star District may also be eligible for STAR bond financing depending on the scope of the proposed improvements.

The City Commission should discuss its interest in moving forward with a potential STAR bond project. The City Manager recommends establishing a steering committee to provide a recommendation on a possible attraction(s) that may be developed or improved with STAR bond proceeds. The committee could also facilitate a discussion about the STAR bond district boundaries and the improvements that would be desirable for inclusion in the project scope. All recommendations are subject to review by the Department of Commerce.

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Westar Energy Franchise Agreement  
**DATE:** October 15, 2015

The current franchise agreement with Westar Energy, Inc., approved by Ordinance No. 3168, is set to renew at the end of the year. A franchise agreement governs the terms and conditions, including payment of a franchise fee, for use of the City's public right-of-way for placement of electric utilities. The City also has franchise agreements with Kansas Gas Service, Inc. and several telecommunications companies.

Representatives from Westar recently inquired about any changes that may be needed to the current agreement. Staff has reviewed the agreement and have prepared the following considerations for the City Commission's review.

1. **Term** - The current agreement was originally set up for a five year period that would automatically renew for five, one year terms. Westar typically has a term of ten to twenty years with many other communities in its service area. Staff is proposing a twenty year term with the ability to review the agreement every five years. It should also be noted that the agreement may be opened for negotiation at any time subject to the following conditions:
  - a. Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or
  - b. Change in the structure or operation of the electrical energy industry which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or
  - c. Any other material and unintended change or shift in the economic benefit to the City or a change the Company did not anticipate upon accepting the grant of the Franchise.
  
2. **Compensation to the City** - The current franchise fee is 5% of the gross receipts received from such distribution of electric energy. Staff is proposing to increase the franchise fee to 6% of gross receipts, which would generate approximately \$110,000 of additional revenue to the City each year. The City Manager proposes using the new revenue for the following programs:
  - a. \$65,000 (59% of the new revenue) to the Business Investment Grant Program for use as an economic development tool for businesses located in or desiring to locate to Abilene; and
  - b. \$45,000 (41% of the new revenue) to be used for the implementation of the Abilene Cowboy Trail in the form of sidewalk or trail improvements and bike lanes.

The City Manager has received input from a variety of stakeholders with interest in both of these programs. Several businesses have inquired about future grant opportunities, and active transportation initiatives have been supported by community stakeholders such as the Health and Wellness Coalition, USD 435, and the general public. Without the increased franchise fee rate, the City Manager does not have a plan to provide revenue to continue to implement these programs.

ORDINANCE NO. 3168

AN ORDINANCE GRANTING TO WESTAR ENERGY, INC. AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF ABILENE, KANSAS.

THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

Section 1. Definitions.

For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

*City as the Grantor* – shall mean the City of Abilene, Kansas.

*Company as the Grantee* – shall mean Westar Energy, Inc., a Kansas Corporation.

*Distributed or Distribution* – shall mean all sales, distribution, or transportation by the Company or by others through the Facilities of the Company in the Right-of-Way to any consumer for use within the City.

*Facilities* – shall mean all electric distribution lines, substations, works, and plants together with all necessary appurtenances thereto.

*Gross receipts* – shall mean any and all compensation and other consideration derived directly by the Company from any Distribution of electric energy to a consumer for any use within the City, including domestic, commercial and industrial purposes, through charges as provided in tariffs filed and approved, and including without limitation interruptible sales and single sales; except that such term shall not include revenues from any operation or use of any or all of the Facilities in the Right-of-Way by others nor shall such term

include revenue from certain miscellaneous charges and accounts, including but not limited to delayed or late payment charges, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, and temporary service charges.

*Public Improvement* – shall mean any existing or contemplated public facility, building, or capital improvement project, financed by the City, including without limitation, streets, alleys, sidewalks, sewer, water, drainage, Right-of-Way improvement, and Public Projects.

*Public Project* – shall mean any project planned or undertaken and financed by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature paid for with public funds.

*Public Project for Private Development* – shall mean a Public Project, or that portion thereof, that primarily benefits a third (3rd) party.

*Right-of-Way* – shall mean present and future streets, alleys, rights-of-way, and public easements, including easements dedicated to the City in plats of the City for streets and alleys but not including any Utility Easement.

*Street Right-of-Way* – shall mean the entire width between property lines of land, property, or an interest therein of every way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular traffic, including street, avenue, boulevard, highway, expressway, alley, or any other public way for vehicular travel by whatever name.

