



College Station, TX

Meeting Agenda City Council

1101 Texas Ave, College Station, TX 77840
Internet: <https://zoom.us/j/96728393278>
Phone: 888 475 4499 and Meeting ID: 967 2839 3278

April 28, 2022

4:00 PM

City Hall Council Chambers

Notice is hereby given that a quorum of the meeting body will be present in the physical location stated above where citizens may also attend in order to view a member(s) participating by videoconference call as allowed by 551.127, Texas Government Code. The City uses a third-party vendor to host the virtual portion of the meeting; if virtual access is unavailable, meeting access and participation will be in-person only.

1. **Call to Order.**
2. **Executive Session is Closed to the Public and Will Be Held in the 1938 Executive Conference Room. The Open Meeting Will Resume No Earlier Than 5:00 PM.**

Consultation with Attorney {Gov't Code Section 551.071};

Possible action. The City Council may seek advice from its attorney regarding a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. Litigation is an ongoing process and questions may arise as to a litigation tactic or settlement offer, which needs to be discussed with the City Council. Upon occasion the City Council may need information from its attorney as to the status of a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. After executive session discussion, any final action or vote taken will be in public. The following subject(s) may be discussed.

Litigation

- a. Kathryn A. Stever-Harper as Executrix for the Estate of John Wesley Harper v. City of College Station and Judy Meeks; No. 15,977-PC in the County Court No. 1, Brazos County, Texas
- b. McCrory Investments II, LLC d/b/a Southwest Stor Mor v. City of College Station; Cause No. 17-000914-CV-361; In the 361st District Court, Brazos County, Texas
- c. City of College Station v. Gerry Saum, Individually, and as Independent Executrix of the Estate of Susan M. Wood, Deceased; Cause No. 17-002742-CV-361; In the 361st District Court, Brazos County, Texas

Legal Advice

- a. Legal advice regarding open meetings requirements, council members' role related to council appointed committees, and other issues related to council members' role.

Personnel {Gov't Code Section 551.074};

Possible action. The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer. After executive session discussion, any final action or vote taken will be in public. The following public officer(s) may be discussed:

- a. City Attorney
- b. Council Self Evaluation

Economic Incentive Negotiations {Gov't Code Section 551.087};

Possible action. The City Council may deliberate on commercial or financial information that the City Council has received from a business prospect that the City Council seeks to have locate, stay or expand in or near the city which the City Council in conducting economic development negotiations may deliberate on an offer of financial or other incentives for a business prospect. After executive session discussion, any final action or vote taken will be in public. The following subject(s) maybe discussed:

- a. Potential incentives for a possible location of a new storage and delivery business.

3. Reconvene from Executive Session and Take Action, if Any.

4. Pledge of Allegiance, Invocation, and Consider Absence Request.

Speaker Protocol

An individual who wishes to address the City Council regarding any item on the agenda other than those items posted for Executive Session must register with the City Secretary two (2) hours prior to the meeting being called to order. Individuals shall register to speak or provide written comments at <https://forms.cstx.gov/Forms/CSCouncil> or provide a name and phone number by calling 979-764-3500. Upon being called to speak an individual must state their name and city of residence, including the state of residence if the city is located out of state. Speakers are encouraged to identify their College Station neighborhood or geographic location. Please do not carry purses, briefcases, backpacks, liquids, foods or any other object other than papers or personal electronic communication devices to the lectern, nor advance past the lectern unless you are invited to do so. Each speaker's remarks are limited to three (3) minutes. Any speaker addressing the Council through the use of a translator may speak for six (6) minutes. At the three (3) minute mark the City Secretary will announce that the speaker must conclude their remarks.

5. Presentation - Proclamations, Awards, and Recognitions.

- 5.1. Presentation proclaiming Coach Gary Blair Day.

Sponsors: Jay Socol

Attachments: 1. 220428 -- Coach Gary Blair Day

- 5.2. Presentation proclaiming May 2022 as Motorcycle Safety and Awareness Month.

Sponsors: Tanya Smith

Attachments: 1. 22 Motorcycle Safety and Awareness Month.doc

- 5.3. Presentation proclaiming May as National Bike Month.

Sponsors: Venessa Garza

Attachments: 1. 22 National Bike Month

- 5.4. Presentation proclaiming the week of May 15th through 21st, 2022 as National Public Works Week.

Sponsors: Emily Fisher

Attachments: 1. 22 Public Works Week Proclamation

6. Hear Visitors.

During Hear Visitors an individual may address the City Council on any item which does not appear on the posted agenda. The City Council will listen and receive the information presented by the speaker, ask staff to look into the matter, or place the issue on a future agenda. Topics of operational concern shall be directed to the City Manager.

7. Workshop Items.

- 7.1. Presentation and introduction of new Extension Agent for Brazos County.

Sponsors: Debbie Eller

Attachments: None

- 7.2. Presentation, discussion, and possible action on recommended projects from the Citizens Bond Advisory Committee.

Sponsors: Bryan Woods

Attachments: 1. CBAC Memo to Council- Final

- 7.3. Presentation, discussion, and possible action on options to preserve neighborhood character.

Sponsors: Michael Ostrowski

Attachments: None

- 7.4. Presentation, discussion, and possible action regarding an update on amending the Dockless Bike Share Program ordinance.

Sponsors: Venessa Garza

Attachments: 1. Ordinance Amendment - Redlined
2. Ordinance Amendment

8. Consent Items.

Presentation, discussion, and possible action on consent items which consist of ministerial or "housekeeping" items as allowed by law. A Councilmember may request additional information at this time. Any Councilmember may remove an item from Consent for discussion or a separate vote.

- 8.1. Presentation, discussion, and possible action of minutes for:

- April 14, 2022 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM041222 DRAFT Minutes

- 8.2. Presentation, discussion, and possible action regarding the award of a contract to Primoris T&D Services, LLC for the construction and installation of electric underground conduit and manholes in the Northgate area for an amount not to exceed \$1,310,886.75.

Sponsors: Timothy Crabb

Attachments: 1. CSP RFP 22-041 BID TABULATION

- 8.3. Presentation, discussion, and possible action on renewal of Cityworks software licenses agreement in the amount of \$105,000.

Sponsors: Sam Rivera

Attachments: 1. 18300237R4 --RF (CC04.28.22)

- 8.4. Presentation, discussion, and possible action to award an Annual Price Agreement for the rental of Heavy Equipment and Machinery for an amount not to exceed \$150,000 to Mustang Rental Services of Texas.

Sponsors: Mary Ellen Leonard

Attachments: 1. Bid 22-040 Tabulation of Responses 033122

- 8.5. Presentation, discussion, and possible action adopting a resolution to approve a Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U. S. C. §5308, Section 108 Loan Agreement between L.U.L.A.C. Oak Hill, Inc. and the City of College Station, Promissory Note, Deed of Trust, and General Certification providing \$2,808,000 for the cost of construction and permanent financing of the rehabilitation of its property located at 1105 Anderson in College Station, Texas.

Sponsors: Debbie Eller

- Attachments:
1. Attachment 1 - Resolution Approving and Authorizing Section 108 Loan
 2. Attachment 2 - Exhibit A - Contract for Loan Guarantee Assistance Under Section 108
 3. Attachment 3 - Exhibit B - Note
 4. Attachment 4 - Exhibit C - LULAC Loan Agreement

- 8.6. Presentation, discussion, and possible action regarding an ordinance amending Chapter 38, "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," by removing parking on the east side of First Street between Louise Avenue and Maple Avenue and on the south side of Maple Avenue between Wellborn Road and First Street.

Sponsors: Jason Schubert

- Attachments:
1. Ordinance
 2. Parking Removal Exhibit

- 8.7. Presentation, discussion, and possible action regarding a resolution approving an Advance Funding Agreement in the amount of \$126,051 between the City of College Station and the State of Texas, acting through the Texas Department of Transportation for a shared-use path on Harvey Mitchell Parkway (FM 2818) and authorizing the City Manager to execute said agreement.

Sponsors: Venessa Garza

- Attachments:
1. Resolution for Advance Funding Agreement
 2. Advanced Funding Agreement for FM2818

- 8.8. Presentation, discussion, and possible action regarding a resolution approving an Advance Funding Agreement in the amount of \$302,254 between the City of College Station and the State of Texas, acting through the Texas Department of Transportation for separated bike lanes on George Bush Drive (FM 2347) and authorizing the City Manager to execute said agreement as well as a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Sponsors: Venessa Garza

- Attachments:
1. Resolution for Advance Funding Agreement
 2. Advanced Funding Agreement for FM2347
 3. Resolution for Debt Reimbursement

- 8.9. Presentation, discussion, and possible action regarding an ordinance amending Chapter 2, "Administration," Article V, "Finance," Division 2 "Fees, Rates and Charges," Section 2-120 "Fire Department Services".

Sponsors: Eric Dotson

- Attachments:
1. Ch 2 Fee 2-120 Fire Dept Fee Ord Amend

- 8.10. Presentation, discussion, and possible action on Change Order No. 3 in the amount of \$76,340 to the Construction Contract with Elliott Construction, LLC. for the Woodson Village Utility rehabilitation Project.

Sponsors: Emily Fisher

- Attachments:
1. Change Order 3 unsigned
 2. Woodson Village Rehab Project Map

9. Regular Items.

- 9.1. Public Hearing, presentation, discussion, and possible action on Budget Amendment 3 amending Ordinance No. 2021-4286 which will amend the budget for the 2021-2022 Fiscal Year in the amount of \$11,676,000.

Sponsors: Mary Ellen Leonard

- Attachments:
1. FY22 BA#3-revised
 2. FY22 Budget Amendment #3 Ordinance

- 9.2. Public Hearing, presentation, discussion, and possible action to consider a Comprehensive Plan Amendment to the Neighborhood Center future land use description, intent, and generally appropriate zoning districts within Chapter 2, Distinctive Places of the Comprehensive Plan.

Sponsors: Alyssa Halle-Schramm

- Attachments:
1. Ordinance
 2. Neighborhood Center Future Land Use Redlines
 3. Comprehensive Plan - Chapter 2. Distinctive Places

- 9.3. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Chapter 103, "Building Regulations," Article III, "Technical Codes," Division 2 "Building Codes" and Division 3 "Electrical Code " adopting the 2021 International Codes, the 2020 National Electrical Code (NEC), and related amendments.

Sponsors: Brian Binford

- Attachments:
1. Ordinance
 2. Overview of Changes and Local Amendments

- 9.4. Presentation, discussion, and possible action regarding an ordinance amending Chapter 16, "Fire Prevention and Protection," Article III, "Fire Code," Sections 16-51 and 16-52 and Article IV, "Life Safety Code", Section 16-78.

Sponsors: Eric Dotson

- Attachments:
1. Chapter 16 Fire Code and Life Safety Code Ord Amend 4-12-22

- 9.5. Presentation, discussion, and possible action regarding Change Order No. 1 in the amount of \$863,750 to the annual price agreement with Larry Young Paving, Inc. for Curb, Gutter, and Concrete Flatwork.

Sponsors: Emily Fisher

- Attachments:
1. 21300494 Chg Ord 1 42822

- 9.6. Presentation, discussion, and possible action regarding a renewal of the Annual Price Agreement for Concrete Curb, Gutter, and Flatwork installation with Larry Young Paving, Inc. for an amount not to exceed \$4,318,750.

Sponsors: Emily Fisher

- Attachments:
1. C 21300494 R1 Larry Young Paving Inc.

- 9.7. Presentation, discussion, and possible action regarding approval of Amendment No. 2 to the Construction Manager at Risk (CMAR) contract with JaCody Construction, LP accepting the Guaranteed Maximum Price (GMP) of \$3,871,798 for the Renovation of 1207 Texas Avenue.

Sponsors: Emily Fisher

- Attachments:
1. 1207 Texas Ave Estimate

2. 1207 GMP #3 Exhibits

10. Council Calendar - Council May Discuss Upcoming Events.**11. Items of Community Interest.**

The Council may receive reports from a Council Member or City Staff about items of community interest for which notice has not been given, including: expressions of thanks, congratulations or condolence; information regarding holiday schedules; honorary or salutary recognitions of a public official, public employee, or other citizen; reminders of upcoming events organized or sponsored by the City of College Station; information about a social, ceremonial or community event organized or sponsored by an entity other than the City of College Station that is scheduled to be attended by a Council Member, another city official or staff of the City of College Station; and announcements involving an imminent threat to the public health and safety of people in the City of College Station that has arisen after the posting of the agenda.

12. Council Reports on Committees, Boards, and Commissions.

A Council Member may make a report regarding meetings of City Council boards and commissions or meetings of boards and committees on which a Council Member serves as a representative that have met since the last council meeting. (Committees listed in Coversheet)

13. Future Agenda Items and Review of Standing List of Council Generated Future Agenda Items.

A Council Member may make a request to City Council to place an item for which no notice has been given on a future agenda or may inquire about the status of an item on the standing list of council generated future agenda items. A Council Member's or City Staff's response to the request or inquiry will be limited to a statement of specific factual information related to the request or inquiry or the recitation of existing policy in response to the request or inquiry. Any deliberation of or decision about the subject of a request will be limited to a proposal to place the subject on the agenda for a subsequent meeting.

14. Adjourn.

The City council may adjourn into Executive Session to consider any item listed on the agenda if a matter is raised that is appropriate for Executive Session discussion.

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on April 22, 2022 at 5:00 p.m.



City Secretary

This building is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need accommodations, auxiliary aids, or services such as interpreters, readers, or large print are asked to contact the City Secretary's Office at (979) 764-3541, TDD at 1-800-735-2989, or email adaassistance@cstx.gov at least two business days prior to the meeting so that appropriate arrangements can be made. If the City does not receive notification at least two business days prior to the meeting, the City will make a reasonable attempt to provide the necessary accommodations.

Penal Code § 30.07. Trespass by License Holder with an Openly Carried Handgun.

"Pursuant to Section 30.07, Penal Code (Trespass by License Holder with an Openly Carried Handgun) A Person Licensed under Subchapter H, Chapter 411, Government Code (Handgun Licensing Law), may not enter this Property with a Handgun that is Carried Openly."

Codigo Penal § 30.07. Traspasar Portando Armas de Mano al Aire Libre con Licencia.

"Conforme a la Seccion 30.07 del codigo penal (traspasar portando armas de mano al aire libre con licencia), personas con licencia bajo del Sub-Capitulo H, Capitulo 411, Codigo de Gobierno (Ley de licencias de arma de mano), no deben entrar a esta propiedad portando arma de mano al aire libre."

April 28, 2022

Item No. 5.1.

Coach Gary Blair Day

Sponsor: Jay Socol, Director of Public Communications

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming Coach Gary Blair Day.

Relationship to Strategic Goals:

Coach Gary Blair Day

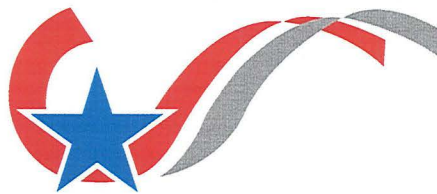
Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. 220428 -- Coach Gary Blair Day



CITY OF COLLEGE STATION

Home of Texas A&M University®

Proclamation

WHEREAS, Gary Blair retired after 19 years as Texas A&M women's basketball coach after the 2021-22 season ended in March; and

WHEREAS, Coach Blair is an elected member of the Women's Basketball Hall of Fame and led A&M to the 2011 national championship; and

WHEREAS, Coach Blair led the Aggies to 16 NCAA Tournament appearances in 19 seasons, advancing to the Sweet Sixteen eight times and the Elite Eight three times; and

WHEREAS, Coach Blair led A&M to five conference championships, including the 2021 Southeastern Conference title; and

WHEREAS, Coach Blair is one of only 13 NCAA Division I coaches to reach 850 career victories and ranks 12th in all-time wins with an 852-348 overall record in 37 seasons; and

WHEREAS, Coach Blair is a two-time national coach of the year, a five-time Texas coach of the year, and a six-time conference coach of the year who is a member of seven halls of fame; and

WHEREAS, Coach Blair is one of only three coaches in history to take two or more schools to the NCAA Final Four, accomplishing it with A&M in 2011 and Arkansas in 1998; and

WHEREAS, Coach Blair posted winning seasons in 35 of his 37 years as a college coach, including 30 seasons with at least 20 victories, and won nine conference regular-season championships and nine conference tournament titles; and

WHEREAS, Coach Blair appeared in a combined 26 NCAA Tournaments, 13 NCAA Sweet Sixteens, and amassed 41 NCAA Tournament victories at A&M, Arkansas, and Stephen F. Austin; and

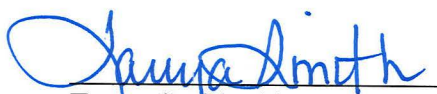
WHEREAS, Coach Blair has raised more than \$1.4 million through Coach Blair Charities for charities across the Brazos Valley.

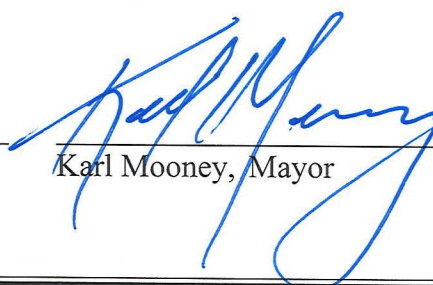
NOW, THEREFORE, I, Karl Mooney, as mayor of the City of College Station and on behalf of our community's residents and the College Station City Council, declare today, April 28, 2022, as

COACH GARY BLAIR DAY

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas, this 28th day of April 2022.

Attest:


Tanya Smith, City Secretary


Karl Mooney, Mayor



April 28, 2022
Item No. 5.2.
Motorcycle Safety and Awareness Month

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming May 2022 as Motorcycle Safety and Awareness Month.

Relationship to Strategic Goals:

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. 22 Motorcycle Safety and Awareness Month.doc



Proclamation

WHEREAS, today's society is finding more citizens involved in motorcycling; and

WHEREAS, the Lone Star State is home to one of the nation's largest motorcycle-riding populations and it is vital that all motorist become more aware of everyone they share the road with, especially motorcyclists; and

WHEREAS, in 2020, there were 7,481 motorcycle crashes on Texas roads, leading to 1,856 serious injuries and 482 riders who lost their lives. With the lives of our fellow Texans on the line, we must do more to properly share the road and ensure the safety of motorcyclists, who represent some of our most vulnerable drivers; and

WHEREAS, each year, the month of May is dedicated to awareness campaigns that combat motorcycle-related crashes and fatalities. There are more than 61 percent of motorcyclist deaths happen between May through October, so these campaigns have helped inform riders and motorists alike to motorcycle safety issues to reduce motorcycle related risks, injuries, and most of all fatalities, through a comprehensive approach to motorcycle safety; and

WHEREAS, it is the responsibility of all who put themselves behind the wheel to become aware of motorcyclists, and to obey all traffic laws. Motorcyclist should also continue to be vigilant for their safety; and

WHEREAS, motorists are encouraged to become more aware of inherent danger involved in operating a motorcycle, and for riders and motorists alike to give each other the mutual respect they deserve.

NOW, THEREFORE, I, Karl Mooney, Mayor of the City of College Station, Texas, do hereby proclaim and officially recognize May 2022 as

Motorcycle Safety and Awareness Month

It is encouraged that all College Station citizens utilize the many resources available to them to learn more about motorcycle safety and how our community do their part to make our roadways more secure.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 28th day of April 2022.

Karl Mooney
Mayor

Attest:

Tanya Smith
City Secretary

April 28, 2022

Item No. 5.3.

Presentation proclaiming May as National Bike Month

Sponsor: Venessa Garza

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming May as National Bike Month.

Relationship to Strategic Goals:

- Improving Mobility
- Sustainable City

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. 22 National Bike Month



Proclamation

WHEREAS, riding a bike is an environmentally sound form of transportation and an excellent form of recreation; and

WHEREAS, College Station encourages the increased use of the bicycle, benefiting all citizens by fostering physical and mental health, improving air quality, and reducing traffic congestion; and

WHEREAS, the education of bicyclists and motorists as to the proper and safe operation of bicycles is important to ensure the safety and comfort of all road users; and

WHEREAS, College Station is nationally recognized as a Bronze Level Bicycle Friendly Community, as designated by the League of American Bicyclists, reflecting the City's commitment to make College Station a vibrant, multi-modal community.

NOW, THEREFORE, I, Karl P. Mooney, by virtue of the authority vested in me as Mayor of the City of College Station, Texas, do hereby proclaim May 2022 as

National Bike Month

And encourage all citizens to try bicycling as a sensible mode of transportation and recreation and urge road users to share the road safely with bicyclists.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 28th Day of April, 2022.

Karl P. Mooney
Mayor

Attest:

Tanya Smith
City Secretary



Proclamation

WHEREAS, public works services provided in our community are an integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as streets, public buildings, transportation, and solid waste collection; and

WHEREAS, the health, safety, and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, are vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the people's attitude and understanding of the importance of the work they perform.

NOW, THEREFORE, I, Karl P. Mooney, by virtue of the authority vested in me as Mayor of the City of College Station, Texas, do hereby proclaim the week of May 15th through 21st, 2022 as

National Public Works Week

and call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 28th day of April, 2022.

Karl P. Mooney
Mayor

Attest:

Tanya Smith
City Secretary

April 28, 2022

Item No. 7.1.

Introduction of new Extension Agent for Brazos County

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation and introduction of new Extension Agent for Brazos County.

Relationship to Strategic Goals:

Good Governance

Recommendation(s): N/A

Summary:

The Texas A&M AgriLife Extension Service is a unique education agency with a statewide network of professional educators, trained volunteers, and county offices. It reaches into every Texas county to address local priority needs. Some of our major efforts are mitigating drought impacts; conserving water use in homes, landscapes, and production agriculture; improving emergency management; enhancing food security; and protecting human health through education about diet, exercise, and disease prevention and management.

AgriLife Extension demonstrates the latest technology and best practices to improve the state's food and fiber system, which serves all Texas consumers and contributes nine percent of the gross domestic product. [Texas 4-H](#), our primary youth program, engages some 600,000 youth in the State of Texas every year in learning projects, leadership development, and community service.

Collaborative programs enable extension educators and their partners to extend resources and prevent duplication of services. In total, extension personnel and extension-trained volunteers achieved nearly 23 million direct teaching contacts, including distance education via the Web.

Brazos County AgriLife Extension is concentrating on growing a strong educational system and developing a strong economy that will prepare its citizens for the 21st century. Program areas within Brazos County include Agriculture and Natural Resources, 4-H, Family and Community Health, Master Gardners, and Master Naturalists.

Chadd Caperton was appointed as the Brazos County Extension Agent in the fall of 2021. Mr. Caperton will provide an overview of Brazos County Extension, efforts in the community, resources available to residents, and opportunities for partnerships and collaboration with the City of College Station.

Budget & Financial Summary:

Attachments:

None

April 28, 2022

Item No. 7.2.

Citizens Bond Advisory Committee Recommendations

Sponsor: Bryan Woods, City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on recommended projects from the Citizens Bond Advisory Committee.

Relationship to Strategic Goals:

Good Governance, Financial Sustainability

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. CBAC Memo to Council- Final

April 28, 2022

MEMORANDUM

To: Honorable College Station Mayor and City Council Members
From: David Higdon, Chair
Don Hellriegel, Co-Chair
Subject: Prioritized Projects for Inclusion in a 2022 Bond Referendum

On October 28, 2021 the City Council adopted Resolution No. 10-28-21-9.7, creating a 2022 Citizen Bond Advisory Committee. On January 13, 2022 the City Council appointed 23 members to the Citizen Bond Advisory Committee (CBAC).

The committee began its work on February 15, 2022; meeting weekly thereafter to study the projects, obtain staff insight, and gather citizen input. At their final meeting on April 4, 2022, the committee voted on an overall prioritized list of projects, as given in this report. The CBAC asked staff to estimate the cost of each proposed project. It should be noted all the projects considered by the CBAC are highly meritorious and deserving.

CBAC Methodology

The CBAC met weekly to hear from staff about the City's potential funding capacity as well as the background and scope of each project. All meetings included a zoom option for virtual participation. A community meeting was held at City Hall on March 7th where the CBAC interacted with citizens and citizens were asked to submit comment cards and select their top ten projects. An online survey was also made available for citizen input. In total, the committee received 68 ranked lists in person and 466 ranked lists from the online survey.

After reviewing citizen input, the committee ranked all 33 projects and identified the 10 projects that, while still deserving, were considered by the group to be their lowest priority. Then, the committee used an online ballot to rank the remaining projects.

Funding and Revenue Estimates

Funding estimates for each project were reported by City staff. The estimates were based on current costs plus an estimated rate of inflation. The CBAC realizes these estimates were made based on five-year projected construction and facilities costs. Thus, individual costs may differ due to overall economic conditions. Moreover, the CBAC realizes several of the projects will require increased staffing, equipment, and/or ongoing operating expenses.

Project Rankings

In its presentation to the Council on April 28th, 2022, the CBAC Chair and Co-chair will outline the recommended projects, as follows:

Rank	Project Name	Estimated Cost	Running Total
1	Fire Station #7 - South CS	\$ 10,000,000	\$ 10,000,000
2	Rock Prairie Road East Widening	\$ 18,000,000	\$ 28,000,000
3	Citywide Park Improvements	\$ 8,000,000	\$ 36,000,000
4	Bachmann Little League Building replacement	\$ 3,000,000	\$ 39,000,000
5	Bachmann Little League (senior) Building replacement	\$ 4,000,000	\$ 43,000,000
6	Veterans Park - 6 soccer field replacements	\$ 6,000,000	\$ 49,000,000
7	Pickleball Courts	\$ 1,500,000	\$ 50,500,000
8	Veterans Park - Synthetic fields 7&8 replacement	\$ 3,000,000	\$ 53,500,000
9	Bicycle and Pedestrian Improvements	\$ 6,000,000	\$ 59,500,000
10	Traffic Signal Improvements	\$ 5,000,000	\$ 64,500,000
11	Central Park Operations Shop	\$ 7,000,000	\$ 71,500,000
12	Mabel Clare Thomas Park improvements	\$ 5,000,000	\$ 76,500,000
13	Bee Creek & Central Tennis Court replacements	\$ 1,000,000	\$ 77,500,000
14	Lincoln Center Area improvements	\$ 1,000,000	\$ 78,500,000
15	Gilchrist Street Rehabilitation	\$ 4,000,000	\$ 82,500,000
16	Mabel Clare Thomas Park Pool	\$ 3,000,000	\$ 85,500,000
17	Barron Cut-Off Road Rehabilitation	\$ 3,000,000	\$ 88,500,000
18	Texas Independence Ball Park Phase 2	\$ 18,000,000	\$ 106,500,000
19	Public Works Operations Center	\$ 32,000,000	\$ 138,500,000
20	Parks Office Building	\$ 8,000,000	\$ 146,500,000
21	Westside Park Development	\$ 3,000,000	\$ 149,500,000
22	Dartmouth Street Extension	\$ 5,000,000	\$ 154,500,000
23	F&B/Health Science Parkway Widening	\$ 8,000,000	\$ 162,500,000
24	Fun For All Playground Phase 3	\$ 2,000,000	\$ 164,500,000
25	Roundabout Improvements*	\$ 3,000,000	\$ 167,500,000
25	Nimitz Street Rehabilitation*	\$ 3,000,000	\$ 170,500,000
25	Luther Street Widening*	\$ 7,000,000	\$ 177,500,000
28	Aquatic Center (add on to Rec Center)**	\$ 13,000,000	\$ 190,500,000
28	Northgate Entertainment District**	\$ 6,000,000	\$ 196,500,000
28	Birding Initiatives and Facilities**	\$ 1,000,000	\$ 197,500,000
31	Recreation Center	\$ 32,000,000	\$ 229,500,000
32	Military Heritage Center	\$ 12,000,000	\$ 241,500,000
33	Town Lake Drive Extension	\$ 4,000,000	\$ 245,500,000
* Tied for 25th place			
** Tied for 28th Place			

April 28, 2022
Item No. 7.3.
Preservation of Neighborhood Character

Sponsor: Michael Ostrowski, Director of Planning and Development

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on options to preserve neighborhood character.

Relationship to Strategic Goals:

- Good Governance
- Neighborhood Integrity
- Diverse & Growing Economy

Recommendation(s): To receive the presentation and provide direction to Staff.

Summary: This item is a follow up to the City Council workshop that was done on May 27, 2021. At that workshop staff introduced several options to address concerns relating to neighborhood integrity. For this workshop, staff will present a list of options for City Council to consider and provide direction. These options are designed to help preserve the character of neighborhoods. Some of the options include:

- Defining Shared Detached Housing, which is also referred to as an Ag-Shack or Stealth Dorm.
- Regulating the size of dwellings in certain areas.
- Creating a High Occupancy Overlay District where additional density could be allowed, thus reducing pressure on other neighborhoods.
- Creating an additional overlay district designed to preserve certain characteristics of neighborhoods.
- Eliminating the ability to reduce a front setback when rear access is provided, or when side yard or rear yard parking is provided.
- Eliminating or requiring additional approval to have shared access.
- Eliminating the ability to combine parking areas and to require a setback to the property line.
- Restricting the parking in front of a dwelling within the front setback area.
- Regulating how landscape materials, which can also be used as parking materials, must exist on a property.

Budget & Financial Summary: N/A

Attachments:

None

April 28, 2022
Item No. 7.4.
Dockless Bike Share Program Ordinance

Sponsor: Venessa Garza

Reviewed By CBC: Bicycle, Pedestrian, & Greenways Advisory Board

Agenda Caption: Presentation, discussion, and possible action regarding an update on amending the Dockless Bike Share Program ordinance.

Relationship to Strategic Goals:

- Good Governance
- Neighborhood Integrity
- Improving Mobility
- Sustainable City

Recommendation(s): Staff recommends City Council receive the presentation and provide direction.

Summary: City Council adopted an ordinance in 2018 to regulate and permit bike share companies in the City in response to Texas A&M University's introduction of a bike share program. The ordinance currently excludes scooters and other electric modes of transportation but since that time, electric modes have been introduced. Staff received direction in October 2021 to amend the ordinance to allow electric micromobility devices (bicycles and scooters), require lock-to parking, and regulate speed. Attached is a draft ordinance amendment based on direction received.

Staff will also provide an overview of the current regulations as it relates to private micromobility and crashes that have occurred in the community.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance Amendment - Redlined
2. Ordinance Amendment

ARTICLE XIII. ~~DOCKLESS BIKE SHARE PROGRAM~~ SHARED MICROMOBILITY

Sec. 8-810. Applicability. This Article applies to all ~~Dockless Bike Share Systems~~ shared micromobility systems, their operators and to all Dockless Bike Share Operators unless expressly provided otherwise herein, any customer or person using those shared systems.

Sec. 8-811. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment means an operator ceases operation and does not remove their micromobility device inventory and associated equipment.

Customer means a person who rents or otherwise uses a Bicycle micromobility device from a ~~Dockless Bike Share Operator~~ shared system.

~~—Dockless Bike, Bicycle or Bike~~ Geo-fence platform means an interactive web application or other tool that includes a map with real-time device that location data for the City to effectively regulate and make informed decisions about micromobility devices in the City's public spaces.

Geo-fence zone means a person may ride defined geographic service area that is propelled by human power, typically has two tandem wheels, and utilizes Global Positioning System (GPS) or similar location-based technology and registers when a shared micromobility device enters or leaves such designated area and in which the operator is allowed to conduct certain activities as set forth in this Article.

Lock-to parking means a built-in or attached locking system for securing a micromobility device to a bicycle rack or operator designated parking area.

Micromobility device means a bicycle, an electric bicycle, or a motor-assisted scooter as defined or may be amended in the Texas Transportation Code Chapters 541, 664, and 551 and designed for personal micromobility that is part of a ~~Dockless Bike Share System~~ shared micromobility system equipped with GPS or comparable technology capable of providing real-time location data.

~~**Dockless Bike Share Operator or Operator**~~ means a corporation, firm, joint venture, limited liability company, partnership, person, or other organized entity ~~that operates a Dockless Bike Share System, whether for profit or not for profit~~ operating or desiring to operate a shared micromobility system.

~~**Dockless Bike Share System**~~ means ~~a system which provides Bicycles for short term rentals for point to point trips and which may be locked and unlocked without the requirement of a bicycle rack or other docking station within the City.~~

~~**Geo-Fence Platform** means an interactive geographic spatial layer or map controlled by the City to quickly and effectively detect and manage connected devices, like shared Bicycles, in the City's public spaces.~~

~~**Geo-Fence Zone** means an area used for commercial, single-family, or multi-family purposes in the City and which is designated in accordance with this Article defined by GPS or RFID that registers when a mobile device like a Bicycle enters or leaves such designated area and in which Operator is allowed to conduct certain activities as set forth in this Article.~~

~~**Home Zone** means one or more areas located within a Geo-Fence Zone which is approved by the City as a Home Zone for an Operator within which Operator may store, relocate or rebalance its fleet of Bikes for availability to its Customers or within which the City may relocate Bikes which fail to meet the standards under this Article.~~

Operator designated parking area means parking installed by the operator that accommodates lock-to parking and receives approval from the City before being installed.

Parking hub means an area within a geo-fence zone that an operator maintains a minimum amount of micromobility devices.

Public ~~Right~~right-of-Wayway means public land acquired by reservation, dedication, prescription, deed, or condemnation and intended for use by the public as a street, alley, or other public way.

Shared micromobility system or shared system means a publicly offered shared transportation service enabling a person to obtain short-term access to a micromobility devices on an as-needed basis. This does not include an owner of a micromobility device which is solely used for private transportation by its owner or pedicabs.

Sec. 8-812. Permit Required.

~~(a) Only Dockless Bike Share Systems are allowed pursuant to this Article, **Permit.** Operators and expressly exclude scooters, shared systems are required to obtain a permit before operating a shared system.~~

~~(b) **Permit Term.** Permits are issued for a 12-months, unless expressly provided otherwise in this Article.~~

~~(a)(c) **Applicable Laws.** Shared systems, operators and other electronic modes of transportation systems. Dockless Bicycle Share Systems may customers must operate in the City only in accordance with according to the terms and conditions of a City permit and must comply with all the provisions of, this Article and applicable law. Permits shall be issued for a twelve (12) month period unless expressly provided otherwise in this Article. any other applicable laws.~~

Sec. 8-813. Permit **Application.**

~~A person desiring to provide a Dockless Bike Share System~~**application.** An operator must ~~first~~ submit ~~ana permit~~ application ~~for a permit~~ or for permit renewal ~~of a permit, application~~ and ~~may shall~~ not operate ~~such Systema shared system~~ until the permit or permit renewal ~~thereof~~ is approved by the City. The permit or permit renewal application shall contain the following:

- (a) The name and form of business of the ~~Operator;operator;~~
 - (b) The name, phone number, and business street address ~~(and mailing address if different)~~ of the ~~Operator;operator~~ and ~~Operator'soperator's~~ agent for service of legal process, if different;
 - (c) The name, phone number ~~(including, cell phone number),, and~~ street address of the local representative of the ~~Operator;operator~~ to the City available and authorized to act on behalf of the ~~Operator;operator;~~
 - (d) Size and location of fleet;
 - (e) A photographic image or visual representation of each type of ~~Bicycle~~micromobility device to be deployed as part of ~~Operator's Dockless Bike Share System;operator's shared system;~~
 - (f) A description of an internet-enabled mobile device application to be used by ~~Customers~~customers to register membership to locate, use, pay for, lock, and unlock each ~~bicycle;~~micromobility device;
 - (g) The proposed ~~Geo-Fence Zones~~geo-fence zones, including any area in which ~~Operator;an operator~~ plans to expand its ~~Dockless Bike Share System~~shared system during the permit period;
- ~~(a) Proposed Home Zones in the City, if any;~~
~~(b) A plan for Operator to maintain each Bicycle in a safe and operable condition, and to recover and repair bicycles discovered or reported to be unsafe or inoperable before redeployment;~~
~~(c) A plan for Operator to rebalance and relocate Bicycles;~~
~~(d) A plan for educating Customers on the safe use of a Bicycle, knowledge of compliance of all applicable laws and proper Bicycle parking;~~
~~(h) An operations plan as required by this Article;~~
~~(h)(i) Proof of current coverage of insurance as required by this Article;~~
~~(i)(j) Payment of a permit fee in the amount applicable to the Operator;operator as specified in this Article;~~
~~(j)(k) The provision of any other information reasonably requested by the City in making its determination; and~~
~~(k)(l) An escrow account as required by this Article.~~

Sec. 8-814. **Granting, Renewing Permit-renewing permit and Permit Terms-permit terms.**

- (a) **Granting or Renewing Permit-renewing permits.** A ~~person may operate a Dockless Bike Share System~~shared system can only be operated with a ~~properly granted or renewed~~ City permit ~~as set forth in this Article, and only in accordance with applicable law.~~
- (b) **Terms of Permit- terms.** The City may identify ~~Geo-Fence Zones and Home Zones~~geo-fence zones within which an ~~Operator;operator~~ may conduct certain activities and such

other reasonable terms as are necessary ~~in order~~ to ensure the public health, safety, and welfare of the general public.

Sec. 8-815. Permit ~~Denial~~denial and ~~Revocation~~-revocation.

- (a) ~~Denial of Permit.~~ A permit application ~~shall be~~, permit or permit renewal application is denied and no permit ~~shall be~~ issued or a permit may be revoked if the City finds that:
1. Any statement made in the application is incomplete, inaccurate, misleading, or false;
 2. The ~~Operator~~operator, its partners, officers, owners, and other principals have not paid to the City all fees due under this Article; ~~or~~ _____
 3. The ~~Operator~~operator has otherwise not complied with this Article or has had a history of noncompliance with the provisions of this Article-;
- ~~(a) Revocation of Permit. The City may revoke a permit due to Operator's failure to comply with its permit, this Article, or any applicable federal, state, or local law or regulation. Permits may also be revoked for one or more of the following reasons:~~
4. Poor ~~Customer~~customer response or service;
 5. Posing an unreasonable risk to the health, safety and welfare of the general public;
 6. Having a history of violating one or more requirements of this Article; ~~or~~
 7. Nonpayment for monies owed City in accordance with this Article-; or to operator's failure to comply with its permit, this Article, or any applicable federal, state, or local law or regulation.
- (b) **Notice of ~~Denial~~permit denial or ~~Revocation~~-revocation.** The City shall provide the operator written notice within ten ~~(10)~~ days of ~~the permit~~ denial or revocation ~~of a permit to Operator, which. The~~ notice shall state the reason(s) for the decision and inform the ~~Operator~~operator of its right to appeal the decision in writing including by when and to whom it must be delivered.

Sec. 8-816. ~~Appellate Review~~-Appeal of permit denial or revocation.

- (a) **Written Appeal.** An ~~Operator~~operator may appeal the revocation, denial or permit terms ~~of a permit~~ to the City Manager or designee if ~~it~~the operator requests an appeal in writing and delivers it to the City Manager or designee not more than ten ~~(10)~~ business days after receiving notice of the action.
- (b) **Hearing.** The City Manager or designee shall act as the appeal hearing officer and shall conduct a hearing as soon as practicable or within five ~~(5)~~ business days of receipt of notice of appeal. The hearing officer shall give the appealing party an opportunity to present information and to make argument on its behalf. The hearing officer may affirm, modify or reverse all or part of the action being appealed. If ~~Operator~~operator is in non-compliance with this Article or other applicable law, the hearing officer may give the ~~Operator~~operator an opportunity to correct the ~~problem~~-violation.
- (c) **Final Decision.** The hearing officer's decision ~~of the hearing officer shall be~~ is rendered in writing to ~~Operator~~operator and as soon as practicable or within five ~~(5)~~ business days of ~~such~~the hearing. The hearing officer's decision ~~of the hearing officer~~ is final.

Sec. 8-817. ~~Dockless Bike Sharing Operating Requirements.~~

~~Each Dockless Bike Share Operator~~Shared system operating requirements. Shared system operators shall do the following:

- (a) **Customer** ~~Communication~~communication. Provide ~~a mechanism~~an application for ~~Customers~~customers to notify the ~~Operator that there is operator of~~ a safety or maintenance issue ~~with the Bicycle, and to include,~~ including a telephone number, web address, and email address that must be properly established, maintained and available ~~twenty-four (24)~~ hours a day;
- (b) ~~Affix on Each Bike.~~Information affixed on each micromobility device. Affix on each ~~Bike~~micromobility device the following:
 1. ~~Contact~~Operator contact information ~~of the Operator,~~ including the web site address;
 2. ~~Contact~~Operator's customer service contact information ~~of Operator's Customer service~~ and how to report incorrectly parked ~~Dockless Bicycle~~micromobility devices, safety concerns, complaints, or questions;
 3. A clearly visible name, logo, trademark, or other operator identifying information ~~of the Operator;~~ and
 4. A unique identification ~~for each deployed Bicycle,~~ consisting of number or letters or both: for each deployed micromobility device.
- (c) **Customer** ~~Notification~~notification. Notify ~~Customers~~customers via a web site or mobile device application the following information:
 1. ~~Bicycle riders~~Customers are encouraged to wear helmets;
 2. ~~Bicycle riders~~Customers must follow all traffic laws;
 3. Customers must ~~park the Bicycles~~ properly and park in compliance with this Article and applicable laws; and
 4. That the City is not responsible for educating ~~users~~customers regarding ~~bicycle~~ laws: related to micromobility devices. Neither is the City responsible for educating ~~users~~customers on how to ride or operate a ~~bicycle~~micromobility device.
- (d) **Staffing.** Maintain sufficient ~~staff~~staffing levels who are able and competent to relocate or rebalance ~~Bicycles~~all micromobility devices on a regular basis and as needed: by the City. Staff must be able and competent in ~~addition to~~ handling local issues ~~as they arise,~~ including timely removals, installation or maintenance of equipment and other issues arising pursuant to this Article requiring local action on the part of ~~Operator;~~ the operator;
- (e) **Contact** ~~Information~~information to City. Provide to City contact information for ~~Operator's~~operator's staff responsible for the relocating or rebalancing ~~Bicycles~~micromobility devices, and the handling of all local issues as they arise, including removals, installation or maintenance of equipment, and other issues arising pursuant to this Article requiring local action on the part of ~~Operator;~~ the operator;
- (f) **Repairs.** Assume responsibility for ~~the cost~~costs and all obligations associated with properly maintaining its ~~Bikes~~micromobility devices in good, safe operating condition, including fixing, repairing, or correcting each ~~Bicycle~~micromobility device that is considered inoperable, unsafe, or otherwise in violation of the standards under this Article before re-deployment back into service;
- (g) **Repair and** ~~Reimbursement~~reimbursement of City ~~Costs;~~ costs. Be responsible for repair and payment of actual costs of repair to public infrastructure damaged by the use of

~~Operator's Bicycles~~operator's micromobility devices, including reimbursement to ~~the~~ City if ~~the~~ City makes ~~such repair, repairs~~ and including payment of costs incurred by the City to remove ~~and/or store Bicycles~~micromobility devices that ~~have been~~are improperly parked or otherwise are required to be removed from the ~~Public Right~~public right-of-Wayway or other areas pursuant to this Article. Payment shall be due within ~~thirty (30)~~ days of written notice by City to ~~Operator~~the operator;

- (h) ~~Change of Information on Permit~~Operator's **information change**. Keep at all times any permit ~~must be kept~~information current and accurate ~~at all times~~. Changes in ~~the information of the~~any permit **information**, including ~~Geo-Fence Zones, Home Zones~~geo-fence zones, size of fleet, change of inventory of fleet, change of address, contact person, or any other information must be approved ~~through amending by the City by requesting an amendment to~~ the permit before instituting such change;

- (i) ~~Geo-Fence Zones~~. Operators must identify the Geo-Fence Zones in which they desire to **fence zones**. Operate and conduct operations in business within a geo-fence zone approved by the City and defined as follows:

1. ~~Texas A&M University (TAMU) geo-fence zone: An area identified in partnership with TAMU and their contracted operator of choice generally including areas surrounding the City-TAMU campus.~~
2. ~~Other geo-fence zones: Areas outside of the TAMU geo-fence zone and within areas that are defined in partnership with the City and the operator. These areas typically include higher concentrations of commercial, multi-family and single-family land uses.~~
3. ~~The City shall consider approval of these areas if Operator establishes to City's satisfaction that it has an adequate plan~~final and sole discretion on geo-fence zone locations.
4. ~~The operator must provide a geo-fence platform for the Geo-Fence Zones including an overall implementation-City use that must be kept operational at all times when operating within the City;~~

- (~~i~~)**(j) Operations plan**. Develop and provide a plan ~~that ensures to ensure~~ the orderly conduct of its ~~System as a whole, and that includes a bike parking-the~~ system such as a rack or designated area, **whole** and which addresses all traffic, safety, public nuisance, and aesthetic issues, including:

~~Dockless Bike Share Operators shall have the capability to create Geo-Fence Platform(s) operable on six (6) workstations simultaneously, compatible with the City of College Station GIS system and must keep same operational at all times when operating within the City.~~

1. ~~Maintenance and inspection schedules of each micromobility device, recovery and repair of unsafe or inoperable devices before redeployment; and~~
2. ~~Education of customers on the safe use of each micromobility device, knowledge of compliance of all applicable laws and proper parking;~~

- (a) ~~Escrow Accounts~~. The Operator must provide Five Thousand Dollars (~~\$~~**account**. Provide \$5,000.00) in cash ~~that for~~ the City ~~will to~~ hold in escrow for the ~~permit~~ term of this Permit to cover ~~the City's~~ direct costs ~~incurred by the City~~ due to violations of the Permit. ~~Should permit, this Article and any other applicable laws. If~~ the escrow account ~~be debited and drop to an amount~~drops below Five Hundred Dollars (~~\$~~\$500.00), ~~the~~ operator shall provide additional funds ~~cash to the City~~ to raise the amount back to ~~Five Thousand Dollars (\$~~\$5,000.00).

- ~~(j)(k)~~ Home Zones. One or more Home Zones may be required or requested in the permit application. In such case, the City may approve one or more Home Zones if Operator establishes to City's satisfaction that it has an adequate plan for the Home Zones including an overall implementation plan that ensures the orderly conduct of its System as a whole, and that includes a bike parking system such as a rack or designated area, a rebalancing program, and which addresses all traffic, safety, public nuisance, and aesthetic issues;
- ~~(h)(l)~~ Inoperable or Unsafe. Any unsafe micromobility devices. Remove inoperable Bicycle, or any Bicycle that is not safe to operate shall be removed unsafe devices from service within 24 hours after notice from a ~~Customer~~ customer, the City, or any third party, ~~and~~. Such devices shall be repaired before ~~the Bicycle is~~ returned to service;
- ~~(h)(m)~~ Use of Latest Technology. Operator shall use latest technology. Use and employ the latest technology reasonably available to ~~it in~~ carrying out its ~~Dockless Bike Share Operations in the City~~ shared system operations, including enhancements to safety, accountability, and precision of location of ~~Bikes as possible~~ micromobility devices;
- ~~(m)(n)~~ Operations Center. Operators shall maintain Operations center. Maintain a staffed operations center located within the City; and
- ~~(o)~~ Rebalancing. Proactively monitor and rebalance micromobility devices to ensure their availability throughout the geo-fence zone. At a minimum this includes rebalancing when micromobility devices have been in the same location for 5 or more consecutive days, when three fourths of available parking is occupied, or upon request of the City.

Sec. 8-818—Safety.

- ~~(a)~~ Standards. ~~All Bicycles deployed by an Operator shall~~ All micromobility devices must comply with safety standards established by the Consumer Product Safety Commission and all other federal, state, and city safety standards.
- ~~(a)(b)~~ Bicycle standards. All bicycles must meet the ~~standards outlined in the~~ following:
1. Code of Federal Regulations, Title 16, Chapter II, Subchapter C, Part 1512 ~~--~~ Requirements for Bicycles, as may be amended;
 2. International Standards Organization 43.150 ~~--~~ Cycles, subsection 4210, as may be amended; and
 3. ~~Section 551.104 of the~~ Texas Transportation Code, Section 551.104 as may be amended, regulating the safety equipment of bicycles.
- ~~(b)(c)~~ Signage. All ~~Operators~~ operators shall have visible language on City approved signs ~~approved by the City~~ in designated parking areas or other appropriate places ~~that notify~~ notifying the user customer that:
1. Helmet use is encouraged while riding; ~~the Bicycle;~~
 2. ~~User~~ Customers shall yield to pedestrians on sidewalks; and
 3. ~~When riding~~ Customers when operating on a ~~street, Bicyclists~~ road must follow the rules of the road as one would in a motor vehicle.
- ~~(d)~~ Micromobility device speed. The speed of any micromobility device may not exceed 15 miles per hour. The operator must install a governor or some type of device to not allow the micromobility device's speed to exceed 15 miles per hour. Upon request of the City, operators may be required to employ speed reductions below 15 miles per hour in specified areas to ensure safety.

Sec. 8-819. Bicycle Parking.

~~(a) Proper Parking. All Bicycles deployed by an Operator shall be parked:~~

- ~~1. In an upright position on top of a hard surface;~~
- ~~2. In a manner that does not detrimentally impact vehicular or pedestrian traffic; and~~

~~(a) **Parking hubs.** Parking hubs may be required or requested where demand exists to create a system that users can rely on and expect micromobility devices when needed.~~

~~(b) **Lock-to parking.** Provide micromobility devices that have a built-in or attached locking system for customers to secure the device. Customers must park and lock all micromobility devices to:~~

- ~~1. A bicycle rack; or~~
- ~~2. An operator designated parking area; and~~
- ~~1.3. Only within a Geo-Fence Zone or Home Zone, the operator's geo-fence zone.~~

~~(b)(c) **Improper Parking. Bicyclesparking.** Micromobility devices shall not be parked adjacent to or within:~~

- ~~1. Transit zones, including bus stops and shelters;~~
- ~~2. Loading zones;~~
- ~~3. ADA handicap parking zones;~~
- ~~4. Street furniture that requires pedestrian access;~~
- ~~5. Curb ramps;~~
- ~~6. Entryways and driveways;~~
- ~~7. Within the visibility triangle at intersections;~~
- ~~8. ~~Rail-road~~Railroad tracks and crossings;~~
- ~~9. Streets, light poles, utility poles, traffic signs, traffic signals, benches, tables, trash receptacles or any other publicly owned property, structure or facility, unless parking at an approved rack for parking.~~
- ~~9.10. Passenger loading zones or valet parking service areas; and~~
- ~~10.11. A place where the City determines poses an unreasonable risk to the health, safety, and welfare of the general public.~~

~~(e)(d) **Block Facesfaces.** City reserves the right to determine certain block faces where ~~Dockless Bicycle~~ parking is prohibited;~~

~~(d)(e) **Remove or Relocate****relocate.** Relocate or remove from the ~~Public Right~~public right-of-Wayway or anywhere within the City each ~~Bicycle~~any micro-mobility device that is illegally parked, inoperable, unsafe, abandoned, or otherwise failing to meet the standards under in violation of this Article, within the following times: or any other applicable law:~~

- ~~1. Within two hours of when ~~Operator~~operator becomes aware of or receives notice between 6:00 a.m. to 6:00 p.m., seven days per week, except a holiday observed by the closure of City offices; and~~
- ~~2. Within ~~twelve~~(12) hours of when ~~Operator~~operator becomes aware of or receives notice during all other times.~~

Sec. 8-820. Survey, ~~Records~~records, and ~~Data-Sharing~~.

~~**Dockless-Bike-Share**~~**data sharing.** Operators are required to report monthly information to the City regarding their operations, fleet, and membership. The goal of these reports is to better understand how the entire ~~**Dockless-Bike-Share System is being**~~**shared system is** utilized and to better inform future policy changes. Operators will work with the City to provide the following information on their operations in the City:

- (a) Number of ~~**Bicycles**~~**micromobility devices** in their ~~**Dockless-Bike-Share System;**~~**shared system;**
- (b) Origin and destination data;
- (c) Usage (total trips, per timeframe, per location, per ~~**Bicycle**~~**micromobility device**);
- (d) Total number of ~~**Customers;**~~**customers and miles traveled;**
- (e) Customer survey and general demographics (if available);
- (f) Reported repairs, collisions;
- (g) Removal or relocation data including response times and locations; and
- (h) Any other data determined by City as necessary to ensure compliance with this Article and with applicable law.

Sec. 8-821. Relocation, ~~**Removal**~~**removal** or ~~**Impoundment.**~~

impoundment. The City has the right to relocate, remove, or impound any obstruction or encumbrance caused by ~~**a Bicycle**~~**micromobility devices** anytime ~~**such Bicycle poses a threat**~~**one may pose a risk** to the health, safety and welfare of the ~~**general**~~ public or anytime a ~~**Bicycle has been**~~**micromobility device is illegally parked, abandoned, or is** otherwise located in violation of this Article. ~~**In such case or any other applicable law. If the Operator**~~**City relocates, removes, or impounds any micromobility devices the operator** may be assessed a fee ~~**in accordance with this Article.**~~

~~**Sec. 8-822.**~~**Indemnity.** By making application for a permit, the ~~**Operator**~~**operator**, its assigns, successors, and representatives agree to and shall defend, indemnify, release, and hold the City, its agents, employees, officers, volunteers, and legal representatives harmless for all claims, causes of action, liabilities, fines, and expenses ~~**including, without limitation, attorneys' attorneys' fees, court costs, and all other defense costs and interests**~~ for injury, death, damage, or loss to personal or real property sustained in connection with or incidental to the activity related to operating a ~~**Dockless-Bike-Share System**~~**shared system** in the City and as ~~**may be**~~ authorized by the permit.

~~**Sec. 8-823.**~~**Insurance.** The following types of insurance must be procured and maintained by Operator:

- (a) **Commercial general liability with minimum limits of liability per occurrence of \$1,000,000.00 with \$2,000,000.00 general aggregate.**
 - 1. Policy shall be written by a licensed carrier authorized to do business in Texas, rated A:VI or better under the current A. M. Best Key Rating Guide.
 - 2. Policy shall be endorsed to name the City of College Station as an ~~**Additional Insured**~~**additional insured**, with a waiver of subrogation rights and ~~**"primary and non-contributory"**~~ language with regard to any self-insurance or insurance the City may have or obtain.

3. Policy shall not exclude: personal and advertising liability, contractual liability (for the indemnity provided herein), products/completed operations; independent contracts.
- (b) **Business ~~Automobile Liability~~—automobile liability.**
1. Policy shall be written by a licensed carrier authorized to do business in Texas rated A:VI or better under the current A. M. Best Key Rating Guide.
 2. Policy shall name the City of College Station as an ~~Additional Insured~~additional insured, with a waiver of subrogation rights and "primary and non-contributory" language with regard to any self-insurance or insurance the City may have or obtain.
 3. Minimum combined single limit of liability of \$1,000,000.00 for bodily injury and property damage.
 4. Coverage shall include any autos, owned autos, leased or rented autos, non-owned autos and hired autos.
- (c) **~~Workers'~~Workers' Compensation Insurance.**
1. Statutory limits required.
 2. ~~Employer's Liability~~Employer's liability minimum limits of liability of \$1,000,000.00 for each accident/each disease/each employee.
 3. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04."
 4. Texas must appear in Item 3A of the ~~Workers'~~Workers' Compensation coverage or Item 3C must contain the following: "All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY."
- (d) **Cyber Liability. Minimum limits of \$5,000,000 for third party losses. Coverage must include the following:**
1. Enterprise Security Event Liability
 2. Payment Card Industry-Data Security Standards (PCI-DSS) Fines
 3. Privacy Regulation
 4. Media Liability
 5. Crisis Management Expense
 6. Fraud Response Expense
 7. Public Relations Expense
 8. Forensic and Legal Expense Includes PCI Re-Certification Services
 9. Extortion Loss
 10. Ransomware Loss
 11. Social Engineering Fraud Loss
 12. Telecommunications Theft Loss
 13. Extortion Threat Reward Reimbursement Expense
 14. Bricking Coverage
 15. Cryptojacking Coverage
 16. Invoice Manipulation
 17. Mitigation Expense
 18. Reputational Loss
 19. Cyber First Party Coverages Proof of Loss
 20. Business Interruption – Service Disruption
 21. Business Interruption – Service Failure

22. Business Interruption – System Disruption

23. Business Interruption – System Failure

24. Data Recovery Expense

25. Business Interruption Coverages Proof of Loss

~~(d)~~(e) Operator shall provide the City with evidence of required coverage on the most current State of Texas Department of Insurance-approved form. Carrier may be an eligible non-admitted insurer in the State of Texas.

~~(e)~~(f) ~~Policy~~Policies shall not be canceled, non-renewed, suspended or reduced in limits of liability until the City has received 30 ~~days'~~days' written notice of such change. Should policies lapse or expire, the permit shall automatically be suspended and ~~Operator~~operator shall discontinue its ~~Dockless Bike Share System~~shared system within the City. Such permit suspension shall be in effect until ~~Operator~~operator provides City with evidence of a replacement policy. If ~~Operator~~operator fails to provide evidence of replacement policies acceptable to the City within five ~~(5)~~business days following the policy lapse, the permit shall terminate automatically.

Sec. 8-824. Fees and ~~Costs~~costs.

(a) The following fees are established and may be assessed by the City in the amount set forth in Section 2-117:

1. Permit ~~Application Fee~~application fee.
2. Permit ~~Renewal Fee~~renewal fee.
3. Removal, ~~Impoundment and~~impoundment or ~~Relocation Fee~~relocation fee.
4. Abandonment fee.

Sec. 8-825. Violation ~~Penalties~~.

; penalties. It shall be unlawful for ~~a Dockless Bike Share Operator~~an operator or person to operate, maintain or conduct ~~within the City a Dockless Bike Share System~~a shared system without ~~first securing~~a permit, and ~~or~~ without complying with all of the provisions of this Article or any other law.

ARTICLE XIII. SHARED MICROMOBILITY

Sec. 8-810. Applicability. This Article applies to all shared micromobility systems, their operators and any customer or person using those shared systems.

Sec. 8-811. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment means an operator ceases operation and does not remove their micromobility device inventory and associated equipment.

Customer means a person who rents or otherwise uses a micromobility device from a shared system.

Geo-fence platform means an interactive web application or other tool that includes a map with real-time device location data for the City to effectively regulate and make informed decisions about micromobility devices in the City's public spaces.

Geo-fence zone means a defined geographic service area that utilizes Global Positioning System (GPS) or similar location-based technology and registers when a shared micromobility device enters or leaves such designated area and in which the operator is allowed to conduct certain activities as set forth in this Article.

Lock-to parking means a built-in or attached locking system for securing a micromobility device to a bicycle rack or operator designated parking area.

Micromobility device means a bicycle, an electric bicycle, or a motor-assisted scooter as defined or may be amended in the Texas Transportation Code Chapters 541, 664, and 551 and designed for personal micromobility that is part of a shared micromobility system equipped with GPS or comparable technology capable of providing real-time location data.

Operator means a corporation, firm, joint venture, limited liability company, partnership, person, or other organized entity operating or desiring to operate a shared micromobility system.

Operator designated parking area means parking installed by the operator that accommodates lock-to parking and receives approval from the City before being installed.

Parking hub means an area within a geo-fence zone that an operator maintains a minimum amount of micromobility devices.

Public right-of-way means public land acquired by reservation, dedication, prescription, deed, or condemnation and intended for use by the public as a street, alley, or other public way.

Shared micromobility system or shared system means a publicly offered shared transportation service enabling a person to obtain short-term access to a micromobility devices on an as-needed basis. This does not include an owner of a micromobility device which is solely used for private transportation by its owner or pedicabs.

Sec. 8-812. Permit Required.

- (a) **Permit.** Operators and shared systems are required to obtain a permit before operating a shared system.
- (b) **Permit Term.** Permits are issued for a 12-months, unless expressly provided otherwise in this Article.
- (c) **Applicable Laws.** Shared systems, operators and customers must operate according to the terms and conditions of a City permit, this Article and any other applicable laws.

Sec. 8-813. Permit application. An operator must submit a permit application or for permit renewal application and shall not operate a shared system until the permit or permit renewal is approved by the City. The permit or permit renewal application shall contain the following:

- (a) The name and form of business of the operator;
- (b) The name, phone number, and business street address and mailing address if different of the operator and operator's agent for service of legal process, if different;
- (c) The name, phone number, cell phone number, and street address of the local representative of the operator to the City available and authorized to act on behalf of the operator;
- (d) Size and location of fleet;
- (e) A photographic image or visual representation of each type of micromobility device to be deployed as part of operator's shared system;
- (f) A description of an internet-enabled mobile device application to be used by customers to register membership to locate, use, pay for, lock, and unlock each micromobility device;
- (g) The proposed geo-fence zones, including any area in which an operator plans to expand its shared system during the permit period;
- (h) An operations plan as required by this Article;
- (i) Proof of current coverage of insurance as required by this Article;
- (j) Payment of a permit fee in the amount applicable to the operator as specified in this Article;
- (k) The provision of any other information reasonably requested by the City in making its determination; and
- (l) An escrow account as required by this Article.

Sec. 8-814. Granting, renewing permit and permit terms.

- (a) **Granting or renewing permits.** A shared system can only be operated with a City permit.
- (b) **Permit terms.** The City may identify geo-fence zones within which an operator may conduct certain activities and such other reasonable terms as are necessary to ensure the public health, safety, and welfare of the general public.

Sec. 8-815. Permit denial and revocation.

- (a) A permit application, permit or permit renewal application is denied and no permit is issued or a permit may be revoked if the City finds that:
 - 1. Any statement made in the application is incomplete, inaccurate, misleading, or false;
 - 2. The operator, its partners, officers, owners, and other principals have not paid to the City all fees due under this Article;
 - 3. The operator has otherwise not complied with this Article or has had a history of noncompliance with the provisions of this Article;
 - 4. Poor customer response or service;
 - 5. Posing an unreasonable risk to the health, safety and welfare of the general public;
 - 6. Having a history of violating one or more requirements of this Article;
 - 7. Nonpayment for monies owed City in accordance with this Article; or to operator's failure to comply with its permit, this Article, or any applicable federal, state, or local law or regulation.
- (b) **Notice of permit denial or revocation.** The City shall provide the operator written notice within ten days of permit denial or revocation. The notice shall state the reason(s) for the decision and inform the operator of its right to appeal the decision in writing including by when and to whom it must be delivered.

Sec. 8-816. Appeal of permit denial or revocation.

- (a) **Written Appeal.** An operator may appeal the revocation, denial or permit terms to the City Manager or designee if the operator requests an appeal in writing and delivers it to the City Manager or designee not more than ten business days after receiving notice of the action.
- (b) **Hearing.** The City Manager or designee shall act as the appeal hearing officer and shall conduct a hearing as soon as practicable or within five business days of receipt of notice of appeal. The hearing officer shall give the appealing party an opportunity to present information and to make argument on its behalf. The hearing officer may affirm, modify or reverse all or part of the action being appealed. If operator is in non-compliance with this Article or other applicable law, the hearing officer may give the operator an opportunity to correct the violation.
- (c) **Final Decision.** The hearing officer's decision is rendered in writing to operator and as soon as practicable or within five business days of the hearing. The hearing officer's decision is final.

Sec. 8-817. Shared system operating requirements. Shared system operators shall do the following:

- (a) **Customer communication.** Provide an application for customers to notify the operator of a safety or maintenance issue, including a telephone number, web address, and email address that must be properly established, maintained and available 24 hours a day;
- (b) **Information affixed on each micromobility device.** Affix on each micromobility device the following:
 - 1. Operator contact information including the web site address;
 - 2. Operator's customer service contact information and how to report incorrectly parked micromobility devices, safety concerns, complaints, or questions;

3. A clearly visible name, logo, trademark, or other operator identifying information; and
 4. A unique identification consisting of number or letters or both for each deployed micromobility device.
- (c) **Customer notification.** Notify customers via a web site or mobile device application the following information:
1. Customers are encouraged to wear helmets;
 2. Customers must follow all traffic laws;
 3. Customers must properly park in compliance with this Article and applicable laws; and
 4. That the City is not responsible for educating customers regarding laws related to micromobility devices. Neither is the City responsible for educating customers on how to ride or operate a micromobility device.
- (d) **Staffing.** Maintain sufficient staffing levels who are able and competent to relocate or rebalance all micromobility devices on a regular basis and as needed by the City. Staff must be able and competent in handling local issues, including timely removals, installation or maintenance of equipment and other issues arising pursuant to this Article requiring local action on the part of the operator;
- (e) **Contact information to City.** Provide to City contact information for operator's staff responsible for the relocating or rebalancing micromobility devices, and the handling of all local issues as they arise, including removals, installation or maintenance of equipment, and other issues arising pursuant to this Article requiring local action on the part of the operator;
- (f) **Repairs.** Assume responsibility for costs and all obligations associated with properly maintaining its micromobility devices in good, safe operating condition, including fixing, repairing, or correcting each micromobility device that is considered inoperable, unsafe, or otherwise in violation of the standards under this Article before re-deployment back into service;
- (g) **Repair and reimbursement of City costs.** Be responsible for repair and payment of actual costs of repair to public infrastructure damaged by the use of operator's micromobility devices, including reimbursement to the City if the City makes repairs and including payment of costs incurred by the City to remove or store micromobility devices that are improperly parked or otherwise are required to be removed from the public right-of-way or other areas pursuant to this Article. Payment shall be due within 30 days of written notice by City to the operator;
- (h) **Permit information change.** Keep at all times any permit information current and accurate. Changes in any permit information, including geo-fence zones, size of fleet, change of inventory of fleet, change of address, contact person, or any other information must be approved by the City by requesting an amendment to the permit before instituting such change;
- (i) **Geo-fence zones.** Operate and conduct business within a geo-fence zone approved by the City and defined as follows:
1. Texas A&M University (TAMU) geo-fence zone: An area identified in partnership with TAMU and their contracted operator of choice generally including areas surrounding the TAMU campus.

2. Other geo-fence zones: Areas outside of the TAMU geo-fence zone and within areas that are defined in partnership with the City and the operator. These areas typically include higher concentrations of commercial, multi-family and single-family land uses.
 3. The City has final and sole discretion on geo-fence zone locations.
 4. The operator must provide a geo-fence platform for City use that must be kept operational at all times when operating within the City;
- (j) **Operations plan.** Develop and provide a plan to ensure the orderly conduct of the system as a whole and which addresses all traffic, safety, public nuisance, and aesthetic issues including:
1. Maintenance and inspection schedules of each micromobility device, recovery and repair of unsafe or inoperable devices before redeployment; and
 2. Education of customers on the safe use of each micromobility device, knowledge of compliance of all applicable laws and proper parking;
- (k) **Escrow account.** Provide \$5,000.00 in cash for the City to hold in escrow for the permit term to cover the City's direct costs due to violations of the permit, this Article and any other applicable laws. If the escrow account drops below \$500.00 the operator shall provide additional cash to the City to raise the amount back to \$5,000.00;
- (l) **Inoperable or unsafe micromobility devices.** Remove inoperable or unsafe devices from service within 24 hours after notice from a customer, the City, or any third party. Such devices shall be repaired before returned to service;
- (m) **Use of latest technology.** Use and employ the latest technology reasonably available to carrying out its shared system operations, including enhancements to safety, accountability, and precision of location of micromobility devices;
- (n) **Operations center.** Maintain a staffed operations center located within the City; and
- (o) **Rebalancing.** Proactively monitor and rebalance micromobility devices to ensure their availability throughout the geo-fence zone. At a minimum this includes rebalancing when micromobility devices have been in the same location for 5 or more consecutive days, when three fourths of available parking is occupied, or upon request of the City.

Sec. 8-818. Safety.

- (a) All micromobility devices must comply with safety standards established by the Consumer Product Safety Commission and all other federal, state, and city safety standards.
- (b) **Bicycle standards.** All bicycles must meet the following:
1. Code of Federal Regulations, Title 16, Chapter II, Subchapter C, Part 1512 - Requirements for Bicycles, as may be amended;
 2. International Standards Organization 43.150 - Cycles, subsection 4210, as may be amended; and
 3. Texas Transportation Code Section 551.104 as may be amended, regulating the safety equipment of bicycles.
- (c) **Signage.** All operators shall have visible language on City approved signs in designated parking areas or other appropriate places notifying the customer that:
1. Helmet use is encouraged while riding;
 2. Customers shall yield to pedestrians on sidewalks; and

3. Customers when operating on a road must follow the rules of the road as one would in a motor vehicle.
- (d) **Micromobility device speed.** The speed of any micromobility device may not exceed 15 miles per hour. The operator must install a governor or some type of device to not allow the micromobility device's speed to exceed 15 miles per hour. Upon request of the City, operators may be required to employ speed reductions below 15 miles per hour in specified areas to ensure safety.

Sec. 8-819. Parking.

- (a) **Parking hubs.** Parking hubs may be required or requested where demand exists to create a system that users can rely on and expect micromobility devices when needed.
- (b) **Lock-to parking.** Provide micromobility devices that have a built-in or attached locking system for customers to secure the device. Customers must park and lock all micromobility devices to:
 1. A bicycle rack; or
 2. An operator designated parking area; and
 3. Only within the operator's geo-fence zone.
- (c) **Improper parking.** Micromobility devices shall not be parked adjacent to or within:
 1. Transit zones, including bus stops and shelters;
 2. Loading zones;
 3. ADA handicap parking zones;
 4. Street furniture;
 5. Curb ramps;
 6. Entryways and driveways;
 7. Within the visibility triangle at intersections;
 8. Railroad tracks and crossings;
 9. Streets, light poles, utility poles, traffic signs, traffic signals, benches, tables, trash receptacles or any other publicly owned property, structure or facility, unless parking at an approved rack for parking.
 10. Passenger loading zones or valet parking service areas; and
 11. A place where the City determines poses an unreasonable risk to the health, safety, and welfare of the general public.
- (d) **Block faces.** City reserves the right to determine certain block faces where parking is prohibited;
- (e) **Remove or relocate.** Relocate or remove from the public right-of-way or anywhere within the City each any micro-mobility device that is illegally parked, inoperable, unsafe, abandoned, or in violation of this Article or any other applicable law:
 1. Within two hours of when operator becomes aware of or receives notice between 6:00 a.m. to 6:00 p.m., seven days per week; and
 2. Within 12 hours of when operator becomes aware of or receives notice during all other times.

Sec. 8-820. Survey, records, and data sharing. Operators are required to report monthly information to the City regarding their operations, fleet, and membership. The goal of these reports is to better understand how the entire shared system is utilized and to better inform future policy changes. Operators will work with the City to provide the following information on their operations in the City:

- (a) Number of micromobility devices in their shared system;
- (b) Origin and destination data;
- (c) Usage (total trips, per timeframe, per location, per micromobility device);
- (d) Total number of customers and miles traveled;
- (e) Customer survey and general demographics (if available);
- (f) Reported repairs, collisions;
- (g) Removal or relocation data including response times and locations; and
- (h) Any other data determined by City as necessary to ensure compliance with this Article and with applicable law.

Sec. 8-821. Relocation, removal or impoundment. The City has the right to relocate, remove, or impound any obstruction or encumbrance caused by micromobility devices anytime one may pose a risk to the health, safety and welfare of the public or anytime a micromobility device is illegally parked, abandoned, or is otherwise located in violation of this Article or any other applicable law. If the City relocates, removes, or impounds any micromobility devices the operator may be assessed a fee.

Sec. 8-822. Indemnity. By making application for a permit, the operator, its assigns, successors, and representatives agree to and shall defend, indemnify, release, and hold the City, its agents, employees, officers, volunteers, and legal representatives harmless for all claims, causes of action, liabilities, fines, and expenses, including, without limitation, attorneys' fees, court costs, and all other defense costs and interests for injury, death, damage, or loss to personal or real property sustained in connection with or incidental to the activity related to operating a shared system in the City and as authorized by the permit.

Sec. 8-823. Insurance. The following types of insurance must be procured and maintained by Operator:

- (a) **Commercial general liability with minimum limits of liability per occurrence of \$1,000,000.00 with \$2,000,000.00 general aggregate.**
 - 1. Policy shall be written by a licensed carrier authorized to do business in Texas, rated A:VI or better under the current A. M. Best Key Rating Guide.
 - 2. Policy shall be endorsed to name the City of College Station as an additional insured, with a waiver of subrogation rights and "primary and non-contributory" language with regard to any self-insurance or insurance the City may have or obtain.
 - 3. Policy shall not exclude: personal and advertising liability, contractual liability (for the indemnity provided herein), products/completed operations; independent contracts.
- (b) **Business automobile liability.**
 - 1. Policy shall be written by a licensed carrier authorized to do business in Texas rated A:VI or better under the current A. M. Best Key Rating Guide.

2. Policy shall name the City of College Station as an additional insured, with a waiver of subrogation rights and "primary and non-contributory" language with regard to any self-insurance or insurance the City may have or obtain.
 3. Minimum combined single limit of liability of \$1,000,000.00 for bodily injury and property damage.
 4. Coverage shall include any autos, owned autos, leased or rented autos, non-owned autos and hired autos.
- (c) **Workers' Compensation Insurance.**
1. Statutory limits required.
 2. Employer's liability minimum limits of liability of \$1,000,000.00 for each accident/each disease/each employee.
 3. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04."
 4. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY."
- (d) **Cyber Liability.** Minimum limits of \$5,000,000 for third party losses. Coverage must include the following:
1. Enterprise Security Event Liability
 2. Payment Card Industry-Data Security Standards (PCI-DSS) Fines
 3. Privacy Regulation
 4. Media Liability
 5. Crisis Management Expense
 6. Fraud Response Expense
 7. Public Relations Expense
 8. Forensic and Legal Expense Includes PCI Re-Certification Services
 9. Extortion Loss
 10. Ransomware Loss
 11. Social Engineering Fraud Loss
 12. Telecommunications Theft Loss
 13. Extortion Threat Reward Reimbursement Expense
 14. Bricking Coverage
 15. Cryptojacking Coverage
 16. Invoice Manipulation
 17. Mitigation Expense
 18. Reputational Loss
 19. Cyber First Party Coverages Proof of Loss
 20. Business Interruption – Service Disruption
 21. Business Interruption – Service Failure
 22. Business Interruption – System Disruption
 23. Business Interruption – System Failure
 24. Data Recovery Expense
 25. Business Interruption Coverages Proof of Loss
- (e) Operator shall provide the City with evidence of required coverage on the most current State of Texas Department of Insurance-approved form. Carrier may be an eligible non-admitted insurer in the State of Texas.

- (f) Policies shall not be canceled, non-renewed, suspended or reduced in limits of liability until the City has received 30 days' written notice of such change. Should policies lapse or expire, the permit shall automatically be suspended and operator shall discontinue its shared system within the City. Such permit suspension shall be in effect until operator provides City with evidence of a replacement policy. If operator fails to provide evidence of replacement policies acceptable to the City within five business days following the policy lapse, the permit shall terminate automatically.

Sec. 8-824. Fees and costs.

- (a) The following fees are established and may be assessed by the City in the amount set forth in Section 2-117:
 - 1. Permit application fee.
 - 2. Permit renewal fee.
 - 3. Removal, impoundment or relocation fee.
 - 4. Abandonment fee.

Sec. 8-825. Violation; penalties. It shall be unlawful for an operator or person to operate, maintain or conduct a shared system without a permit, and without complying with all of the provisions of this Article or any other law.

**April 28, 2022
Item No. 8.1.
Minutes**

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC:

Agenda Caption: Presentation, discussion, and possible action of minutes for:

- April 14, 2022 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM041222 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
APRIL 14, 2022

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Karl Mooney, Mayor

Council:

Bob Brick - absent
John Crompton
Linda Harvell
Elizabeth Cunha
John Nichols
Dennis Maloney

City Staff:

Bryan Woods, City Manager
Jeff Capps, Deputy City Manager
Carla Robinson, City Attorney
Mary Ann Powel, Deputy City Attorney
Tanya Smith, City Secretary
Ian Whittenton, Deputy City Secretary

1. Call to Order and Announce a Quorum is Present.

With a quorum present, the Meeting of the College Station City Council was called to order by Mayor Mooney via In-Person and Teleconference at 4:01 p.m. on Thursday, April 14, 2022, in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

2. Executive Session

In accordance with the Texas Government Code §551.071-Consultation with Attorney, and §551.074-Personnel, and §551.087-Economic Incentive Negotiations, the College Station City Council convened into Executive Session at 4:02 p.m. on April 14, 2022, to continue discussing matters pertaining to:

- A. Consultation with Attorney to seek advice regarding pending or contemplated litigation, to wit:
- Kathryn A. Stever-Harper as Executrix for the Estate of John Wesley Harper v. City of College Station and Judy Meeks; No. 15,977-PC in the County Court No. 1, Brazos County, Texas; and
 - McCrory Investments II, LLC d/b/a Southwest Stor Mor v. City of College Station; Cause No. 17-000914-CV-361; In the 361st District Court, Brazos County, Texas; and

- City of College Station v. Gerry Saum, Individually, and as Independent Executrix of the Estate of Susan M. Wood, Deceased; Cause No. 17-002742-CV-361; In the 361st District Court, Brazos County, Texas; and
- B. Deliberation on the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer; to wit:
- City Manager
 - Council Self-Evaluation
- C. Deliberation on an offer of financial or other incentives for a business prospect that the Council seeks to have locate, stay or expand in or near the City; to wit:
- Potential incentives for a possible location of a new storage and delivery business.

3. Reconvene from Executive Session and take action, if any.

Executive Session recessed at 6:12 p.m. No action was taken.

4. Pledge of Allegiance, Invocation, consider absence request.

5. Hear Visitors Comments

Will Leskowitz, College Station, stated that he is a student at TAMU and is came before council to expressed his concerns with the status of cannabis crimination in the city. He is in support of decriminalization and will return at a future meeting to address this issue again.

Shruti Mavuri, College Station, stated that she is a student at TAMU with sensitive drug policy. Ms. Mayuri expressed that Cannabis should be decriminalization and would like council to look at a different policy in the city to help with use of cannabis. She cited what she considers to be the questionable history of cannabis criminalization as a national policy which disproportionally effects certain groups.

6. WORKSHOP ITEMS

6.1. Presentation, discussion, and possible action on the proposed Military Heritage Center.

John White, Military Heritage Center, presented an overview of the proposed Military Heritage Center that would reflect the spirit and commitment of the City of College Station and its citizens by honoring and remembering those who have served our country. He explained that the mission of the Military Heritage Center is to connect all generations with those who have served our country by bringing their stories of service and sacrifice to life. Furthermore, the proposed MHC would foster this connection through interactive and thematic exhibits, educational programs, and enlightening seminars.

6.2. Presentation, discussion, and possible action on the proposed “Cooling” College Station: Five-Yeas Planting Plan for Urban Heat Mitigation.

Michael Ostrowski, Planning and Development Director, stated that at a previous meeting the City Council directed staff to research urban heat islands and determine costs for mitigation strategies focused on tree planting. This item and the associated report provided an overview of the urban heat

island phenomenon, maps, and analysis on the City's vegetative cover and surface area temperatures and proposes priority locations for tree planting over the next five years. The report recommends specific tree species and estimates program costs, methods of monitoring implementation, and additional strategies the City Council may wish to consider.

Estimated Programs Costs:

Priority #	Park Name	Plantable Area (Sq Ft)	Estimated # Trees	FY22 Estimated Cost per Park	FY22 Estimated Cost	Program Year	Future FY Estimated cost (with inflation)**
1	Edelweiss	92,091	56	\$37,597	\$62,566	FY23*	\$66,946
3	Edelweiss Gartens	66,044	36	\$24,169			
2	Sandstone	141,082	68	\$45,653	\$56,395	FY24	\$63,295
6	Tarrow & Wayne Smith Athletic Complex	23,785	16	\$10,742			
4	Anderson	31,349	34	\$22,827	\$51,696	FY25	\$59,726
5	Pebble Creek	56,729	34	\$22,827			
7	Wolf Pen Creek	6,556	9	\$6,042			
8	Veterans Park & Athletic Complex***	183,390	123	\$82,579	\$41,289	FY26	\$49,106
					\$41,289	FY27	\$50,551
			376	\$252,435	TOTAL:		\$289,623

* The FY23 program costs include \$800 to purchase 16 infrared thermometers (two per park) to measure ambient air temperatures

** Inflation assumptions: 7% for FY23, 5% for FY24, 3% for FY25 - FY27

*** Veterans Park costs could be significantly less based on number of trees relocated from SH6 / University Dr. TxDOT project

Residential Tree Planting Program:

FY2023	\$	41,125
FY2024	\$	42,131
FY2025	\$	43,395
FY2026	\$	44,697
FY2027	\$	46,038
Estimated total five-year cost	\$	216,386

Assumptions

- \$75 per tree, plus inflation
- 500 trees per year (2,500 trees over five years)

A consensus of the Council directed staff to have options to purchase different size trees for planting in residential areas in addition to the a five-year planting plan for City-controlled properties.

6.3. Presentation, discussion, and possible action regarding development bordering the College Station Cemetery.

Kelly Kelbly, Parks and Recreation Assistant Director, stated that the Planning & Development Services and Parks & Recreation staff have worked alongside a developer regarding a proposed car wash bordering the College Station Cemetery. The purpose of this item is to discuss topics requested by council concerning surrounding development, such as: impact to vegetation from runoff, aesthetic, and sound barrier. Mr. Wright explained that the city is waiting for final approval from TxDOT in order to approve the site plan.

Runoff:

- Planning & Development Services and developer address in plans
- Upgraded main drain and water flow; stormwater captured/relayed to TxDOT ROW (no adjacent properties)
- Minimal curb cuts
- 15' buffer

Aesthetics & Sound Barrier:

- 6' Block wall with masonry cap
- 16 Canopy (3" Caliper)
- 27 Non canopy trees (Larger than 1.25" Caliper)

A consensus of the Council directed staff to work with the developer or to build a 10ft wall bordering the College Station Cemetery.

6.4. Presentation, discussion, and possible action on accepting the strategic priorities from Council Retreat.

Bryan Woods, City Manager, presented an overview of the Strategic Priorities discussed by Council during the Council Retreat and prioritize them within the Strategic Plan.

Good Governance:

- Increase transparency and improve the public's ability to participate in government by continuing to offer virtual options for public meetings, providing a centralized calendar for public meetings and events, allowing citizens to book city facilities through the city website.
- Work with College Station ISD to form a joint legislative committee.
- Explore annexation opportunities.
- Assist in completing transitional housing on Anderson.

Financial Sustainability:

- Explore and pursue methods of diversifying sources of city revenue.
- Consider alternative infrastructure funding opportunities.

Core Services & Infrastructure:

- Explore options for a community recreation center.
- Identify a site and begin the design of Fire Station No. 7.
- Increase and expand programming in the parks system.
- Partner with local agencies to build a medical examiner's office, a coroner's facility in Brazos County, and a mental health facility.
- Begin the planning and design of Southwest Park.
- Contribute to the HOME Revitalization Project.
- Evaluate library services.
- Make infrastructure improvements in aging areas of the community (e.g., McCulloch).
- Improve parks facilities, including tennis courts, baseball storage at Bachmann Park, and the construction of outdoor restrooms at the Lincoln Recreation Center.
- Explore options for expanded museums.

Neighborhood Integrity:

- Advance the next phase of Mabel Clare Thomas Park improvements.
- Plan and design a downtown concept at Midtown.

Diverse & Growing Economy:

- Begin Phase 2 of the Texas Independence Ballpark.

- Explore options for an indoor sports facility.
- Find opportunities to connect Century Square with Hensel Park.
- Pursue options for redeveloping Post Oak Mall and Wolf Pen Creek Park.
- Expand Christmas in College Station.
- Improve infrastructure, programming, and opportunities in Northgate.
- Add gateway signage at major entrances into College Station.

Improving Mobility:

- Expand public transit options and increase multimodal infrastructure.
- Improve cooperation with Brazos Transit, including possible board representation.

Sustainable City:

- Examine ways to use co-production for service delivery.

MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Harvell, the City Council voted six (6) for and none (0) opposed, to accept the strategic priorities from Council Retreat. The motion carried unanimously.

7. CONSENT ITEMS

Presentation, discussion, and possible action on consent items which consist of ministerial, or "housekeeping" items as allowed by law: A Councilmember may request additional information at this time. Any Councilmember may remove an item from the Consent Agenda for a separate vote.

No consent items pulled for discussion.

7.1. Presentation, possible action, and discussion of minutes for:

- **March 24, 2022 Council Meeting**

7.2. Presentation, discussion, and possible action on the second reading of a franchise agreement Ordinance No. 2022-4343 with Jetsam Removals & Roll-Offs LLC for the collection of recyclables from commercial businesses and multi-family locations.

7.3. Presentation, discussion, and possible action regarding Ordinance No. 2022-4344 amending Chapter 40, "Utilities," Division 2 "Waste Collection," Section 40-388, 40-391, and 40-392 and renumbering the remaining sections of Division 2 and Resolution No. 04-14-22-7.3 amending fees related to waste collection in Resolution 08-12-21-8.4 establishing the fees, rates and charges as authorized in Chapter 2 "Administration", Art. V. "Finance", Div. 2 "Fees, Rates and Charges".

7.4. Presentation, discussion, and possible action regarding Resolution No. 04-14-22-7.5 the repeal of the existing Section 3 Implementation Plan and Administrative Guide and the adoption of a revised Section 3 Implementation Plan and Administrative Guide to comply with 24 CFR, Part 75 of the United States Department of Housing and Urban Development Section 3.

7.5. Presentation, discussion, and possible action regarding the award of Bid 22-045 to Custom Truck One Source, in the amount of \$139,000 for the purchase of a flatbed boom truck.

7.6. Presentation, discussion, and possible action regarding ordinance 2022-4345 consenting to and extending the Mayor's renewal of a disaster declaration due to a public health emergency.

Councilmember Crompton left chambers during the consent items.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Maloney, the City Council voted five (5) for and none (0) opposed, to approve the Consent Items. The motion carried unanimously.

8. REGULAR ITEMS

8.1. Public Hearing, presentation, discussion, and possible action on to consider Ordinance No. 2022-4346 a Conditional Use Permit request for a Night Club, Bar or Tavern use encompassing 5,218 square feet on approximately 2.05 acres located at 3164 Holleman Drive South Suite 100, generally located near the intersection of Kenyon Drive and Holleman Drive South.

Robin Macias, Planning and Development, stated that this request is for a Conditional Use Permit for the use of a Night Club, Bar or Tavern for 5,218 square feet of an existing shopping center consisting of indoor and rooftop bar amenities, located at 3164 Holleman Dr South Suite 100. The property is currently zoned GC General Commercial.

Conditional Use Permits:

- Nightclub, bar, or tavern uses are required to obtain a conditional use permit to be located in a zoning district outside of the Northgate District.
- The proposed use shall not be detrimental to the health, welfare or safety of the surrounding neighborhood or its occupants.
- May impose additional reasonable restrictions or conditions to mitigate adverse effects of the proposed use.

The Planning & Zoning Commission considered this item at their March 17, 2022 meeting and unanimously recommended approval (7-0) of the request with the condition that live music on the rooftop area be limited to non-amplified acoustic music and a 3 foot perimeter barrier be installed on the south side of the open air bar area. Staff also recommends approval of the conditional use permit with the condition that only acoustic music shall be allowed on the rooftop area, no amplified music but not include the use of radio or television.

At approximately 7:56 p.m., Mayor Mooney opened the Public Hearing.

There being no comments, the Public Hearing was closed at 7:56 p.m.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Nichols, the City Council voted six (6) for and none (0) opposed, to adopt Ordinance No. 2022-4346, a Conditional Use Permit request for a Night Club, Bar or Tavern use encompassing 5,218 square feet on approximately 2.05 acres located at 3164 Holleman Drive South Suite 100, generally located near the intersection of Kenyon Drive and Holleman Drive South as amended with the P&Z Commission's recommendations. The motion carried unanimously.

8.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2022-4347 amending Appendix A, "Unified Development Ordinance, "Article 4, Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundary from R Rural and GC General Commercial to MF Multi-family and NAP Natural Areas Protected for approximately 42.8

acres generally located at Holleman Drive South and General Parkway.

Robin Macias, Planning and Development, stated that the owner's original request was to rezone approximately 42.8 acres of undeveloped land generally located at the intersection of Holleman Drive South and General Parkway from R Rural and GC General Commercial to MF Multi-family and NAP Natural Areas Protected. The request was modified (Modified Request #1) to reduce the amount of MF Multi-family being requested, and to reserve land along Holleman Drive South for potential future commercial. The request was then modified a second time (Modified Request #2) to add back some MF Multi-family zoning between the NAP Natural Areas Protected and the area for potential future commercial. The applicant's reason for this modification was to provide a park amenity for the multi-family development between the potential future commercial use and the portion being rezoned to NAP Natural Areas Protected.

The Planning and Zoning Commission heard this item at their March 17, 2022 Regular Meeting and voted unanimously (7-0) to recommend approval of Modified Request #2. Staff recommends denial of the Original Request but would be supportive of Modified Request #1 and Modified Request #2, which both reserve a portion of land along Holleman Drive South for potential future commercial.

At approximately 8:26 p.m., Mayor Mooney opened the Public Hearing.

There being no comments, the Public Hearing was closed at 8:26 p.m.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Nichols, the City Council voted six (6) for and none (0) opposed, to adopt Ordinance No. 2022-4347, amending Appendix A, "Unified Development Ordinance, "Article 4, Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundary from R Rural and GC General Commercial to MF Multi-family and NAP Natural Areas Protected for approximately 42.8 acres generally located at Holleman Drive South and General Parkway with staff recommendation as presented with Option No. 3. The motion carried unanimously.

9. Council Calendar

Council reviewed the calendar.

10. Items of Community Interest: The Council may receive reports from a Council Member or City Staff about items of community interest for which notice has not been given, including: expressions of thanks, congratulations or condolence; information regarding holiday schedules; honorary or salutory recognitions of a public official, public employee, or other citizen; reminders of upcoming events organized or sponsored by the City of College Station; information about a social, ceremonial or community event organized or sponsored by an entity other than the City of College Station that is scheduled to be attended by a Council Member, another city official or staff of the City of College Station; and announcements involving an imminent threat to the public health and safety of people in the City of College Station that has arisen after the posting of the agenda.

Councilmember Harvell reported on a tour with individuals from California.

Councilmember Cunha recognized the Parks Department who send staff to CSISD to speak on their employment. She also thanked police and fire dispatchers for their work in recognition of National

Public Safety Telecommunicators Week.

Councilmember Maloney recognized TAMU for being in the top 10 graduate schools as reported in a national news publication.

11. Council Reports on Committees, Boards, and Commission: A Council Member may make a report regarding meetings of City Council boards and commissions or meetings of boards and committees on which a Council Member serves as a representative that have met since the last council meeting. (Committees listed in Coversheet)

Councilmember Nichols reported on Sister Cities.

12. Future Agenda Items and Review of Standing List of Council Generated Future Agenda Items: A Council Member may make a request to City Council to place an item for which no notice has been given on a future agenda or may inquire about the status of an item on the standing list of council generated future agenda items. A Council Member's or City Staff's response to the request or inquiry will be limited to a statement of specific factual information related to the request or inquiry or the recitation of existing policy in response to the request or inquiry. Any deliberation of or decision about the subject of a request will be limited to a proposal to place the subject on the agenda for a subsequent meeting.

Councilmember Crompton requested item on leash laws in city parks.

Councilmember Crompton requested an item to discuss a policy on wildlife preserves.

Councilmember Maloney requested a presentation from electric regrading transformer operation, maintenance, and cost.

13. Adjournment.

There being no further business, Mayor Mooney adjourned the Meeting of the City Council at 9:57 p.m. on Thursday, April 14, 2022.

Karl Mooney, Mayor

ATTEST:

Tanya Smith, City Secretary

April 28, 2022

Item No. 8.2.

Northgate Underground Electric Conduit and Manhole Installation

Sponsor: Timothy Crabb, Director of Electric

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding the award of a contract to Primoris T&D Services, LLC for the construction and installation of electric underground conduit and manholes in the Northgate area for an amount not to exceed \$1,310,886.75.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends awarding contract 22300419 to Primoris T&D Services, LLC, for an amount not to exceed \$1,310,886.75, for the construction and installation of underground electric conduit and manholes in the College Station Northgate area.

Summary: Consistent with the Electric System Master Plan, and to accommodate growth and redundancy in the Northgate area, the Electric Department seeks to retain a qualified contractor to perform the installation of conduit and manholes. This will allow for the extension of electric distribution feeders from Northgate substation through the Northgate entertainment district along Patricia Street, and the addition of electrical conduit along surrounding streets. The contractor will provide labor, materials, and equipment to directionally bore conduits and install manholes.

On March 22, 2022, one (1) sealed bid was received and opened in response to CSP RFP#22-041 for the Northgate conduit and manholes project. The bid from Primoris T&D Services, LLC has been evaluated and meets CSU specifications.

Budget & Financial Summary: Funds for this contract are available in the Electric FY22 Capital Budget.

Attachments:

1. CSP RFP 22-041 BID TABULATION

CSP RFP#22-041
NORTHGATE UNDERGROUND CONDUIT MANHOLE INSTALLATION
TABULATION

Event Number	22-041 Addendum 1		Organization	Brazos Valley e-Marketplace
Event Title	Northgate Underground Conduit & Manhole Installation		Workgroup	City of College Station
Event Description			Event Owner	Robyn Forsyth
Event Type	RFP		Email	rforsyth@cstx.gov
Issue Date	2/24/2022 04:01:18 PM (CT)		Phone	(979) 764-3437
Close Date	3/22/2022 02:00:00 PM (CT)		Fax	

Responding Supplier	City	State	Response Submitted	Response Total
Primoris T&D Services, LLC	Fort Worth	TX	3/22/2022 01:26:19 PM (CT)	\$1,310,886.75

April 28, 2022

Item No. 8.3.

Renewal of Cityworks software license agreement

Sponsor: Sam Rivera

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on renewal of Cityworks software licenses agreement in the amount of \$105,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): CIO recommends approval of the contract

Summary: This contract renewal is to renew the support, maintenance, and licenses for Cityworks. This software is used by Public Works, Water and Parks Departments to host and conduct all department service requests, work orders and inspections. The software also helps keep track of and maintain various types of assets around the City.

Budget & Financial Summary: Funds will be coming out org 10011250 obj 5201.

Attachments:

1. 18300237R4 --RF (CC04.28.22)



CITY OF COLLEGE STATION
Home of Texas A&M University®

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: ^{18300237R4} PROJECT#: _____ BID/RFP/RFQ#: _____

Project Name / Contract Description: Renewal of Software License Agreement
for City Works

Name of Contractor: Azteca Systems, LLC- CityWorks

CONTRACT TOTAL VALUE: \$ 105,000.00

Grant Funded ☐ Yes ☒ No
If yes, what is the grant number:

Debarment Check ☐ Yes ☒ No ☐ N/A

Section 3 Plan Incl. ☐ Yes ☒ No ☐ N/A

Davis Bacon Wages Used ☐ Yes ☒ No ☐ N/A

Buy America Required ☐ Yes ☒ No ☐ N/A

Transparency Report ☐ Yes ☒ No ☐ N/A

☐ **NEW CONTRACT** ☒ **RENEWAL #** _____ ☐ **CHANGE ORDER #** _____ ☐ **OTHER** _____

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)

Org ¹⁰⁰¹¹²⁵⁰ Obj 5201

CRC Approval Date*: 8/31/2017 ^{(If required)*} **Council Approval Date*:** 4/28/22 **Agenda Item No*:** _____

--Section to be completed by Risk, Purchasing or City Secretary's Office Only--

Insurance Certificates: N/A **Performance Bond:** N/A **Payment Bond:** N/A **Info Tech:** _____

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

LEGAL DEPARTMENT

DATE

ASST CITY MGR – CFO

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

Contact Information

Contact Name:	Jeffrey Speed	Prepared By Name:	Jenn Miya
Customer:	College Station (TX), City of	Prepared By Phone:	(801) 872-9528
Contact Address:	2613 Texas Avenue P.O. Box 9960 College Station, TX 77842	Prepared By Email:	jmiya@cityworks.com

Quote Lines

Product Name	Quantity	Net Unit Price
Server AMS Premium ELA	1.00	USD 105,000.00
AMS Respond ELA License	1.00	USD 0.00
AMS Native Mobile Apps ELA License	1.00	USD 0.00
Storeroom ELA License	1.00	USD 0.00
Equipment Checkout ELA License	1.00	USD 0.00
Contracts ELA License	1.00	USD 0.00
Cityworks for Excel ELA License	1.00	USD 0.00
Cityworks Analytics ELA License	1.00	USD 0.00
eURL ELA License	1.00	USD 0.00
Operational Insights	1.00	USD 0.00
Workload	1.00	USD 0.00
Web Hooks	1.00	USD 0.00
MicroPaver Interface ELA License	1.00	USD 0.00
Citizen Engagement API License	1.00	USD 0.00
Inspection API License	1.00	USD 0.00
Metrics API License	1.00	USD 0.00
Service Request API License	1.00	USD 0.00
Work Order API Basic License	1.00	USD 0.00
Work Order API Extended License	1.00	USD 0.00
Storeroom API	1.00	USD 0.00
TOTAL:		USD 105,000.00

Notes

Year 1 Dollar Value	USD 105,000.00	Year 1 Date Range	6/1/2022 - 5/31/2023
Year 2 Dollar Value		Year 2 Date Range	
Year 3 Dollar Value		Year 3 Date Range	

Maintenance Start Date: 6/1/2022 Maintenance End Date: 5/31/2023

Quote Notes:

Price has increased to reflect adjustment from the previous year. This change will take effect on your next annual renewal.

Terms and Conditions

Payment Terms

Payment due within 30 days

IF YOUR ORGANIZATION REQUIRES A PURCHASE ORDER, PLEASE CONTACT YOUR FINANCE DEPARTMENT TO BEGIN THE APPROVAL PROCESS TO AVOID PAYMENT DELAYS.

All quotations are valid for ninety-days (90) from the date above, unless otherwise stated in this quotation form. All prices quoted are in USD, unless specifically provided otherwise, above. These prices and terms are valid only for items purchased for use and delivery for the Customers listed above.

Unless otherwise referenced, this quotation is for the Cityworks software products referenced above only. Pricing for implementation services (installation, configuration, training, etc.), or other software applications is provided separately and upon request.

The procurement, installation and administration of the Esri software or any other third-party software utilized in conjunction with Cityworks will be the responsibility of the Customer.

For "on-prem" installations, the procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the Customer. Currently, Cityworks supports Oracle and SQL Server. The procurement, installation and administration of the infrastructure (hardware and networking) utilized in conjunction with Cityworks will be the responsibility of the Customer.

This quotation and the pricing information herein is confidential and proprietary and may not be copied or released other than for the express purpose of the current system Software and Product selection and purchase. This information may not be given to outside parties or used for any other purpose without written consent from Azteca Systems, LLC or unless otherwise specifically permitted by law. If a "public access" or similar request is made, Customer, shall notify Azteca Systems, prior to any disclosure.

Software Licensing

All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense, and is subject to the terms and conditions of the signed "Cityworks Software License and Maintenance Agreement" ("Agreement") and any and all addendums or amendments thereto. A fully executed copy of the Agreement and any addendum(s) is required before delivery and installation and usage of the software is subject to the terms of the current license agreement.

The terms and conditions of the executed Cityworks Software License Agreement apply to this Quote unless otherwise specifically stated herein. Any additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and dates are void and of no effect.

Delivery method is by way of download through Azteca Systems, LLC. customer support web portal.

Taxes

Prices quoted do not include any applicable state, sales, local, or use taxes unless so stated. In preparing your budget and/or Purchase Order, please allow for any applicable taxes, including, sales, state, local or use taxes as necessary. Azteca Systems reserves the right to collect any applicable sales, use or other taxes assessed by or as required by law. Azteca Systems reserves the right to

add any applicable tax to the invoice, unless proof with the order is shown that your organization or entity is tax exempt or if it pays any applicable tax directly.

International Customers

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Your signature indicates your acceptance of this Quote, and that you have read and accepted the Terms and Conditions set forth above.

Accepted by:

Title

_____/_____/_____
Date

Azteca Systems, LLC - Cityworks | 11075 South State Street Suite 24, Sandy, UT 84070 | Corporate Main 801-523-2751 | Corporate Fax 801-523-3734

April 28, 2022

Item No. 8.4.

Presentation, discussion, and possible action to award an Annual Price Agreement for the rental of Heavy Equipment and Machinery for an amount not to exceed \$150,000 to Mustang Rental Services of Texas.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action to award an Annual Price Agreement for the rental of Heavy Equipment and Machinery for an amount not to exceed \$150,000 to Mustang Rental Services of Texas.

Relationship to Strategic Goals:

Core Services and Infrastructure
Financially Sustainable City

Recommendation(s): Staff recommends award of this Annual Price Agreement for the Lease/ Rental of Heavy Equipment/ Machinery with Mustang Rental Services of Texas. This annual price agreement is comparable with quantities of previous fiscal years' history for city-wide electrical warehouse needs.

Summary: The Cities of Bryan and College Station combined their annual requirements for an Annual Price Agreement for the lease/ rental of Heavy Equipment/ Machinery and jointly solicited Bid#22-040, hosted by the City of College Station.

Purchasing issued Bid #22-040 on February 25, 2022, for "Annual Price Agreement for Heavy Equipment / Machinery Lease/Rental" and the bid was opened on March 17, 2022. Five (5) responsive bid responses were received and were reviewed by both cities' Public Works Staff, to ensure the compliance of required specifications.

The Cities of Bryan and College Station Public Works Staff reviewed each bid response for compliance to the needed specifications and jointly agreed on the award of the Annual Price Agreement for Heavy Equipment/ Machinery Lease/Rental to Mustang Rental Services of Texas, as they provided the most in equipment inventory and monthly rental/ lease pricing.

This annual price agreement may be renewed for up to two (2) additional one (1) year terms . Upon Council approval a blanket order will be issued to the vendor for the recommended award value not to exceed \$150,000.

Budget & Financial Summary: Funds are available and budgeted within each departments operational budget. Various projects may be expensed as equipment is rented or leased.

Attachments:

1. Bid 22-040 Tabulation of Responses 033122

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
1	Backhoe/Loader & accessories; 78 HP	John Deere 310	\$ 325.00	\$ 2,005.00		John Deere 310 / Case 580N	\$ 224.13	\$ 2,019.19		CAT 416	\$ 259.00	\$ 1,850.00
2	Backhoe/Loader & accessories; 78 HP w/hyd thumb									No Bid		
3	Backhoe/Loader & accessories; 74 HP (4x4)	JD 310/Case 580N	\$ 335.00	\$ 2,105.00		John Deere 310 / Case 580N	\$ 224.13	\$ 2,019.19		CAT 416	\$ 259.00	\$ 1,850.00
4	Backhoe/Loader & accessories; 93HP (4x4)									CAT 420	\$ 289.00	\$ 1,925.00
5	Backhoe/Loader & accessories; 78 HP w/1000# Hammer	JD 310/Case 580N	\$ 670.00	\$ 4,210.00						CAT 416/HAMMER	\$ 550.00	\$ 4,950.00
	Hammer	Stanley MB15EX										
6	Backhoe/Loader and accessories; 78 HP w/Extendahoe	JD 310/Case 580N	\$ 365.00	\$ 2,232.00						CAT 416 E-STICK	\$ 275.00	\$ 2,150.00
7	Backhoe/Loader and accessories; 93 HP w/Extendahoe									420IT E-STICK	\$ 340.00	\$ 2,795.00
8	digging depth									CAT 416 E-STICK	\$ 275.00	\$ 2,150.00
	Loader Box Blade Tractors											
9	Tractor w/1 yd. loader bucket & box blade									CAT 415	\$ 259.00	\$ 1,795.00
10	Tractor (4x4) w/1yd. Loader bucket & hyd box blade	John Deere 210	\$ 395.00	\$ 1,890.00		John Deere 210k	\$ 207.43	\$ 1,866.90		CAT 415	\$ 259.00	\$ 1,795.00
	Wheel & Track Mini Skid Loaders											
11	Wheel skid steer - 62HP - Wt. 5700 lbs	Bobcat S530	\$ 280.00	\$ 1,958.00						CAT 242	\$ 195.00	\$ 1,595.00
12	Mini track loader - 62 HP - wt. 6618	Bobcat MT55/MT85	\$ 200.00	\$ 1,822.00						NO BID	NO BID	
13	Cat 259 Compact Track Loader/ Skid Steer	Bobcat T590/Takeuchi TL	\$ 390.00	\$ 2,520.00		Kubota SVL75-2	\$ 231.22	\$ 2,078.89		CAT 259	\$ 300.00	\$ 2,100.00
14	72" SSL CTL Bucket									included with SSL/CTL rental		
	Skid Steer Attachments											
15	Cold planner									CAT PC-205	\$ 342.00	\$ 2,735.00
16	Hydraulic auger	Bobcat 15C	\$ 90.00	\$ 740.00			\$ 84.00	\$ 757.00		CAT A19/A41	\$ 75.00	\$ 595.00
17	Hydraulic hammer	Stanley MB25603	\$ 200.00	\$ 1,575.00		Soosan SQ35A02	\$ 146.96	\$ 1,324.11		CAT H55/B6	\$ 105.00	\$ 840.00
18	72" Angle Blade									CAT D72 BLADE	\$ 95.00	\$ 765.00
19	Grapple Bucket	Bobcat 681G	\$ 90.00	\$ 793.00		900317	\$ 153.02	\$ 1,377.14		CAT G-BUCKET	\$ 65.00	\$ 550.00
20	Grapple Forks									CAT G-FORKS	\$ 65.00	\$ 550.00
	Mini Excavators											
21	Cat 301.6 (or equal) 6' 10" depth -11'10" Reach	Bobcat E20	\$ 240.00	\$ 2,032.00						CAT 301.7	\$ 200.00	\$ 1,550.00
22	Cat 303C-CR (or equal) 9' 11" depth - 16' 10" Reach	JD 35G/Bobcat E35	\$ 335.00	\$ 2,110.00						CAT 303	\$ 255.00	\$ 1,750.00
23	Cat 302.5 (or equal) 9' 7" depth - 15' 9" Reach	JD 27DX/Bobcat E26	\$ 320.00	\$ 2,105.00		John Deere 26G / Yanmar VIO25	\$ 182.65	\$ 1,642.77		CAT 302.7	\$ 235.00	\$ 1,650.00
	Excavators w/ Buckets											
24	17,730 lbs - 22' 3" Reach 15' 5" Depth	Bobcat E85/Takeuchi TB2	\$ 480.00	\$ 3,623.00		Yanmar Vio80	\$ 466.98	\$ 4,200.78		CAT 308	\$ 425.00	\$ 3,050.00
25	28,970 lbs - 28' 3" Reach - 19' 10" Depth									CAT 313	\$ 505.00	\$ 3,635.00

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
26	36,930 lbs - 28' 8" Reach - 19' 19" Depth									CAT 316	\$ 555.00	\$ 4,475.00
27	32,500 lbs - 28' 3" Reach - 19' 10" Depth	Doosan DX140/Case CX1	\$ 720.00	\$ 5,265.00						CAT 315	\$ 545.00	\$ 4,475.00
28	47,400 lbs - 31' 10" Reach - 21' 7" Depth									CAT 320	\$ 660.00	\$ 5,035.00
29	46,300 lbs - 31' 10" Reach - 21' 7" Depth w/thumb									THUMB	\$ 730.00	\$ 6,515.00
30	48,300 lbs - 32'4" Reach - 22'11" Depth w/thumb									THUMB	\$ 730.00	\$ 6,515.00
31	56,200 lbs - 32'5" Reach - 22'1" Depth w/thumb									THUMB	\$ 730.00	\$ 6,515.00
32	64,460 lbs - 35' Reach - 23' 11" Depth									CAT 326	\$ 830.00	\$ 5,960.00
33	79,700 lbs - 36' 1" Reach - 24' 7" Depth									CAT 336	\$ 1,210.00	\$ 8,705.00
	Wheel Excavators w/ Buckets											
34	42,000 lbs - 169 HP - 30'1" Reach - 19'2" Depth									CAT M316	\$ 800.00	\$ 6,600.00
	Specialty Excavators w/ Buckets											
35	47,400 lbs - w/5000 lb hammer									CAT 320/HAMMER	\$ 2,035.00	\$ 15,500.00
36	47,400 lbs w/Pin and thumb attachment									THUMB	\$ 983.00	\$ 7,510.00
37	Long Reach - w/60' Reach - 45' Depth									CAT 326 LR	\$ 1,485.00	\$ 11,870.00
	Dozers											
38	74 HP Dozer w / 6-way Blade									CAT D1/D3K OROPS	\$ 425.00	\$ 3,150.00
39	84 HP Dozer w / 6-way Blade									CAT D2/D4K OROPS	\$ 450.00	\$ 3,310.00
40	96 HP Dozer w / 6-way Blade									CAT D3/D5K OROPS	\$ 495.00	\$ 3,975.00
41	121 HP Dozer w / 6-way Blade									CAT D4/D6K C&A	\$ 725.00	\$ 5,995.00
42	125 HP Dozer w / 6-way Blade									CAT D4/D6K C&A	\$ 725.00	\$ 5,995.00
43	36,497 lbs - 150 HP Dozer w/6-way Blade									CAT D5/D6N C&A	\$ 910.00	\$ 7,755.00
44	44,200 lbs - 175 HP Clearing Dozer Rake & Blade									CAT D5/D6N CLEARING C&A	\$ 1,175.00	\$ 10,085.00
45	200 HP Dozer w/Straight Blade w/Tilt 44,420 lbs									CAT D6/D6T LGP C&A	\$ 1,715.00	\$ 13,415.00
46	Tilt											
	Low Ground Pressure Dozers											
47	74 HP LGP Dozer w / 6-way Blade					John Deere 450J	\$ 430.04	\$ 3,870.40		CAT D1/D3K LGP OROPS	\$ 515.00	\$ 3,780.00
48	84 HP LGP Dozer w/ 6-way Blade									CAT D2/D4K LGP OROPS	\$ 594.00	\$ 4,775.00
49	96 HP LGP Dozer w/6-way Blade 19,700 lbs									CAT D3/D5K LGP OROPS	\$ 708.00	\$ 5,060.00
50	125 HP LGP Dozer w / 6-way Blade									CAT D4/D6K LGP C&A	\$ 979.00	\$ 7,475.00
51	150 HP LGP Dozer w / 6-way Blade									CAT D5/D6N LGP C&A	\$ 1,340.00	\$ 10,225.00
52	200 HLGP Dozer w/ straight Blade w / Tilt									CAT D6/D6T LGP C&A	\$ 1,715.00	\$ 13,415.00
53	200 HP LGP Dozer w/straight Blade w/ Tilt CAB									CAT D6/D6T LGP C&A	\$ 1,715.00	\$ 13,415.00

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
	Landscape Tractor											
54	78 HP Tractor Box Blade / Front End Loader 4x4	John Deere 210	\$ 395.00	\$ 1,890.00		Case 570N	\$ 207.43	\$ 1,866.90		CAT 415	\$ 259.00	\$ 1,795.00
	Wheel Loaders											
55	2.3 Yard Bucket - 129 HP									CAT 926	\$ 608.00	\$ 4,395.00
56	2.6 Yard Bucket - 143 HP	Komatsu WA200-6L	\$ 655.00	\$ 4,484.00						CAT 930	\$ 656.00	\$ 4,755.00
57	3 Yard Bucket - 149 HP									CAT 930	\$ 656.00	\$ 4,755.00
58	3.25 Yard Bucket - 160 HP									CAT 938	\$ 846.00	\$ 6,615.00
59	4Yard Bucket - 196 HP									CAT 950	\$ 1,026.00	\$ 8,230.00
	Integrated Tool Carrier Wheel Loaders											
60	2.3 Yard Bucket - 129 HP									CAT 926	\$ 608.00	\$ 4,395.00
61	3.0 Yard Bucket - 143 HP									CAT 930	\$ 656.00	\$ 4,755.00
62	3.3 Yard Bucket - 160 HP w/Cab									CAT 938	\$ 846.00	\$ 6,615.00
	Scrapers											
63	11 CY Self Loading											
64	17 CY Self Loading											
65	22 CY Self Loading											
	Pad Drum Compactors											
66	50" Single Vibratory Drum 83 HP	Bomag BW124PD	\$ 405.00	\$ 2,803.00						CAT CP34	\$ 413.00	\$ 2,885.00
67	66" Single Vibratory Drum - 100 HP	IR SD70 (Or Like)	\$ 440.00	\$ 3,287.00		Bomag PDH50 (74hp)	\$ 354.15	\$ 3,091.26		CAT CP44	\$ 480.00	\$ 3,270.00
68	84" Single Vibratory Drum - 150 HP	Volvo SD1158	\$ 540.00	\$ 4,615.00						CAT CP56	\$ 627.00	\$ 4,335.00
	Smooth Drum Compactors											
69	47" Single Vibratory Drum - 36.2 HP									CAT CS34	\$ 394.00	\$ 2,705.00
70	66" Single Vibratory Drum - 100 HP	Hamm H7I	\$ 440.00	\$ 3,287.00		Bomag BW177D5 (74hp)	\$ 354.15	\$ 3,091.26		CAT CS44	\$ 466.00	\$ 3,200.00
71	84" Single Vibratory Drum - 156 HP									CAT CS56	\$ 589.00	\$ 4,010.00
72	1.5 Ton Double Drum Smoth	Wacker RD12A	\$ 235.00	\$ 1,864.00		Dynapac CC900	\$ 155.33	\$ 1,400.94		CAT CB22	\$ 280.00	\$ 2,255.00
	Trench Compactors											
73	Remote 24/33 Width - Diesel	Wacker RTKX-SC3	\$ 335.00	\$ 1,856.00		Wacker RTKX-SC3	\$ 262.59	\$ 1,932.17		BOMAG BMP8500	\$ 350.00	\$ 1,850.00
74	Walk Behind 24/33 Width - Diesel	Wacker RTKX-SC3	\$ 335.00	\$ 1,856.00						BOMAG BMP8500	\$ 350.00	\$ 1,850.00
	Asphalt Equipment											
75	14 ton - 9 Wheel Pneumatic 100 HP									CAT CW16	\$ 385.00	\$ 3,060.00

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
76	47" Static Steel Drum Roller									CAT CB24	\$ 314.00	\$ 2,495.00
77	60" Static Steel Drum Roller									CAT CB36	\$ 423.00	\$ 3,440.00
78	Asphalt Recycler									CAT RM300 RECLAIMER	\$ 3,145.00	\$ 17,595.00
79	Pulver Mixer 335 HP - 8' Drum Soil Stabilizer									CAT RM300 MIXER OPEN	\$ 1,886.00	\$ 10,535.00
80	Water Truck 2000 Gallon									LW2000	\$ 442.00	\$ 3,365.00
81	Self Propelled Mechanical 7' 6" Broom Diesel									OROPS	\$ 337.00	\$ 1,875.00
82	Catepillar 815F Soil Compactor									CAT 815 C&A	\$ 1,558.00	\$ 12,510.00
	Motor Graders											
83	Noram 65E/Leeboy686B 68 HP									NORAM 65E	\$ 584.00	\$ 4,930.00
84	Cat 120 (or equal) 125 HP - 12' Moldboard									CAT 120M	\$ 865.00	\$ 6,355.00
85	Cat 135H 135 HP 14' Moldboard											
86	Cat 12H 140 HP 14' Moldboard									CAT 12M	\$ 988.00	\$ 7,285.00
87	Cat 140H 165 HP 14' Moldboard									CAT 140M	\$ 998.00	\$ 8,415.00
	Articulated Off Road Trucks											
88	25 Ton Off Road Truck									CAT 725	\$ 1,450.00	\$ 11,405.00
89	30 Ton Off Road Truck											
	Forklifts											
90	6000 lb. Straight Mask Rought Terrain w / 21' Lift	Case 586H	\$ 315.00	\$ 1,670.00						LIFTKING LK8M42 (8K LB.)	\$ 532.00	\$ 2,975.00
91	7000 lb Tele Handler 44' Lift 30' Reach	Skytrak 6042L	\$ 460.00	\$ 2,436.00		Skytrac 8042 T4F	\$ 270.68	\$ 2,437.59		CAT TL642	\$ 375.00	\$ 2,050.00
92	9000 lb Tele Handler 43' Life - 31.5' Reach	Skytrak 8042L	\$ 480.00	\$ 2,615.00		Genie GTH1056	\$ 490.76	\$ 3,576.96		CAT TL943	\$ 395.00	\$ 2,550.00
	Aerial Lift Rental											
93	40'-50' Articulating	Genie Z4525/JLG 450AJ	\$ 420.00	\$ 2,090.00		JLG 450AJ SII	\$ 287.37	\$ 2,580.78		JLG 450AJ Diesel R/T	\$ 342.00	\$ 1,575.00
94	45'-50' Telescopicc 4WD	Genie S40-S45/JLG 400S-460SJ	\$ 390.00	\$ 1,927.00						JLG 460SJ Diesel R/T	\$ 342.00	\$ 1,625.00
95	65'-70' Telescopic	Genie S60-S65/JLG 600S-660SJ	\$ 485.00	\$ 2,499.00		Genie S65	\$ 362.76	\$ 2,703.21		JLG 660SJ Diesel R/T	\$ 437.00	\$ 2,100.00
96	125' Telescopiew/ Jib 4WD	Genie S125	\$ 1,500.00	\$ 8,125.00						JLG 1200SJP Diesel R/T	\$ 1,235.00	\$ 6,660.00
97	135' Telescopic w/ Jib 4WD									JLG 1350SJP Diesel R/T	\$ 1,591.00	\$ 7,530.00
98	45'-50' Telescopicc 4WD	Genie S40-S45/JLG 400S-460SJ	\$ 390.00	\$ 1,927.00						JLG 460SJ Diesel R/T	\$ 342.00	\$ 1,625.00

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
	Scissor Lift Rental											
99	Scissor Lifts 21' 30" wide	Genie GS1930/JLG1930ES	\$ 180.00	\$ 404.00		Skyjack SJIII 3219	\$ 104.22	\$ 416.89		JLG 1930	\$ 124.00	\$ 350.00
100	Scissor Lifts 25' 32" wide	Genie GS2632/JLG 2630ES	\$ 190.00	\$ 695.00		Skyjack SJIII 3226	\$ 141.16	\$ 562.10		JLG 2632	\$ 166.00	\$ 615.00
101	Scissor Lifts 32'1" 46" wide		\$ 250.00	\$ 814.00						JLG 3246	\$ 204.00	\$ 765.00
102	Scissor Lifts 38' 46" wide									JLG 4045	\$ 257.00	\$ 1,295.00
	Trash Pumps (Hoses Extra)											
103	2" Gasoline	Multiquip QP2TH	\$ 80.00	\$ 569.00		Koshin KTZ-50X	\$ 47.98	\$ 429.76		MULTIQUIP QP2TH	\$ 86.00	\$ 460.00
104	3" Gasoline	Multiquip QP3TH	\$ 95.00	\$ 709.00		Koshin KTZ-80S	\$ 63.63	\$ 572.67		MULTIQUIP QP3TH	\$ 119.00	\$ 655.00
105	4" Diesel - Trailer Mounted	Gorman Rupp PA4A604045T	\$ 275.00	\$ 1,964.00						MULTIQUIP QP4TH	\$ 138.00	\$ 765.00
106	6" Diesel - Trailer Mounted	Gorman Rupp PA6A604045T	\$ 305.00	\$ 2,148.00						MC SUPER 6" VAC ASSIST	\$ 366.00	\$ 2,040.00
	Air Compressors (Hoses Extra) and Light Towers											
107	185 CFM - Diesel Trailer Mounted	Sullair 185DPWQJD	\$ 180.00	\$ 1,003.00		Allmand MAXIAIR185	\$ 93.60	\$ 844.41		SULLAIR 185	\$ 138.00	\$ 650.00
108	400 CFM - Deisel Trailer Mounted	Sullair 375H	\$ 275.00	\$ 1,728.00						SULLAIR 375	\$ 295.00	\$ 1,405.00
	Light Towers											
109	Light Towers 4 KW Vertical Mast 23'5"	Magnum MLT6SK	\$ 125.00	\$ 705.00		Allmand NLV-P11	\$ 101.19	\$ 910.68		NO BID		
110	Light Towers 6KW Generator 23' Mast									ALLMAND NL6 (6KW)	\$ 105.00	\$ 495.00
111	Light Towers 7KW Generator 30' Mast 360 degrees									ALLMAND NLPRO (8KW)	\$ 105.00	\$ 495.00
	Generators											
112	3600 Watts	Multiquip GA36HR	\$ 60.00	\$ 520.00		EG4000CLAT	\$ 43.43	\$ 387.34				
113	6000 Watts	Multiquip GA6HR	\$ 85.00	\$ 600.00		EB6500X1AG	\$ 48.48	\$ 435.82		MULTIQUIP GA6SR	\$ 95.00	\$ 540.00
114	20 KW - Trailer Mounted	Magnum MMG25	\$ 230.00	\$ 1,182.00		Wacker G25T4	\$ 107.77	\$ 970.89		SWP QP25	\$ 228.00	\$ 1,275.00
115	36 KW - Trailer Mounted	MQ Power DCA45SSI	\$ 290.00	\$ 1,548.00		Atlas Copco QAS45 (45kw)	\$ 155.83	\$ 1,400.43		SWP QP45	\$ 304.00	\$ 1,530.00
116	56 KW - Trailer Mounted	MMD Powerpro 65	\$ 340.00	\$ 2,016.00						ALLMAND MP65	\$ 314.00	\$ 1,760.00

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
	Trenchers											
117	Walk Behind 1030 Ditchwitch	DitchWitch C16X	\$ 210.00	\$ 1,680.00		Barreto E2036RTK / Ditch Witch RT16	\$ 155.33	\$ 1,397.39		DITCH WITCH CX24	\$ 235.00	\$ 1,350.00
118	Ride-On Vermeer RT350	Vermeer RTX450	\$ 405.00	\$ 2,557.00		Vermeer RT450	\$ 252.47	\$ 2,267.10		DITCH WITCH RT45	\$ 425.00	\$ 2,525.00
	Rammers											
119	Tamper - Multiquip MT5 / MT85 (or equal)	Multiquip MTX70	\$ 100.00	\$ 699.00		Bomag BT65	\$ 64.64	\$ 578.23		BOMAG BT65	\$ 105.00	\$ 590.00
	Crawler Loaders											
120	2.4 Yd Bucket 148 HP - 33,389 lbs									CAT 963	\$ 1,325.00	\$ 10,650.00
121	3.2 Yd Bucket 189 HP - 45,500 lbs									CAT 963	\$ 1,325.00	\$ 10,650.00
	Disc Plows - 36 Hinge Offset											
122	Plow 20 x 30 w/Plow 16/32									ROME 16X30	\$ 266.00	\$ 1,785.00
	Vibratory Plate Compactors											
123	Multiquip = 17" to a 19" X 17" to 22" 3350 Centrifical Force or Equivalent					Bomag BVP 18/45	\$ 47.98	\$ 433.80		WACKER 1550AW	\$ 86.00	\$ 535.00
	Reversible Vibratory Plate Compactors											
124	Multiquip - MVH 200DA- 8 HP	Multiquip MVC90H	\$ 90.00	\$ 709.00								
	Welders											
125	Lincoln 250 Amps & Multiquip 300 Amps	Lincoln Vantage 300	\$ 100.00	\$ 557.00		Miller 907510	\$ 159.37	\$ 1,434.33		LINCOLN VANTAGE 322	\$ 105.00	\$ 575.00
	Hydraulic Cranes											
126	Carry Deck Crane - 8 Ton	Broderson IC-80-3H	\$ 600.00	\$ 3,954.00						BROCE IC80	\$ 580.00	\$ 3,230.00
	Submersible Pumps (Trash and Centrifugal)											
127	2" Electric Centrifugal	Multiquip ST2040T	\$ 50.00	\$ 405.00								
128	2" Electrical Trash	Multiquip ST2040T	\$ 50.00	\$ 405.00		Wacker PST2 400	\$ 28.79	\$ 255.53				
	Paving Breakers (runs off air)											
129	60 lbs	APT M160-5235	\$ 50.00	\$ 462.00		Michigan Pneu. MPT- 60	\$ 58.28	\$ 524.48		MPB-60A	\$ 48.00	\$ 255.00
130	90 lbs	APT M190-5239	\$ 50.00	\$ 462.00		Chichago Pneu. CP1290	\$ 58.28	\$ 524.48		MPB-90A	\$ 57.00	\$ 305.00
	Concrete Vibrators											
131	2 HP (Furnished w/shaft & head)	Wacker M2500	\$ 60.00	\$ 489.00						WACKER M2500	\$ 86.00	\$ 495.00
132	3 HP (Furnished w/shaft & head)	Wacker M3000	\$ 60.00	\$ 495.00						NO BID		
	Misc											
133	Bike Rack											
	Grand Total per column		\$ 18,440.00	\$ 115,695.00			\$ 6,828.21	\$ 58,183.77			\$ 67,869.00	\$ 486,790.00

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
	Delivery Charge		\$ 125.00	\$ 125.00			\$ 45.00				\$ 150.00	\$ 150.00
	Pick Up Charge		\$ 125.00	\$ 125.00			\$ 45.00				\$ 150.00	\$ 150.00
	Fuel Charge per gallon		\$ 8.95	\$ 8.95			\$ 5.49				\$ 10.00	
	Charge for Cleaning Equipment if Returned Dirty	125/hr					\$ 100.00				\$ 265.00	
	Delivery can be completed in ___ days After Receiving Order (ARO)	TYPICALLY 1 DAY				If available same day	Same Day					
	Location of Nearest Branch	1747 Earl Rudder Bryan/TX	Sam Williams 979-822-3500			3101 Longmire Dr. CS/TX	Adam Blouch 979-696-5696			8206 W. SH 21 Bryan, TX	Nick Sharpton 979-775-7368	

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		Sunstate Equipment				Redtail Equipment Rental LLC				Mustang Rental Services		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly		MFG	Daily	Monthly
Comments:		Comments:				Comments:				Comments:		
										1. Quoted delivery/pickup charges are for non-permit loads ONLY. Permit loads will be quoted by the branch based on the machine size and weight. 2. Rain Days will be honored if called into the branch by 8am on the day being rained out. 3. Overtime Rates - to calculate overtime rates, the daily rate is divided by 8 hours, the weekly rate is divided by 40 hours, and the monthly rate is divided by 160 hours. Example - \$1000 rental rate for a month rental divided by 160 hours = \$6.25 per hour of overtime. 4. Minimum rental period is 1 day. 5. Loss Damage Waiver - 15% of the rental rate with a \$2500 deductible per covered claim. 6. Response Time for Emergencies - 2 hours 7. Technician Labor Rates for service related to customer damage - Regular \$162, Overtime \$243, Holiday \$243.		

No Bid

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
1	Backhoe/Loader & accessories; 78 HP	DEERE 310LEP	\$330.00	\$2,321.00				
2	Backhoe/Loader & accessories; 78 HP w/hyd thumb							
3	Backhoe/Loader & accessories; 74 HP (4x4)	DEERE 310LEP	\$330.00	\$2,321.00		Case 580N	\$345	\$1,610
4	Backhoe/Loader & accessories; 93HP (4x4)							
5	Backhoe/Loader & accessories; 78 HP w/1000# Hammer	DEERE 310LEP	\$681.00	\$4,837.00		Okada Top 100	\$970	\$4,000
	Hammer							
6	Backhoe/Loader and accessories; 78 HP w/Extendahoe	DEERE 310LEP	\$330.00	\$2,321.00				
7	Backhoe/Loader and accessories; 93 HP w/Extendahoe							
8	digging depth							
	Loader Box Blade Tractors							
9	Tractor w/1 yd. loader bucket & box blade	DEERE 210LEP	\$251.00	\$2,109.00				
10	Tractor (4x4) w/1yd. Loader bucket & hyd box blade	DEERE 210LEP	\$251.00	\$2,109.00				
	Wheel & Track Mini Skid Loaders							
11	Wheel skid steer - 62HP - Wt. 5700 lbs							
12	Mini track loader - 62 HP - wt. 6618	BOBCAT T450	\$371.00	\$2,481.00				
13	Cat 259 Compact Track Loader/ Skid Steer	BOBCAT T590	\$371.00	\$2,481.00		Takeuchi TL8	\$339	\$2,320
14	72" SSL CTL Bucket							
	Skid Steer Attachments							
15	Cold planner							
16	Hydraulic auger	BOBCAT 30C	\$81.00	\$635.00		Star Industries 160D	\$115	\$760
17	Hydraulic hammer	FRD FX45ASS	\$219.00	\$1,643.00		TNB-4M	\$375	\$1,500
18	72" Angle Blade							
19	Grapple Bucket	BOBCAT 7168290	\$68.00	\$490.00		Bobcat	\$95	\$450
20	Grapple Forks					Bobcat 72" Root Grappl	\$100	\$795
	Mini Excavators							
21	Cat 301.6 (or equal) 6' 10"" depth -11'10" Reach	TAKEUCHI TB216R	\$245.00	\$1,821.00		Yanmar VIO17	\$325	\$2,085
22	Cat 303C-CR (or equal) 9' 11"" depth - 16' 10" Reach	BOBCAT E35I	\$301.00	\$1,888.00		Yanmar VIO35	\$265	\$1,665
23	Cat 302.5 (or equal) 9' 7" depth - 15' 9" Reach	BOBCAT E35I	\$301.00	\$1,888.00				
	Excavators w/ Buckets							
24	17,730 lbs - 22' 3" Reach 15' 5" Depth	BOBCAT E85	\$460.00	\$3,791.00		Yanmar VIO80	\$450	\$2,995
25	28,970 lbs - 28' 3" Reach - 19' 10" Depth	VOLVO EC140EL	\$596.00	\$4,817.00		Kobelco 130	\$735	\$5,285

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
26	36,930 lbs - 28' 8" Reach - 19' 19" Depth	VOLVO EC140EL	\$596.00	\$4,817.00		John Deere 135G	\$735	\$5,285
27	32,500 lbs - 28' 3" Reach - 19' 10" Depth	VOLVO EC140EL	\$596.00	\$4,817.00		Link Belt 145X	\$715	\$5,125
28	47,400 lbs - 31' 10" Reach - 21' 7" Depth	VOLVO EC220EL	\$836.00	\$6,133.00		John Deere 210G	\$835	\$5,680
29	46,300 lbs - 31' 10" Reach - 21' 7" Depth w/thumb	VOLVO EC220EL	\$836.00	\$6,133.00		John Deere 210G	\$875	\$5,950
30	48,300 lbs - 32'4" Reach - 22'11" Depth w/thumb	VOLVO EC220EL	\$836.00	\$6,133.00		Sany SY225	\$875	\$5,950
31	56,200 lbs - 32'5" Reach - 22'1" Depth w/thumb	VOLVO EC250EL	\$880.00	\$7,504.00		Sany SY225	\$875	\$5,950
32	64,460 lbs - 35' Reach - 23' 11" Depth	VOLVO EC350EL	\$1,307.00	\$9,624.00		John Deere 300G	\$1,225	\$7,700
33	79,700 lbs - 36' 1" Reach - 24' 7" Depth	VOLVO EC350EL	\$1,307.00	\$9,624.00		John Deere 350G	\$1,070	\$8,430
	Wheel Excavators w/ Buckets							
34	42,000 lbs - 169 HP - 30'1" Reach - 19'2" Depth							
	Specialty Excavators w/ Buckets							
35	47,400 lbs - w/5000 lb hammer	VOLVO EC220EL	\$1,456.00	\$11,606.00		John Deere 210G 5k ha	\$2,210	\$11,180
36	47,400 lbs w/Pin and thumb attachment	VOLVO EC220EL	\$836.00	\$6,133.00		John Deere 210G	\$875	\$5,950
37	Long Reach - w/60' Reach - 45' Depth					Link Belt 250X4LF	\$1,750	\$10,765
	Dozers							
38	74 HP Dozer w / 6-way Blade	DEERE 450K	\$572.00	\$4,428.00		John Deere 450K	\$675	\$4,705
39	84 HP Dozer w / 6-way Blade	DEERE 450K	\$572.00	\$4,428.00		John Deere 550K	\$745	\$5,360
40	96 HP Dozer w / 6-way Blade	JOHN DEERE 650K	\$641.00	\$6,409.00		John Deere 650K	\$830	\$5,200
41	121 HP Dozer w / 6-way Blade					John Deere 700K	\$1,035	\$6,775
42	125 HP Dozer w / 6-way Blade					John Deere 700K	\$1,035	\$6,775
43	36,497 lbs - 150 HP Dozer w/6-way Blade					John Deere 750K	\$1,420	\$9,940
44	44,200 lbs - 175 HP Clearing Dozer Rake & Blade							
45	200 HP Dozer w/Straight Blade w/Tilt 44,420 lbs							
46	Tilt							
	Low Ground Pressure Dozers							
47	74 HP LGP Dozer w / 6-way Blade	DEERE 450K	\$572.00	\$4,428.00		John Deere 450K	\$675	\$4,705
48	84 HP LGP Dozer w/ 6-way Blade	DEERE 450K	\$572.00	\$4,428.00		John Deere 550K	\$745	\$5,360
49	96 HP LGP Dozer w/6-way Blade 19,700 lbs	JOHN DEERE 650K	\$641.00	\$6,409.00		John Deere 650K	\$830	\$5,200
50	125 HP LGP Dozer w / 6-way Blade					John Deere 700K	\$1,035	\$6,775
51	150 HP LGP Dozer w / 6-way Blade					John Deere 750K	\$1,420	\$9,940
52	200 HLGP Dozer w/ straight Blade w / Tilt							
53	200 HP LGP Dozer w/straight Blade w/ Tilt CAB							

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
	Landscape Tractor							
54	78 HP Tractor Box Blade / Front End Loader 4x4	DEERE 210LEP	\$251.00	\$2,109.00				
	Wheel Loaders							
55	2.3 Yard Bucket - 129 HP	VOLVO L70H	\$627.00	\$5,854.00				
56	2.6 Yard Bucket - 143 HP	VOLVO L70H	\$627.00	\$5,854.00				
57	3 Yard Bucket - 149 HP	VOLVO L70H	\$627.00	\$5,854.00		John Deere 524P	\$690	\$5,195
58	3.25 Yard Bucket - 160 HP	VOLVO L90H	\$650.00	\$5,937.00				
59	4Yard Bucket - 196 HP	VOLVO L110H	\$1,093.00	\$8,929.00				
	Integrated Tool Carrier Wheel Loaders							
60	2.3 Yard Bucket - 129 HP							
61	3.0 Yard Bucket - 143 HP	VOLVO L70H	\$627.00	\$5,854.00		John Deere 524P	\$690	\$5,195
62	3.3 Yard Bucket - 160 HP w/Cab	VOLVO L70H	\$627.00	\$5,854.00				
	Scrapers							
63	11 CY Self Loading							
64	17 CY Self Loading							
65	22 CY Self Loading							
	Pad Drum Compactors							
66	50" Single Vibratory Drum 83 HP	BOMAG 124 PDH-40	\$400.00	\$2,975.00		Hamm H51	\$560	\$3,105
67	66" Single Vibratory Drum - 100 HP	CASE SV208D (PADFOOT	\$488.00	\$3,845.00		Hamm H71P	\$470	\$3,380
68	84" Single Vibratory Drum - 150 HP	CASE SV212D (PADFOOT	\$602.00	\$4,851.00		Hamm H10IP	\$660	\$4,565
	Smooth Drum Compactors							
69	47" Single Vibratory Drum - 36.2 HP	VOLVO SD45	\$367.00	\$2,664.00				
70	66" Single Vibratory Drum - 100 HP	VOLVO SD75B	\$457.00	\$3,519.00		Hamm H71	\$465	\$2,800
71	84" Single Vibratory Drum - 156 HP	VOLVO SD115B	\$523.00	\$4,351.00		Hamm H10I	\$535	\$4,140
72	1.5 Ton Double Drum Smoth	VOLVO DD25BW	\$275.00	\$2,103.00				
	Trench Compactors							
73	Remote 24/33 Width - Diesel	WACKER RTKX-SC3	\$288.00	\$1,691.00		Bomag BMP8500	\$285	\$1,700
74	Walk Behind 24/33 Width - Diesel	WACKER RTKX-SC3	\$288.00	\$1,691.00				
	Asphalt Equipment							
75	14 ton - 9 Wheel Pneumatic 100 HP							

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
76	47" Static Steel Drum Roller					Hamm HD12VV	\$370	\$2,655
77	60" Static Steel Drum Roller							
78	Asphalt Recycler							
79	Pulver Mixer 335 HP - 8' Drum Soil Stabilizer							
80	Water Truck 2000 Gallon	HINO 338	\$360.00	\$3,338.00		Ledwell & Sons Water	\$475	\$3,485
81	Self Propelled Mechanical 7' 6" Broom Diesel	LAYMOR SM300	\$279.00	\$1,843.00		Laymor 400	\$425	\$2,490
82	Catepillar 815F Soil Compactor							
	Motor Graders							
83	Noram 65E/Leeboy686B 68 HP							
84	Cat 120 (or equal) 125 HP - 12' Moldboard					Noram 65E	\$1,245	\$6,750
85	Cat 135H 135 HP 14' Moldboard					Sany SMG200C-8	\$1,570	\$12,015
86	Cat 12H 140 HP 14' Moldboard							
87	Cat 140H 165 HP 14' Moldboard							
	Articulated Off Road Trucks							
88	25 Ton Off Road Truck							
89	30 Ton Off Road Truck					John Deere 310E	\$2,210	\$13,800
	Forklifts							
90	6000 lb. Straight Mask Rought Terrain w / 21' Lift					Gehl RS6-34	\$435	\$2,220
91	7000 lb Tele Handler 44' Lift 30' Reach	GENIE GTH-844	\$440.00	\$2,700.00		JCB 507-42	\$505	\$2,610
92	9000 lb Tele Handler 43' Life - 31.5' Reach	GENIE GTH-1056	\$575.00	\$3,593.00		JCB 509-42	\$565	\$2,900
	Aerial Lift Rental							
93	40'-50' Articulating	JLG 450AJ	\$ 362.00	\$ 2,021.00		Genie Z45/25	\$305	\$1,630
94	45'-50' Telescopicc 4WD	GENIE S-45	\$ 362.00	\$ 2,021.00		Genie S45	\$380	\$1,680
95	65'-70' Telescopic	GENIE S-65	\$ 469.00	\$ 2,480.00		Genie S65	\$480	\$2,415
96	125' Telescopicw/ Jib 4WD	GENIE SX-125XC	\$ 1,203.00	\$ 8,510.00		Genie S125	\$1,510	\$7,625
97	135' Telescopic w/ Jib 4WD	JLG 1350SJP	\$ 1,348.00	\$ 8,823.00		Genie SX-135	\$2,000	\$12,500
98	45'-50' Telescopicc 4WD	GENIE S-45	\$ 362.00	\$ 2,021.00				

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
	Scissor Lift Rental							
99	Scissor Lifts 21' 30" wide	MEC MICRO19 LCS	\$ 118.00	\$ 430.00		JLG 1930ES	\$130	\$370
100	Scissor Lifts 25' 32" wide	JLG 2632ES	\$ 144.00	\$ 647.00		JLG 2632ES	\$155	\$560
101	Scissor Lifts 32'1" 46" wide	GENIE GS-3246	\$ 186.00	\$ 972.00		JLG 3246EX	\$215	\$780
102	Scissor Lifts 38' 46" wide	SKYJACK SJ4740	\$ 286.00	\$ 1,518.00		Genie GS4047	\$325	\$1,245
	Trash Pumps (Hoses Extra)							
103	2" Gasoline	MULTIQUIP QP2TH	\$78.00	\$573.00		Multiquip QP2TH	\$90	\$595
104	3" Gasoline	WACKER PT3A	\$86.00	\$703.00		Multiquip QP3TH	\$75	\$605
105	4" Diesel - Trailer Mounted					Godwin CD100S	\$125	\$980
106	6" Diesel - Trailer Mounted	CORNELL 6NNT	\$271.00	\$1,989.00		Godwin CD150S	\$375	\$2,835
	Air Compressors (Hoses Extra) and Light Towers							
107	185 CFM - Diesel Trailer Mounted	DOOSAN C185WDO-T4F	\$137.00	\$760.00		Sullair 185DPQ	\$140	\$660
108	400 CFM - Deisel Trailer Mounted	DOOSAN P425/HP375WCU-T	\$245.00	\$2,007.00		Atlas Copco XATS400	\$250	\$1,360
	Light Towers							
109	Light Towers 4 KW Vertical Mast 23'5"	MAGNUM MLT6SK	\$ 125.00	\$ 650.00		Magnum MLT6SK	\$100	\$500
110	Light Towers 6KW Generator 23' Mast	MAGNUM MLT6SK	\$ 125.00	\$ 650.00		Atlas Copco QLTV5+	\$145	\$720
111	Light Towers 7KW Generator 30' Mast 360 degrees	MAGNUM MLT6SK	\$ 125.00	\$ 650.00				
	Generators							
112	3600 Watts	HONDA EB3000CK2A	\$62.00	\$500.00		Wacker GP3800A	\$70	\$510
113	6000 Watts	HONDA EB5000XK31	\$78.00	\$644.00		Wacker GP5600A	\$100	\$690
114	20 KW - Trailer Mounted	MULTIQUIP DCA25SSIU4F	\$213.00	\$1,383.00		Allmand MP25	\$280	\$1,545
115	36 KW - Trailer Mounted	MULTIQUIP DCA45SSIU4F	\$267.00	\$1,668.00		Magnum MMG55	\$330	\$1,925
116	56 KW - Trailer Mounted	MULTIQUIP DCA70SSIU4F	\$292.00	\$2,063.00		Airman SDG65S-8E1	\$400	\$2,385

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
	Trenchers							
117	Walk Behind 1030 Ditchwitch	DITCHWITCH C16X	\$228.00	\$1,696.00		Ditch Witch C16X	\$205	\$1,450
118	Ride-On Vermeer RT350	DITCHWITCH RT45	\$355.00	\$2,190.00		Ditch Witch RT45	\$360	\$2,020
	Rammers							
119	Tamper - Multiquip MT5 / MT85 (or equal)	WACKER BS50-4AS	\$94.00	\$650.00		Bomag BT65	\$85	\$550
	Crawler Loaders							
120	2.4 Yd Bucket 148 HP - 33,389 lbs							
121	3.2 Yd Bucket 189 HP - 45,500 lbs							
	Disc Plows - 36 Hinge Offset							
122	Plow 20 x 30 w/Plow 16/32							
	Vibratory Plate Compactors							
123	Multiquip = 17" to a 19" X 17" to 22" 3350 Centrifical Force or Equivalent	WACKER WP1550AW	\$91.00	\$705.00		Bomag BP25/50	\$80	\$590
	Reversible Vibratory Plate Compactors							
124	Multiquip - MVH 200DA- 8 HP	WACKER WP1550AW	\$91.00	\$705.00				
	Welders							
125	Lincoln 250 Amps & Multiquip 300 Amps	MILLER TRAILBLAZER325D	\$93.00	\$543.00		Lincoln Welders Vantage 300	\$115	\$540
	Hydraulic Cranes							
126	Carrry Deck Crane - 8 Ton							
	Submersible Pumps (Trash and Centrifugal)							
127	2" Electric Centrifugal							
128	2" Electrical Trash	WACKER PST2 400	\$60.00	\$386.00				
	Paving Breakers (runs off air)							
129	60 lbs	APT 160	\$58.00	\$409.00			\$50	\$352
130	90 lbs	APT 190	\$66.00	\$483.00				
	Concrete Vibrators							
131	2 HP (Furnished w/shaft & head)	WACKER M2500	\$65.00	\$530.00		Wacker M2000	\$57	\$395
132	3 HP (Furnished w/shaft & head)	WACKER M2500	\$65.00	\$530.00				
	Misc							
133	Bike Rack							
	Grand Total per column		\$ 36,923.00	\$ 278,926.00			\$ 47,686.00	\$ 301,182.00

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
		\$25 each way for pickup truck loads, \$75 each way for rollback loads, \$200 each way for Tractor Trailer loads. Outside Hauling and After Hours delivery are negotiated locally. Tolls and Permits are not included.						
	Delivery Charge						\$ 125.00	\$ 125.00
	Pick Up Charge	\$25 each way for pickup truck loads, \$75 each way for rollback loads, \$200 each way for Tractor Trailer loads. Outside Hauling and After Hours delivery are negotiated locally. Tolls and Permits are not included.					\$ 125.00	\$ 125.00
	Fuel Charge per gallon		\$8.50/gal	\$8.50/gal			\$ 9.95	
	Charge for Cleaning Equipment if Returned Dirty		\$75/per hour	\$75/per hour			\$75/hour	
	Delivery can be completed in ___ days After Receiving Order (ARO)							
	Location of Nearest Branch	2787 N Earl Rudder Fwy	Jason Oosterbeek, Vice President			740 N Harvey Mitch Pkwy	Brian Nye	
		Bryan, TX	979-606-0227			Bryan/Tx	979-823-0085	

BID#22-040 ANNUAL PRICE AGREEMENT
FOR
HEAVY EQUIPMENT RENTAL

		HERC Rentals Inc.				H&E Equipment		
Item	Description	Model &	Unit Price	Unit Price		Model &	Unit Price	Unit Price
No.	Loaders	MFG	Daily	Monthly		MFG	Daily	Monthly
Comments:		Comments:				Comments:		
		Grand Totals do not include delivery/Pickup. Additional Fees may apply, as noted on HercRentals.com				As requested on the bid document under Delivery, pg. 5, Delivery and Pickup is \$125 each way. Permitted loads are extra.		

April 28, 2022

Item No. 8.5.

LULAC Oak Hill Section 108 Loan Contract Approval

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action adopting a resolution to approve a Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U. S. C. §5308, Section 108 Loan Agreement between L.U.L.A.C. Oak Hill, Inc. and the City of College Station, Promissory Note, Deed of Trust, and General Certification providing \$2,808,000 for the cost of construction and permanent financing of the rehabilitation of its property located at 1105 Anderson in College Station, Texas.

Relationship to Strategic Goals:

Core Services & Infrastructure, Neighborhood Integrity

Recommendation(s):

Staff recommends adoption of a resolution for the Section 108 Loan for the rehabilitation project at LULAC Oak Hill Apartments.

Summary:

At the April 22, 2021 meeting, City Council approved the application to the U. S. Department of Housing and Urban Development (HUD) for a Section 108 Loan to provide funding to L.U.L.A.C. Oak Hill, Inc. for the cost of construction and permanent financing for the rehabilitation of its property located at 1105 Anderson. The Section 108 program is a provision of the Community Development Block Grant (CDBG) program and allows Entitlement Communities to borrow up to five times their current annual grant amount. Future CDBG allocations guarantee the loan. Section 108 loans can be used as a source of financing for economic development, housing rehabilitation, public facilities, and infrastructure.

LULAC Oak Hill Apartments were developed originally through the Section 202 Supportive Housing for the Elderly program. Therefore, 100% of the residents are at or below 50% of the area's median income. Residents must also be 62 years of age or older. Therefore, this activity meets the objective of assisting low-to-moderate income residents and the goal identified in the 2020 – 2024 Consolidated Plan of addressing Rental Housing – Rehabilitation for Special Needs populations.

LULAC Oak Hill Apartments is a 50-unit property constructed over 40 years ago to provide housing for low-income elderly residents and persons with disabilities. The property has never undergone substantial rehabilitation and many of its components are well beyond their useful life and in poor condition. The work will include complete interior and exterior renovations that will increase the safety of the tenants and include energy-efficient upgrades. As the property maintains 100% occupancy, temporary relocation will take place while each unit is being renovated. Relocation expenses will include housing, storage, and moving expenses for each tenant. This project will ensure safe, decent, affordable housing for the City's low-income elderly population for many years.

The application for \$2,808,000 was approved by HUD on August 17, 2021. The application indicated the amount loaned to L.U.L.A.C Oak Hill, Inc. would be in the form of a 0% interest loan and that interest payments and fees required by the Section 108 loan would be paid out of the Community Development fund as a CDBG expense. The Guarantee Fee is 2.15%.

The Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C §5308 is attached. This contract provides funding to the City of College Station for the rehabilitation of 1105 Anderson.

The Section 108 Loan Agreement between L.U.L.A.C Oak Hill, Inc. and the City of College Station, along with the Note and Deed of Trust provides the funding from the City to L.U.L.A.C Oak Hill for the cost of construction and permanent financing of the rehabilitation of its property located at 1105 Anderson.

This process requires approval of all documents by the Texas Attorney General prior to execution. The General Certification will be submitted along with copies of all attached documents.

The resolution provides for approval of all documents and authorizes the City Manager to execute the contracts following the approval by the Texas Attorney General.

Budget & Financial Summary:

The approval of this loan will increase the Community Development/CDBG budget by \$2,808,000. The City will be required to maintain funds in designated accounts for Section 108 funds.

Attachments:

1. Attachment 1 - Resolution Approving and Authorizing Section 108 Loan
2. Attachment 2 - Exhibit A - Contract for Loan Guarantee Assistance Under Section 108
3. Attachment 3 - Exhibit B - Note
4. Attachment 4 - Exhibit C - LULAC Loan Agreement

RESOLUTION NO.

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, AUTHORIZING AND APPROVING A CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 AS AMENDED, THE CITY'S ISSUANCE OF A NOTE PURSUANT TO SAID SECTION 108 CONTRACT, A SECTION 108 LOAN AGREEMENT BETWEEN L.U.L.A.C. OAK HILL, INC. AND THE CITY, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER THOSE AND SUCH OTHER AGREEMENTS AS MAY BE NECESSARY TO COMPLETE THE CONTEMPLATED SECTION 108 LOAN FINANCING.

WHEREAS, the City of College Station, Texas, has an established Community Development Program under Chapter 373 of the Texas Local Government Code that (1) identifies areas of the City with concentrations of low- and moderate- income persons; (2) establishes areas in which program activities are proposed; (3) provides a plan under which citizens may publicly comment on activities; and (4) requires public hearings on program activities; and

WHEREAS, the City of College Station has provided adequate information for public comment as required by the Citizen Participation Plan; and

WHEREAS, on April 22, 2021, the City approved an application for Section 108 Loan funds to finance the rehabilitation Oak Hill Apartments, owned by L.U.L.A.C. Oak Hill, Inc. (the "HUD Section 108 Loan"); and

WHEREAS, on August 17, 2021 the City's Section 108 Loan Application was approved by HUD now; and

WHEREAS, the City Council desires to authorize the execution and delivery of the Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as Amended, 42 U.S.C. §5308, the contemplated promissory note B-20-MC-48-0007 [LULAC Oak Hill Apartments Project], the Loan Agreement with L.U.L.A.C. Oak Hill, Inc., and any and all other documents or agreements necessary or desirable to complete the HUD Section 108 Loan financing; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the City Council hereby authorizes and approves the Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308 in substantially the form attached as **Exhibit A** (the "Section 108 Contract"). The City Manager is authorized to execute and deliver the Section 108 Contract, with such changes, insertions, deletions, or modifications as he determines necessary to obtain the guaranteed financing of the HUD Section 108 Loan.

- PART 2:** That the City Council hereby authorizes and approves the issuance by the City of a note in substantially the form attached as **Exhibit B** (the “Note”), with this authorization being conditioned on the interest rate for the note being no more than the maximum net effective interest rate permitted by law to be paid on obligations issued or assumed by the City in exercise of its borrowing powers, as prescribed by Texas Law, including Texas Government Code, Chapter 1204. The City Manager is authorized to execute and deliver the Note, with such changes, insertions, deletions, or modifications as he determines necessary to obtain the guaranteed financing of the HUD Section 108 Loan.
- PART 3:** That the City Council hereby authorizes and approves the Section 108 Loan Agreement between L.U.L.A.C Oak Hill, Inc. and the City of College Station in the amount of \$2,808,000 in substantially the form attached as **Exhibit C** (the “L.U.L.A.C. Loan Agreement”). The City Manager is authorized to execute and deliver the L.U.L.A.C. Loan Agreement with such changes, insertions, deletions, or modifications as he determines necessary.
- PART 4:** That the City Council hereby authorizes and approves the City Manager to pay from the proceeds of the HUD Section 108 Loan or otherwise all expenses related to the issuance and delivery of the Note, the Contract, any conversion of the Note, and the related agreements, expenses of approval by the Texas Attorney General’s Office, as well as the City’s share of any expenses of any public offering.
- PART 5:** That the City Council authorizes and approves the City Manager to execute and deliver documents not mentioned in this resolution if such documents are necessary to complete the issuance and delivery of the Note, the Section 108 Contract, the execution and delivery of the Section 108 Contract, to obtain approval from the Texas Attorney General’s Office, to execute and delivery of the L.U.L.A.C. Loan Agreement, and to complete the documents specifically described in this resolution.
- PART 6:** That this resolution shall take effect immediately from and after its passage.

ADOPTED this 14th day of April, 2022.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER
SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT
OF 1974, AS AMENDED, 42 U.S.C. §5308**

Date of Contract_____

This Contract for Loan Guarantee Assistance ("Contract") is entered into between College Station, Texas, as Borrower (the "Borrower"), and the Secretary of Housing and Urban Development ("Secretary"), as guarantor for the Guarantee made pursuant to section 108 ("Section 108") of title I of the Housing and Community Development Act of 1974, as amended (the "Act") and 24 CFR Part 570, Subpart M, of the promissory note executed contemporaneously herewith and numbered B-20-MC-48-0007 [LULAC Oak Hill Apartments Project], in the Maximum Commitment Amount of \$2,808,000, and any amended note or note issued in substitution for such note and having the same note number (the "Note"). This is the first Contract under the Funding Approval ("Commitment") of the same number, which was approved by the Secretary on August 17, 2021. The funds paid or credited to the account of the Borrower pursuant to the Note are referred to herein as the "Guaranteed Loan Funds." The Note (including the Fiscal Agency Agreement and the Trust Agreement as defined in Section I.A. of the Note and incorporated therein) is hereby incorporated into the Contract. Terms used in the Contract with initial capital letters and not otherwise defined in the text hereof shall have the respective meanings given thereto in the Note. The Fiscal Agency Agreement and the Trust Agreement are sometimes collectively referred to herein as the "Fiscal Agency/Trust Agreements," and the Fiscal Agent and the Trustee respectively are sometimes collectively referred to as the "Fiscal Agent/Trustee."

PART I

- A. **The Note: Advances and Records.** The Note provides that Advances and Conversion Date Advances shall be made thereunder upon the written request of the Borrower and the approval of the Secretary, pursuant to this Contract and the Fiscal Agency Agreement. The Commitment Schedule attached to the Note represents the principal repayment schedule for the Maximum Commitment Amount of the Note. At all times, the total amount of all Advances and Conversion Date Advances under the Note for all Principal Due Dates shall

not exceed the Maximum Commitment Amount of the Note. Prior to the Conversion Date (as defined in the Note, Section I.A.), the total amount of Advances made by the Holder for each Principal Due Date under the Note shall not exceed the applicable Commitment Amount for such Principal Due Date set forth in the Commitment Schedule of the Note. Prior to the Conversion Date, the Borrower agrees that the Fiscal Agent pursuant to the Fiscal Agency Agreement shall record the date and amount of each payment and Advance under the Note and shall maintain the books and records of all Advances and Conversion Date Advances for each Principal Due Date, interest rates on Advances, payments, and Principal Amounts outstanding for each Principal Due Date. On and after the Conversion Date, the Borrower agrees that the Trustee pursuant to the Trust Agreement will maintain the books and records of all payments on the Note and all Principal Amounts and interest rates on such Principal Amounts (each as to be set forth on Schedule P&I to the Note). No advances of any kind may be made on the Note after its Conversion Date.

- B. **Borrower's Requests for Advances.** All requests for Advances or Conversion Date Advances by the Borrower under the Note shall: be in writing; specify the amount of the Advance requested; identify the Note by Borrower, number and Maximum Commitment Amount; be addressed to the Secretary at the address for notices specified in paragraph 12(f) of this Contract; be signed by an authorized official of the Borrower; and otherwise be in the form prescribed by the Secretary. Advances and Conversion Date Advances shall be requested and will only be approved and made in increments of not less than \$1,000 for any Principal Due Date. A request for an initial Advance under a Note, or a request for a Conversion Date Advance, shall be received by the Secretary at least ten Business Days prior to the Borrower's proposed Funding Date or Conversion Date, as applicable. All other requests for Advances shall be received by the Secretary not less than five Business Days prior to the proposed Funding Date. The Borrower may not deliver a Note or a request for an Advance or Conversion Date Advance to the Secretary more than two calendar months prior to the Borrower's proposed Funding Date. At least two Business Days prior to the proposed Funding Date or Conversion Date if the Borrower's request was timely received, or the next available Funding Date for which the request was timely received, the Secretary shall, except as otherwise provided in paragraph 11(c) or 12 hereof, deliver a corresponding

Authorization Order or Advance Order (as applicable) to the Fiscal Agent in accordance with Section 2.03 or 2.04 of the Fiscal Agency Agreement for the applicable Funding Date or Conversion Date. If the Borrower requests an Advance or Conversion Date Advance of less than the outstanding Maximum Commitment Amount under the Note, the Borrower may also specify in its written request the amount of the Advance or Conversion Date Advance to be allocated to each Commitment Amount or Principal Amount per Principal Due Date under the Note. If the Borrower does not specify how the Advance or Conversion Date Advance should be allocated among Commitment Amounts/Principal Due Dates, the Borrower hereby authorizes the Secretary to direct the Fiscal Agent to allocate the Advance to the respective Commitment Amounts or Principal Amounts in order of the earliest Principal Due Date(s).

- C. **Conversion; Public Offering.** On the Conversion Date (if any), trust certificates backed by the Note (and similar notes issued by other Section 108 borrowers) will be purchased for a purchase price of the full principal amount thereof by underwriters selected by the Secretary (the "Underwriters") pursuant to an Underwriting Agreement between the Underwriters and the Secretary, at a closing on such Conversion Date as determined by the Secretary and the Underwriters. The Borrower agrees that the interest rate at which the trust certificate of a specified maturity is sold to the Underwriters shall govern the interest rate inserted on the Conversion Date in Schedule P&I of the Note for the Principal Amount of corresponding maturity.
- D. **Guarantee Fee.** The Borrower shall pay to the Secretary a fee equal to 2.15% of each Advance to offset the credit subsidy cost of the guaranteed loan. This fee which was announced on August 26, 2020, 85 Fed. Reg. 52479, for Section 108 loan guarantee disbursements under loan guarantee commitments awarded in FY 2021 is due to the Secretary no later than the time of the disbursement of each Advance to the Borrower. The fee is payable from allocations or grants which have been made to Borrower under Section 106 of the Act (including program income derived therefrom) or from other sources, but is only payable from Guaranteed Loan Funds if the fee is deducted from the Advance.
- E. **Consents.** By execution of this Contract, the Borrower ratifies and consents to the Secretary's selection of the Underwriters and authorizes the Secretary to negotiate with the Underwriters the terms of the Underwriting Agreement and of the public offering of interests in the trust

certificates to investors (including the applicable interest rates). In addition, by execution hereof the Borrower ratifies and consents to the Secretary's selection of the Fiscal Agent/Trustee and agrees to the respective terms of the Fiscal Agency/Trust Agreements. If Advances have been made in the Maximum Commitment Amount of the Note not less than ten Business Days prior to the proposed Conversion Date, or if the Borrower requests a Conversion Date Advance, the Borrower authorizes the Secretary to deliver Schedule P&I to the Note completed in accordance herewith to the Fiscal Agent/Trustee on the Conversion Date in accordance with the Fiscal Agency/Trust Agreements, concurrent with delivery of the Secretary's Guarantee of the trust certificates at the closing on the Conversion Date, and thereafter the Note shall be enforceable in accordance with its terms including Schedule P&I. In addition, the Secretary reserves the right to notify the Borrower not less than one calendar month in advance of a specified Conversion Date that the Note will be sold to the Underwriters on such date, if the Secretary in his sole discretion determines that market conditions or program needs require the participation in the proposed public offering of all or substantially all Borrowers with outstanding Advances.

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PART II

1. Receipt, Deposit and Use of Guaranteed Loan Funds.

(a) Except for funds deducted on the Conversion Date pursuant to paragraph 4(b) and fees and charges deducted by the Fiscal Agent/Trustee pursuant to paragraph 4(a), the Guaranteed Loan Funds shall be electronically transferred in accordance with the Borrower's instructions for deposit in a separate, identifiable account (the "Guaranteed Loan Funds Account") with a financial institution whose deposits or accounts are Federally insured. The Guaranteed Loan Funds Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Deposit Account"

(Attachment 1) and shall be continuously maintained for the Guaranteed Loan Funds. Such Letter Agreement must be executed when the Guaranteed Loan Funds Account is established, and an original of this Letter Agreement, signed by the Borrower and the financial institution, shall be submitted by the Borrower to the Secretary with this signed Contract.

The Borrower shall make withdrawals from said account only for payment of the costs of approved Section 108 activities, for transfer to the Loan Repayment Account or for the temporary investment of funds pursuant to this paragraph 1(a). Such temporary investment of funds into the Guaranteed Loan Funds Investment Account shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Guaranteed Loan Funds Account. At that time, any balance of funds in the Guaranteed Loan Funds Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof, held in the Guaranteed Loan Funds Investment Account.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with the cash requirements of the approved activities. In no event shall the investments mature on or after March 31, 2024 or have maturities which exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Guaranteed Loan Funds Investment Account") established and designated as

prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Investment Account" (**Attachment 2**), which account shall be maintained for all Government Obligations purchased with funds from the Guaranteed Loan Funds Account. The Guaranteed Loan Funds Investment Account need only be established if and when the Borrower is required to invest, or otherwise invests, the Guaranteed Loan Funds in Government Obligations. Such Letter Agreement must be executed when the Guaranteed Loan Funds Investment Account is established and an original of this Letter Agreement, signed by the Borrower and the financial institution, shall be submitted to the Secretary within thirty days of its execution. All proceeds and income derived from such investments shall be returned to the Guaranteed Loan Funds Account.

All funds in the Guaranteed Loan Funds Account or the Guaranteed Loan Funds Investment Account must be withdrawn and disbursed by the Borrower for approved activities by March 31, 2024. Any funds remaining in either Account after this date shall be immediately transferred to the Loan Repayment Account established pursuant to paragraph 6 of this Contract.

(b) The Borrower shall by the fifteenth day of each month provide the Secretary with an electronic copy of a statement showing the balance of funds in the Guaranteed Loan Funds Account and the withdrawals from such account during the preceding calendar month, and an electronic copy of a statement identifying the obligations and their assignments in the Guaranteed Loan Funds Investment Account. Borrower shall e-mail the electronic copies to 108reports@hud.gov.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Guaranteed Loan Funds and Guaranteed Loan Funds Investment Accounts shall immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligations of the Borrower under this Contract or the Fiscal Agency/Trust Agreements.

2. **Payments Due on Note; Final Payment and Discharge.** The Borrower shall pay to the Fiscal Agent/Trustee, as collection agent for the Note, all amounts due pursuant to the terms of the Note. In accordance with the Note and the

Fiscal Agency/Trust Agreements, payment shall be made by 3:00 P.M. (New York City time) on the seventh Business Day (the "Note Payment Date") preceding the relevant Interest Due Date or Principal Due Date (each as defined in the Note). If any Note Payment Date falls on a day that is not a Business Day, then the required payment shall be made on the next Business Day. Payment may be made by check or wire transfer.

Upon final payment of all amounts due to Holders under the Note, including any payment made by the Secretary pursuant to the Guarantee, the Fiscal Agent/Trustee is required by the Fiscal Agency/Trust Agreements to return the Note to the Secretary. Upon final payment to the Secretary of any amounts due as a result of Guarantee Payments or otherwise due under this Contract, the Secretary will cancel and return the Note to the Borrower in discharge of the Borrower's obligations under the Note.

3. **Selection of New Fiscal Agent or Trustee.** The Secretary shall select a new Fiscal Agent or Trustee if the Fiscal Agent or Trustee resigns or is removed by the Secretary. The Borrower hereby consents in advance to any such selection and to any changes in the Fiscal Agency/Trust Agreements agreed to by any Fiscal Agent or Trustee and the Secretary, subject to paragraph 4(e) of this Contract.
4. **Payments Due Fiscal Agent or Trustee; Documents to the Secretary.**
 - (a) The Borrower agrees to pay the fees of the Fiscal Agent as required by Exhibit G to the Fiscal Agency Agreement, and any additional amounts that may be due pursuant to Section 6.01 of the Fiscal Agency Agreement. If not paid by the Borrower by any other means prior thereto, the Borrower agrees that any such fees or additional amounts that have been incurred prior to an Advance or a Conversion Date Advance may be deducted by the Fiscal Agent/Trustee from the proceeds of the Advance or Conversion Date Advance, as applicable.
 - (b) The Borrower agrees to pay the Borrower's share, as determined by the Secretary, of the customary and usual issuance, underwriting, and other costs related to the public offering and future administration of the Note and the trust certificates, as approved by the Secretary, including the cost of reimbursement and/or compensation of

the Trustee pursuant to the Trust Agreement, including Sections 3.11 and 7.01 thereof. In connection with the public offering on the Conversion Date, such payment shall either be made by wire transfer to the Trustee on the day prior to the Conversion Date or shall be deducted from the Guaranteed Loan Funds on the Conversion Date.

(c) The Borrower shall submit to the Secretary not later than ten Business Days prior to the Funding Date for the initial Advance hereunder, or if not submitted earlier, prior to any Conversion Date or Public Offering Date applicable to the Note, this executed Contract, the executed Note, a request for an Advance or a Conversion Date Advance (as applicable) in proper form, and an opinion acceptable to the Secretary from the Borrower's counsel to the effect that: (i) the governing body of the Borrower has authorized by resolution or ordinance, in accordance with applicable State and local law, the issuance of the Note and the execution of this Contract; (ii) the Note and this Contract are valid, binding, and enforceable obligations of the Borrower; (iii) the pledge of funds pursuant to 24 CFR 570.705(b)(2) and paragraph 5(a) of this Contract is valid and binding; and (iv) there is no outstanding litigation that will affect the validity of the Note or this Contract. In addition, the Borrower shall submit any other additional documents or opinions specifically required by this Contract (e.g., paragraph 5(c), or paragraph 15, *et seq.*), at the time required thereby.

(d) The Borrower agrees to reimburse the Underwriters upon demand by the Secretary for the Borrower's share, as determined by the Secretary, of all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) incurred in connection with a proposed public offering, if the Underwriters incur such additional costs for the public offering because of any refusal, inability, or failure on the part of the Borrower timely to submit in acceptable form any document required by this Contract (including paragraph 4(c)), or because of any withdrawal by the Borrower from the public offering, after the Borrower has submitted a request for a Conversion Date Advance hereunder. By execution and delivery of this Contract to the Secretary, the Borrower hereby expressly authorizes the Secretary to pay amounts due under this paragraph from funds pledged under paragraph 5(a) of this Contract.

(e) The undertakings in paragraphs 3 and 4 of this Contract are expressly subject to the requirement that the Fiscal

Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses, or any indemnification by the Borrower from any source other than funds pledged pursuant to paragraphs 5 or 15 *et seq.* of this Contract.

5. **Security.** The Borrower hereby pledges as security for repayment of the Note, and such other charges as may be authorized in this Contract, the following:

- (a) All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q).
- (b) Program income, as defined at 24 CFR 570.500(a) (or any successor regulation), directly generated from the use of the Guaranteed Loan Funds.
- (c) Other security as described in paragraph 15, *et seq.*
- (d) All proceeds (including insurance and condemnation proceeds) from any of the foregoing.
- (e) All funds or investments in the accounts established pursuant to paragraphs 1 and 6 of this Contract.

6. **Loan Repayment Account.**

(a) All amounts pledged pursuant to paragraphs 5(b), 5(c), and 5(d) of this Contract shall be deposited immediately on receipt in a separate identifiable account (the "Loan Repayment Account") with a financial institution whose deposits or accounts are Federally insured. The Loan Repayment Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Deposit Account" (**Attachment 1**) and shall be maintained for such pledged funds. The Loan Repayment Account need only be established if and when the Borrower receives amounts pledged pursuant to paragraph 5(b), 5(c) or 5(d). Such Letter Agreement must be executed when the Loan Repayment Account is established and an original of this Letter Agreement, signed by the Borrower and the financial institution, shall be submitted by the Borrower to the Secretary within thirty days of its execution. Borrower shall make withdrawals from said account only for the

purpose of paying interest and principal due on the Note (including the purchase of Government Obligations in accordance with paragraph 10 hereof), for payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or for the temporary investment of funds pursuant to this paragraph, until final payment and discharge of the indebtedness evidenced by the Note, unless otherwise expressly authorized by the Secretary in writing. Such temporary investment of funds shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Loan Repayment Account. At that time, the balance of funds in the Loan Repayment Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with cash requirements for payment of principal and interest as required under the Note. In no event shall the maturities of such investments exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Loan Repayment Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Investment Account" **(Attachment 2)**, which account shall be maintained for all Government Obligations purchased with funds from the Loan Repayment Account. Such Letter Agreement must be executed when the Loan Repayment Investment Account is established, and an original of this Letter Agreement, signed by the Borrower and the financial institution, shall be submitted to the Secretary within thirty days of its execution. All proceeds and income derived from such investments shall be returned to the Loan Repayment Account.