*Utility Easement* – shall mean an easement owned by or dedicated to the City for the purpose of providing the Company and other utilities access to customers and users of any utility service.

Section 2. Grant.

There is hereby granted to Company, the non-exclusive right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in, through, and along the Right-of-Way of the City for the purpose of supplying electric energy to the City and the inhabitants thereof for the full term of this Franchise; subject, however, to the terms and conditions herein set forth. Nothing in this grant shall be construed to franchise or authorize the use of the Company's Facilities or the Right-of-Way by the Company or others, for any purpose not related to the provision of electric energy. The Company may not allow a subsidiary, affiliate, or a third (3rd) party to acquire rights to occupy the Rights-of-Way under this Franchise; provided, that nothing in this section shall prevent Company from allowing the use of its Facilities by others when such use is compensated to the City under the provisions of a franchise granted by the City to any such third party.

Section 3. Term.

a. The term of this Franchise shall be five (5) years from the effective date of this Ordinance. Thereafter, this Franchise will renew automatically for five (5) one (1) year terms, unless the City notifies the Company of its intent to terminate the Franchise prior to ninety (90) days before the termination of the then current term.

b. Upon written request of either the City or the Company, the franchise shall be reopened and renegotiated at any time upon any of the following events:

1. Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

2. Change in the structure or operation of the electrical energy industry which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

3. Any other material and unintended change or shift in the economic benefit to the City or a change the Company did not anticipate upon accepting the grant of this Franchise.

c. Amendments under this section, if any, shall be made by ordinance as prescribed by statute. The franchise shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to subsection (b).

Section 4. Compensation to the City.

a. In consideration of and as compensation for the franchise hereby granted to the Company by the City, the Company shall make an accounting on a monthly basis to the City of all electric energy that has been Distributed within the City. The Company shall pay the City:

A sum equal to five percent (5%) of the Gross Receipts received from such Distribution of electric energy; and

The above sum shall be adjusted for uncollectible receivables and for receivables which are later collected.

b. Payment of the compensation above shall be effective on the first day of January, 2011. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance 3049 . Such payments shall be made to the City under procedures, which are mutually agreed to by the Company and the City within thirty (30) days of the last day of the month to which such accounting shall apply.

c. Notwithstanding anything to the contrary in this Franchise, the fee provided for in this Section 4 shall not become effective within any area annexed by the City until 30 days after the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the city detailing the annexed area.

d. Company will use commercially reasonable efforts to ensure the accuracy of its records and of the determination of the amount of Gross Receipts subject to the fee provided for in this Section 4. In the event and to the extent the accounting rendered to the City by the Company is found to be incorrect due to Company's failure to use commercially reasonable efforts as provided herein, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Company agrees that all of its books,

records, documents, contracts and agreements as may be reasonably necessary for an effective compliance review of this Ordinance shall upon reasonable notice and at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting. Notwithstanding the obligation herein, the Company shall have the right to require the reasonable protection of proprietary information of the Company.

**Section 5. Payment and Charges.**

The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales and excise taxes, or charges made for privileges which are not connected with the electric energy business, will be imposed on the Company and are not covered by the payments herein.

**Section 6. Use of Right-of-Way.**

a. The use of the Right-of-Way under this Franchise by the Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to use, placement, location, or management of utilities located in the City's Right-of-way. In addition, the Company shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits, fees, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the

Right-of-Way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, or ordinance proposed, adopted, or promulgated by the City. Further, the Company shall comply with the following:

b. The Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The Company shall coordinate the installation of its Facilities in the Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.

c. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-Way damaged or removed by the Company in its activities under this Franchise shall be fully repaired or replaced promptly by the Company without cost to the City, however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto. Nothing in this Franchise shall require the Company to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with the Company's access to any of its Facilities located in a Utility Easement.

d Except in the event of an emergency, as reasonably determined by the Company, the Company shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected.

e. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within the Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents, or authorized contractors. The Company shall designate and maintain an agent, familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in the Right-of-Way during and for the design of Public Improvements. At the request of the Company, the City may include design for Facilities in the design of Public Projects. Also at the request of the Company, the City and/or its contractor(s) or agent(s) shall provide accurate and timely field locations of proposed Public Projects in the event the Company is required to install new and/or relocate its Facilities.