(b) Borrower shall by the fifteenth day of each month, provide the Secretary with an electronic copy of a statement showing the balance of funds in the Loan Repayment Account and the deposits and withdrawals of all funds in such account during the preceding calendar month and an electronic copy of a statement identifying the obligations and their assignments in the Loan Repayment Investment Account. Borrower shall email the electronic copies to 108reports@hud.gov.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Loan Repayment and Loan Repayment Investment Accounts shall immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements.

7. **Use of CDBG, EDI or BEDI Funds for Repayment.** Any funds available to the Borrower under Section 106 of the Act (including program income derived therefrom) are authorized to be used by the Borrower for payments due on the Note, Optional Redemption (as defined in the Note), payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or the purchase of Government Obligations in accordance with paragraph 10. Any funds specifically available to the Borrower for such payments or as a debt service reserve under an EDI or BEDI Grant Agreement pursuant to Section 108(q) of the Act which supports the eligible project(s) and activities financed by the Note may also be used therefor; any other use of Section 108(q) funds for such purposes shall require the prior written approval of the Secretary. Unless otherwise specifically provided herein or unless otherwise expressly authorized by the Secretary in writing, the Borrower shall substantially disburse funds available in the Loan Repayment or the Loan Repayment Investment Accounts before funds from grants under Section 106 of the Act are withdrawn from the U.S. Treasury for such purposes.
8. **Secretary's Right to Restrict Use of CDBG Funds to Repayment.** Upon a determination by the Secretary that payments required by paragraph 2 and/or paragraph 4 of this Contract are unlikely to be made as specified, the Secretary may give the Borrower notice that the availability to the Borrower of funds pledged under paragraph 5(a) of this Contract for purposes other than satisfaction of the pledge is being restricted. This restriction shall be in an amount estimated by the Secretary to be sufficient to ensure that the payments referred to in paragraph 2 and/or paragraph 4 hereof are made when due. This restriction may be given effect by conditioning the restricted amounts to prohibit disbursement for purposes other than satisfaction of the pledge at the time such restricted funds are approved as grants, by limiting the Borrower's ability to

draw down or expend the restricted funds for other purposes, and by disapproving payment requests submitted with respect to such grants for purposes other than satisfaction of the pledge.

9. **Secretary's Right to Use Pledged Funds for Repayment.** The Secretary may use funds pledged under paragraph 5(a) of this Contract or funds restricted under grants pursuant to paragraph 8 of this Contract to make any payment required of the Borrower under paragraph 2 and/or paragraph 4, if such payment has not been timely made by the Borrower.
10. **Defeasance.** For purposes of this Contract, after the Conversion Date the Note shall be deemed to have been paid (defeased) if there shall have been deposited with the Trustee either moneys or Government Obligations (as defined below), which in the sole determination of the Secretary, mature and bear interest at times and in amounts sufficient, together with any other moneys on deposit with the Trustee for such purpose, to pay when due the principal and interest to become due on the Note. The Aggregate Principal Amount of the Note or any unpaid Principal Amount may be so defeased, in whole or in part, as of any Interest Due Date, or any other Business Day acceptable to both HUD and the Borrower. In accordance with the Note and the Trust Agreement, the Borrower shall give timely notice and written instructions to the Secretary and the Trustee concerning any principal amounts proposed to be defeased, including any Optional Redemptions proposed, which instructions shall be approved by the Secretary. If the unpaid Aggregate Principal Amount of the Note guaranteed pursuant to this Contract shall be defeased and deemed to have been paid in full, then the Borrower shall be released from all agreements, covenants, and further obligations under the Note.

"Government Obligation" means a direct obligation of, or any obligation for which the full and timely payment of principal and interest is guaranteed by, the United States of America, including but not limited to, United States Treasury Certificates of Indebtedness, Notes and Bonds - State and Local Government Series or certificates of ownership of the principal of or interest on direct obligations of, or obligations unconditionally guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System and has capital and surplus (exclusive of undivided profits) in excess of \$100,000,000.

11. **Default.** (a) A Default under the Note and this Contract

shall occur upon failure by the Borrower to:

(i) pay when due an installment of principal or interest on the Note; or (ii) punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in: (A) this Contract, (B) any security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by the Note, or (C) any future amendments, modifications, restatements, renewals, or extensions of any such documents.

(b) The Borrower waives notice of Default and opportunity for hearing with respect to a Default under paragraph 11(a).

(c) In addition to Defaults under paragraph 11(a), the Secretary may declare the Note in Default if the Secretary makes a final decision in accordance with the provisions of section 111 of the Act and 24 CFR 570.913 (or any successor provisions), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with title I of the Act. Notwithstanding any other provision, following the giving of such reasonable notice, the Secretary may, in the Secretary's sole discretion pending the Secretary's final decision, withhold the guarantee of any or all obligations not yet guaranteed on behalf of the Borrower under outstanding commitments, suspend approval of any further Advances or Conversion Date Advances under the Note, and/or direct the Borrower's financial institution to: refuse to honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account initiated by the Borrower, and/or refuse to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account.

12. **Remedial Actions.** Upon a Default or declaration of Default under this Contract, the Secretary may, in the Secretary's sole discretion, take any or all of the following remedial actions:

(a) With any funds or security pledged under this Contract, the Secretary may: (i) continue to make payments due on the Note, (ii) make a prepayment under Section I.D. of the Note or make an acceleration payment with respect to the principal amount of the Note subject to Optional Redemption as provided

in Section III of the Note, (iii) purchase Government Obligations in accordance with paragraph 10 of this Contract, (iv) pay any interest due for late payment as provided in the Note, this Contract, or the Fiscal Agency/Trust Agreements, (v) pay any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, and/or (vi) pay any reasonable expenses incurred by the Secretary or the Fiscal Agent/Trustee as result of the Borrower's Default.

(b) The Secretary may withhold the guarantee of any or all obligations not yet guaranteed or the disbursement of any or all grants not yet disbursed in full under outstanding guarantee commitments or grant approvals for the Borrower under Sections 108 and/or 106 of the Act.

(c) The Secretary may withhold approval of any or all further Advances or Conversion Date Advances under the Note (if applicable); direct the Borrower's financial institution to refuse to: honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account by the Borrower, and/or to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account; and/or direct the Borrower and/or the Borrower's financial institution to transfer remaining balances from the Guaranteed Loan Funds Account to the Loan Repayment Account.

(d) Until the Conversion Date, or with respect to amounts subject to Optional Redemption, the Secretary may accelerate the Note.

(e) The Secretary may exercise any other appropriate remedies or sanctions available by law or regulation applicable to the assistance provided under this Contract, or may institute any other action available under law to recover Guaranteed Loan Funds or to reimburse the Secretary for any payment under the Secretary's Guarantee or any reasonable expenses incurred by the Secretary as a result of the Default.

(f) All notices and submissions provided for hereunder shall be in writing (including by telex, telecopier or any other form of facsimile communication) and mailed or sent or delivered, as to each party hereto, at its address set forth below or at such other address as shall be designated by such party in a written notice to the other party hereto. All such notices and other communications shall be effective when received as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail,

upon the earlier of the date of receipt or five Business Days after deposit in the mail, postage prepaid; (iii) if sent by telex, upon receipt by the sender of an answer back; and (iv) if sent by telecopier, upon receipt.

The Secretary:

U.S. Dept. of Housing and Urban Development
Attention: Paul Webster, Director
Financial Management Division
451 7th Street SW, Room 7282
Washington, DC 20410

Borrower:

City of College Station, Texas
Attention: Debbie Eller, Director
Community Development Division
PO Box 9960
College Station, TX 77840

13. **Limited Liability.** Notwithstanding any other provision of this Contract, the Fiscal Agency/Trust Agreements or the Note, any recovery against the Borrower for any liability for amounts due pursuant to the Note, the Fiscal Agency/Trust Agreements or this Contract shall be limited to the sources of security pledged in paragraph 5 or any Special Conditions of this Contract. Neither the general credit nor the taxing power of the Borrower, or of the State in which the Borrower is located, is pledged for any payment due under the Note, the Contract, or the Fiscal Agency/Trust Agreements.
14. **Incorporated Grant Agreement.** The Contract and the Note are hereby incorporated in and made a part of the Grant Agreement authorized by the Secretary on January 19, 2021 under the Funding Approval for grant number B-20-MC-48-0007 to the Borrower. In carrying out activities with the Guaranteed Loan Funds hereunder, the Borrower agrees to comply with the Act and 24 CFR Part 570, as provided in Subpart M thereof.
15. **Special Conditions and Modifications:**
- (a) Paragraph 5(c) of the contract is amended by deleting the paragraph as written in its entirety and substituting therefor the following:

"(c) Other security described generally in paragraph 15,

including but not limited to, all rights in and to the Security Documents defined in paragraph 15(d) and to the Collateral (defined in paragraph 15(c)) described therein, and all rights in and to any other collateral approved by the Secretary and described in **Attachment 4.**"

(b) Guaranteed Loan Funds shall be used by the Borrower for the activities described in subparagraphs (i), (ii), and (iii), subject to the requirements in subparagraph (iv).

(i) Borrower shall use the Guaranteed Loan Funds to make a loan to LULAC Oak Hill, Inc. (the "Subrecipient"), a non-profit, to carry out housing rehabilitation activities under 24 CFR 570.202 pursuant to 24 CFR 570.703(h), in connection with the LULAC Oak Hill Apartments Project (the "Project").

(ii) Reserved.

(iii) Reserved.

(iv) **Requirements on the use of Guaranteed Loan Funds:**

(A) **Transfer of Guaranteed Loan Funds:**

The Borrower shall not grant, loan, or otherwise transfer Guaranteed Loan Funds to any entity other than the Subrecipient to carry out the activity described in paragraph 15(b) (i).

Borrower shall not transfer Guaranteed Loan Funds to the Subrecipient until Borrower has received written approval from HUD approving the form of the Subrecipient Note and Subrecipient Loan Agreement (as defined in paragraph 15(b) (iv) (B)) and all other Security Documents (as defined in paragraph 15(d)) related to the pledge of collateral by the Subrecipient to the Borrower as security for the Subrecipient Note (including the legal opinion described in paragraph 15(e) (vii)) and the pledge of collateral by the Borrower to HUD as security for repayment

of the Note, and such other charges as may be authorized in this Contract.

The requirements in 24 CFR 570.503 and other provisions of 24 CFR part 570 related to subrecipients apply to the Borrower's transfer of Guaranteed Loan Funds to the Subrecipient and the activity carried out through the Subrecipient.

(B) **Subrecipient Loan Terms**

Borrower's loan to the Subrecipient shall be evidenced by a promissory note (the "Subrecipient Note") and a loan agreement that includes the provisions required by 24 CFR 570.503 (the "Subrecipient Loan Agreement").

The Subrecipient Note and Subrecipient Loan Agreement shall be in a form acceptable to the Secretary, shall be in form and content consistent with this Contract (with such provisions as are necessary to ensure compliance with requirements applicable to the use of the Guaranteed Loan Funds), enforceable under state and local law, and shall contain such other provisions as a prudent lender would reasonably require..

The Subrecipient Loan Agreement shall, as a condition of the loan, obligate Subrecipient to pledge the collateral described in paragraph 15(c).

The Subrecipient Loan Agreement shall also prohibit Subrecipient from selling, conveying, transferring or further encumbering the Property (as defined in paragraph 15(c)(i)) or any part thereof or any interest therein (whether legal, equitable, or beneficial), whether voluntarily, by gift, bequest, operation of law, merger, or in any other manner, after granting the lien described in paragraph

15(c)(i) without HUD's prior written approval.

The Subrecipient Loan Agreement shall also include any provisions necessary or appropriate to ensure compliance with all requirements associated with the use of the Guaranteed Loan Funds contained in this Contract and 24 CFR part 570, and to ensure that in the event that HUD's requirements conflict with any other agreement governing the use of the funds, HUD's requirements on the use of Guaranteed Loan Funds shall control.

The amount of principal and/or interest payable under the Subrecipient Note during the twelve-month period beginning July 1 of each year and ending on June 30 of the next succeeding year shall be equal to or greater than the amount of principal and/or interest payable under the Note for the corresponding period. The Subrecipient Note shall not be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Note.

- (C) **Intercreditor and Other Agreements.** If HUD requirements made applicable by this Contract conflict with any other agreement governing the use of the Guaranteed Loan Funds, HUD's requirements on the use of Guaranteed Loan Funds shall control.

Without written approval by the Secretary, neither the Subrecipient or the Borrower shall enter or amend an intercreditor agreement, subordination agreement, or similar agreement that affects the Borrower's or HUD's rights under the Security Documents as defined in paragraph 15(d) or the collateral pledged to secure the Subrecipient's payment obligation under the Subrecipient Note or the rights assigned to HUD under the Security Documents pledged to

secure the Note, including HUD's rights under the lien described in paragraph 15(c)(i) (each individually, an "Intercreditor Agreement"). Intercreditor Agreements approved by the Secretary, including amendments, must be in a form acceptable to the Secretary.

(D) **New Markets Tax Credits.** Without prior written approval by HUD, the Borrower shall not use Guaranteed Loan Funds for an activity that is part of a project in which New Markets Tax Credits are part of the financing structure or in which Guaranteed Loan Funds will be used to leverage or generate New Markets Tax Credits pursuant to Section 45(D) of the Internal Revenue Code. At the discretion of the Secretary, HUD's approval and any related conditions may be provided in **Attachment 4**, as discussed below.

(E) **Alternative Collateral and Security Arrangements.** The Borrower shall not incur any obligations to be paid with Guaranteed Loan Funds which will be subject to the alternative collateral or security arrangements described in paragraph 15(c)(iv) prior to the approval and memorialization of the alternative collateral or security arrangements in **Attachment 4**.

(F) **Limitation on Tax-Exempt Bond Financing.** Without prior written approval by HUD, the Borrower shall not use Guaranteed Loan Funds for an activity or project that is financed in whole or in part with tax-exempt bonds. HUD will not unreasonably withhold approval if the use of Guaranteed Loan Funds complies with the requirements of 26 U.S.C. 149 and Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables, published by the White House Office of Management and Budget.

(c) To secure the payment and performance of the obligations of the Subrecipient to the Borrower in the Subrecipient Note and Subrecipient Loan Agreement, the Borrower shall obtain the collateral in subparagraphs (i) through (iii).

Alternatively, the Borrower may seek approval from HUD for alternative collateral or security arrangements, as described in subparagraph (iv) below.

The pledges and assignments required by (i) - (iii) and related security agreements, security documents, and financing statements required by (v) may be made in the instruments identified therein, or in a single instrument (individually or collectively, the "Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing"), which shall be signed by the Subrecipient, be in a form acceptable to the Secretary, and contain any provisions the Secretary deems necessary.

Collectively, the collateral described or identified in (i) - (iv) shall be referred to as the "Collateral", and shall be subject to the requirements in (v):

- (i) A sole first-priority lien on the real property described in **Attachment 3**, including all water rights, air rights, and other real property interests, together with any fixtures located on and any personal property affixed to, installed in, or attached to the real property, whether now owned or here-after acquired (the "Property"), established through an appropriate and properly recorded mortgage or deed of trust signed by the Subrecipient as mortgagor and securing repayment of the indebtedness evidenced by the Subrecipient Note, which shall contain such provisions as the Secretary deems necessary, and which must be in a form acceptable to the Secretary, including any subsequent amendments thereto.
- (ii) A first lien security interest in any and all rights, titles, and interests in and to any leases covering the Property and any rents derived from the Property. Such rights, titles, and interests shall be the subject of an appropriate and properly recorded collateral assignment of leases and rents, which shall be in a form acceptable to the Secretary, including any amendments thereto.
- (iii) A first lien security interest in any and all rights titles, and interests in and to any permits, licenses, agreements, and other intangible personal

property rights covering the Property, including but not limited to utility connection rights, or insurance policies held by the Subrecipient with respect to the Property, whether now owned or hereafter acquired, and which are used in connection with the maintenance, use, occupancy or enjoyment of the Property. Such rights, titles, and interests shall be the subject of a collateral assignment of interest in licenses, permits, and other agreements, which shall be in a form acceptable to the Secretary, including any amendments thereto.

- (iv) Such other alternative collateral or security arrangements as may be requested by the Borrower and approved by the Secretary in writing, which may include collateral pledged by the Subrecipient or directly by the Borrower. The alternative collateral shall be described in **Attachment 4** to this Contract, which may be updated from time to time to include all alternative collateral approved by the Secretary as security for the Note. The last dated **Attachment 4** that is agreed to and acknowledged by the signature of the parties identified in paragraph 12, their successors, or other authorized agents of the parties, is incorporated into this Contract and shall represent the agreement of the parties.
- (v) The Borrower shall take all steps necessary to attach, perfect, and maintain the perfection and priority of its security interests, and security interests granted to the Secretary, in the Collateral described in (i) through (iv), unless otherwise required by this paragraph or **Attachment 4**. Real property interests must be properly recorded. Personal property and fixtures pledged as Collateral shall be included in valid agreements necessary for attachment and perfection, for example, a security agreement that reasonably identifies the property, or in the case of a deposit account, a deposit account control agreement (together, the "Security Agreement or Other Security Documents"). As needed for attachment and perfection, the Security Agreement or Other Security Documents shall be referenced in appropriate Uniform Commercial Code ("UCC") Financing Statements filed

in accordance with applicable law and the UCC. The Security Agreement and Other Security Documents and related UCC Financing Statements shall contain such provisions as the Secretary deems necessary. UCC Financing Statements shall be refiled by the Borrower as necessary to remain current and effective.

- (d) Unless otherwise agreed to by the Secretary, the Borrower shall select a financial institution acceptable to the Secretary (the "Custodian") to act as custodian for the documents specified in 15(e) below (the "Security Documents"). The Borrower and the Custodian shall enter into a written agreement containing such provisions as the Secretary deems necessary. A fully signed original agreement shall be delivered to the Secretary contemporaneously with the delivery of this Contract and the Note. At the request of the Secretary, Borrower shall deliver electronic copies of all Security Documents to the office identified in paragraph 12, or upon the request of the Secretary, electronic copies to an address to be identified by the Secretary.
- (e) Not later than five business days after receipt by the Borrower of the Guaranteed Loan Funds, or at such other time as may be required by the Secretary, the Borrower shall deliver to the Custodian the following:
 - (i) The Subrecipient Note, endorsed in blank and without recourse.
 - (ii) The original Subrecipient Loan Agreement and a collateral assignment thereof to the Secretary, of which both shall be in a form acceptable to the Secretary.
 - (iii) The original recorded Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing (which may consist of one or more instruments that contain the mortgage and assignments from the Subrecipient to the Secretary required by 15(c)(i), (ii), and (iii)), and the related Security Agreement or Other Security Documents and UCC Financing Statements required by 15(c)(v)), together with assignments thereof from the Borrower to the Secretary, in a recordable form but unrecorded, all of which shall be in a form acceptable to the

Secretary.

The original Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing shall be accompanied by copies of all UCC Financing Statement filings and re-filings made by the Borrower or Subrecipient pursuant to 15(c) (v).

(iv) A mortgagee title policy covering the Property, issued by a company acceptable to the Secretary and in a form acceptable to the Secretary, naming the Borrower as the insured party. The policy must either include in the definition of the "insured" each successor in ownership of the indebtedness secured by the Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing or be accompanied by an endorsement of the policy to the Secretary. The policy shall indicate that the Borrower has the security interest indicated in 15(c) (i).

(v) An appraisal of the ownership interest in the Property specifying an estimate of the "as completed" fair market value of not less than 125 percent (125%) of the principal balance of the Note plus 125 percent (125%) of any outstanding balance on other indebtedness secured by a mortgage lien of senior or equal priority on the Property, if agreed to by the Secretary.

The appraisal shall be completed by an appraiser who is certified by the state and has a professional designation (such as "SRA" or "MAI"), and it shall conform to the standards of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

(vi) A certified survey of the Property with a legal description conforming to the title policy and the Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing.

(vii) An opinion of the Borrower's counsel on its letterhead, addressed and satisfactory to the Secretary, that:

- (A) The Subrecipient is duly organized and validly existing as a **[corporation, partnership, etc.]** under the laws of the State of Texas is **[existing, qualified to do business, in good standing, as applicable]** in and under the laws of the State of Texas;
- (B) The Subrecipient Note has been duly executed and delivered by a party authorized by the Subrecipient to take such action and is a valid and binding obligation of the Subrecipient, enforceable in accordance with its terms, except as limited by bankruptcy and similar laws affecting creditors generally; and
- (C) The security instruments specified in (ii) and (iii) above, including assignments to the Secretary, are valid and legally binding obligations, enforceable in accordance with their respective terms.

To the extent that the foregoing opinion deals with matters customarily within the due diligence of counsel to the Subrecipient, Borrower's counsel may attach and expressly rely on an opinion of Subrecipient's counsel satisfactory to the Secretary.

- (viii) Any instruments, documents, agreements, and legal opinions required pursuant to paragraph 15(c), or **Attachment 4**, including an opinion of the Borrower's counsel that the instruments, documents, and agreements are valid and legally binding obligations, enforceable in accordance with their respective terms. These instruments shall include any Security Agreement or Other Security Documents required by paragraph 15(c)(v), and an assignment thereof to the Secretary, which shall be in a form acceptable to the Secretary. The Security Agreement or Other Security Documents shall be accompanied by copies of all UCC Financing Statement filings and re-filings required by paragraph 15(c)(v).
- (f) Borrower shall not amend, modify, supplement, terminate, or perform any act that might affect the Security Documents without the prior written approval of HUD.

- (g) Notwithstanding paragraph 15(e), if the original Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing has not been returned from the appropriate office(s) in which they must be recorded within five (5) business days of receipt by the Borrower of the Guaranteed Loan Funds, the Borrower shall deliver an electronic copy of the relevant instrument together with a recordation receipt or other evidence of recordation to the Custodian within the timeframe prescribed in 15(e) instead, and shall subsequently deliver the original Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing and assignment thereof to the Custodian within five (5) business days after receipt from local recordation office, but not later than 45 days after disbursement of Guaranteed Loan Funds.
- (h) Borrower shall deliver to the Custodian all recorded re-filings of financing statements or filings of continuation statements filed by Subrecipient or Borrower to continue the effectiveness of the financing statements made pursuant to this Contract within five business days of such filings.
- (i) Paragraph 12 is amended by adding at the end thereof the following language:
 - "(g) The Secretary may record the assignments referred to in paragraph 15(e), or take any other measures to effectuate the transfer of the documents referenced and underlying indebtedness from the Borrower to the Secretary or the Secretary's assignee.
 - (h) The Secretary may exercise or enforce any and all other rights or remedies available by law or agreement, including any and all rights and remedies available to a secured party under the Uniform Commercial Code or in any of the Security Documents (as defined in paragraph 15(d)), against the Collateral, against the Borrower, against the Subrecipient, or against any other person or property (including the Property)."
- (j) The Borrower agrees that it shall promptly notify the Secretary in writing upon the occurrence of any event which constitutes a default (an "Event of Default") under (and as defined in) any of the Security Documents, as

defined in paragraph 15(d). Notification of an Event of Default shall be delivered to the Secretary as directed in paragraph 12(f) above. Upon the occurrence of an Event of Default, the Secretary may (without prior notice or hearing, which Borrower hereby expressly waives), in addition to (and not in lieu of) exercising any and all remedies that may be available under the Security Documents, declare the Note in Default and exercise any and all remedies available under paragraph 12. This paragraph shall not affect the right of the Secretary to declare the Note in Default pursuant to paragraph 11 and to exercise in connection therewith any and all remedies available under paragraph 12.

(k) Additional Grounds for Default. Notice of Default. Restriction of Pledged Grants. Availability of Other Remedial Actions.

- (i) The Borrower acknowledges and agrees that the Secretary's guarantee of the Note is made in reliance upon the availability of grants pledged pursuant to paragraph 5(a) (individually, a "Pledged Grant" and, collectively, the "Pledged Grants") in any Federal fiscal year subsequent to the Federal fiscal year ending September 30, 2021 to: (A) pay when due the payments to become due on the Note, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Note. The Borrower further acknowledges and agrees that if the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are unlikely to be available for either of such purposes, such determination shall be a permissible basis for any of the actions specified in paragraphs (ii) and (iii) below (without notice or hearing, which the Borrower expressly waives).
- (ii) Upon written notice from the Secretary to the Borrower at the address specified in paragraph 12(f) above that the Secretary (in the Secretary's sole discretion) has determined that Pledged Grants are unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above (such notice being hereinafter referred to as the "Notice of Impaired Security"), the Secretary may limit the availability of Pledged Grants by withholding amounts at the time a Pledged Grant is

approved or by disapproving payment requests (drawdowns) submitted with respect to Pledged Grants.

- (iii) If after 60 days from the Notice of Impaired Security the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are still unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above, the Secretary may declare the Note in Default and exercise any and all remedies available under paragraph 12. This paragraph (iii) shall not affect the right of the Secretary to declare the Note and/or this Contract in Default pursuant to paragraph 11 and to exercise in connection therewith any and all remedies available under paragraph 12.
- (iv) All notices and submissions provided for hereunder above shall be submitted as directed in paragraph 12(f).
- (1) Notwithstanding any other provision of the Note or this Contract, the following provisions to assure compliance with Texas law shall govern:
 - (i) The Secretary shall not require the Note to be converted to a fixed-rate Note pursuant to Sections II and III thereof at an interest rate on any Principal Amount on Schedule P&I thereof that exceeds the maximum rate payable by the Borrower thereon under generally applicable Texas law, including Chapter 1204 of the Texas Government Code, as amended. This limitation on the interest rate on the principal of the Note also applies if the Note bears interest at a variable rate prior to a conversion to a fixed rate. In addition, the accrual of interest on unpaid interest shall be limited to the extent permissible under Texas law.
 - (ii) Part I, paragraph C, of the Contract is amended to delete the last sentence thereof, and to insert the following two new sentences at the end:

"The Borrower agrees that the interest rate at which the trust certificate corresponding to a

specified Principal Due Date on Schedule P&I of the Note is sold to the Underwriters shall be the interest rate inserted on the Conversion Date in Schedule P&I for the Principal Amount corresponding to such Principal Due Date. Such interest rate for each trust certificate shall be that rate which the Underwriters determine will enable them to sell under then-prevailing market conditions such certificate, or interests therein, for 100% of the Principal Amount of such certificate."

- (iii) Paragraph 4(e) of the Contract is amended by deleting the paragraph as written in its entirety and substituting therefor the following:

"(e) The undertakings in paragraphs 3 and 4 of this Contract are expressly subject to the requirement that the Fiscal Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses or any indemnification by the Borrower from any source other than funds pledged pursuant to paragraphs 5(a) and (b) of this Contract."

- (iv) The provisions of the Fiscal Agency/Trust Agreements (including any future amendments thereto or any new fiscal agency or trust agreements in the future) relating to indemnification, standard of care, choice of law and disposition of unclaimed property as they concern the Borrower are subject to the limitations of this Contract and will be enforceable against the Borrower only to the extent permitted by Texas law. The Secretary further agrees that he will require the Fiscal Agent and Trustee to maintain the registration books referred to in section 5.01 of the Amended and Restated Master Fiscal Agency Agreement and in section 5.03 of the Trust Agreement in a form that can be converted to a writing and a copy of which can be provided to the Borrower in Texas within a reasonable time after request.
- (v) To the extent that a pledge of ad valorem tax is securing payment of all or a portion of the principal of and interest on the Note,

acceleration of the maturity date of that portion of the Note shall not be available as a remedy in the event of a default by the Borrower under the Note or this Contract.

- (m) If any one or more of the covenants, agreements, provisions, or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract or of the Note or the rights of the Holder thereof.

[Rest of Page Intentionally Left Blank]

THE UNDERSIGNED, as authorized officials on behalf of the Borrower or the Secretary, have executed this Contract for Loan Guarantee Assistance, which shall be effective as of the date of execution hereof on behalf of the Secretary.

City of College Station, Texas
BORROWER

BY: _____
(Signature)

(Name)

(Title)

(Date)

**SECRETARY OF HOUSING AND URBAN
DEVELOPMENT**

Kevin Bush Digitally signed by Kevin Bush
Date: 2022.04.04 10:04:33
BY: _____
(Signature) -04'00'

Kevin J. Bush _____
(Name)

**Deputy Assistant Secretary
for Grant Programs** _____
(Title)

(Date)

Note No. B-20-MC-48-0007

Attachment 1

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
DEPOSIT ACCOUNT

Name of Institution (and Branch)

Street

City, State, Zip Code

☐ This account is established for funds received by the Borrower under Note(s) guaranteed by the United States Department of Housing and Urban Development (HUD) under the Section 108 Loan Guarantee Program **(Guaranteed Loan Funds Account)**.

☐ This account is established for repayment of the Note(s) guaranteed by HUD under the Section 108 Loan Guarantee Program **(Loan Repayment Account)**.

☐ This account is established as a debt service reserve under the Section 108 Loan Guarantee Program **(Debt Service Reserve Account)**.

You are hereby authorized and requested to establish a deposit account to be specifically designated:

"The City of College Station, Texas, as Trustee of United States Department of Housing and Urban Development." All deposits made into such account shall be subject to withdrawal therefrom by the Borrower named below, unless and until HUD provides you with a notice that it is assuming control over the account. Thereafter withdrawals may not be made by the Borrower. Within a reasonable period of time, not to exceed two business days, after your receipt of such notice from HUD, you shall so prevent such Borrower withdrawals and, if requested by HUD in writing, shall thereafter forward monthly to HUD, to an account it specifies in its notice, the collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any instrument drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. You are permitted, however, to debit from

the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: College Station, Texas

By: _____ Date: _____
[Signature]

Name and Title: _____

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: _____, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, to refuse to honor any instruments drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to statutory limits.

Name of Institution: _____

By: _____ Date: _____
(Signature)

Name and Title: _____

8-28-08

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
INVESTMENT ACCOUNT**

Name of Institution (and Branch)

Street

City, State, Zip Code

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Guaranteed Loan Funds Account **(Guaranteed Loan Funds Investment Account)**.

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Loan Repayment Account **(Loan Repayment Investment Account)**.

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Debt Service Reserve Account **(Debt Service Reserve Investment Account)**.

You are hereby authorized and requested to hold obligations and assignments of those obligations in trust for the United States Department of Housing and Urban Development (HUD) in an account specifically designated:

"The City of College, Texas, as Trustee of United States Department of Housing and Urban Development." All obligations and assignments shall be subject to release to the Borrower named below, unless and until HUD provides you with a notice that it is assuming control over the account. Thereafter, releases may not be made by the Borrower. Within a reasonable period of time, not to exceed two business days, after your receipt of such notice from HUD, you shall so prevent such Borrower releases and, if requested by HUD in writing, shall thereafter forward monthly to HUD, to an account it specifies in its notice, the collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in this account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. You are permitted, however, to debit from the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: College Station, Texas _____

By: _____ Date: _____
[Signature]

Name and Title: _____

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: _____, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in the account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the financial institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to the statutory limits.

Name of Institution: _____

By: _____ Date: _____
(Signature)

Name and Title: _____

8-28-08

ATTACHMENT 3

[Description of Real Property]

ATTACHMENT 4

HUD-Approved Alternative Collateral or Security Arrangements

Date: _____

This attachment may be updated from time to time as anticipated by paragraph 15(c)(iv). The last dated Attachment 4 that is signed by the parties identified in paragraph 12, or their successors or other authorized agents of the parties, is incorporated into the Contract for Loan Guarantee Assistance (the Contract) and shall represent the agreement of the parties.

The last dated Attachment 4 shall include a list of all previously approved alternative collateral or security arrangements that secure either the Note or the Subrecipient Note, as those terms are defined in the Contract, and any newly approved alternative collateral or security arrangement.

Date Approved by HUD: _____

Note Number: _____

Maximum Commitment Amount: _____

Subrecipient: _____

These alternative collateral and security arrangements are agreed to by the Secretary and the Borrower pursuant to paragraph 15(c)(iv), and describe the obligations related to the HUD-guaranteed promissory note executed by Borrower on _____, numbered _____, in the Maximum Commitment Amount of \$ _____ (the " _____ Project Note").

The Secretary and Borrower agree to the following:

PROMISSORY NOTE

\$ 2,808,000.00

Date: _____

FOR VALUE RECEIVED, L.U.L.A.C. OAK HILL, INC., a Texas nonprofit corporation ("Obligor"), promises to pay to the order of the City of College Station, Texas, a home rule city (hereafter the "Lender"), at its offices at _____, or such other place as may be designated in writing by the Lender, the principal sum of TWO MILLION EIGHT HUNDRED EIGHT THOUSAND AND NO/100 DOLLARS (\$2,808,000.00), plus interest at the rate set forth herein, said principal sum, together with the interest accrued and unpaid thereon, to be due and payable as set forth herein, provided that if not sooner paid, the unpaid principal sum together with the interest accrued and unpaid thereon shall be due and payable twenty years after the Effective Date (the "Maturity Date").

Effective Date. This Note shall be effective on the date of the first disbursement of funds to Obligor pursuant to the terms of this Note. Lender and Obligor agree that in the event that no funds are disbursed pursuant to this Note within 1 year of the date of execution of this Note, this Note and all obligations contemplated therein shall automatically terminate.

Section 108 Note. This Note is being made from the proceeds of a loan made to the Lender and guaranteed by the Secretary of Housing and Urban Development (hereafter the "Secretary" or "HUD") under Section 108 of Title I of the Housing and Community Development Act of 1974, as amended, 24 CFR Part 570, Subpart M. (collectively the "Act"), through a Contract for Loan Guarantee Assistance dated _____ (the "Section 108 Contract") and pursuant to a Note numbered _____ executed by the Lender (the "Section 108 Note"). The terms of this Note are subject in all respects to the Act, the Section 108 Contract, and the Section 108 Note. The Section 108 Note may initially be issued in the form of a variable/fixed rate interim Note, to be converted to a fixed rate permanent Note upon the Public Offering Date, as defined in the Section 108 Note.

Interest Rate. The interest rate on this Note shall be the interest rate or rates applicable from time to time to advances under the Section 108 Note (as defined herein), plus 0%.

Advances. Advances to be made under this Note shall be used by Obligor in connection with the rehabilitation of an apartment complex for low income elderly residents which will meet an eligible rehabilitation activity in accordance with 24 CFR 570.703(h), pursuant to 24 CFR 570.202(a)(1). Upon written request by Obligor, and as accompanied by such reasonable documentation as Lender may require, Lender shall, in its reasonable discretion, disburse advances under this Note.

Payment Terms. Beginning on the first day of the first quarter after the date of the first advance of proceeds of this Note and continuing in the first day of each successive quarter thereafter until the entirety of the principal and interest has been repaid.

Additional Payments. On each Section 108 Note Payment Date, the Obligor shall further pay to Lender any late charges accruing on the Section 108 Note, the sum of the expense of the Lender incurred in enforcing the obligations of the Obligor under the Loan Documents (hereinafter defined), and any other amount otherwise becoming due or past due under the Section 108 Note, including any acceleration or mandatory prepayment of principal and all accrued interest thereon pursuant to the terms of the Section 108 Note if any such occurrence is a result of a default under the Loan Documents.

Form of Note. The Obligor shall make all payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, and amounts payable on any Section 108 Note Payment Date shall be payable in immediately available funds.

Late Charges, Default Rate. In the event the Obligor shall fail to make any payment or deposit required by this Note for a period of more than ten (10) days from the date such payment is due, the Obligor shall pay the same together with the Late Payment Fee, with interest at the Default Rate from the date on which such payment was due until the date on which such payment is made.

The "LATE PAYMENT FEE" shall be ____ cents (\$.__) for each dollar (\$1.00) so overdue, for the purpose of defraying the expense incident to handling such delinquent payment.

The "DEFAULT RATE" shall be the higher of 3% percent plus the Prime Rate or the default rate applicable to the Section 108 Note; provided, however, that such rate shall in no event exceed the maximum rate which the Obligor may pay by law.

"PRIME RATE" means such rate of interest as is published in the Wall Street Journal. Any changes in the Prime Rate shall be effective as of the opening of business on the date such charge is announced by Federal Reserve Board.

Loan Documents. This Note is made pursuant to the terms of a loan agreement of even date between Obligor and Lender ("Loan Agreement") and is secured the Deed of Trust, Assignment, Security Agreement and Fixture Filing of even date ("Deed of Trust"). The terms and provisions of the Loan Agreement and Deed of Trust are incorporated herein by this reference as if expressly set forth in this Note and together with this Note are collectively referred to as the "Loan Documents".

Default. The whole of the principal sum or any part thereof, and of any other sums of money secured by the Deed of Trust given to secure this Note shall, forthwith or thereafter, at the option of the Lender, become due and payable if default be made in any payment under this Note or upon the happening of any default which, by the terms of the Loan Documents shall entitle the Lender to declare the same, or any part thereof, to be due and payable.

Maximum Rate. This Note is subject to the express condition that at no time shall the Obligor be obligated or required to pay interest on the principal balance of this Note at a rate which could subject the Lender either to civil or to criminal penalty as a result of being in excess of the maximum rate which the Obligor is permitted by law to contract or agree to pay. If by the terms

of this Note the Obligor at any time is required or obligated to pay interest on the principal balance of this Note at a rate in excess of such maximum rate, then the rate of interest under this Note shall be deemed to be immediately reduced to such maximum rate and interest payable hereunder shall be computed at such maximum rate and any prior interest payments made in excess of such maximum rate shall be applied and shall be deemed to have been paid in reduction of the principal balance of this Note.

In addition to the protection afforded the Lender under this Note, the Deed of Trust protects the Lender from possible losses which might result if Obligor does not fulfill covenants, conditions and restrictions contained therein. Among other things, the Deed of Trust requires that the Lender consent to any sale of the property identified in the Deed of Trust or any sale of the ownership or beneficial interests in Obligor, which consent shall not unreasonably withheld, conditioned, or delayed.

Prepayment. This Note shall not be subject to prepayment, except that in the event and to the extent that the Section 108 Note is subject to prepayment, the Obligor shall be permitted to prepay this Note at the same time and in the same amount, subject to payment by Obligor of any premium and expenses required for prepayment of the Section 108 Note, upon receipt by the Lender of five (5) days prior written notice. Any partial prepayments shall be applied to principal in inverse order of maturity unless otherwise agreed by Lender. In the event of partial prepayments, there will be no changes in the due date and the amount of Obligor's monthly payment unless Lender agrees in writing to such changes.

Modification. The Note may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

Waivers; No Release. The Obligor hereby waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees (which costs may be added to the amount due under this Note and be receivable therewith) and to perform and comply with each of the terms, covenants and provisions contained in this Note and in any instrument evidencing or securing the indebtedness evidenced by this Note on the part of the Obligor to be observed and/or performed hereunder and thereunder. No release of any security for the principal sum due under this Note, or of any portion thereof, and no alteration, amendment or waiver of any provision of this Note or of any instrument evidencing and/or securing the indebtedness evidenced by this Note made by agreement between the Lender and any other person or party shall release, discharge, modify, change or affect the liability of the Obligor under this Note or under such instrument.

Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Texas and no defense given or allowed by the laws of any state or country shall be interposed in any action or proceeding hereof unless such defense is also given or allowed by the laws of the State of Texas.

Jurisdiction and Venue. All acts contemplated by this Note shall be performable in Brazos County, Texas, and all sums payable under this Note shall be payable in Brazos County, Texas. Lender

and Obligor hereby confirm and agree that all legal actions involving the validity or enforcement of this Note shall have exclusive jurisdiction and venue in Brazos County, Texas.

Terms. All references to the Lender shall be deemed to apply to any holder of this Note and the terms hereof shall be binding on the successors and assigns of the Obligor.

Successors and Assigns. This Note and all of the covenants, promises and agreements contained herein shall be binding upon and shall inure to the benefit of Obligor and Lender and their respective executors, administrators, successors and assigns.

Non-Recourse. Notwithstanding anything to the contrary contained in this Note or in any of the other Loan Documents, subject to Obligor meeting CDBG and HUD objectives, the Lender expressly agrees that the liability of the Obligor and/or any of the Obligor's directors, officers, shareholders, partners, representatives, agents, employees, heirs, affiliates, successors and assigns (such past, present and future members or shareholders in the Obligor, if any, and/or any of such parties' directors, officers, shareholders, partners, representatives, agents, employees, heirs, affiliates, successors and assigns are herein collectively referred to as "Obligor's Affiliates"), under any Loan Document shall be strictly and absolutely limited to the property encumbered under the Deed of Trust of even date herewith, and the leases, rents, profits and issues thereof and any other collateral securing the repayment of this Note. Lender shall not seek any deficiency judgment against Obligor, it being understood and agreed that neither Obligor nor any of its partners shall have any personal liability for the payment of the indebtedness and obligations evidenced by the Loan Documents and such indebtedness shall be considered limited recourse to Obligor.

Cumulative Rights. No delay on the part of Lender or other holder of this Note in the exercise of any power or right under this Note or under any other Loan Document, shall operate as a waiver thereof, nor shall a single or partial exercise of any power or right preclude other or further exercise thereof or exercise of any other power or right. Enforcement by Lender or other holder of this Note of any

Entire Agreement. THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date and year first above written.

BORROWER:
L.U.L.A.C. Oak Hill, Inc.
A Texas nonprofit corporation

By: _____

Name:
Title:

Endorsement

Pay to the order of _____ without recourse.

By: _____
Signature

Name: _____

Title: _____

**SECTION 108 LOAN AGREEMENT
BETWEEN L.U.L.A.C. OAK HILL, INC.
AND THE CITY OF COLLEGE STATION**

The parties to this Agreement (this "Agreement") are the **CITY OF COLLEGE STATION, TEXAS**, a home-rule city organized under the laws of the State of Texas ("City"), and **L.U.L.A.C. OAK HILL, INC.**, a Texas non-profit corporation ("Owner" or "Borrower") as the case may be as indicated herein.

Unless the context otherwise requires, the initial capitalized words shall have the meanings ascribed to them in "Definitions" following the main text of this Agreement if they are not otherwise defined in the main body of this Agreement.

Owner and City hereby agree as follows:

**SECTION I
BACKGROUND**

A. Owner requested from City, financial assistance with the rehabilitation of its property an apartment complex for low income elderly residents. As a result of the City's approval of Owner's proposal Owner has requested and this Agreement provides for a loan to be made from the City to the Owner to fund the cost for the construction and permanent financing of the rehabilitation of its property located at 1105 Anderson, College Station, Brazos County, Texas ("Project"). The funding for the loan will consist of a Section 108 loan in the maximum principal amount of TWO MILLION EIGHT HUNDRED EIGHT THOUSAND AND NO/100 DOLLARS (\$2,808,000.00) ("Loan Amount" or "Loan")

B. The Loan is being provided to the City pursuant to the Housing and Community Development Act of 1974, as amended, ("the Act") and 24 Code of Federal Regulations Part 570, Subpart M. Specifically, the Loan is provided pursuant to a contract for Loan Guarantee Assistance between City and HUD under Section 108 of the Act ("Section 108 Guarantee Loan Program").

C. Owner owns the property on which the Project is located, more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").

D. The City's proposed use of its Section 108 loan proceeds for the Loan to Owner for the Project is an eligible rehabilitation activity in accordance with 24 CFR 570.703(h), pursuant to 24 CFR 570.202(a)(1), a privately owned building and improvements used for residential purposes.

E. Owner's obligations to the City under this Agreement, including, but not limited to repayment of the Loan as evidenced by the Note, upon default under the Loan Documents (Note, Deed of Trust, Assignment and Security Agreement and Fixture Filing, together with the Financing Statements, collectively the "Loan Documents"), will be secured by, among other things, the Deed of Trust, Assignment, Security Agreement and Fixture Filing respectively, in favor of the City and other Loan Documents. In furtherance of the foregoing, Owner shall execute and deliver any instruments, documents and/or agreements necessary to create or perfect the security interests referenced hereunder.

F. Owner shall use the proceeds of the Loan for the rehabilitation of the residential dwelling units located at 1105 Anderson Dr, College Station, Brazos County, Texas.

G. To secure the Loan and its other obligations hereunder, Owner will execute the Deed of Trust, Assignment, Security Agreements, and Fixture Filing and collaterally assign other Loan Documents in favor of the City covering the Project. After granting the first priority lien on the Project, until the City Loan is paid in full, Owner shall not sell, convey, transfer or further encumber the Property or any part thereof or any interest therein (whether legal, equitable, or beneficial), whether voluntarily, by gift, bequest, operation of law, merger, or in any other manner, as required by HUD and as stated in the Deed of Trust.

H. The City is obligated to comply with certain requirements with respect to reporting to HUD about the use of its Section 108 loan proceeds for the construction of the Project and this Agreement contains provisions for the Owner to submit information to the Director on various aspects of the Project. Owner shall submit this information to the Director on the forms from time to time provided and required by the Director to be used by the Owner ("Monitoring Forms").

I. The Project Budget, the Scope of Work and the Construction Schedule are attached hereto in the Exhibits to this Agreement.

J. Owner has submitted to the Director a signed Certificate regarding lobbying ("Lobbying Certificate") in the form set forth in the Appendices to this Agreement (or in the form in effect at the time the Lobbying Certificate was submitted to the Director).

K. In addition to the provisions of the main text of this Agreement, this Agreement consists of "Appendices" and "Exhibits" as follows:

1. Exhibits ("Exhibits"), setting forth;
 - A. Legal Description of the Property;
 - B. Project Budget, including Construction Budget;
 - C. Scope of Work; and
 - D. Construction Schedule.
2. Appendices ("Appendices"), setting forth the specifics of requirements described in this Agreement or other City forms, policies requirements, which specifics and forms may be modified by the City from time to time or which may change as a result of change in or to Applicable Law, relating to:
 - A. Applicable Law;
 - B. Construction Contract Requirements;
 - C. Lobbying Certificate; and
 - D. Debarment Form.

L. The recitals and statements contained in this Section One shall be incorporated into this Agreement, and Owner confirms, agrees and acknowledges that the information contained in this Section One is true and correct and, to the extent that any of the subsections contained in this Section One contain covenants or agreements of Owner, Owner hereby covenants and agrees to comply with the terms therewith.

SECTION II

REPRESENTATIONS AND WARRANTIES

Owner hereby represents and warrants, and such representations and warranties shall be deemed to be continuing representations and warranties during the entire term of this Agreement, and for so long as the City shall have any commitment or obligation to make any disbursements of the City Funding hereunder, and so long as all of or any part of the City's Funding remains unpaid and outstanding under any Loan Documents, as follows:

2.1. Ownership of Property. Owner holds and will hold at the time of Closing fee simple title in and to the Property located in College Station, Brazos County, Texas, having an address of 1105 Anderson Drive, College Station, Brazos County, Texas, and more particularly described on Exhibit A.

2.2. Information Submitted is True and Correct. The information contained in or submitted in connection with Owner's application to, and in any communications with, the City for the City Funding, as amended by further information provided and disclosed to the City, is true and correct.

2.3. Taxes and Assessments. There are no delinquent taxes, assessments, or other impositions on the Property or Project, or if there are any delinquent taxes, assessments, or other impositions on the Property or Project, same will be paid prior to Closing.

2.4. Financial Capacity.

2.4.1. The financial representations made to the City by Owner concerning Owner's financial condition are true and correct and, upon the Closing of the City Funding, Owner has the financial capacity to carry out its obligations under this Agreement and the Loan Documents. If any material negative change in either Owner's financial condition occurs, Owner shall report such change to the City within five (5) business days.

2.4.2. The Owner is in good standing on all outstanding loans and loan commitments with no defaults or negative collection actions on any current or previous loans that City reasonably determines would adversely impact the ability of Owner to perform hereunder. Neither Owner is in default with respect to any order, writ, injunction, decree or demand of any court or other Governmental Authority, in the payment of any Indebtedness of borrowed money or under any agreement or other papers evidencing or securing any such debt.

2.4.3. Owner has filed all tax returns required to be filed and paid all taxes shown thereon to be due, including interest and penalties, except for taxes which are being diligently contested in good faith and for payment of which adequate reserves have been set aside.

2.5. Authority. All action on the part of Owner necessary to authorize the transactions contemplated by this Agreement has been taken, and upon execution of this Agreement, this Agreement shall constitute the binding and enforceable obligation of Owner.

2.6. Liens. As of the Closing Date, there are no existing or threatened liens against the Land or Project, and the Owner do not know of any reason such liens may be filed or threatened against the Property or Project. As of the Closing Date, all payables and liabilities to parties

providing goods or services to Owner have been paid and no payables or liabilities exist that are more than thirty (30) days outstanding. If a mechanic's lien claim is filed against the Property or Project at any time prior to the end of the Restricted Use Period, Owner shall promptly notify the City and shall have it promptly discharged or bonded-around so that the lien no longer impairs the Project.

2.7. Project Budget. The Project Budget specifies a listing of all costs necessary to complete the Project.

2.8. Expertise. Owner has engaged or will engage competent persons and firms for constructing, leasing and managing the Project.

2.9. Legal Existence. Owner is a non-profit corporation, duly created and validly existing and in good standing under the laws of the State of Texas.

2.10. Plans, Specifications, Permits, and Utilities. The Plans and Specifications are, or upon delivery to City will be, complete and adequate for the Work. To Owner's knowledge, the Plans and Specifications comply, or when delivered to City will comply, and the Work, when completed in accordance with the Plans and Specifications will comply, with all applicable restrictive covenants, zoning ordinances and building codes, the Americans with Disabilities Act and all other applicable Legal Requirements. All necessary permits, approvals or consents necessary for the Work have been obtained or will be obtained prior to the delivery of any Request for Draw for such Work and are or will be at all times thereafter in full force and effect. All utility service, in sufficient size and capacity, necessary for the operation of the Project and, where applicable, the construction of the Project is (or, where applicable, will be when called for in the Plans and Specifications) available at the boundaries of the Project, including water supply, storm and sanitary sewer facilities, gas, electric, cable television, telephone, and internet facilities.

2.11. Cost of Work. The Project Budget reflects all costs of all labor and materials required complete the Work, together with all related costs and expenses. Owner is required to provide in writing to the City with a minimum of thirty (30) days if and when the cost of the remaining Work shall exceed or appear likely to exceed the amount of unadvanced proceeds of the City Funding available under the Project Budget and Work Write-Up to pay the cost of the Work, either in the aggregate or with respect to any particular item in the Project Budget or Work Write-Up, and shall give City sufficiently detailed information with respect thereto. If the City determines at any time that the unadvanced proceeds of the City's Funding for the costs of the Work will be insufficient to pay for completion of the Work, Owner shall provide evidence to City that Owner has the financial ability to fund that amount, when and if due to complete the Work.

2.12. Commencement of Construction; Prosecution of Construction. Owner will commence the Work on or before the Commencement Date, and will prosecute construction of the Project in accordance with the Plans and Specifications, all applicable Legal Requirements, this Agreement and other Loan Documents and with diligence and dispatch and without cessation of work thereon for a period in excess of twenty (20) Business Days, except for delays due to strikes, riots, acts of God, war, unavailability of labor or materials, unusually inclement weather, fire or other causes outside the control of Owner. Owner will cause the Project to be executed and

completed in accordance with the Plans and Specifications and all applicable Legal Requirements, free and clear of all liens (other than those in favor of City), with Evidence of Completion delivered to City with respect to all the Work on or before the Completion Date.

2.13. Regulation U. None of the proceeds of the Loan will be used for purchasing or carrying, directly or indirectly, any margin stock or for any other purpose which would make such Loan a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System.

SECTION III

CONDITIONS PRECEDENT FOR CITY CLOSING AND FUNDING

All the conditions listed in this Section must be satisfied by the date of Closing of the City's Funding and the satisfaction of each of such conditions shall be a condition precedent to closing of the Loan:

3.1. Execution and Approval of Architects Contract. The Owner and the Architect (if any) shall have executed the Architect's Contract which shall have been approved by the Director; the Architect's Contract will be collaterally assigned to the City as additional security for the repayment and performance of the Loan pursuant to an "Assignment of Architect's Contract, Plans and Specifications, and Consent" instrument in the form set forth in the Attachments ("Assignment of Architect's Contract, Plans and Specifications, and Consent").

3.2. Approval of Plans, Specifications, and Drawings. The City shall have approved the scope of the Work, any site plans, floor plans, wall sections, architectural, structural, civil, HVAC, mechanical, electrical, plumbing, accessibility requirements (which also must be approved by an accessibility expert), construction and landscaping plans, and any other applicable drawings (collectively, the "Plans and Specifications") required for the construction of the Project according to the Approved Construction Contract, which must be in detail great enough to provide a sound basis for the City to effectively monitor the compliance of the construction with the Plans and Specifications. The Plans and Specifications will also be collaterally assigned to the City as additional security for the repayment and performance of the Loan pursuant to the Assignment of Architect's Contract, Plans, Specifications, and Consent. The Scope of Work to be reflected by the Plans and Specifications shall not vary from the Scope of Work attached hereto as Exhibit C unless such variance is approved in writing by the Director.

3.3. Approval of Construction Schedule and Drawdown Schedule. The Director shall have approved the construction schedule and drawdown schedule for the Project (collectively referred to as the "Approved Final Construction Schedule") which Approved Final Construction Schedule shall not vary from the Construction Schedule attached hereto as Exhibit D unless such variance is approved by the Director in writing.

3.4. Budgets.

3.4.1. Approved Final Operating Budget. Prior to Closing, the Director shall have approved a detailed operating budget ("Approved Final Operating Budget") for the Project; the Approved Final Operating Budget shall include a cash flow projection of all Project related

income, expenses, debt service on all debt encumbering the Project, reserves for replacements of capital items, and any other costs associated with the operation of the Project. An updated operating budget including a cash flow projection shall be submitted for the Director's approval on an annual basis thereafter for each subsequent year (unless required on a more frequent basis by the Director) in a form as the Director may require

3.4.2. Approved Final Construction Budget. The Director shall have approved a detailed budget final Construction Budget which shall include all costs to construct the Work and any other construction costs for the Project ("Approved Final Construction Budget"), and all other costs necessary to complete the Project per the Plans and Specification and Approved Construction Contract, which approved Final Construction Budget shall not vary from the Construction Budget included in Exhibit B, unless such variance is approved in writing by the Director. The Approved Final Construction Budget shall be in such forms as the Director may require, and shall be in sufficient detail to permit the City to effectively and adequately monitor the use of the Loan proceeds for the payment of costs pursuant to the Approved Final Construction Schedule to ensure that Loan proceeds are expended only for costs eligible under applicable HUD regulations including but not limited to 24 CFR Part 570, if applicable, those regulations listed in Appendix A and other cross cutting federal regulations. Subsequent to the Closing, any changes to the Approved Final Construction Budget must be approved in writing by the Director. If required by the City, the Owner, at its own expense, shall engage appropriate third party inspectors acceptable to the Director, in his or her sole discretion, or alternatively, the City, at its own expense, may utilize its own internal or external inspectors (collectively, "Approved Inspectors") to verify the budgets submitted to the Director for approval under this Section, to report to the Director on the adequacy and reasonableness of the amounts set forth in such budgets to complete the Project and the Work according to the Plans, Specifications and Drawings and to verify that all draws under the Approved Final Construction Budget conform with such budget, that all labor and material for which disbursement is requested have gone into the Project in accordance with the Plans, Specifications and Drawings and that the remaining undisbursed portion of the Loan are adequate to complete the Work and the Project. The agreement with any Approved Inspectors shall provide that the City is entitled to rely on the Approved Inspector's Reports and that the reports shall be addressed to the City.

3.5. Construction Contract and Related Matters.

3.5.1. Approved Construction Contract. Owner and Contractor shall have executed the Construction Contract approved by the Director ("Approved Construction Contract"), which Approved Construction Contract will be collaterally assigned to the City as additional security for the City Funding pursuant to an "Assignment of Construction Contract" instrument in the form set forth in the Attachments ("Assignment of Construction Contract"). The Approved Construction Contract shall be for a stipulated sum.

3.5.2. Bonds. Owner shall furnish or cause Contractor to furnish (a) a performance bond, with dual obligee rider naming the City as an additional beneficiary, for the full amount (100 percent) of the construction or rehabilitation price ("Performance Bond"); (b) a maintenance bond to secure the Defects Warranty ("Maintenance Bond"); and (c) a statutory payment bond

("Payment Bond") for 100 percent of the contract price. The surety upon any required bond must be on the current list, published by the United States Treasury Department, of acceptable sureties for federal bonds. The form of the Performance Bond, Maintenance Bond, and Payment Bond shall be as set forth in the Attachments or in other forms approved by the City.

3.5.3. Defects Warranty. Owner shall expressly and unconditionally agree to warrant and guarantee ("Defects Warranty") for a period of one (1) year all work performed, or materials supplied to be free of defects, omissions, unsoundness or flaws, by executing the Maintenance Bond in the form set forth in the Attachments or in other form approved by the Director. The one (1) year period shall commence on the date of issuance of the last Certificate of Occupancy. The Defects Warranty shall include any condition which may impair or tend to impair the safe and normal use, functioning or enjoyment of the Project and which results in any manner from all labor and/or materials used or supplied under the Approved Construction Contract whether the materials or equipment are guaranteed by the manufacturer or supplier. The Defects Warranty shall not be construed to limit or in any way modify any warranties or guarantees placed upon any materials, appliances, fixtures or devices by their manufacturers, or any components for which a longer period of warranty is required in the Approved Construction Contract. The Maintenance Bond shall provide that the Owner shall obtain all manufacturers' and suppliers' written guarantees, warranties and operating instructions covering materials and equipment furnished under the Approved Construction Contract together with any documentation required for validation of such guarantees and warranties.

3.6. Lobbying. On or before the Closing of the Loan, Owner and Contractor shall each submit to the Director a signed Certificate regarding lobbying in the form set forth in the Attachments (or in the form in effect at the time the Certificate is required to be submitted to the Director).

3.7. Appraisal. The Owner shall obtain an appraisal of the value of the fee interest in the Property, which shall specify an estimate of the "as completed" fair market value of not less than 125 percent (125%) of the principal balance of the Section 108 Note plus 125% of any outstanding balance on other indebtedness secured by a mortgage lien of senior or equal priority on the Property, if agreed to by the Secretary. The appraisal shall meet the definition of an appraisal under the URA at 49 CFR § 24.2(a) (3), which shall be done in accordance with the requirements of the URA at 49 CFR § 24.103. The appraisal shall be acceptable to the Director and shall be prepared by a qualified appraiser approved by the City who is certified by the State of Texas and has a professional designation (such as "SRA" or "MAI"). The appraisal shall conform to the standards of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

3.8. Survey. The Director shall have approved a current survey ("Survey") of the Property complying with the "Survey Requirements" ("Survey Requirements") in the Appendices and showing, among other things detailed in the Survey Requirements, that none of the improvements located within the Project are within an identified (shaded) special flood hazard area (including without limitation, the 100-year flood hazard area). The survey shall be certified

with a legal description conforming to the title policy and the Deed of Trust, Assignment, Security Agreement, and Fixture Filing.

3.9. Title Commitments; Title Insurance. The Title Company shall issue at Owner's expense, in substance approved by the Director, a Commitment to issue to the City a Loan (Mortgagee's) Policy of Title Insurance ("City's Loan Title Policy") in a form acceptable to the Secretary naming the City as Insured, including in the definition of Insured each successor in ownership of the indebtedness secured by the Deed of Trust, Assignment, Security Agreement and Fixture Filing or to be accompanied by an endorsement of the policy to the Secretary and insuring the first lien priority of the lien securing the City's Loan, subject only to (1) the City's Restrictive Covenants; and (2) Schedule B Exceptions approved by the Director, in their reasonable discretion.

3.9.1. Arbitration Deleted. The arbitration provisions of the Loan Policy shall be endorsed as deleted.

3.9.2. Insured Closing Service Letter. The Title Insurer shall have issued the City an "insured closing service letter" relating to the closing of the Loan and such insured closing service letter shall be in effect as of the time of the closing of the Loan.

3.10. Environmental. Owner shall have executed and delivered an "Environmental Indemnity Agreement" in favor of the City (the "Environmental Indemnity Agreement") in the form set forth in the Attachments or on another form approved by the City.

SECTION IV

CLOSING

In addition to all the conditions listed in Section III being satisfied as conditions precedent to closing of the Loan, the City shall not be obligated to close the Loan unless the following requirements are satisfied:

4.1. Delivery and Execution of Documents. Owner must, concurrently with Closing of the City's Funding, execute, or cause to be executed as applicable, and deliver to the City, together with any other documents, certificates, affidavits, policies and other deliverables required hereunder or under any of the Appendices hereto or otherwise reasonably required by the City including, but not limited to, the following:

1. Note;
2. Deed of Trust;
3. Financing Statements;
4. Assignment of Construction Contract;
5. Assignment of Architect's Contract;
6. This Agreement;
7. Environmental Indemnity Agreement;
8. Certification Regarding Lobbying;
9. Certification Regarding Debarment;

10. A copy of the fully executed Construction Contract;
11. A copy of the fully executed Architects Contract;
12. A copy of the Plans and Specifications;
13. A copy of the Construction Schedule;
14. A copy of the Operating Budget, including rent roll or proforma projection;
15. A copy of the Construction Budget;
16. A copy of the Appraisal;
17. A copy of the Survey;
18. Certificates or policies of Owner's insurance required by this Agreement or by the Deed of Trust;
19. Payment, Performance, and Maintenance Bonds;
20. City's Loan Title Policy, or a Commitment to issue the same, dated as of the Closing Date, and the Insured Closing Letter;
21. Resolutions of Owner authorizing the Loan or other evidence satisfactory to the Director that Owner has the authority to enter into the transactions contemplated by this Agreement in a form acceptable to the City;
22. A legal opinion of Owner's counsel addressing, without limitation the authority of the parties signing this agreement and the closing documents on behalf of the Owner and the Guarantor and as to the enforceability of such documents in a form acceptable to the City Attorney. The opinion, on the Owner's counsel's letterhead, addressed and satisfactory to the Secretary, shall state that (a) the Owner is duly organized and validly existing as a nonprofit corporation under the laws of the State of Texas, is existing and in good standing in and under the laws of the State of Texas; (b) the Note has been duly executed by a party authorized by the Owner to take such action and is a valid and binding obligation of the Owner, enforceable in accordance with its terms, except as limited by bankruptcy and similar laws affecting creditors generally; (c) the Agreement and the Deed of Trust, Assignment, Security Agreement, and Fixture Filing, Financing Statement, are valid and legally binding obligations, enforceable in accordance with their respective terms; and
23. Such other information and documentation which may be required by the Director to evidence Owner's satisfaction of the conditions required by the City to close the Loan.

4.2. Waiver of Conditions; Additional Conditions. The Director may, by written instrument, waive any of the conditions or requirements set forth in this Agreement as a condition precedent to or a requirement of Closing of the Loan, provided that waiver of any condition or requirement shall not operate as a waiver of the City's right to enforce any other condition or requirement set forth in this Agreement. In addition, the written consent of the City Attorney shall be required for the waiver of any legal requirement of the Loan Documents. The Director may impose such additional conditions to, or requirements of, closing of the Loan as are necessary under the circumstances or are otherwise customary in connection with construction financing

pursuant to the Act, specifically under Section 108 Loan Guaranty Program, CDBG programs, or other Federal guidelines or regulations.

4.3. Escrow of Loan Proceeds. At the sole discretion of the City, all or part of the Loan Proceeds may be disbursed to a title company or mortgage servicer approved by the Director, to be held in escrow for subsequent disbursement to Owner or for return to the City pursuant to the terms and conditions of this Agreement. Notwithstanding the foregoing, it is the understanding of the Owner and City that the City does not expect to fund its obligations hereunder through an escrow held by a title company or mortgage servicer.

4.4. Closing of Loan at Title Company. The closing of the Loan shall occur at a title company approved by the Director and the Secretary ("Title Company"). The Director reserves the right to require a representative of the Owner with authority to execute the Loan Documents will personally attend Closing at the office of the Title Company in College Station, Texas.

4.5. Closing Deadline. Notwithstanding anything contained in this Agreement to the contrary, Owner shall cause all conditions precedent to Closing to be satisfied on or before twelve (12) months from the date hereof (the "Outside Closing Date"). Unless Closing occurs on or before the Outside Closing Date (unless the Director, in their sole and absolute discretion, consents to an extension of the Outside Closing Date), the Director may, without providing prior notice, terminate this Agreement by written notice to Owner in which event the City's obligations hereunder shall automatically cease and be of no further effect. Notwithstanding the foregoing, if Closing does not occur within twelve (12) months from the date hereof, this Agreement will automatically terminate and be of no force and effect.

SECTION V

FUNDING LIMITATIONS

5.1. Dependency on Federal Funding. Owner understands that the availability of funding for the Loan is dependent upon federal funding. Unless and until the City receives adequate funds from HUD, the City shall have no obligation to Owner under this Agreement.

5.2. No Liability for Interruption of Funding. If HUD or other applicable governmental agency (for whatever reason) instructs the City to cease funding the Loan, the City may do so without obligation to Owner without being liable to Owner for any damages Owner may incur because of such cessation in funding. The City shall give Owner written notice of such instructions promptly upon receiving such instruction from HUD, at which time, all the City's obligations under this Agreement or any of the Loan Documents shall cease. In furtherance of the foregoing, if the City provides Owner with notice of interruption as contemplated in this Section V, Owner shall execute any releases or other documents or agreements that the City determines necessary to enable the City to reallocate all or a portion of funds that are available pursuant to this Agreement.

5.3. Environmental Clearance and Release of Funds. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute the City's commitment of funds or site approval, and that such commitment of funds and site approval may occur only upon satisfactory completion of environmental review and receipt by the

City of a written "release of funds" authorization from HUD under 24 CFR Part 58. The parties further agree that if the City is to provide any funds to the Owner in connection with the Project, such disbursement is conditioned on the City's determination to proceed with, modify, or cancel the Loan based on the results of a subsequent environmental review of the Property and the improvements thereon.

5.4. City Council Approval. This Agreement is subject to the approval of the City Council of the City of College Station.

SECTION VI

OWNER'S COVENANTS

Owner agrees as follows:

6.1. Use of Proceeds; Order of Funding and Disbursement; Reimbursement of Funds.

6.1.1. Use of Proceeds. Owner shall use the proceeds of the Loan only for items included in the Approved Final Construction Budget. Further, proceeds of the Loan shall only be used for hard costs or allowable soft costs, and Work performed that is eligible for payment under the Loan and other regulations applicable to the Loan.

6.1.2. Order of Funding and Disbursement. The proceeds of the City Funding shall be disbursed as set forth below:

6.1.2.1. Advances By the City. All advances of Loan Proceeds shall be made as follows:

6.1.2.1.1. Initial Disbursement. After Closing and upon satisfaction of all conditions precedent to the City's obligation to fund such advance as set forth in the Loan Documents, the City shall disburse up to the total sum requested in the manner set forth in the Loan Documents.

6.1.2.1.2. Subsequent Disbursements. Upon receipt by the City of subsequent Disbursement Requests and satisfaction of all conditions precedent to the City's obligation to fund such advance as set forth in the Loan Documents, the City shall fund such amounts in the manner set forth in the Loan Documents.

6.1.2.1.3. Project Completion. Upon completion of the construction of the Project, and upon satisfaction of all conditions precedent to the City's obligation to fund such advance as set forth in the Loan Documents, the City will disburse up to the lesser of (i) the remainder of the Loan or, (ii) the amount requested in the manner set forth in the Loan Documents.

6.1.2.1.4. Disbursements Not to Exceed. In no event shall the City be obligated to fund more than the Loan Amount.

6.1.2.2. Compliance with Loan Documents. Owner represents and warrants to City, that, as of the date of any request for disbursement, that neither Owner nor the Project is in breach, violation, or default under any of the Loan Documents.

6.1.3. Reimbursement to City. Owner agrees that it will reimburse the City in a sum equivalent to the amount of disallowed expenditures in the event that HUD or other applicable state or federal agency, through audit exception or other action, determines that Owner's expenditure of funds loaned to it under this Agreement for the Project was not made in compliance with this Agreement (including without limitation, for the purposes set forth in Section Six, Paragraph 6.1.1 hereof) or Applicable Law. Notwithstanding anything to the contrary, this provision shall survive the end of the term of this Agreement.

6.2. Construction Matters.

6.2.1. Commencement and Completion of Work; Change Orders. No Work shall commence on the Project prior to the Closing of the Loan. Owner shall begin the Work no later than sixty (60) days of the date of this Agreement, but the City shall have no obligation to fund any portion of the Loan until the issuance of all City authorizations and required permits, including without limitation the Notice to Proceed to be issued by the City. Owner shall complete the Work in accordance with the Approved Final Construction Schedule but in no case later than () months after Closing, subject to force majeure not to exceed 60 days, time being of the essence (the "Approved Construction Period"). Any changes to the Approved Final Construction Schedule, Approved Construction Contract, Approved Construction Period, or the Approved Plans, Specifications, and Drawings must be approved by the City. The foregoing provisions shall not prevent Owner from making non-structural, finish type changes to the approved Plans, Specifications, and Drawings or to the Approved Construction Contract without consent of the Director; provided such changes do not increase the Approved Final Construction Budget, and do not cost in the aggregate more than \$50,000 with a single change costing no more than \$15,000.00 each as documented by appropriate change orders.

6.2.2. Subject to waiver by the Director, Owner shall not be entitled to receive any disbursements of the City Funding after the expiration of the Approved Construction Period

6.2.3. Good and Workmanlike Manner; Engagement of Experts. Owner shall perform or cause to be performed, the Work in a good and workmanlike manner and in strict accordance with the Approved Plans, Specifications and Drawings, the Approved Final Construction Schedule, the Approved Final Construction Budget and the Approved Construction Contract. Owner shall engage or employ competent persons and firms for constructing, leasing, and managing the Project.

6.2.4. Compliance with Approved Construction Contract. Owner shall fully and timely perform its obligations under the Approved Construction Contract.

6.2.5. Written Agreements with Subcontractors. Owner shall cause Contractor to enter into written agreements with each Subcontractor who does work on or delivers materials to the Project. These subcontracts, upon request by Director, shall be subject to review and approval by

the Director; to the extent that the Director requires, subcontractors shall be required to execute assignment and subordination of liens in favor of the City.

6.2.6. Construction and Supply Contract Requirements. The Approved Construction Contract and any other written agreements with contractors, subcontractors, or suppliers (collectively, for "Construction and Supply Contracts") shall meet the requirements set forth in the Appendices attached hereto under the title "Construction Contract Requirements" (collectively, the "Construction and Supply Contract Requirements") (if the Owner acts as the "contractor" of the Work) and shall comply with the Construction and Supply Contract Requirements. Each Construction and Supply Contract must comply with the federal labor standards provisions of the Davis-Bacon Act, as amended (40 U.S.C. §§ 276a, et seq.); compliance with the Davis-Bacon Act may be verified through on-site inspections by representatives of the City or at the City's option, the Approved Inspectors. In addition, each Construction and Supply Contract must require compliance with Department of Labor regulations at 29 CFR Parts 1, 3, 5, 6 and 7.

6.2.7. Owner's Insurance Requirements. Until such time as construction is complete and the Certificate of Completion is issued to Owner, Owner shall cause its Contractor to maintain insurance with waiver of subrogation against the City, its predecessors, successors, assigns, legal representatives, and its former, present and future agents, employees and officers (the foregoing are collectively referred to herein as "City") and, except with respect to workmen's compensation, shall name the City as an additional insured party. Notwithstanding the foregoing, during any period of time when construction is ongoing, Owner shall cause builder's risk insurance to be maintained by Contractor for those buildings at the Project undergoing construction in coverage amounts not less than the total respective amount of funds that will be allocated to pay for the cost of the Work contemplated by this Agreement.

6.2.8. Debarment. No contractor or subcontractor shall be employed who is debarred or suspended by the City, HUD or any other federal, state or local governmental program. The Debarment form included in the Appendices (or the Debarment form in effect at the time the form is required to be submitted to the Director) shall be furnished to the Director on or before the execution of this Agreement.

6.3. Inspections; Corrective Actions.

6.3.1. During construction, the Work shall be subject to inspection by the City, HUD or at the City's option, any Approved Inspectors. Until Project Completion, in connection with every requested draw on the City Funds, Owner shall provide the Director, at Owner's expense, with an inspection report in form and substance acceptable to Director from the Approved Inspectors.

6.3.2. Owner shall promptly make any corrections or modifications to the Work as requested by the Director to cause the Work to comply with the terms of this Agreement, the inspection reports from the Approved Inspectors, the Approved Plans and Drawings, the Approved Final Construction Schedule, and any applicable HUD requirements.

6.3.3. After the Certificate of Completion is issued and throughout the entirety of the Term of the City Funds, the City and/or HUD shall have the right to inspect or have the Project

inspected by Approved Inspectors to ensure compliance with Applicable Law, this Agreement, and the Loan Documents.

6.3.4. With respect to all of the City's and HUD's inspection rights (1) the City, HUD, Approved Inspectors and the City's authorized agents and independent contractors, and others acting on its behalf, shall have access to the Project at reasonable times for purpose of monthly inspections; (2) each new or renewal lease of a unit or suite within the Project shall include a clause that permits the City's Approved Inspectors and HUD access to inspect such unit or suite at reasonable times (except in an emergency, when the inspection may be at any time); (3) neither the City nor HUD shall incur any liability to Owner, or any tenants as a result of such inspections; (4) the City does not guarantee the Work of the Contractor or any Subcontractor and the City shall not be liable in the event of the Contractor's or any Subcontractors' default, or for any damages caused by the Contractor, any Subcontractors, or their employees or agents.

6.3.5. It is expressly understood and agreed that City is under no duty to supervise or to inspect the work of construction, and that any such inspection by or on behalf of City is for the sole purpose of protecting the interests of City with respect to the Project. Failure to inspect the work or any part thereof shall not constitute a waiver of any of City's rights hereunder. Inspection not followed by notice of Default shall not constitute a waiver of any Default then existing; nor shall it constitute an acknowledgment that there has been or will be compliance with the Plans and Specifications, or applicable Legal Requirements or that the construction is free from defective materials or workmanship. It is further understood and agreed that any consents or approvals of City hereunder are for the sole purpose of protecting the interests of City under the Loan Documents and Owner shall have no right to rely on such approvals for Owner's purposes.

6.4. Compliance with Property Standards. The Work applicable to the improvements shall, at a minimum, be in compliance with all applicable local codes, construction standards, ordinances, and zoning ordinances (including without limitation, the City's Building, and Fire Codes). Owner shall, throughout the term of the City Funding, maintain the Project in good condition and repair, ordinary wear and tear excepted, and in accordance with the standards described in the preceding sentence. Owner shall have such time period as may be set forth in such standards (or if no time period is set forth therein, a reasonable period of time) in which to make any necessary repairs to the Project. City shall have the right to inspect the Project from time to time to insure compliance with such requirements, and may require Owner to make any necessary repairs to comply with such requirements in a reasonable period of time; provided, however, any repairs to correct a dangerous condition or imminent hazard shall be commenced immediately upon notice of such dangerous condition or imminent hazard and prosecuted diligently to completion.

6.5. Maintenance of Records; Financial and Operating Reports; Monitoring.

6.5.1. Owner shall maintain books of record and account in accordance with Good Accounting Practice in which full, true and correct entries shall be made of all its Property, dealings and business affairs. In addition, Owner shall maintain such records and make such reports as may from time to time be reasonably requested by

the Director to document compliance with all applicable Legal Requirements, including applicable HUD requirements, and the requirements of this Agreement.

6.5.2. Owner shall provide to the Director: (a) annual calendar year-end property operating statements not later than 45 days after the end of the calendar year; (b) current rent rolls (or occupancy reports) not later than the 10th day following the end of each calendar quarter (or upon a more frequent basis if requested by the Director) which contain at a minimum the following information (or other information as the Director may from time to time require) which correctly reflects for each leased unit: the unit or suite number, the tenant name, the effective lease date, the monthly rent; and (c) an annual audited financial statement for Owner within 180 days following the close of their respective fiscal year. Notwithstanding anything to the contrary, if Director requires, Owner shall provide such reports at more frequent intervals.

6.5.3. Owner shall accurately complete and provide the Director the Monitoring Forms or other forms from time to time established for use by the Director for monitoring purposes of the Funding Proceeds or to document Owner's compliance with the requirements of this Agreement.

6.5.4. The City shall have access to, and entitled to copies, of all information, including reports and data, prepared or assembled by Owner for purposes of meeting Applicable Law and contractual requirements under this Agreement.

6.5.5. Owner shall, upon the request of the Director, make available to the City at the location of the Project (or at another location in Brazos County, Texas) all records, reports and other information and data maintained by Owner relating to the Project, and shall cooperate with the City in connection with the City's review of such records and monitoring of the Project.

6.5.6. Owner shall maintain all records and other information regarding the Project for a period of not less than five (5) years after expiration of the Restricted Use Period unless a longer period is required under 24 CFR § 570.502. The information furnished to the City will be used to meet HUD's reporting requirements, measure the progress of the Project evaluate its impact and exercise general monitoring of the Project, as may be applicable.

6.5.7. Financial Information. Owner shall furnish or cause to be furnished to City with copies of each of the following:

6.5.7.1. As soon as available and in any event within ninety (90) days after the close of each fiscal quarter of Owner, the unaudited consolidated and consolidating balance sheets of Owner as of the end of such quarter year including contingent liabilities, the unaudited consolidated and consolidating statements of profit and loss of Owner for such quarter, and a cash flow statement of Owner for such quarter, together with a projection of cash flow for the next fiscal quarter of Owner, setting forth in each case in comparative form the corresponding figures

for the preceding fiscal quarter, prepared in accordance with, and certified by an appropriate officer or other responsible party acceptable to City to have been prepared in accordance with, Good Accounting Practice as of the date or dates and for the period or periods stated;

- 6.5.7.2. As soon as available and in any event within one-hundred eighty (180) days after the close of each fiscal year of Owner, the audited (by independent accountants), if requested by City, consolidated and consolidating balance sheets of Owner as of the end of such fiscal year including contingent liabilities, the audited (by independent accountants), if requested by City, consolidated and consolidating statements of profit and loss of Owner for such year, and a cash flow statement of Owner for such year, together with a projection of cash flow for the next fiscal year of Owner, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, prepared in accordance with, and certified by an appropriate officer or other responsible party acceptable to City to have been prepared in accordance with, Good Accounting Practice as of the date or dates and for the period or periods stated;
- 6.5.7.3. Promptly upon receipt thereof, one (1) copy of each written report submitted to and pertaining to Owner by independent accountants in any annual, quarterly or special audit made, if any; it being understood and agreed that all audit reports which are furnished to City pursuant to this provision shall be treated as confidential, but nothing herein contained shall limit or impair City's right to disclose such reports to any appropriate Governmental Authority or to use such information to the extent pertinent to an evaluation of any matter relating to the Loan Documents or to enforce compliance with the terms and conditions of any of the Loan Documents or to take any lawful action which City deems necessary to protect its interests under any of the Loan Documents;
- 6.5.7.4. Contemporaneously with the furnishing of each of the financial statements referred to above, a certificate of an appropriate officer or other responsible party of Owner acceptable to City stating that the signer has reviewed the terms of the Loan Documents, has set forth in or attached to such certificate such reasonable detail of such computations as is necessary to establish compliance with the covenants contained in the Loan Documents and has made, or caused to be made under his supervision, a review of the transactions and condition of Owner during the accounting period covered by such financial statement and that such review has not disclosed the existence during such accounting period, and the signer does not have knowledge of the existence, of any condition or event which constitutes an Event of Default or which with the passage of time or the giving of notice or both, would constitute an Event of Default, or if any such Event of Default or matter which with the passage of time or the giving of notice would constitute an Event of Default, existed or

exists, specifying the nature and period of existence thereof and what action Owner has taken or is taking or proposes to take with respect thereto;

6.5.7.5. Monthly, before commencement of completion of construction, a schedule detailing the progress of the Work and quarterly during the term of the Note, reports of the operations of the Project in Proper Form containing such information as the City may request including after the commencement of operation of the Project, a statement of income and expenses for the Project and a statement of changes in financial position and a balance sheet for the Project;

6.5.7.6. Not later than November 1 of each year during the term of the Note, Owner shall submit to the Director for review a proposed detailed Operating Budget (herein so called) for the Project for the next succeeding calendar year, showing the projections for gross income, Operating Expenses and Net Operating Income for the Project. Such budget, and any other budget or budget revision, shall be deemed approved by the Director unless written approval or disapproval from the Director is delivered to Owner within thirty (30) days after such budget or revision. If approved by the Director, such Operating Budget shall govern Owner's disbursement of Project income during the relevant calendar year. Revisions to the approved Operating Budget may be approved by the Director from time to time, based upon changed circumstances. Documentation of the preceding six months' actual disbursements pursuant to the approved Operating Budget shall be provided to the Director twice a year during the term of the Note; and

6.5.7.7. Promptly, from time to time, such other information concerning Owner or any of their respective businesses, assets, properties, conditions and operations as City may reasonably request.

6.6. Notice of Claims or Suits. Owner shall give the Director prompt written notice of any actions, suits, or other proceedings filed or any claims made against the Project, Owner, Guarantor or any other persons involved in the implementation or administration of the transactions contemplated by this Agreement.

6.7. Transactions with Affiliates. Except as otherwise provided in this Agreement and/or in any of the Loan Documents, during the term of this Agreement or any of the Loan Documents, Owner shall not enter into any transaction in connection with this Agreement with any director, officer, employee, partner, or affiliate of Owner without the prior written approval of the Director.

6.8. Taxes and Insurance. Owner shall pay all applicable taxes for the Project before delinquency and all insurance premiums for the Project at least 15 days before due date to prevent any lapse in coverage. Owner at its option shall either: (1) fund an escrow account for the payment of taxes and insurance premiums at a bank acceptable to the Director; or (2) provide the Director with written evidence acceptable to the Director that taxes and insurance premiums are paid prior

to the date that such taxes and insurance premiums are due. To the extent that Owner escrows funds with a bank acceptable to the Director, Owner shall provide the City with evidence of the adequacy of such escrows. Further, to the extent that Owner fails to escrow funds with a bank, the Director reserves the right to require Owner to escrow funds for taxes and insurance premiums with the City.

6.9. HUD Section 3 Requirements. Owner shall comply at all times with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C.1701 u).

6.10. Public Relations and Signage. All news releases and other public relations efforts, including advertising and signage, must be approved in advance by the Director, which approval shall not be unreasonably withheld, and must properly refer to the City's role in funding the Project. Owner will permit City and its duly authorized agents to place and maintain a sign on the Project at a suitable location selected by City, containing such information regarding the financing of the Project as City may deem appropriate.

6.11. Expertise. Upon request by the City, the City shall have the right to approve Owner's intention to retain any person or firm for constructing, leasing and managing the Project and Owner shall provide evidence of the expertise and competence of such persons and firms that Owner intends to engage for constructing, leasing and managing the Project.

6.12. Compliance with Applicable Law.

6.12.1. Owner shall acquire, construct, repair/re-construct, lease, maintain and operate the Project, and conduct all activities under this Agreement in accordance with all applicable federal, state, and local laws, rules, regulations and ordinances including, without limitation, those included in the Appendices and specifically set forth in this Agreement, as they may be from time to time amended and other applicable HUD requirements whether or not expressly stated in this Agreement or the Appendices (collectively, the "Applicable Law").

6.12.2. Owner will conduct all activities under this Agreement and the Loan Documents in accordance with Applicable Law.

6.12.3. Owner acknowledges and agree that they are required to comply with all Applicable Law with respect to lead-based paint (42 U.S.C. Sec. 483 l(b)) and asbestos containing materials within the Project.

6.12.4. Owner shall cause the Project and the Work to comply with the requirements of 2010 ADA Standards under the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), (except where HUD requirements require the application of UFAS (including, without limitation Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 et seq.) or other guidelines as set forth under 79 Fed. Reg. 29672), the Fair Housing Act Guidelines, UFAS (as applicable to the 2010 ADA Standards if the 2010 ADA Standards are chosen as the design standard for accessibility or in full if UFAS is chosen as the design standard for accessibility), and regulations and guidelines promulgated thereunder, as all of the same may be amended and

supplemented from time to time, the Texas Architectural Barriers Act, Article 9102, Tex. Civ. Stat. Ann. (1994) and the regulations and guidelines promulgated thereunder, and Chapter 10, subsection 60 of the Texas Administrative Code and the regulations and guidelines promulgated thereunder ("Chapter 10"), if applicable, as all of the same may be amended and supplemented from time to time (collectively, "Accessibility Requirements").

6.12.5. If applicable, Owner shall comply with program regulations at 24 CFR § 570, the Uniform Relocation Assistance and Real Property Policies Act of 1970 ("URA"), as amended, at 49 CFR § 24, and Section 104(d) of the Housing and Community Development Act of 1974, as amended, at 24 CFR § 42 and as modified by the Neighborhood Stabilization Program under the Housing and Economic Recovery Act, 2008 (FR-5255-N-01). Owner shall also comply with any applicable tenant protection requirements set forth in the Protecting Tenants at Foreclosure Act of 2009 ("PTAF"), as well as with any local codes or ordinances with respect to tenants' rights or tenant protection. If required by applicable law, Owner shall also comply with the Multifamily Relocation Requirements ("Multifamily Relocation Requirements") in the Appendices and shall submit to the Director copies of all documentation required by the Multifamily Relocation Requirements or relating to URA, which may include, without limitation, (i) a certification or affidavit, unless waived by the Director, affirming Owner has performed all appropriate due diligence in order to confirm compliance with the tenant protection requirements set forth herein, (ii) a Notice to Real Property Owner/Seller, (iii) Tenant Status Reports, (iv) all Notices with Tenant Acknowledgements as required by the URA and (v) other related forms described in the Multifamily Requirements. If required by applicable law, Owner shall also submit to Director copies of all tenant notices and the Seller's Occupancy Certification required under PTAF with respect to the tenant protection requirements, to substantiate that such notices, if required by applicable law, were provided either by the foreclosing City or by Owner as applicable.

6.12.6. Owner will comply with all applicable uniform administrative requirements, as described in 24 CFR § 570.502, as amended from time to time, and will carry out each of its activities under this agreement, in compliance with all Federal laws and regulations described in 24 CFR Subpart K, except that 6.22.6 Owner does not assume City's environmental responsibilities described at 24 CFR § 570.604; and 6.22.7 Owner does not assume City's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

6.13. Consulting and Developer's Fees. During the term of the Loan, without prior written approval of the Director, no consulting or developer's fees shall be paid by Owner directly or indirectly out of the proceeds of the City's Funding or out of the revenue of the Project.

SECTION VII

TERMS OF LOAN

7.1. Purpose; Term. The purpose of Loan is to finance the construction of the Improvements and to provide term financing upon completion of such work. The Loan is for a term beginning on the date of the Note and ending on the Maturity Date.

7.2. Commitment; Use of Funds. City agrees, subject to the terms and conditions of this Agreement, to make Draws to Owner under this Section prior to the Completion Date in an aggregate principal amount up to but not exceeding \$2,808,000.00 for the purpose of paying the cost of the Work in accordance with the Approved Final Project Budget and Approved Final Construction Budget. Owner shall not, without the prior written consent of City, apply or permit application of any funds drawn against the Note for any purposes other than the Work set forth in the Approved Final Project Budget and Approved Final Construction Budget or in excess, in the aggregate, of the respective amounts set forth in the Approved Final Project Budget and Approved Final Construction Budget. Any "contingency" line items for Hard Costs or Soft Costs as shown in the Approved Final Project Budget and Approved Final Construction Budget may be used for other Hard Costs items or Soft Costs items, respectively, without approval of, but with notice to, City. City is not required to make, and Owner will not apply, any Draw (i) to pay any item of Work in excess of the amount budgeted for it in the Project Budget, provided that if, as herein permitted, "contingency" line items are used for other items than those initially designated, Owner may apply funds from any Draw to pay such items so identified, to the extent of additions from contingency line items so used, (ii) to pay any item of Work not included in the Project Budget, (iii) to pay any item of Work in excess of the amounts necessary to complete construction of the Project and to pay other costs for the Work that are specifically provided for in the Approved Final Project Budget and Approved Final Construction Budget or (iv) to pay any principal payment required hereunder.

7.3. Reborrowing. Notwithstanding anything herein to the contrary, any principal payments made by Owner to City, including any payments of principal and interest as described in the Note, will not be available for reborrowing by Owner.

7.4. Interest.

7.4.1. Accrual of Interest. The outstanding principal balance of the Note shall bear interest as set forth in the Note.

7.4.2. Computation of Interest. All interest hereunder shall be computed based on a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

7.5. Repayment. The Loan (to the extent not otherwise prepaid as allowed under the Loan Documents) shall be repayable as follows;

7.5.1. Beginning on the first day of the first quarter after the date of the Initial Draw, and continuing quarterly until maturity, Owner shall pay to City equal installments of principal and interest necessary to amortize the outstanding principal balance of the Note.

7.5.2. All unpaid principal and interest shall be due and payable on the Maturity Date.

SECTION VIII

DISBURSEMENT PROCEDURES

8.1. Disbursement Limitations. The proceeds of the Loan shall be disbursed only for hard costs, allowable soft costs or relocation costs that (i) are included in the Approved Final Project Budget, (ii) have been approved by the Director, (iii) if for Work, are for Work that has been completed and which Work has been approved by the Director, and (iv) if for materials, are for materials purchased and stored on site or off site and approved by the Director. In the event all the Closing Conditions contained in this Agreement have been satisfied as of the Closing Date, the City shall disburse Proceeds as and when, and for the purposes and in amounts set forth in this Agreement.

8.2. Retainage. Disbursement for the Work or other expenses under the Approved Final Construction Budget shall be subject to a ten percent (10.0%) retainage under Section 53.101, et seq. of the Texas Property Code (as it may be amended from time to time), but notwithstanding the foregoing, in no case shall retainage be released prior to thirty (30) days following completion of the Work as certified by the Architect or other person acceptable to the City. At the time of the release of the retainage, the Project is or will be because of the release of retainage free of all liens relating to the Project, provided that Owner shall have the right to contest the validity of any liens or claims for liens, by bonding around such lien in accordance with the requirement of the Texas Property Code and by exercising other protective measures regarding disputed. At the time of the release of the retainage, Owner shall provide the City with a down-date endorsement (T-3), final lien waivers and/or such other documentation as may be required by the Director.

8.3. Reallocation of Proceeds. Any Funding Proceeds that are allocated for the Project but that are not expended for eligible costs under the Approved Final Project Budget pursuant to the terms of this Agreement shall be returned to the City.

8.4. Reallocation of Savings and Contingencies. Owner may, with the Director's written approval, reallocate savings from one category of the Approved Final Project Budget or from the contingency category of the Approved Final Construction Budget to another category of the Approved Final Project Budget for the Project.

8.5. Drawdown Procedure. Owner shall not request a disbursement of the Loan Proceeds except in accordance with the Approved Final Construction Schedule and Approved Final Project Budget. When a disbursement of Loan Proceeds is requested, Owner shall deliver to the Director (but in no event more often than once a month and for an amount of not less than \$5,000) an application for the disbursement (in a form required by the Director) (the "Disbursement Request") together with supporting documentation required by the Director (which shall include but not be limited to a down date endorsement to the City's Loan Title Policy, invoices and draw requests submitted by Contractor, interim lien waivers using forms provided by or acceptable to HUD, and monthly construction progress reports in a form reasonably acceptable to the Director for verification by a third party inspector or a representative of the City) and evidence of required permits. In addition to the other information required by the Director, the initial disbursement request shall include a copy of all required permits necessary to commence

construction. If the Director objects to an item (or portion thereof) included in any Disbursement Request or if all required information has not been submitted, then the Director shall notify Owner within 10 business days of receipt of the applicable Disbursement Request of the Director's objection and shall thereupon be relieved of any obligation to make a disbursement for that item until such time as Owner cures the objection(s) to the satisfaction of the Director. If the Disbursement Request is otherwise complete (as determined by the Director) and provided no Default or event that with the passage of time or giving of notice would constitute a Default has occurred, the City shall, within 30 calendar days following approval of Owner's request, fund the requested disbursement from the Loan less any amounts for items to which the Director has raised an objection and that have not been cured and less any retainage; provided, however, that the City shall not be required to make a disbursement (other than the last disbursement) in an amount less than \$5,000 nor shall the City be required to make more than one disbursement per month. With each draw, the Owner shall provide a down-date endorsement (T-3) to the Mortgagee Title Policy together with conditional lien releases from the Contractor and subcontractors for the Work performed through the date of the draw request, provided that Owner shall have the right to contest the validity of any liens or claims for liens, by bonding around such lien in accordance with the requirements of the Texas Property Code, and by exercising other protective measures regarding disputed liens.

8.6. Conditions to Draws. The obligations of City to make any Draw is subject to the accuracy of all representations and warranties of Owner in this Agreement or any other Loan Documents on the date of this Agreement and the date of the Draw (and City's receipt of evidence of such accuracy in Proper Form), to the performance by Owner of its obligations under the Loan Documents (and City's receipt of evidence of such performance in Proper Form) and to the satisfaction of the following conditions, each in Proper Form:

8.6.1. City shall have received no later ten (10) Business Days prior to the date of the requested Draw, a duly completed and executed Request for Draw and, with respect to each Draw for Hard Costs other than furniture, fixtures and equipment;

8.6.2. City shall have received, as part of the Request for Draw, executed lien waivers and, acknowledgements of payment (subject to retainage) through the date of the immediately preceding Draw (other than with respect to the final Draw, which shall include all periods through the Completion Date) from any and all of the General Contractor, subcontractors, materialmen, engineers, design professionals and any other Person for whom amounts were drawn under this Agreement as included in the immediately preceding Draw, or satisfactory evidence to confirm bonding around of any contested lien claims or the exercise of other protective measures regarding disputed liens;

8.6.3. prior to the date thereof, there shall have occurred, in the reasonable opinion of City, no material adverse change in the assets, liabilities or condition (financial or otherwise) of the Owner;

- 8.6.4. no Event of Default or any event or circumstance which could, with the passage of time or the giving of notice or both, constitute an Event of Default shall have occurred and be continuing;
- 8.6.5. the making of the Draw shall not be prohibited by any applicable Legal Requirement;
- 8.6.6. all the Loan Documents then required by City have been executed and delivered, and shall be valid, enforceable and in full force and effect;
- 8.6.7. all fees and expenses owed to City, if any, under any of the Loan Documents as of the date thereof shall have been paid in full;
- 8.6.8. no material default, or any circumstances which with the passage of time or the giving of notice or both constitutes a material default or event of default, under the Other Financing Documents has occurred and is continuing;
- 8.6.9. City is satisfied that, if drawn in accordance with this Agreement, the Approved Final Construction Schedule and Approved Final Construction Budget, the unadvanced proceeds of the Loan, together with such other sums as may have been deposited with City for the purpose of paying the costs of the Work, will be sufficient to pay for completion of the Work in accordance with the Plans and Specifications;
- 8.6.10. City shall have received copies, certified as true, correct and complete, of all construction contracts, engineer agreements and design professional agreements then in existence relating to the Work;
- 8.6.11. City shall have received evidence reasonably satisfactory to City as to the perfection and priority of the Liens created by the Loan Documents including a down date endorsement from the Title Company showing no additional claims against or exceptions to title to the Property as of the date of the applicable Draw or other satisfactory documentation provided to the City to confirm bonding around of any contested lien claims or the exercise of other protective measures regarding disputed liens;
- 8.6.12. For Draws after the commencement of the Work, City shall have received a report reasonably satisfactory to City as to the progress of the Work, the conformity of the Work with the Plans and Specifications, the sufficiency of the Loan Proceeds to fund the Work remaining to be completed, whether all materialmen, subcontractors and contractors have been paid for Work done to date, whether the Work can be completed by the Completion Date and any other matters which City requests to be reviewed;
- 8.6.13. the Request for Draw shall not contain any materially false, inaccurate or misleading statements; and
- 8.6.14. City shall have received such other documents as it may reasonably require relating to the requested Draw.

8.7. Direct Payment to Contractors. City may elect to pay any amount of any Draw which is to be used to pay any contractor, subcontractor, materialman or any design professional directly to them or it, instead of advancing that money to Owner, and will notify Owner if (and how) it has exercised that election on each occasion it does. All Draws made pursuant to a Request for Draw for payment of any other items set forth in the Approved Final Project Budget and Approved Final Construction Budget shall be drawn to or for the account of Owner as payment of Owner's obligation to the party paid.

8.8. Off-site Materials. City shall not be obligated to fund any Draw covering in whole or in part any equipment or materials not stored at the Project unless (i) such equipment or material is stored at a lumber mill or bonded warehouse reasonably acceptable to Director; (ii) City receives evidence reasonably satisfactory to City, and Owner warrants to City, that such equipment or materials shall be held separate and segregated from any other equipment, inventory or property being held at such lumber mill or bonded warehouse and shall be properly labeled and designated as the property of the Owner; (iii) City receives evidence reasonably satisfactory to City that such equipment or materials is insured as required by City and that City's lien against or interest in such equipment or materials is and shall continue to be perfected and superior to any other lien against such equipment or materials; and (iv) such Draw has been approved by the Director.

8.9. Reaffirmation of Representations. Each Request for Draw submitted by Owner shall constitute a reaffirmation and ratification of all representations and warranties set forth herein and in other Loan Documents as of the date of such Request for Draw (except as expressly set forth in the Request for Draw) and shall also constitute a representation and warranty of Owner that no Event of Default or, to Owner's Knowledge, any event or circumstance which, with the passage of time or giving of notice or both, could constitute an Event of Default has occurred and is continuing (except as expressly set forth in the Request for Draw).

SECTION IX

DEFAULT AND REMEDIES

9.1. Default. The Director may declare a default ("Default") under this Agreement or any one or more of the Loan Documents upon the occurrence of any one or more of the following circumstances:

9.1.1. Failure to Pay. If Owner fails to pay, when due, any portion of the indebtedness evidenced by the Note and/or Agreement and such failure continues for ten (10) days after written notice thereof.

9.1.2. Breach of Restrictive Covenants. If Owner breaches any covenant, condition, representation or warranty contained in the Restrictive Covenants and such breach continues for thirty (30) days after written notice thereof from the City to Owner.

9.1.3. Breach of Other Covenants or Conditions. Except for the breaches of covenants or conditions covered by Section Ten, Paragraphs 9.1.1 and 9.1.2 above, if Owner fails, refuses or neglects to perform fully and timely any obligation, or breaches any covenant or condition (including any condition prior to or subsequent to the issuance

of the Loan) under this Agreement, or under any other Loan Documents, and such failure continues for thirty (30) days after written notice from the City to Owner; provided, however that in the event that (i) any such cure periods would cause a violation to occur under Applicable Law or (ii) any breach or failure of performance of a life safety requirement, such event shall be deemed a Default hereunder without any notice or opportunity to cure.

9.1.4. Breach of Representations or Warranties. If any representation or warranty made by Owner in its application(s) for the Loan or in any of the Loan Documents, or this Agreement, is false or misleading in any material respect, Owner shall have thirty (30) days after written notice to the Owner from the City in which to take such action as may be necessary to cause the matter or thing represented to become true or not misleading; provided, however that in the event that (i) any such cure periods would cause a violation to occur under Applicable Law or (ii) such misrepresentation involves a financial covenant, such event may be deemed and declared a Default hereunder without any notice or opportunity to cure.

9.1.5. Voluntary Actions. If Owner is voluntarily adjudicated bankrupt, seeks, consents or does not contest the appointment of a receiver or trustee for itself or for all or part of its property, makes a general assignment for the benefit of creditors, does not pay its debts as they become due, or files a petition seeking relief under United States Bankruptcy Code.

9.1.6. Involuntary Actions. If a petition is filed against Owner under United States Bankruptcy Code or if a court of competent jurisdiction enters an order appointing a receiver or trustee for Owner or all or any material part of such party's property, and the order or petition is not discharged, dismissed or stayed within a period of ninety (90) days.

9.1.7. Dissolution or Liquidation. If Owner is a partnership, limited liability company, corporation or other legal entity and dissolves, liquidates, or merges with or is consolidated into any other entity without the written approval of the Director.

9.1.8. Destruction of the Project. If the Project is demolished, destroyed or substantially damaged, and it is not restored or rebuilt in accordance with the requirements of the Loan Documents.

9.1.9. Cessation of Work. If Work on the Project ceases for ninety (90) or more consecutive days unless such cessation of Work is caused by cessation of funding under the Loan or by an event of force majeure.

9.1.10. Liens and Other Encumbrances. If any mechanics', materialman' s or other similar lien or encumbrance is filed against the Project, or the fixtures, materials, machinery and equipment to be used in the Project or other collateral that secures the Loan, and the same is not discharged (by payment, bonding, which may include payment bond

furnished by contractor, or otherwise) within fifteen (15) working days following written notice thereof from the City to Owner.

9.1.11. Change in Ownership or Management.

9.1.11.1. If all or any part of Owner's interest in the Project is transferred, sold or assigned, voluntarily or involuntarily, except as permitted in this Agreement, or there is a change of management of the Project, at any time within the Term of the City Funding, such transfer of interest or change of management must first be approved in writing by the Director, which approval may be granted or withheld by the Director. In the case of a transfer of Owner's interest in the Project, the Director's consent, if any, shall not be effective unless or until the purchaser or transferee assumes in writing all obligations and covenants of Owner under the Loan Documents in a form acceptable to the Director and the City Attorney; or

9.1.11.2. If there is otherwise a change in control of Owner in violation of this Agreement; or

9.1.11.3. There is a change in Property Manager without Director's consent.

9.1.12. Failure to Complete. If Owner fails to complete the Work in accordance with the Approved Plans, Specifications, and Drawings that are approved by the Director within and the Approved Construction Period.

9.1.13. HUD, IRS or Other Audit Findings or Exceptions. If HUD the Internal Revenue Service, or other federal or state agency makes an audit finding or exception that relates to the Project, the funds provided under this Agreement, or Other Funding, provided, however, that if the audit finding or exception is curable, there shall be no Default unless the audit finding or exception is not cured within thirty (30) days after written notice to Owner of such finding or exception or for such greater period as shall be necessary to cure such finding or exception so long as Owner commences to cure such finding or exception within thirty (30) days after written notice thereof to Owner and satisfactorily completes such cure.

9.2. Owner's Right to Contest. Notwithstanding anything herein or in any of the other Loan Documents to the contrary, Owner will not be deemed to be in default hereunder for allowing, suffering or failing to pay, as applicable, any mechanics' or materialmen's lien, bills due to any contractor or subcontract, ad valorem taxes or assessments or any Lien, suit, action or proceeding that, in the absence of this Section, would, with notice or passage of time or both, constitute an Event of Default hereunder, if Owner is, in good faith, by appropriate proceedings contesting or protesting the validity, applicability or amount of any such mechanics' or materialmen's lien, bills due to any contractor or subcontractor, ad valorem taxes or assessments or any Lien, suit, action or proceeding; provided, however, that such contest or protest must stay or prevent a proceeding or action that may divest or impair Owner's title to any of its Property or which may affect the priority or validity of

the Loan Documents or any liens created thereunder, and City may, as a condition to Owner's right to contest, require Owner to establish an escrow or post a bond or other security that is adequate, in City's reasonable discretion, to compensate City for any losses, costs and expenses which it may suffer or incur as a result of any such divestiture or impairment of title or invalidity or loss of priority under any Loan Document (which escrow or security will be returned to Owner upon payment or release of the sums subject to contest). City will permit Owner to contest minor liens which do not exceed \$25,000 in amount without litigation or posting a bond. Owner shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest, promptly after the judgment becomes final. In any event each contest must be concluded and the sums due be paid prior to the date any writ or order is issued under which the divestiture or impairment of title or inability or loss of priority under any Loan Document is threatened.

9.3. City's Right to Cure. If Owner should fail to comply with any of their agreements, covenants or obligations under any Loan Document, then City (in the applicable Obligor's name or in City's own name) may, upon written notice to Owner, perform them or cause them to be performed for Owner's account and at Owner's expense, but shall have no obligation to perform any of them or cause them to be performed. Any and all expenses thus incurred or paid by City shall be Owner's obligations to City due and payable on demand, or if no demand is sooner made, then they shall be due on or before four years after the respective dates on which they were incurred, and each shall bear interest from the date City pays it until the date Owner repays it to City, at the Past Due Rate. Upon making any such payment or incurring any such expense, City shall be fully and automatically subrogated to the rights of the person, corporation or Governmental Authority receiving such payment. Any amounts owing by Owner to City pursuant to this or any other provision of this Agreement shall be secured by all instruments securing the respective Note. The amount and nature of any such expense and the time when it was paid shall be fully established by the affidavit of City or any of City's officers or agents. The exercise of the privileges granted to City in this Section shall in no event be considered or constitute a cure of the default or a waiver of City's right at any time after an Event of Default to declare the Note to be at once due and payable, but is cumulative of such right and of all rights given by this Agreement, the Notes and the Loan Documents and of all rights given City by law.

9.4. City's Remedies.

9.4.1. Upon the declaration of a Default by the Director and the failure by Owner to cure same within a time period specified herein (if any), the Director may in his or her sole discretion: (i) terminate this Agreement; (ii) accelerate payment of the Note and declare that all sums under the Loan are immediately due and payable; (iii) foreclose on the Project; (iv) cease funding any disbursements of the Loan; and/or (v) take any other action authorized or available under this Agreement, any of the Loan Documents or under Applicable Law or in equity. In the event of a Default, if the

Director so chooses this remedy, the outstanding principal balance of the Loan shall be immediately due and payable. Upon the occurrence of any Default regarding the Loan, the principal shall bear interest at a rate of the lesser of the Past Due Rate or the maximum rate of interest permitted to be contracted for by Applicable Law ("Highest Lawful Rate"). If the City elects to stop funding the Loan upon the occurrence and continuance of a Default, the Owner shall be obligated to continue and complete the Work at Owner's expense.

9.4.2. Notwithstanding any provision in this Section to the contrary, upon the occurrence of any Event of Default, City shall have the right, immediately and without notice, to take possession of and exercise possessory rights with regard to any property securing payment of the indebtedness evidenced by the Notes and perform any and all work and labor necessary to complete the Work and employ watchmen to protect any applicable property (all such sums reasonably expended by City in connection therewith to be deemed to have been paid to or advanced on behalf of Owner and to be secured by the Loan Documents). Upon the occurrence of an Event of Default, Owner hereby irrevocably constitutes and appoints City as the true and lawful attorney-in-fact of Owner with full power of substitution to complete, or cause to be completed, the Work in the name of Owner and hereby empowers such attorney or attorneys as follows: to use such sums as are necessary, including funds of Owner (including any balance which may be held in escrow and any funds which may remain unadvanced hereunder) for the purpose of completing the Work; to make such additional changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Work; to employ such contractors, subcontractors, agents, inspectors and architects and other design professionals as shall be reasonably required for such purpose; to pay, settle or compromise all existing bills and claims which are or may be liens against any of the Project or which may be reasonably necessary or desirable for the completion of the Work or the clearance of title; to execute all applications and certificates in the name of Owner which may be required by any construction contract; to endorse the name of Owner on all checks or drafts for the payment of insurance proceeds or other checks or instruments, whether to use such funds to complete the Work or to reimburse City for sums theretofore advanced or expended and to do any and every act with respect to the Work which Owner may do in Owner's own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. The attorney- in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the Work and to take such other action and require such performance as is deemed necessary.

SECTION X

ALLOCATION OF COST SAVINGS

AND RECOVERY OF DAMAGES FROM CONTRACTOR

10.1. In the event that (i) cost savings are achieved in connection with the performance of the Work and not otherwise reallocated in accordance with this Agreement or (ii) the Contractor or any Subcontractor selected to perform the Work on the Project makes a payment of damages to Owner for delays, defective workmanship or material, or for other items related to Work on the Project and such sums are not used by Owner to correct such defective workmanship or otherwise mitigate any damages related to Work on the Project resulting from such default by the Contractor or any Subcontractor, or pay other approved costs, Owner shall forego a Draw of such cost savings amount, or promptly pay to the City a portion of such cost savings which were not allocated or the sum received as payment of damages not otherwise used as described above, to be applied against the principal balance of the Loan.

SECTION XI

INSURANCE

11.1. Coverages. Owner shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the Work or the Project hereunder by the Owner, its agents, representatives, volunteers, employees, contractors or subcontractors. The policies, coverages, limits and endorsements required are set forth below.

During the term of this Agreement, Owner's insurance policies shall meet the minimum requirements of this section.

11.2. Types. Owner shall have the following types of insurance:

- (a) Commercial General Liability
- (b) Business Automobile Liability
- (c) Excess Liability
- (d) Owner and Contractor's Protective Liability
- (e) Workers' Compensation / Employer's Liability

11.3. General Requirements Applicable to All Policies. The following general requirements applicable to all policies shall apply:

- (a) Only licensed Insurance Carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (c) "Claims Made" policies are not accepted.

- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.
- (e) The City of College Station, its agents, officials, employees and volunteers, are to be named as “Additional Insured” to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents, officials, employees or volunteers.

11.4. Commercial General Liability. The following Commercial General Liability requirements shall apply:

- (a) General Liability insurance shall be written by a carrier rated “A:VII” or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
- (c) Coverage shall be at least as broad as ISO form GC 00 01.
- (d) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City’s review and acceptance.
- (e) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

11.5. Business Automobile Liability. The following Business Automobile Liability requirements shall apply:

- (a) Business Automobile Liability insurance shall be written by a carrier rated “A:VII” or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000.00. per occurrence for bodily injury and property damage.
- (c) Business Automobile Liability insurance shall be written by a carrier rated “A:VIII” or better rating under the current A. M. Best Key Rating Guide.
- (d) Policies shall contain an endorsement naming the City as Additional Insured and further providing “primary and non-contributory” language with regard to self-insurance or any insurance the City may have or obtain.
- (e) Combined Single Limit of Liability not less than \$1,000,000 per occurrence for bodily injury and property damage.
- (f) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.

- (g) The coverage shall include any autos, owned autos, leased or rented autos, non-owned autos, and hired autos.

11.6. Excess Liability. The following Excess Liability requirements shall apply:

Unless otherwise agreed in writing, excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the Agreement, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage.

11.7. Workers' Compensation / Employer's Liability Insurance. Workers' Compensation / Employer's Liability insurance shall include the following terms:

- (a) Employer's Liability minimum limits of liability not less than \$1,000,000.00 for each accident/each disease/each employee are required.
- (b) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
- (c) TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY

11.8. Certificates of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent on the most current State of Texas Department of Insurance-approved form, and shall contain the following provisions and warranties:

- (a) The company is authorized to do business in the State of Texas.
- (b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Department of Insurance or ISO.
- (c) Original endorsements affecting coverage required by the section shall be furnished with the certificates of insurance.

SECTION XIII

RELEASE AND INDEMNIFICATION

12.1. Release. OWNER, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS "OWNER") HEREBY RELEASE, RELINQUISH AND DISCHARGE THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FROM ANY LIABILITY AS A RESULT OF THE JOINT NEGLIGENCE OF THE CITY AS A RESULT OF ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR

PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH THIS AGREEMENT.

12.2. INDEMNIFICATION. OWNER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD THE CITY HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION WITH OWNER'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF OWNER IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. ALSO, DURING THE PERFORMANCE OF THE WORK AND UP TO A PERIOD OF FIVE (5) YEARS AFTER THE DATE OF FINAL ACCEPTANCE OF THE WORK, OWNER FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY, WHETHER OWNER IS IMMUNE FROM LIABILITY OR NOT.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY OWNER TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF OWNER. FURTHER, THE COVENANTS MADE IN THIS SECTION TOGETHER WITH ALL OTHER INDEMNIFICATION REQUIREMENTS OF OWNER SHALL BE JOINT AND SEVERAL OBLIGATIONS OF OWNER.

OWNER AGREES THAT WITH RESPECT TO ANY LEGAL LIMITATIONS NO OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF ITS INDEMNIFICATION OBLIGATIONS , SUCH LEGAL LIMITATIONS ARE MADE APART OF THE INDEMNIFICATION OBLIGATION AND SHALL OPERATE TO AMEND THE INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING SUCH CONFLICTING PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE INDEMNIFICATION OBLIGATION SHALL CONTINUE IN FULL FORCE AND EFFECT. THESE INDEMNITY PROVISIONS SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

SECTION XIII

NOTICE

13.1. All notices demands, certificates, or other communications hereunder shall be in writing and shall be deemed sufficiently given or served for all purposes when delivered personally, when sent by certified or registered mail, postage prepaid, return receipt requested or by private courier service, in each case, with the proper address as indicated below; provided that any such notices, demands, certificates, or other communications shall be deemed delivered on the date delivered, or if mailed, three (3) days after deposit in the U.S. mail. Where an email address is indicated below, notice shall also be sent to the applicable party by email as well as one of the other designated forms of notice but notice by email shall not satisfy the notice delivery requirement of this Agreement. Each party may, by written notice given to the other parties, designate any other address or addresses to which notices, certificates or other communications to them shall be sent as contemplated by this Agreement. Until otherwise so provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

TO THE CITY: City of College Station
c/o Community Services 1101 Texas Avenue
College Station, TX 77840 Attention: Director

TO OWNER: LULAC OAK HILL, INC.
1105 Anderson
College Station, Texas 77840
Attention:

SECTION XIV

MISCELLANEOUS

14.1. Relationship of Parties. The relationship of the City to Owner pursuant to this Agreement, the Note, and all other Loan Documents is that of City to borrower. Neither this Agreement, the Note, nor any of the Loan Documents creates any partnership, joint venture, or fiduciary relationship between City and Owner.

14.2. Parties in Interest. Except for the rights of HUD specifically set forth herein, this Agreement shall not bestow any rights upon any third party, but, rather, shall bind and benefit the City and Owner, and as applicable, benefit HUD. Neither the U.S. Government, HUD, any contractor, subcontractor or supplier, nor any other person or entity, is a party to or a third-party beneficiary of this Agreement.

14.3. Exculpation. The City shall not be liable to Owner or responsible in any manner to any third-party in connection with this Agreement.

14.4. Non-waiver. Failure or forbearance of either party hereto to insist on the strict performance of any obligation under this Agreement or to exercise any rights or remedies accruing upon default shall not be considered a waiver of the right to insist on and to enforce, by any appropriate remedy, strict compliance with any other obligation or to exercise any right or remedy occurring as a result of any future default or failure of performance.

14.5. Modification. Any alterations, additions, or deletions to terms which are required by changes in federal or state laws and regulations shall be automatically incorporated into this Agreement and shall take effect on the effective date of the laws or regulations.

14.6. Severability. In the event that any covenant, condition or provision of this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of the invalid covenant, condition or provision shall in no way affect any other covenant, condition, or provision, provided that the respective rights and obligations of the parties contained in the valid covenants, conditions and provisions of this Agreement are not materially prejudiced.

14.7. Choice of Law. This Agreement shall be performable and enforced in Brazos County, Texas, and shall be construed in accordance with the laws of the State of Texas and other Applicable Law. Venue shall be appropriate in Brazos County, as applicable.

14.8. Integration. Except as may be otherwise provided in this Agreement, this Agreement, the Appendices, Attachments, and Exhibits embody the entire Agreement between the City and Owner, and there are no other effective agreements, representations or warranties between the City and Owner in connection with this Agreement.

14.9. Assignability. This Agreement shall not be assignable in whole or in part by Owner without the prior written consent of HUD and the City which consent on behalf of the City shall be in the form of a resolution passed by City Council.

14.10. Survival. All the terms of this Agreement (including without limitation, the conditions listed in Section Three) shall survive the execution of the Note, Deed of Trust and other Loan Documents. The parties hereto expressly agree and acknowledge that the terms of this Agreement, except where specifically indicated herein, shall remain in full force and effect until the expiration of the Term of the Loan.

14.11. Captions. The use of captions in this Agreement is for convenience only and such captions shall not be used to define or limit the terms of this Agreement.

14.12. Applicable Law. The interpretation and application of this Agreement shall be in accordance with Applicable Law.

14.13. Multiple Counterparts; Effective Date. The parties have executed this Agreement in multiple originals, each having full force and effect, as of the Effective Date.

14.14. Approval by City or Director. All references to "reasonable" with respect to the granting or denying of the City's or the Director's approval shall be deemed to be "reasonable" if the Director is acting in his or her official capacity.

14.15. To the extent applicable, this Agreement is subject to the following:

14.15.1. Boycott Israel. If this Agreement is for goods and services subject to § 2270.002 Texas Government Code, Program Participant verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Agreement;

14.15.2. Boycott Firearms. If this Agreement is for goods and services subject to § 2274.002 Texas Government Code, Program Participant verifies that it i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and

14.15.3. Boycott Energy Companies. Subject to § 2274.002 Texas Government Code, Program Participant herein verifies that it i) does not boycott energy companies; and ii) will not boycott energy companies during the term of this Agreement.

14.16. Consents and Approvals. Any approval or consent required of the City or the Director under the Loan Documents is for the purposes of administering the City Funding for City's benefit only and does not constitute any type of warranty or guaranty to Owner that the plans, specifications, contracts or items of a similar nature for which approval or consent is sought is free from error, in compliance with Applicable Law or fit for the Owner's purpose. Owner acknowledge that neither the City nor the Director is an engineer, or an architect and that Owner is required to rely on its own architect, contractors and engineers in performance and monitoring of the Work hereunder. To the extent that any condition or provision of this Agreement or any other Loan Documents is subject to the approval or consent of the City or the Director and such consent is not expressly required to be "reasonable", such consent or approval may be granted or denied within the sole and absolute discretion of the City or the Director, as applicable. In all cases, any approval or consent required by the City or Director shall not be effective unless such consent or approval is in writing.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGE]

[SIGNATURE PAGE TO LOAN AGREEMENT]

OWNER
L.U.L.A.C. OAK HILL, INC.

CITY OF COLLEGE STATION

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

Exhibit A

Property Description

1105 Anderson Street, College Station, Texas

A000701, CRAWFORD BURNETT (ICL), TRACT 147.1, 5.41 ACRES, & ASSOCIATED
BPP

Exhibit B
Project Budget

Sources and Uses: This project will be carried out entirely utilizing the Section 108 funding.

Construction

Building Rehabilitation	\$	1,941,243
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Professional Fees

General Requirements	\$	116,475
Overhead	\$	116,475
Profit	\$	38,825
Construction Contingency	\$	220,000
Architectural	\$	30,000
Survey	\$	5,000
Engineering	\$	10,000
Permits	\$	10,000
Inspections	\$	20,000
Bond	\$	25,000
Environmental	\$	5,000

Other Soft Costs

Accounting	\$	15,000
Legal	\$	30,000
Total/Recording	\$	40,000
Soft Cost Contingency	\$	60,000

Relocation

Relocation Costs	\$	75,000
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Developer Fee

Developer Fee	\$	50,000
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Total Project Cost	\$	2,808,018
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Exhibit C
Scope of Work

M.E.K.

CONSTRUCTION, LTD.

February 8, 2021

Creative Property Management
8323 Southwest Frwy, Suite 330
Houston, TX

Attn: Bill Elsbree

Re: Lulac Oak Hill Apts – College Station, TX

REVISED PROPOSAL

Scope of Work

- 1) Concrete – Demo and repour 250 SF of concrete paving and repair broken curb in front of units #3. – **\$3,500.00**
- 2) Unit Demo – Remove and place in dumpster all existing kitchen cabinets and vanities, vinyl tile flooring and carpeting, toilets, tubs, tile tub surrounds, front doors, patio doors, storage doors in 50 units. - **\$45,000.00**
- 3) Carpentry – Remove and replace all fascia and soffit with new 2"x8" and 1"x4" Silva trim fascia. Existing soffits to remain with new 4" continuous aluminum vent. Add 38,060 SF of new 5/16" x 8.25" x 12' fiber cement textured siding and trim to all existing siding locations (14) buildings and (1) community building. Remove and replace 54 cedar pergolas with sunscreen added to roofs. Tyvek building wrap behind is included. - **\$564,130.00**
- 4) Roofing & Guttering
 - a. Remove and replace 497 squares of shingles. Install new Owens Corning Rhino V-20 felt over existing roof decking. Install new 1½" x 1½" galvanized drip edge and install new 40-year Owens Corning shingles. - **\$177,777.00**
 - b. Remove and replace guttering at existing building locations complete with 5" guttering, 3"x4" downspouts and splash blocks. - **\$17,534.00**
- 5) Windows and Sliding Glass Doors – Remove, reframe and replace windows and sliding glass doors at existing locations in (14) buildings and (1) community center. New windows to be flanged, double paned and Low-E366 glass and tempered where needed. Sliding glass doors to be 6'0"x6'8" with Low-E366 glass and tempered. (217 windows and 50 Sliding glass doors) - **\$134,300.00**
- 6) Exterior Doors/Millwork Materials – Furnish and install (52) new unit entry doors, 50 new storage doors. Door casing to match existing door units. Install shoe molding as needed for vinyl flooring. - **\$43,922.00**

11322 Neeshaw Dr. Houston, Texas 77065 * (281) 469-3328 * FAX (281) 469-3840

- 7) Interior Trim Labor – Install exterior doors, handicap blocking at new showers and shoe molding and hardware. - **\$15,300.00**
- 8) Cabinets – Install new kitchen cabinets and vanities in (49) units and community center complete with counter tops. Cabinets to be regular standard wood front cabinet with slab or shaker doors in standard color stain. Countertops to be Wilsonart standard colors. (Please note that in the (5) handicap units there are no vanity cabinets only wall hung sinks). - **\$204,313.00**
- 9) Plumbing – **\$157,000.00**
 - a. Plumber will disconnect all P-traps and supply lines before demo of cabinets, vanities, tubs and toilets.
 - b. Supply and install
 - 45- 22x33x6 Kitchen sinks
 - 6 – 22x33x4 ADA Kitchen sinks
 - 51 – Chrome Kitchen faucets with spray
 - 45 – 1/3 HP Garbage disposals with power cords
 - 52 – Laundry chrome faucets
 - 45 – 17x19 Oval china lavatories
 - 7 – Wall hung china lavatories at the HC units and common building
 - 47 – ADA elongated toilets
 - 47 – Toilet flanges
 - 45 – 30x60 Fiberglass shower bases
 - 50 – Chrome shower valves
 - 258 – ½ turn angle stops
 - Shower pans at HC units to remain
- 10) Miscellaneous Framing – Furnish and install blocking at new shower locations for future accessories. Shower pans, valves, studs at shower ends, curtain rods, etc. - **\$30,600.00**
- 11) Drywall – Furnish and install USG Durock Tile backer in 45 new shower locations. (Shower pans at HC units to remain as they are) - **\$41,000.00**
- 12) Ceramic Tile / Vinyl Plank
 - a. Install 3x6 Ceramic tile at all unit kitchen back splashes - **\$10,554.00**
 - b. Install 12x24 GS-Tile at unit shower wall surrounds (8' AFF) - **\$22,310.00**
 - c. Install vinyl plank 6"x48" 3.2mm click floating vinyl plank flooring at entry, kitchen, living, dining, bedroom and bathroom floors. Includes all units and club - **\$91,452.00**
 - d. 2 bags per unit floor prep
- 13) Electrical - **\$53,205.00**
 - a. Replace all light fixtures in (50) tenant units and (1) club building. (New fixtures will be LED energy efficient with 5-year warranty)
 - b. Remote existing dusk to dawn lighting and associated illegal wiring at (15) buildings and replace with new LED flood fixtures as directed.
 - c. Replace smoke detectors in (48) tenant units. New smoke detectors will have 10-year battery life as required by codes.
- 14) Emergency pull switch - Emergency pull switch and external horn strobes in (49) tenant units. - **\$35,260.00**
 Note: Emergency pull switch and horn/strobe to be installed at existing locations. This estimate excludes any relocation or additions to the existing wiring or box locations.

15) Electrical at Club Building – \$8,550.00

- a. Remove all existing lighting and ceiling fans.
- b. Supply and install all new LED light fixtures as follows:
 - 8– 2'x4' Flat panel LED
 - 6 – 1'x4' Flat panel LED
 - 4 – LED exterior door lights
 - 3 – Emergency /Exit combination lights
 - 2 – 4 bulb vanity lights with LED lamps
 - 6 – Ceiling fans with LED lights
 - 5 – Smoke detectors with 10-year battery backup
- c. Install GFCI devices in kitchen as required
- d. Provide labor and materials as required for new AHU connections
- e. Provide labor and materials as required to relocate boxes and wiring at (3) door locations that will be enlarged.
- f. Provide new controls for separate light controls for ceiling fans in (2) offices.
- g. Provide labor and materials to provide wiring for switch and light in the new storage area.

16) Painting Exterior – 50 Units and (1) Club Building – \$44,500.00

- a. Caulk all joints, putty all nail holes and prime all bare materials such as siding, fascia, soffits and trim.
- b. Apply one coat of Sherwin Williams A-100 Acrylic Latex paint to all primed areas.

17) Painting Interior – 50 Units & (1) Club Building - \$71,554.00

- a. Caulk, putty as needed and apply one coat to cover all existing interior walls, ceilings, doors, trim and base boards.

18) Hardware - \$42,375.00

- a. Furnish new door hardware at new door locations at the club building including panic bars, door closures and lever type door handles.
- b. Unit door hardware to include deadbolts, keyless deadbolts, pass lever at entry, key lock lever, passage lever, privacy lever, viewer/knocker, hinge stops, play stops, TP Holders, towel doors, (5) HC tub seats, (7) 24" x 24" L-grab bars, shower curtain rods, (curved rods), (50) 5# dry chemical fire extinguishers, (7) 18" grab bars, (7) 24" grab bars, 914) 36" grab bars.

19) Cleaning - Unit rough and final clean - \$24,000.00**20) Signage – (51) unit signs (unit numbers with braille) - \$4,746.00****21) Kitchen Appliances - \$32,994.00**

- 1 – 17.5 CUFT glass shelf E-Star counter depth refrigerator for Club
- 6 – Electric ranges, front controls (coil)
- 45 – Electric ranges, coil, standard clean
- 50 – Vent hoods with non-vented, standard

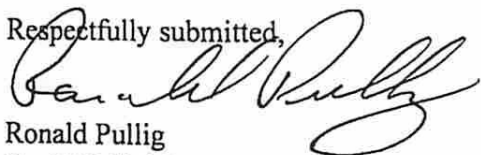
22) Perimeter Fence – Remove and install 2,421 LF of 6' high picket fencing with rot board - \$65,367.00

PRICE RECAP:

Concrete	\$ 3,500.00
Unit Demo	\$ 45,000.00
Carpentry	\$564,130.00
Roofing	\$177,777.00
Guttering	\$ 17,534.00
Windows/Sliding Doors	\$134,300.00
Ext Door/Millwork	\$ 43,922.00
Int Trim Labor	\$ 15,300.00
Cabinets	\$204,313.00
Plumbing	\$157,000.00
Misc Framing	\$ 30,600.00
Drywall	\$ 41,000.00
Tile backsplashes	\$ 10,554.00
Tile wall surrounds	\$ 22,310.00
Vinyl Plank	\$ 91,452.00
Electrical	\$ 53,205.00
Emergency Pull Switch	\$ 35,260.00
Electrical @ Club	\$ 8,550.00
Paint Exterior	\$ 44,500.00
Paint Interior	\$ 71,554.00
Hardware	\$ 42,375.00
Rough & Final Clean	\$ 24,000.00
Signage	\$ 4,746.00
Kitchen Appliances	\$ 32,994.00
Perimeter Fence	\$ 65,367.00
Subtotal:	\$1,941,243.00
General Requirements:	\$ 116,475.00
Overhead:	\$ 116,475.00
Profit:	\$ 38,825.00
GRAND TOTAL	\$2,213,018.00

Thank you for giving M.E.K. Construction, Ltd., the opportunity to bid on the Lulac Oak Hill Apartments. If after reviewing this proposal you should have any questions please do not hesitate to call me, I will be glad to discuss it with you.

Respectfully submitted,



Ronald Pullig
For M.E.K. Management, Inc., the general partner
For M.E.K. Construction, Ltd.

Exhibit D

Construction Schedule

To be determined upon approval by Texas Attorney General

Appendix A

“Applicable Law”

Section 1

Title VI of The Civil Rights Act of 1964

Owner shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) ("Title VI") and with Title 24 Code of Federal Regulations (CFR) Part 1, which implements Title VI. In accordance with Title VI, no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Owner receives federal financial assistance. Owner will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate Owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. [24 CFR § 570.601]

Section 2

Section 109 of The Housing and Community Development Act of 1974

Owner shall comply with Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and implementing federal regulations, 24 CFR § 570.602, issued pursuant to Section 109. No person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds. Section 109 also prohibits discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). [24 CFR § 570.602]

Section 3

Environmental Standards

Owner understands that it does not assume the environmental responsibilities referenced at 24 CFR Part 58. [24 CFR § 570.604]

Section 4

National Flood Insurance Program

If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. part 91) and the regulations in 44 CFR § parts 59 through 79 apply hereto. Without limitation, for areas identified by HUD as having special flood hazards, the use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of said act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement. [24 CFR § 570.605]

Section 5

Displacement, Relocation, Acquisition

Owner understands that projects funded hereunder are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655). Without limitation, the act provides that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA. [24 CFR § 570.606]

Section 6

Section 3 Of The Housing And Urban Development Act Of 1968

(The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

Owner agrees to send to each labor organization or representative of workers with which Owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Owner's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

Owner agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. Owner will not subcontract

with any subcontractor where Owner has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

Owner will certify that any vacant employment positions, including training positions, that are filled (1) after Owner is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent Owner's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Section 7

Executive Order 11246, as amended

Owner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Owner will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

Owner will, in all solicitations or advertisements for employees placed by or on behalf of Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

Owner will send to each labor union or representative of workers with which Owner has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of Owner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Owner will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor set forth at 41 CFR § 60.

Owner will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of Owner's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or

suspended in whole or in part and Owner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.

Owner will include provisions similar to paragraph A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon subcontractors or vendors. Owner will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance:

PROVIDED, however, that in the event Owner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, Owner may request the United States to enter into such litigation to protect the interests of the United States. (24 CFR § 570.607]

To the extent they are otherwise applicable, Owner will also comply with

Section 8

Lead-Based Paint Poisoning Prevention Act

This agreement may be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the implementing regulations at 24 CFR § 35, together with the Federal Lead- Based Paint Regulation, effective September 15, 2000, implementing Title X of the Housing and Community Development Act of 1992. Specifically, this contract may be subject to the provisions for the elimination of lead-based paint hazards pursuant to said regulations, and Owner may be responsible for all required inspections and certifications. [24 CFR §570.608]

Section 9

Use Of Debarred, Suspended, Or Ineligible Contractors or Subrecipients

Owner shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under provisions of 24 CFR §24 or under the authority of the City.

Owner shall not use CDBG funds for any contract for the construction, alteration or repair of the project funded under this agreement with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, that is identified by the Office of the United States Trade Representative as discriminating against U.S. firms in conducting procurement for public works projects. This restriction covers, without limitation, all architectural, engineering and construction services, and includes all products or goods, except construction equipment or vehicles used during the construction, alteration or repair which do not become part of a delivered structure, product or project. (24 CFR § 570.609]

Section 10

Uniform Administrative Requirements And Cost Principles

Owner shall comply with the policies, guidelines, and requirements of 2 CFR Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”.

Section 11

Conflict Of Interest

In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 24 CFR § 84 and 85 respectively, shall apply. In all cases not governed by 24 CFR § 84 and 85, the following shall apply:

In all cases not governed by 24 CFR § 84 and 85, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to §570.203, § 570.204 or §570.455.

(i) In accordance with 24 CFR § 570.611, no persons described in paragraph (ii) (below) who exercise or have exercised any functions with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to CDBG assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(ii) The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or subrecipient under which receives funds under the CDBG grant agreement with HUD. [24 CFR § 570.611]

Section 12

Executive Order 12372

Owner understands that implementing regulations at 24 CFR § 52 are applicable to planning or construction of water or sewer facilities only, and that such regulation does not impart any responsibility upon it, rather the regulation imposes the Executive Order Review Process upon the City when funds are proposed for activities subject to review.

[24 CFR § 570.612]

Section 13

Eligibility for Certain Resident Aliens

Owner understands that certain newly legalized aliens, as described in 24 CFR § 49, are not eligible to apply for benefits under activities meeting the requirements of section § 570.208 that either (1) have income eligibility requirements limiting the benefits exclusively to low and moderate income persons or are targeted geographically are otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of application.

Owner further understands that this restriction applies to covered activities funded under the Housing and Community Development Act of 1974, as amended; and that "benefits" under this section means financial assistance, public services, jobs, and access to new rehabilitated housing and other facilities made available under covered activities funded by the Community Development Block Grant Program. Benefits do not include relocation services and payments to which displaces are entitled by law. Furthermore, these restrictions apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section. Compliance can be accomplished by obtaining certification as provided in 24 CFR § 49.20. [24 CFR §570.613]

Section 14

Findings Confidential

All reports, information, data, etc., prepared or assembled by Owner for purposes of meeting program requirements are confidential and Owner agrees that they shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior approval of the City.

Section 15

Court Actions

Owner agrees to give the City immediate notice in writing of any actions or suits filed and prompt notices of any claims made against the City, Owner, or any of the parties involved in the implementation and administration of this Agreement.

Section 16

Records For Audit Purposes

Without limitation to any other provision of this Agreement Owner shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires for four years from the expiration date of the Agreement unless a longer period is required under 24 CFR § 570.502. Owner will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

Section 17

Compliance With Clean Air And Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended (42 U.S.C. 7400 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.) and the regulations of the Environmental Protection Agency, 40 CFR § 15. In compliance with the regulations, Owner agrees that:

A. No facility to be utilized in the project or program is listed on the list of Violating Facilities issued by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.

B. Owner will comply with all the requirements of section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) pertaining to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308, and all regulations and guidelines issued thereunder.

C. As a condition for the award of this Agreement, Owner shall give prompt notice to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized is under consideration to be listed on the EPA List of Violating Facilities.

D. Owner will include or cause to be included the requirements contained in paragraphs A through C of this clause in every lower-tier nonexempt contract and will take such action as the City may direct as a means of enforcing such provisions.

In no event shall any amount of the funds provided under the Agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

Section 18

Architectural Barriers Act and The Americans with Disabilities Act

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Part 101-19, Subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and

construct facilities for first occupancy no later than January 25, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplished and able to be carried out without much difficulty or expense. [24 CFR § 570.614]

Section 19

Audit Requirements

Limited Scope Audit - Owner understands that Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available to review and audit as described hereinabove at Section 16. Owner further understands that limited scope audits can and may be required by the City for Non-Federal entities that expend less than \$500,000. If the City requires such limited scope audits, same shall be performed in accordance with Office of Management and Budget (OMB) Circular A-133 - "Audits of States, Local Governments, and Non-Profits" which rescinds Circular A-128, Audits of State and Local Governments (codified at 24 CFR Part 45) and it supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions", issued April 22, 1996 (codified at 24 CFR Part 44).

Single Audit - Owner further understands that Non-Federal entities that expend \$500,000 or more a year in Federal awards shall have a single audit conducted pursuant to A-133, except when they elect to have a program-specific audit pursuant to and as described in A-133. Prior arrangements must be made to conduct such audit. Once the Contract is executed, Owner understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

Section 20

Labor Standards/Davis-Bacon Act

To the extent applicable, Owner shall comply with the Federal wage requirements for federally-assisted construction projects pursuant to the Davis-Bacon Act (40 U.S.C. 327, et seq.), as amended. [24 CFR § 570.603].

Appendix B

“Construction Contract Requirements”

1. Davis-Bacon. Compliance with the federal labor standards provisions of the Davis- Bacon Act, as amended (40 U.S.C. §§ 276a, et seq.); compliance with the Davis- Bacon Act shall be verified through on-site inspections by representatives of the City or at the City's option, the Approved Inspectors. Each Construction Contract should include as an attachment HUD 4010 Federal Labor Provisions and HUD Handbook 1344 -Davis Bacon Act. In addition, each Construction Contract must require compliance with Department of Labor regulations at 29 CFR Parts 1, 3, 5, 6 and 7.

2. Release and Indemnity Provisions in Contracts. Inclusion of a release and indemnity in favor of the City in substantially the same text as set forth in this Agreement for Owner with respect to City (when the terms "Owner"/"Agreement" are used below, they encompass the terms "Contractor"/ "Contract" and "Subcontractor"/"Subcontract" "Supplier/Supply Contract" where applicable).

3. Insurance. Inclusion of the requirement that the contractor, subcontractor, or supplier maintain insurance in sufficient form necessary to protect the Project, but in no event less that Owner is required to maintain pursuant to this Agreement.

4. Disputes. All disputes concerning the quantity, quality and completion or sufficiency of work performed or materials supplied pursuant to the Approved Construction Contract shall be submitted to the Director for resolution, and the Director may order the parties to mediation, at their option, to attempt to resolve the dispute in accordance the Agreement. The Director may declare a default under the Loan if any dispute referred to mediation is not resolved within thirty (30) days after submission to non-binding mediation, unless the City shall be protected in accordance with the Agreement. The Approved Construction Contract and each subcontract will include a requirement that the Director shall have the authority to require any disputes thereunder be submitted to nonbinding mediation, but nothing shall require the City to participate in such mediation. Neither the decision of the Director nor the issuance of a Certificate of Completion shall be construed to release the Borrower, Owner or any surety from liability under any bond, warranty or guaranty to be provided under this Agreement.

5. Compliance With Minimum Property and Rehabilitation Standards. The Approved Construction Contract shall provide that the entire Project be constructed or brought up to the standards required by the City's Minimum Property Standards being all applicable local codes, construction standards, ordinances, and zoning ordinances.

6. Audit Rights. Each Construction Contract and subcontract shall contain provisions granting HUD and the City the right to review, audit and monitor any construction contracts and subcontracts.

7. Penalties. Each Construction Contract and subcontract shall include a clause that failure to adequately perform under the contract may result in penalties including the possibility of debarment from future HUD or City work.

Appendix C

“Lobbying Certificate”

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds, other than Federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions .
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

OWNER
L.U.L.A.C. OAK HILL, INC.

By:_____

Printed Name:_____

Title:_____

Date:_____

Appendix D

“Debarment Certification”

The undersigned certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local government or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement , theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

OWNER
L.U.L.A.C. OAK HILL, INC.

By:_____

Printed Name:_____

Title:_____

Date:_____

Assignment of Architect's Contract, Plans, and Specifications, and Consent

FOR VALUE RECEIVED, executed by **L.U.L.A.C. Oak Hill, Inc.**, a Texas non-profit corporation ("Owner"), whose mailing address is _____, Attention:_____, as additional security for the obligations incurred and to be incurred pursuant to that certain Loan Agreement of even date (the "Loan Agreement"), and **THE CITY OF COLLEGE STATION** (the "City"), whose mailing address is 1101 Texas Avenue, College Station, Texas 77840, Attention: Director, which Agreement evidences that certain loan made by the City to Owner in the original principal amount of \$2,808,000.00 (the "Loan") the proceeds of which were loaned to Owner for the construction and rehabilitation of the project located at 1105 Anderson, College Station, Texas 77840 (the "Project"), together with a Security Agreement and Financing Statement cover the Project, hereby transfers, assigns, and conveys to City, and the successors and assigns of City, all of the right, title, and interest of Owner in and to that certain professional services contract between Owner and _____ ("Architect"), dated _____, (the "Contract") and in and to those certain architectural drawings and plan (the "Plans") and the Contract Specifications (the "Specifications") therefor, all inclusive, all of which were prepared by Architect, a true and correct copy of the Contract, Plans and Specifications having been deposited with and held by City. Upon the payment and satisfaction in full of the obligations of Owner to City evidenced by the Loan Agreement and upon written confirmation by City of such payment and satisfaction, this Assignment of Architect's Contract, Plans, and Specifications and Consent (this "Assignment") shall become null and void.

Owner and Architect, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of Owner's obligations or duties concerning the Contract, Plans and Specifications, including but not limited to the obligation to pay for the preparation of the Contract, Plans, and Specifications, until and unless City shall exercise its rights, loaned hereby, to the use of the Contract, Plans, and Specifications.

Owner hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce Owner's rights with respect to the Contract, Plans and Specifications, to give appropriate receipts, releases and satisfactions for and on behalf of Owner and to do any and all acts in the name of Owner or in the name of City with the same force and effect as Owner could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default, as is defined in the Loan Agreement, shall have occurred.

Except as previously disclosed to City in writing Owner hereby represents and warrants to City that no other previous assignment of its interest in the Contract, Plans, and Specifications has been made; and Owner agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract, Plans, and Specifications so long as this Assignment is in effect.

[OWNER'S SIGNATURE PAGE TO FOLLOW]

Owner's Signature Page

Assignment of Architect's Contract, Plans, and Specifications, and Consent

Dated to be effective as of _____.

Owner:

L.U.L.A.C. Oak Hill, Inc.,
a Texas nonprofit corporation

By: _____

Name: _____

Title: _____

[ARCHITECT'S CONSENT TO FOLLOW]

Consent of Architect

Assignment of Architect's Contract, Plans, and Specifications, and Consent

The undersigned ("Architect") represents to City that the Contract with Owner is in full force and effect and is valid, binding and enforceable against Architect in accordance with the terms and there is no default by Architect thereunder.

Architect hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any default by Owner under the Loan Agreement, City is authorized to use the Contract, Plans, and Specification for the purpose of the inspection or completion of the construction and/or renovation of the Project and for the maintenance and protection of the Project contemplated by the Loan Agreement.

To induced City to enter into the Loan Agreement with Owner, Architect hereby agrees that all of the liens which Architect may have or be entitled to either against such Contract, Plans and Specifications or against the Project contemplated by the Loan Agreement (including the real property where the Project is located) shall be and are hereby made subordinate and inferior to the liens and security interests securing the payment of the Loan.

Architect acknowledges that City is relying on and is entitled to rely on Architect's professional skill and competence in the provision of its services under the Contract.

Dated to be effective as of _____.

Architect: _____

By: _____

Name: _____

Title: _____

Environmental Indemnity Agreement

This Environmental Indemnity Agreement ("Environmental Indemnity Agreement") is executed to be effective as of _____, by L.U.L.A.C. Oak Hill, Inc., a Texas nonprofit corporation ("Indemnitor") for the benefit of The City of College Station, Texas ("City").

Background

WHEREAS, City is issuing a loan ("Section 108 Loan") to Owner in the original principal amount of TWO MILLION EIGHT HUNDRED EIGHT THOUSAND AND 00/100 DOLLARS (\$2,808,000.00), further evidenced by that certain Loan Agreement entered into by and between City and Owner ("Loan Agreement") for the construction and/or rehabilitation project located on property described on Exhibit A (the "Property"), secured, inter alia, by certain Loan Agreement documents. The Loan Agreement, the collateral assignments of various contracts, this Environmental Indemnity Agreement and all other documents or instruments evidencing, securing or governing the Section 108 Loan shall be collectively referred to as the "City Loan Documents"; and

WHEREAS, as a material inducement in order for City to issue the Section 108 Loan to Indemnitor, Indemnitor has agreed to execute and deliver this Environmental Indemnity Agreement to and for the benefit of City.

NOW, THEREFORE, for and in consideration of the issuing of the Section 108 Loan and Grants by City to Indemnitor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Indemnitor hereby agrees as follows:

Agreement

Section 1. Definitions

The following terms shall have the defined meanings ascribed to such terms, as set forth below:

"Environmental Laws" shall mean any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Property, including without limitation, the following , as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA") , 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33

U.S.C. § 1251 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("TWC") § 26.001 et seq.; Texas Health & Safety Code ("THSC")

§ 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

"Hazardous Substances" shall mean any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(9) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(13) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

"Hazardous Substances Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Substances, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Substances at any time (whether before or after the date of the Note) emanating from the Property.

"Initial Environmental Report" means the Phase I Environmental Site Assessment dated _____, prepared by _____, and bearing Project No. _____, covering the Property, and all documents reflecting any Phase II assessments and any curative actions required and/or taken thereunder.

Section 2. Representations and Warranties

Indemnitor unconditionally represents and warrants to City as follows:

(a) To Indemnitor's knowledge, except as otherwise set forth in the Initial Environmental Report, the Property does not contain any Hazardous Substances, and the Property is not subject to any Hazardous Substances Contamination.

(b) To Indemnitor's knowledge, except as otherwise set forth in the Initial Environmental Report, the Property and the operations conducted thereon do not violate any Environmental Laws.

(c) To Indemnitor's knowledge, all notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Property,

including, without limitation, the past or present generation, treatment, storage, disposal, or release of any Hazardous Substances into the environment, have been duly obtained or filed.

(d) Except as otherwise set forth in the Initial Environmental Report, neither Indemnitor nor, to the best knowledge of Indemnitor, any other person, including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, under, from or about the Property of any Hazardous Substances or the transportation to or from the Property of any Hazardous Substances.

(e) Except as otherwise set forth in the Initial Environmental Report, to Indemnitor's knowledge, (i) no property adjoining the Property is or has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Substances, nor, (ii) is any other property adjoining the Property affected by Hazardous Substances Contamination.

(f) Neither Indemnitor nor, to the best knowledge of Indemnitor, any other person, including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal of any Hazardous Substances on, under, from or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Indemnitor in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.

(g) To Indemnitor's knowledge, no inquiry, investigation, administrative order, consent order and agreement, litigation or settlement is proposed, threatened, anticipated or in existence with respect to any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property. Indemnitor has not received any notice, and has no actual or constructive knowledge, that any governmental authority has determined, or threatens to determine, or is investigating any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property.

(h) Indemnitor has taken all steps reasonably necessary to determine that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Property.

(i) The foregoing representations and warranties do not apply to Permitted Use Substances (hereinafter defined).

Section 3. Covenants

Indemnitor unconditionally covenants that and agrees with City as follows:

(a) Indemnitor will not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, under, from or about the Property or transport to or from the Property any Hazardous Substances or allow any other person or entity to do so. Notwithstanding the foregoing, reasonable quantities of such Hazardous Substances as are customarily used in the construction, habitation, maintenance and/or operating of an apartment project, properly used and/or stored, shall be permitted (collectively, the "Permitted Use Substances")

(b) Indemnitor will keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law.

(c) Indemnitor will establish and maintain, at Indemnitor's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Property, by any and all owners or operators, including tenants, of the Property, which system shall include annual reviews of such compliance by employees or agents of Indemnitor who are familiar with the requirements of the Environmental Laws and, at the request of City no more than once each year, a detailed review of such compliance of the environmental condition of the Property (the "Environmental Report") in scope satisfactory to City by an environmental consulting firm approved in advance by City; provided, however, that if any Environmental Report indicates any violation of any Environmental Laws or a need for remedial work ("Remedial Work"), such system shall include at the request of City a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. Indemnitor shall furnish an Environmental Report or such Supplemental Report to the City within sixty (60) days after City so requests, together with such additional information as City may reasonably request.

(d) Indemnitor will give prompt written notices to City of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any Hazardous Substances on, under, from or about the Property, the migration thereof from or to other property, the disposal, storage, or treatment of any Hazardous Substances generated or used on, under or about the Property, (ii) all claims made or threatened by any third party against Indemnitor or the Property or any other owner or operator, including a tenant, of the Property relating to any loss or injury resulting from any Hazardous Substances, and (iii) Indemnitor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any investigation or cleanup of the Property pursuant to any Environmental Laws.

(e) Indemnitor will permit City to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental

Laws or Hazardous Substances, and Indemnitor shall pay all attorneys' fees incurred by City in connection therewith.

(f) In the event that any Remedial Work is reasonably necessary or desirable, Indemnitor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by City for performance thereof (or such shorter period of time as may be required under any Environmental Laws). All Remedial Work shall be performed by contractors approved in advance by City, and under the supervision of a consulting engineer approved by City. All costs and expenses of such Remedial Work shall be paid by Indemnitor including, without limitation, City's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Indemnitor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, City may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured by the Deed of Trust ("Indebtedness") and shall be payable to City upon demand.

Section 4. Default

The term "Default", as used herein, shall mean the occurrence at any time and from time to time, of any one or more of the following :

(a) If either Indemnitor or City acquires knowledge or receives notice that Hazardous Substances or Hazardous Substances Contamination exists in, on, about or under any of the Property, other than Permitted Use Substances, and Indemnitor fails, within thirty (30) days after acquisition of such knowledge or of such notice, to commence and thereafter diligently prosecute to completion any necessary remedial actions in compliance with Environmental Laws.

(b) If any representation or warranty contained herein shall be false or misleading, or erroneous in any material respect.

Section 5. Remedies

If a Default shall exist, City may, at City's sole election Exercise any and all other rights, remedies and recourses granted under the City Agreement Documents or as may be now or hereafter existing in equity or at law, by virtue of statute or otherwise, including actions for damages and specific performance

Section 6. Site Assessment

If City shall ever have reason to believe that there are Hazardous Substances or Hazardous Substances Contamination affecting any of the Property, other than Permitted Use Substances, City (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such

Property arising under any state, federal or local law, rule or regulation relating to Hazardous Substances. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Indemnitor which do not impede the performance of the Site Assessments. Following one (1) business days' prior notice delivered to Indemnitor, and during normal business hours, the Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of any Hazardous Substances on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Indemnitor will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, City shall make the results of such Site Assessments fully available to Indemnitor, which (unless a Default exists) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Indemnitor upon demand of City and any such obligations shall be Indebtedness secured by the Deed of Trust.

Section 7. INDEMNIFICATION

REGARDLESS OF WHETHER ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, INDEMNITOR SHALL JOINTLY AND SEVERALLY PROTECT, INDEMNIFY, AND HOLD HARMLESS CITY, ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER, ABOUT OR FROM THE PROPERTY OCCURRING PRIOR TO OR DURING OWNER'S OWNERSHIP OF THE PROPERTY, OTHER THAN PERMITTED USE SUBSTANCES, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF AND REGARDLESS OF WHETHER OR NOT CAUSED BY, OR WITHIN THE CONTROL OF INDEMNITOR, INCLUDING WITHOUT LIMITATION (I) DAMAGES FOR PERSONAL INJURY, OR INJURY TO PROPERTY OR NATURAL RESOURCES OCCURRING UPON OR OFF THE PROPERTY, FORESEEABLE OR UNFORESEEABLE, INCLUDING, WITHOUT LIMITATION, THE COST OF DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS ON THE REAL PROPERTY, INTEREST AND PENALTIES; (II) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS INCLUDING FEES INCURRED FOR ATTORNEYS, CONSULTANTS, CONTRACTORS, EXPERTS AND LABORATORIES; AND (III) LIABILITY TO ANY THIRD PERSON OR ANY GOVERNMENTAL AUTHORITY TO

INDEMNIFY SUCH PERSON OR GOVERNMENTAL AUTHORITY FOR COST EXPENDED IN CONNECTION WITH THE ITEMS REFERENCED IN SUBPARAGRAPH (II) IMMEDIATELY ABOVE. THIS COVENANT AND THE INDEMNITY CONTAINED HEREIN SHALL SURVIVE THE RELEASE OF THE LIEN OF THE DEED OF TRUST, OR THE EXTINGUISHMENT OF THE LIEN OF THE DEED OF TRUST BY FORECLOSURE OR ACTION IN LIEU THEREOF AND SHALL CONTINUE IN EFFECT SO LONG AS A VALID CLAIM MAY BE LAWFULLY ASSERTED AGAINST CITY.

Section 8. City's Right to Remove Hazardous Materials

City shall have the right but not the obligation, without in any way limiting City's other rights and remedies under the City Loan Documents, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substances or Hazardous Substances Contamination on the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Substances or Hazardous Substances Contamination pertaining to the Property or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Property or other action and/or which, in City's reasonable opinion, could jeopardize City's security under the City Agreement Documents; provided, however, City shall have no right to proceed with any of the rights loaned to it in this paragraph until City has provided Indemnitor with written notice of City's intent to take any of the actions described in this paragraph and Indemnitor fails to commence within thirty (30) days following Indemnitor's receipt of such notice and diligently proceeds thereafter to complete all action necessary to clean-up, remove or resolve any of the foregoing . All reasonable costs and expenses paid or incurred by City in the exercise of any such rights shall be included in the indebtedness secured by the City Agreement Documents and shall be payable by Indemnitor upon demand.

Section 9. Miscellaneous

This Environmental Indemnity Agreement are joint, several and unconditional and shall not be subject to any exculpation, non-recourse or other limitation of liability provisions in the City Loan Documents, and Indemnitor acknowledges that its obligations under this Environmental Indemnity Agreement are not limited by such exculpation, non-recourse or similar limitation of liability provisions in the City Loan Documents (if any).

Those costs, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) for which City is indemnified hereunder shall be reimbursable to City after being paid by City, and Indemnitor shall pay such costs, expenses, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) to City within thirty (30) days after notice from City itemizing the amounts paid to the date of such notice. In addition to any remedy available for failure to periodically pay such amounts, such amounts shall thereafter bear interest at the Default Rate (as defined in the Note) of interest specified in the City Funding Documents. Payment by City shall not be a condition precedent to the obligations of Indemnitor under this Environmental Indemnity Agreement.

Any notice, communication, request or other documents or demand permitted or required hereunder shall be in writing and given in accordance with the provisions of the City Loan Documents.

THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN TEXAS PROVIDED, HOWEVER, THAT EITHER FEDERAL LAW OR, TO THE EXTENT FEDERAL LAW DOES NOT APPLY, THE LAW OF THE SITUS OF THE PROPERTY SHALL BE APPLIED TO DETERMINE THE COMPLIANCE OF THE PROPERTY WITH ENVIRONMENTAL LAWS. PROVIDED FURTHER, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED SHALL APPLY TO THE CREATION, PERFECTION, AND PRIORITY OF LIENS AND SECURITY INTERESTS AND TO ANY FORECLOSURE, TRUSTEE'S SALE, APPOINTMENT OF RECEIVER OR OTHER REMEDY WITH RESPECT TO THE PROPERTY. ANY PROCEDURES PROVIDED HEREIN FOR SUCH REMEDIES SHALL BE MODIFIED BY AND REPLACED WITH, WHERE INCONSISTENT WITH OR REQUIRED BY, ANY PROCEDURES OR REQUIREMENTS OF THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

ANY LEGAL ACTION TO INTERPRET OR ENFORCE ANY TERM OR CONDITION OF THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE BROUGHT AND MAINTAINED ONLY IN THE TEXAS STATE COURTS SITUATED IN BRAZOS COUNTY, TEXAS. BY EXECUTING THIS ENVIRONMENTAL INDEMNITY AGREEMENT, INDEMNITOR EXPRESSLY (A) CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF SUCH TEXAS AND FEDERAL COURTS, (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT BRAZOS COUNTY, TEXAS IS NOT A PROPER OR CONVENIENT VENUE OR FORUM, AND (C) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.

Indemnitor waives any acceptance of this Environmental Indemnity Agreement by City.

The failure of any party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party, nor excuse any of the parties from their obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Environmental Indemnity Agreement is subject to enforcement at law and/or equity, including actions for damages and/or specific performance.

Time is of the essence in the performance of the terms, conditions and covenants herein contained.

This Environmental Indemnity Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive any exercise of any remedy by City under the City Loan Documents, including foreclosure of the liens of the City Loan Documents (or deed

in lieu thereof), even if, as part of such foreclosure or deed in lieu of foreclosure , the Loan amount is satisfied in full.

All terms not defined in this Environmental Indemnity Agreement shall have the same meanings as given them in the City Loan Documents.

EXECUTED to be effective as of the date first set forth above.

INDEMNITOR:

L.U.L.A.C. Oak Hill, Inc., a Texas nonprofit
corporation

By: _____

Name: _____

Title: _____

Exhibit A
(property description)

PROMISSORY NOTE

\$ 2,808,000.00

Date: _____

FOR VALUE RECEIVED, L.U.L.A.C. OAK HILL, INC., a Texas nonprofit corporation ("Obligor"), promises to pay to the order of the City of College Station, Texas, a home rule city (hereafter the "Lender"), at its offices at _____, or such other place as may be designated in writing by the Lender, the principal sum of TWO MILLION EIGHT HUNDRED EIGHT THOUSAND AND NO/100 DOLLARS (\$2,808,000.00), plus interest at the rate set forth herein, said principal sum, together with the interest accrued and unpaid thereon, to be due and payable as set forth herein, provided that if not sooner paid, the unpaid principal sum together with the interest accrued and unpaid thereon shall be due and payable twenty years after the Effective Date (the "Maturity Date").

Effective Date. This Note shall be effective on the date of the first disbursement of funds to Obligor pursuant to the terms of this Note. Lender and Obligor agree that in the event that no funds are disbursed pursuant to this Note within 1 year of the date of execution of this Note, this Note and all obligations contemplated therein shall automatically terminate.

Section 108 Note. This Note is being made from the proceeds of a loan made to the Lender and guaranteed by the Secretary of Housing and Urban Development (hereafter the "Secretary" or "HUD") under Section 108 of Title I of the Housing and Community Development Act of 1974, as amended, 24 CFR Part 570, Subpart M. (collectively the "Act"), through a Contract for Loan Guarantee Assistance dated _____ (the "Section 108 Contract") and pursuant to a Note numbered _____ executed by the Lender (the "Section 108 Note"). The terms of this Note are subject in all respects to the Act, the Section 108 Contract, and the Section 108 Note. The Section 108 Note may initially be issued in the form of a variable/fixed rate interim Note, to be converted to a fixed rate permanent Note upon the Public Offering Date, as defined in the Section 108 Note.

Interest Rate. The interest rate on this Note shall be the interest rate or rates applicable from time to time to advances under the Section 108 Note (as defined herein), plus 0%.

Advances. Advances to be made under this Note shall be used by Obligor in connection with the rehabilitation of an apartment complex for low income elderly residents which will meet an eligible rehabilitation activity in accordance with 24 CFR 570.703(h), pursuant to 24 CFR 570.202(a)(1). Upon written request by Obligor, and as accompanied by such reasonable documentation as Lender may require, Lender shall, in its reasonable discretion, disburse advances under this Note.

Payment Terms. Beginning on the first day of the first quarter after the date of the first advance of proceeds of this Note and continuing in the first day of each successive quarter thereafter until the entirety of the principal and interest has been repaid.

Additional Payments. On each Section 108 Note Payment Date, the Obligor shall further pay to Lender any late charges accruing on the Section 108 Note, the sum of the expense of the Lender incurred in enforcing the obligations of the Obligor under the Loan Documents (hereinafter defined), and any other amount otherwise becoming due or past due under the Section 108 Note, including any acceleration or mandatory prepayment of principal and all accrued interest thereon pursuant to the terms of the Section 108 Note if any such occurrence is a result of a default under the Loan Documents.

Form of Note. The Obligor shall make all payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, and amounts payable on any Section 108 Note Payment Date shall be payable in immediately available funds.

Late Charges, Default Rate. In the event the Obligor shall fail to make any payment or deposit required by this Note for a period of more than ten (10) days from the date such payment is due, the Obligor shall pay the same together with the Late Payment Fee, with interest at the Default Rate from the date on which such payment was due until the date on which such payment is made.

The "LATE PAYMENT FEE" shall be ____ cents (\$.__) for each dollar (\$1.00) so overdue, for the purpose of defraying the expense incident to handling such delinquent payment.

The "DEFAULT RATE" shall be the higher of 3% percent plus the Prime Rate or the default rate applicable to the Section 108 Note; provided, however, that such rate shall in no event exceed the maximum rate which the Obligor may pay by law.

"PRIME RATE" means such rate of interest as is published in the Wall Street Journal. Any changes in the Prime Rate shall be effective as of the opening of business on the date such charge is announced by Federal Reserve Board.

Loan Documents. This Note is made pursuant to the terms of a loan agreement of even date between Obligor and Lender ("Loan Agreement") and is secured the Deed of Trust, Assignment, Security Agreement and Fixture Filing of even date ("Deed of Trust"). The terms and provisions of the Loan Agreement and Deed of Trust are incorporated herein by this reference as if expressly set forth in this Note and together with this Note are collectively referred to as the "Loan Documents".

Default. The whole of the principal sum or any part thereof, and of any other sums of money secured by the Deed of Trust given to secure this Note shall, forthwith or thereafter, at the option of the Lender, become due and payable if default be made in any payment under this Note or upon the happening of any default which, by the terms of the Loan Documents shall entitle the Lender to declare the same, or any part thereof, to be due and payable.

Maximum Rate. This Note is subject to the express condition that at no time shall the Obligor be obligated or required to pay interest on the principal balance of this Note at a rate which could subject the Lender either to civil or to criminal penalty as a result of being in excess of the maximum rate which the Obligor is permitted by law to contract or agree to pay. If by the terms

of this Note the Obligor at any time is required or obligated to pay interest on the principal balance of this Note at a rate in excess of such maximum rate, then the rate of interest under this Note shall be deemed to be immediately reduced to such maximum rate and interest payable hereunder shall be computed at such maximum rate and any prior interest payments made in excess of such maximum rate shall be applied and shall be deemed to have been paid in reduction of the principal balance of this Note.

In addition to the protection afforded the Lender under this Note, the Deed of Trust protects the Lender from possible losses which might result if Obligor does not fulfill covenants, conditions and restrictions contained therein. Among other things, the Deed of Trust requires that the Lender consent to any sale of the property identified in the Deed of Trust or any sale of the ownership or beneficial interests in Obligor, which consent shall not unreasonably withheld, conditioned, or delayed.

Prepayment. This Note shall not be subject to prepayment, except that in the event and to the extent that the Section 108 Note is subject to prepayment, the Obligor shall be permitted to prepay this Note at the same time and in the same amount, subject to payment by Obligor of any premium and expenses required for prepayment of the Section 108 Note, upon receipt by the Lender of five (5) days prior written notice. Any partial prepayments shall be applied to principal in inverse order of maturity unless otherwise agreed by Lender. In the event of partial prepayments, there will be no changes in the due date and the amount of Obligor's monthly payment unless Lender agrees in writing to such changes.

Modification. The Note may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

Waivers; No Release. The Obligor hereby waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees (which costs may be added to the amount due under this Note and be receivable therewith) and to perform and comply with each of the terms, covenants and provisions contained in this Note and in any instrument evidencing or securing the indebtedness evidenced by this Note on the part of the Obligor to be observed and/or performed hereunder and thereunder. No release of any security for the principal sum due under this Note, or of any portion thereof, and no alteration, amendment or waiver of any provision of this Note or of any instrument evidencing and/or securing the indebtedness evidenced by this Note made by agreement between the Lender and any other person or party shall release, discharge, modify, change or affect the liability of the Obligor under this Note or under such instrument.

Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Texas and no defense given or allowed by the laws of any state or country shall be interposed in any action or proceeding hereof unless such defense is also given or allowed by the laws of the State of Texas.

Jurisdiction and Venue. All acts contemplated by this Note shall be performable in Brazos County, Texas, and all sums payable under this Note shall be payable in Brazos County, Texas. Lender

and Obligor hereby confirm and agree that all legal actions involving the validity or enforcement of this Note shall have exclusive jurisdiction and venue in Brazos County, Texas.

Terms. All references to the Lender shall be deemed to apply to any holder of this Note and the terms hereof shall be binding on the successors and assigns of the Obligor.

Successors and Assigns. This Note and all of the covenants, promises and agreements contained herein shall be binding upon and shall inure to the benefit of Obligor and Lender and their respective executors, administrators, successors and assigns.

Non-Recourse. Notwithstanding anything to the contrary contained in this Note or in any of the other Loan Documents, subject to Obligor meeting CDBG and HUD objectives, the Lender expressly agrees that the liability of the Obligor and/or any of the Obligor's directors, officers, shareholders, partners, representatives, agents, employees, heirs, affiliates, successors and assigns (such past, present and future members or shareholders in the Obligor, if any, and/or any of such parties' directors, officers, shareholders, partners, representatives, agents, employees, heirs, affiliates, successors and assigns are herein collectively referred to as "Obligor's Affiliates"), under any Loan Document shall be strictly and absolutely limited to the property encumbered under the Deed of Trust of even date herewith, and the leases, rents, profits and issues thereof and any other collateral securing the repayment of this Note. Lender shall not seek any deficiency judgment against Obligor, it being understood and agreed that neither Obligor nor any of its partners shall have any personal liability for the payment of the indebtedness and obligations evidenced by the Loan Documents and such indebtedness shall be considered limited recourse to Obligor.

Cumulative Rights. No delay on the part of Lender or other holder of this Note in the exercise of any power or right under this Note or under any other Loan Document, shall operate as a waiver thereof, nor shall a single or partial exercise of any power or right preclude other or further exercise thereof or exercise of any other power or right. Enforcement by Lender or other holder of this Note of any

Entire Agreement. THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date and year first above written.

BORROWER:
L.U.L.A.C. Oak Hill, Inc.
A Texas nonprofit corporation

By: _____

Name:
Title:

Endorsement

Pay to the order of _____ without recourse.

By: _____
Signature

Name: _____

Title: _____

**DEED OF TRUST, ASSIGNMENT, SECURITY
AGREEMENT AND FIXTURE FILING (WITH
ASSIGNMENT OF RENTS AND OTHER RIGHTS)**

This Deed of Trust, Assignment, Security Agreement and Fixture Filing (with Assignment of Rents and Other Rights) ("Deed of Trust") is executed to be effective as of _____, 2021 by L.U.L.A.C. Oak Hill, Inc., a Texas nonprofit corporation, whose address is, _____ (the "Grantor," whether one or more), to _____, Trustee ("Trustee") for the benefit of CITY OF COLLEGE STATION, TEXAS ("Beneficiary"), whose address is 1101 Texas Avenue, College Station, Texas.

Article 1. Definitions

1.1. Definitions: The following capitalized words and terms as used in this Deed of Trust have the following meaning (and their use includes the singular or plural):

(a) Affiliate: Any person or entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with Grantor.

(b) Buildings: All buildings, parking areas and other improvements and structures, and any and all additions, alterations, or appurtenances thereto, now or later placed or constructed on the Land.

(c) Contractual Rights: All Contracts (including, without limitation, contracts for the sale or exchange of all or any portion of the Land or the Buildings), franchises, licenses and permits, whether executed, granted or issued by a private person or entity or a Governmental Authority, which are directly or indirectly related to or connected with the development, construction, management, use or sale of the Land or the Buildings, whether now or at any time hereafter existing, and all amendments and supplements thereto and renewals and extensions thereof at any time made, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Grantor's other benefits under those Contracts, to the extent the same are assignable.

(d) Contracts: Includes all of the following: (i) all contracts now or hereafter entered into by and between Grantor and any original contractor or between Grantor and any other party, as well as all right, title and interest of Grantor under any subcontracts, providing for the renovation or construction (original, restorative or otherwise) of any improvements to or on any of the Mortgaged Property or the furnishing of any materials, supplies, equipment or labor in connection with any such construction; (ii) all of the plans, specifications and drawings (including site plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and architectural and engineering studies and analyses) heretofore or hereafter prepared by any architect, engineer or other design professional, in respect of any of the Mortgaged Property; (iii) all agreements now or hereafter entered into with any person or entity in respect of architectural, engineering, design, management, development, inspection, supervision, franchising, or consulting services or other services of any kind rendered or to be rendered with respect to any of the Mortgaged Property; (iv) any

commitment issued by any lender or investor other than Grantor to finance or invest in any of the Mortgaged Property; (v) any and all tax abatement agreements with respect to the Mortgaged Property; (vi) any completion bond, performance bond and labor and material payment bond and any other bond relating to the Mortgaged Property or to any-contract providing for construction of improvements to any of the Mortgaged Property; (vii) any and all contracts for the sale of the Buildings once constructed or renovated; and (viii) the Leases.

Contracts also include any and all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles now owned by Grantor or existing or hereafter acquired, created or arising.

(e) Fixtures: All materials, supplies, equipment, machinery, appliances, apparatus and other items owned by Grantor and now or later attached to, installed in or used in connection with (temporarily or permanently) any of the Buildings or the Land, including but not limited to any and all partitions, shelving, bookcases, cabinets and carpentry, window screens and shades, wall and floor coverings, awnings, elevators, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, smoke detector and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, lighting, air conditioning, heating, ventilating, filtering, plumbing, utility, gas and electrical lines, wiring and equipment, telephone and other communication equipment, photocopying, facsimile, word processing, computer and telex hardware and software, and all other equipment and facilities of all kinds and the connection rights thereto. All proceeds of, appurtenances to, renewals or replacements of, or substitutions for any Fixtures are also included in the definition of Fixtures.

(f) Governmental Authority: Any and all courts, political subdivisions, boards, agencies, bureaus, commissions, regulatory bodies, central bank, department, offices or authorities of any kind for any governmental unit (foreign, federal, state, county, district, municipal, city, quasi-governmental or otherwise) now or later in existence.

(g) Grantor and Successors and Assigns: The person or entity named in the introductory paragraph of this Deed of Trust, and its, her, his or their respective heirs, personal representatives, successors and assigns (all of which are and whom are included in the term "its successors and assigns"), subject however to the requirements of this Deed of Trust.

(h) Income: All of the rents, bonuses, royalties, revenues, income, proceeds, damages, profits and other benefits and income paid or payable from the Mortgaged Property, the Leases or from the use, possession, operation, or sale of the Mortgaged Property, including without limitation any insurance or condemnation proceeds.

(i) Indebtedness: The principal of, interest on and all other amounts, payments, fees, and premiums now or hereafter due under the Note, this Deed of Trust and the other Security Documents.