f. The Company shall promptly locate, remove, relocate, or adjust any Facilities located in the Right-of-Way if reasonably necessary and requested by

the City for a Public Project. Such location removal, relocation, or adjustment for a particular Public Project shall be performed by the Company without expense to the City, its employees, agents, or authorized contractors, and shall be specifically subject to rules and regulations of the City pertaining to such. If additional location, removal, relocation, or adjustment is the result of the inaccurate or mistaken information of the Company, the Company shall be responsible for costs associated with such without expense to the City. Likewise, if additional location, removal, relocations or adjustment is the result of inaccurate or mistaken information of the City, the City shall reimburse the Company for any additional expense necessarily incurred by the Company directly due to such inaccurate or mistaken information. The Company shall only be responsible for removal, relocation, or adjustment of Facilities located in the Right-of-Way at the Company's sole cost once each five (5) years for that particular facility. The City shall reimburse the Company for the removal, relocation, or adjustment of the Company's Facilities located in the Right-of-Way if required before the expiration of five (5) years from the date of the last relocation, removal, or adjustment of that particular facility.

g. The Company shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance. The expenses attributable to such a project shall be the responsibility of the third (3rd) party upon the request and appropriate documentation of the Company. Before such expenses may be billed to the third (3rd) party, the Company shall be required to coordinate with the third (3rd) party and the City on the design and construction to ensure that

the work required is necessary and done in a cost effective manner. The Company may require payment in advance of estimated costs or relocation prior to undertaking any work required to accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance.

h. The City will make every effort to provide a location in the Right-of-Way for the Company's Facilities as part of a Public Project, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

i It shall be the responsibility of the Company to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If the Company fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. The Company shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the Company to perform any of its obligations under this Ordinance. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near the Company's Facilities.

j. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way shall be in accordance with applicable present and future federal, state, and City laws and regulations, including but not limited to the most

recent standards of the Kansas Corporation Commission and U.S. Department of Transportation. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Franchise may be additional to or stricter than such minimum standards.

k. The City encourages the conservation of the Right-of-Way by the sharing of space by all utilities. Notwithstanding provisions of this Franchise prohibiting third (3rd) party use, to the extent required by federal or state law, the Company will permit any other franchised entity by an appropriate grant, or a contract, or agreement negotiated by the parties, to use Facilities constructed or erected by the Company, as long as the third party meets all code and Company standards for material, installation, and maintenance.

l. Permission is hereby granted to the Franchisee to trim trees upon and overhanging the right-of-way and utility easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269. All pruning operations shall be performed by personnel qualified to perform the work and in accordance with the latest versions of ANSI Z133.1 (Safety Requirements for Pruning, Repairing, Maintaining and Removing Trees, and Cutting Brush) and ANSI A300 (Part 1) (Standard Practices for Tree, Shrub, and Other Woody Plant Maintenance). For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger.

**Section 7. Indemnity and Hold Harmless.**

The Company shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including reasonable attorney fees, to the extent occasioned in any manner by the Company's occupancy of the Right-of-Way. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the Right-of-Way by Facilities of the Company, then upon notice by the City to the Company, the Company shall assume responsibility for the defense of such actions at the cost of the Company, subject to the option of the City to appear and defend.

**Section 8. Right of Assignment.**

This Franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

**Section 9 Acceptance of Terms by Company.**

Within thirty (30) days after the final passage and approval of this Ordinance, the Company shall file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance. This Ordinance shall constitute a non-exclusive contract between the City and the Company.

**Section 10. Conditions of Franchise.**

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

Section 11. Invalidity of Ordinance.

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining provisions of this Ordinance.

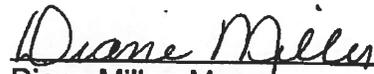
Section 12. Effective Date of Ordinance.

After its passage and approval by the City, acceptance by the Company, and publication in the official city newspaper, this Ordinance shall take effect and be in force on the first day of January, 2011 (the "Effective Date of this ordinance").

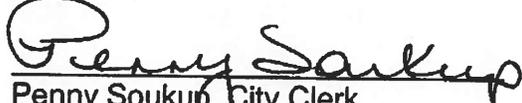
Section 13. Repeal of Conflicting Ordinances.

Ordinance No. 3049, which heretofore granted a non-exclusive franchise to the Company, and which became a contract between the City and the Company in accordance with its terms, and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby canceled, annulled, repealed, and set aside.

PASSED and APPROVED by the Governing Body on the 8th day of November, 2010.

  
Diane Miller, Mayor

ATTEST:

  
Penny Soukup, City Clerk