(j) Land: The land described in EXHIBIT A to this Deed of Trust, and all oil, gas, coal, lignite, soil, gravel and other minerals ("Minerals"), development rights, air rights, shrubbery or plantings, water rights, easements, and other rights related to the Land owned by Grantor.

(k) Leases and Rents: All of Grantor's estate, right, title and interest in and to any and all leases of space in any part of the Mortgaged Property, together with any guaranties and security (including any deposits and any letters of credit, the proceeds of any letters of credit and any letter of credit rights and supporting obligations) for the obligations of any tenant, lessee, lease guarantor, sublessee or other person or entity having the right to occupy, use or manage any part of the Mortgaged Property (which agreements are herein referred to as a "Lease" or the "Leases") and all of Grantor's estate, right, title and interest in and to all rents, revenues, income, profits, proceeds, issues, royalties, other benefits and all other "Rents" (as such term is defined in the Texas Assignment of Rents Act, Chapter 64 of the Texas Property Code ("TARA")) now or hereafter derived from the Land, Buildings, Fixtures and Personalty or the Leases (collectively, the "Rents").

(l) Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, orders, decrees, rules, regulations, permits, certificates, codes or ordinances (or interpretations of any of the foregoing) of any Governmental Authority in any way applicable to Grantor or the Mortgaged Property, including without limitation the ownership, use, occupancy, operation, maintenance, repair or reconstruction of the Mortgaged Property, and all applicable Legal Requirements pertaining to health or the environment, (ii) Grantor's present or future bylaws and articles or certificate of incorporation, partnership, limited partnership, joint venture, trust or other form of association, and all legal requirements to maintain those entities in existence and in compliance with all applicable laws, (iii) any and all Leases, (iv) any restrictions, covenants, Contractual Rights and other contracts (written or oral) of any nature to which Grantor is or may be bound or to which the Mortgaged Property is or may be subject, and (v) the terms of any license or permit issued by any Governmental Authority pertaining to Grantor or the Mortgaged Property.

(m) Loan Agreement: The Agreement of even date herewith by and between Grantor, as Borrower, and Beneficiary, as Lender, which, among other things, provides for the Note and pertains to the Mortgaged Property.

(n) Mortgaged Property: The Land, Buildings, Fixtures, Income, Leases, Rents, Contractual Rights, Utilities (hereinafter defined) and Personalty (hereinafter defined), together with: (i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, alleys, appendages and appurtenances in anywise appertaining thereto and all right, title and interest of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part of it; (ii) all additions, appurtenances, substitutions, replacements, reversions and remainders therein; (iii) all of Grantor's right, title and interest in and to any awards, remuneration, settlements or compensation made by any Governmental Authority to the present or any subsequent owner of the Land, Buildings, Fixtures, Leases, Utilities or Personalty, including but not limited to those for any condemnation or other award, vacation of, or change of grade in, any streets affecting the Land or the Buildings; and (iv) any and all other security and collateral of any nature whatsoever, now or later given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

(o) Note: The Promissory Note dated the same date as this Deed of Trust, executed by Grantor and made payable to the order of Beneficiary (the "Note"), in the face amount of \$2,808,000.00 or so

much of that amount as is advanced, and any and all renewals, extensions, replacements, rearrangements, substitutions or modifications of the Note.

(p) Obligations: The Indebtedness and any and all of the agreements, covenants, duties, liabilities, warranties, representations and other obligations made by Grantor or others to Beneficiary as set forth in the Security Documents or in any lease, sublease or other agreement pursuant to which Grantor is granted a possessory interest in the Land.

(q) Permitted Encumbrances: The liens, easements, restrictions, security interests and other matters (if any) which are listed in Exhibit B to this Deed of Trust, but only to the extent they are valid and in force and affect and apply to the Land as of the date hereof.

(r) Personalty: All furniture, furnishings, tools, materials, supplies, equipment, machinery, goods, inventory, work in process, general intangibles (including, but not limited to patents, trade secrets, trademarks and goodwill), shrubbery and plantings that are not a part of the Land, money, accounts, chattel paper, notes, documents, instruments, utility and other deposits permits, licenses, franchises, certificates, plans and specifications, studies, contract rights (but not obligations), claims against third parties which relate to the Mortgaged Property, funds, accounts, accounts receivable, trademarks, trade names, symbols, all guaranties and warranties obtained with respect to the Land, Buildings, equipment, furniture and furnishings, judgments, awards, books and records, building materials, advertising brochures, lease forms, insurance proceeds and all other personal property (other than the Fixtures) of any kind or character, now or later located on or about the Land and the Buildings or used in connection with their operation, or stored off the Land for future incorporation on or about the Land and the Buildings and now or hereafter owned by Grantor, together with all accessories, replacements and substitutions and their proceeds.

(s) Security Documents: This Deed of Trust, the Loan Agreement, and the other Loan Documents (as defined in the Loan Agreement) and any and all other documents now or hereafter executed by Grantor and as any of them may be amended, modified, restated or supplemented, or any other person, to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations. In addition, where the context in which it is used includes, directly or indirectly or by implication, the payment of the Note or obligations that are to be performed under the Note, the definition of Security Documents also includes the Note.

(t) Taxes and Charges: All real estate and personal property and use taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, maintenance fees, charges and assessments and any interest, costs or penalties with respect thereto, of any kind and nature which at any time may be assessed, levied or imposed upon the Mortgaged Property or the Income, or the ownership, use, occupancy or enjoyment of them.

(u) UCC: The Uniform Commercial Code in effect in the state in which the affected Mortgaged Property, or any portion of it, is located.

(v) Utilities: All wastewater, fresh water and other utilities capacity and facilities including, without limitation, all utility lines and utility connections and any wastewater capacity reservation

(the "Utilities Capacity") available or allocable to the Land and the Buildings or dedicated to or reserved for them pursuant to any system, program, contract or other arrangement with any public or private utility, and all related or incidental licenses, reservations, commitments, capital recovery charge receipts, rights and interests, whether considered to be real, personal or mixed property, including the right and authority to transfer or relinquish any or all such rights and the right to any credit, refund, deposit, reimbursement or rebate for utilities facilities construction or installation or for any reservation fee, standby fee or capital recovery charge promised, provided or paid for by Grantor or any of Grantor's predecessors or Affiliates, to the full extent now allocated or allocable to the Land or Buildings. Utilities also includes without limitation water, gas, electricity, drainage and storm and sanitary sewers.

The words "hereof," "herein," and "hereunder," and words of similar import when used in this Deed of Trust shall refer to this Deed of Trust as a whole and not any particular provision of this Deed of Trust. References to Section or Subsection are to the sections and subsections in this Deed of Trust, unless otherwise indicated.

Article 2. Conveyance of Mortgaged Property and Warranty of Title

2.1. Conveyance and Warranty of Title. In order to secure the payment of the Indebtedness and the performance of the Obligations, Grantor has GRANTED, SOLD and CONVEYED, and does hereby GRANT, SELL and CONVEY to the Trustee and its successors and assigns the Mortgaged Property, IN TRUST WITH POWER OF SALE for the benefit and security of Beneficiary, subject to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto the Trustee, his successors and assigns, forever, and Grantor does hereby bind Grantor and its successors and assigns, to warrant and forever defend the title to the Mortgaged Property subject to the Permitted Encumbrances, unto the Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor pays the Indebtedness and performs the Obligations on or before the date they are to be paid and performed then this Deed of Trust shall terminate, and at Grantor's expense, will be released; otherwise it will remain in full force and effect.

2.2. Priority of Lien: This Deed of Trust is in all respects senior, and superior to any other liens and security interests (collectively, the "Junior Liens")

Article 3. Representations, Warranties, Covenants and Agreements

Grantor hereby unconditionally represents, warrants, covenants and agrees to all of the following:

3.1. Validity of Security Documents: The Note and Security Documents constitute the legal, valid and binding obligations of Grantor and others obligated under the terms of the Security Documents, in accordance with their respective terms. If the validity or priority of the Security Documents or of any rights, titles, liens or security interests created or evidenced by them with respect to the Mortgaged Property or any part of it is questioned or attacked directly or indirectly, or if any legal proceeding is instituted with respect thereto, Grantor, at Grantor's cost and expense, will promptly cure any defect that may develop or be claimed, and will take all necessary steps for the defense of any legal proceeding, including but not limited to the prosecution or defense of

litigation and the release or discharge of all adverse claims, and the Beneficiary, whether or not named as a party, is authorized and empowered to take any additional steps as in its judgment and discretion may be necessary or proper for the defense of the legal proceeding or the protection of the validity or priority of the Security Documents and the rights, titles, liens and security interests created or evidenced by them, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Mortgaged Property, the posting of any bonds, the purchase of any tax title and the removal of prior liens or security interests, and all expenses so incurred of every kind and character will be a demand obligation owing by Grantor and Beneficiary will be subrogated to all rights of the person receiving the payment. Grantor will, on request of the Beneficiary, and at Grantor's expense, (i) promptly correct any defect, error or omission which may be discovered in the contents of the Security Documents or in their execution or acknowledgment; and (ii) execute, acknowledge, deliver, procure and record or file any document or instrument (including without limitation any financing statement) deemed advisable by the Beneficiary to perfect the lien or the security interest hereunder against the rights or interests of third persons, subject to the Permitted Encumbrances.

3.2. Title to Mortgaged Property: Grantor has good and indefeasible fee simple title to the Mortgaged Property, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances. This Deed of Trust is a valid, subsisting, first lien deed of trust on the Land, the Buildings and the Fixtures and is a valid, subsisting, first security interest in and to the Personalty, Leases and Income, all in accordance with the terms of this Deed of Trust.

3.3. Payment and Performance: Grantor will pay the Indebtedness, as and when called for in the Note and Security Documents, and will perform all of the Obligations on or before the dates they are to be performed.

3.4. Compliance with Legal Requirements; Environmental Laws; Anti-forfeiture Laws: Grantor will promptly and faithfully comply with all present and future Legal Requirements, including but not limited to the Americans with Disabilities Act. The Mortgaged Property and its intended use complies with all Legal Requirements in all material respects. There are no judicial or administrative actions, suits or proceedings pending or threatened against Grantor with respect to the Mortgaged Property. The agreements, representations, warranties, covenants and indemnities made by Grantor in that certain Environmental Risk Agreement of even date herewith for the benefit of Beneficiary are hereby incorporated herein for all purposes. Grantor will not commit, permit or suffer to exist any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any money paid in performance of Grantor's obligations under the Note or under any of the other Security Instruments. In furtherance thereof, Grantor hereby agrees to indemnify Beneficiary and Trustee harmless from and against, and Grantor shall be responsible for, any loss, damage or injury by reason of the breach of the covenants and agreements set forth in this Section REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF BENEFICIARY OR TRUSTEE. Without limiting the generality of the foregoing, the filing of

formal charges or the commencement of proceedings against Grantor, or against all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in the performance of Grantor's obligations under the Security Documents is a potential result shall, at the election of the Beneficiary, constitute an Event of Default hereunder without notice or opportunity to cure.

3.5. **Payment of Taxes and Charges:** Grantor will duly pay and discharge, or cause to be paid and discharged, the Taxes and Charges before they are delinquent and in every event before they might become a lien against the Mortgaged Property, and not less than ten (10) days before the date they will become delinquent Grantor will furnish to Beneficiary certificates or other evidence satisfactory to Beneficiary showing that the Taxes and Charges have been paid. In the event of a foreclosure under this Deed of Trust, or deed-in-lieu of foreclosure, Grantor will be and remain responsible for, and liable to the purchaser or grantee for, all Taxes and Charges then due and for all Taxes and Charges that have accrued through the date of foreclosure sale or deed-in-lieu, whether or not then due.

3.6. **Tax and Insurance Escrow:** In order to implement the provisions of Sections 3.5 and 6.1, Grantor will, upon written request from the Beneficiary following an Event of Default, pay to Beneficiary, as and when directed by Beneficiary, and as escrowed sums, a monthly amount equal to 1/12th of the sum of (x) the annual Taxes and Charges (estimated by Beneficiary in good faith wherever necessary) to become due for the tax year during which payment is directed and (y) the insurance premiums for the same year for the insurance policies required hereunder; provided, however, if when any escrow is established hereunder less than a full calendar year remains until the date the Taxes and Charges and insurance premiums are due, then the monthly amount of escrowed sums to be paid by Grantor pursuant hereto shall be determined by multiplying the amount of Taxes and Charges and insurance premiums to be due times a fraction whose denominator is the number of months remaining until the due date of the Taxes and Charges and insurance premiums and whose numerator is one. Beneficiary also may require that the Taxes and Charges and insurance premiums be paid to Beneficiary in regular installments in addition to and at the same time as installments are paid on the Note. If Beneficiary determines that any amounts paid by Grantor are insufficient for the payment in full of the Taxes and Charges and insurance premiums, Beneficiary may notify Grantor of the increased amounts required, whereupon Grantor will pay to Beneficiary within thirty (30) days the additional amount as stated in Beneficiary's notice. The escrowed sums shall be held by Beneficiary in non-interest bearing accounts and shall not be commingled with Beneficiary's other funds. Upon foreclosure or a deed in lieu of foreclosure, or upon an assignment of this Deed of Trust, Beneficiary can pay the balance of the escrowed sums then in its possession to the purchaser or transferee or to its assignee, whereupon the Beneficiary and its Trustee will then be completely released from all liability with respect to them. Upon full payment of the Indebtedness, or at any earlier time as Beneficiary may elect, the balance of the escrowed sums in Beneficiary's possession may be paid to Grantor. The escrowed sums may, at the option of Beneficiary, be repaid to Grantor in time to allow Grantor to satisfy Grantor's obligations under the Security Documents to pay the Taxes and Charges and the required insurance premiums, or be paid directly to the Governmental Authority and the insurance company entitled to them. If an Event of Default then exists, however, Beneficiary will have the additional

option of crediting the full amount of the escrowed sums against the Indebtedness. Notwithstanding anything to the contrary contained in this paragraph, Beneficiary reserves the right to waive the payment by Grantor to Beneficiary of the escrowed sums, and, in the event Beneficiary does waive payment, it will be without prejudice to Beneficiary's right to insist, at any subsequent time or times, that the payments be made to Beneficiary.

3.7. Restoration Following Casualty: If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) results in damage to or loss or destruction of the Mortgaged Property, Grantor will immediately notify Beneficiary and, if so instructed by Beneficiary and if Beneficiary makes the insurance proceeds paid in connection with such casualty available therefor as provided in this Deed of Trust, Grantor will promptly, at Grantor's sole cost and expense and regardless of whether the insurance proceeds (if any) are sufficient for that purpose, begin and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

3.8. Repair: Grantor will keep the Mortgaged Property in first class order and condition and will make all repairs, replacements, additions, improvements and alterations, interior and exterior, structural and non-structural, which are necessary or reasonably appropriate to keep it in that order and condition.

3.9. Leases; Performance of Leases: Grantor will not execute any Leases as Lessor except on a form reasonably approved by Beneficiary. Grantor will (a) duly and punctually perform and comply in material respects with any and all of its representations, warranties, covenants and agreements under each of the Leases, (b) except in the ordinary course of business, not modify the Leases or voluntarily terminate, cancel or waive its rights or the obligations of any person under any of the Leases, unless a tenant is in default under such Lease, (c) comply with and perform all its obligations under the Leases and maintain the Leases in force and effect during their full term, unless a tenant is in default under such Lease, (d) appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other parties to the Leases, (e) upon Beneficiary's written request deliver copies to Lender of the Leases and any and all amendments thereto certified by Grantor to be true and correct, (f) not collect any rental under the Leases for more than one (1) month in advance, and (g) maintain all security deposits, pet deposits and other sums received as security for leases in a separate interest-bearing bank account in Grantor's name, in trust for Beneficiary and tenants under the Leases, (as their interests may appear) which account shall remain segregated and not co-mingled with Grantor's operating accounts and which shall be subject to the liens and security interests granted herein. Upon request of Beneficiary, Grantor will send Beneficiary a copy of any notice of default given to a tenant and will cause each tenant to agree (and each tenant under each Lease executed after the date hereof so agrees) to give Beneficiary written notice of each and every default by Grantor under any Lease, and not to exercise any remedies under any Lease unless Beneficiary fails to cure the default within thirty (30) days after Beneficiary has received that notice, or within such longer period as may be reasonably necessary if the default cannot be cured within thirty (30) days, provided that

Beneficiary shall never have any obligation or duty to cure any such default. Grantor will not enter into any Lease which (i) provides for an original term of less than six (6) months from the commencement date of such Lease, (ii) is not an arm's length transaction or (iii) does not provide that such Lease is subordinate to this Deed of Trust and that all tenants thereunder agree to attorn to Beneficiary.

3.10. Hold Harmless: Grantor will defend, at its own cost and expense, and hold the Trustee and Beneficiary harmless from, any action, proceeding or claim affecting the Mortgaged Property or the Security Documents, and all costs and expenses incurred by the Trustee or Beneficiary in protecting its interests in any of these events (including all court costs and reasonable attorneys' fees) must be paid by Grantor, unless such is caused by the gross negligence, willful misconduct or bad faith of Beneficiary. THIS INDEMNITY IS INTENDED TO COVER, AND GRANTOR DOES HEREBY INDEMNIFY BENEFICIARY AGAINST, LIABILITIES, LOSSES, COSTS AND EXPENSES ARISING OUT OF THE SOLE, JOINT OR CONCURRENT NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR STRICT LIABILITY OF BENEFICIARY.

3.11. Other Covenants and Agreements: Grantor will keep and perform its covenants and agreements in this Deed of Trust.

3.12. Use Violations: Grantor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (a) violates in a material respect any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance or (d) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. If Grantor receives any notice claiming that Grantor is in violation of any Legal Requirement or in any of the provisions of this section, Grantor will immediately notify Beneficiary and furnish a copy of the notice to Beneficiary. Grantor shall not grant, join in or consent to any lien, security interest, easement, license, use or other change or interest covering or affecting all or part of the Mortgaged Property or initiate, join in or consent to the change in any private restrictive covenant, zoning ordinance or other restriction limiting or defining the use which may be made of the Mortgaged Property or any part thereof without the prior written consent of Beneficiary.

3.13. Waste; Alterations: Grantor will not commit or permit any physical waste or physical deterioration of the Mortgaged Property. Subject to the provisions of Sections 3.7, 3.8 and Article 6, Grantor will not without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld) make or permit to be made any alterations or additions to the Mortgaged Property which would impair or reduce its value, or extract, remove, drill, explore or deplete or suffer or permit extraction, removal, drilling, exploration or depletion of any Minerals (as defined above) or substances, timber, or other portion of the Land.

3.14. Replacement of Fixtures and Personalty: Grantor will promptly replace all worn-out or obsolete Fixtures or Personalty with Fixtures or Personalty of substantial equal suitability. However, Grantor will not, without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld), permit any of the Fixtures or Personalty to be removed at any time

from the Land or Buildings, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is simultaneously replaced by an article of equal suitability.

Any net cash proceeds received by Grantor from such disposition shall be promptly paid over to Beneficiary to be applied to the Indebtedness in the order determined by the Beneficiary in its sole discretion.

3.15. No Residence or Homestead: Grantor does not claim or use and shall not claim or use (and hereby renounces) the Mortgaged Property or any part of it as Grantor's residence or business or residential homestead.

3.16. Payment of Debts; No Further Encumbrances: Grantor will pay and discharge any valid debts and liabilities incurred in connection with the Mortgaged Property. Except for the Senior Liens, Grantor will not, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, easement, restrictive covenant, charge, or encumbrance on or covering any of the Mortgaged Property, Leases or Income, regardless of whether they are expressly subordinate to the liens of the Security Documents. If any further encumbrances are placed against the Mortgaged Property without Beneficiary's consent, then Grantor will immediately cause them to be discharged and removed.

3.17. No Sales or Other Transfers or Refinancing: In the event Grantor, without the prior written consent of Beneficiary, sells or contracts to sell or enters into an option to sell, or exchanges, assigns, conveys, mortgages, transfers possession of (including also a lease of all or a substantial part of the Mortgaged Property), or otherwise disposes of the Mortgaged Property, or any part of it (except as permitted herein), or refinance the indebtedness secure hereby, Beneficiary shall have the right to accelerate the Indebtedness and declare such Indebtedness immediately due and payable. In order to assist Beneficiary in determining whether or not to consent to any sale, exchange, assignment, conveyance, transfer or other disposition, Grantor will furnish to Beneficiary, at no expense to Beneficiary, detailed and complete financial statements of the proposed transferee, prepared consistent with GAAP and audited by a certified public accountant satisfactory to Beneficiary, if requested by Beneficiary, together with detailed and complete information about the business and business experience of the proposed transferee, the use to be made of the Mortgaged Property by the proposed transferee, projections by the proposed transferee of the sources of funds to be used to repay the Indebtedness, and an appraisal of the Mortgaged Property from an appraiser satisfactory to Beneficiary, together with any other information Beneficiary may reasonably require. Beneficiary may also require as a condition to any consent that a transfer fee be paid to it or that the Note or this Deed of Trust be modified in order to reflect its loan practices or market conditions at that time. Although not required as a condition for Beneficiary to refuse its consent to a proposed sale or transfer, any determination by Beneficiary that its security would be impaired by the transfer will be conclusive and binding. Beneficiary may grant or deny its consent in its sole discretion and, if the consent is given, that transfer will be subject to the Security Documents, and the transferee must assume all obligations and agree to be bound by all the provisions in the Security Documents; however, the transferee's assumption will

not release Grantor or any maker or guarantor of the Note from any liability. Consent to a transfer will not be a waiver of the right to the requirement of Beneficiary's consent to any other transfer. As used herein "sell, or contract to sell, exchange, assign, convey, mortgage, transfer possession of or otherwise dispose of includes (i) the sale, agreement to sell, assignment, conveyance or transfer of the Mortgaged Property, or any portion of it or any interest in it, whether voluntary, involuntary, by operation of law or otherwise, and (ii) except as permitted under the Loan Agreement, the transfer, assignment or conveyance or other change in ownership of the partnership interest, capital stock or other voting or ownership interest of any corporation, partnership, joint venture, trust, or other entity.

3.18. Estoppel Certificates: Grantor will at any time and from time to time furnish promptly upon request by the Beneficiary a written statement in form as required by the Beneficiary stating that the Note, this Deed of Trust, and the other Security Documents are valid and binding obligations of Grantor, enforceable against Grantor in accordance with their terms; the amount of unpaid principal balance of the Note; the date to which interest on the Note is paid; that the Note, this Deed of Trust and the other Security Documents have not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of the Note, this Deed of Trust and the other Security Documents, or if any of the foregoing statements are untrue, specifying the reasons; and containing such other information as Beneficiary may request.

3.19. No Sale or Other Transfers of Utilities: Grantor will not, without the prior written consent of Beneficiary, sell or contract to sell, or enter into an option to sell, or exchange, assign, convey, pledge, transfer possession of (including also a lease of all or any part of the Utilities) or otherwise dispose of all or any part of the Utilities or any agreements or rights of any nature relating to the Utilities, drainage ditches, and/or treatment plants associated with the Mortgaged Property, any reimbursements or other rights belonging to Grantor which pertain to any Utilities or utility services provided, to be provided, or now or in the future available to all or any part of the Mortgaged Property. Grantor further covenants and agrees that it shall take any such action and execute, acknowledge, deliver and record and/or file any and all instruments as may be necessary or proper to transfer any existing or future utility commitments, reservations or capital recovery charge receipts covering the Mortgaged Property to the Grantor and Beneficiary as co-recipients of the utility commitments, reservation and/or capital recovery charge receipt, and to maintain the existing Utility Capacity, rights to the Utilities, and reservations for the Mortgaged Property at or above its present level.

3.20. Grantor Will Protect Property from Mechanic's Liens: Grantor agrees to promptly pay all bills for labor and materials incurred in connection with the Mortgaged Property and to prevent the fixing of any lien against any part of the Mortgaged Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Grantor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency. Notwithstanding the foregoing, Grantor shall have the right to contest the validity of any liens or claims for liens, and Beneficiary may require protection regarding disputed liens as provided in the Loan Agreement which may include bonding around a disputed lien in accordance with the requirements of the Texas Property Code.

3.21. Contracts: Grantor, promptly upon written request of Beneficiary, will furnish to Beneficiary copies of all Contracts and all amendments and supplements thereto certified by Grantor to be true and correct and Grantor does hereby obligate itself to comply with and perform all its obligations under the Contracts and enforce the provisions of such Contracts.

3.22. Grantor Will Correct Title Defects: If at any future time any defect should be found to exist in the title to any of the Mortgaged Property, Grantor agrees to promptly commence and thereafter diligently proceed to cure the defect and defend the title. If any lien or encumbrance junior, equal or superior in rank or priority to the lien of this Deed of Trust should be discovered or arise at any time in the future then, unless Beneficiary is the only holder of it, or Beneficiary has given specific prior written consent to it, Grantor agrees to promptly discharge and remove it from the Mortgaged Property. Grantor will notify Beneficiary in writing within five days of the time, that Grantor becomes aware of the filing of any mortgage, lien, security interest, financing statement or other security device whatsoever against the Mortgaged Property other than the Security Documents.

3.23. No Reliance on Beneficiary: Grantor is experienced in the ownership and operation of properties similar to the Mortgaged Property, and Beneficiary is relying solely upon Grantor's expertise and business plan in connection with the construction of the Improvements and ownership and operation of the Mortgaged Property. Grantor is not relying on Beneficiary's expertise or business acumen in connection with the Mortgaged Property or in connection with the construction of the Improvements.

3.24. ERISA: If and to the extent that Grantor is obligated under any plan governed by or subject to the Employee Retirement Income Security Act, as amended ("ERISA"), Grantor shall fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA and the Internal Revenue Code, as amended ("IRC"). Furthermore, Grantor shall comply in all material respects with any and all applicable provisions of ERISA and the IRC and will not incur or permit to exist any unfunded liabilities to the Pension Benefit Guaranty Corporation or to such plan under ERISA or the IRC.

3.25. Disclosures: If at any time Grantor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which are likely to have a material adverse affect on the Mortgaged Property or Grantor's financial condition, Grantor shall promptly notify Beneficiary of the existence or occurrence thereof and of Grantor's opinion as to what effect such may have on the Mortgaged Property or Grantor. Grantor shall also give prompt notice to Beneficiary of (i) the serious illness or death of any principal or key employee of Grantor, (ii) any litigation or dispute, threatened or pending against or affecting Grantor, the Mortgaged Property or any guarantor which could have a material adverse effect on the Mortgaged Property or the financial condition or business of any of the aforementioned parties, (iii) any Default, (iv) any default by Grantor or any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party, (v) any default by Guarantor or any acceleration of any indebtedness owed by any Guarantor under any contract to which Guarantor is a party and (vi) any change in the character of Grantor's business as it existed on the date hereof.

3.26. Use of Personality: Grantor represents that all Personality is property for business use and is not consumer goods. Grantor further covenants that there are and shall be no conditional sales contracts that cover any of the Personality.

3.27. Contractual Rights; Performance of Contracts: Grantor will (a) duly and punctually perform and comply in material respects with all of its representations, warranties, covenants and agreements under each of the Contracts, (b) except in the ordinary course of business, not alter or modify the Contracts or voluntarily terminate, cancel or waive its rights or the obligations of any other party under any of the Contracts or permit or suffer a cancellation or termination of a diminution of the obligations of any other party under any of the Contracts; however, Beneficiary shall not unreasonably withhold its consent with respect to a property management agreement or the modification or termination thereof, (c) comply with and perform all its obligations under the Contracts and maintain the Contracts in full force and effect during their terms, (d) appear in and defend any action or proceeding arising under or in any manner connected with any of the Contracts or the representations, warranties, covenants and agreements of it or the other parties to the Contracts. Grantor will give immediate notice to Beneficiary of any notice Grantor receives from any other party to any of the Contracts specifying any claimed default by any party to any of the Contracts.

Upon receipt from Beneficiary of notice that an Event of Default exists, any and every party to each of the Contracts are hereby authorized and directed to attorn to the Beneficiary as owner, and to observe and perform the Contracts as though Beneficiary were named as owner in the Contracts and to continue to do so until otherwise notified by Beneficiary. Upon the occurrence of an Event of Default, Grantor specifically agrees that Beneficiary may take possession of the Mortgaged Property and manage and operate it on such terms as it deems proper and may either with or without taking possession of the Mortgaged Property demand, sue for or otherwise enforce the Contracts with full power to perform, amend, revise, release or otherwise change or enforce the same as Beneficiary may deem proper. Upon any foreclosure under this Deed of Trust or the acceptance of a deed-in-lieu of foreclosure, Grantor hereby specifically agrees that Beneficiary or the Trustee has the full power and authority to assign the Contracts to any purchaser at such a sale or a grantee. Any such assignment will operate to fully vest any such purchaser or grantee with all rights of Grantor under the Contracts as though such purchaser or grantee were named as owner in the Contracts. Beneficiary shall not be liable for any loss sustained by Grantor resulting from Beneficiary's failure to enforce the Contracts after default or from any other act or omission of Beneficiary, unless such loss is caused by the gross negligence, willful misconduct or bad faith of Beneficiary. The Beneficiary shall not be obligated to perform or discharge any obligation, duty or liability under the Contracts, and the Grantor shall and does hereby agree to indemnify the Beneficiary for, and to hold the Beneficiary harmless from, any and all liability, loss or damage which may or might be incurred under the Contracts, and from any and all claims and demands whatsoever which may be asserted against the Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Contracts, unless such loss is caused by the gross negligence, willful misconduct or bad faith of Beneficiary. THIS INDEMNITY IS INTENDED TO COVER, AND GRANTOR DOES HEREBY INDEMNIFY BENEFICIARY AGAINST, LIABILITIES, LOSSES, COSTS

AND EXPENSES ARISING OUT OF THE SOLE, JOINT OR CONCURRENT NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR STRICT LIABILITY OF BENEFICIARY.

Article 4. Events of Default

The term "Event of Default," as used in this Deed of Trust means the occurrence or happening, at any time and from time to time, of any one or more of the following unless cured with the applicable cure period, if any, as expressly provided in the Loan Agreement:

4.1. Defaults: If there should occur an Event of Default under the Loan Agreement or any default or event of default (after the expiration of any applicable cure period) under any of the Security Documents.

4.2. Destruction of Improvements: If the Mortgaged Property is so demolished, destroyed or substantially damaged that (in Beneficiary's reasonable judgment) it cannot be restored or rebuilt with available funds to a substantially similar condition within a reasonable period of time.

4.3. Foreclosure of Other Liens: If the holder of any lien or security interest on any of the Mortgaged Property (without implying Beneficiary's consent to the existence, placing, creating or permitting of any lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies, whether or not that lien or security interest is inferior to this Deed of Trust and whether or not Beneficiary may have consented to the creation of that lien or security interest.

4.4. Enforceable Judgment: If any execution, extent or sequestration or any other process of any court becomes enforceable against the Grantor or a distress or analogous process is levied upon the Mortgaged Property or any part thereof, unless the Grantor (a) gives security to the Beneficiary in such form, substance and amount as the Beneficiary in its sole discretion may require, (b) in good faith disputes such process or appeals the judgment giving rise to such process and (c) thereafter, in the opinion of the Beneficiary, the Grantor diligently prosecutes such dispute or appeal.

Article 5. Remedies in Event of Default

5.1. Remedies: If an Event of Default occurs, Beneficiary may, at Beneficiary's election and by or through the Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration: Declare the principal balance (meaning the then unpaid principal balance on the Note), the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, including notice of intent to accelerate, notice of acceleration, presentment, protest, demand or action of any nature whatsoever (each of which is hereby expressly waived by Grantor), which will then become immediately due and payable.

(b) Entry on Mortgaged Property: Enter upon the Mortgaged Property and take exclusive possession of it and of all books, records and accounts relating to it, and exercise without interference any and all rights of Grantor with respect to the management, possession, operation,

protection or preservation of the Mortgaged Property, including without limitation the right to lease the Mortgaged Property for Grantor's account on any terms Beneficiary considers to be reasonable under the circumstances and to deduct from the Income all reasonable expenses. If Grantor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent, Grantor will be deemed to be a tenant at will or sufferance of Beneficiary, and Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in this paragraph will, however, be construed to impose any greater obligation to acquiring possession of the Mortgaged Property after an Event of Default than would have otherwise existed.

(c) Foreclosure and Sale: Sell or offer for sale the Mortgaged Property in such portions, order and parcels as Beneficiary may determine, with or without having first taken possession, to the highest bidder for cash at public auction at the courthouse of any county in which any of the Land to be sold is located, on the first Tuesday of any month between the hours of 10:00 a.m. and 4:00 p.m. (as provided in the Texas Property Code), after (i) giving notice of the time, place and terms of the sale in accordance with the statutes of the State of Texas then in effect which specify the procedure for foreclosures under deeds of trust (or if no statute then exists which applies to this Deed of Trust, then in accordance with section 51.002 of the Texas Property Code as it now reads), and (ii) giving notice at least twenty-one (21) days preceding the date of sale (by the Beneficiary or any person chosen by the Beneficiary) of the proposed sale by certified mail to each debtor obligated to pay the Indebtedness according to the records of Beneficiary; service of the notice to each debtor to be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to each debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service (it being expressly understood that the affidavit of any person having knowledge of the facts to the effect that the notice was given shall be prima facie evidence of that fact). However, nothing contained in this paragraph will be construed to limit in any way the Trustee's rights to sell the Mortgaged Property, or any portion of it, by private sale if, and to the extent that, a private sale is permitted under the laws of the State of Texas, or by public or private sale after entry of a judgment by any court of competent jurisdiction ordering it. Any sale of property covered by Article 7 in this Deed of Trust may be conducted in the manner provided in this paragraph, without the necessity for Trustee to have physically present, or to have constructive possession of, the Mortgaged Property (Grantor hereby covenanting and agreeing to deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of that property will pass to the purchaser as completely as if it had been actually present and delivered to purchaser at the sale. Each instrument of conveyance executed by the Trustee will contain a general warranty of title, binding upon the Grantor and its successors and assigns, and each and every recital contained in any instrument of conveyance will conclusively establish the truth and accuracy of the matters recited in it, including, without limitation, the occurrence of the Event of Default, of the proper advertisement and conduct of the sale, and of the appointment of any substitute Trustee, and any prerequisites to the validity of the sale will be conclusively presumed to have been performed. To the fullest extent permitted by law, after the sale the Grantor will be completely and irrevocably divested of all of its right,

title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and the sale will be a perpetual bar both at law and in equity against Grantor, and against any and all other persons claiming or to claim the property sold or any part of it, by, through or under Grantor. Beneficiary may be a purchaser at any sale and its bid price may be credited to the Indebtedness in the manner and order provided in Section 5.6, in lieu of the payment of cash.

(d) Receiver: Upon, or at any time after, beginning the foreclosure under this Deed of Trust or the exercise of any of the other remedies, Beneficiary may make application to a court of competent jurisdiction as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness or the solvency of Grantor, for appointment of a receiver of the Mortgaged Property, and Grantor does hereby irrevocably consent to such an appointment. Any receiver will have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and will apply the Income in accordance with the provisions of Section 5.6.

(e) Protection of Mortgaged Property: Take any action and expend any sums which may be reasonably necessary to enhance, protect or preserve the Mortgaged Property.

(f) Attorneys' Fees: Collect from Grantor all court costs and reasonable attorneys' fees (which shall include costs of paralegals and all other incidental costs) incurred by Beneficiary in connection with the Event of Default.

(g) Other: Exercise any and all other rights, remedies and recourses granted under the Security Documents or now or hereafter existing in equity or at law, by virtue of statute or otherwise.

5.2. Separate Sales: If an Event of Default occurs, the Mortgaged Property, or any interest in it, may be sold in one or more sales or one or more parcels and in such manner and order as the Trustee, in his sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default will not be exhausted by any one or more sales, and that other and successive sales may be made until all of the Mortgaged Property has been sold or until the Indebtedness has been fully satisfied.

5.3. Remedies Cumulative, Concurrent and Non-Exclusive: If an Event of Default occurs, Beneficiary has all the rights, remedies and recourses granted in the Security Documents, as well as those available at law or equity (including specifically those granted by the UCC in effect and applicable to the Mortgaged Property, or any portion of it), and all those rights, remedies and recourses (a) are cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor, any guarantor or others obligated under the Note, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion arises, it being agreed by Grantor that the exercise or failure to exercise any of the remedies will in no event be construed as a waiver or release of any right, remedy or recourse, and (d) are intended to be, and will be, nonexclusive.

5.4. Waiver of Redemption, Notice and Marshalling of Assets: If an Event of Default occurs, to the fullest extent permitted by law, Grantor hereby agrees not to claim the benefit of and

irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default (except as may be provided for in this Article 5) or of Trustee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Security Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

5.5. Discontinuance of Proceedings: If an Event of Default occurs, if the Beneficiary has proceeded to invoke any right, remedy or recourse permitted under the Security Documents and thereafter elects to discontinue or abandon it for any reason, Beneficiary will have the unqualified right to do so and (a) to pursue another right, remedy or recourse, including without limitation the filing of a suit or institution of a foreclosure, or (b) to reinstate the Note in writing, in which event, Grantor and Beneficiary will be restored to their former positions with respect to the Indebtedness, the Obligations, the Security Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary will continue as if they had never been invoked.

5.6. Application of Proceeds: If an Event of Default occurs, the proceeds of any sale of, and the Income and other amounts generated by the holding, leasing, operation or other use of, the Mortgaged Property will be applied by Beneficiary (or the receiver, if one is appointed) to the extent that funds are available in the following order of priority:

(a) first, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling it, including without limitation (i) a reasonable Trustee's fee and any receivers' fees, (ii) court costs; (iii) attorneys' and accountants' fees, (iv) costs of advertisement, and (v) the payment of any and all Taxes and Charges, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Deed of Trust (except those to which the Mortgaged Property has been sold under Section 5.1(c) subject to and without in any way implying Beneficiary's obligation to pay any of those items or its consent to their creation);

(b) second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest, which may be due to Beneficiary under the Note or other Security Documents, together with all interest thereon as provided therein;

(c) third, in the order and manner determined by Beneficiary, to the payment of all accrued but unpaid interest due on the Note and to the payment of the remaining Indebtedness represented by the principal amount outstanding under the Note or the Loan Agreement;

(d) fourth, to the extent funds are available and, to the extent known by and at the election of Beneficiary, to the payment of any indebtedness or obligation secured by any subordinate (or any equal or superior ones which are not paid under (a) above) deed of trust on or security interest in the Mortgaged Property; and

(e) fifth, to Grantor or any other person entitled to the remainder of the funds.

5.7. Occupancy After Foreclosure: If an Event of Default occurs, the purchaser at any foreclosure sale will become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property or any part of it will become tenants at sufferance of the purchaser at the foreclosure sale, and must (a) deliver possession immediately to the purchaser upon demand and (b) pay the purchaser a reasonable rental for their occupancy after the sale. It will not be necessary for the purchaser at the sale to bring any action for possession of the Mortgaged Property, other than the statutory action of forcible entry and detainer in any court having jurisdiction over the Mortgaged Property if that action is required.

5.8. Relationship of Multiple Beneficiaries: If an Event of Default occurs, if there is more than one Beneficiary under this Deed of Trust, it is agreed that in the exercise of all of Beneficiary's rights and remedies under this Article 5 and elsewhere in this Deed of Trust and in the Security Documents, those persons (unless otherwise expressly provided herein to the contrary) will be governed and controlled by the decision of the holder or holders of fifty-one percent (51 %) or more of the aggregate principal amount owing (at the time in question) on the Note, which decision will be conclusive and binding on all those persons.

Article 6. Insurance and Condemnation Proceeds

6.1. Insurance Requirements: At all times before the final termination of this Deed of Trust, Grantor agrees to provide, maintain and keep in force title, casualty, liability and other insurance for the Mortgaged Property as required by Beneficiary and in any event Grantor will maintain the following specifically described insurance coverages:

(a) an all-risk policy of permanent property insurance insuring the Mortgaged Property for its full replacement cost against all risks of any kind or character except those permitted by Beneficiary in writing to be excluded from coverage thereunder;

(b) a boiler and machinery insurance policy covering loss or damage to all portions of the Mortgaged Property comprised of air-conditioning and heating systems, other pressure vessels, machinery, boilers or high pressure piping;

(c) an all-risk policy of insurance covering loss of earnings and/or rents from the Mortgaged Property in the event that the Mortgaged Property is not available for use or occupancy due to casualty, damage or destruction required to be covered by the policies of insurance described in (a) and (b) above;

(d) commercial general liability, auto liability, umbrella or excess liability and worker's compensation insurance against claims for bodily injury, death or property damage occurring on, in or about the Mortgaged Property in amounts reasonably acceptable to Beneficiary and containing terms reasonably acceptable to Beneficiary;

(e) if all or any portion of the Mortgaged Property consists of improvements under construction:
(i) a builder's all-risk form insurance policy on a completed value, non-reporting form, insuring the Mortgaged Property against all risks of any kind or character except those permitted by Beneficiary in writing to be excluded from coverage thereunder, and an all-risk policy of insurance

covering loss of future earnings and/or rents from the Mortgaged Property in the event the Mortgaged Property is not ready or available for use or occupancy due to casualty, damage or destruction required to be covered by such builder's all-risk insurance policy will be acquired by Grantor, (ii) policies of insurance covering worker's compensation, employers' liability, commercial general liability and comprehensive automobile liability, including a broad form umbrella/excess liability insurance policy will be carried by each contractor performing work in connection with the Mortgaged Property and (iii) policies of professional liability insurance covering each such party against claims for actual or alleged errors, omissions or negligent acts in the performance of their respective services rendered in respect of the Mortgaged Property will be carried by each design professional performing work in connection with the Mortgaged Property; and

(f) such other insurance against other insurable hazards, risks or casualties which at the time are commonly insured against in the case of owners and premises similarly situated, due regard being given to the financial condition of Grantor, the height and type of the Mortgaged Property, its construction, location, use and occupancy.

6.2. Insurance Companies, Policies, Endorsements and Premium Payments. Grantor agrees that all required insurance will be written on forms acceptable to Beneficiary and by companies having a Best's Insurance Guide Rating of not less than A or A+ and which are otherwise acceptable to Beneficiary, and that such insurance (other than third party liability insurance) shall be written or endorsed so that all losses are payable to Beneficiary. Beneficiary shall be named as an additional insured and a loss payee (as applicable) under all insurance. The copies of policies evidencing such insurance shall be delivered by Grantor to Beneficiary and held by Beneficiary. Each such policy shall expressly prohibit cancellation, reissuance or modification of insurance without thirty (30) days' written notice to Beneficiary. Grantor agrees to furnish due proof of payment of the premiums for all such insurance to Beneficiary promptly after each such payment is made and in any case at least fifteen (15) days before payment becomes delinquent. Any casualty insurance coverage must be in at least an amount sufficient to pay for 100% of replacement cost.

6.3. Beneficiary's Rights to Collect Insurance Proceeds. Grantor hereby assigns to Beneficiary the exclusive right to collect any and all monies that may become payable under any insurance policies covering any part of the Mortgaged Property, or any risk to or about the Mortgaged Property.

6.4. Effects of Foreclosure on Insurance Policies and Post-foreclosure Event Claims. Foreclosure of this Deed of Trust shall automatically constitute foreclosure upon all policies of insurance insuring any part of, or risk to, the Mortgaged Property and all claims thereunder arising from post-foreclosure events. The successful bidder or bidders for the Mortgaged Property at foreclosure, as their respective interests may appear, shall automatically accede to all of Grantor's rights in, under and to such policies and all post-foreclosure event claims, and such bidder(s) shall be named as insured(s) on request, whether or not the trustee's deed or bill of sale to any such successful bidder mentions insurance.

6.5. Application of Insurance Proceeds Collected Before Foreclosure. Unless an Event of Default has occurred and so long as Beneficiary is satisfied in its reasonable discretion that the applicable proceeds (together with other funds deposited with Beneficiary by or on behalf of Grantor for the purpose of repair and restoration of the applicable damage or destruction) are sufficient to pay all reasonably estimated costs of repair and restoration of the applicable damage or destruction and such repair and restoration can be completed prior to the scheduled maturity of the Note, Beneficiary will hold all proceeds of insurance which was paid for by Grantor or by anyone other than Beneficiary and which proceeds are actually received by Beneficiary before foreclosure (and such other funds deposited with Beneficiary), and will disburse the same as such repairs or restoration are made, upon such terms and conditions as Beneficiary may elect, and upon presentation of satisfactory evidence to Beneficiary that payment is being requested for permissible repair and restoration and without the imposition of any lien on the Mortgaged Property. Any insurance proceeds remaining if Grantor and Beneficiary do not agree to the terms of the advance of the funds for repair and restoration within thirty (30) days after the event producing such funds, or if an Event of Default occurs, or after completion of the repair and restoration, or if the conditions of the preceding sentence are not satisfied, shall be applied in payment of the Indebtedness and the Obligations in the manner Beneficiary chooses or, at the option of Beneficiary, shall be paid to Grantor or to such other person as is legally entitled to them.

6.6. Application of Insurance Proceeds Collected After Foreclosure. Unless Beneficiary or Beneficiary's representative reserves at the foreclosure sale the right to collect any uncollected insurance proceeds recoverable for events occurring before foreclosure (in which event the successful bidder at the sale, if not Beneficiary, shall have no interest in such proceeds and Beneficiary shall apply them, if and when collected, to the payment of the Obligations and then in such order and manner as Beneficiary shall then elect and remit any remaining balance to Grantor or to such other person or entity as is legally entitled to them), all proceeds of all such insurance which are not so reserved by Beneficiary at the foreclosure sale and are not actually received by Beneficiary until after foreclosure shall be the property of the successful bidder or bidders at foreclosure, as their interests may appear, and Grantor shall have no interest in them and shall receive no credit for them.

6.7. Beneficiary Not Obligated to Require, Provide or Evaluate Insurance. Beneficiary shall have no duty to Grantor or anyone else to either require or provide any insurance or to determine the adequacy or disclose any inadequacy of any insurance.

6.8. Beneficiary May Elect to Insure Only its Own Interests. If Beneficiary elects at any time or for any reason to purchase insurance relating to the Mortgaged Property, it shall have no obligation to cause Grantor or anyone else to be named as an insured, to cause Grantor's or anyone else's interests to be insured or protected or to inform Grantor or anyone else that his or its interests are uninsured or underinsured.

6.9. Condemnation: Grantor agrees to notify Beneficiary immediately upon learning of the institution of any proceeding for the condemnation of all or any part of the Mortgaged Property. Grantor agrees, at its expense, to file or defend its claim in that proceeding and to prosecute it with due diligence to a final disposition, and to cause any awards or settlements to be paid to Beneficiary

for disposition pursuant to the terms of this Deed of Trust. Grantor may be the nominal party in the proceeding, but Beneficiary will be entitled to participate in all decisions with respect to the handling of the proceeding on behalf of Grantor but with the prior consultation with Grantor, and to be represented by counsel of its own choice, and Grantor will deliver to Beneficiary any instruments requested by it to permit its participation. Whether or not there is any such proceeding, if the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered into by or under threat of such a proceeding, or there is a conveyance in lieu of condemnation, the award, settlement or other consideration ("proceeds") payable by virtue of Grantor's interest in the Mortgaged Property will be, and hereby is, assigned and transferred to Beneficiary to be held by it, and will be disbursed as follows:

(a) if (i) all of the Mortgaged Property is taken or if so much of the Mortgaged Property is taken or if it is so diminished in value, that the remainder cannot (in Beneficiary's commercially reasonable judgment) continue to be operated profitably for the purpose for which it was being used immediately before the taking or diminution, (ii) an Event of Default then exists, or (iii) the Mortgaged Property is partially taken or diminished in value and (in Beneficiary's sole judgment) need not be rebuilt, restored or repaired in any manner, or (iv) the conditions of Section 6.9(b) are not satisfied, then in any of those events the proceeds will be applied in the manner provided below in Section 6.9(c); or

(b) if only a portion of the Mortgaged Property is taken and the portion remaining can (in Beneficiary's commercially reasonable judgment), with rebuilding, restoration or repair, be profitably operated for the purpose for which it was being used immediately before the taking or diminution, then the rebuilding, restoration or repair and the administration and disbursement of the proceeds will, if Beneficiary elects, follow the same procedures and be subject to the same requirements as stated in Section 6.5; otherwise the proceeds will be applied by Beneficiary in the manner provided below in Section 6.9(c).

(c) Subject to the terms of Sections 6.9(a) and 6.9(b), all proceeds will be applied in the following manner:

- (i) first, to reimburse Trustee or Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection and administration of the proceeds; and
- (ii) thereafter, if there is any balance, in the order provided in Sections 5.6(b) –

Article 7. Security Agreement

7.1. Security Interest: This Deed of Trust is a deed of trust on real property and also is a security interest under the UCC with respect to the Personalty, Fixtures, Leases, Income and Contractual Rights (collectively, the "Collateral"). To this end, Grantor, as debtor, has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Beneficiary, as secured party, a security interest in and to all of Grantor's right, title and interest in

the Collateral, in trust, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

7.2. Grantor's Covenants Concerning Personalty Subject to the UCC: Grantor covenants and agrees with Beneficiary that in addition to and cumulative of any other remedies granted in this Deed of Trust to Beneficiary or the Trustee, upon or at any time after the occurrence of an Event of Default:

(a) Beneficiary is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Grantor hereby WAIVING all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell or rent the same for the account of Grantor and to deduct from such sale proceeds or such rents all costs, expenses and liabilities of every character incurred by Beneficiary in collecting such sale proceeds or such rents and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds or such rents on the Indebtedness in such manner as Beneficiary may elect. Before any sale, Beneficiary may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to such extent as Beneficiary may deem advisable and any sums expended therefor by Beneficiary shall be reimbursed by Grantor. Beneficiary may take possession of Grantor's premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Grantor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Grantor. All costs, expenses, and liabilities incurred by Beneficiary in collecting such sales proceeds or such rents, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds or such rents as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the Past Due Rate (as defined in the Note), all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Beneficiary pursuant to this Section, Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Beneficiary with respect to the Collateral unless such loss is caused by the gross negligence, willful misconduct and bad faith of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.

(b) Beneficiary may, without notice except as hereinafter provided, sell the Collateral or any part thereof at public or private sale (with or without appraisal or having the Collateral at the place of sale) for cash, upon credit, or for future delivery, and at such price or prices as Beneficiary may deem best, and Beneficiary may be the purchaser of any and all of the Collateral so sold and may apply upon the purchase price therefor any of the Indebtedness and thereafter hold the same

absolutely free from any right or claim of whatsoever kind. Upon any such sale Beneficiary shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Grantor has or may have under any rule of law or statute now existing or hereafter adopted. Beneficiary shall give Grantor written notice at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Beneficiary's intention to make any such public or private sale. Such notice shall be personally delivered or mailed, postage prepaid, at least ten (10) calendar days before the date fixed for a public sale, or at least (10) calendar days before the date after which the private sale or other disposition is to be made, unless the Collateral is perishable or threatens to decline speedily in value. Such notice, in case of public sale, shall state the time and place fixed for such sale or, in case of private sale or other disposition other than a public sale, the time after which the private sale or other such disposition is to be made. Any public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Beneficiary may fix in the notice of such sale. At any sale the Collateral may be sold in one lot as an entirety or in separate parcels as Beneficiary may determine. Beneficiary shall not be obligated to make any sale pursuant to any such notice. Beneficiary may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Beneficiary until the selling price is paid by the purchaser thereof, but Beneficiary shall incur no liability in case of the failure of such purchaser to take up and pay for the Collateral so sold, and in case of any such failure, such Collateral may again be sold upon like notice. Each and every method of disposition described in this Section shall constitute disposition in a commercially reasonable manner. Grantor and, to the extent applicable, other obligors, shall remain liable for any deficiency.

(c) Beneficiary shall have all the rights of a secured party after default under the UCC and in conjunction with in addition to or in substitution for those rights and remedies:

- (i) Beneficiary may require Grantor to assemble the Collateral and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Collateral; and
- (ii) (ii) it shall not be necessary that Beneficiary take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and
- (iii) (iii) before application of proceeds of disposition of the Collateral to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale of lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Beneficiary, each obligors, to the extent applicable, to remain liable for any deficiency; and

- (iv) (iv) the sale by Beneficiary of less than the whole of the Collateral shall not exhaust the rights of Beneficiary hereunder, and Beneficiary is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the indebtedness secured hereby, this Deed of Trust and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and
- (v) (v) in the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, or in the event the sufficiency, adequacy or legality of any sale hereunder is questioned or challenged by any person, entity or party, such sale shall not exhaust the rights of Beneficiary hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder; and
- (vi) (vi) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Indebtedness or as to the occurrence of any default, or as to Beneficiary having declared all of the Indebtedness to be due and payable, or as to notice of time, place and terms of sale and the Collateral to be sold having been duly given, as to any other act or, thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and
- (vii) (vii) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of sale, but in the name and on behalf of Beneficiary; and
- (viii) (viii) demand of performance, advertisement and presence of property at sale are hereby WAIVED and Beneficiary is hereby authorized to sell hereunder any evidence of debt it may hold as security for the Indebtedness. Except as provided in the Loan Agreement, all demands and presentments of any kind or nature are expressly WAIVED by Grantor. Grantor WAIVES the right to require Beneficiary to pursue any other remedy for the benefit of Grantor and agrees that Beneficiary may proceed against any obligors for the amount of the Debt owed to Beneficiary without taking any action against any other obligors or any other person or entity and without selling or otherwise proceeding against or applying any of the Collateral in Beneficiary's possession.

7.3. UCC Rights are not Exclusive: Should Beneficiary elect to exercise its rights under the UCC as to part of the personal property or fixtures described in this Deed of Trust, such election shall not preclude Beneficiary or the Trustee from exercising any or all of the rights and remedies granted by the other Articles of this Deed of Trust as to the remaining Personalty or Fixtures.

7.4. Deed of Trust is Also Financing Statement: Beneficiary may, at its election, at any time after delivery of this Deed of Trust, file an original of this Deed of Trust as a financing statement or sign one or more copies of this Deed of Trust to use as a UCC financing statement. Beneficiary's signature may be placed between the last sentence of this Deed of Trust and Grantor's acknowledgment or may follow Grantor's acknowledgment. Unless otherwise required by applicable law, Beneficiary's signature need not be acknowledged and is not necessary to the

effectiveness of this Deed of Trust as a deed of trust, mortgage, assignment, pledge, security agreement or as a financing statement. In addition, Beneficiary is authorized to file a financing statement or statements and one or more continuation statements in any jurisdiction where Beneficiary deems it necessary, and at Beneficiary's request, Grantor will join Beneficiary in executing one or more financing statements, continuation statements or both pursuant to the UCC, in form satisfactory to Beneficiary, and will pay the costs of filing or recording them, in all public offices at any time and from time to time whenever filing or recording of this Deed of Trust, any financing statement or any continuation statement is deemed by Beneficiary or its counsel to be necessary or desirable.

For financing statement purposes, the name and address of Debtor is L.U.L.A.C. Oak Hill, Inc., a Texas nonprofit corporation, whose address is _____. The name and address of Secured Party is City of College Station, _____.

7.5. No Other Financing Statements on the Collateral: So long as any amount remains unpaid on the Indebtedness, Grantor will not execute and there will not be filed in any public office any financing statements affecting the Collateral other than financing statements in favor of Beneficiary and the Senior Lender, unless prior written specific consent and approval of Beneficiary shall have been first obtained.

7.6. Fixtures. CERTAIN OF THE COLLATERAL IS OR WILL BECOME "FIXTURES" (AS THAT TERM IS DEFINED IN THE UCC) ON THE LAND, AND WHEN THIS DEED OF TRUST IS FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE COUNTY WHERE SUCH FIXTURES ARE SITUATED, IT SHALL ALSO AUTOMATICALLY OPERATE AS A FINANCING STATEMENT UPON SUCH OF THE COLLATERAL WHICH IS OR MAY BECOME FIXTURES.

7.7. Assignment of Non-UCC Personal Property: To the extent that any of the Collateral is not subject to the UCC of the state or states where it is situated, Grantor hereby assigns to Beneficiary all of Grantor's right, title and interest in the Collateral to secure the Indebtedness. Release of the lien of this Deed of Trust shall automatically terminate this assignment.

7.8. Grantor's Warranties Concerning Collateral: Grantor warrants and represents to Beneficiary that Grantor is the legal and equitable owner and holder of the Collateral free of any adverse claim and free of any security interest or encumbrance except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Deed of Trust (such warranty to supersede any provision contained in this Deed of Trust limiting the liability of Grantor). Grantor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its proceeds or any interest in either. Grantor also warrants and represents that (except for the Senior Loan Documents) Grantor has not heretofore signed any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed by Grantor is now on file in any public office except only those statements (if any) true and correct copies of which Grantor has actually delivered to Beneficiary.

7.9. Certain Powers of Beneficiary: To facilitate the rights of Beneficiary hereunder, Grantor hereby authorizes Beneficiary, its officers, employees, agents or assigns:

(a) after the occurrence of an Event of Default, to collect all or any part of the Collateral without further notice to or further consent by Grantor, and Grantor hereby constitutes and appoints Beneficiary the true and lawful attorney of Grantor (such agency being coupled with an interest), irrevocably, with power of substitution, in the name of Grantor or in its own name or otherwise, to take any of the actions described in the following clauses (b) (c) (d) (e) and (f) of this Section 7.9;

(b) after the occurrence of an Event of Default, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Collateral and to settle and/or adjust all disputes and/or claims directly with any Collateral obligors and to compromise, extend the time for payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, on such terms and conditions as Beneficiary may determine (without thereby incurring responsibility to or discharging or otherwise affecting the liability of Grantor to Beneficiary under this Deed of Trust or otherwise);

(c) to direct delivery of, receive, open and dispose of all mail addressed to Grantor and to execute, sign, endorse, transfer and deliver (in the name of Grantor or in its own name or otherwise) any and all receipts or other orders for the payment of money drawn on the Collateral and all notes, acceptances, commercial paper, drafts, checks, money orders and other instruments given in payment or in part payment thereof and all invoices, freight and express bills and bills of lading, storage receipts, warehouse receipts and other instruments and documents in respect of any of the Collateral and any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Deed of Trust;

(d) in its discretion to file any claim or take any other action or proceeding which Beneficiary may deem necessary or appropriate to protect and preserve the rights, titles and interests of Beneficiary hereunder;

(e) to sign the name of Grantor to financing statements, drafts against Collateral Obligors, assignments or verifications of any of the Collateral and notices to Collateral Obligors;

(f) to station one or more representatives of Beneficiary on Grantor's premises for the purpose of exercising any rights, benefits or privileges available to Beneficiary hereunder or under any of the Credit Documents or at law or in equity, including receiving collections and taking possession of books and records relating to the Collateral;

(g) to cause title to any or all of the Collateral to be transferred into the name of Beneficiary or any nominee or nominees of Beneficiary.

Grantor hereby authorizes and directs each account debtor and each other person or entity obligated to make payment in respect of any of the Collateral (each a "Collateral Obligor") to pay over to Beneficiary, its officers, agents or assigns, upon demand by Beneficiary, all or any part of the Collateral without making any inquiries as to the status or balance of the secured indebtedness and

without any notice to or further consent of Grantor. Grantor hereby agrees to indemnify each Collateral Obligor and hold each Collateral Obligor harmless from all expenses and losses which it may incur or suffer as a result of any payment it makes to Beneficiary pursuant to this paragraph. Further, Grantor hereby authorizes Beneficiary, its officers, agents, employers or assigns to notify Collateral Obligors of Beneficiary's security interest in the Collateral.

The powers conferred on Beneficiary pursuant to this Section are conferred solely to protect Beneficiary's interest in the Collateral and shall not impose any duty or obligation on Beneficiary to perform any of the powers herein conferred. No exercise of any of the rights provided for in this Section shall constitute a retention of collateral in satisfaction of the indebtedness as provided for in the UCC.

7.10. Standard of Care: Beneficiary shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Grantor requests in writing, but failure of Beneficiary to comply with such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Beneficiary to take any action not so requested by Grantor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

7.11. Change Terms, Release Collateral: Beneficiary may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Grantor or discharging or otherwise affecting any liability of Grantor. Beneficiary shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

Article 8. Assignment of Rents and Other Income

8.1. Collateral Assignment of Rents. Grantor, absolutely and unconditionally collaterally assigns the Rents to Beneficiary, whether any Rents are now due, past due or to become due. Upon receipt from Beneficiary of notice that an Event of Default exists, each tenant under the Leases is hereby authorized and directed to pay such Rents thereafter accruing or payable directly to Beneficiary and receipt of Rents by Beneficiary shall be a release of such tenant to the extent of all amounts so paid. Beneficiary shall apply Rents so received against the Indebtedness. Grantor irrevocably appoints Beneficiary its agent to, at any time, demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Grantor or in the name of Beneficiary, for all such Rents. Each time Grantor enters into a Lease, such Lease shall automatically become subject to this Section without further action.

8.2. Nonresponsibility. The acceptance by Beneficiary of the collateral assignments with all the rights, powers, privileges and authority so granted will not obligate Beneficiary to assume any obligations in respect of the Leases and Rents or take any action thereunder or to expend any money or incur any expense or perform or discharge any obligation, duty or liability in respect of the Leases and Rents or to assume any obligation or responsibility for the nonperformance of the provisions thereof by Grantor.

8.3. No "Beneficiary-in-Possession" Status. Neither the collateral assignment of Rents contained in this Deed of Trust, nor the exercise by Beneficiary of any of its rights or remedies under this Deed of Trust shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Mortgaged Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Mortgaged Property by any court at the request of Beneficiary or by agreement with Grantor or the entering into possession of the Mortgaged Property by such receiver, be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Mortgaged Property.

8.4. Additional Covenants, Warranties and Representations Concerning Leases and Rental: Grantor covenants, warrants and represents that:

(a) Neither Grantor nor any previous owner has entered into any prior oral or written assignment, pledge or reservation of any of the Rental, entered into any prior assignment or pledge of Grantor's landlord interests in any Lease or performed any act or executed any other instruments which might prevent or limit Beneficiary from operating under and receiving the benefits of the terms and conditions of this Article 8 except the Senior Loan Documents;

(b) Grantor has good title to the Leases and Rental and has the authority to assign them, and no other person or entity has any right, title or interest in and to the landlord's interests therein;

(c) All existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists under any Leases;

(d) No Rental has been, nor does Grantor anticipate that any Rental will be, waived, released, discounted, set off or compromised, except in accordance with prudent business judgment;

(e) Except as disclosed to Beneficiary in writing before the date hereof, Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rental;

(f) Grantor will (i) perform all of the material terms and conditions of the Leases, (ii) upon Beneficiary's request, execute an additional assignment to Beneficiary of all Leases then affecting the Mortgaged Property and all Rental and other sums due thereunder by assignment(s) in form and substance satisfactory to Beneficiary and (iii) at the request of Beneficiary, record assignment(s) to Beneficiary Grantor will not, without the prior written consent of Beneficiary, amend, modify, extend, renew, terminate, cancel or surrender any Lease or suffer or permit any of the foregoing, orally or in writing, except in the ordinary course of business;

(g) Upon request, Grantor shall give immediate notice to Beneficiary of any notice Grantor received from any tenant or subtenant under any Leases specifying any claimed default by any person under such Leases;

(h) Grantor shall enforce the tenants' obligations under the Leases; (i) Grantor shall defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party;

(i) Grantor shall neither create nor permit any encumbrance upon or assignment of its interest as landlord under the Leases or its interest in the Rental, except for this Deed of Trust and any other encumbrances permitted by this Deed of Trust;

(j) Except in the ordinary course of Grantor's business, Grantor shall not waive or release any obligation of any tenant under the Leases without Beneficiary's prior written consent;

(k) Each Lease executed after the date hereof shall contain a statement signed by the Grantor that such Lease is subject to this Deed of Trust;

(l) Grantor shall from time to time upon written request furnish to Beneficiary, within fifteen (15) days after demand true, correct and complete copies of any Leases or any portion of the Leases specified by Beneficiary; and

(m) Grantor shall not in any event collect any Rental more than one (1) month in advance of the time it will be earned (and if Grantor does so, in addition to any other rights or remedies available by reason of such Event of Default, all Rental so collected more than one (1) month in advance of the time it is earned shall be delivered to Beneficiary to be applied to the Obligations).

8.5. Grantor's Indemnities: So long as the assignment of rents contained in this Article 8 is in effect, Grantor shall indemnify and hold Beneficiary harmless from and against any and all liability, loss, cost, damage or reasonable expense which Beneficiary may incur under or by reason of this assignment of rents or under or arising out of the Leases, or for any action taken by Beneficiary hereunder, or by reason of or in defense of any and all claims and demands whatsoever which may be asserted against Beneficiary arising out of the Leases, other than for Beneficiary's breach of the assignment of rents in this Article 8 or its gross negligence or willful misconduct. In the event Beneficiary incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the Past Due Rate specified in the Loan Agreement shall be payable by Grantor to Beneficiary immediately, without demand, and shall be secured under the Deed of Trust. THE INDEMNITY CONTAINED IN THIS SECTION IS INTENDED TO COVER, AND GRANTOR DOES HEREBY INDEMNIFY BENEFICIARY AGAINST, LIABILITIES, LOSSES, COSTS AND EXPENSES ARISING OUT OF THE SOLE, JOINT OR CONCURRENT NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR STRICT LIABILITY OF BENEFICIARY.

8.6. Subordination of Deed of Trust to Leases: It is agreed and understood that Beneficiary hereby reserves the right and shall have the right, at any time and from time to time, without the consent or joinder of any other person, to subordinate this Deed of Trust and the liens, assignments and security interests created by this Deed of Trust to all or any of the Leases regardless of the respective priority of any of such Leases and this Deed of Trust. Upon doing so and filing evidence of such subordination in the real property records in the county or counties where the Land is located, a foreclosure of Beneficiary's liens, assignments and security interests under this Deed of Trust shall be subject to and shall not operate to extinguish any of said Leases as to which such subordination is operative. Beneficiary will have a period not to exceed ninety (90) days from the date of any foreclosure under this Deed of Trust in which to ratify and confirm any Leases so that

they remain in full force and effect notwithstanding such foreclosure. The provisions of this Article 8 apply to all Leases, whether or not subject to or prior to this Deed of Trust.

8.7. Texas Assignment of Rents Act. Without in any way limiting or restricting any of Beneficiary's other rights, benefits or privileges under this Deed of Trust or any other Security Document, Grantor and Beneficiary hereby expressly agree that Beneficiary shall be entitled to all rights, benefits or privileges provided for in TARA. This Deed of Trust shall constitute and serve as a security instrument under TARA. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Security Document, Grantor hereby (i) agrees that, to the extent this Deed of Trust or any of the other Security Document contains any notice or cure period, the date on which Beneficiary begins to enforce an assignment of rents under TARA shall not be affected, extended or otherwise modified by reason of such periods, and (ii) waives the thirty (30) day grace period provided for in Section 64.060 of TARA and agrees that, to the extent Grantor collects Rents that Beneficiary is entitled to collect following Grantor's receipt of any notice from Beneficiary in accordance with Section 64.054 of TARA, provided that any Event of Default then exists, Grantor shall immediately turn over all of the proceeds thereof to Beneficiary, without any deduction, setoff or other reduction of any kind.

Article 9. The Trustee

9.1. No Liability: The Trustee is not and will not be liable for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for the Trustee's bad faith or willful wrong. In particular, the Trustee will not be personally liable in case of entry by him, or anyone entering by virtue of the powers granted to him, upon the Mortgaged Property, or for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. The Trustee may rely on any instrument, document or nature authorizing or supporting any action taken or proposed to be taken by him under this Deed of Trust, which he believes in good faith to be genuine. The Trustee must be reimbursed for expenses incurred in the performance of his duties and to reasonable compensation for his services under this Deed of Trust. Grantor will save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties other than those attributable to Trustee's willful misconduct. THIS INDEMNITY IS INTENDED TO COVER, AND GRANTOR DOES HEREBY INDEMNIFY TRUSTEE AGAINST, LIABILITIES, LOSSES, COSTS AND EXPENSES ARISING OUT OF THE SOLE, JOINT OR CONCURRENT NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OR STRICT LIABILITY OF TRUSTEE.

9.2. Retention of Monies: All monies received by the Trustee, until used or applied as herein provided, will be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee has no obligation to pay interest on any moneys received by him.

9.3. Successor Trustees: The Trustee may resign by giving notice in writing to the Beneficiary. If the Trustee dies, resigns, or becomes disqualified from acting as Trustee or fails or refuses to act as Trustee, or if, for any reason, Beneficiary prefers to appoint a substitute trustee to act instead

of the Trustee, Beneficiary may appoint a substitute trustee and, if preferred, several substitute trustees in succession who will immediately succeed to all the estate, rights, powers and duties of the Trustee.

9.4. Succession Instruments: Any new Trustee appointed under Section 9.3 will be, without any further act, deed or conveyance, vested with all the estates, properties, rights, powers and trusts of his predecessor as if originally named as Trustee.

Article 10. Miscellaneous

10.1. Survival of Obligations: Each and all of the Obligations will survive the execution and delivery of the Security Documents, and the consummation of the loan made in connection with the Note, and will continue in full force and effect until the Indebtedness has paid in full.

10.2. Further Assurances: Grantor, upon the request of Trustee or Beneficiary, will execute, acknowledge, deliver and record and/or file any other instruments and take other action as may be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents and to subject to the liens and security interests thereof any property intended by their terms to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property.

10.3. Recording and Filing: Grantor will cause the Security Documents and all amendments, supplements and substitutions to them to be recorded, filed, re-recorded and re-filed in the manner and in those places as Trustee or Beneficiary reasonably request, and will pay all related fees.

10.4. Notices: Unless otherwise expressly provided herein, any notices, requests or other communications required or permitted to be given under this Deed of Trust must be given in writing by delivering it against receipt for it, by depositing it with an overnight delivery service or by depositing it in a receptacle maintained by the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at the addresses shown herein (and if so given, shall be deemed given when mailed). Notice sent by any other manner shall be effective upon actual receipt by the party to be notified. Actual notice, however and from whomever given or received, shall always be effective when received. Grantor's address for notice may be changed at any time and from time to time, but only after thirty (30) days' advance written notice to Beneficiary and shall be the most recent address furnished in writing by Grantor to Beneficiary. Grantor's address for notice may be changed at any time and from time to time, but only after ten (10) days' advance written notice from Beneficiary to Grantor and shall be the most recent address furnished in writing by Beneficiary to Grantor. The giving of any notice by Beneficiary which is not expressly required by this Deed of Trust will not obligate Beneficiary to give any future notice. Grantor and any other parties to this Deed of Trust hereby request that a copy of any notice of default and a copy of any notice of sale be mailed to them at the addresses provided in this Deed of Trust.

10.5. No Waiver; Payment on Account: Any failure by the Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor of any of the provisions of any of the Security Documents will not be deemed to be a waiver of that or of

any other provision, and Trustee or Beneficiary will have the right at any time or times thereafter to insist upon strict performance by Grantor of any and all of the provisions. Acceptance of any payment in an amount less than the amount actually due will be applied to the Indebtedness but will not affect Grantor's default for failure to pay the full amount. Receipt or acceptance by Beneficiary of any payment in an amount less than the amount then due on the Indebtedness or under the Security Documents will be deemed an acceptance on account only, and the failure to pay the entire amount then due will continue to be an Event of Default.

10.6. Future Advances: This Deed of Trust shall secure the Note and any and all future advances made to Grantor by Beneficiary. This provision shall not constitute an obligation upon or commitment of Beneficiary to make additional advances or loans to Grantor.

10.7. Right to Contest: Notwithstanding anything contained herein to the contrary, Grantor will not be deemed to be in default hereunder for allowing, suffering or failing to pay, as applicable, any Taxes or Charges, mortgage, pledge, lien (statutory, constitutional or contractual), security interest, easement, restrictive covenant, encumbrance or mechanics lien on or covering any of the Mortgaged Property (collectively "Encumbrances") or foreclosure thereof or with respect thereto that would, in the absence of this Section, with notice or passage of time or otherwise, constitute an Event of Default hereunder if Grantor is, in good faith, by appropriate proceedings, contesting the validity, applicability or amount, as applicable, of any such Encumbrances; provided, however, that such contest must stay or prevent a proceeding which may impair or divest Grantor of title to the Mortgaged Property or which may affect the priority of the lien granted under the Deed of Trust, and Beneficiary may, as a condition to such right to contest, require Grantor to establish an escrow or give other security adequate (in Beneficiary's sole discretion) to compensate Beneficiary for any loss, costs or expenses which it may suffer or incur as a result of such divestiture or impairment of title or invalidity or loss of priority of the liens created by this Deed of Trust (which escrow or security will be returned to Grantor upon payment or release of the Encumbrances). Grantor shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest, promptly after the judgment becomes final; provided, however, that in any event each contest must be concluded and the sums due must be paid prior to the date any writ or order is issued under which the Mortgaged Property may be sold.

10.8. No Late Cure: Following the occurrence of an Event of Default, Beneficiary may at its option elect to accept a late cure of any fact, circumstance or condition that gave rise to such Event of Default and to reinstate the Note and the Loan Agreement, but nothing contained in this Deed of Trust or in any of the Security Documents will obligate Beneficiary to accept such late cure under any circumstances unless expressly agreed to in writing by Beneficiary or such acceptance is otherwise required by law.

10.9. Successors and Assigns: Subject to the restrictions in Section 3.19, all of the terms of the Security Documents apply to, and are binding upon and inure to the benefit of the parties to them, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them. In the event the ownership of all or any part of the Mortgaged Property is transferred to a person other than Grantor, Beneficiary may, without notice to Grantor, deal with successor or successors in interest in the same manner as with Grantor, without in any way

affecting the provisions of this section or discharging Grantor's liability for the payment of the Indebtedness. No sale of the Mortgaged Property, or forbearance on the part of the Beneficiary or extension of the time for the payment of the Indebtedness will release, discharge, modify, change or affect, in whole or in part, the liability of Grantor. When an assignment or other transfer is made in accordance with this paragraph, then "Grantor" will include the assignee or transferee.

10.10. Severability; Savings from Usury: If any provision of any of the Security Documents or their application to any person or circumstance is invalid or unenforceable, neither the remainder of the instrument in which that provision is contained, nor the application of that provision to other persons or circumstances, nor other instruments, will be affected, and that provision will be enforceable to the greatest extent permitted by law. In no event shall any provision of this Deed of Trust, any of the Security Documents or any other instrument evidencing or securing the Indebtedness ever obligate Grantor to pay interest on the Note or any other Note secured hereby at a rate greater than that permitted by law, or obligate Grantor to pay any taxes, assessments, charges, insurance premiums, or other amounts to the extent that the payments, when added to the interest payable on the Note or any other Note secured hereby, would be held to constitute the payment by Grantor of interest at a rate greater than that permitted by law.

10.11. Indebtedness May be Changed without Affecting this Deed of Trust: Any of the Indebtedness may be extended, rearranged, renewed, increased or otherwise changed in any way, and any part of the security described in this Deed of Trust or any other security for any part of the Indebtedness may be waived or released without in any way altering or diminishing the force, effect or lien of this Deed of Trust, and the lien, assignment and security interest granted by this Deed of Trust shall continue as a prior lien, assignment and security interest on all of the Mortgaged Property not expressly so released, until the final termination of this Deed of Trust.

10.12. Counterparts: This Deed of Trust may be executed in any number of counterparts, and will be effective when signed by the Grantor, and each of which will be an original and all of which together will constitute one instrument.

10.13. Release of and Resort to Security: Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Security Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Beneficiary may resort to any other security therefor held by Trustee in such order and manner as Beneficiary may elect. If any of the Indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Mortgaged Property cannot be lawfully subject to this lien and security interest to the full extent of the Indebtedness, then all payments made will be applied on the Indebtedness first in discharge of that portion which is unsecured.

10.14. Subrogation: If any or all of the proceeds of the Note have been or are used to extinguish, extend or renew any prior indebtedness, lien, security interest or other encumbrance against all or any part of the Mortgaged Property, then, to that extent, the Indebtedness and this Deed of Trust will be subrogated to all of the rights, claims, liens, titles and interests previously existing to secure

the indebtedness so extinguished, extended or renewed and the former rights, claims, liens, titles and interests, if any, are not waived but are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

10.15. Headings and References: The headings in this Deed of Trust are for convenience of reference only and in no way alter, modify, define, or limit the scope of any of the provisions in this Deed of Trust. References in this Deed of Trust to article or section numbers are references to articles and sections in this Deed of Trust, unless otherwise indicated.

10.16. Gender: Any gender used herein includes and applies to all gender, including the neuter.

10.17. Vendor's Lien: If any vendor's lien is retained in favor of Beneficiary in the conveyance of the Mortgaged Property to Grantor, then this Deed of Trust is cumulative of and does not exclude the remedies provided for the enforcement of the vendor's lien.

10.18. Statutory Deficiency Liability: Notwithstanding the provisions of §51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note or the other Security Documents equal to the difference between the amount owing on the Note and the amount for which the Mortgaged Property was sold pursuant to a judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this Section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought, or any guarantors independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of foreclosure and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Grantor and others against whom recovery of a deficiency is sought. In the event that the waiver set forth in this Section is held invalid, illegal or unenforceable in any respect for any reason, Grantor agrees to submit its competent evidence of fair market value to the judge, instead of a jury, of a court of competent jurisdiction as the finder of fact under the above-cited provisions of the Texas Property Code and further agree that the term "fair market value" shall include those matters required by law and shall also include the additional factors set forth below:

(a) The Mortgaged Property is to be valued "AS IS" and "WITH ALL FAULTS" and there shall be no assumption of restoration of or refurbishment of improvements, if any, after the date of the foreclosure;

(b) There shall be an assumption of a prompt resale of the Mortgaged Property or an all cash sales price by the purchaser at the foreclosure sale; and

(c) An offset to the fair market value of the Mortgaged Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs relating to the sale of the Mortgaged Property by the purchaser at the foreclosure sale, including but not limited to, brokerage commissions, attorneys' fees, title policy expenses, tax proration, escrow fees, and other common charges which are incurred by a seller of property.

10.19. Limitation on Indemnities: Notwithstanding anything to the contrary contained in this Deed of Trust, in no event shall any indemnification by Grantor be applicable to any acts, omissions,, events, facts or circumstances that occur wholly after the date on which the lien of this Deed of Trust is fully and finally foreclosed (with all redemption periods having expired) or a conveyance by deed in lieu, of foreclosure is fully and finally effective and possession of the Mortgaged Property has been given to the purchaser or grantee free of occupancy, claims of occupancy or redemption by Grantor or any Obliger; provided, however, if such foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, such date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion; provided, further, this Section 10.19 shall not apply to any acts, omissions, events, facts or circumstances caused by Grantor or its agents.

10.20. Construction Mortgage: This Deed of Trust is a construction mortgage under the UCC to secure an obligation incurred for the construction of an improvement on land, including the acquisition costs of the land. This Deed of Trust secures a construction loan, and it will be subject to the terms of a construction loan agreement between Grantor and Beneficiary. Any materials, equipment or supplies used or intended for use in the construction, development, or operation of the Mortgaged Property, whether stored on or off the Mortgaged Property, shall also be subject to the lien of this Deed of Trust and Grantor, or Grantor's contractor if loan proceeds are paid to such contractor, shall apply the loan proceeds to the payment of lawful claims for labor and material furnished for such construction.

10.21. Construction: Wherever used in this Deed of Trust, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Grantor" means "Grantor and/or any subsequent owner or owners of the Mortgaged Property," the word "Beneficiary" means "Beneficiary or any subsequent holder or holders of this Deed of Trust," the word "Note" is a part of "the indebtedness secured by this Deed of Trust" and the word "person" means "an individual, corporation, partnership, unincorporated association, joint venture, joint stock association, business or other trust or any other form of entity" and the word "will" has the same meaning as "shall." The masculine and neuter genders used in this Agreement each includes the masculine, feminine and neuter genders, and whenever the singular number is used, the same shall include the plural where appropriate, and vice versa. Wherever the term "including" or a similar term is used in this Agreement, it shall be read as if it were written "including by way of example only and without in any way limiting the generality of the clause or concept referred to." The section headings contained herein are included as a matter of convenience and are not intended to define, limit or modify the terms of this Deed of Trust, and unless otherwise provided references to Sections are to the Sections in this Deed of Trust.

10.22. Choice of Law. This Deed of Trust shall be performable and enforced in Brazos County, Texas, and shall be construed in accordance with the laws of the State of Texas from time to time in effect except to the extent preempted by the United States federal law. Venue shall be appropriate in Brazos County, as applicable.

10.23. JURY WAIVER. GRANTOR AND BENEFICIARY ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE, THE INDEBTEDNESS OR THIS DEED OF TRUST.

10.24. THIS DEED OF TRUST, THE NOTE, AND THE OTHER SECURITY DOCUMENTS EMBODY THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN GRANTOR AND BENEFICIARY RELATING TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ALL PRIOR PROPOSALS, NEGOTIATIONS, AGREEMENTS AND UNDERSTANDINGS RELATING THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN OR ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the date of the acknowledgement set forth below; to be effective, however, for all purposes as of the date first set forth above.

THE STATE OF TEXAS §
§ ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____, in their capacity as _____ of L.U.L.A.C. Oak Hill, Inc.

Notary Public in and for the State of Texas

April 28, 2022

Item No. 8.6.

First Street and Maple Avenue On-Street Parking Removal

Sponsor: Jason Schubert

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 38, "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," by removing parking on the east side of First Street between Louise Avenue and Maple Avenue and on the south side of Maple Avenue between Wellborn Road and First Street.

Relationship to Strategic Goals:

- Core Services & Infrastructure
- Improving Mobility

Recommendation(s): Staff recommends approval of the ordinance.

Summary: The proposed ordinance provides no parking anytime by removing on-street parking on the east side of First Street between Louise Avenue and Maple Avenue and on the south side of Maple Avenue between Wellborn Road and First Street. The parking removal is needed to help ensure the Fire Department has adequate fire access to a proposed high-rise project which is planned to cover the block bounded by Wellborn Road, Louise Avenue, First Street, and Maple Avenue. Most of these frontages have head-in parking to private property so the effect of the parking removal will be two on-street spaces removed on First Street and one on-street space on Maple Avenue. On-street parking is already removed on the opposite (west) side of First Street, on the opposite (north) side of Maple Avenue, and on both sides of Louise Avenue in this area. The high-rise project will include off-street parking for their project within a parking garage.

An in-person meeting to discuss the parking removal was hosted by the developer's consultant on the evening of Tuesday, March 22, 2022. The applicant mailed 72 meeting notifications to property owners and tenants within 200 feet of the project and the Community Services Department notified the Northgate District Association. One property manager attended the meeting and was curious about the project and wanted the contractor's contact info to coordinate as needed once construction begins.

Budget & Financial Summary: The developer of the high-rise project will install the no parking signs as part of constructing the project.

Attachments:

1. Ordinance
2. Parking Removal Exhibit

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 38, “TRAFFIC AND VEHICLES,” ARTICLE VI “TRAFFIC SCHEDULES,” SECTION 38-1014 “TRAFFIC SCHEDULE XIV, NO PARKING HERE TO CORNER AND NO PARKING AT ANY TIME,” BY REMOVING PARKING ON THE EAST SIDE OF FIRST STREET BETWEEN LOUISE AVENUE AND MAPLE AVENUE AND ON THE SOUTH SIDE OF MAPLE AVENUE BETWEEN WELLBORN ROAD AND FIRST STREET, OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1:** That Chapter 38, “Traffic and Vehicles,” Article VI “Traffic Schedules,” Section 38-1014 “Traffic Schedule XIV, No Parking Here to Corner and No Parking at Any Time,” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance upon a finding of liability thereof shall be deemed liable for a civil offense and punished with a civil penalty of not less than one dollar (\$1.00) and not more than two thousand dollars (\$2,000.00) or upon conviction thereof guilty of a misdemeanor, shall be punished by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this 28th day of April, 2022.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Chapter 38, “Traffic and Vehicles,” Article VI. “Traffic Schedules”, Section 38-1014 “Traffic Schedule XIV, No Parking Here to Corner and No Parking at Any Time,” is hereby amended to include the following:

1. First Street

- a. Traveling on: First Street
- b. Between: Louise Avenue and Maple Avenue
- c. Travel Direction: North
- d. Restriction: No parking any time

2. Maple Avenue

- a. Traveling on: Maple Avenue
- b. Between: Wellborn Road and First Street
- c. Travel Direction: East
- d. Restriction: No parking any time



— Parking Removal

Maple Avenue

First Street

Boyett Street

Wellborn Road

Louise Avenue

April 28, 2022

Item No. 8.7.

Advance Funding Agreement with TxDOT for Harvey Mitchell Parkway (FM 2818) Shared Use Path

Sponsor: Venessa Garza

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a resolution approving an Advance Funding Agreement in the amount of \$126,051 between the City of College Station and the State of Texas, acting through the Texas Department of Transportation for a shared-use path on Harvey Mitchell Parkway (FM 2818) and authorizing the City Manager to execute said agreement.

Relationship to Strategic Goals:

- Fiscal Sustainability
- Core Services & Infrastructure
- Improving Mobility
- Sustainable City

Recommendation(s): Staff recommends approval of the resolution authorizing the Advance Funding Agreement and authorizing the City Manager to execute said agreement.

Summary: The Harvey Mitchell Parkway (FM 2818) Shared Use Path Project will extend on the south side of the road from Waxwing Lane (Jones Crossing development) to Larry J. Ringer Library (.4 miles) and will provide a connection for students and residents to commercial areas, parks, schools, and surrounding neighborhoods.

This project was submitted as a part of the Transportation Alternatives Set-Aside Program (TASA) which is a federal grant program administered by the Texas Department of Transportation (TxDOT) that provides funding assistance to local communities to help enhance bicycle and pedestrian safety and connectivity through infrastructure projects. In May 2021, City Council passed a resolution of support and commitment to fund the project, if awarded, and enter into an Advancing Funding Agreement (AFA) with TxDOT. The City was notified in March 2022 that the project would be funded and implemented through TxDOT's Design Division using Statewide Americans with Disabilities (ADA) Pedestrian Program funds.

The City is being asked to provide the minimum local match of 20% for construction that was proposed for the application submittal. Any cost overruns will be paid for by TxDOT. The total project cost is estimated at \$794,671. The City's match for the construction portion is \$126,051. Payment is due to the State sixty (60) prior to the construction contract being advertised for bids. TxDOT will manage the design and construction of the project. Construction is anticipated to begin in 2023.

Budget & Financial Summary: This project will be funded through the City's Street Capital Improvements Fund.

Attachments:

1. Resolution for Advance Funding Agreement
2. Advanced Funding Agreement for FM2818

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF A SHARED-USE PATH ON HARVEY MITCHELL PARKWAY (FM 2818) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE ADVANCE FUNDING AGREEMENT.

WHEREAS, FM 2818 is owned and maintained by the Texas Department of Transportation; and

WHEREAS, any construction or improvements on Texas Department of Transportation right-of-way must be approved through the permitting process; and

WHEREAS, the Texas Transportation Commission passed Minute Order No. 116126, dated October 28, 2021, authorizing the State to undertake and complete a highway improvement funded through the Statewide Curb Ramp Program, including the project described herein; and

WHEREAS, said project will enhance bicycle and pedestrian safety for residents between area schools, neighborhoods, commercial districts, and other points of interest; and

WHEREAS, the City of College Station supports the design and construction of a shared use path along FM 2818; and

WHEREAS, the City of College Station agrees to the terms and conditions stated in the Texas Department of Transportation's Advance Funding Agreement for the design and construction of the FM 2818 shared use path.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the City Council hereby approves the Advance Funding Agreement with the Texas Department of Transportation for the design and construction of the FM 2818 shared use path improvements.

PART 2: That the City Council hereby authorizes the City Manager to execute the Advance Funding Agreement for the design and construction of the FM 2818 shared use path.

PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, 2022.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

CSJ #	2399-01-085
District #	17 – BRY
Code Chart 64 #	09050 – City of College Station
Project Name	FM 2818 Shared Use Path

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT PROJECTS
WITH NO REQUIRED MATCH
ON-SYSTEM**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **City of College Station**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, Texas Transportation Code, Chapters 201 and 221, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and

WHEREAS, Texas Government Code, Chapter 791, and Texas Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **116073** authorizing the State to undertake and complete a highway improvement funded through the Statewide Curb Ramp Program generally described as FM 2818 Shared Use Path (Project). A map showing the Project location appears in Attachment C, Location Map Showing Project; and

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by contributing a fixed amount of funds towards the Project; and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated _____, which is attached to and made a part of this Agreement as Attachment B, Resolution or Ordinance, and

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the state;

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NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in full force and effect until all funds contributed by the Local Government have been expended on the Project described in this Agreement or unless terminated as provided below.

2. Project Funding

At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its financial share as stated in Attachment A, Payment Provision and Work Responsibilities (Attachment A) which is attached to and made a part of this contract. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.

3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

4. Adjustments Outside the Project Scope

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites owned or controlled by the Local Government.

5. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

6. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider. At

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the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

7. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State.

The State and the Local Government agree that the State may, in its sole discretion, modify the Project, including scope and project limits. Such modification will not impact the Local Government's contribution to the Project.

9. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

10. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in Attachment A or existing maintenance agreements with the Local Government.

11. Termination

- A. This agreement may be terminated in the following manner:
 - 1. By mutual written agreement and consent of both parties;
 - 2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
 - 3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B. If the agreement is terminated in accordance with the above provisions, the State will return any remaining Local Government funds after all expenses are paid in accordance with the provisions of Attachment A.

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12. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
City of College Station ATTN: Bicycle, Pedestrian, and Greenways Planning Administrator P.O. Box 9960 College Station, TX 77842	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

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

13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

14. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

15. Amendments

By mutual written consent of the parties, this agreement may be amended in writing prior to its expiration.

16. State Auditor

Pursuant to Texas Government Code § 2262.154, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

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17. Signatory Warranty

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

THIS AGREEMENT IS EXECUTED by the State and the Local Government.

THE STATE OF TEXAS	THE LOCAL GOVERNMENT
Signature	Signature
Typed or Printed Name	Typed or Printed Name
Typed or Printed Title	Typed or Printed Title
Date	Date

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ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES

The Local Government will contribute a fixed amount of \$126,051 for the Local Government's participation in the Project.

The State will perform the work for the Project. Any changes, additions, or deletions to the Project will be at the State's sole discretion.

The Project may include any combination of Federal and State funds in addition to Local Government funds. After the Local Government funds are expended, Federal and State funds will be used to complete the Project. The total amount of Local Government participation shall not exceed the fixed amount stated above.

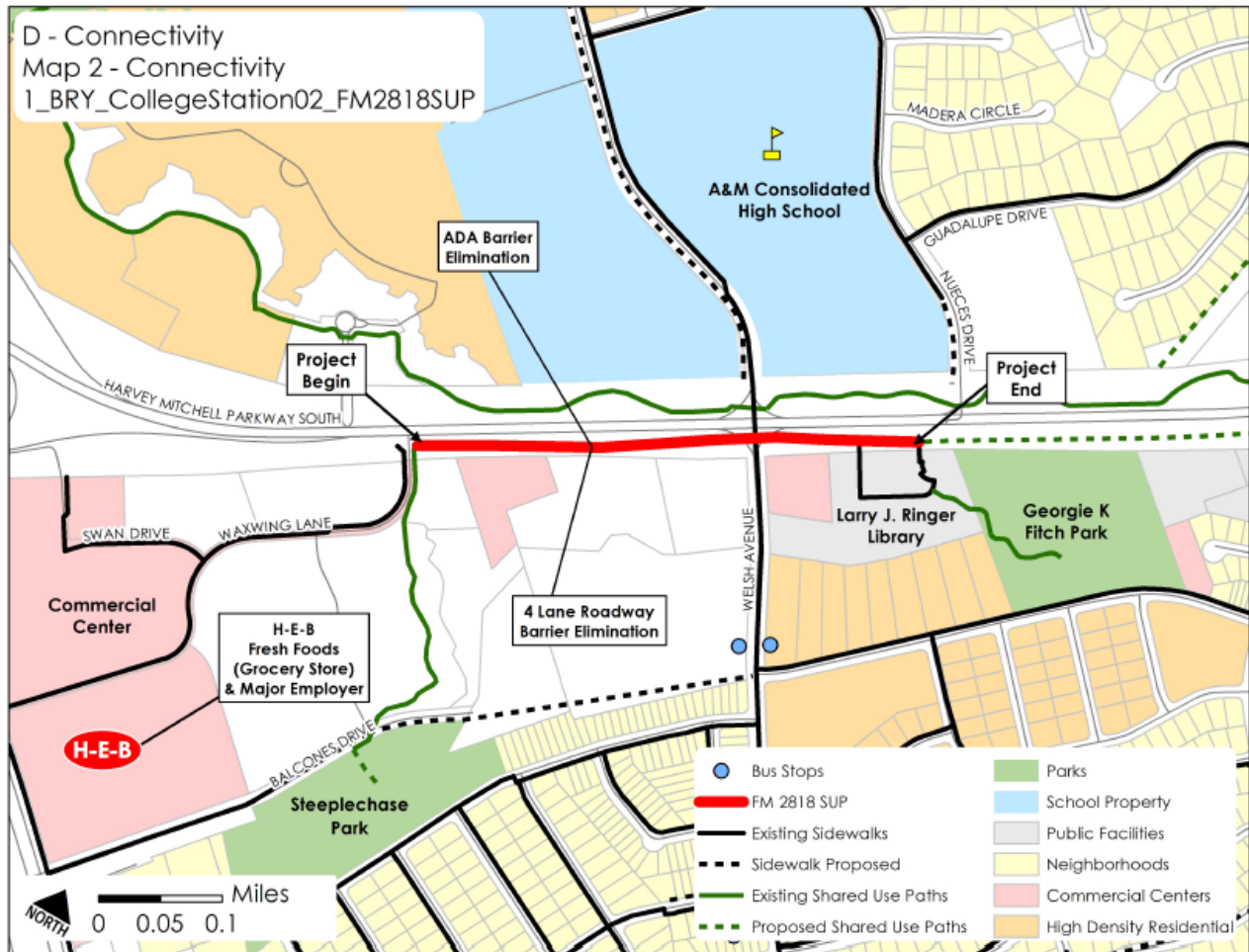
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ATTACHMENT B
Resolution of Local Government

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ATTACHMENT C

Location Map Showing Project



April 28, 2022

Item No. 8.8.

Advance Funding Agreement with TxDOT for George Bush Drive (FM 2347) Separated Bike Lanes

Sponsor: Venessa Garza

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a resolution approving an Advance Funding Agreement in the amount of \$302,254 between the City of College Station and the State of Texas, acting through the Texas Department of Transportation for separated bike lanes on George Bush Drive (FM 2347) and authorizing the City Manager to execute said agreement as well as a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Relationship to Strategic Goals:

- Fiscal Sustainability
- Core Services & Infrastructure
- Improving Mobility
- Sustainable City

Recommendation(s): Staff recommends approval of the resolution authorizing the Advance Funding Agreement and authorizing the City Manager to execute said agreement as well as approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: The George Bush Drive (FM 2347) Separated Bike Lanes Project will extend from Texas Avenue to Wellborn Road for approximately 1.3 miles. It will include a vertical barrier between the bike lane and vehicle lanes as well as intersection modifications to increase safety along the corridor for biking to and from Texas A&M University and commercial areas, parks, and surrounding neighborhoods.

The Transportation Alternatives Set-Aside Program (TASA) is a federal grant program administered by the Texas Department of Transportation (TxDOT) that provides funding assistance to local communities to help enhance bicycle and pedestrian safety and connectivity through infrastructure projects. In May 2021, City Council passed a resolution of support and commitment to fund the project, if awarded, and enter into an Advancing Funding Agreement (AFA) with TxDOT. The City was notified of the grant award in November 2021.

The grant covers up to 80% of construction costs. The City must provide a minimum local match of 20% for construction and 100% of design costs. Cost overruns will need to be paid for by the City. The total project cost is estimated at \$1,905,513. The City's match for the construction portion is \$302,254. The first payment of \$11,827 is due to the State within thirty (30) days from execution of this AFA. The second payment of \$290,246 is due to the State within sixty (60) prior to the construction contract being advertised for bids.

City staff will begin the design phase in the coming months and construction will begin late 2023 or early 2024. TxDOT will manage the construction of the project.

Budget & Financial Summary: Budget in the amount of \$750,000 is included for this project in the Streets Capital Improvement Projects Fund to cover the design phase and the local match for construction. Nothing has been expended or committed to date, leaving a balance of \$750,000 for this AFA and future expenses.

The “Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt” is necessary for this project because all of the long-term debt projected to be issued for this project has not yet been issued. The debt for the project is scheduled to be issued at a later date.

Attachments:

1. Resolution for Advance Funding Agreement
2. Advanced Funding Agreement for FM2347
3. Resolution for Debt Reimbursement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION, RELATED TO THE TRANSPORTATION ALTERNATIVES SET-ASIDE (TASA) PROGRAM, FOR THE DESIGN AND CONSTRUCTION OF SEPARATED BIKE LANES ON GEORGE BUSH DRIVE (FM 2347) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE ADVANCE FUNDING AGREEMENT.

WHEREAS, FM 2347 is owned and maintained by the Texas Department of Transportation; and

WHEREAS, any construction or improvements on Texas Department of Transportation right of way must be approved through the Texas Department of Transportation permitting process; and

WHEREAS, the Texas Transportation Commission passed Minute Order No. 116126, dated October 28, 2021, awarding funding for projects in the 2021 TASA Program Call of the State, including the project described herein; and

WHEREAS, said project will enhance bicycle safety for residents between area schools, neighborhoods, commercial districts, and other points of interest; and

WHEREAS, the City of College Station supports the design and construction of separated bike lanes on FM 2347; and

WHEREAS, the City of College Station agrees to the terms and conditions stated in the Texas Department of Transportation's Advance Funding Agreement for the design and construction of separated bike lanes on FM 2347.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the City Council hereby approves the Advance Funding Agreement with the Texas Department of Transportation for the design and construction of separated bike lanes on FM 2347.

PART 2: That the City Council hereby authorizes the City Manager to execute the Advance Funding Agreement.

PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, 2022.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

TxDOT:				Federal Highway Administration:	
CSJ #	3138-01-038			CFDA No.	20.205
District #	17 - BRY	AFA ID	Z00002926	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 2347 Separated Bike Lanes			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES
SET-ASIDE (TASA) PROGRAM PROJECT
TxDOT-Selected On-System**

This Advance Funding Agreement for a Transportation Alternatives Set-Aside (TASA) Program Project (“Agreement”) is made between the State of Texas (State), acting through the Texas Department of Transportation, and the City of College Station (Local Government), acting through its duly authorized officials.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, Federal law, 23 USC §134 and 49 USC §5303, requires that State and Metropolitan Planning Organizations (MPOs) develop transportation plans and programs for urbanized areas of Texas, and

WHEREAS, Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the rules and procedures for the Transportation Alternatives Set-Aside Program (TASA) are established in 23 USC §133(h), and 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418, and

WHEREAS, the Local Government prepared and submitted to the State or Metropolitan Planning Organization (MPO) a project nomination package for TASA funding consideration, which is briefly described as FM 2347 Separated Bike Lanes (Project), and

WHEREAS, the Texas Transportation Commission (Commission) passed Minute Order Number 116126 (MO) dated October 28, 2021 awarding funding for TASA projects in the TASA Program Call of the State, including Project, and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated _____, which is attached to and made a part of this

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Agreement as Attachment C, Resolution or Ordinance. A map showing the Project location appears in Attachment A, Project Location Map, which is attached to and made a part of this Agreement, and

NOW, THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Period of Agreement and Performance

- A. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided below.
- B. Period of Performance.
 1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
 2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

2. Scope of Work and Use of Project

- A. The scope of work for Project consists of the design and construction of on-street separated bike lanes with a vertical barrier on both sides of FM 2347 from FM 2154 to approximately 400 feet east of BS 6R in College Station, TX. This project will include intersection and driveway improvements which may include 2-stage turning boxes and green conflict striping to create a safer route for biking.
- B. Any project changes proposed must be submitted in writing by Local Government to State. Substantive changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

3. Project Sources and Uses of Funds

The total estimated development cost of the Project is shown in Attachment B, Project Budget Estimate and Source of Funds (Attachment B).

- A. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of the Project. State in its discretion may deny reimbursement if Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.
- B. The total estimated project cost as shown in Attachment B includes the Local Government's estimated itemized cost of real property, utilities, environmental assessments, construction, and

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- other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. Local Government must submit to State evidence of payment for eligible in-kind costs at least once per calendar quarter using the State's In-Kind Match Reporting form.
- C. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
 - D. The Project budget and source of funds estimate based on the budget provided in the application is included in Attachment B. Attachment B shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal TASA funds assigned by the Commission or MPO in consultation with State. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the TASA, FPAA, or other federal documents.
 - E. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.
 - F. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government. If the Project was State-selected, the State may apply a portion of any excess program funds to cover all or a portion of any overrun based on criteria provided by 43 Tex. Admin. Code §11.411(d).
 - G. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
 - H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
 - I. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment B for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment B for State's estimated construction oversight and construction cost.
 - J. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment B and 100

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- percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State's written notification.
- K. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the "Texas Department of Transportation". The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.
- L. Upon completion of Project, State will perform a final accounting of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party.
- M. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State's notification.
- N. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.
- O. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- P. State will not pay interest on any funds provided by Local Government.
- Q. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.
- R. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.
- S. If Local government is an Economically Disadvantaged County (EDC) and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

4. Termination of the Agreement

- A. This Agreement may be terminated by any of the following conditions:
1. By mutual written consent and agreement of all parties;
 2. By any party with 90 days written notice; or
 3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.
- B. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract

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has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

- C. The Agreement may be terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination;
- D. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system and with 2 CFR Part 200 recapture requirements.
- E. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:
 - 1. Local Government fails to satisfy any requirements of the program rules cited in 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418.
 - 2. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.
 - 3. Local Government withdraws from participation in Project.
 - 4. State determines that federal funding may be lost due to Project not being implemented and completed.
 - 5. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.
 - 6. A construction contract has not been awarded or construction has not been initiated within three years after the date that the Commission or MPO selected the project or by a letting date determined by the state and agreed to by the Local Government.
 - 7. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.
- F. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.

5. Amendments

This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

6. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

7. Utilities

Local Government shall be responsible for the adjustment, removal, or relocation of utilities or utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government's failure to ensure that utilities or

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utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. At the State's discretion, State may reimburse Local Government for minor, incidental utility adjustments that are identified during the preliminary engineering phase if they are eligible for federal reimbursement. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TASA participation if the following conditions are met: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TASA funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

8. **Environmental Assessment and Mitigation**

Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The **Local Government** is responsible for the identification and assessment of any environmental problems associated with the development of Project.
- B. Local Government is responsible for the cost of any environmental problem's mitigation and remediation. These costs will not be reimbursed or credited towards Local Government's financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.
- C. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, including any public hearing requirements that may be necessary when adding a bike lane.
- D. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

9. **Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. **Architectural and Engineering Services**

- A. Architectural and engineering services for preliminary engineering will be provided by the **Local Government**. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services or if these services will be used as in-kind contributions; and with Texas Government Code Subchapter 2254.A., in all cases. Professional services contracts for federally funded projects must conform to federal requirements. For State-selected projects, architectural and engineering services are not eligible for TASA reimbursement.
- B. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as

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applicable. The engineering plans shall be developed in accordance with State's applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials' ("AASHTO") publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All design criteria for bicycle and pedestrian bridges must comply with TxDOT's Bridge Design Manual and AASHTO's Load and Resistance Factor Design (LRFD) Guide Specifications for the Design of Pedestrian Bridges (latest edition) as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

- C. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval on an agreed upon schedule. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.
- D. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work, including any proposed changes to the scope of work, as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

11. Construction Phase Services

When architectural and engineering services are provided by or through Local Government, Local Government shall provide Construction Phase Services at the written request of the State's Project Manager. The written request must include a description of the work requested, a mutually agreed upon time limit, and any special instructions for coordination and submittal. These services shall include, but are not limited to the following:

- A. Calculate quantities and assist the area engineer in preparing change orders
- B. Responding to requests for information (RFIs)
- C. Providing redesign, which will include changes to the affected plan sheets and an updated copy of the 3D corridor model.
- D. Answering general questions
- E. Providing clarification
- F. Other project related tasks in support of the State during construction

12. Automation Requirements

- A. Planimetric design files (DGN) provided by the Local Government shall be fully compatible with the State's MicroStation graphics program without further modification or conversion as requested by the State.
- B. If applicable, electronically collected and processed field survey data files must be fully compatible with the State's computer systems without further modification or conversion. All files must incorporate only those feature codes currently being used by the State.
- C. If applicable, Digital Terrain Models (DTM) must be fully compatible with the State's OpenRoads civil design system without further modification or conversion. All DTM must be fully edited and rectified to provide a complete digital terrain model with all necessary break lines.

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13. Construction Responsibilities

- A. The **State** shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. To ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.
- B. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.
- C. All contract change order review and approval procedures must be approved by State prior to start of construction.
- D. If the Local Government is the responsible party, the State must review and approve change orders.
- E. Upon completion of Project, the party constructing Project will issue and sign a “Notification of Completion” acknowledging Project’s construction completion.
- F. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form “FHWA-1273” in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.
- G. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

12. Project Maintenance

- A. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project’s original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

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- B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.
- C. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.
- D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

13. Right of Way and Real Property Acquisition

- A. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.
- B. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR §24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.
- D. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, or (2) Local Government, if the real property is not to be made part of the State Highway System. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.
- E. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.
- F. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted

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and will base its reimbursement for parcel acquisitions on these in determining the fair market values. Local Government will not be reimbursed for right-of-way costs on state-selected projects.

- G. For State-selected TASA projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TASA Project.
- H. Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Local Government will not be reimbursed for right-of-way costs on state-selected projects.
- I. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.
- J. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment. For State-selected projects, this is outlined in 43 Tex. Admin. Code §11.417. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.
- K. Local Government shall execute individually or produce a legal document as necessary to provide for Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- L. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.
- M. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

14. Insurance

- A. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.

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- B. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a “Loss Payee” should the building be destroyed.

15. Notices, Invoices, Payments, and Project Inquiries

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
City of College Station ATTN: Bicycle, Pedestrian, and Greenways Planning Administrator PO Box 9960 College Station, TX 77842	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

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

Invoicing, payment, and project inquiries must be sent to the following address, which the State may change by sending written notice of the change to the Local Government:

Texas Department of Transportation
ATTN: District TA Coordinator
2591 North Earl Rudder Freeway
Bryan, TX 77803

All invoicing, payment, and project inquiries must include the following information:

County: Brazos
Local Government: City of College Station
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Highway or Roadway: FM 2347

16. Legal Construction

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

17. Responsibilities of the Parties

Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

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18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

19. Document and Information Exchange

Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State's document template. Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

20. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

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25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

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- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. Disadvantaged Business Enterprise Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise (“DBE”) Program requirements established in 49 CFR Part 26.
- B. Local Government shall adopt, in its totality, State’s federally approved DBE program.
- C. Local Government shall set an appropriate DBE goal consistent with State’s DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. Local Government shall follow all other parts of State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and

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attachments found at web address: http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

- E. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).
- F. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:
 "The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate."

28. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

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

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- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. Local Government agrees that it shall:
 - 1. Obtain and provide to State a System for Award Management (SAM) number (Federal Acquisition Regulation (FAR) Subpart 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://sam.gov/SAM/pages/public/index.jsf>
 - 2. Obtain and provide to State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 - 3. Report the total compensation and names of its top five executives to State if:
 - a. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - b. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows: *We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____.*

TxDOT:				Federal Highway Administration:	
CSJ #	3138-01-038			CFDA No.	20.205
District #	17 - BRY	AFA ID	Z00002926	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 2347 Separated Bike Lanes			AFA Not Used For Research & Development	

- D. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Signatory Warranty

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

Each party is signing this agreement on the date stated under that party's signature.

THE STATE OF TEXAS

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

THE LOCAL GOVERNMENT

Signature

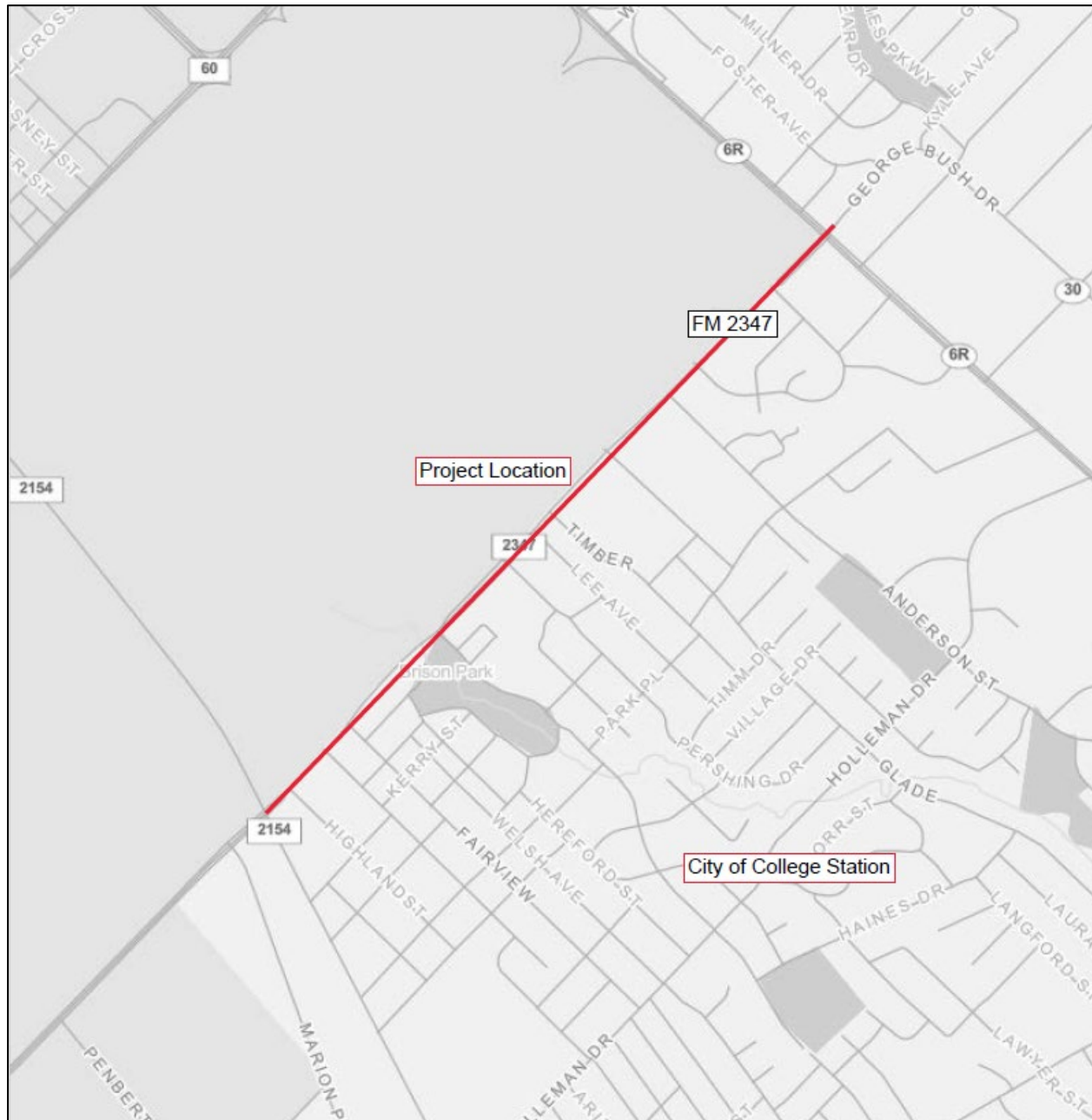
Typed or Printed Name

Typed or Printed Title

Date

TxDOT:				Federal Highway Administration:	
CSJ #	3138-01-038			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00002926	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 2347 Separated Bike Lanes			AFA Not Used For Research & Development	

ATTACHMENT A PROJECT LOCATION MAP



CSJ #	3138-01-038	Project Name:	FM 2347 Separated Bike Lanes	AFA ID:	Z00002926
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ATTACHMENT B
PROJECT ESTIMATE AND SOURCE OF FUNDS
 LG Performs PE Work or Hires Consultant / State Lets Project for Construction

Work Performed by Local Government ("LG")							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation Includes percentage for TDC apportionment on MPO-selected projects where applicable		State Participation Includes authorized EDC amounts		Local Government Participation Includes authorized EDC reduction	
		%	Cost	%	Cost	%	Cost
Planning/Maps/Education/Non-CST	\$0	0%	\$0	0%	\$0	0%	\$0
Preliminary Engineering	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities	\$0	0%	\$0	0%	\$0	0%	\$0
Construction Cost	\$						
Construction Engineering Cost	\$						
Eligible In-Kind Contribution Value	\$						
Total Construction Value (sum of construction cost and in-kind value)	\$0						
Work by LG Subtotal	\$0		\$0		\$0		\$0
Work Performed by the State (Local Participation paid up front by LG to TxDOT)							
Preliminary Engineering ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way ³	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities ²	\$0	0%	\$0	0%	\$0	0%	\$0
Construction Cost ²	\$ 1,314,147	\$1,314,147	80%	\$1,051,318	0%	20%	\$262,829
Eligible In-Kind Contribution Value	\$						
Total Construction Value (sum of construction cost and in-kind value)							
Work by State Subtotal	\$1,314,147		\$1,051,318		\$0		\$262,829
Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight							

CSJ #	3138-01-038	Project Name:	FM 2347 Separated Bike Lanes	AFA ID:	Z00002926
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Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation Includes percentage for TDC apportionment on MPO-selected projects where applicable		State Participation Includes authorized EDC amount		Local Government (LG) Participation Includes authorized EDC reduction	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering ¹	\$29,568	80%	\$23,654.65	0%	\$0	20%	\$5,913.66
Environmental Cost ¹	\$19,712	80%	\$15,769.76	0%	\$0	20%	\$3,942.44
Right of Way ¹	\$5,914	80%	\$4,730.93	0%	\$0	20%	\$1,182.73
Utilities ¹	\$3,942	80%	\$3,153.95	0%	\$0	20%	\$788.49
Construction ²	\$137,985	80%	\$110,388.35	0%	\$0	20%	\$27,597.09
Direct State Costs Subtotal	\$197,122	80%	\$157,698	0%	\$0	20%	\$39,424
Indirect State Cost	\$62,685		\$0	100%	\$62,685		\$0
TOTAL PARTICIPATION	\$1,573,954		\$1,209,015		\$62,685		\$302,254
In-kind Contribution Credit Applied						0%	\$0
TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION							\$302,254

- The estimated total participation by Local Government is \$302,254, plus 100% of overruns.
- Total estimated payment by Local Government to State is \$302,254.
- ¹Local Government's first payment of \$11,827 is due to State within 30 days from execution of this contract.
- ²Local Government's second payment of \$290,426 is due to State within 60 days prior to the Construction contract being advertised for bids.
- ³If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.
- The local match must be 20% or greater and may include eligible in-kind contributions, EDC adjustments, or TDCs if authorized as part of project selection.
- This is an estimate; the final amount of Local Government participation will be based on actual costs.
- Maximum federal TASA funds available for Project are \$1,209,015.

TxDOT:					Federal Highway Administration:	
CSJ #	3138-01-038				CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00002926		CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station					
Project Name	FM 2347 Separated Bike Lanes				AFA Not Used For Research & Development	

ATTACHMENT C
RESOLUTION OF LOCAL GOVERNMENT

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS THAT:

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$750,000, for the purpose of paying the aggregate costs of the Project.

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

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 28th DAY OF April, 2022.

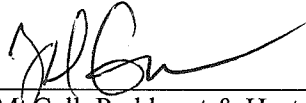
Karl Mooney, Mayor

ATTEST:

Tanya Smith, City Secretary

(Seal)

APPROVED:

A handwritten signature in black ink, appearing to read "J. L. Horton", is written over a horizontal line.

McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The projects to be financed that are the subject of this Statement are:

George Bush Drive (FM 2347) Separated Bike Lanes (\$750,000)

The George Bush Drive (FM 2347) Separated Bike Lanes Project will extend from Texas Avenue to Wellborn Road for approximately 1.3 miles. It will include a vertical barrier between the bike lane and vehicle lanes as well as intersection modifications to increase safety along the corridor for biking to and from Texas A&M University and surrounding key destinations and neighborhoods.

The Transportation Alternatives Set Program (TASA) is a federal grant program administered by the Texas Department of Transportation (TxDOT) that provides funding assistance to local communities to help enhance bicycle and pedestrian safety and connectivity through infrastructure projects. In May 2021, City Council passed a resolution of support and commitment to fund the project, if awarded, and enter into an Advancing Funding Agreement (AFA) with TxDOT. The City was notified of the grant award in November 2021.

The grant covers up to 80% of construction costs. The City must provide a minimum local match of 20% for construction and 100% of design costs. Cost overruns will need to be paid for by the City. The total project cost is estimated at \$1,905,513. The City's match for the construction portion is \$302,254. The first payment of \$11,827 is due to the State within thirty (30) days from execution of this AFA. The second payment of \$290,246 is due to the State within sixty (60) prior to the construction contract being advertised for bids. TxDOT will manage the construction of the project.

The AFA requires signatures from the City along with a Resolution authorizing execution, which are both attached. City staff will begin the design phase in the coming months and construction will begin late 2023 or early 2024.

The projected total cost to the City is not expected to exceed \$750,000.

April 28, 2022

Item No. 8.9.

Ch 2 Fee 2 Fire Department fee ordinance amendment

Sponsor: Eric Dotson, Fire Marshal

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 2, "Administration," Article V, "Finance," Division 2 "Fees, Rates and Charges," Section 2-120 "Fire Department Services".

Relationship to Strategic Goals:

Core Services and Infrastructure: The city will plan for, maintain, and invest in the infrastructure, facilities, services, personnel and equipment needed to meet projected needs and opportunities.

Recommendation(s): Staff recommends approval of Items 28, 29 and 30 of section 2-120.

Summary: Creating permits for mobile fuel vendors, hot works, and emergency access gates. These permits will allow for an inspection of these situations, therefore insuring the access of the Fire Department and the safety of our citizens.

Budget & Financial Summary: N/A

Attachments:

1. Ch 2 Fee 2-120 Fire Dept Fee Ord Amend

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2, “ADMINISTRATION,” ARTICLE V, “FINANCE,” DIVISION 2 “FEES, RATES AND CHARGES,” SECTION 2-120, OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO FIRE DEPARTMENT SERVICE FEES; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1:** That Chapter 2, “Administration,” Article V, “Finance,” Division 2 “Fees, Rates and Charges,” Section 2-120 of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 2, “Administration,” Article V, “Finance,” Division 2 “Fees, Rates and Charges,” Section 2-120 of the Code of Ordinances of the City of College Station, Texas, is hereby amended by adding and is to read as follows:

Sec. 2-120. – Fire Department Services.

- (28)** Mobile fuel vendor permit
- (29)** Hot work permit
- (30)** Emergency access gate permit

April 28, 2022

Item No. 8.10.

Woodson Village Utility Rehabilitation Project Construction Change Order No. 3

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on Change Order No. 3 in the amount of \$76,340 to the Construction Contract with Elliott Construction, LLC. for the Woodson Village Utility rehabilitation Project.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: At the request of the City of College Station's Water Services Department, additional repairs were made to sewer lines in and near the project area. Within the project area, the existing clay tile sanitary sewer line, located between Orr St., Winding Rd., and Langford St. collapsed prior to replacement. The contractor coordinated with the water services field operations crews and repaired the line to maintain functionality until the new sanitary line is installed and placed in service. Additionally, a segment of sanitary sewer line on Glade St. that runs between 1603 and 1701 Glade needed replacement. This segment is 0.2 miles south of the project boundary at the intersection of Haines Dr and Glade St. The existing line is a 6-inch diameter clay tile line, approximately 380 LF in length, with three manholes. The line was installed in 1961 and TV inspection by water services noted that there are several root balls, offset joints, and missing segments of clay inside this line. Due to the proximity to the Woodson Village Project, Water Services requested that the contractor pipe burst this line, upsizing it to an 8-inch diameter line, and if needed, replace or rehab the manholes.

To assist Water Services with flushing a new 8-inch, dead-end, line on Hawthorn, a new fire hydrant was installed near 802 Hawthorn. After installation and activation of the line, multiple reports from nearby residents noted discoloration in their drinking water in the period after new tie-ins were made in the area. To assist in alleviating the discoloration and to aid water services in routine flushing of the line, an end of line fire hydrant was installed in lieu of a traditional blowoff due to the line being on a cul-de-sac.

Budget & Financial Summary: A combined total budget in the amount of \$7,115,000 is included for these projects in the Water and Wastewater Capital Improvement Projects Funds. A combined total of \$6,117,483 has been expended or committed to date, leaving a combined balance of \$997,517 for this change order and future expenses.

Attachments:

1. Change Order 3 unsigned
2. Woodson Village Rehab Project Map

CHANGE ORDER NO. 3	DATE: April 11, 2022	Contract No. 2130008E
P.O.# 21201535	PROJECT: Woodson Village Utility Rehabilitatio	

OWNER: City of College Station P.O. Box 9960 College Station, Texas 77841	CONTRACTOR: Elliott Constructor PO BOX 510 Wellborn, TX 77881 Ph: 979- 690- 7071 Fax: 979- 690- 7152
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PURPOSE OF THIS CHANGE ORDER:
A. Additional Sewer Line Repair and Rehabilitation At the request of the City of College Station's water Services Department additional repair were made to sewer lines in and near the project area. Within the project area, the existing clay tile sanitary sewer line, located between Orr St., Winding Rd., and Langford St. collapsed prior to replacement. The contractor coordinated with the water services field operations crews and repaired the line to maintain functionality until the new sanitary line is installed and placed in service. Additionally, a segment of sanitary sewer line on Glade St running between 1603 and 1701 Glade. This segment is 0.2 miles south of the project boundary at the intersection of Haines Dr and Glade St. The existing line is a 6-inch diameter clay tile line, approximately 380 LF in length, with three manholes. the line was installed in 1961 and TV inspection by water services noted that there are a number of root balls, offset joints, and missing segments of clay in this line. Do the proximity to the Woodson Village Project, water services requested that the contractor pipe burst this line, upsizing it to an 8-inch diameter line, and if need replace or rehab the manholes.

B. Additional Fire Hydrant: To assist water services with flushing a new 8-inch, dead-end, line on Hawthorn a new fire hydrant was installed near 802 Hawthorn. After installation and activation of the line, multiple reports from nearby residents noted discoloration in their drinking water in the period after new tie-ins were made in the area. To assist in alleviating the discoloration and to aid water services in routine flushing of the line an of line fire hydrant was installed in lieu of a traditional blowoff due to the line being on a cul-de-sac.

ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
CO3.1	LS	Pipe Bursting Additional Mobilization	\$8,000.00	0	1	\$8,000.00
CO3.2	LF	6" HDPE (DR-17) Sanitary Sewer Pipe by Pipe Bursting	\$110.00	0	380	\$41,800.00
CO3.3	EA	4' Manhole	\$6,350.00	0	3	\$19,050.00
CO3.4	EA	4" Short Service	\$1,200.00	0	2	\$2,400.00
CO3.5	LS	Cut in end of line hydrant on Hawthorn	\$3,950.00	0	1	\$3,950.00
CO3.6	HR	Fix Existing sanitary sewer collapse at Orr and Langford	\$285.00	0	4	\$1,140.00
					TOTAL	\$76,340.00

THE NET AFFECT OF THIS CHANGE ORDER IS 1.51% INCREASE
--

LINE 1 (WTWOC-6581/WA1957431)	\$0.00	
LINE 2 (WTWOC-6581/WA1957431)	\$0.00	
LINE 3 (WTWOC-6581/WA1957431)	\$3,950.00	
LINE 4 (SCWOC-6590/WW1957430)	\$0.00	
LINE 5 (SCWOC-6590/WW1957430)	\$0.00	
LINE 6 (SCWOC-6590/WW1957430)	\$72,390.00	
TOTAL CHANGE ORDER	\$76,340.00	

ORIGINAL CONTRACT AMOUNT	\$5,055,913.00	
CHANGE ORDER NO. 1	\$126,859.60	2.51% CHANGE
CHANGE ORDER NO. 2	\$32,770.00	0.65% CHANGE
CHANGE ORDER NO. 3	\$76,340.00	1.51% CHANGE
REVISED CONTRACT AMOUNT	\$5,215,542.60	3.16% TOTAL CHANGE

ORIGINAL CONTRACT TIME	330	Days
Time Extension No. 1	93	Days
Revised Contract Time	423	Days

SUBSTANTIAL COMPLETION DATE	5-May-22
REVISED SUBSTANTIAL COMPLETION DATE	6-Aug-22

APPROVED

A/E CONTRACTOR Date

CONSTRUCTION CONTRACTOR Date

PROJECT MANAGER Date

CITY ENGINEER Date

DEPARTMENT DIRECTOR Date

ASST CITY MGR - CFO Date

CITY ATTORNEY Date

CITY MANAGER Date

Revised 2012 0719



Woodson Village Rehab



April 28, 2022

Item No. 9.1.

Public Hearing, presentation, discussion, and possible action on Budget Amendment 3 amending Ordinance No. 2021-4286 which will amend the budget for the 2021-2022 Fiscal Year in the amount of \$11,676,000.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Public Hearing, presentation, discussion, and possible action on Budget Amendment 3 amending Ordinance No. 2021-4286 which will amend the budget for the 2021-2022 Fiscal Year in the amount of \$11,676,000.

Relationship to Strategic Goals:

Good Governance

Financially Sustainable City

Core Services and Infrastructure

Recommendation(s): Staff recommends the City Council approve Budget Amendment 3.

Summary: The charter of the City of College Station provides for the City Council to amend the annual budget in the event there are revenues available to cover expenditures and after holding a public hearing on such budget amendment. The proposed budget amendment is to increase the FY22 budget appropriations by \$11,676,000 for increases in the cost of FY22 Electric Purchase Power, fuel, the addition of an Electric Underground Crew, Economic Development Business Development Manager, and a Tourism Staff Assistant among other costs. Attached is a summary with a complete description of the items included on the proposed budget amendment. This amendment also includes interfund transfers related to moving the assigned fund balance for IT replacements to the appropriate fund.

Budget & Financial Summary: The City has resources or can reasonably expect resources to cover the appropriations in this budget amendment. The attached summary has the complete description of the items included on the proposed budget amendment and a description of the interfund transfers. If approved, the net revised budget appropriations will be \$386,904,841.

Attachments:

1. FY22 BA#3-revised
2. FY22 Budget Amendment #3 Ordinance

Exhibit A – FY22 Budget Amendment #3 Detail Listing

1. Training Computer Purchase - \$30,000 (Budget Amendment)

This item will provide training laptops for City-wide use when onboarding new employees and/or training current employees. These computers will be available for departments to use in City Hall with the relevant supporting equipment.

2. Electric Underground Crew - \$374,200 (Budget Amendment); 3.0 FTE addition

These positions will provide CSU with an in-house underground Electric team. Due to challenges with third party contractors, CSU believes bringing this capability in-house will result in capital project savings. Additionally, CSU expects the team to increase reliability/accuracy, reduce safety issues, and provide greater responsiveness via experienced personnel.

3. Economic Development Business Development Manager – General Fund \$126,400 (Budget Amendment); 1.0 FTE addition

This position will implement strategic primary job recruitment and expansion efforts associated with the Economic Development Master Plan adopted in May 2020. Economic Development staff will enhance a proactive approach to regional, national, and international industry leads to activate Midtown Business Park and College Station Business Center, adding greater diversity to the local economy.

4. Tourism Staff Assistant II - Hotel Tax Fund \$68,500 (Budget Amendment); 1.0 FTE addition

This position will perform essential administrative tasks to facilitate department functions. The Economic Development and Tourism Department needs organizational support to manage HOT grants, sponsorships, and compliance aspects associated with the conventions/meetings and sports tourism markets.

5. Pool Replaster - \$300,000 (Budget Amendment)

This item will fund the necessary City pool replaster out of the General Fund.

6. Fun For All Conceptual Design – Fun for All Fund - \$42,000 (Budget Amendment)

This item will fund a conceptual design study for a potential future phase of Fun for All Park. This item will use existing contributions from the Fun for All Fund.

7. Electric Purchase Power - \$10,000,000 (Budget Amendment)

This item will increase budget in the Electric fund to cover increased Purchase Power costs due to the substantial and unexpected increase in natural gas prices and the contractual cost for Wind Power related to economic curtailment. The increase in natural gas prices and changes in EROCT protocols also affects the related ancillary costs paid by the City of College Station.

8. Fuel Cost City Wide - \$726,700 Budget Amendment

Gas prices have hit record highs due to imbalances between supply and demand. During the pandemic companies that produced oil drastically decreased production. As the pandemic eases increased demand have strained current production capacity. The Russia-Ukraine conflict has also limited available crude oil. Staff projects the FY22 budget should be increased primarily in the Police, Fire, Public Works, and Utilities departments that contain the largest segment of our vehicles.

9. Law Enforcement Officer Standards and Education (LEOSE) Funds-\$8,200 (Budget Amendment)

This item provides additional training budget to meet State of Texas compliance requirements. The City of College Station received LEOSE funds and must show a corresponding budget for use of those funds.

10. General Fund Transfer to IT Replacement-\$2,000,000 Budget Amendment

This is the budgeted assigned fund balance included on page 36 of the FY22 Budget document. The assignment was allocated to help fund the future replacement of the financial management ERP system and is included as \$2,000,000 a year for a total of five years. This transfer is the second annual transfer and is included on the Budget Amendment for accounting reasons and transparency. Future transfers will be included in the annual Budget document transfer appendix.

ORDINANCE NO. _____

AN ORDINANCE (BUDGET AMENDMENT #3) AMENDING ORDINANCE NO. 2021-4286 WHICH WILL AMEND THE BUDGET FOR THE 2021-2022 FISCAL YEAR AND AUTHORIZING AMENDED EXPENDITURES AS THEREIN PROVIDED.

WHEREAS, on August 12, 2021, the City Council of the City of College Station, Texas, adopted Ordinance No. 2021-4286 approving its Budget for the 2021-2022 Fiscal Year: and

WHEREAS, on January 27, 2022, the City Council of the City of College Station, Texas, adopted Ordinance No. 2022-4328, budget amendment #1: and

WHEREAS, on March 10, 2022, the City Council of the City of College Station, Texas, adopted Ordinance No. 2022-4339, budget amendment #2: and

WHEREAS this amendment was prepared and presented to the City Council and a public hearing held thereon as prescribed by law and the College Station City Charter, after notice of said hearing having been first duly given; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Ordinance No. 2021-4286 is hereby amended by amending the 2021-2022 Budget adopted thereto by a net amount of \$11,676,000 as further detailed in the proposed 2021–2022 year-end estimates incorporated herein for funds and purposes.

PART 2: That this Budget Amendment #3 shall be attached to and made a part of the 2021-2022 Budget.

PART 3: That except as amended hereby, Ordinance No, 2021-4286 shall remain in effect in accordance with its terms.

PART 4: That this ordinance shall become effective immediately after passage and approval.

PASSED and APPROVED this _____ day of _____ 2022

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

April 28, 2022
Item No. 9.2.
Neighborhood Center Future Land Use Revisions

Sponsor: Alyssa Halle-Schramm, Planner

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action to consider a Comprehensive Plan Amendment to the Neighborhood Center future land use description, intent, and generally appropriate zoning districts within Chapter 2, Distinctive Places of the Comprehensive Plan.

Relationship to Strategic Goals:

- Good Governance
- Neighborhood Integrity
- Diverse & Growing Economy
- Improving Mobility

Recommendation(s): The Planning and Zoning Commission heard this item on April 7, 2022, and voted 6-0 to recommend approval with minor text revisions. Staff have incorporated those revisions and recommends approval of the ordinance.

Summary: This item is to consider revisions to the Neighborhood Center future land use category. The proposed update includes revisions to the description, intent, and generally appropriate zoning districts to provide clarity regarding the commercial requirements.

The proposed amendment to the Comprehensive Plan stems from numerous discussions amongst City staff and private developers regarding the intent of the Neighborhood Center future land use category. The proposed changes specify the extent of commercial uses expected along primary streets, while also allowing flexibility in the exact size and location if creating commercial nodes or if other site characteristics necessitate an alternative design to provide a horizontal mixing of commercial, office, and residential uses.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Neighborhood Center Future Land Use Redlines
3. Comprehensive Plan - Chapter 2. Distinctive Places

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF COLLEGE STATION, TEXAS, AMENDING THE OFFICIAL CITY OF COLLEGE STATION COMPREHENSIVE PLAN BY AMENDING THE CHAPTER 2. DISTINCTIVE PLACES TEXT REGARDING THE NEIGHBORHOOD CENTER FUTURE LAND USE DESCRIPTION, INTENT, AND GENERALLY APPROPRIATE ZONING DISTRICTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATED THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the “Official City of College Station Comprehensive Plan” is hereby amended by adding new Subsection “D.1.a” of Exhibit “A” thereto as set out in Exhibit “A” attached hereto and made a part hereof; as set out in Exhibit “B” attached hereto and made a part hereof.

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

PART 3: That this Ordinance shall take effect immediately from and after its passage.

PASSED, ADOPTED and APPROVED this ____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Ordinance No.4303 adopting the “Official City of College Station Comprehensive Plan” as amended, is hereby amended by adding Subsection “D.1.a” to Exhibit “A” of said plan for Exhibit “A” to read in its entirety as follows:

A. Comprehensive Plan

The Official City of College Station Comprehensive Plan (Ordinance 4303) is hereby adopted and consists of the following:

1. Plan Foundation;
2. Distinctive Places;
3. Strong Neighborhoods;
4. A Prosperous Economy;
5. Engaging Spaces;
6. Integrated Mobility;
7. Exceptional Services;
8. Managed Growth;
9. Collaborative Partnerships; and
10. Plan Implementation

B. Master Plans

The following Master Plans are hereby adopted and made a part of the Official City of College Station Comprehensive Plan:

1. The Northgate Redevelopment Plan dated November 1996;
2. The Revised Wolf Pen Creek Master Plan dated 1998;
3. Northgate Redevelopment Implementation Plan dated July 2003;
4. East College Station Transportation Study dated May 2005;
5. Bicycle, Pedestrian, and Greenways Master Plan dated January 2010;
6. Central College Station Neighborhood Plan dated June 2010;
7. Eastgate Neighborhood Plan dated June 2011;
8. Parks, Recreation, and Open Spaces Master Plan dated July 2011;
9. Southside Area Neighborhood Plan dated August 2012;
10. Medical District Master Plan dated October 2012;
11. Wellborn Community Plan dated April 2013;
12. Economic Development Master Plan dated May 2020;
13. South Knoll Neighborhood Plan dated September 2013;
14. The Water System Master Plan dated April 2017; and
15. The Wastewater System Master Plan dated April 2017.

C. Master Plan Amendments

The following Master Plan Amendments to the Official City of College Station Comprehensive Plan are as follows:

D. Text Amendments

The following Text Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Text Amendments:
 - a. *Chapter 2. Distinctive Places* by amending the text regarding the Neighborhood Center future land use description, intent, and generally appropriate zoning districts – Ordinance _____, dated April 28, 2022.

E. Map Amendments

The following Map Amendments to the Official City of College Station Comprehensive Plan are as follows:

F. General

1. **Conflict.** All parts of the Comprehensive Plan and any amendments thereto shall be harmonized where possible to give effect to all. Only in the event of an irreconcilable conflict shall the later adopted ordinance prevail and then only to the extent necessary to avoid such conflict. Ordinances adopted at the same city council meeting without reference to another such ordinance shall be harmonized, if possible, so that effect may be given to each.
2. **Purpose.** The Comprehensive Plan is to be used as a guide for growth and development for the entire City and its Extraterritorial Jurisdiction (“ETJ”). The Comprehensive Plan depicts generalized locations of proposed future land uses, including thoroughfares, bicycle and pedestrian ways, parks, greenways, and waterlines, and sewer lines that are subject to modification by the City to fit local conditions and budget constraints.
3. **General nature of Future Land Use.** The Comprehensive Plan, in particular the Future Land Use & Character Map and any adopted amendments thereto, shall not be, nor be considered, a zoning map, shall not constitute zoning regulations or establish zoning boundaries, and shall not be site or parcel specific but shall be used to illustrate generalized locations.
4. **General nature of College Station Comprehensive Plan.** The Comprehensive Plan and any additions, amendments, master plans and subcategories thereto depict same in generalized terms including future locations; and are subject to modifications by the City to fit local conditions, budget constraints, cost participation, and right-of-way availability that warrant further refinement as development occurs. Linear routes such as thoroughfares, bikeways,

pedestrian ways, greenways, waterlines, and sewer lines that are a part of the Comprehensive Plan may be relocated by the City 1,000 feet from the locations shown in the Comprehensive Plan without being considered an amendment thereto.

5. **Reference.** The term College Station Comprehensive Plan includes all of the above in its entirety as if presented in full herein, and as same may from time to time be amended.

EXHIBIT B

That the “Official City of College Station Comprehensive Plan” is hereby amended by amending *Chapter 2. Distinctive Places, Page 35* regarding the Neighborhood Center future land use description, intent, and generally appropriate zoning districts to read as follows:

NEIGHBORHOOD CENTER

Areas that are appropriate for a mix of uses arranged in a compact and walkable pattern at a smaller scale than Urban Centers. These areas consist of residential, commercial, and office uses arranged horizontally in an integrated manner and may be mixed vertically within structures. Neighborhood Centers should also incorporate consolidated parking facilities, access to transportation alternatives, open space and recreational facilities, and public uses.

Height: 3 stories average

Mobility: Walking, bicycling, transit, automobile

Intent

- Create and reinforce walkable activity centers that are connected to surrounding development and include a mix of complementary uses
- Accommodate a mix of building types that frame attractive pedestrian spaces
- Support vertical mixed-use structures with ground-floor retail in appropriate locations such as along corridors or major intersections
- Encourage all land generally within 300 to 500 feet of streets classified as major collectors or higher to be commercial uses, unless providing vertical mixed-use structures with residential uses on upper floors. The exact location and extent can be modified if creating commercial nodes, such as at intersections, and/or if other characteristics of the site require an alternative design that provides a mixture of uses in an integrated manner.
- Stand-alone commercial uses with a preferred emphasis on urban form may be allowed if the size and scale of the property and/or development does not adequately support mixing uses in a horizontal manner
- Support multi-family residential as a complementary secondary component of a center that includes commercial and/or office uses
- Encourage shared surface parking located behind or to the side of buildings (with some limited parking in front of buildings), structured parking, and on-street parking where possible

Generally appropriate zoning districts:

Mixed-use, Wolf Pen Creek zoning (in Wolf Pen Creek only), commercial and multi-family zoning may be considered in some circumstances if designed in an integrated manner through a Planned Development District with a preferred emphasis on urban form



CHAPTER 2. DISTINCTIVE PLACES

NOTE: Redlines showing changes to Page 35 of the College Station Comprehensive Plan

Neighborhood Center

Areas that are appropriate for a mix of uses arranged in a compact and walkable pattern at a smaller scale than Urban Centers. These areas consist of residential, commercial, and office uses arranged horizontally in an integrated manner and may be mixed vertically within structures. Neighborhood Centers should also incorporate consolidated parking facilities, access to transportation alternatives, open space and recreational facilities, and public uses.

Height: 3 stories average

Mobility: Walking, bicycling, transit, automobile

Intent

- Create and reinforce walkable activity centers that are connected to surrounding development and include a mix of complementary uses
- Accommodate a mix of building types that frame attractive pedestrian spaces
- ~~Encourage commercial uses along primary streets~~
- Support vertical mixed-use structures with ground-floor retail in appropriate locations such as along corridors or major intersections
- ~~Encourage all land generally within 300 to 500 feet of streets classified as major collectors or higher to be commercial uses, unless providing vertical mixed-use structures with residential uses on upper floors. The exact location and extent can be modified if creating commercial nodes, such as at intersections, and/or if other characteristics of the site require an alternative design that provides a mixture of uses in an integrated manner.~~
- ~~Stand-alone commercial uses with a preferred emphasis on urban form may be allowed if the size and scale of the property and/or development does not adequately support mixing uses in a horizontal manner~~
- Support multi-family residential as a complementary secondary component of a center that includes commercial and/or office uses
- Encourage shared surface parking located behind or to the side of buildings (with some limited parking in front of buildings), structured parking, and on-street parking where possible

Generally appropriate zoning districts:

Mixed-use, Wolf Pen Creek zoning (in Wolf Pen Creek only).

~~General~~ commercial and multi-family zoning may be considered in some circumstances if designed in an integrated manner through a Planned Development District with a preferred emphasis on urban form





2 DISTINCTIVE PLACES

The Comprehensive Plan sets the framework to create distinctive places, strong neighborhoods, a prosperous economy, and engaging natural spaces and arts for everyone in College Station. The plan provides policy direction for an integrated mobility network, exceptional City services, and carefully managed, fiscally responsible growth. Effective collaboration across City departments and with regional partners is key to achieve and implement the plan's vision, goals, and actions. The plan strives to identify, create, conserve, and connect places of distinction – those areas that make College Station unique and contribute to the City's character and sense of place.



Goal

Vibrant and distinct districts, attractive neighborhoods, revitalized gateways and corridors, and conserved natural areas, grounded in environmental stewardship and resiliency.

Purpose

How land is used – including its appearance, physical arrangement, and development intensity – contributes significantly to the community's character and its sense of place with far-reaching and long-term impacts. The City must balance and encourage infill, redevelopment, and new development in appropriate areas to accommodate an increasing population while maintaining the integrity and character of established neighborhoods. Revitalization, where needed, is also essential to maintaining College Station's character.

Sound planning ensures that the City can accommodate needed development, that development can be adequately served with public services, and that its impacts can be managed to maintain compatibility and to promote the character desired by College Station's residents. Planning establishes effective strategies for future growth, infill, and appropriate redevelopment while balancing market opportunities, protecting and enhancing neighborhood character, creating and preserving unique districts and corridors, conserving natural areas, and creating a more resilient community.

The 10-year update to the Comprehensive Plan places a renewed focus on infill and redevelopment in strategic locations to accommodate population growth while ensuring the long-term fiscal sustainability of the City. Infill and redevelopment opportunities more efficiently utilize existing infrastructure, facilities, and City staff resources by encouraging growth in areas with existing capacity to maximize efficiency.

The Comprehensive Plan contains future land use categories that serve as policy guides and set expectations for how land within the City should be developed and used in the future. The terms future land use and zoning often get confused, but they are separate tools and processes. Future land use serves as a guide for how areas of the City may develop in the future. In contrast, zoning regulates how a specific property can be developed and used today. **Map 2.2, Future Land Use & Character** is used to guide decisions about infrastructure investment and zoning changes.

This chapter serves as the plan's foundation and encompasses many interrelated components as land use and development patterns are fundamental to the other topic chapters including creating strong neighborhoods (Chapter 3), a prosperous economy (Chapter 4), engaging natural spaces and arts (Chapter 5), an integrated mobility network (Chapter 6), exceptional City services (Chapter 7), and carefully managed, fiscally responsible growth (Chapter 8). Effective collaboration across City departments and with regional partners (Chapter 9) is vital to achieve and implement the plan's vision, goals, and actions (Chapter 10).

This chapter includes a series of maps that depict the City's land use strategies and goals visually, including **Map 2.1, Planning Areas**, **Map 2.2, Future Land Use & Character**, and **Map 2.3, Community Assets & Image Corridors**.

Planning Considerations

Planning input from the community identified various issues and opportunities regarding land use planning, conservation of natural features, and enhanced community identity and aesthetics. The considerations highlighted in this section were used in the development of the goal and action recommendations that follow.

GROWTH AND DEVELOPMENT

College Station is poised for continued population growth, which will bring demands for additional housing, shopping, recreational needs, public facilities, infrastructure, and services. University students continue to make up a significant portion of the population, but College Station is also diversifying in age—those aged 55 and over are the fastest-growing cohort, increasing by 83.5 percent over the last decade. The City of College Station is projected to increase by approximately 35,000 people over the next decade for a total population estimated to be 162,500 by 2030. The housing demand associated with this population growth is approximately 14,000 additional dwelling units. When factoring in assumed build-out of all existing and known development projects, there is a gap of approximately 10,000 dwelling units. This additional housing stock could come from a combination of infill development, redevelopment projects in existing areas, and new developments. This housing stock must include a variety of housing types to meet the needs and demands of all residents including students, young professionals, families and non-family households, renters and homeowners, and the retiree and 55 and older population, with an emphasis on aging-in-place. For reference, the City had a net gain of approximately 12,800 housing units over the last decade, with 6,500 single-family residences and 6,300 multi-family units added.¹



If population and housing demands continue to increase and state legislation restricting annexation remains in effect, the City will naturally face a greater need for increased density in appropriately targeted areas. This presents an exciting opportunity to thoughtfully plan for a variety of neighborhoods that accommodate a wide range of lifestyles for College Station residents. Though the current population density at slightly more than 2,400 persons per square mile remains low in comparison to other metropolitan areas, the need for increased density offers opportunities for reinvigorating strategic areas and reimagining the way that new neighborhoods are designed. The City's enviable growth prospects necessitate more effective land use planning and capital investments, as well as diversified housing types including vertical mixed-use apartments, townhomes, and dense single-family neighborhoods.

¹Data provided by City of College Station Planning & Development Services

COMMUNITY CHARACTER, SUSTAINABILITY & URBAN DESIGN

College Station residents are interested in the character of their neighborhoods, special districts, corridors, and natural areas that collectively make College Station unique. Effective design also helps to create places of distinction – places worth remembering and protecting – and contributes significantly to quality of life. The design of streetscapes and building fronts as well as the treatment of parking and other physical features all impact how people experience the public realm. This plan speaks to the urban form of the City (where, when, and how land uses are developed) as well as public realm design (sometimes called urban design) and its impact on community character and identity.

Residents expressed the desire to preserve natural features for their environmental functions as well as their contribution to the community's character, with an emphasis on ensuring that the use or enjoyment of existing resources does not compromise resource availability for future residents. This is generally recognized as the definition of sustainability – meeting the needs of current generations without compromising the ability of future generations to meet their own needs. Combining these desires for unique places, quality urban design, and development patterns that are sensitive to resident needs and natural resources, along with the efficient use of infrastructure and City resources, provides a defined vision to make College Station a more livable and sustainable community.

As College Station grows, it is the residents' and City's intent that:

- **Infill and redevelopment in strategic locations is prioritized** over expansion of the urban area, is sensitive to existing neighborhoods, and engages residents in infill and redevelopment planning.
- **Growth occurs in a sustainable manner** to steward limited resources in an efficient and responsible manner that accommodates an increasing population and mitigates negative impacts on the natural and built environment. Compact development patterns help minimize sprawl and its associated impacts and makes sound economic sense for infrastructure provision and City services (see **Chapter 8: Managed Growth**).
- **New or enhanced residential areas are created** with qualities of traditional neighborhoods that feature a mix of housing types, a balance of owner and renter occupants, where parks and open space are provided, neighborhood-serving businesses are accessible, and adjacent neighborhoods and areas are connected in a seamless fashion (see **Chapter 3: Strong Neighborhoods**).
- **Existing neighborhoods are conserved, enhanced, or revitalized** with harmonious improvements, infill development, and compatible adjacent land uses that enhance the established neighborhood's character (see **Chapter 3: Strong Neighborhoods**).
- **Unique corridors and districts are developed, enhanced, and conserved** that foster vibrant places, streets, and natural corridors that contribute to the community's character and sense of place.
- **Rural areas are preserved** to protect streams, trees, pastures, and open areas that contribute significantly to the character of rural areas.
- **Natural resources are managed and conserved through sound stewardship practices** to protect streams, wooded areas, and open spaces that provide habitat for a variety of plants and wildlife, convey and clean stormwater, improve air quality, and add to the City's character and identity (see **Chapter 5: Engaging Spaces**).

- **Sustainable site design and low impact development practices are utilized** to mitigate stormwater and prevent flooding, avoid soil erosion and mitigate urban heat island effect, encourage tree preservation and planting programs, reduce energy consumption and pursue renewable technologies, conserve and reuse water, encourage native and adapted vegetation, and minimize waste and resource consumption, among others.
- **Multiple mobility mode options are available** to access neighborhoods, major employers and attractions, and the wider community, and streets are designed in a context-sensitive manner. The design of a street should be a function of both its role as a mobility corridor and its place context (see **Chapter 6: Integrated Mobility**).
- **Streetscapes are designed at a human-scale** and contribute positively to the way people navigate and experience the City. Effective streetscapes prioritize elements like wide sidewalks, pedestrian-scaled streetlights, wayfinding signs, and canopy trees. New district and corridor plans, as well as context-sensitive street design, will help elevate streets from utilitarian elements of the community to special places in their own right.
- **Public facilities are located and designed to contribute to community character** and make a statement about the community's values and expectations. A well-designed library or community center fits into a neighborhood, enabling residents to walk safely from their homes and providing a place for neighbors to gather, and contributes positively to that neighborhood's character and reinforces the public facility as an integral part of the community.
- **Public spaces are highly visible and accessible to all residents and visitors.** Public spaces like plazas, amphitheaters, and pedestrian malls that are well designed and safe foster social interactions and community identity.



Existing Land Use

Future land use and character is grounded in the current use of land and the prevailing character. An overview of the current conditions is necessary prior to forming policies for the future use of land and community character. College Station can be readily divided into three basic types of existing land use patterns: urban, suburban, and rural. These are common terms that should bring immediate images to mind. Attributes that define these areas contribute to the identity of College Station.

Urban character is currently concentrated in the Northgate area. It includes early 20th century lot-line commercial structures such as those along either side of College Main, and immediately north of University Drive (FM 60). More recently constructed structured parking and multi-story residential projects built close to the street continue this urban feel. This area includes vertical, mixed-use development, minimal setbacks, minimal surface parking lots, and a high level of pedestrian activity.

Suburban character dominates College Station largely due to the time period most of the City was developed (post-World War II), local preferences and building customs, and the dominance of apartment-style development to support the student population. Much of this suburban character is auto-dominated and consists of land uses that have extensive areas of parking in relationship to their floor area. Big-box retail areas and shopping malls are quintessential examples of this character. Most apartment complexes, duplexes, and single-family residential developments exhibit similar auto-oriented character and design.

Some suburban areas of the City exhibit a less auto-dependent and more walkable character. These areas retain a balance between green areas (parks and open space) and the built environment. Often these areas include parks, schools, and small-scale, neighborhood-serving businesses. The College Hills area is a good example of this type of suburban character. There are also suburban areas that are dominated by open space. These estate areas exhibit a more rural character with homes generally placed on large lots. The Foxfire subdivision is a good example of this type of suburban land use and character.

Rural areas that currently exist in and around College



Station are areas that exhibit countryside, agricultural, and natural character. Countryside is typically dominated by a few lots of estate size or greater fronting a road surrounded by agricultural or natural lands. The latter two tend to be determined by uses – crop or ranching in agricultural areas and wooded or savannah lands in natural areas. Rural areas tend to be more sensitive than other character areas to intrusions from incompatible development. Portions of the City and most of the ETJ are planned to remain rural and are identified accordingly on **Map 2.2, Future Land Use & Character**. Additional information about these areas is contained in **Chapter 8: Managed Growth**.



Future Land Use

The plan for future uses of land is presented through policy guidance and associated maps. Three significant land use components work in tandem to identify, create, conserve, and connect places of distinction – those areas that make College Station unique and contribute to the City's character and sense of place. These components are: Planning Areas, Future Land Use & Character, and Community Assets & Images Corridors. Each component is visually represented by an associated map. Combined, the narrative and maps capture the City's policies regarding how and where College Station will grow and change over the course of the next decade.

- **Map 2.1, Planning Areas** depicts areas within the city with distinctive character that have existing small area plans or are priority areas for future focused planning efforts.
- **Map 2.2, Future Land Use & Character** provides specific detail regarding the desired future use and character of all land within the City and ETJ.
- **Map 2.3, Community Assets & Image Corridors** visually portrays community assets, both natural and man-made, that contribute to the character and identity of the City.

PLANNING AREAS

The policy guidance within this section and **Map 2.1, Planning Areas** are intended to provide a broad overview of the City's land use strategy. Significant neighborhoods, districts, corridors, redevelopment areas, and places that would benefit from future small area planning efforts are identified. Small area plans are focused planning efforts that provide a more granular level of study and specific actions for a smaller, defined geographic area to help implement the Comprehensive Plan's overarching goals. The City has several existing small areas plans and identified priority areas for additional planning efforts through recent citizen input and the 10-year plan update.

The basic land use strategy is to strategically accommodate the projected demand for new housing, businesses, public facilities, and infrastructure needs resulting in multiple places of distinction. This enables the City to continually strengthen its principal competitive advantage for attracting and retaining residents, visitors, and new businesses along with the employment and tax revenues that accompany them – that is, a high quality of life. The land use strategy and planning areas focus on identifying, creating, conserving, and connecting:

- Strong and sustainable neighborhoods
- Unique districts and corridors, both natural and man-made
- Redevelopment areas that renew, revitalize, and infill underperforming areas of the community through partnerships with public and private interests
- Rural areas that preserve open spaces and respect the limits of public infrastructure and services, and
- A context sensitive mobility system that links the community together (as discussed in **Chapter 6: Integrated Mobility** and visually represented through the **Thoroughfare Plan and Bicycle, Pedestrian, and Greenways Master Plan**)



Neighborhoods & Districts

Neighborhood planning areas are places in which the current land use, character, and identity will generally remain and be enhanced. Among other activities, these plans identify appropriate and compatible land uses and design for vacant lands within the neighborhood and its area of influence. They also designate areas appropriate for redevelopment. Neighborhood plans typically contain strategies that address existing challenges (for example, code issues) and identify enhancement actions (such as pedestrian or park improvements).

District planning areas present opportunities for a mix of appropriate uses that enhance the unique characteristics of a defined area of the City. Existing examples include the Wellborn Community Plan which centers on the unique, rural character of the Wellborn area and the Medical District Master Plan which focuses on creating a cohesive healthcare and wellness district.

Over the last 10 years, citizens, staff, and City leadership worked together to create seven neighborhood and district plans. These plans provide strategic recommendations for an area within a defined timeframe (typically seven years). Once adopted, those recommendations are either implemented over the planning period, incorporated into relevant parts of the Comprehensive Plan, or additional planning efforts may emerge due to changed conditions. Occasionally, some action items are not pursued due to changed conditions or waning neighborhood interest. Many of the existing neighborhood plans are now outside of their original planning timeframes. The City should establish a formal process for reviewing neighborhood plans at defined intervals to assess what was achieved relative to the plan's recommendations, what was not achieved (and why), and whether additional planning efforts are needed for an area.

- **Planning Area 1: Eastgate Neighborhood Plan** – Adopted in June 2011, this neighborhood plan covers approximately 567 acres in one of the City's older neighborhoods along the eastern edge of Texas A&M University.
- **Planning Area 2: Southside Area Neighborhood Plan** – Adopted in September 2012, this neighborhood plan covers approximately 720 acres in one of the City's oldest neighborhoods along the southern edge of Texas A&M University.



- **Planning Area 3: South Knoll Neighborhood Plan** – Adopted in September 2013, this neighborhood plan covers over 3,500 acres within the City's core.
- **Planning Area 4: Central College Station Neighborhood Plan** – Adopted in June 2010, this neighborhood plan covers approximately 1,450 acres in the geographic center of the City.
- **Planning Area 5: Wellborn Community Plan** – Adopted in April 2013, this plan encompasses 929 acres in the southwestern portion of the City, including much of the historic Wellborn community and focuses on retaining the rural character of the area. However, conditions have changed in recent years and the community is facing continued development pressures for growth that may now be appropriate, in contrast with the existing plan direction. A renewed planning effort in the Wellborn area is needed.
- **Planning Area 6: Medical District Master Plan** – Adopted in October 2012, the Medical District Master Plan creates a focused healthcare and wellness district that includes the City's major hospitals and medical facilities. This area is generally located along State Highway 6 near the Rock Prairie Road interchange, which is one of the primary gateways into the City as one approaches from the south. The plan links medical facilities into a cohesive district with supporting commercial and residential areas that are being realized through the Midtown Reserve & City Center master planned development. The City-owned Midtown Business Park, consisting of over 250 acres, is located in this general area as well, providing economic development opportunities for office, light

and heavy-industrial, and limited commercial uses. There are also significant natural features in the area – branches of Lick Creek and Spring Creek – and these should continue to be incorporated into the district as parks, greenway trails, and open space. Future development should also continue cohesive identity elements such as signage, landscaping, and design that visually tie the district together.

- **Planning Area 7: Wolf Pen Creek District** - This district along the Wolf Pen Creek corridor combines parks, arts, and commerce by linking a variety of private and public facilities together with an urban greenway. This area has been the subject of considerable planning efforts, including specific Wolf Pen Creek Design Standards (within the Unified Development Ordinance), and substantial public and private investment. Future planning should build upon these existing efforts to expand the district's reach into the adjacent areas of influence, resulting in a more urban character.



Redevelopment

Portions of the City are identified for focused redevelopment activities. Within these areas it is anticipated that a change in use – and, if appropriate, character – requires some form of direct intervention by the City. This intervention may involve regulation (e.g., City-initiated rezoning), investment (e.g., capital expenditure on infrastructure), or incentives (e.g., fast-tracking of a project or density bonuses). This stands in contrast to areas that experience changes in use based on market opportunities alone. Some of these redevelopment areas may overlap established neighborhood areas, districts, or corridors and careful attention and cohesive planning will be needed to provide appropriate transitions between redeveloping and existing areas.

- **Planning Area 8: Northgate District & Redevelopment Area** - This area serves as the City's primary entertainment district and represents the City's only current urban character area. This area has been and will continue to be the subject of considerable planning along with substantial public and private investment. These efforts should be guided by the Northgate District Design Standards (within the Unified Development Ordinance), the Mobility Study and Operations Plan, and any emerging plans for the area. Continued development and redevelopment efforts in the Northgate District should enhance the vibrant entertainment district and include vertical mixed-use projects, retail and entertainment uses, and tourist attractions.

- **Planning Area 9: Texas Avenue & University Drive (FM 60) Redevelopment Area** - This area includes a number of underperforming land uses that, due to their proximity to two of the busiest corridors in the City, are poised for redevelopment. Much of the area is currently subdivided into small lots, making it difficult to assemble land for redevelopment. A portion of this area includes the new City Hall site and a prime redevelopment opportunity to transition the former City Hall site into a cohesive mixed-use area that incorporates retail, office, and residential uses. The proximity of existing neighborhoods and the Texas A&M University campus requires careful site planning and building design. These efforts should be complimentary to the nearby hospitality corridor planning efforts, the Eastgate area, and the Texas A&M University Campus Master Plan while focusing on bringing vertical mixed-use and other aspects of urban character to this portion of the City. This area is consistently ranked as a high priority area for future planning efforts by residents and City leadership.

- **Planning Area 10: Harvey Road Redevelopment Area** – This section of Harvey Road includes newer commercial areas and a number of underperforming commercial and older multi-family properties and apartment complexes. This area also includes the Post Oak Mall, which will likely need to reposition itself in the near future to remain competitive. This presents an exciting opportunity to evolve into a denser area of the City, including vertical and horizontal mixed-use developments, which could compliment the adjacent Wolf Pen Creek District. During the 10-year Comprehensive Plan evaluation, residents and City leadership expressed interest in alternative options for future redevelopment and revitalization of this area, indicating a need for additional study and engagement.

- **Planning Area 11: George Bush Drive & Wellborn Road (FM 2154) Redevelopment Area** - This area includes a number of underperforming commercial properties and poor-quality residences that, due to planned road changes to the George Bush Drive and Wellborn Road (FM 2154) intersection along with the area’s proximity to Texas A&M University, are poised for redevelopment. Much of the area is currently subdivided into small lots, making it difficult to consolidate land for redevelopment. The presence of existing residences and businesses, and proximity to established neighborhoods and the university campus, requires careful site planning and building design. Redevelopment planning efforts should focus on bringing vertical and horizontal mixed-use and other aspects of urban character to this portion of the City, while providing contextually appropriate transitions to established areas of the Southside neighborhood. During the 10-year plan evaluation residents were divided on alternative options for this area, indicating the need for further study and public engagement. Residents strongly opposed changes to interior portions of the Southside neighborhood across from Texas A&M University, thus future planning efforts within the Southside neighborhood should center on the area surrounding the George Bush Drive and Wellborn Road (FM 2154) intersection. These planning efforts will be prioritized and synced with the proposed road changes, once the timing is known.

Gateway Corridors

Gateway corridors serve as functional and focal entry points into the City and its unique districts, neighborhoods, redevelopment, and natural areas. These gateway corridors are prominent routes for College Station residents and visitors alike. An effective gateway corridor establishes a positive impression and identity that reinforces the community’s character. Several of these corridors serve as a link between districts, further reinforcing their importance. Identity and beautification elements, such as decorative markers and themed wayfinding signs, should be placed along these corridors. Additionally, landscaping and streetscape elements should be unified and significant along these corridors. These corridors also offer the opportunity for the placement of public art and other design elements.

- **Planning Area 12: Presidential Gateway & BioCorridor** - This area located near the intersection of State Highway 47 and Raymond Stotzer Parkway (FM 60) is a main entryway into the City from the west. It is adjacent to the Texas A&M University Health Science Center, Easterwood Airport, and nearby the RELLIS Campus in Bryan. The BioCorridor contains interconnected, master planned properties specializing in corporate office, biomanufacturing, research and development, and industrial uses. The area's character is managed and regulated jointly by the cities of College Station and Bryan largely through the BioCorridor Planned Development District. Future development should build upon existing assets in the area and continue to enhance this primary gateway into the City through cohesive design, landscaping, and signage.
- **Planning Area 13: Hospitality Corridor** - This area along University Drive (FM 60), spanning from Tarrow Street and Fire Station #6 to the interchange at State Highway 6, is one of the main entryways into the City from the highway. A number of hotels and restaurants are currently located along this corridor. The focus of this corridor should be linking current and future hospitality facilities into a cohesive corridor along with adjacent redevelopment areas that, over time, could emerge as another urban character area. The plan should include identity elements such as signage, landscaping, and enhanced design to visually tie the corridor together.
- **Planning Area 14: Municipal Center Corridor** - This area located along Krenak Tap Road between State Highway 6 and Texas Avenue includes Stephen C. Beachy Central Park, the original City cemetery, and several municipal facilities. The area also includes significant natural features such as Bee Creek and several wooded areas. Plans for this corridor should enhance the municipal facilities and support a mix of residential and commercial activities with an emphasis on cohesive design that integrates the natural features of the area.
- **Planning Area 15: Harvey Mitchell Corridor** - This is an area of Harvey Mitchell Parkway (FM 2818) generally around its intersection with Texas Avenue extending eastward to State Highway 6. This area includes a significant amount of floodplain area adjacent to Bee Creek and significant road frontage along Harvey Mitchell Parkway and Texas Avenue. The focus of this plan should be the development of an urban area that incorporates the natural features of the area and design elements that positively contribute to two prominent entries into the core of the City.
- **Planning Area 16: Longmire & Highway 6 Frontage Road Corridor** - This gateway corridor is a major entryway into the City from State Highway 6. The area is generally defined as the State Highway 6 Frontage Road at its intersection with Texas Avenue between Deacon Drive to Rock Prairie Road and west to Longmire Drive. The corridor contains a series of older, underperforming, and in many cases nonconforming, commercial and multi-family uses. As a key corridor, future planning efforts should focus on redevelopment opportunities and identity enhancements such as signage, landscaping, and design to create a more visually cohesive entryway and corridor.
- **Planning Area 17: Wellborn Road (FM 2154) and William D. Fitch Corridor (State Highway 40)** - This area is generally the southwestern gateway into the City near the intersection of Wellborn Road (FM 2154) and William D. Fitch Parkway (State Highway 40). There is a future grade-separated crossing at the intersection of these roads that will significantly change the area's character. The land west of the railroad and generally south of Rock Prairie Road is largely undeveloped but limited in development potential due to sewer capacity constraints. A plan for this area should focus on opportunities for visual enhancements such as signage, landscaping, and enhanced design to create a more attractive entryway, along with compatible land uses such as light industrial that can operate within existing constraints.



Natural Corridors

Natural corridors exhibit opportunities for resource conservation and recreational activities. Examples include the Carter Creek and Lick Creek Corridors. Each of these will be the subject of a future district or corridor plan.

- **Planning Area 18: Bee Creek Corridor** - This corridor contains Bee Creek, which is a significant stream that traverses many neighborhoods in the core of the City. This watershed has been the location of intense development resulting in significant alteration to the stream. The focus of this corridor should be on the continued restoration of the creek, development of recreational opportunities, and expansion of its role in linking adjacent areas.
- **Planning Area 19: Carter Creek Corridor** - This corridor consists of the entirety of Carter Creek and its associated floodplain. Carter Creek is a significant natural feature stretching along much of the eastern edge of the City and linking College Station, Bryan, and the remainder of Brazos County. The focus of this corridor should be the protection of this natural feature and development of recreational opportunities that could cohesively connect the region.
- **Planning Area 20: Lick Creek Corridor** - This area includes Lick Creek Park and the surrounding area. Lick Creek Park is one of the most significant natural features in College Station. It offers a unique natural setting and protects much of the Lick Creek watershed along with a large, wooded area and the habitats of rare and endangered species. The focus of this corridor should be the continued protection of the natural features, additional recreational and educational opportunities, and the expansion of its role in linking adjacent areas.

FUTURE LAND USE & CHARACTER

Future land use serves as a guide for how all property within the City may develop in the future. Each future land use category contains a character-based description and overall intent of the category, along with generally appropriate zoning districts that help achieve the desired character. There are also example photographs from existing developments in College Station or other communities to visually illustrate the desired development characteristics.

The appropriateness of zoning change requests will be considered using multiple criteria including, but not limited to, whether the request is aligned with **Map 2.2, Future Land Use & Character**, whether changed or changing conditions exist in the area, compatibility with existing uses and development patterns, impact on environmentally sensitive and natural areas, impact on and timing of infrastructure, and consistency with all goals and strategies of the Comprehensive Plan. The zoning districts listed as generally appropriate under each future land use category are meant to provide guidance and do not represent affirmative support of each listed zoning district.

The land use strategies discussed in this chapter are further clarified by the future land use category descriptions and are visually portrayed in **Map 2.2, Future Land Use & Character**. The associated acreages in each land use category are compiled in **Table 2.1, Summary of Future Land Use Acreages**.

With the 10-year Comprehensive Plan update several changes were made to the future land use categories and map based on community and stakeholder input, changing conditions, and best practices identified during the evaluation process. These changes include renaming, simplifying and reducing the number of categories, refining the land use definitions, creating new categories to encourage and support emerging development forms, and reconsidering how land uses apply to various areas of the City.

The future land uses described below and applied to **Map 2.2, Future Land Use & Character** are meant to realize the citizens' vision for the future of College Station.

Table 2.1 - Summary of Future Land Use Acreages

Future Land Use	City Limits	ETJ
Urban Center	335.6	
Neighborhood Center	1,256.2	
General Commercial	1,854.5	159.4
Neighborhood Commercial	517.9	
Business Center	968.0	874.0
Urban Residential	946.7	
Mixed Residential	1,092.7	209.1
Suburban Residential	6,348.2	577.7
Estate Residential	2,822.7	885.0
Rural	7.8	57,785.4
Neighborhood Conservation	1,795.7	
Medical	187.8	
Wellborn	434.6	38.0
Institutional/Public	952.3	4.2
Texas A&M University	4,839.8	44.4
Parks & Greenways	870.4	*17.3
Natural & Open Areas	5,132.0	41,804.3
TOTALS	30,362.9	102,381.5

*Note: The 17.3 acres of Parks & Greenways in the ETJ is the park within the Southern Pointe subdivision, which will be annexed into the City in the future per their development agreement

Planning Areas

- NEIGHBORHOODS & DISTRICTS
1. EASTGATE NEIGHBORHOOD PLAN*

2. SOUTHSIDE AREA NEIGHBORHOOD PLAN*

3. SOUTH KNOLL NEIGHBORHOOD PLAN*

4. CENTRAL COLLEGE STATION NEIGHBORHOOD PLAN*

5. WELLBORN COMMUNITY PLAN*

6. MEDICAL DISTRICT MASTER PLAN*

7. WOLF PEN CREEK DISTRICT*
- REDEVELOPMENT AREAS
8. NORTHGATE DISTRICT*

9. TEXAS AVENUE & UNIVERSITY DRIVE AREA

10. HARVEY ROAD AREA

11. GEORGE BUSH DRIVE & WELLBORN ROAD AREA
- GATEWAY CORRIDORS
12. PRESIDENTIAL GATEWAY & BIOCORRIDOR*

13. HOSPITALITY CORRIDOR*

14. MUNICIPAL CENTER CORRIDOR

15. HARVEY MITCHELL CORRIDOR

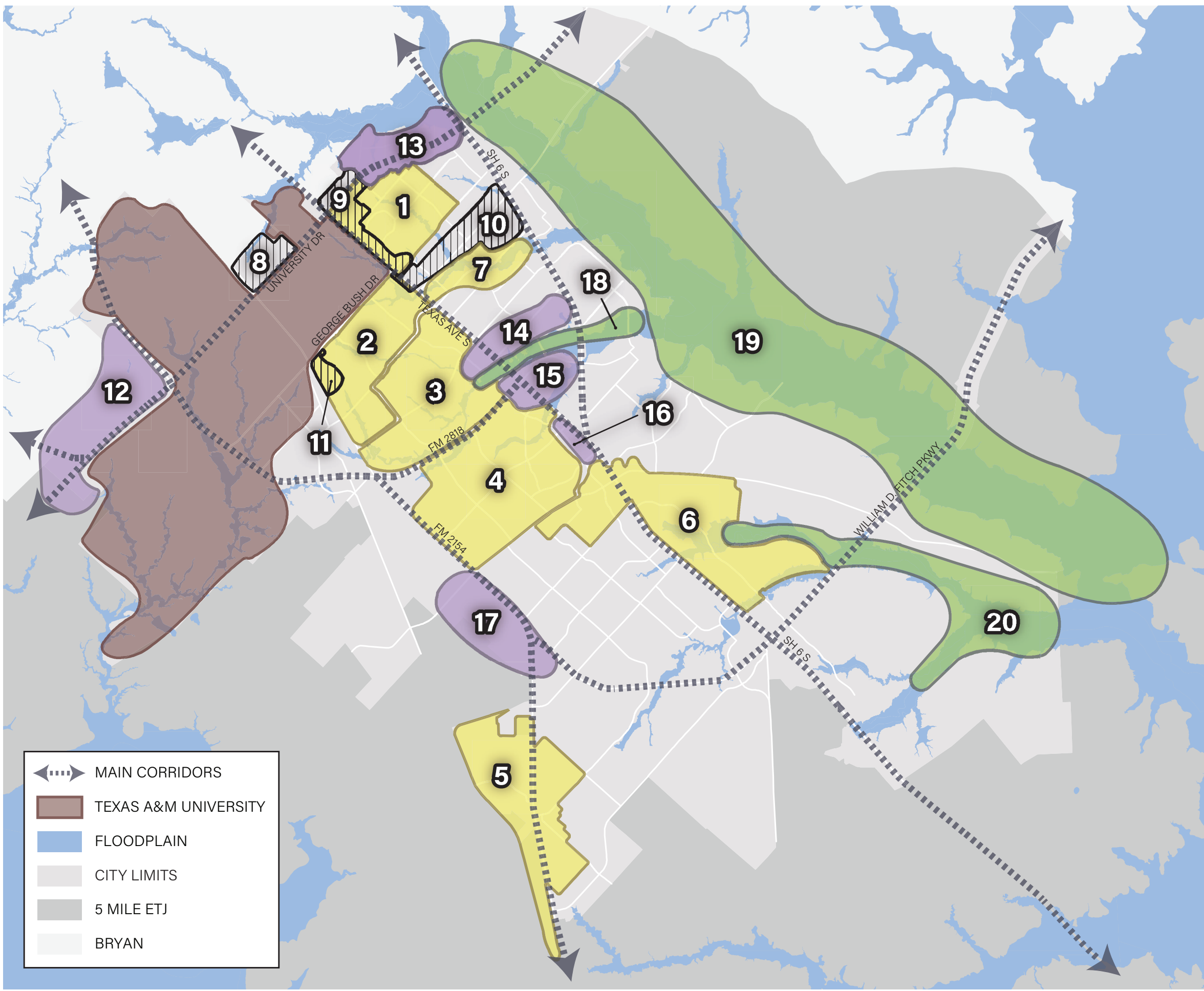
16. LONGMIRE & HIGHWAY 6 FRONTAGE ROAD CORRIDOR

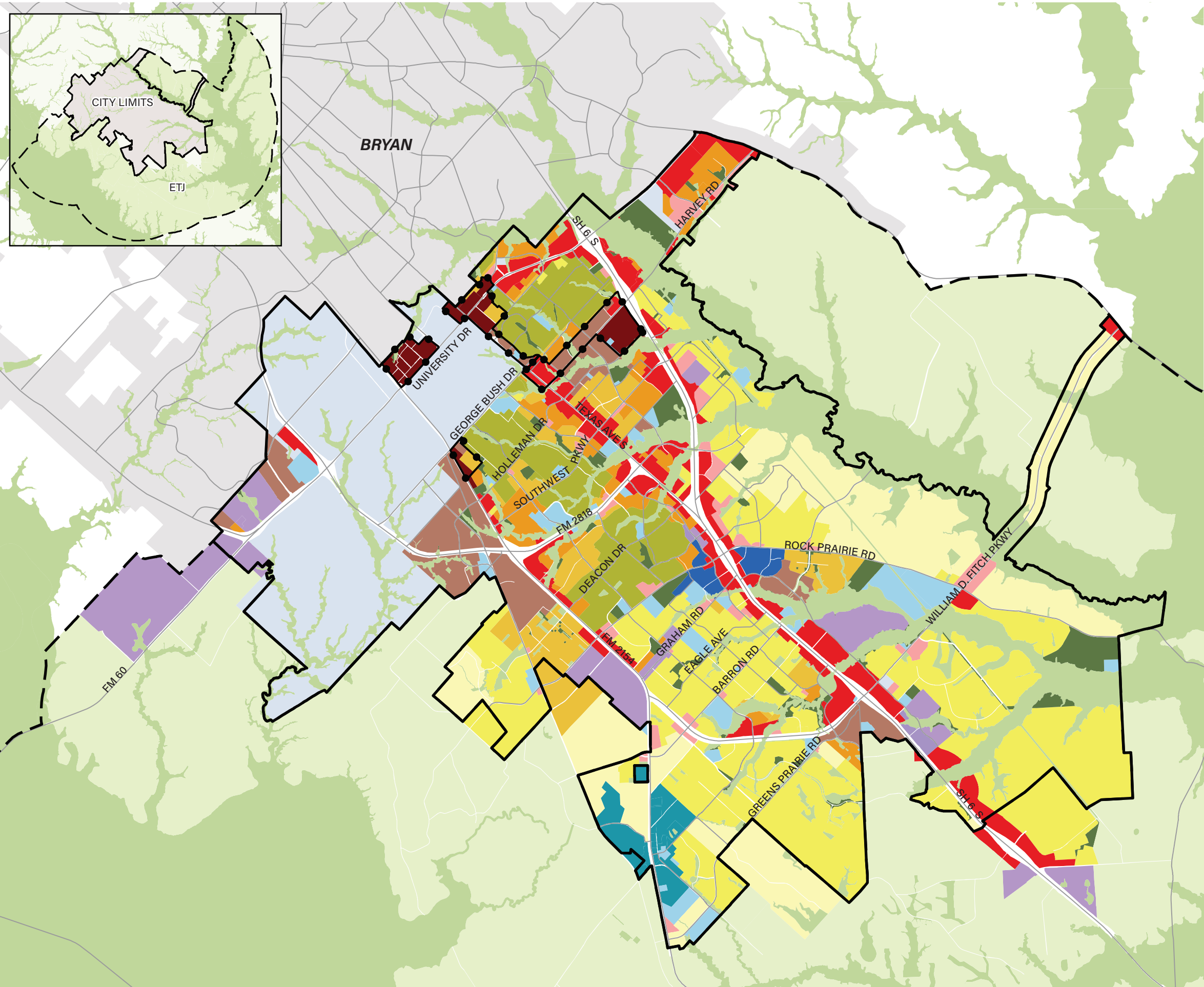
17. WELLBORN ROAD & WILLIAM D. FITCH CORRIDOR
- NATURAL CORRIDORS
18. BEE CREEK CORRIDOR

19. CARTER CREEK CORRIDOR

20. LICK CREEK CORRIDOR

* EXISTING PLANNING EFFORT OR DESIGN STANDARDS





*Future Land Use
& Character*

- URBAN CENTER
- NEIGHBORHOOD CENTER
- GENERAL COMMERCIAL
- NEIGHBORHOOD COMMERCIAL
- BUSINESS CENTER
- URBAN RESIDENTIAL
- MIXED RESIDENTIAL
- SUBURBAN RESIDENTIAL
- ESTATE RESIDENTIAL
- RURAL
- NEIGHBORHOOD CONSERVATION
- MEDICAL
- WELLBORN
- INSTITUTIONAL/PUBLIC
- TEXAS A&M UNIVERSITY
- PARKS & GREENWAYS
- NATURAL & OPEN AREAS
- REDEVELOPMENT AREAS

*NOTE: A COMPREHENSIVE PLAN SHALL NOT
CONSTITUTE ZONING REGULATIONS OR ESTABLISH
ZONING BOUNDARIES

Future Land Use Categories

URBAN CENTER

Areas that are appropriate for the most intense development and mix of uses arranged in a compact and walkable pattern. These areas will tend to consist of multi-story residential, commercial, and office uses that may be mixed vertically within mixed-use structures or horizontally in an integrated manner. Urban Centers should also incorporate consolidated parking facilities, access to transportation alternatives, open space and recreational facilities, and public uses.

Building Height: 5 stories average

Mobility: Walking, bicycling, transit, automobile

Intent

- Create and reinforce walkable activity centers with small blocks that are connected to surrounding development and include a mix of complementary uses
- Accommodate a mix of building types including freestanding and attached structures that frame attractive pedestrian zones between buildings and streets
- Encourage commercial uses along primary streets
- Encourage vertical mixed-use structures with ground-floor retail in appropriate locations such as along major corridors
- Support multi-family residential as a secondary component of a center
- Encourage shared surface parking located behind buildings or to the side of buildings, structured parking, and on-street parking where possible

Generally appropriate zoning districts:

Mixed-use, Northgate zoning (in Northgate only), Wolf Pen Creek zoning (in Wolf Pen Creek only)



NEIGHBORHOOD CENTER

Areas that are appropriate for a mix of uses arranged in a compact and walkable pattern at a smaller scale than Urban Centers. These areas consist of residential, commercial, and office uses arranged horizontally in an integrated manner and may be mixed vertically within structures. Neighborhood Centers should also incorporate consolidated parking facilities, access to transportation alternatives, open space and recreational facilities, and public uses.

Height: 3 stories average

Mobility: Walking, bicycling, transit, automobile

Intent

- Create and reinforce walkable activity centers that are connected to surrounding development and include a mix of complementary uses
- Accommodate a mix of building types that frame attractive pedestrian spaces
- Support vertical mixed-use structures with ground-floor retail in appropriate locations such as along corridors or major intersections
- Encourage all land generally within 300 to 500 feet of streets classified as major collectors or higher to be commercial uses, unless providing vertical mixed-use structures with residential uses on upper floors. The exact location and extent can be modified if creating commercial nodes, such as at intersections, and/or if other characteristics of the site require an alternative design that provides a mixture of uses in an integrated manner.
- Stand-alone commercial uses with a preferred emphasis on urban form may be allowed if the size and scale of the property and/or development does not adequately support mixing uses in a horizontal manner
- Support multi-family residential as a complementary secondary component of a center that includes commercial and/or office uses
- Encourage shared surface parking located behind or to the side of buildings (with some limited parking in front of buildings), structured parking, and on-street parking where possible

Generally appropriate zoning districts:

Mixed-use, Wolf Pen Creek zoning (in Wolf Pen Creek only), commercial and multi-family zoning may be considered in some circumstances if designed in an integrated manner through a Planned Development District with a preferred emphasis on urban form



GENERAL COMMERCIAL

Concentrated areas of commercial activities that cater to both nearby residents and to the larger community or region. Generally, these areas tend to be large and located along regionally significant roads. Due to their context, these areas tend to prioritize automobile mobility.

Height: 1-2 stories average

Mobility: Primarily automobile, but accessible by walking, bicycling, and transit

Intent

- Accommodate a wide range of commercial uses
- Concentrate future commercial development at major intersections
- Provide connectivity to surrounding bicycle and pedestrian networks and provide safe pedestrian facilities within sites
- Encourage transitions in building height and mass when adjacent to residential neighborhoods
- Support multi-family residential as secondary uses on a site
- Encourage shared surface parking

Generally appropriate zoning districts:

General commercial, office, and mixed-use zoning



NEIGHBORHOOD COMMERCIAL

Areas of commercial activities that cater primarily to nearby residents. These areas tend to be smaller format than general commercial and located adjacent to major roads along the fringe of residential areas. Design of these structures is compatible in size, architecture, and lot coverage with surrounding residential uses.

Height: 1-2 stories average

Mobility: Primarily automobile, but accessible by walking, bicycling, and transit

Intent

- Accommodate limited commercial services compared to General Commercial
- Provide pedestrian and bicycle connectivity to surrounding neighborhoods and nearby public uses (schools, parks, etc.)
- Support some residential uses that are compatible with the surrounding neighborhood character
- Encourage transitions in building height and mass when adjacent to residential neighborhoods
- In a walkable neighborhood context, locate new buildings near the street and accommodate parking to the side or rear of buildings with some limited parking in front of buildings and accommodate on-street parking where possible

Generally appropriate zoning districts:

Suburban commercial and office zoning



BUSINESS CENTER

Areas that include office, research, or industrial uses that may be planned and developed as a unified project. Generally, these areas need convenient access to arterial roadways.

Height: Varies

Mobility: Primarily automobile

Intent

- Accommodate a variety of large footprint buildings
- Accommodate commercial and service uses within Business Centers
- Accommodate pedestrian, bicycle, and transit connectivity to and within Business Centers
- Provide buffering through landscaping and building placement where large-scale employment sites are adjacent to residential areas

Generally appropriate zoning districts:

Business park, industrial, and commercial industrial zoning



URBAN RESIDENTIAL

Areas that are appropriate for a range of high-density multi-family and attached residential development in various forms including townhomes, apartment buildings, mixed-use buildings, and limited non-residential uses that are compatible with the surrounding area.

Height: 3 stories average

Mobility: Walking, bicycling, transit, automobile

Intent

- Accommodate a wide range of attractive multi-family housing for a diverse population. Buildings may be clustered and grouped. Building setback from street varies but is generally consistent within a development
- Provide vehicular and pedestrian connectivity between developments
- Accommodate streetscape features such as sidewalks, street trees, and lighting
- Support commercial, service, office uses, and vertical mixed-use within redevelopment areas

Generally appropriate zoning districts:

Multi-family, townhouse, mixed-use, and limited suburban commercial zoning



MIXED RESIDENTIAL

Areas appropriate for a mix of moderate density residential development including, townhomes, duplexes, small multi-family buildings (3-12 unit), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows original character to evolve. These areas may serve as buffers between more intense multi-family residential or mixed-use development and suburban residential or neighborhood conservation areas.

Height: Varies (generally 2-3 stories)

Mobility: Walking, bicycling, transit, automobile

Intent

- Accommodate a walkable pattern of small lots, small blocks, and well-connected street pattern
- Accommodate streetscape features such as sidewalks, street trees, and lighting
- Encourage community facilities, parks, and greenways within neighborhoods
- Support neighborhoods with a mix of housing types and where larger or more dense housing is located near community facilities or adjacent to commercial or neighborhood centers

Generally appropriate zoning districts:

Duplex, townhouse, middle housing, and limited-scale single-family



SUBURBAN RESIDENTIAL

Primarily single-family residential areas that consist of low to moderate density single-family lots. These areas may also include limited townhomes, duplexes, other housing types, and some non-residential uses that are compatible with surrounding single-family areas. Development types tend to be highly consistent within a subdivision or neighborhood.

Height: 1-2 stories

Mobility: Primarily automobile, but accessible by walking, bicycling, and transit to surrounding neighborhood services and centers

Intent

- Accommodate streetscape features such as sidewalks, street trees, and lighting
- Support neighborhoods with a mix of housing types
- Encourage community facilities, parks, and greenways within neighborhoods
- When establishing new residential areas or expanding existing developments, provide pedestrian and vehicular connectivity between adjacent developments

Generally appropriate zoning districts:

General and restricted suburban zoning



ESTATE RESIDENTIAL

Primarily single-family residential areas that have a low level of development activities. These areas are appropriate for very low-density residential lots of one-acre or greater lot sizes or average 20,000 square feet lots when clustered around open space.

Height: 1-2 stories

Mobility: Primarily automobile

Intent

- Support a wide range of lot sizes, long blocks, and curvilinear streets. Buildings tend to be located greater than 30 feet from a fronting street.
- When establishing new residential areas or expanding existing developments, provide pedestrian and vehicular connectivity between adjacent developments

Generally appropriate zoning districts:

Estate, rural, and manufactured home park zoning



NEIGHBORHOOD CONSERVATION

Residential areas that are essentially “built-out” and are not likely to be the focus of extensive infill development or redevelopment. These areas often were platted before current development regulations were in place often resulting in nonconforming situations. These areas are appropriate for overlays or zoning classifications that provide additional character protection and address nonconforming issues.

Height: 1-2 stories

Mobility: Walking, bicycling, transit, automobile; on-street parking and private off-street parking

Intent

- Maintain the existing housing stock, lot patterns, and character of neighborhoods
- Support infill housing that fits-in with neighboring homes (scale, placement, use, etc.)
- Address nonconforming lot issues through flexible development regulations
- Maintain established trees

Generally appropriate zoning districts:

General and restricted suburban, single-family overlays



TEXAS A&M UNIVERSITY

Areas owned by Texas A&M University and are appropriate for campus development as described in the Texas A&M Campus Master Plan and related documents.

INSTITUTIONAL/PUBLIC

Areas that are, and are likely to remain, in some form of institutional or public activity. Examples include schools, libraries, municipal facilities, and major utilities.

MEDICAL

Areas appropriate for medically related uses and supporting office, commercial, and residential uses. The medical land use designation surrounding Rock Prairie and State Highway 6 is further detailed in the Medical District Master Plan, which envisions a wide array of medical and supporting services and activities concentrated in the district. This includes the two major hospitals in close proximity to residential neighborhoods, neighborhood centers, offices, and commercial uses.

Height: Varies

Mobility: Walking, bicycling, transit, automobile

Generally appropriate zoning districts:

Varies

WELLBORN

The Wellborn Community Plan envisions the future of Wellborn to maintain its rural character with open space that is both privately and publicly held. The area will continue as a place where neighborhood commercial uses support surrounding low-density residential properties.

Height: Varies

Mobility: Primarily automobile

Zoning districts: Wellborn zoning districts, as appropriate and specified in the Wellborn Community Plan



PARKS & GREENWAYS

Areas that are permanently protected from development. Such areas are preserved for their natural function or for parks, recreation, or greenways opportunities. These areas include, publicly owned open space, conservation easements, greenway trails, and public parks.

NATURAL & OPEN AREAS

This land use designation is generally for areas that represent a constraint to development and that should be conserved for their natural function or open space qualities. These areas include floodplains, riparian buffers, common areas, and open space. The boundaries of the Natural & Open Areas land use are illustrative, and the exact location of floodplains and other physical constraints are determined during the development process.

Generally appropriate zoning districts

Natural areas protected

RURAL

Areas that, due to public service limitations, inadequate public infrastructure, or a prevailing rural or agricultural character, should have very limited development activities. These areas will tend to include a mix of large acreages (ranches and farmsteads) and limited large-lot (two acre or larger) residential developments. Open space is the dominant feature of these areas.

Height: Varies

Mobility: Primarily automobile

Generally appropriate zoning districts

Rural and manufactured home park zoning



Community Assets & Images Corridors

The physical design and appearance of the built environment – what buildings, streets, and parks look like – contributes significantly to the character and identity of the City. This section identifies many of the community's unique assets and provides general policy guidance regarding suburban and urban design, streets and streetscape design, public buildings and facilities, image corridors, and gateways. More specific and detailed guidance will be provided through subsequent neighborhood, district, and corridor plans, as well as master plans and other studies and plans adopted by the City Council.

COMMUNITY ASSETS

College Station has a number of existing assets (both natural and man-made) that contribute significantly to the character and identity of the City and, thus, are deserving of identification and worthy of policy guidance. **Map 2.3, Community Assets & Image Corridors**, visually portrays these assets which include natural features such as Carter Creek and Lick Creek, connections to the greater region such as Easterwood Airport, public facilities such as the Texas A&M University campus and Veterans Park, and various vistas and views. Care should be taken to protect each of these assets from encroachment by incompatible land uses and from insensitive development activities that would compromise their contribution to the area's character and identity.

IMAGE CORRIDORS

Image corridors are delineated on **Map 2.3, Community Assets & Image Corridors**, reflecting their importance as routes that many residents and visitors travel and, along the way, form impressions of College Station. Several of these corridors serve as a link between districts, further reinforcing their importance. Identity and beautification elements, such as decorative markers and themed wayfinding signs, should be placed along these corridors. Additionally, landscaping and streetscape elements should be unified and significant along these corridors. These corridors also offer the opportunity for the placement of public art and other design elements. Primary image corridors include corridors that carry high volumes of traffic and move travelers through or along some of the City's most significant assets. Examples include State Highway 6, Texas Avenue, and Wellborn Road (FM 2154). Secondary image corridors include corridors that tend to carry slightly less traffic volume and move travelers mainly through the community's significant business or residential areas. Examples include Rock Prairie Road, Harvey Road (FM 30), and portions of University Drive (FM 60). Image corridors also offer an opportunity to support the City's resource conservation objectives through the preservation of open space and other natural features along these key corridors. Where these corridors cross streams, go through forested areas, or offer attractive vistas, care should be taken in how bridges are constructed, banks are stabilized, stormwater is managed, trees are protected, and views are kept unobstructed to maximize the positive impressions gained by these assets.

GATEWAYS

A gateway serves as the symbolic entry point to an area, whether the City, a neighborhood, or a district. An effective gateway establishes an immediate positive impression that reinforces the character of an area and is visually harmonious with its surroundings. The key gateways into these areas need specific design elements and enhancements to create such an experience. For neighborhoods this may be in the form of landscaping or an entrance monument. For districts and corridors this may be in the form of landscaping,

streetscape, special lighting, signage, public art, or building design. Along the image corridors at key entry points to the City this may be in the form of landscaping, special signage, public art, or enhancements to bridges and overpasses.

Each of the neighborhood area plans, district plans, and corridor plans should address the most effective means to enhance associated gateways. This section outlines the framework for the most appropriate manner to address the key gateways into and out of the City as a whole. This plan identifies three levels of gateways, each with its own specific purpose and related design focus.

Early Image-Setting Gateways are locations where those approaching the community can first be engaged and experience College Station's unique identity. These areas offer opportunities for tasteful signage and landscaping that are harmonious with the surrounding rural areas while announcing one's pending arrival into College Station. Examples of appropriate locations for such enhancements are the intersection of University Drive/Raymond Stotzer Parkway (FM 60) and Wellborn Road (FM 2154), the FM 60 crossing of the Brazos River, and the intersection of State Highway 47 and Raymond Stotzer Parkway (FM 60).

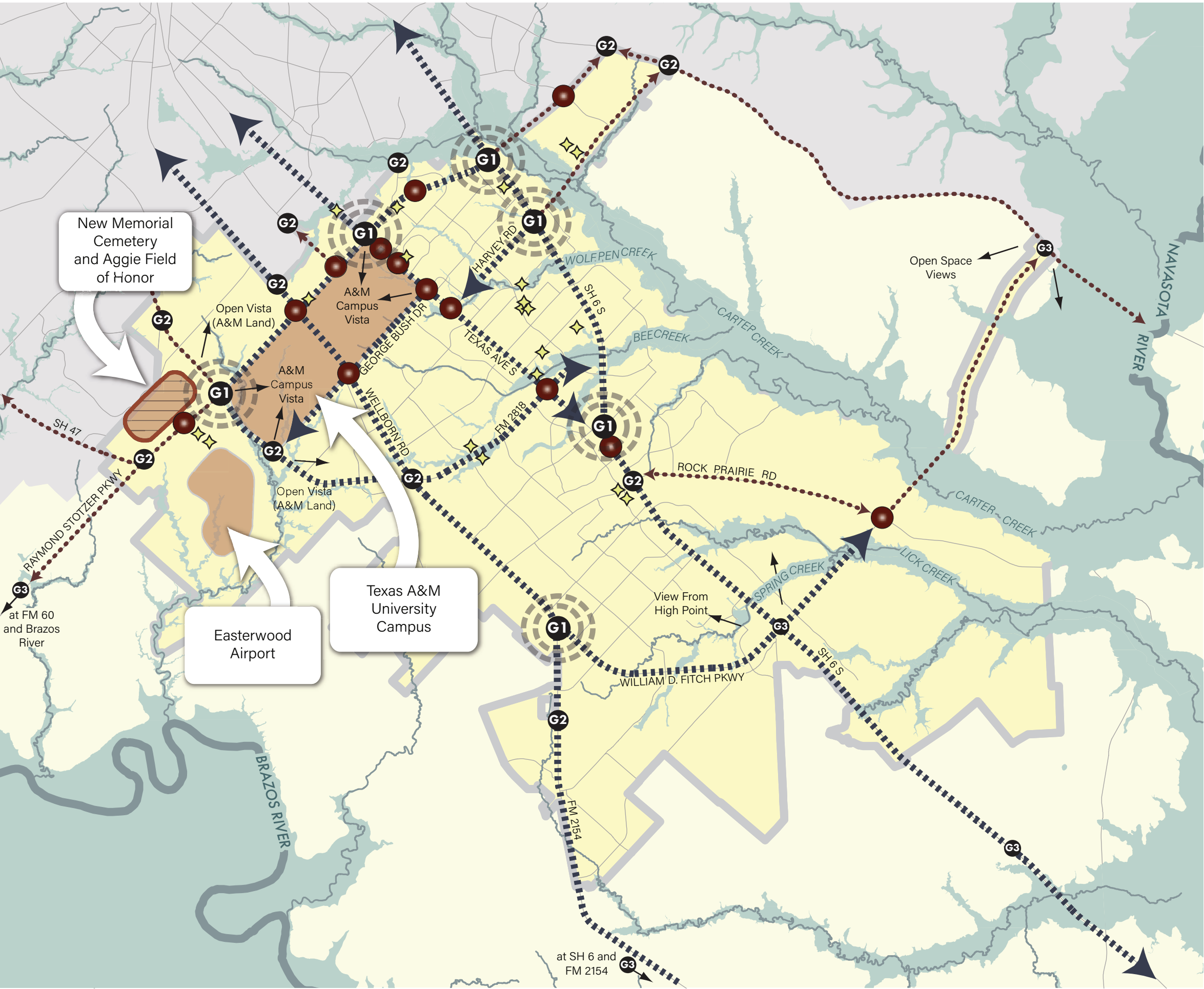
Secondary Welcoming Gateways are locations where community identity and themes can be reinforced through more substantial enhancements. These may include significant monument signage, substantial areas of landscaping and tree planting, and flags. Generally, these are located within the city limits but prior to arrival in the core of the City itself. Examples of appropriate locations for such enhancements are the Rock Prairie Road interchange with State Highway 6, the intersection of George Bush Drive and Harvey Mitchell Parkway (FM 2818), and the city limits at South College Avenue.

Primary Arrival Gateways are locations where the most substantial enhancements should be installed. These may include significant monument signage, substantial areas of landscaping and tree planting, fountains, lighted icons, and large-scale art. Examples of appropriate locations for such enhancements are the intersection of Texas Avenue and State Highway 6, the University Drive/Raymond Stotzer Parkway (FM 60) interchange with Harvey Mitchell Parkway (FM 2818), and the intersection of Texas Avenue and University Drive (FM 60).

For these gateways to succeed, it is essential that common elements be used throughout each of the three levels. Further, enhancements should be focused and sized properly to have the intended impact. Enhancements dispersed over a wide area, lacking common elements, and sized inappropriately will have less of an impact and will miss a critical opportunity to reinforce the character and identity of College Station.



Community Assets & Image Corridors



- KEY IMAGE / DESIGN INTERSECTION
- PRIMARY ARRIVAL GATEWAY
- SECONDARY WELCOMING GATEWAY
- EARLY IMAGE-SETTING GATEWAY
- PUBLIC ART LOCATION
- PRIMARY IMAGE CORRIDOR
- SECONDARY IMAGE CORRIDOR
- FLOODPLAIN
- EXISTING UNIQUE COMMUNITY ASSET AREA
- EMERGING / POTENTIAL UNIQUE COMMUNITY ASSET AREA
- CITY LIMITS
- 5 MILE EXTRATERRITORIAL JURISDICTION (ETJ)

Strategic & Ongoing Actions

The actions listed below designed to achieve the City's goal of vibrant and distinct districts, attractive neighborhoods, revitalized gateways and corridors, and conserved natural areas, grounded in environmental stewardship and resiliency.

STRATEGIC ACTIONS

2.1 Review and undertake amendments to the Unified Development Ordinance's zoning districts.

Consider amendments necessary to implement the Future Land Use & Character categories and definitions.

2.2 Prioritize and undertake detailed plans for priority neighborhoods, districts, corridors, or redevelopment areas. The City should commit to proactively planning for a limited set of target areas, as specified in [Map 2.1, Planning Areas](#).

2.3 Creative incentives and programs to revitalize existing areas and established neighborhoods.

This could include façade or landscaping improvement programs or rehabilitation initiatives. New programs should align with and complement existing City efforts through the Neighborhood Partnership Program, Neighborhood Grant Program, and proposed property maintenance programming.

2.4 Evaluate existing policies and create incentives for low impact and sustainable development.

Encourage policies and regulations that incentivize sustainable practices such as energy reduction, renewable energy, water conservation, protection of natural resources, use of native and adapted vegetation, adaptive reuse, waste minimization, and stormwater management.

2.5 Pursue feasibility of a tree preservation and/or tree planting incentive program. This could involve regulatory changes, incentives to preserve existing trees (especially large canopy trees) in new development and redevelopment projects, requiring replacement of trees that are destroyed or removed, proactive efforts by the City such as planting trees and installing landscaping along major road corridors and gateways, or a program where the City or a partner agency provides trees at reduced cost.

2.6 Create additional incentives for conservation design and evaluate the effectiveness of cluster development standards in the Unified Development Ordinance. Common incentives include density bonuses where a project may be permitted a greater total density in exchange for preservation of common open space areas.

2.7 Integrate parks, greenways, and community facilities within new neighborhoods. Ensure that parks, greenways, and other types of open spaces are integrated into the design of new neighborhoods and that appropriate connections are made to existing facilities. Also consider opportunities and partnerships to locate civic uses (such as recreation centers, schools, libraries) within new neighborhoods or redevelopment areas.



ONGOING ACTIONS AND POLICY DIRECTION

- 2.8 Evaluate and update development standards in the Unified Development Ordinance.** Evaluate the effectiveness of development standards such as mobility and connectivity, off-street parking, building form and design, landscaping and buffers, exterior lighting, or other applicable standards to achieve desired design form and quality.
- 2.9 Develop or refine incentives to promote high quality design.** Such incentives may include regulatory (flexible standards, density bonuses), procedural, cost-sharing agreements, and tax incentives, among others. Incentives could be targeted to specific geographies or types of development (such as mixed-use or commercial).
- 2.10 Encourage parking alternatives to support redevelopment opportunities.** Use regulatory or other incentives to encourage residential, commercial, and mixed development models in the City's targeted Redevelopment Areas that integrate structured parking, reduced parking requirements, or shared parking agreements to enable more productive use of the overall site in place of extensive surface parking.
- 2.11 Continue to initiate proactive zoning map updates.** Amend the zoning map in strategic areas to encourage transitions to the desired community character and help implement the Future Land Use & Character Map. Proactive zoning map changes may also encourage redevelopment in targeted areas.
- 2.12 Continue beautification programs.** Maintain and consider opportunities to expand beautification partnerships with Keep Brazos Beautiful and other organizations.

April 28, 2022

Item No. 9.3.

2021 International Building Codes and 2020 National Electrical Code

Sponsor: Brian Binford

Reviewed By CBC: Construction Board of Adjustments & Appeals

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Chapter 103, "Building Regulations," Article III, "Technical Codes," Division 2 "Building Codes" and Division 3 "Electrical Code" adopting the 2021 International Codes, the 2020 National Electrical Code (NEC), and related amendments.

Relationship to Strategic Goals:

- Core Services & Infrastructure
- Neighborhood Integrity
- Diverse & Growing Economy
- Sustainable City

Recommendation(s): The Construction Board of Adjustment and Appeals considered this item at their March 22, 2022 meeting and unanimously recommended approval of the updated codes and amendments, as presented. Staff recommends approval with an effective date of June 1, 2022.

Summary: This ordinance adopts the latest edition of the International Codes (I-Codes), for use in College Station. The City of College Station currently uses the 2018 edition of the I-Codes and the 2017 edition of the NEC. The International Code Council and National Fire Protection Association issues updated codes every three years. The changes included in the latest codes help clarify intent, improve energy efficiency, and strengthen requirements designed to safeguard the public health, safety, and general welfare.

In addition to the Construction Board of Adjustments and Appeals meeting, staff anticipates presenting an overview of the changes contained in the International Residential Code and National Electrical Code to representatives of the Greater Brazos Valley Builders Association on April 20th.

A copy of the 2020 National Electrical Code and the 2021 International Codes are available in the office of Planning & Development Services for review.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Overview of Changes and Local Amendments

ORDINANCE NO. 2022-XXXX

AN ORDINANCE AMENDING CHAPTER 103, “BUILDING REGULATIONS,” ARTICLE III, “TECHNICAL CODES,” DIVISION 2 “BUILDING CODES” AND DIVISION 3 ELECTRICAL CODE, OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO BUILDING REGULATIONS; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Chapter 103, “Building Regulations,” Article III, “Technical Codes,” Division 2 “Building Codes” and Division 3 “Electrical Code” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** and **Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.

PART 2: If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

PART 3: That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: This Ordinance is a penal ordinance and becomes effective June 1, 2022.

PASSED, ADOPTED and APPROVED this 28TH day of April 2022.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 103, “Building Regulations,” Article III, “Technical Codes,” Division 2 “Building Codes” is hereby amended to read as follows:

Sec. 103-131. – International Building Code adopted.

A booklet entitled 'International Building Code 2021 Edition' as amended and as hereafter may be amended, at least one (1) copy of which is on file in the office of the Building Official of the City of College Station, Texas, is hereby adopted and designated as the Building Code of the City of College Station, Texas. In addition, Appendix D of the 2021 International Building Code is hereby adopted.

Sec. 103-132. – International Building Code amended.

The above referenced International Building Code is hereby amended as follows:

1. **Section 105** (Permits) is amended by adding Section 105.1.3 to read as follows:

105.1.3 Registration of Contractors.

It shall be the duty of every individual who makes contracts to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, and every individual making such contracts and subletting the same or any part thereof, to first register with the Building Official, giving full name, residence, name and place of business, and in case of removal from one place to another to have made corresponding change to the Building Official.

Exception: Homeowner permits as provided per local amendment by added Section R105.2.4, International Residential Code.

Plumbing Contractors - Plumbing contractors shall be licensed as prescribed by the State of Texas and shall register their license with the City of College Station before a plumbing permit is issued by the City.

Air Conditioning, Refrigeration and Heating Contractors - Air Conditioning, Refrigeration and Heating Contractors shall be licensed by the State of Texas and shall register their license with the City of College Station before a mechanical permit is issued by the City.

Licensed Irrigators - Irrigation Contractors shall be licensed Irrigators by the State of Texas shall register their license with the City of College Station before a lawn irrigation permit is issued by the City.

Electrical Contractors - Electrical Contractors shall be licensed by the State shall register their license with the City of College Station before an electrical permit is issued by the City.

Electrical Sign Contractors – Electrical Sign Contractors shall be licensed by the State shall register their license with the City of College Station before a permit is issued.

Before any license is registered with the City, the applicant shall have adequate insurance coverage for general liability as provided for by State law for the respective trade.

2. **Section 105.2** (Work exempt from permit) is amended by deleting item #2 under “Building” and replacing with the following:

“2. Fences of wood, chain link, or similar material, and less than eight feet in height, and walls of brick, stone, concrete, or similar material, and less than six feet in height, shall not be construed to be a structure, nor shall they require a building permit.

3. **Section 105.2** (Work exempt from permit) is amended by adding the following under

“Electrical”:

Replacing Fuses: No permit shall be required for replacing fuses of like rating.

Replacing Flush or Snap Switches: No permit shall be required for replacing flush or snap switches, receptacles, lamp sockets, the installation of lamps, or minor repairs on permanently connected electrical appliances.

Conveying Signals: No permit shall be required for the installation, maintenance or alteration of wiring, poles and down guys, apparatus, devices, appliances or equipment for telegraph, telephone, signal service or central station protective service used in conveying signals or intelligence, except where electrical work is done on the primary side of the source of power at a voltage over 50 volts and of more than 500 watts.

Wiring by Electric Public Service Company: No permit shall be required for the installation, maintenance or alteration of electric wiring, apparatus devices, appliances or equipment to be installed by an electric public service company for the use of such company in the generation, transmission, distribution, sale or utilization of electrical energy. However, an electric public service company shall not do any wiring on a customer's distribution system, including metering equipment wherever located and transformer

vaults in which customer's transformers are located, nor shall any of its employees do any work other than done for said company as hereinbefore provided for by virtue of this exception.

Temporary Wiring: No permit shall be required for the installation of temporary wiring, apparatus, devices, appliances or equipment used by a recognized electrical training school or college.

Railway Crossing Signal Devices: No permit shall be required for the installation and maintenance of railway crossing signal devices, when such is performed by due authority of the railroad and in accordance with the standards of the American Railroad Association, and in collaboration with and approval of the Department of Public Services of the City of College Station.

4. **Section 107.1** (General) is amended to include the following at the end of the section and before the exception: “The design professional shall be an architect or engineer legally registered and in compliance under the laws of Texas and shall affix his official seal to the construction documents for the following:

1. All group A, E and I occupancies.
2. Building and structures three or more stories in height
3. Buildings and structures 5,000 square feet or more in total area

Exception: “Group R-3 buildings, regardless of size”

5. **Section 109.4** (Work commencing before permit issuance) is amended by deleting the existing text in its entirety and replacing it with the following:

“Any person who commences any work on a building, structure electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a penalty of 100% of the usual fee in addition to the required permit fees.”

6. **Section 109.6** (Refunds) is amended by deleting the existing text in its entirety and replacing it with the following:

“The City Manager or his designee is authorized to establish a refund policy.”

7. **Section [A] 110.3.1** (Footing and foundation inspection) is amended by adding the following to the end of said section:

“The Building Official shall have the authority to require a form survey to verify building setbacks. Such survey shall be provided to the Building Official prior to

placement of concrete and prepared by a surveyor licensed to perform work in the State of Texas.”

8. **Section 110.3.6** (Lath and gypsum board inspection) is amended by deleting the section in its entirety.
9. **Section 111.2** (Certificate issued) is amended by deleting items number 4, 5, 7, 10, and 11.
10. **Section 113** (Means of Appeals) is amended by deleting the section in its entirety.
11. **Section 116.1** (Unsafe Conditions) is amended by deleting the sentence, “Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section.” and replacing it with the following: “Unsafe structures shall be taken down, removed or made safe as provided for in Section 1 (C), Chapter 3, Code of Ordinances.”
12. **Section 202** (Definitions) is amended by adding “Porte-Cocheres”
 1. A passageway through a building or screen wall designed to let vehicles pass from street to an interior courtyard.
 2. A roofed structure extending from the entrance of a building over an adjacent driveway and sheltering those getting in or out of vehicles.
13. **Section 202** (Definitions) is amended by deleting the Townhouse definition and replacing it with the following:

“Townhouse. A single-family dwelling unit constructed in a group of attached units separated by property lines in which each unit extend from foundation to roof and with open space on at least two sides.”
14. **Section 303.4** (Assembly Group A-3) is amended by adding “tutorial services”.
15. **Section 502.1** (Address identification) is amended by deleting the existing text in its entirety and replacing it with the following:

“502.1 Address identification. An official address, assigned by the Building Official or his designee, shall be provided and placed pursuant to this section in such a position as to be clearly visible from the public street or roadway fronting the property. Addresses placed pursuant to this section shall be a minimum four (4) inches in height and stroke of minimum one-half (1/2) inch, composed of a durable material and of a color that provides a contrast to the background itself. The official address shall be placed a minimum of thirty-six (36) inches and a maximum of thirty (30) feet in height measured from the ground level. Buildings or structures located more than fifty (50) feet from the street curb shall have an official address

at least five (5) inches in height. Durable materials used for the official address shall include, but not be limited to, wood, plastic, metal, weather resistant paint, weather resistant vinyl, or weather resistant material designed for outside use on a glass surface. For single family residences, the requirement of this section may be met by providing a minimum of two (2) inch high numbers on both sides of a U. S. mailbox located near the curb in front of the house, or a freestanding structure with numbers at least four (4) inches in height.

A building complex composed of multiple structures or dwellings shall have an official suite or unit number assigned to each building, suite or tenant as well as a street address number. If there is sufficient street frontage, each building, suite or tenant may also be assigned an official street address number. The official street address number of each structure must be prominently posted on the building so that it is visible from the nearest public street or designated fire lane. Each number designated by the Building Official, or his designee, for each individual suite or unit must be conspicuously posted on each suite or unit.

Commercial buildings with side or rear access in addition to the main entrance, shall also display the business name and official address on each side or rear door with characters at least two (2) inches in height. Residential structures which provide for rear vehicular access from a dedicated public alley, street or designated fire lane shall conspicuously post an official address at least two (2) inches in height so that it is visible from the public alley, street or designated fire lane.

The owner or manager of a building complex, which contains an enclosed shopping mall, shall submit to the Fire Official four (4) copies of diagrams acceptable to the Fire Marshal of the entire complex, indicating the location and number of each business. When a change in a business name or location is made, the owner or manager shall so advise the Fire Marshal in writing of the change.

When required by the Fire Code Official, address numbers shall be provided in additional approved locations to facilitate emergency response.”

16. **Table 803.13** (Interior Wall And Ceiling Finish Requirements by Occupancy) is amended by deleting the existing text in footnote “d” and replacing it with the following:

“Class A interior finish material shall be required in all areas of all assembly occupancies, whether sprinklered or not, except as provided for in notes e and f below.”

17. **Section 902.1.2** (Marking on access doors). Is amended by replacing 2 inches with 4 inches.
18. **Section 903.1** (General) is amended by adding the following text at the end of said section:

"For the purpose of this section, the term "fire area" shall be replaced with "building area."

19. **Section 903.2** (Where Required) is amended by adding the following text at the end of the section:
In addition to the requirements of this section, an automatic sprinkler system shall be provided throughout all new buildings and structures as follows:
 1. Where the total building area exceeds 12,000 square feet in area.
 2. Where the height exceeds two stories, regardless of area.
20. **Section 903.2.1.6** (Assembly Occupancies on Roofs) is amended by deleting the exception in its entirety.
21. **Section 903.2.3** (Group E) is amended by deleting the exception in its entirety.
22. **Section 903.2.4** (Group F-1) is amended by deleting items "2" and "3."
23. **Section 903.2.4.2** (Group F-1 distilled spirits) is amended to add: An automatic sprinkler system shall be provided throughout a Group F-1 fire area used for the manufacture of distilled spirits involving more than 120 gallons of distilled spirits (>16% alcohol) in the fire area at any one time.
24. **Section 903.2.7** (Group M) No. 2 is amended by replacing "three stories above grade" with "two stories in height" and by deleting No. 3 in its entirety.
25. **Section 903.2.8** (Group R) is amended by deleting the section in its entirety.
26. **Section 903.2.9** (Group S-1) is amended by replacing "three stories above grade" with "two stories above grade" in item "2" and by replacing "24,000 square feet" with "12,000 square feet" in item "3."
27. **Section 903.2.9.3** (Group S-1 Distilled spirits or wine) is amended to add: An automatic sprinkler system shall be provided throughout a Group F-1 fire area used for the manufacture of distilled spirits involving more than 120 gallons of distilled spirits (>16% alcohol) in the fire area at any one time.
28. **Section 903.2.10** (Group S-2 Parking Garage) is amended by deleting the exception in its entirety.
27. **Section 903.2.13** (Porte-cocheres). All porte-cocheres shall be protected with fire sprinklers.

Exception: Porte-cocheres of non-combustible construction or a distance of 10 foot or greater.

29. **Section 903.3.1.1.1** (Exempt locations) is amended by deleting item number 4.
30. **Section 903.3.1.2.2** (Corridors and balconies in the means of egress) is amended as follows:

903.3.1.2.2 (Corridors and balconies in the means of egress). Sprinkler protection shall be provided in all corridors and for all balconies in the means of egress.
31. **Section 903.3.1.2.3** (Attics). is amended by deleting items 3.4 and 4.5
32. **Section 903.4** (Sprinkler systems supervision and alarms) is amended by adding the following:

Exceptions: 9. Valves located outside buildings or in a vault that are sealed or locked in the open position.
33. **Section 904.3.5**, (Monitoring). is amended by deleting the section and replacing it with:

904.3.5 (Monitoring). All automatic fire extinguishing system shall be monitored with a system in accordance with NFPA 72.
34. **Section 905.1**, (General). is amended by adding Section 905.1.1, Safety factor, as follows:

905.1.1 (Safety factor). All standpipe systems with the exception of manual standpipes shall be designed with a minimum safety factor of 5 PSI or 10% of required pressure (whichever is greater) taken at the source for the hydraulically most demanding system and/or outlet.
35. **Section 905.4**, (Location of Class I standpipe hose connections), is amended as follows with all other code text to remain as written:

905.4 (Location of Class I standpipe hose connections). Class I standpipe hose connections shall be provided in all of the following locations:

 1. In every required interior exit stairway, a hose connection shall be provided for each story above and below grade plane. Hose connections shall be located at [the main] an intermediate [floor] landing between stories unless otherwise approved by the fire code official.

Exception: A single hose connection shall be permitted to be installed in the open corridor or open breezeway between open stairs that are not greater than 75 feet (22 860 mm) apart.

36. **Section 906.1** (Where required) is amended by deleting exception 1 and 2 all others remain the same.

37. **Section 907.2.1** (Group A) is amended by adding the following section:

907.2.1.3 Group A-2. An automatic alarm system shall be provided for fire areas containing Group A-2 occupancies that have an occupant load of 100 or more.

38. **Section 907.2.7.1**, (Occupant notification). is repealed in its entirety.

39. **Section 907.2.8.2**, (Automatic smoke detection system), is hereby amended to read as follows:

907.2.8.2 (Automatic smoke detection system). An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.5 shall be installed throughout all interior corridors serving sleeping units. The automatic smoke detection system requirement is met only by the installation of smoke or beam detectors whenever possible. If environmental conditions do not allow the installation of smoke detectors, fire alarm heat detectors may be used on a limited basis when approved by the fire code official.

Exception: An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

Exception: An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

40. **Section 907.2.12.2**, (System response), is hereby deleted in its entirety.

41. **Section 907.2.12.1.2**, (Duct smoke detection), is amended to read as follows:

907.2.12.1.2 (Duct smoke detection). Duct smoke detectors complying with Section 907.3.1 shall be located in accordance with the NFPA 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems or as follows:

1. In the main return air and exhaust air plenum of each air-conditioning system having a capacity greater than 2,000 cubic feet per minute (cfm)

(0.94 m³/s). Such detectors shall be located in a serviceable area downstream of the last duct inlet.

2. At each connection to a vertical duct or riser serving two or more stories from a return air duct or plenum of an air-conditioning system. In Group R-1 and R-2 occupancies, a smoke detector is allowed to be used in each return air riser carrying not more than 5,000 cfm (2.4 m³/s) and serving not more than 10 air-inlet openings.

42. **Section 907.2**, (Where required) - new buildings and structures, is amended by adding Section 907.2.24, Fire alarm systems for property protection, to read as follows:

907.2.24 (Fire alarm systems for property protection). Fire alarm systems dedicated solely to the protection of property are permitted to be installed in facilities where a fire alarm system is not required by other sections of this code or the International Building Code provided the following conditions are met:

1. Any and all automatic detection is installed, located and maintained in accordance with the requirements of NFPA 72 and a documentation cabinet as required by NFPA 72 is provided and installed.
2. The installed system is monitored by a supervising station which provides remote and central station service.
3. One manual means of activation is installed in an approved location
4. Where the fire alarm system control unit is located in an area that is not readily accessible to response personnel, a remote fire alarm system annunciator panel is installed.

43. **Section 907.2**, (Where Required) – is amended by adding Section 907.2.25, Fire alarm systems for property protection, to read as follows:

907.2.25 (Group R-4) Fire alarm systems and smoke alarms shall be installed in Group R-4 occupancies as required in Sections 907.2.10.1 through 907.2.10.3. Section 907.2.10.1 Manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group R-4 occupancies.

Exceptions:

1. A manual fire alarm system is not required in buildings not more than two stories in height where all individual sleeping units and contiguous attic and crawl spaces to those units are separated from each other and public or

common areas by not less than 1-hour fire partitions and each individual sleeping unit has an exit directly to a public way, egress court or yard.

2. Manual fire alarm boxes are not required throughout the building where all of the following conditions are met:

- 2.1. The building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

- 2.2. The notification appliances will activate upon sprinkler water flow.

- 2.3. Not fewer than one manual fire alarm box is installed at an approved location.

3. Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits where located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that the distances of travel required in Section 907.4.2.1 are not exceeded.

907.2.10.2 Automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.5 shall be installed in corridors, waiting areas open to corridors and habitable spaces other than sleeping units and kitchens.

Exceptions:

1. Smoke detection in habitable spaces is not required where the facility is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.
2. An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

907.2.10.3 Smoke alarms. Single- and multiple-station smoke alarms shall be installed in accordance with Section 907.2.11.

44. **Section 907.3.1**, (Duct smoke detectors), is amended to read as follows:

907.3.1 (Duct smoke detectors). Smoke detectors installed in ducts shall be listed for the air velocity, temperature and humidity present in the duct. Duct smoke detectors shall be connected to the building's fire alarm control unit where a fire alarm system is required by Section 907.2. Activation of a duct smoke detector shall

initiate a visible and audible supervisory signal at a Central monitoring station and shall perform the intended fire safety function in accordance with this code, NFPA 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems and the International Mechanical Code. In facilities that are required to be monitored by a supervising station, duct smoke detectors shall report only as a supervisory signal and not as a fire alarm. They shall not be used as a substitute for required open area detection. 2021 International Building-Related Codes

Exceptions:

1. In occupancies not required to be equipped with a fire alarm system, actuation of a smoke detector shall activate a visible and an audible signal in an approved location. Smoke detector trouble conditions shall activate a visible or audible signal in an approved location and shall be identified as air duct detector trouble.
2. For fire alarm systems which cannot be programmed for supervisory signals, duct detectors shall be allowed to activate the alarm signal.

45. **Section 907.3.**, (Fire safety functions), is amended by adding 907.3.5, Fire alarm systems - emergency control, as follows:

907.3.5 (Fire alarm systems - emergency control). At a minimum, the following functions, where provided, shall be activated by the fire alarm system:

1. Elevator capture and control in accordance with ASME/ANSI A17.1b, Safety Code for Elevators and Escalators.
2. Release of automatic door closures and hold open devices
3. Stairwell and/or elevator shaft pressurization.
4. Smoke management and/or smoke control systems.
5. Initiation of automatic fire extinguishing equipment.
6. Emergency lighting control.
7. Unlocking of doors.
8. Emergency shutoff of gas and fuel supplies that may be hazardous provided the continuation of service is not essential to the preservation of life.
9. Emergency shutoff of audio systems for sound reinforcement or entertainment (i.e. music systems, systems for announcement and

broadcast which are separate from public address systems) provided that such systems are not used to issue emergency instructions.

10. Emergency shutoff of systems used for the creation of displays or special effects (i.e. lighting effects, laser light shows, projection equipment).

46. **Section 907.4.2.1**, (Location), is amended to add the Exception to read as follows:

907.4.2.1 (Location). Manual fire alarm boxes shall be located not more than 5 feet (1524 mm) from the entrance to each exit. In buildings not protected by an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2, additional manual fire alarm boxes shall be located so that the distance of travel to the nearest box does not exceed 200 feet (60 960 mm).

Exception: Where construction of the building prohibits the proper installation of a pull station (e.g. glass walls, interior brick or rock walls), a pull station shall be allowed to be located in the normal path of egress, where approved by the Fire Marshal or his/her designee.

47. **Section 907.5.1.1**, (Presignal feature), is amended to read as follows:

907.5.1.1 (Presignal feature and positive alarm sequences). A presignal feature or Positive Alarm Sequence as defined in NFPA 72 shall not be installed unless approved by the fire code official. Request to use a presignal feature or a Positive Alarm Sequence must be submitted in writing to the Fire Marshal and approval granted before installation. Where a presignal feature or Positive Alarm Sequence is provided, a signal shall be annunciated at a constantly attended location approved by the fire code official, so that occupant notification can be activated in 2018 International Building-Related Codes the event of fire or other emergency. When approved by the fire code official, the presignal feature or Positive Alarm Sequence shall be implemented in accordance with the requirements of NFPA 72.

48. **Section 907.5.2.1**, (Audible alarms), is amended by adding Section 907.5.2.1.4, Testing of audible alarms in occupancies other than Group R, and Section 907.5.2.1.5, Testing of audible alarms in Group R occupancies, as follows:

907.5.2.1.4 (Testing of audible alarms in occupancies other than Group R). Audibility levels for all occupancies other than Group R shall be in accordance with the public mode requirements of NFPA 72, and shall be tested utilizing the following criteria:

1. A UL listed sound pressure level meter, which has been calibrated within the last calendar year, and supplied by the fire alarm system installing contractor, shall be utilized to obtain readings. The sound pressure level meter will be held five feet above floor, pointed in the direction of the audible device.

2. All doors within the occupancy, including the bathroom and balcony doors shall be in the closed position.
3. Measurements shall be taken in the most remote areas of the occupancy first, including bathrooms and balconies.
4. Initial measurements to confirm the average ambient sound level in each area shall be taken.
5. The fire alarm system shall be activated and measurements in the tested areas shall be retaken and compared with the requirements.

907.5.2.1.5 (Testing of audible alarms in Group R occupancies). Audibility levels for all Group R occupancies shall be in accordance with the requirements of Section 907.5.2.1.1, and shall be tested utilizing the following criteria:

1. A UL listed sound pressure level meter, which has been calibrated within the last calendar year, and supplied by the fire alarm system installing contractor, shall be utilized to obtain readings. The sound pressure level meter will be held five feet above floor, pointed in the direction of the audible device.
2. All doors within the occupancy, including the bathroom and balcony doors shall be in the closed position.
3. Ambient sound level shall be established with the television set at 50% of maximum volume, showers running, bathroom exhaust systems running, and air conditioning units running.
4. Measurements shall be taken in the most remote area of the dwelling or sleeping unit first, including bathrooms and balconies.
5. Initial measurements to confirm the ambient sound level in each area shall be taken.
6. The fire alarm system shall be activated and measurements in the tested areas shall be retaken and compared with the requirements.

49. **Section 907.5.2.2**, (Emergency voice/alarm communication systems), is amended to read as follows:

907.5.2.2 (Emergency voice/alarm communication systems). Emergency voice/alarm communication systems required by this code shall be designed and installed in accordance with NFPA 72. The operation of any automatic fire detector, sprinkler waterflow device or manual fire alarm box shall automatically sound an alert tone followed by voice instructions giving approved information and

directions for a general or staged evacuation in accordance with the building's fire safety and evacuation plans required by Section 404 of the International Fire Code. In high-rise buildings, the system shall operate on at least the alarming floor, the floor above and the floor below. If the system is not reset after five minutes, the building shall sound the general evacuation signal 2021 International Building-Related Codes and message in all zones unless an alternative Positive Alarm Sequence has been approved by the Fire Marshal. Speakers shall be provided throughout the building by paging zones. At a minimum, paging zones shall be provided as follows:

1. Elevator groups.
2. Interior exit stairways.
3. Each floor.
4. Areas of refuge as defined in Chapter 2.

Exception: In Group I-1 and I-2 occupancies, the alarm shall sound in a constantly attended area and a general occupant notification shall be broadcast over the overhead page.

50. **Section 907.5.2.2.4**, (Emergency voice/alarm communication captions), is repealed in its entirety.
51. **Section 907.5.2.3**, (Visible alarms), is amended by adding a subsection 907.5.2.3.4, Group R-2 sleeping areas, and Section 907.5.2.3.5, Combination devices, to read as follows:

907.5.2.3.4 (Group R-2 sleeping areas). Living rooms in Group R-2 occupancies shall have audible notification appliances that meet the sleeping area audible requirements of NFPA 72, Chapter 18, Section 18.4.5, and Subsection 18.4.5.1. When such units are required to be equipped with visible notification for the hearing impaired or when such units are designated as accessible in accordance with ICC/ANSI A117.1, combination audible and visible notification appliances that meet both the sleeping area audible requirements of NFPA 72, Chapter 18, Section 18.4.5, Subsection 18.4.5.1 and the effective intensity settings of NFPA 72, Chapter 18.5.5.7.2 shall be installed.

907.5.2.3.5 (Combination devices). Combination 120 VAC single or multiple-station smoke detectors with an onboard visible notification appliance if utilized to meet the requirements of Section 907.2.11, will not be given credit for meeting the visible alarm notification requirements of Section 907.5.2.3.3 if these devices do not have the capability of supplying backup power for the visible notification appliance portion of the device. Should such devices be utilized to comply with Section 907.2.11, the visible appliance side of the device shall flash in synchronization with the notification appliances required in the unit.

52. **Section 907.5.2.3.1** (Public Use Areas and Common Use Areas) is amended by deleting the exception and adding Section 907.5.2.3.1.1 to read as follows:

Section 907.5.2.3.1.1 (Employee Work Areas). Where a fire alarm and detection system is required, employee work areas shall be provided with devices that provide audible and visible alarm notification.

53. **Section 907.6.3**, (Initiating device identification), is amended to read as follows with exceptions to remain as written:

907.6.3 (Initiating device identification). The fire alarm system shall identify the specific initiating device address, location, device type, and floor level where applicable and status including indication of normal, alarm, trouble and supervisory status, to the fire alarm panel, annunciator panel and to the supervising station as appropriate.

54. **Section 912**, (Fire Department Connections), is amended by adding Section 912.8, Location and type, as follows:

912.8 (Location and type). Sprinkler system and standpipe fire department hose connections shall be as follows:

1. Within 40 feet of a public street, approved fire lane, or access roadway.
2. Within 100 feet of an approved fire hydrant measured per hose lay.
3. All structures are required to have a five inch "Storz" connection.
 - a. Where provided, the five inch "Storz" inlet shall be installed at a 30-degree angle pointing down.
 - i. Exception: NFPA 13R system requiring less than 250 gpm.
4. Minimum of two feet above finished grade and a maximum of four feet above finished grade for standard inlets and minimum of 30 inches at lowest point above finished grade and maximum of four feet above finished grade for the five inch "Storz" inlet.
5. Freestanding FDCs shall be installed a minimum of one foot and a maximum of seven feet from the gutter face of the curb.
6. The Fire Code Official shall approve the location of freestanding fire department connections. Freestanding FDCs must be physically protected against impact per the requirements of Section 312 or other approved means.

7. Fire department connections for H occupancies shall be freestanding, remote and located as determined by the fire code official.
 8. Fire department connections for systems protecting fuel storage tanks shall be freestanding, remote and located as determined by the fire code official.
 9. No FDC is required for projects designed per NFPA 13D.
55. **Section 912.2.1**, (Visible location), is amended by adding the following sentence to the end of that section to read as follows:
- 912.2.1 (Visible location). Fire department connections shall be located on the street side of buildings or facing approved fire apparatus access roads, fully visible and recognizable from the street, fire apparatus access road or nearest point of fire department vehicle access or as otherwise approved by the fire code official. The fire department connection shall be identified by a sign installed above the connection with the letters “FDC” not less than 6 inches high and mounted at least 3 feet above the FDC to the bottom edge of the sign unless approved by the fire code official and if multiple FDC’s a sign identifying the corresponding riser.
56. **Section 912.2.2**, (Existing buildings), is amended to read as follows:
- 912.2.2 (Existing buildings). On existing buildings, wherever the fire department connection is not visible to approaching fire apparatus, the fire department connection shall be indicated by an approved sign mounted on the street front or on the side of the building. Such sign shall have the letters “FDC” not less than 6 inches (152 mm) high and words in letters not less than 2 inches (51 mm) high or an arrow to indicate the location. Signs shall be mounted no lower than 7 feet from grade to the bottom edge of the sign and are subject to the approval of the fire code official.
57. **Section 912.2** (Location), is amended to add the following:
- Section 912.2.3** (Distance). Fire department connection shall not be located further than 100 feet from the fire hydrant measured by lay of hose from the engine.
58. **Section 912.4.1**, (Locking fire department connection caps), is amended to read as follows:
- 912.4.1 (Locking fire department connection caps). Locking caps are required on all fire department connections for water-based fire protection systems including but not limited to FDC’s and standpipes.
59. **Section 1004.5.1** (Increased occupant load) is amended by deleting the section in its entirety.

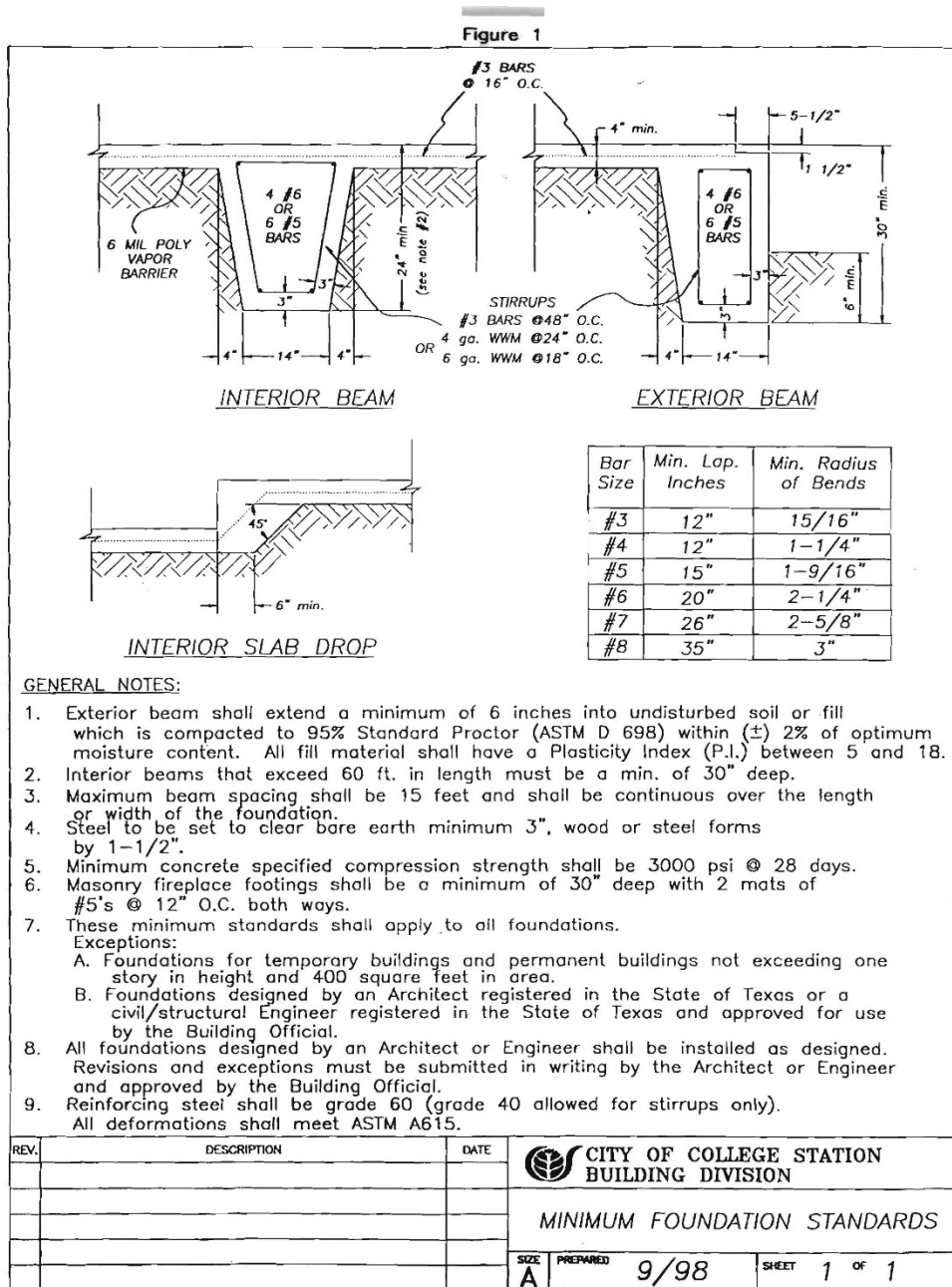
60. **Section 1004.9** (Posting of occupant load) is amended by adding the following text to the end of said section:

“For the purposes of this section, the occupant load shall be the number of occupants computed at the rate of one occupant per unit of area as prescribed in Table 1004.5.”

61. **Section 1612.3** (Establishment of flood hazard areas) is amended by inserting “Brazos County” for name of jurisdiction and “July 2, 1992 or February 9, 2000” for the date of issuance.

62. **Section 1907** (Minimum slab provisions) is amended by adding Section 1907.2 to read as follows:

“**Section 1907.2** Minimum foundation standard. All slabs-on-grade with turned-down footings shall comply with the Minimum Foundation Standard as shown in figure 1.”



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- APPENDIX D (FIRE DISTRICTS)** is hereby adopted.

Sec. 103-133. - Fire limits.

The fire district referenced in any code or ordinance adopted by the City shall be construed to be the following described area.

1. Beginning at the south corner of Farm Highway No. 60 and Old Highway No. 6, Block 8 Boyett Addition;

Thence northeast along center of Farm Highway No. 60 through Blocks 8,1, and 2 to east corner of Tauber Street and Farm Highway No. 60;

Thence northwest approximately 189 feet;

Thence southwest to east corner of Block 1, Lot 21, to corner of Main and Patricia Streets;

Thence northwest approximately 50 feet;

Thence southwest approximately 190 feet which includes Lots 21 to 26 inclusive, also Block 1, Boyett Addition;

Thence northwest approximately 150 feet to the Church Avenue;

Thence southwest approximately 52 feet to Patricia Street which includes Lots 18 to 27 and 28, Block 1, Boyett Addition;

Thence southwest on Patricia Street to Old Highway No. 6;

Thence southeast approximately 200 feet along center of Old Highway No. 6 to the place of beginning.

2. Save and except the area described as follows:

Beginning at the intersection of the northwest right-of-way line of the University Drive and the northeast right-of-way line of Boyett Street;

Thence northwest along the northeast right-of-way line of Boyett Street to the southeast right-of-way line of Patricia Street;

Thence northeast along the southeast right-of-way line of Patricia Street approximately 235 feet;

Thence southeast through Lot. No. 11, Block No. 1, Boyett addition, 25 feet from and parallel to the line between Lot No. 11 and Lot No. 12 to the northwest right-of-way line of University Drive;

Thence southwest along the northwest right-of-way line of University Drive to the place of beginning and being all of Lot No. 13, all of Lot No. 12, and the southwest 25 feet of Lot No. 11, Block No. 1, Boyett Addition.

3. Beginning at the corner of George Bush Drive and Montclair Street, Block 8, West Park Addition;

Thence southwest along centerline to Highlands Street, which includes Lots 1 to 13 inclusive;

Thence southeast along centerline of Highlands Street, 100 feet to alley;

Thence northeast to east corner of Lot No. 1, Block No. 8, Montclair Avenue;

Thence northwest 100 feet to place of beginning.

Sec. 103-134. – Amendments to the International Residential Code.

The International Residential Code adopted by reference in Section 101.2, 2021 International Building Code, is hereby amended as follows:

1. **Section R102.4 (Referenced codes and standards)** is amended by adding the following to said section:

“Any reference to the *ICC Electrical Code* shall mean the *National Electrical Code*, as adopted and amended by the City of College Station.”

2. **Section R105.2 (Work exempt from permit)** is amended by deleting number one under “Building” and replacing it with the following:

“1. One detached accessory structure per residential lot, provided the floor area does not exceed 120 square feet and the structure complies with all of the following:

- a. The accessory structure is not located in a surface drainage easement.
- b. The accessory structure is not permanently affixed to the ground.
- c. The accessory structure is located in the rear yard.
- d. The accessory structure is not provided with utilities (sewer, water, gas or electricity).”

3. **Section R105.2 (Work exempt from permit)** is amended by deleting number ten under “Building” and replacing with the following:

“10. Uncovered decks, patios or other raised floor surfaces located not more than 30 inches above adjacent grade and are not attached to a dwelling.”

4. **Section R105.2.4 is added to read as follows:**

“R105.2.4 Homeowner permit. A property owner may obtain a building permit to perform work on a building owned and occupied by him as his homestead without registering with the City as a contractor. However, work involving the electrical, plumbing and mechanical systems must be permitted and installed by licensed contractors.”

5. **Section R106.3.1 (Approval of construction documents)** is amended by deleting the last sentence in said section.

6. **Section R108.3 (Building permit valuations)** is amended by adding the following to said section:

“If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates

to meet the approval of the building official. Final permit valuation shall be set by the building official.”

7. **Section R108.5 (Refunds)** is amended by deleting the text in said section and replacing it with the following:

“The City Manager or his designee is authorized to establish a refund policy.”

8. **Section R109.1.1 (Foundation Inspection)** is amended by adding the following to the end of said section:

“The Building Official shall have the authority to require a form survey to verify building setbacks. Such survey shall be provided to the Building Official prior to placement of concrete and prepared by a surveyor licensed to perform work in the State of Texas.”

9. **Section R112 (Board of Appeals)** is amended by deleting the section in its entirety.

10. **Section R202 (Definitions)** is also amended by adding the following definitions:

Air Gap, Irrigation System. A complete physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.

Atmospheric Vacuum Breaker. An assembly containing an air inlet valve, a check seat, and an air inlet port. The flow of water into the body causes the air inlet valve to close the air inlet port. When the flow of water stops the air inlet valve falls and forms a check against back-siphonage. At the same time it opens the air inlet port allowing air to enter and satisfy the vacuum. Also known as an Atmospheric Vacuum Breaker Back-Siphonage Prevention Assembly.

Backflow Prevention, Irrigation System. The mechanical prevention of reverse flow, or back siphonage, of nonpotable water from an irrigation system into the potable water source.

Backflow Prevention Assembly. Any assembly used to prevent backflow into a potable water system. The type of assembly used is based on the existing or potential degree of health hazard and backflow condition.

Completion of Irrigation System Installation. When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.

Consulting, Irrigation System. The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.

Cross-Connection. An actual or potential connection between a potable water source and an irrigation system that may contain contaminants or pollutants or any source of water that has been treated to a lesser degree in the treatment process.

Design, Irrigation System. The act of determining the various elements of a landscape irrigation system that will include, but not be limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulics calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

Design Pressure, Irrigation System. The pressure that is required for an emission device to operate properly. Design pressure is calculated by adding the operating pressure necessary at an emission device to the total of all pressure losses accumulated from an emission device to the water source.

Double Check Valve. An assembly that is composed of two independently acting, approved check valves, including tightly closed resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a Double Check Valve Backflow Prevention Assembly.

Emission Device. Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

Employed, Irrigation Systems. Engaged or hired to provide consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

Head-to-Head Spacing, Irrigation System. The spacing of spray or rotary heads equal to the manufacturer's published radius of the head.

Health Hazard, Irrigation System. A cross-connection or potential cross-connection with an irrigation system that involves any substance that may, if introduced into the potable water supply, cause death or illness, spread disease, or have a high probability of causing such effects.

Hydraulics. The science of dynamic and static water; the mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

Installer, Irrigation System. A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

Irrigation Inspector. A person who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor and is required to be licensed under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

Irrigation Plan. A scaled drawing of a landscape irrigation system which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system.

Irrigation Services. Selling, designing, installing, maintaining, altering, repairing, servicing, permitting, providing consulting services regarding, or connecting an irrigation system to a water supply.

Irrigation System. An assembly of component parts, including the backflow device and all equipment downstream, that is permanently installed for the controlled distribution and conservation of water to irrigate any type of landscape vegetation in any location, and/or to reduce dust or control erosion. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

Irrigation Technician. A person who works under the supervision of a licensed irrigator to install, maintain, alter, repair, service or supervise installation of an irrigation system, including the connection of such system in or to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

Irrigation Zone. A subdivision of an irrigation system with a matched precipitation rate based on plant material type (such as turf, shrubs, or trees), microclimate factors (such as sun/shade ratio), topographic features (such as slope) and soil conditions (such as sand, loam, clay, or combination) or for hydrological control.

Irrigator. A person who sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30.

Irrigator-in-Charge. The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

Landscape Irrigation. The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

Irrigation License. An occupational license that is issued by the Texas Commission on Environmental Quality under Title 30, Texas Administrative Code, Chapter 30 to an

individual that authorizes the individual to engage in an activity that is covered by Title 30, Texas Administrative Code, Chapter 30.

Mainline, Irrigation System. A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

Maintenance Checklist, Irrigation System. A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

Major Maintenance, Alteration, Repair, or Service (Irrigation System). Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

Master Valve, Irrigation System. A remote control valve located after the backflow prevention device that controls the flow of water to the irrigation system mainline.

Matched Precipitation Rate. The condition in which all sprinkler heads within an irrigation zone apply water at the same rate.

New Installation, Irrigation System. An irrigation system installed at a location where one did not previously exist.

Pass-through Contract. A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services relating to an irrigation system.

Pressure Vacuum Breaker. An assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a Pressure Vacuum Breaker Back-siphonage Prevention Assembly.

Reclaimed Water. Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

Records of Landscape Irrigation Activities. The irrigation plans, contracts, warranty information, invoices, copies of permits, and other documents that relate to the installation, maintenance, alteration, repair, or service of a landscape irrigation system.

Reduced Pressure Principle Backflow Prevention Assembly. An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.

Static Water Pressure. The pressure of water when it is not moving.

Supervision, Landscape Irrigation. The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local or state requirements. Also a licensed installer working under the direction of a licensed irrigator or an irrigation technician who is working under the direction of a licensed irrigator to install, maintain, alter, repair or service an irrigation system.

Water Conservation, Irrigation System. The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

Zone Flow. A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

Zone Valve, Irrigation System. An automatic valve that controls a single zone of a landscape irrigation system.

11. **Section R302.1 (Exterior walls)** is amended by deleting the existing text and replacing it with the following:

R302.1 Exterior walls. Exterior walls with a fire separation distance less than 3 feet shall have not less than a one hour fire-resistive rating with exposure from both sides. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

Exception: Tool and storage sheds, playhouses and similar structures exempted from permits by Section R105.2 are not required to provide wall protection based on location on the lot.

Projections. Projections may extend beyond the exterior wall on zero lot line construction. Projections shall be constructed from non-combustible material on the underside and may allow manufactured perforated soffit material installed for attic

ventilation.. The soffit may project a maximum of 18 inches, excluding non-combustible gutters, over the adjacent property line.

Exception: Tool and storage sheds, playhouses and similar structures exempted from permits by Section R 105.2 shall not extend over the lot line in zero lot line construction.

Combustibles in maintenance easement. The construction of any structure utilizing combustible material or the storage of combustible material is prohibited within the maintenance easement. The term “maintenance easement” is defined in Article 11 of the UDO.

Exception: A wood fence may be installed in the maintenance easement.

12. **Section R302.6 (Dwelling-garage fire separation)** is amended by adding the following exception:

Exception: One unprotected attic access opening, not exceeding 30 inches by 54 inches in size, is allowed per garage.

13. **Section R310.2.1 (Minimum size)** is amended by deleting this section in its entirety.

14. **Section R311.7.8.4 (Continuity)** is amended by deleting the following text in said section:

“Handrail ends shall be returned or shall terminate in newel posts or safety terminals.”

15. **Section R313 (Automatic Fire Sprinkler Systems)** is amended by deleting the section in its entirety.

16. **Section R318.2 (Chemical termiticide treatment)** is amended by adding the following to the end of said section:

“The method of application and contractor hired to apply the chemicals shall submit to the Building Department when applying for the Building Permit, and verification of the application turned in prior to issuance of the Certificate of Occupancy.”

17. **Section R319.1 (Address Identification)** is amended by deleting the existing text in its entirety and replacing it with the following:

“Premises identification shall comply with Section 502.1, International Building Code, as amended.”

18. **Section 322.2.1 (Elevation requirements)** is amended by deleting the existing text, save the exception, and replacing it with the following:

“1. Buildings and structures shall have the lowest floors elevated in accordance with the City of College Station Code of Ordinances, Chapter 13 (Flood Hazard Protection) and the City of College Station Drainage Policy and Design Standards (refer to Section II.D).

2. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Maps, or at least 2 feet if a depth number is not specified, plus the additional footage requirements in the City of College Station Code of Ordinances, Chapter 13 (Flood Hazard Protection) and the City of College Station Drainage Policy and Design Standards (refer to Section II.D).

3. Basement floors that are below grade on all sides shall be elevated in accordance with the City of College Station Code of Ordinances, Chapter 13 (Flood Hazard Protection) and the City of College Station Drainage Policy and Design Standards (refer to Section II.D).

19. **Section R403.1.3.3 (Slabs-on-ground with turned-down footings)** is amended by deleting the existing text and replacing it with the following to read as follows:

“All slabs-on-ground with turned-down footings shall comply with the minimum foundation standard in Section 1907.2, International Building Code.”

20. **Chapter 11 (Energy Efficiency)** is amended by deleting this chapter in its entirety and replacing it with the following.

“One-and-two family dwellings shall comply with the 2021 International Energy Conservation Code as amended.”

21. **Section M1411.3 (Condensate disposal)** is amended by deleting the existing text and replacing with the following:

“Condensate from all cooling coils or evaporators shall be conveyed from the drain pan outlet to the sanitary sewer system, if available. The condensate drain shall be connected to the sanitary sewer system in a manner approved by the code official.

Exception: When a sanitary sewer system is not available on the premises, or connection thereto is not practical, the condensate shall discharge into an approved french drain.”

22. **Section M1501.1 (Outdoor discharge)** is amended by deleting the last sentence in said section.

23. **Section M1505.2 (Recirculation of air)** is amended by deleting the second sentence in said section, and replacing it with the following:

“Exhaust air from bathrooms and toilet rooms shall discharge directly to the outdoors or the vent termination shall be unobstructed and within 6 inches of the soffit vent or ridge vent.”

24. **Section G2408.3 (Private garages)** is amended by deleting the section in its entirety.

25. **Section G2414.4.3 (Copper or copper-alloy tubing)** is amended by deleting said section in its entirety.

26. **Section G2417.1.2 (Repairs and additions)** is amended by deleting the existing text in its entirety and replacing it with the following:

“In the event repairs or additions are made after the pressure test, the affected piping shall be tested. If approved by the code official, minor repairs and additions are not required to be pressure tested provided the work is inspected and connections are tested with a noncorrosive leak-detecting fluid or other leak detecting methods.”

27. **Section G2417.4 (Test pressure measurement)** is amended by deleting the existing text in its entirety and replacing it with the following:

“Test pressure measurement shall comply with Section 406.4, 2021 International Fuel Gas Code, as amended.”

28. **Section G2417.4.1 (Test pressure)** is amended by deleting the existing text in its entirety and replacing it with the following:

“Test pressure shall comply with Section 406.4.1, 2021 International Fuel Gas Code, as amended.”

29. **Section P2503.8 (Inspection and testing of backflow prevention devices)** is amended by deleting the section in its entirety and replacing with the following:

“Inspection and testing of backflow prevention devices shall comply with Section 312.10, 2021 International Plumbing Code, as amended.”

30. **Section P2804.6.1 (Requirements for discharge pipe)** is amended by deleting the text in number five and replacing it with the following:

“Discharge to an indirect waste receptor or to the outdoors.”

31. **Section P2902.5.3 (Lawn irrigation systems)** is amended by deleting the existing text in its entirety and replacing it with the following:

P2902.5.3 Lawn Irrigation Systems

P2902.5.3.1 Valid License Required. Any person who connects an irrigation system to the water supply within the city or the city's extraterritorial jurisdiction, commonly referred to as the ETJ, must hold a valid license, as defined by Title 30, Texas Administrative Code, Chapter 30 and required by Chapter 1903 of the Texas Occupations Code, or as defined by Chapter 365, Title 22 of the Texas Administrative Code and required by Chapter 1301 of the Texas Occupations Code.

Exception: A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, §1903.002(c)(1) if he or she is performing irrigation work in a building or on a premises owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in Title 30, Texas Administrative Code, Chapter 344 regarding spacing, water pressure, spraying water over impervious materials, rain or moisture shut-off devices or other technology, backflow prevention and isolation valves. See Texas Occupations Code §1903.002 for other exemptions to the licensing requirement.

P2902.5.3.2 Permit Required. Any person installing an irrigation system within the territorial limits or extraterritorial jurisdiction of the city is required to obtain a permit from the city prior to beginning work on the irrigation system. A completed irrigation permit application and irrigation plan must be submitted to the city and approved before a permit will be issued by the city. The irrigation plan must be in compliance with the requirements of this section.

Exceptions:

- (1) An irrigation system that is an on-site sewage disposal system, as defined by Section 366.002, Health and Safety Code; or
- (2) An irrigation system used on or by an agricultural operation as defined by Section 251.002, Agriculture Code; or
- (3) An irrigation system connected to a groundwater well used by a property owner strictly for domestic use.

P2902.5.3.3 Backflow Prevention Methods and Devices. Any irrigation system that is connected to the potable water supply must be connected through a backflow prevention method approved by the Texas Commission on Environmental Quality (TCEQ). The backflow prevention device must be approved by the Foundation for Cross-Connection Control and Hydraulic Research, the University of Southern California, the International Plumbing Code, or any other laboratory that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations. If conditions that present a health hazard exist, one of the following methods must be used to prevent backflow;

- (1) An air gap may be used if:
 - (a) there is an unobstructed physical separation; and

- (b) the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater.
- (2) Reduced pressure principle backflow prevention assemblies may be used if:
 - (a) the device is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and
 - (b) drainage is provided for any water that may be discharged through the assembly relief valve.
- (3) Atmospheric vacuum breakers may only be used as replacements on existing systems utilizing atmospheric vacuum breakers if:
 - (a) no back-pressure will be present;
 - (b) there are no shutoff valves downstream from the atmospheric vacuum breaker;
 - (c) the device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;
 - (d) there is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and
 - (e) a separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls.
- (4) Pressure vacuum breakers may be used if:
 - (a) no back-pressure condition will occur; and
 - (b) the device is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

All backflow prevention devices used in applications designated as health hazards must be tested upon installation and annually thereafter.

If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the device is tested upon installation and test cocks are used for testing only. A double check valve may be installed below ground if:

- (a) the double check valve assembly is installed in a vault or other approved enclosure that which is constructed of a durable material. The vault or enclosure shall either be of solid (waterproof) construction with an integral bottom or bottomless to facilitate drainage. If the vault or enclosure is bottomless, a minimum of four (4) inches of washed gravel shall be installed below the assembly. The washed gravel shall have a diameter of between 3/8 inch and 3/4 inch (inclusive);
- (b) the test cocks are plugged with a non-ferrous material (brass, plastic, etc.) except when the double check valve is being tested;
- (c) the test cock plugs are threaded, water-tight, and made of non-ferrous material;

- (d) a y-type strainer is installed on the inlet side of the double check valve;
- (e) a minimum clearance of three (3) inches is provided between any fill material and the bottom of the double check valve to allow space for testing and repair; and
- (f) a minimum clearance of four (4) inches is provided on the sides of the double check valve to test and repair the double check valve.

If an existing irrigation system without a backflow-prevention assembly requires major maintenance, alteration, repair, or service, the system must be connected to the potable water supply through an approved, properly installed backflow prevention method before any major maintenance, alteration, repair, or service is performed.

If an irrigation system is connected to a potable water supply through a double check valve, pressure vacuum breaker, or reduced pressure principle backflow assembly and includes an automatic master valve on the system, the automatic master valve must be installed on the discharge side of the backflow prevention assembly.

The irrigator shall ensure the backflow prevention device is tested by a licensed Backflow Prevention Assembly Tester prior to being placed in service. The tester must be registered with the City of College Station and the test results must be provided to the local water purveyor and the irrigation system's owner or owner's representative within ten business days of testing of the backflow prevention device.

P2902.5.3.4 Specific Conditions and Cross-Connection Control. Before any chemical is added to an irrigation system connected to the potable water supply, the irrigation system must be connected through a reduced pressure principle backflow prevention assembly or air gap.

Connection of any additional water source to an irrigation system that is connected to the potable water supply can only be done if the irrigation system is connected to the potable water supply through a reduced-pressure principle backflow prevention assembly or an air gap.

Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any potable water supply must be connected through a reduced pressure principle backflow device.

If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Title 30, Texas Administrative Code, Chapter 285, then:

- (1) all irrigation piping and valves must meet the separation distances from the On-Site Sewage Facilities system as required for a private water line in Title 30, Texas Administrative Code, Section 285.91(10);

(2) any connections using a private or public potable water source that is not the city's potable water system must be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in Title 30, Texas Administrative Code, Section 344.50; and

(3) any water from the irrigation system that is applied to the surface of the area utilized by the On-Site Sewage Facility system must be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the On-Site Sewage Facilities system from operating effectively.

P2902.5.3.5 Water Conservation. All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in the Definitions section of this ordinance.

P2902.5.3.6 Irrigation Plan Design. An irrigator shall prepare an irrigation plan for each site where a new irrigation system will be installed. A paper or electronic copy of the irrigation plan must be on the job site at all times during the installation of the irrigation system. A drawing showing the actual installation of the system is due to each irrigation system owner after all new irrigation system installations. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:

- (1) diminish the operational integrity of the irrigation system;
- (2) violate any requirements of this ordinance; and
- (3) go unnoted in red on the irrigation plan.

The irrigation plan must include complete coverage of the area to be irrigated. If a system does not provide complete coverage of the area to be irrigated, it must be noted on the irrigation plan.

All irrigation plans used for construction must be drawn to scale. The plan must include, at a minimum, the following information:

- (1) the irrigator's seal, signature, and date of signing;
- (2) all major physical features and the boundaries of the areas to be watered;
- (3) a North arrow;
- (4) a legend;
- (5) the zone flow measurement for each zone;
- (6) location and type of each:
 - (a) controller; and
 - (b) sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);
- (7) location, type, and size of each:
 - (a) water source, such as, but not limited to a water meter and point(s) of connection;
 - (b) backflow prevention device;

- (c) water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;
 - (d) valve, including but not limited to, zone valves, master valves, and isolation valves;
 - (e) pressure regulation component; and
 - (f) main line and lateral piping.
- (8) the scale used; and
- (9) the design pressure.

P2902.5.3.7 Design and Installation. No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.

P2902.5.3.7.1 Spacing. The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure. New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.

Exception:

Narrow paved walkways, jogging paths, golf cart paths or other small areas located in cemeteries, parks, golf courses or other public areas if the runoff drains into a landscaped area.

P2902.5.3.7.2 Water Pressure. Emission devices must be installed to operate at the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

P2902.5.3.7.3 Piping. Piping in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC) pipe.

P2902.5.3.7.4 Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

P2902.5.3.7.5 Matched Precipitation Rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

P2902.5.3.7.6 Impervious Surfaces. Irrigation systems shall not spray water over surfaces made of concrete, asphalt, brick, wood, stones set with mortar, or any other impervious material, such as, but not limited to, walls, fences, sidewalks, streets, etc.

P2902.5.3.7.7 Master Valve. When provided, a master valve shall be installed on the discharge side of the backflow prevention device on all new installations.

P2902.5.3.7.8 PVC Pipe Primer Solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the International Plumbing Code (Section 605).

P2902.5.3.7.9 Rain or Moisture Sensor. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall.

P2902.5.3.7.10 Isolation Valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention device.

P2902.5.3.7.11 Depth Coverage of Piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping. If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan and discussed with the irrigation system owner or owner's representative to address any safety issues. If a utility, man-made structure or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to

provide a minimum of two inches of select backfill between the top of the pipe and the natural grade of the topsoil. All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

P2902.5.3.7.12 Irrigation System Wiring. Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground. Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation. Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer. Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

P2902.5.3.7.13 Irrigation System Water. Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a covered purple valve box and the hose bib and any hoses connected to the bib must be labeled "non potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

P2902.5.3.7.14 Licensed Person On Site During Installation. Beginning January 1, 2010, either a licensed irrigator or a licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not onsite, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

P2902.5.3.8 Completion of Irrigation System Installation. Upon completion of the irrigation system, the irrigator or irrigation technician who provided supervision for the on-site installation shall be required to complete the following four items:

- (1) a final walk through with the irrigation system's owner or the owner's representative to explain the operation of the system;
- (2) The maintenance checklist on which the irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's

representative will be given the original maintenance checklist and a duplicate copy of the maintenance checklist shall be maintained by the irrigator.

The items on the maintenance checklist shall include but are not limited to:

- (a) the manufacturer's manual for the automatic controller, if the system is automatic;
- (b) a seasonal (spring, summer, fall, winter) watering schedule based on either current/real time evapotranspiration or monthly historical reference evapotranspiration (historical ET) data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;
- (c) a list of components, such as the nozzle, or pump filters, and other such components; that require maintenance and the recommended frequency for the service; and
- (d) the statement, "This irrigation system has been installed in accordance with all applicable state and local laws, ordinances, rules, regulations or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan and is properly adjusted for the most efficient application of water at this time."

(3) A permanent sticker which contains the irrigator's name, license number, company name, telephone number and the dates of the warranty period shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original maintenance checklist. The information contained on the sticker must be printed with waterproof ink and include:

(4) The irrigation plan indicating the actual installation of the system must be provided to the irrigation system's owner or owner representative.

P2902.5.3.9 Maintenance, Alteration, Repair, or Service of Irrigation Systems. The licensed irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other irrigator who subsequently conducts any irrigation service on the same irrigation system. All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be returned to the original grade with compacted select backfill. Colored PVC pipe primer solvent must be used on all pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the adopted International Plumbing Code (Section 605). When maintenance, alteration, repair or service of an irrigation system involves excavation work at the water meter or backflow prevention device, an isolation valve shall be installed, if an isolation valve is not present.

P2902.5.3.10 Reclaimed Water. Reclaimed water may be utilized in landscape irrigation systems if:

- (1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;
- (2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;
- (3) the irrigation system is installed using purple components;
- (4) the domestic potable water line is connected using an air gap or a reduced pressure principle backflow prevention device, in accordance with §290.47(i) of this title (relating to Appendices);
- (5) a minimum of an eight inch by eight inch sign is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER – DO NOT DRINK" ; and
- (6) backflow prevention on the reclaimed water supply line shall be provided in accordance with the regulations of the city's water provider.

P2902.5.3.11 Advertisement Requirements. All vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service must display the irrigator's license number in the form of "LI _____" in a contrasting color of block letters at least two inches high, on both sides of the vehicle. All forms of written and electronic advertisements for irrigation services must display the irrigator's license number in the form of "LI _____." Any form of advertisement, including business cards, and estimates which displays an entity's or individual's name other than that of the licensed irrigator must also display the name of the licensed irrigator and the licensed irrigator's license number. Trailers that advertise irrigation services must display the irrigator's license number. The name, mailing address, and telephone number of the commission must be prominently displayed on a legible sign and displayed in plain view for the purpose of addressing complaints at the permanent structure where irrigation business is primarily conducted and irrigation records are kept.

P2902.5.3.12 Contracts. All contracts to install an irrigation system must be in writing and signed by each party and must specify the irrigator's name, license number, business address, current business telephone numbers, the date that each party signed the agreement, the total agreed price, and must contain the statement, "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us." All contracts must include the irrigator's seal, signature, and date. All written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) must include the irrigator's name, license number, business address, current business telephone number(s), and the statement: "Irrigation in Texas is regulated by the Texas Commission On Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: www.tceq.state.tx.us." An individual who agrees by contract to provide irrigation services as defined in §344.30 of this title (relating to License Required) shall hold an irrigator license issued under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations) unless the contract is a pass-through contract as defined in

§344.1(36) of this title (relating to Definitions). If a pass-through contract includes irrigation services, then the irrigation portion of the contract can only be performed by a licensed irrigator. If an irrigator installs a system pursuant to a pass-through contract, the irrigator shall still be responsible for providing the irrigation system's owner or through contract, the irrigator shall still be responsible for providing the irrigation system's owner or owner's representative a copy of the warranty and all other documents required under this chapter. A pass-through contract must identify by name and license number the irrigator that will perform the work and must provide a mechanism for contacting the irrigator for irrigation system warranty work. The contract must include the dates that the warranty is valid.

P2902.5.3.13 Warranties for Irrigation Systems. On all installations of new irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative with a written warranty covering materials and labor furnished in the new installation of the irrigation system. The irrigator shall be responsible for adhering to terms of the warranty. If the irrigator's warranty is less than the manufacturer's warranty for the system components, then the irrigator shall provide the irrigation system's owner or the owner's representative with applicable information regarding the manufacturer's warranty period. The warranty must include the irrigator's seal, signature, and date. If the warranty is part of an irrigator's contract, a separate warranty document is not required. An irrigator's written warranty on new irrigation systems must specify the irrigator's name, business address, and business telephone number(s), must contain the signature of the irrigation system's owner or owner's representative confirming receipt of the warranty and must include the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 130897, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us." On all maintenance, alterations, repairs, or service to existing irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative a written document that identifies the materials furnished in the maintenance, alteration, repair, or service. If a warranty is provided, the irrigator shall abide by the terms. The warranty document must include the irrigator's name and business contact information.

P2902.5.3.14 Duties and Responsibilities of City Irrigation Inspectors. A licensed irrigation inspector or plumbing inspector shall enforce the ordinance of the city, and shall be responsible for:

- (1) verifying that the appropriate permits have been obtained for an irrigation system and that the irrigator and installer or irrigation technician, if applicable, are licensed;
- (2) inspecting the irrigation system;
- (3) determining that the irrigation system complies with the requirements of this section;
- (4) determining that the appropriate backflow prevention device was installed and tested;

- (5) investigating complaints related to irrigation system installation, maintenance, alteration, repairs, or service of an irrigation system and advertisement of irrigation services; and
- (6) maintaining inspection records according to this section.”

32. **Table P2906.4** (Water service pipe) is amended by deleting the following materials:

“Acrylonitrile butadiene styrene (ABS) plastic pipe
Asbestos-cement pipe
Polyethylene/aluminum/polyethylene (PE-AL-PE) pipe
Polyethylene (PE) plastic pipe
Polyethylene (PE) plastic tubing”

33. **Table P2906.5** (Water distribution pipe) is amended by deleting the following materials:

“Polyethylene/aluminum/polyethylene (PE-AL-PE) composite pipe”

34. **Section P2906.5** (Water-distribution pipe.) is amended by adding the following text to the end of the section:

“Inaccessible water distribution piping under slabs shall be copper (minimum type K) or cross-linked polyethylene (PEX) tubing all installed without joints or connections. Materials subject to corrosion shall be protected when exposed to concrete or corrosive soils.”

35. **Section 2906.10** (Cross-linked polyethylene plastic (PEX)) is amended by adding P2906.10.3 to read as follows:

“P2906.10.3. Sleeving. When a sleeve is provided for cross-linked polyethylene (PEX) plastic piping or tubing installed under concrete slabs the annular space between the piping or tubing and the sleeve must be caulked, foamed, or otherwise sealed to prevent the entrance of termiticide.”

36. **Section P3002.2.** (Building sewer) is amended by adding P3002.2.1 to read as follows:

“P3002.2.1 Depth of building sewer. Building sewer pipe shall be installed with a minimum of twelve (12) inches of cover. Where conditions prohibit the required amount of cover, cast iron pipe with approved joints may be used unless other means of protecting the pipe is provided as approved by the Building Official.”

37. **Section E3401.1** (applicability) is amended by deleting the section in its entirety and replacing with the following:

“Electrical installations shall comply with the *National Electrical Code*, as adopted and amended by the City of College Station.”

Sec. 103-135. – Amendments to the International Fuel Gas Code.

The International Fuel Gas Code adopted by reference in Section 101.4.1, 2021 International Building Code is hereby amended as follows:

1. **Section 102.8** (Referenced codes and standards) is amended by adding the following exception:

“Exception: Any reference to the ICC Electrical Code shall mean the National Electrical Code, as adopted and amended by the City of College Station.”

2. **Section 106.3** (Application for permit) is amended by deleting the text in said section and replacing it with the following:

“The code official may require a permit application for work regulated by this code.”

3. **Section 109.2** (Schedule of permit fees) is amended by deleting the section in its entirety.

4. **Section 109.6** (Refunds) is amended by deleting the text in said section and replacing it with the following:

“The City Manager or his designee is authorized to establish a refund policy.”

5. **Section 113** (Means of Appeal) is amended by deleting the section in its entirety.

6. **Section 305.5** (Private garages) is amended by deleting the section in its entirety.

7. **Section 403.3.3** (Copper and copper alloy) is amended by deleting the section in its entirety.

8. **Section 403.4.3** (Copper and copper alloy tubing) is amended by deleting the section in its entirety.

9. **Section 406.1.2** (Repairs and additions) is amended by deleting the existing text in its entirety and replacing it with the following:

“In the event repairs or additions are made after the pressure test, the affected piping shall be tested. If approved by the code official, minor repairs and additions are not required to be pressure tested provided the work is inspected and connections are tested with a noncorrosive leak-detecting fluid or other leak detecting methods.

10. **Section 406.4** (Test pressure measurement) is amended by adding the following to the end of said section:

‘For gas systems with a working pressure up to and including five (5) psi., a diaphragm gauge utilizing a dial with a minimum diameter of three and one-half inches (3 ½”), a

set hand, 2/10 pound incrementation and a pressure range not more than twenty (20) psi shall be acceptable. A mechanical spring gauge is only acceptable for use on gas systems requiring a pressure test of more than 20 psig.'

11. **Section 406.4.1** (Test pressure) is amended by deleting the existing text in its entirety and replacing it with the following:

'The test pressure to be used shall be no less than twice the proposed maximum working pressure, but no less than five (5) psig, irrespective of design pressure.'

12. **Section 406.4.2** (Test duration) is amended by deleting the existing text in its entirety and replacing it with the following:

"Gas piping systems shall withstand the required pressure test for a period of not less than ten (10) minutes without showing any drop in pressure."

Sec. 103-136. – Amendments to the International Mechanical Code.

The International Mechanical Code adopted by reference in Section 101.4.2, 2021 International Building Code is hereby amended as follows:

1. **Section 102.8** (Referenced codes and standards) is amended by adding the following exception:

‘Exception: Any reference to the ICC Electrical Code shall mean the National Electrical Code, as adopted and amended by the City of College Station.

2. **Section 106.3** (Application for permit) is amended by deleting the text in said section and replacing it with the following:

‘The code official may require a permit application for work regulated by this code.’

3. **Section 109.2** (Schedule of permit fees) is amended by deleting the section in its entirety.

4. **Section 109.6** (Refunds) is amended by deleting the text in said section and replacing it with the following:

“The City Manager or his designee is authorized to establish a refund policy.”

5. **Section 113.4** (Failure to comply) is amended by adding the following at the end of said section:

“Fines shall be not less than twenty-five (\$25.00) and not more than two-thousand (\$2,000.00).”

6. **Section 114** (Means of Appeal) is amended by deleting the section in its entirety.

7. **Section 304.7** (Private garages) is amended by deleting the section in its entirety.

8. **Section 507.6.1** (Capture and containment test) is amended by deleting the section in its entirety.

Sec. 103-137. – Amendments to the International Plumbing Code.

The International Plumbing Code adopted by reference in Section 101.4.3, 2021 International Building Code is hereby amended as follows:

1. **Section 102.8** (Referenced codes and standards) is amended by adding the following exception:

‘Exception: Any reference to the ICC Electrical Code shall mean the National Electrical Code, as adopted and amended by the City of College Station.’

2. **Section 106.3** (Application for permit) is amended by deleting the text in said section and replacing it with the following:

“The code official may require a permit application for work regulated by this code.”

3. **Section 109.2** (Schedule of permit fees) is amended by deleting this section in its entirety.

4. **Section 109.5** (Refunds) is amended by deleting the text in said section and replacing it with the following:

“The City Manager or designee is authorized to establish a refund policy.”

5. **Section 113.4** (Failure to comply) is amended by inserting the following amounts in the blanks provided at the end of said section:

“Fines shall be not less than twenty-five (\$25.00) and not more than two- thousand (\$2,000.00)”

6. **Section 114** (Means of Appeal) is amended by deleting the section in its entirety.

7. **Section 305.4.1** (Sewer depth) is amended by inserting “twelve (12)” in both blanks and adding the following sentence to the end of said section.

“Where conditions prohibit the required amount of cover, cast iron pipe with approved joints may be used unless other means of protecting the pipe is provided as approved by the Building Official.”

8. **Section 312.1** (Required tests) is amended by deleting the following text from said section:

“, for piping systems other than plastic, by”

9. **Section 312.2** (Drainage and vent water test) is amended by deleting said section in its entirety and replacing with the following:

“312.2 Drainage water test. A water test shall be applied to the drainage system either in its entirety or in sections. If applied to the entire system, all openings in the piping shall be tightly closed, except the highest opening, and the system shall be filled with water to the point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest opening of the section under test, and each section shall be tested with not less than a 5-foot head of water. This pressure shall be held for at least 15 minutes. The drainage system shall then be tight at all points.”

10. **Section 312.3** (Drainage and vent air test) is amended by deleting said section in its entirety and replacing with the following:

“312.3 Drainage air test. An air test shall be applied to the drainage piping by forcing air into the system until there is uniform gauge pressure of 5 pounds per square inch (psi) or sufficient to balance a 10-inch column of mercury. This pressure shall be held for a test period of at least 15 minutes. Any adjustment to the test pressure required because of changes in ambient temperature or the seating of gaskets shall be made prior to the beginning of the test period.”

11. **Section 312.6** (Gravity sewer test) is amended by replacing “10-foot” with “5-foot”.

12. **Section 312.10** (Inspection and testing of backflow prevention assemblies.) is amended by deleting said section in its entirety and replacing with the following:

“312.10 Inspection and testing of backflow prevention assemblies. Upon initial installation, an inspection shall be made of all backflow prevention devices and assemblies to determine whether they are operable. Testing of all backflow prevention devices and assemblies shall be in accordance with Chapter 11, Section 10, Subsection F, of the Code of Ordinances, City of College Station, Texas.”

13. **Section 410.4** (Substitution) is amended by deleting the last sentence in said section and replacing it with the following:

“Where bottle water dispensers are provided in other occupancies, drinking fountains shall not be required.”

14. **Table 605.3** (Water Service Pipe) is amended by deleting the following materials:

Acrylonitrile butadiene styrene (ABS) plastic pipe
Polyethylene (PE) plastic pipe
Polyethylene (PE) plastic tubing
Polyethylene/aluminum/polyethylene (PE-AL-PE) pipe

15. **Section 606** (Installation of the Building Water Distribution System) is amended by adding section 606.7 to read as follows:

“606.7 Materials below slab. Water distribution piping installed under concrete slabs shall be copper (minimum type K), cross-link polyethylene (PEX) tubing, or cross-linked polyethylene/aluminum/ polyethylene (PEX-AL-PEX) pipe, all installed without joints or connections. Materials subject to corrosion shall be protected when exposed to concrete or corrosive soils.”

16. **Section 606** (Installation of the Building Water Distribution System) is amended by adding section 606.8 to read as follows:

“606.8 Sleeved cross-polyethylene piping or tubing. ‘When a sleeve is provided for cross-linked polyethylene (PEX) plastic piping or tubing installed under concrete slabs the annular space between the piping or tubing and the sleeve must be caulked, foamed, or otherwise sealed to prevent the entrance of termiticide.’”

17. **Section 608.17.5** (Connections to lawn irrigation systems) is amended by deleting the first sentence in said section and replacing it with the following:

“The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric vacuum breaker, a pressure vacuum breaker assembly, a reduced pressure principle backflow prevention assembly or a double check.”

18. **Section 701.2** (Connection to sewer required) is amended by deleting the section in its entirety and replacing with the following:

“701.2 Connection to sewer required. Every building in which plumbing fixtures are installed and all premises having sanitary drainage piping shall be connected to an approved sewer. Private sewage systems must comply with City of College Station’s Code of Ordinances. All private sewage disposal systems must comply with the latest adopted standards of the Texas Commission on Environmental Quality and be installed under the direction of the Brazos County Health Department. The installer shall be licensed by the Texas Commission on Environmental Quality.”

19. **Section 1003.3.5** (Hydromechanical grease interceptors, fats, oils and greases disposal systems and automatic grease removal devices) is amended by deleting the first sentence in said section.

Sec. 103-138. – Amendments to the International Property Maintenance Code.

The International Property Maintenance Code adopted by reference in Section 101.4.4, 2021 International Building Code is hereby amended as follows:

1. **Section 102.7** (Referenced codes and standards) is amended by adding the following exception:

“Exception: Any reference to the ICC Electrical Code shall mean the *National Electrical Code*, as adopted and amended by the City of College Station.”

2. **Section 107** (Means of Appeals) is amended by deleting the section in its entirety.
3. **Section 111** (Unsafe Structures and Equipment) is amended by deleting the section in its entirety.
4. **Section 111.4** (Notice) is amended by deleting the section in its entirety.
5. **Section 112** (Emergency Measures) is amended by deleting the section in its entirety.
6. **Section 113** (Demolition) is amended by deleting the section in its entirety.
7. **Section 302.4** (Weeds) is amended by deleting the section in its entirety.
8. **Section 304.3** (Premises identification) is amended by deleting the text in said section and replacing it with the following:

“Premises identification shall be in compliance with Section 502.1, 2021 International Building Code as amended.”
9. **Section 304.14** (Insect screens) is amended by deleting the existing text and replacing it with the following:

“Every door, window, and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any other areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25mm) and every swinging door shall have a self-closing device in good working condition.”

Exceptions:

1. Screens shall not be required where other approved means, such as air curtains or Insect repellant fans, are employed.

2. Screens shall not be required for windows and doors enclosing habitable spaces that contain central heating and air conditioning equipment that provide mechanical ventilation.’
10. **Section 602.3** (Heat supply) is amended by adding the following dates in the blanks provided:
“1 October in first blank and 30 April in second blank”
11. **Section 602.4** (Occupiable work spaces) is amended by adding the following dates in the blanks provided:
“1 October in first blank and 30 April in second blank”
12. **Section 602.4** (Occupiable work spaces) is amended by adding the following exception:
“3. Warehouse, storage rooms and similar areas that are not occupied on a constant basis.”
13. **Appendix A** (Boarding Standard) is hereby adopted.

Sec. 103-139. – Amendments to the International Energy Conservation Code.

The International Energy Conservation Code adopted by reference in Section 101.4.6, 2021 International Building Code, is hereby amended as follows:

1. **Section C&R108.1** (Referenced codes and standards) is amended by adding the following to said section:
“Any reference to the ICC Electrical Code shall mean the National Electrical Code, as adopted and amended by the City of College Station.”
2. **Section C&R110** (Board of Appeals) is amended by deleting the section in its entirety.
3. **Section C402.5** (Air leakage-thermal envelope (Mandatory)) is amended by adding an exception:

“**Exception:** The air leakage – thermal envelope shall be considered acceptable when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. Where required by the code official, an approved third party, independent from the installer, shall inspect and approve the thermal envelope and insulation installation.”
4. **Section R401.3** (Certificate) is amended by deleting the existing text from said section:
“The certificate shall list the types and efficiencies of heating, cooling and service water heating equipment. Where a gas-fired unvented room heater, electric furnace, or baseboard electric heater is installed in the residence, the certificate shall list “gas-fired unvented room heater,” “electric furnace” or “baseboard electric heater.” as appropriate. An efficiency shall not be listed for gas-fired unvented room heaters, electric furnaces or electric baseboard heaters.”
5. **Section R402.4.1.2** (Testing) is amended by adding an exception:

“**Exception:** Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. Where required by the code official, an approved third party independent from the installer, shall inspect and approve the air barrier and insulation installation.”
6. **Section R402.4.6** (Electrical and communication outlet boxes (air-sealed boxes). Is amended by adding the following to the end of the section:

“On-site sealing of boxes is acceptable, when using approved sealant materials”
7. **Section R403.3.1** (Ducts located outside conditioned space) is amended by adding the following to the end of the section:

“Supply and return air ducts in unconditioned spaces may have an insulation R-Value of 6 when installed in conjunction with an air conditioner having a minimum SEER rating of 16.”

8. **Section R403.3.5** (Duct Testing) is amended by adding an additional exception below said section:

Exception: 2. Duct tightness shall be considered acceptable when the items listed below, applicable to the method of construction, are field verified:

Connections:

- a. Seal core to collar with UL listed mastic or at least 2 wraps of UL 181 listed tape.
- b. Secure connection with mechanical clamp placed over the core and tape.
- c. Pull jacket and insulation back over core. Use a mechanical clamp, two wraps of UL 181 listed tape or UL listed mastic to secure insulation.

Splices:

- a. Butt two cores together on a 4” length metal sleeve.
- b. Secure core and sleeve with UL listed mastic or two wraps of UL 181 listed tape
- c. Secure connection with 2 clamps placed over the taped core ends.
- d. Pull jacket and insulation back over core. Use two wraps of UL 181 listed tape or UL listed mastic to secure insulation.

9. **Section R403** (Systems) is amended by adding R403.13 to read as follows:

“403.13 Heating equipment. Electrical resistance heat may be used as the primary source of heating for residential use not exceeding five hundred (500) square feet in area.”

10. **Section R404.2** (Interior Lighting Controls) Is amended by deleting this section in its entirety.
11. **Section R406.5** (Verification by approved agency) is amended by replacing the existing text with:

“The Code Official may require verification of compliance with Section R406 be completed by an approved third party.”

EXHIBIT B

That Chapter 103, “Building Regulations,” Article III, “Technical Codes,” Division 3 “Electrical Code” is hereby amended to read as follows:

Sec. 103-162. – National Electrical Code adopted.

A booklet entitled ‘National Electrical Code 2020 Edition’ as amended and as hereafter may be amended, at least one (1) copy of which is on file in the office of the Building Official of the City of College Station, Texas, is hereby adopted and designated as the Electrical Code of College Station, Texas.

Sec. 103-163. – Amendments to the National Electrical Code.

1. **Section 210.23 (A) 15- and 20- Ampere Branch Circuits.** Shall be amended to delete the reference to 15 ampere branch circuits. It shall also be amended to include the following sentence after said section:

“However, a circuit of twenty (20) amperes shall not serve more than ten openings.”

2. **Table 210.24 Summary of Branch-Circuit Requirements** shall be amended by placing an asterisk next to all 14 AWG conductors indicated in the table and by adding this footnote at the bottom of the table:

“ special note: Except for fixture wires in UL or other listed fixtures, no conductor of a size smaller than 12 AWG solid copper is allowed in branch circuit wiring.”

3. **Section 210.52 (B) Small Appliances** shall be amended by adding the following subsection:

“(4) **Separate Circuit Required.** A separate circuit is required for each refrigerator, deep freeze, dishwasher, disposal, trash compactor or any other load exceeding six (6) amperes.”

4. **Section 210.52 (C) Countertops And Work Surfaces** shall be amended to include after the words ‘...with 210.52 (C) (1) through (C) (5). the following sentence:

“However, a separate circuit is required for microwave ovens or any other counter top appliance with a load exceeding six (6) amperes.”

5. **Section 210.52 (F) Laundry Areas.** Shall be amended to include after the words ‘. . . for the installation of laundry equipment.’ the following sentence:

“However, a separate circuit is required for a washing machine or any other laundry appliance with a load exceeding six (6) amperes.”

6. **Section 210.52 One-Family and Two-Family Dwelling.** Shall be amended by adding the following subsection:

“(J) **Other Locations.** A separate circuit is required for each well pump or other outdoor loads exceeding six (6) amperes.”

7. **Article 230 Services.** Shall be amended by adding the following section:

“230.11 **Meter Mounting Heights.** Individual meters shall be mounted at a height not greater than 5'-6” or less than 4'-6" above finished grade, measured to the center line of the meter base. Meter packs shall be mounted with its horizontal centerline not greater than 4'-6” or less than 4'-0" above finished grade.”

“Exception: Meters and meter packs may be mounted at a different height by special permission of the Building Official or his designee when special conditions make the installation at the above heights impractical. “

8. **Section 230.70 General** shall be amended by adding the following subsection:

“(D) **Service Disconnecting Means for Commercial Buildings and Structures.** For commercial buildings and structures, the service disconnecting means shall be installed on the outside of the building or structure. A power operated disconnect switch (shunt trip) is permitted for service disconnects rated 1000 amps or more. All shunt trip disconnecting means shall be of the maintained contact type in an approved, lockable enclosure. All service disconnects shall be clearly marked in a permanent manner.

Exception: A power operated disconnect switch (shunt trip) may be allowed on service disconnects rated less than 1000 amps, if the applicant requests an exception from the Electrical Division and Building Official and satisfies the official that one of the following criteria has been met.

- (a) A power operated disconnect switch (shunt trip) may be used for a service disconnect rated less than 1000 amps when the building or structure is served by a single transformer and the transformer is not anticipated to be used for multiple services; or
- (b) A power operated disconnect switch (shunt trip) may be used for a service disconnect rated less than 1000 amps on an existing building or structure when space is not available to mount an external disconnect.

9. **Article 230 Services.** Shall be amended by adding the following section:

“230.70 (E) **Outside Disconnect Locking Device.** Factory installed key operated lock shall have an alternate locking mechanism approved by the local jurisdiction.”

10. **Section 230.71 (A) General** shall be amended to include the following sentence after said section:

“Any multi-tenant building larger than 5,000 square feet shall have a service disconnect.”

11. **Section 250.52 (A) (5) Rod and Pipe Electrodes** shall be amended by deleting the section in its entirety and replacing with the following:

“**Rod and Pipe Electrodes.** Rod and pipe electrodes shall not be less than eight (8) feet in length, not less than 5/8” in diameter and shall be copper coated.”

12. **Section 310.3 (B) Conductor Material** shall be amended by adding the following Exception:

“**Exception:** Aluminum and copper-clad aluminum is not allowed in branch circuits.”

13. **Section 320.12 Uses Not Permitted** shall be amended by deleting the section in its entirety and replacing with the following:

“**Uses Not Permitted.** Type AC cable shall not be permitted in commercial buildings as a wiring method.”

14. **Section 334.12 (A) Types NM and NMC.** Shall be amended to include the following subsection:

“(11) In educational occupancies as defined by the City’s “adopted building code.”

2021 International Building Code

Overview of Changes

The scope of the International Building Code (IBC) applies to the construction, alteration, movement, enlargement, replacement, repair, use and occupancy, location, maintenance, and removal or demolition of buildings and structures. The IBC establishes the minimum requirements to safeguard the public health, safety and general welfare through structural strength, proper exits, and sanitation. The IBC is also designed to provide safety for firefighters and emergency responders from fire and other hazards associated with the building's environment.

The 2021 IBC continues to establish minimum regulations for building systems using prescriptive and performance-related provisions. The code changes in this cycle result in technical consistency with the other *International Codes*.

New in the 2021 IBC Edition

- **404.5 Smoke control** in atriums. In the evaluation of whether a smoke control system is required for an atrium condition, vertical opening protection consisting of a combination of both the atrium and a shaft enclosure is now recognized.
- **406.2.4 Floor surfaces** in parking garages. The mandate for a sloping floor in the vehicle areas of parking garages has been reinstated in the IBC for those garages classified as Group S-2 occupancies.
- **407.6.1 Activation of automatic-closing doors.** In Group I-2 occupancies, the closing of automatic-closing doors on hold-open devices must now also occur upon activation of the fire alarm system or automatic sprinkler system.
- **411.5 Puzzle room exiting.** Puzzle rooms are now regulated in a manner consistent with traditional special amusement areas. Special means of egress requirements have been established for puzzle rooms.
- **414.2.3 Fire wall use for control areas.** The scoping limitations of a fire wall's use to create separate buildings have been expanded through a new allowance for the number of control areas permitted.
- **424 Play structures.** The interior finish materials of play structures are now regulated for flame spread purposes.
- **506.3.2 Allowable area frontage increase.** The methodology for establishing the permissible allowable area increase for frontage has been simplified by using a table.

Amendments

- Current Number of Amendments: 59
- Proposed Number of Amendments: 63

The newly proposed amendments are to align language in Chapter 9 of the IBC with amendments made to Chapter 9 of the 2021 International Fire Code (IFC) by the Fire Marshal. Chapter 9 of the IBC, Fire Protection and Life Safety Systems, derives its contents from Chapter 9 of the IFC.

2021 International Residential Code

Overview of Changes

The *International Residential Code* (IRC) is a standalone code that regulates the construction of detached one-and-two family dwellings and townhouses not more than three stories in height. There have been significant changes made to the IRC since the initial 2000 edition. This overview is intended to highlight the significant changes contained in the 2021 IRC.

New In the 2021 Edition

- **301.2(2) Ultimate Design Wind Speed** has been aligned with IBC and ASCE 7 maps. Structures in Brazos County should be designed for 115 mph.
- **302.5.1 Opening Protection** has been clarified to state that doors separating the garage and dwelling must be self-latching, as well as self-closing.
- **310.1.1 Operational constraints and opening control devices** clarifies that window opening control devices and fall prevention devices, complying with ASTM 2090, shall be allowed on emergency escape and rescue windows. The height of the mechanism is restricted to not more than 70" above the finished floor.
- **311.7 Stairways** clarifies that stairways not within or attached to a building, porch, or deck are not regulated by this section. *(Example: A stairway in the yard leading to a firepit area would not have to meet the riser height, tread depth, handrail, etc., requirements that a stairway inside of the house must meet.)*
- **314.3 Location** is modified with a new location requirement for smoke alarms to address areas with high ceilings adjacent to hallways serving bedrooms. *(In the hallway and in the room open to the hallway, where the ceiling height of a room open to a hallway serving bedrooms exceeds that of the hallway by 24" or more.)*
- **315.2.2 Alterations, repairs and additions** is modified to require that carbon monoxide alarms be installed when there are repairs to, or replacement of, fuel fired mechanical systems.
- **323.1.1 Sealed Documents.** This is a newly added section requiring storm shelter construction documents be prepared and sealed by a registered design professional. There is an exception to this for systems that are listed and labeled to indicate compliance with ICC-500.
- **326 Habitable Attics** is modified to limit the area of a habitable attic to not greater than one-third of the floor area of the story below. The allowable area is allowed to be increased to not greater than one-half of the floor area of the story below when located within a dwelling unit equipped with a fire sprinkler system.
- **609.4.1 Garage door labeling** has been added to require that all garage doors have a permanent label provided by the manufacturer. The label shall identify the door manufacturer, the model/series number, the wind pressure rating, the installation instruction drawing reference number, and the applicable test standard.
- **N1101.14 (R401.3) Certificate** is modified by requiring additional information related to the building thermal envelope, solar energy, Energy Rating Index, and the code edition be added to the energy certificate.
- **Table N1102.1.3 (R402.1.3) Minimum R-Values and Fenestration Requirements** is modified by increasing the Ceiling R-Value requirements from R38 to R49.

Overview of Changes and Local Amendments

- **N1104.3 (R404.3) Exterior lighting controls** have been added to require automatic shutoff of all permanently installed exterior lighting fixtures, where the total permanently installed exterior lighting power is greater than 30 watts.
- **G2415.5 Fittings in concealed locations.** Plugs and caps have been added to the list of threaded fittings approved for concealed locations.
- **G2447.2 Prohibited location** has been modified by deleting the exception allowing a commercial cooking appliance in a dwelling unit when the installation is designed by an engineer, the appliance must now also be listed as a domestic cooking appliance.
- **P2905.3 Hot water supply to fixtures** was added. The developed length of hot water piping, from the source of hot water to the fixtures that require hot water, shall not exceed 100'. Water heaters and recirculating system piping shall be considered sources of hot water.
- **E3601.8 Emergency disconnects (230.85)** is added to require all one- and two-family dwellings to have an emergency disconnect in a readily accessible outdoor location.
- **E3606.5 Surge protection (230.67)** is added requiring all services supplying one- and two-family dwelling units to be provided with a surge-protection device at the service panel. This section will also be applicable when the service equipment is replaced.
- **E3901.4.2 [210.52(C)(2)] Island and peninsular countertops and work surfaces** is modified to determine that the number of required receptacle outlets is based off the area of countertop surface. *(One receptacle outlet for the first 9 sq. ft., or fraction thereof. One receptacle outlet for each additional 18 sq. ft., or fraction thereof.)*

Amendments

- Current Number of Amendments: 37
- Proposed Number of Amendments: 37

2021 International Plumbing Code

Overview of Changes

The *2021 International Plumbing Code* (IPC) contains many changes that provide clarity of content and resolve common interpretation problems. The scope of the 2021 IPC continues to encompass the initial design of the plumbing system, the installation and construction of plumbing systems, and the maintenance of operating systems. All plumbing systems which are provided for utilization by and for the general safety and well-being of the occupants of a building are intended to be governed by the code. Plumbing installations associated with one-and-two family dwellings are regulated by the *International Residential Code*.

New in the 2021 Edition

- **202 Public or Public Utilization.** The definitions of “public” and “private” are simplified to make a clearer distinction as to which plumbing fixtures are intended to be configured for public use.
- **403.1.1 Fixture calculations.** The minimum fixture quantities for multiple-user toilet facilities designed to serve all genders must be calculated 100 percent based on total occupant load.
- **403.2 Separate facilities.** Designs for multiple-user facilities serving both sexes are possible.
- **407.2 Bathtub waste outlets and overflows.** Bathtubs are no longer required to have an overflow outlet.
- **606.1 Location of full-open valves.** Multiple tenant buildings must have a main water shutoff valve for each tenant space.
- **708.1.6 Cleanout equivalent.** Removable traps and removable fixtures with integral traps are acceptable as equivalent to cleanouts.

Amendments

- Current Number of Amendments: 19
- Proposed Number of Amendments: 19

2021 International Mechanical Code

Overview of Changes

The latest code change cycle resolved common interpretation problems and provided clarity of content to the 2021 *International Mechanical Code* (IMC). The code was also changed to reflect current design, construction and inspection methods. In order to keep the IMC up to date on new technology, requirements to assist designers, installers and inspectors as the demand for new energy sources increase.

The 2021 IMC is primarily intended to be a commercial code. Therefore, mechanical installations associated with one-and-two family dwellings are regulated by the *International Residential Code*.

New in the 2021 Edition

- **401.4 Intake opening location.** A new type of factory-built combination exhaust and intake air fitting is introduced that does not require separation between the two openings.
- **502.20 Manicure and pedicure stations.** The code now requires the continuous operation of nail salon exhaust systems during business hours.
- **504.4.1 Termination location.** New text was added to address the possibility of dryer exhaust air being reintroduced into a building interior.
- **506.3.7 Prevention of grease accumulation in grease ducts.** A new exception exempts factory-built grease ducts from the duct slope prescriptions of the code, relying instead on the slope requirements stated in the product listing and manufacturer's installation instructions.
- **602.2.1.8 Pipe and duct insulation within plenums.** This revision addresses the practice of using pipe insulation materials to protect piping that does not meet the required fire performance requirements.
- **1105.9 Means of egress.** Revised egress requirements for machinery rooms from the IBC were added to the IMC to prevent such requirements from being overlooked.

Amendments

- Current Number of Amendments: 8
- Proposed Number of Amendments: 8

2021 International Fuel Gas Code

Overview of Changes

The *2021 International Fuel Gas Code* (IFGC) consolidates all code changes from the fuel gas related installations into one convenient document. It is a compilation of fuel gas related text from the International Mechanical Code, the International Plumbing Code, and the National Fuel Gas Code. The code is designed to complement the family of International Codes, including the International Mechanical Code, the International Plumbing Code, the International Fire Code, and the International Building Code.

The IFGC regulates fuel gas distribution piping systems, gas-fired appliance installation and gas-fired appliance venting systems for structures other than one-and-two family dwellings. Fuel gas installations associated with one-and-two family dwellings are regulated by the International Residential Code.

New in the 2021 Edition

- **307.2 Fuel-burning appliances.** The termination of concealed condensate piping shall be marked to indicate whether the piping is connected to the primary drain or the secondary drain.
- **403.8.3 Threaded joint sealing.** the text was revised to require the use of thread joint sealants (aka, joint compounds, pipe dope, pipe tape). In the past, the code addressed pipe thread sealants but never required them to be used.
- **404.5 Fittings in concealed locations.** Plugs and caps have been added to the list of fittings approved for installation in concealed spaces.
- **618.6 Furnace plenums and air ducts.** New text clarifies the intent to prohibit pulling return air from the mechanical room.

Amendments

- Current Number of Amendments: 12
- Proposed Number of Amendments: 12

2021 International Energy Conservation Code

Overview of Changes

The International Energy Conservation Code (IECC) establishes regulations for the design of energy-efficient residential and commercial buildings and structures, as well as portions of factory and industrial occupancies designed for human comfort.

The State of Texas is divided into climate zones which are used in determining applicable requirements for residential and commercial energy efficiency. Insulation, window and skylight requirements for the thermal envelope for both residential and commercial buildings are based on the climate zones. The performance criteria for compliance with residential energy efficiency requirements using simulated energy analysis are also addressed.

New in the 2021 Edition

- **R402.1.3 Insulation Minimum R-Values.** Is modified by increasing the ceiling R-value from R38 to R49.
- **R402.4.6 Electrical and communication outlet boxes (air-sealed).** Is a newly added section that requires all electrical and communication outlet boxes installed in the building thermal envelope to be sealed, tested, and marked for compliance with NEMA OS 4.
- **R404.2 Interior lighting controls.** Is a newly added section requiring all permanently installed interior lighting fixtures to be controlled with a dimmer, an occupant sensor control, or another control that is installed or built into the fixture. Bathrooms, hallways, exterior lighting, and lighting designed for safety or security are exempt from this section.
- **R404.3 Exterior lighting controls.** Is a newly added section requiring automatic shutoff of all permanently installed exterior lighting fixtures, where the total permanently installed exterior lighting power is greater than 30 watts.

Amendments

- Current Number of Amendments: 9
- Proposed Number of Amendments: 11

Newly Proposed IECC Amendments

- **R402.4.6 Electrical and communication outlet boxes (air-sealed boxes).** Is amended by adding the following to the end of the section:

“On-site sealing of boxes is acceptable, when using approved sealant materials”

This is a newly added section that requires all electrical and communication outlet boxes installed in the building thermal envelope to be sealed, tested, and marked for compliance with NEMA OS 4.

Reason: Primarily due to material availability constraints and concerns. Unlike many code changes, this is not a requirement that increases the use of a material or product that is already being used in our area. This section is calling for a completely new product to be used by requiring outlet boxes to have self-sealing cable grommets, as well as flanges and gaskets against the back of the drywall. Our proposed amendment would allow contractors to field apply approved materials to the outlet boxes that are currently being used.

Overview of Changes and Local Amendments

- **R404.2 Interior Lighting Controls.** Is amended by deleting this section in its entirety. This newly added section requires all permanently installed lighting fixtures, in one- and two-family dwellings, to be controlled with a dimmer switch, an occupant sensor control, or another control that is installed or built into the fixture. The code provides four exceptions to this requirement, bathrooms, hallways, exterior lighting fixtures, and lighting designed for safety or security.

Reason: We are proposing to delete this requirement due to the broad scope of the “safety or security” exception. It can easily be argued that most, if not all, interior lighting is for safety or security. Unlike the location requirements of smoke alarms, tempered glass, etc, which are uniform across sites, this designation would be able to be applied in different areas on each individual site.

Note: The North Central Texas Council of Governments recommended amending both sections.

2021 International Property Maintenance Code

Overview of Changes

The 2021 *International Property Maintenance Code* (IPMC) continues to emphasize protection of health, safety and welfare while providing code requirements that are enforceable in the diverse types of buildings that exist. Providing a safe means of egress, preventing hazardous structural conditions and reducing health hazards by providing a clean, sanitary environment are the key components of the code.

The IPMC applies to all existing structures, including residential and nonresidential property and addresses the following areas:

- Administration, enforcement and penalties associated with the code
- Determination and assignment of responsibility for code compliance among the owner, operator and occupant of a property
- Minimum property maintenance conditions for existing structures and premises in regard to structural safety, sanitation, health and comfort
- Regulating the use of existing dwelling through the establishment of occupancy limitations
- Maintenance of means of egress and fire safety, with appropriate references to the *International Fire Code*

Amendments

- Current Number of Amendments: 13
- Proposed Number of Amendments: 13

2020 National Electrical Code

Overview of Changes

The National Electrical Code (NEC) is published by the National Fire Protection Association and updated every three years by issuing a new edition. The City of College Station is currently operating under the 2017 Edition of the NEC.

The 2020 NEC contains several changes, most of which are designed to provide clarity for existing code provisions. However, there are some new provisions and changes included in the 2020 NEC.

New in the 2020 Edition

- **210.8(A) Dwelling Units** now requires ground-fault circuit-interrupter (GFCI) protection for up to 250-volt receptacles in the areas previously identified as requiring GFCI protection for 125-volt receptacles.
- **210.8(A)(11) Indoor damp and wet locations.** GFCI protection is now required for indoor damp and wet locations not included in the other specific locations requiring protection.
- **210.52(C)(2) Island and peninsular countertops and work surfaces** is modified to determine that the number of required receptacle outlets is based off the area of countertop surface. *(One receptacle outlet for the first 9 sq. ft., or fraction thereof. One receptacle outlet for each additional 18 sq. ft., or fraction thereof.)*
- **230.67 Surge protection** is added requiring all services supplying one- and two-family dwelling units to be provided with a surge-protection device at the service panel. This section will also be applicable when the service equipment is replaced.
- **230.85 Emergency disconnects** is added to require all one- and two-family dwellings to have an emergency disconnect in a readily accessible outdoor location.

Amendments

- Current Number of Amendments: 14
- Proposed Number of Amendments: 14

April 28, 2022
Item No. 9.4.
2021 International Fire Codes & NFPA 101 Life Safety code

Sponsor: Eric Dotson, Fire Marshal

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 16, "Fire Prevention and Protection," Article III, "Fire Code," Sections 16-51 and 16-52 and Article IV, "Life Safety Code", Section 16-78.

Relationship to Strategic Goals:

Core Services and Infrastructure: The city will plan for, maintain, and invest in the infrastructure, facilities, services, personnel and equipment needed to meet projected needs and opportunities.

Recommendation(s): Staff recommends approval of the 2021 IFC's and the 2021 NFPA Life Safety Codes and associated amendments.

Summary: To ensure the City of College Station keeps up with building trends in materials and techniques and the overall safety of our citizens, visitors, and firefighters. The newest codes and amendments are presented for adoption by the City Council.

Budget & Financial Summary: N/A

Attachments:

1. Chapter 16 Fire Code and Life Safety Code Ord Amend 4-12-22

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 16, "FIRE PREVENTION AND PROTECTION," ARTICLE III, "FIRE CODE," SECTIONS 16-51 AND 16-52 AND ARTICLE IV, "LIFE SAFETY CODE", SECTION 16-78, OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO FIRE CODES AND LIFE SAFETY CODES; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1:** That Chapter 16, "Fire Prevention and Protection," Article III, "Fire Code," Sections 16-51 and 16-52 and Article IV, "Life Safety Code", Section 16-78 of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit "A"** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 16, “Fire Prevention and Protection,” Article III, “Fire Code,” Sections 16-51 and 16-52 and Article IV, “Life Safety Code”, Section 16-78 of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

Sec. 16-51. International Fire Code adopted.

The 2021 Edition of the International Fire Code, including Appendix Chapters B through I, all as published by the International Code Council, is hereby adopted to the same extent as though such Code were copied at length herein, subject, however, to the omissions, additions, supplements, and amendments contained in this article.

Sec. 16-52. Amendments to the International Fire Code.

The International Fire Code, as referred to in Section 16-51, is hereby amended as follows:

- (1) Section 101 (General) is amended by adding Section 101.6 to read as follows:

Section 101.6 (Emergency Vehicle Egress). No part of any commercial structure will be located outside the limits of a 150-foot arc from a point where fire apparatus can operate. Fire apparatus will operate on surfaces designed for such and may utilize public right-of-way, approved fire lanes and/or drive access ways to meet this 150-foot limit but in no case shall the truck travel route be measured across grass, wooded, or landscaped areas, over curbs, through fences, through ditches or across paved areas which are not designed and maintained as fire lanes.

- (2) Section 105 (Permits) is amended by adding Section 105.1.1.1 to read as follows:

Section 105.1.1.1 (Registration of Contractors). It shall be the duty of every individual who makes contracts to construct, enlarge, alter, repair, move, or demolish any life safety systems to include, but not be limited to, fire sprinkler systems, fire alarm systems, commercial cooking extinguishing systems, underground tanks, underground piping and underground fire supply lines of which are regulated by this code, or cause such work to be done, and every individual making such contracts and subletting the same or any part thereof, to first register with the Building Official, giving full name, residence, name and place of business, and in case of removal from one place to another to have made corresponding change to the Building Official.

- (3) Section 107.3 (Permit valuations) is amended by deleting this section in its entirety

- (4) Section 107.6 (Refunds) is amended by deleting the existing text in its entirety and replacing it with the following: "The City Manager or designee is authorized to establish a refund policy."

(5) Section 109.6 is amended by adding after the Fire Code Official "or any member of the Fire Department designated by the Fire Code Official, the Chief of Police, or any member of the Police Department designated by the Chief of Police."

(6) Section 109.6.1 is added.

109.6.1 (Certificate of Occupancy Temporary Suspension). The Fire Code Official or any member of the Fire Department designated by the Fire Code Official, the Chief of Police, or any member of the Police Department designated by the Chief of Police is authorized, in writing, to immediately suspend a Certificate of Occupancy for a twenty-four (24) hour period where it is determined that the building or structure or portion thereof is Overcrowded, violating any life safety regulation or ordinance or violating any other ordinance adopted by this code. Within one (1) business day after the suspension, a person may submit a written appeal to the City Manager appealing the Certificate of Occupancy Temporary Suspension. The City Manager's decision is final.

(7) Section 111 is amended by deleting the section in its entirety.

(8) Section 112.4 (Violation Penalties) is amended by deleting the section in its entirety and replacing with the following:

Section 112.4 (Violation Penalties). Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the Fire Official, or of a permit or certificate used under provisions of this code, shall be punished as provided in with Section 1-7.

(9) Section 202 is amended by adding [BG] AMBULATORY CARE FACILITY. Buildings or portions thereof used to provide medical, surgical, psychiatric, nursing, or similar care on a less than 24-hour basis to persons who are rendered incapable of self-preservation by the services provided or staff has accepted responsibility for care recipients already incapable. This group may include but not be limited to the following:

- Dialysis centers

- Procedures involving sedation

- Sedation dentistry

- Surgery centers

- Colonic centers

- Psychiatric centers

(10) Section 202 is amended by adding [B] ATRIUM. An opening connecting three or more stories *{remaining text unchanged}*

(11) Section 202 (Definitions) is amended by adding "Porte Cocheres ":

1. A passageway through a building or screen wall designed to let vehicles pass from the street to an interior courtyard.
2. A roofed structure extending from the entrance of a building over an adjacent driveway and sheltering those getting in or out of vehicles"

(12) Section 202 (Definitions) is amended by adding "tutorial services" under the definition of "Occupancy Classification Assembly Group A-3"

(13) Section 202 (Definitions) is amended by deleting the townhouse definition and replacing it with the following: "Townhouse. A single-family dwelling unit constructed in a group of attached units separated by property lines in which each extend from foundation to roof and with open space on at least two sides."

(14) Section 307.4.2 (Recreational Fires) is amended by adding the following: "This code is to include manufactured and non-manufactured fire pits/boxes."

(15) Section 307.4 (Location) is amended by adding Section 307.4.2.1 to read as follows:

Section 307.4.2.1 Solid fuels are strictly prohibited for recreational fires.

Exception: One- and two-family dwellings.

(16) Section 307.4 (Location) is amended by adding the following:

Section 307.4.4 (Permanent outdoor fire pits or fire feature devices). Permanently installed outdoor fire pits and similar fire feature devices, manufactured and non-manufactured, shall not be installed within 20 feet of a structure or combustible materials. Exceptions:

1. Permanent outdoor fire pits or fire feature devices listed less than 100,000 BTU/hr shall not be installed within 10 feet of combustible materials (vertically and horizontally).
2. Permanently installed outdoor fireplaces constructed in accordance with the International Building Code.

307.4.4.1 (Solid fuels). All solid fuels are strictly prohibited for fire pits and fire feature devices.

1. Exception: One- and two- family dwellings.

307.4.4.2 (Requirements for all fire pits or fire feature devices). Comply with all of the following requirements:

1. Flame shall be fully enclosed by an approved permanent means to prevent debris from entering the fire and to prevent occupants from becoming burned.

2. Provide an emergency fuel gas supply line shut-off device at least 20 feet from the fire pit device location but not greater than 50 feet. Provide emergency fuel gas shut-off device signage clearly visible from fire pit or fire feature device locations.
3. Floor surface shall be a solid continuous non-combustible material without any gaps and all joints sealed.
4. Timer device on fuel gas line set to automatically shut-off gas supply and extinguishes flame at a set time agreed upon by the fire code official.

(17) Section 308.1.4 (Open-Flamed Cooking Devices) is amended by deleting the section including exceptions in its entirety and replacing with the following:

Section 308.1.4 (Open-Flame Cooking Devices). Charcoal burners, liquefied-petroleum-gas fueled cooking devices, and other open-flamed cooking devices shall not be stored or operated on combustible balconies or within ten feet (3048 mm) of combustible construction.

Exception: One- and two-family dwellings.

(18) Section 308.1.6.3 (Sky lanterns) is amended to read as follows: A person shall not release or cause to be released an unmanned free-floating device containing an open flame or other heat source, such as but not limited to a sky lantern.

(19) Section 311.5 (Placards) is amended by adding: ~~Any~~ The fire code official is authorized to require marking of any vacant or abandoned buildings or structures determined to be unsafe pursuant to Section 114 of this code relating to structural or interior hazards, ~~shall be marked~~ as required by Section 311.5.1 through 311.5.5.

(20) Section 319.10.3 (Fuel gas system) is amended by adding certified plumber as an approved inspection agency.

(21) Section 501.4 (Timing of Installation) is amended by adding the following text at the end of the section: "There shall be no combustible, job trailers, flammable or ignitable materials placed on a site, lot or subdivision where water lines, fire hydrants and/or all weather access roads capable of supporting emergency vehicles with an imposed load of at least 84,000 pounds as required by this code or other adopted codes or ordinances are completed, accepted and in service."

(22) Section 503.2.1 (Dimensions) is amended by replacing "13 feet 6 inches" with "14 feet."

(23) Section 503.2.2 (Authority). Is amended by adding: The *fire code official* shall have the authority to require an increase in the minimum access widths and vertical clearances where they are inadequate for fire or rescue operations or where necessary to meet the public safety objectives of the jurisdiction.

(24) Section 503.2.3 (Surface). Fire apparatus access roads shall be designed and maintained to support imposed loads of 85,000 Lbs. for fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.

(25) Section 503.2.5 (Dead Ends) is amended by replacing "150 feet" with "100 feet."

(26) Section 503.3 (Marking) is amended by deleting the section in its entirety and replacing with the following:

Section 503.3 (Marking). The owner, manager, or person in charge of any building or property to which fire lanes have been approved or required by engineering shall mark and maintain said fire lanes in the following manner:

1. All curbs and curb ends shall be painted **RED** with four-inch white lettering stating "FIRE LANE - NO PARKING - TOW AWAY ZONE." Wording may not be spaced more than 15 feet apart.
2. In areas where fire lanes are required but no continuous curb is available, the following method shall be used, in conjunction with the curb markings, to indicate that the fire lane is continuous:
 - a. From the point the fire lane begins to the point the fire lane ends, including behind all parking spaces which adjoin a fire lane, shall be marked with one continuous eight-inch red stripe painted on the drive surface behind the parking spaces. All curbing adjoining a fire lane must be painted red. Red stripes and curbs will contain the wording "FIRE LANE - NO PARKING-TOW AWAY ZONE," painted in four-inch white letters. ("Figure A" in Ordinance No. 1630 illustrates striping on drive surface behind parking spaces.). Also, a sign 12 inches wide and 18 inches in height shall be mounted in a conspicuous location at each entrance to the property. (See Diagram No. 1 for specifications on colors and lettering.)
3. The use of the color **RED** to mark or stripe any curb or parking area (other than fire lanes) is prohibited within the City.

(27) Section 503 is amended by adding Sections 503.3.1 (Fire Lane Signs; Tow-Away Zone Signs), 503.3.2 (Destruction of Fire Lane and Tow-Away Signs), 503.3.3 (Abandonment or Closing) and 503.3.4 (Authority Under Emergency Conditions) to read as follows:

Section 503.3.1 (Fire Lane Signs; Tow-Away Zone Signs). The owner, manager, or person in charge of any building to which fire lanes have been approved by the Planning and Development Services Department shall post and maintain appropriate signs in conspicuous places along such fire lanes stating "No Parking - Fire Lane." Such signs shall be 12 inches wide and 18 inches high, with a companion sign 12 inches wide and six inches high stating "Tow-Away Zone."

Any "No Parking - Fire Lane" or "Tow-Away Zone" sign shall be painted on a white background with symbols, letters and border in red. Drawings and samples of such signs may be obtained from the Fire Department of the City. Standards for mounting, including, but not limited to, the height above the grade at which such signs are to be mounted, shall be as adopted by the Fire Official of the City.

Section 503.3.2 (Destruction of Fire Lane or Tow-Away Signs). It is hereby unlawful for any person without lawful authority to attempt or in fact alter, destroy, deface, injure, knock down, or remove any sign designating a fire lane or tow-away zone erected under the terms of this code, or to deface a curb marking in any way.

Section 503.3.3 (Abandonment or Closing). No owner, manager, or person in charge of any premises served by a required fire lane shall abandon or close such fire lane without written permission of the Fire Official of the City.

Section 503.3.4 (Authority under Emergency Conditions). The Fire Marshal is hereby authorized to establish fire lanes during any fire, and to exclude all persons other than those authorized to assist in extinguishing the fire or the owner or occupants of the burning property from within such lanes.

(28) Section 503.4 (Obstruction of Fire Apparatus Access Roads) is amended by deleting the section in its entirety and replacing with the following:

Section 503.4 (Obstruction of Fire Apparatus Access Roads). No person shall park, place, allow, permit, or cause to be parked or placed, any motor vehicle, trailer, boat, or similar obstruction within or upon an area designated as a fire lane and marked by an appropriate sign or curb marking.

(29) Section 503 (Fire Apparatus Access Roads) is amended by adding Sections 503.4.2 (Obstructing Fire Lanes) and 503.4.3 (Enforcement; Issuance of Citations; Impoundment of Obstructions) to read as follows:

Section 503.4.2 (Obstructing Fire Lanes). Any motor vehicle, trailer, boat, or similar obstruction found parked within an area designated as a fire lane as required by this section is hereby declared a nuisance per se and any such motor vehicle, trailer, boat, or similar obstruction parked or unoccupied in such a manner as to obstruct in whole or in part any such fire lane shall be prima facie evidence that the registered owner unlawfully parked, placed, or permitted to be parked or placed such obstruction within a fire lane.

The records of the State Department of Transportation or the County Highway License Department showing the name of the person to whom the State highway license or boat or trailer license is issued shall constitute prima facie evidence of ownership by the named persons.

Section 503.4.3 (Enforcement; Issuance of Citations; Impoundment of Obstructions). The Fire Official or any member of the Fire Department designated by the Fire Official, the Chief of Police, or any member of the Police Department designated by the Chief of Police are hereby authorized to issue parking citations for any motor vehicle, trailer, boat, or similar obstruction found parked

or unattended in or upon a designated fire lane and may have such obstruction removed by towing it away. Such vehicle or obstruction may be redeemed by payment of the towage and storage charges at the owner's expense.

No parking citations shall be voided, nor shall the violator be relieved of any penalty assessed by a Judge of the Municipal Court for any provision by the redemption of the obstruction from the storage facility.

(30) Section 503 (Fire apparatus access roads) is amended by adding the following;

Section 503.7 (Fire access locks) Any fire apparatus access requiring a lock shall install a Knox Lock. Electric gates must install a Knox Key switch with a manual override. An emergency access secondary gate must install a Knox pad lock.

(31) Section 505.1 (Address Identification) is amended by deleting the section in its entirety and replacing with the following:

Section 505.1 (Address Identification). An official building number placed pursuant to this section must be at least four inches high, and have at least a one-half inch stroke in the main body of the number, and be composed of a durable material and of a color which provides a contrast to the background. The number shall be mounted a minimum of 36 inches and a maximum of 30 feet in height measured from ground level. Buildings located more than 50 feet from the curb of a street shall have numbers at least five inches in height. For the purpose of this section, durable materials for use in numbering shall include, but not be limited to, wood, plastic, metal, weather-resistant paint, weather-resistant vinyl, or weather-resistant numbers designed for outside use on a glass surface. For single-family residences, the requirement of this section may be met by providing two-inch-high numbers on both sides of a U.S. mailbox located near the curb in front of the house, or a freestanding structure with numbers at least four inches in height.

(32) Section 505 (Premises Identification) is amended by adding Sections 505.1.1 (Building Complex Identification), 505.1.2 (Rear Access Identification), 505.1.3 (Alley Premises Identification) and 505.1.4 (Building Complex Diagrams) to read as follows:

Section 505.1.1 (Building Complex Identification). A building complex composed of multiple structures shall have an official suite/unit number assigned to each building as well as a street address number. If there is sufficient street frontage, each unit or building may be assigned a separate official street address number. The official street address number of each structure as designated by the Building Official must be prominently posted on the building so that it is visible from the nearest public street. Each number designated by the Building Official for each individual suite/unit must be conspicuously posted on the suite/unit.

Section 505.1.2 (Rear Access Identification). Commercial buildings with rear access shall also display the business name and designated street address and suite/unit number on the rear access door.

Section 505.1.3 (Alley Premises Identification). Residential structures that provide for rear vehicular access from a dedicated public alley shall conspicuously post the designated numbers that comply with the size requirements above so that it is visible to the alley.

Section 505.1.4 (Building Complex Diagrams). The owner of a building complex which contains an enclosed shopping mall shall submit to the Fire Official four copies of diagrams acceptable to the Fire Official of the entire complex, indicating the location and number of each business. When a change in a business name or location is made, the owner or manager of the structure shall so advise the Fire Official in writing of the change.

(33) Section 505.2 (Street or Road Signs) is amended by adding the following:

Section 505.2.1. (Street and road signs) shall only be installed on streets or roadways that are approved through the platting process.

(34) Section 507.5.1 (Where Required) is amended by deleting the section in its entirety and replacing with the following:

Section 507.5.1 (Where Required). Public fire hydrants of the City standard design shall be installed as part of the water distribution system for subdivisions and/or site developments. The Planning and Development Services Department shall approve the appropriate hydrant locations accessible to firefighting apparatus and within the maximum distances described in the following sections.

(35) Section 507.5.2 (Inspection, Testing and Maintenance) is amended by deleting the section in its entirety and replacing with the following:

Section 507.5.2 (Inspection, Testing and Maintenance). Public fire hydrants shall be installed in districts zoned for single-family and duplex at such locations that no part of any structure shall be more than 500 feet from a fire hydrant as measured along the right-of-way of a public street as the fire hose is laid off the fire truck.

(36) Section 507.5.3 (Private Fire Service Mains and Water Tanks) is amended by deleting the section in its entirety and replacing with the following:

Section 507.5.3 (Private Fire Service Mains and Water Tanks). Private fire hydrants shall be installed in districts other than districts zoned single-family and duplex at such locations that no part of any structure, aboveground tanks or fueling station, shall be more than 300 feet from a fire hydrant as measured along the right-of-way of a public street or along an approved fire lane as the fire hose is laid off the fire truck.

(37) Section 508.1 (Location and access) is amended by adding the following:

Section 508.1.1.1 (Fire Command Center Access) Access to the Fire Command Center must be on the exterior of the structure unless authorized by the Fire Code Official or designee.

(38) Section 509.2 (Equipment Access) is amended by adding the following:

Section 509.2.1 (Fire Sprinkler Riser Access) Access to the fire sprinkler riser must be on the exterior of the structure unless authorized by the Fire Code Official or designee.

(39) Table 803.3 (Interior Wall and Ceiling Finish Requirements by Occupancy) is amended by deleting the existing text in footnote "d" and replacing it with the following:

"Class A interior finish material shall be required in all areas of all assembly occupancies, whether a fire sprinkler system is present or not, except as provided for in notes e and f below."

(40) Section 901.4.7.2 (Marking on access doors). Is amended by replacing 2 inches with 4 inches.

(41) Section 901.6 is amended by adding section 901.6.4 (False alarms and nuisance alarms) False alarms and nuisance alarms shall not be given, signaled, or transmitted or caused or permitted to be given, signaled, or transmitted in any manner.

(42) Section 901.7 (Systems out of service) is amended by adding: Where a required *fire protection system* is out of service ***or in the event of an excessive number of activations***, the fire department and the *fire code official* shall be notified immediately and, where required by the *fire code official*, the building shall either be evacuated or an *approved fire watch* shall be provided for all occupants left unprotected by the shut down until the *fire protection system* has been returned to service. ...

(43) Section 903.1 (General) is amended by adding the following text at the end of said section:

"For the purpose of this section, the term "fire area" shall be replaced with "building area."

(44) Section 903.2 (Where Required) is amended by adding the following text at the end of the section:

In addition to the requirements of this section, an automatic sprinkler system shall be provided throughout all new buildings and structures as follows:

1. Where the total building area exceeds 12,000 square feet in area.
2. Where the height exceeds two stories, regardless of area.

(45) Section 903.2.1.6 (Assembly Occupancies on Roofs) is amended by deleting the exception in its entirety.

(46) Section 903.2.3 (Group E) is amended by deleting the exception in its entirety.

(47) Section 903.2.4 (Group F-1) is amended by deleting items "2" and "3."

Section 903.2.4 (Group F-1 distilled spirits) is amended to add: An automatic sprinkler system shall be provided throughout a Group F-1 fire area used for the manufacture of distilled spirits **involving more than 120 gallons of distilled spirits (>16% alcohol) in the fire area at any one time.**

Section 903.2.9.3 (Group S-1 distilled spirits or wine) is amended to add: An automatic sprinkler system shall be provided throughout a Group F-1 fire area used for the manufacture of distilled spirits **involving more than 120 gallons of distilled spirits (>16% alcohol) in the fire area at any one time.**

(48) Section 903.2.7 (Group M) No. 2 is amended by replacing "three stories above grade" with "two stories in height" and by deleting No. 3 in its entirety.

(49) Section 903.2.8 (Group R) is amended by deleting the section in its entirety.

(50) Section 903.2.9 (Group S-1) is amended by replacing "three stories above grade" with "two stories above grade" in item "2" and by replacing "24,000 square feet" with "12,000 square feet" in item "3." Section 903.2.9.3 is amended as follows:

903.2.9.3 Group S-1 (distilled spirits or wine). An automatic sprinkler system shall be provided throughout a Group S-1 fire area used for the bulk storage of distilled spirits or wine **involving more than 120 gallons of distilled spirits or wine (>16% alcohol) in the fire area at any one time.**

(51) Section 903.2.10 (Group S-2 Enclosed Parking Garage) is amended by deleting the exception in its entirety.

(52) Section 903.2.13 (Porte-cocheres). All porte-cocheres shall be protected with fire sprinklers.

Exception: Porte-cocheres of non-combustible construction or a distance of 10 foot or greater.

(53) Section 903.3.1.1.1 (Exempt locations) is amended by deleting item number 4

(54) Section 903.3.1.2.2 (Corridors and balconies) is amended as follows:

903.3.1.2.2 (Corridors and balconies in the means of egress). Sprinkler protection shall be provided in all corridors and for all balconies. in the means of egress where any of the following conditions apply: *{Delete the rest of this section.}*

(55) Section 903.3.1.2.3 (Attics) is amended by deleting sections 3.4 and 4.5

(56) Section 903.4 (Sprinkler systems supervision and alarms) is amended by adding the following:

Exceptions:

8. Valves located outside buildings or in a vault that are sealed or locked in the open position.

(57) Section 904.3.5 is amended by deleting the section and replacing it with:

904.3.5 (Monitoring) All automatic fire extinguishing system shall be monitored with a system in accordance with NFPA 72.

(58) Section 905.1, (General), is amended by adding Section 905.1.1, Safety factor, as follows:

905.1.1 (Safety factor). All standpipe systems with the exception of manual standpipes shall be designed with a minimum safety factor of 5 PSI or 10% of required pressure (whichever is greater) taken at the source for the hydraulically most demanding system and/or outlet.

(59) Section 905.4, (Location of Class I standpipe hose connections), is amended as follows with all other code text to remain as written:

905.4 (Location of Class I standpipe hose connections). Class I standpipe hose connections shall be provided in all of the following locations:

1. In every required interior exit stairway, a hose connection shall be provided for each story above and below grade plane. Hose connections shall be located at [the main] an intermediate [floor] landing between stories unless otherwise approved by the fire code official.

(60) Section 906.1 (Where required) is amended by deleting exception 1 and 2 all others remain the same.

(61) Section 907.2.1 (Group A) is amended by adding the following section:

907.2.1.3 Group A-2. An automatic alarm system shall be provided for fire areas containing Group A-2 occupancies that have an occupant load of 100 or more.

(62) Section 907.2.7.1, (Occupant notification), is repealed in its entirety.

(63) Section 907.2.8.2, (Automatic smoke detection system), is hereby amended to read as follows:

907.2.8.2 (Automatic smoke detection system). An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.5 shall be installed throughout all interior corridors serving sleeping units. The automatic smoke detection system requirement is met only by the installation of smoke or beam detectors whenever possible. If environmental conditions do not allow the installation of smoke detectors, fire alarm heat detectors may be used on a limited basis when approved by the fire code official.

Exception: An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

(64) Section, 907.2.13.2(Fire department communication system), is hereby deleted in its entirety.

(65) Section, 907.2.13.1.2 (Duct smoke detection), is amended to read as follows:

907.2.13.1.2 (Duct smoke detection). Duct smoke detectors complying with Section 907.3.1 shall be located in accordance with the NFPA 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems or as follows:

1. In the main return air and exhaust air plenum of each air-conditioning system having a capacity greater than 2,000 cubic feet per minute (cfm) (0.94 m³/s). Such detectors shall be located in a serviceable area downstream of the last duct inlet.
2. At each connection to a vertical duct or riser serving two or more stories from a return air duct or plenum of an air-conditioning system. In Group R-1 and R-2 occupancies, a smoke detector is allowed to be used in each return air riser carrying not more than 5,000 cfm (2.4 m³/s) and serving not more than 10 air-inlet openings.

(66) Section 907.2, (Where required) - new buildings and structures, is amended by adding Section 907.2.24, Fire alarm systems for property protection, to read as follows:

907.2.24 (Fire alarm systems for property protection). Fire alarm systems dedicated solely to the protection of property are permitted to be installed in facilities where a fire alarm system is not required by other sections of this code or the International Building Code provided the following conditions are met:

1. Any and all automatic detection is installed, located and maintained in accordance with the requirements of NFPA 72 and a documentation cabinet as required by NFPA 72 is provided and installed.
2. The installed system is monitored by a supervising station which provides remote and central station service.
3. One manual means of activation is installed in an approved location
4. Where the fire alarm system control unit is located in an area that is not readily accessible to response personnel, a remote fire alarm system annunciator panel is installed.

(67) Section 907.2, (Where Required) - is amended by adding Section 907.2.25, Fire alarm systems for property protection, to read as follows:

907.2.25 (Group R-4) Fire alarm systems and smoke alarms shall be installed in Group R-4 occupancies as required in Sections 907.2.10.1 through 907.2.10.3. 907.2.10.1 Manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group R-4 occupancies.

Exceptions:

1. A manual fire alarm system is not required in buildings not more than two stories in height where all individual sleeping units and contiguous attic and crawl spaces to those units are separated from each other and public or common areas by not less than 1-hour fire partitions and each individual sleeping unit has an exit directly to a public way, egress court or yard.
2. Manual fire alarm boxes are not required throughout the building where all of the following conditions are met:
 - 2.1. The building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
 - 2.2. The notification appliances will activate upon sprinkler water flow.
 - 2.3. Not fewer than one manual fire alarm box is installed at an approved location.
3. Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits where located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that the distances of travel required in Section 907.4.2.1 are not exceeded.

907.2.25.1 Automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.5 shall be installed in corridors, waiting areas open to corridors and habitable spaces other than sleeping units and kitchens.

Exceptions:

1. Smoke detection in habitable spaces is not required where the facility is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.
2. An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

907.2.25.2 Smoke alarms. Single- and multiple-station smoke alarms shall be installed in accordance with Section 907.2.11.

(68) Section 907.3.1, (Duct smoke detectors), is amended to read as follows:

907.3.1 (Duct smoke detectors). Smoke detectors installed in ducts shall be listed for the air velocity, temperature and humidity present in the duct. Duct smoke detectors shall be connected to the building's fire alarm control unit where a fire alarm system is required by Section 907.2. Activation of a duct smoke detector shall initiate a visible and audible supervisory signal at a Central monitoring station and shall perform the intended fire safety function in accordance with this code, NFPA 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems and the International Mechanical Code. In facilities that are required to be monitored by a supervising station, duct smoke detectors shall report only as a supervisory signal and not as a fire alarm. They shall not be used as a substitute for required open area detection. 2021 International Building-Related Codes

Exceptions:

1. In occupancies not required to be equipped with a fire alarm system, actuation of a smoke detector shall activate a visible and an audible signal in an approved location. Smoke detector trouble conditions shall activate a visible or audible signal in an approved location and shall be identified as air duct detector trouble.
2. For fire alarm systems which cannot be programmed for supervisory signals, duct detectors shall be allowed to activate the alarm signal.

(69) Section 907.3., (Fire safety functions), is amended by adding 907.3.5, Fire alarm systems - emergency control, as follows:

907.3.5 (Fire alarm systems - emergency control). At a minimum, the following functions, where provided, shall be activated by the fire alarm system:

1. Elevator capture and control in accordance with ASME/ANSI A17.1b, Safety Code for Elevators and Escalators.
2. Release of automatic door closures and hold open devices.
3. Stairwell and/or elevator shaft pressurization.
4. Smoke management and/or smoke control systems.
5. Initiation of automatic fire extinguishing equipment.
6. Emergency lighting control.
7. Unlocking of doors.
8. Emergency shutoff of gas and fuel supplies that may be hazardous provided the continuation of service is not essential to the preservation of life.

9. Emergency shutoff of audio systems for sound reinforcement or entertainment (i.e. music systems, systems for announcement and broadcast which are separate from public address systems) provided that such systems are not used to issue emergency instructions.
10. Emergency shutoff of systems used for the creation of displays or special effects (i.e. lighting effects, laser light shows, projection equipment).

(70) Section 907.4.2.1, (Location), is amended to add the Exception to read as follows:

907.4.2.1 (Location). Manual fire alarm boxes shall be located not more than 5 feet (1524 mm) from the entrance to each exit. In buildings not protected by an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2, additional manual fire alarm boxes shall be located so that the distance of travel to the nearest box does not exceed 200 feet (60 960 mm).

Exception: Where construction of the building prohibits the proper installation of a pull station (e.g. glass walls, interior brick or rock walls), a pull station shall be allowed to be located in the normal path of egress, where approved by the Fire Marshal or ~~his/her~~ designee.

(71) Section 907.5.1, (Presignal feature), is amended to read as follows:

907.5.1.1 (Presignal feature and positive alarm sequences). A presignal feature or Positive Alarm Sequence as defined in NFPA 72 shall not be installed unless approved by the fire code official. Request to use a presignal feature or a Positive Alarm Sequence must be submitted in writing to the Fire Marshal and approval granted before installation. Where a presignal feature or Positive Alarm Sequence is provided, a signal shall be annunciated at a constantly attended location approved by the fire code official, so that occupant notification can be activated in 2021 International Building-Related Codes the event of fire or other emergencies. When approved by the fire code official, the presignal feature or Positive Alarm Sequence shall be implemented in accordance with the requirements of NFPA 72.

(72) Section 907.5.2.1, (Audible alarms), is amended by adding Section 907.5.2.1.4, Testing of audible alarms in occupancies other than Group R, and Section 907.5.2.1.5, Testing of audible alarms in Group R occupancies, as follows:

907.5.2.1.4 (Testing of audible alarms in occupancies other than Group R). Audibility levels for all occupancies other than Group R shall be in accordance with the public mode requirements of NFPA 72, and shall be tested utilizing the following criteria:

1. A UL listed sound pressure level meter, which has been calibrated within the last calendar year, and supplied by the fire alarm system installing contractor, shall be utilized to obtain readings. The sound pressure level meter will be held five feet above floor, pointed in the direction of the audible device.

2. All doors within the occupancy, including the bathroom and balcony doors shall be in the closed position.
3. Measurements shall be taken in the most remote areas of the occupancy first, including bathrooms and balconies.
4. Initial measurements to confirm the average ambient sound level in each area shall be taken.
5. The fire alarm system shall be activated and measurements in the tested areas shall be retaken and compared with the requirements.

907.5.2.1.5 (Testing of audible alarms in Group R occupancies). Audibility levels for all Group R occupancies shall be in accordance with the requirements of Section 907.5.2.1.1, and shall be tested utilizing the following criteria:

1. A UL listed sound pressure level meter, which has been calibrated within the last calendar year, and supplied by the fire alarm system installing contractor, shall be utilized to obtain readings. The sound pressure level meter will be held five feet above floor, pointed in the direction of the audible device.
2. All doors within the occupancy, including the bathroom and balcony doors shall be in the closed position.
3. Ambient sound level shall be established with the television set at 50% of maximum volume, showers running, bathroom exhaust systems running, and air conditioning units running.
4. Measurements shall be taken in the most remote area of the dwelling or sleeping unit first, including bathrooms and balconies.
5. Initial measurements to confirm the ambient sound level in each area shall be taken.
6. The fire alarm system shall be activated and measurements in the tested areas shall be retaken and compared with the requirements.

(73) Section 907.5.2.2, (Emergency voice/alarm communication systems), is amended to read as follows:

907.5.2.2 (Emergency voice/alarm communication systems). Emergency voice/alarm communication systems required by this code shall be designed and installed in accordance with NFPA 72. The operation of any automatic fire detector, sprinkler waterflow device or manual fire alarm box shall automatically sound an alert tone followed by voice instructions giving approved information and directions for a general or staged evacuation in accordance with the building's fire safety and evacuation plans required by Section 404 of the International Fire Code. In high-rise buildings, the system shall operate on at least the alarming floor, the floor above and the floor

below. If the system is not reset after five minutes, the building shall sound the general evacuation signal 2021 International Building-Related Codes and message in all zones unless an alternative Positive Alarm Sequence has been approved by the Fire Marshal. Speakers shall be provided throughout the building by paging zones. At a minimum, paging zones shall be provided as follows:

1. Elevator groups.
2. Interior exit stairways.
3. Each floor.
4. Areas of refuge as defined in Chapter 2.

Exception: In Group I-1 and I-2 occupancies, the alarm shall sound in a constantly attended area and a general occupant notification shall be broadcast over the overhead page.

(74) Section 907.5.2.2.4, (Emergency voice/alarm communication captions), is repealed in its entirety.

(75) Section 907.5.2.3, (Visible alarms), is amended by adding a subsection 907.5.2.3.1.1, Wired Equipment, 907.5.2.3.4, Group R-2 sleeping areas, and Section 907.5.2.3.5, Combination devices, to read as follows:

907.5.2.3.3.1.1 (Other Applications) is amended by adding:

907.5.3.3.1.1.1 (Multi-tenant commercial structures) multi-tenant commercial structures shall comply with section 907.2.3.3.1 (1) through(4).

907.5.2.3.4 (Group R-2 sleeping areas). Living rooms in Group R-2 occupancies shall have audible notification appliances that meet the sleeping area audible requirements of NFPA 72, Chapter 18, Section 18.4.5, and Subsection 18.4.5.1. When such units are required to be equipped with visible notification for the hearing impaired or when such units are designated as accessible in accordance with ICC/ANSI A117.1, combination audible and visible notification appliances that meet both the sleeping area audible requirements of NFPA 72, Chapter 18, Section 18.4.5, Subsection 18.4.5.1 and the effective intensity settings of NFPA 72, Chapter 18.5.5.7.2 shall be installed.

907.5.2.3.5 (Combination devices). Combination 120 VAC single or multiple-station smoke detectors with an onboard visible notification appliance if utilized to meet the requirements of Section 907.2.11, will not be given credit for meeting the visible alarm notification requirements of Section 907.5.2.3.3 if these devices do not have the capability of supplying backup power for the visible notification appliance portion of the device. Should such devices be utilized to comply with Section 907.2.11, the visible appliance side of the device shall flash in synchronization with the notification appliances required in the unit.

(76) Section 907.6.3, (Initiating device identification), is amended to read as follows with exceptions to remain as written:

907.6.3 (Initiating device identification). The fire alarm system shall identify the specific initiating device address, location, device type, and floor level where applicable and status including indication of normal, alarm, trouble and supervisory status, to the fire alarm panel, annunciator panel and to the supervising station as appropriate.

(77) Section 907.5.2.3.1 (Public Use Areas and Common Use Areas) is amended by deleting the exception and adding Section 907.5.2.3.1.1 to read as follows:

Section 907.5.2.3.1.1 (Employee Work Areas). Where a fire alarm and detection system are required, employee work areas shall be provided with devices that provide audible and visible alarm notification.

(78) Section 912.2.1, (Visible location), is amended by adding the following sentence to the end of that section to read as follows:

912.2.1 (Visible location). Fire department connections shall be located on the street side of buildings or facing approved fire apparatus access roads, fully visible and recognizable from the street, fire apparatus access road or nearest point of fire department vehicle access or as otherwise approved by the fire code official. The fire department connection shall be identified by a sign installed above the connection with the letters "FDC" not less than 6 inches high and mounted at least 3 feet above the FDC to the bottom edge of the sign unless approved by the fire code official and if multiple FDC's a sign identifying the corresponding riser.

(79) Section 912.2.2, (Existing buildings), is amended to read as follows:

912.2.2 (Existing buildings). On existing buildings, wherever the fire department connection is not visible to approaching fire apparatus, the fire department connection shall be indicated by an approved sign mounted on the street front or on the side of the building. Such sign shall have the letters "FDC" not less than 6 inches (152 mm) high and words in letters not less than 2 inches (51 mm) high or an arrow to indicate the location. Signs shall be mounted no lower than 7 feet from grade to the bottom edge of the sign and are subject to the approval of the fire code official.

(80) Section 912.2 (Location), is amended to add the following:

Section 912.2.3 (Distance). Fire department connection shall not be located further than 100 feet from the fire hydrant measured by lay of hose from the engine.

(81) Section 912.4.1, (Locking fire department connection caps), is amended to read as follows:

912.4.1 (Locking fire department connection caps). Locking caps are required on all fire department connections for water-based fire protection systems including but not limited to FDC's and standpipes.

(82) Section 912, (Fire Department Connections), is amended by adding Section 912.8, Location and type, as follows:

912.8 (Location and type). Sprinkler system and standpipe fire department hose connections shall be as follows:

1. Within 40 feet of a public street, approved fire lane, or access roadway.
2. Within 100 feet of an approved fire hydrant measured per hose lay.
3. All structures are required to have a five inch "Storz" connection.
 - a. Where provided, the five inch "Storz" inlet shall be installed at a 30-degree angle pointing down.
 - i. Exception: NFPA 13R system requiring less than 250 gpm.
4. Minimum of two feet above finished grade and a maximum of four feet above finished grade for standard inlets and minimum of 30 inches at lowest point above finished grade and maximum of four feet above finished grade for the five inch "Storz" inlet.
5. Freestanding FDCs shall be installed a minimum of one foot and a maximum of seven feet from the gutter face of the curb.
6. The Fire Code Official shall approve the location of freestanding fire department connections. Freestanding FDCs must be physically protected against impact per the requirements of Section 312 or other approved means.
7. Fire department connections for H occupancies shall be freestanding, remote and located as determined by the fire code official.
8. Fire department connections for systems protecting fuel storage tanks shall be freestanding, remote and located as determined by the fire code official.
9. No FDC is required for projects designed per NFPA 13D.

(83) Section 1004.5.1 (Increased Occupant Load) is amended by deleting the section in its entirety.

(84) Section 1004.9 (Posting of Occupant Load) is amended by adding the following text to the end of said section:

"For the purposes of this section, the occupant load shall be the number of occupants computed at the rate of one occupant per unit of area as prescribed in Table 1004.5."

(85) Section 1103.5.1 (Group A-2) is amended by deleting the section in its entirety and replacing it with the following:

1103.5.1 (Group A-2). A Group A-2 occupancy that is permitted "Alterations - Level 2" according to the International Existing Building Code Chapter 8 and is dedicated predominantly to selling and consuming of alcoholic beverages rather than food and having an occupant load of 100 or more shall be equipped throughout with an automatic sprinkler system in accordance with section 903.3.1.1.

(86) Section 1103.7(Fire alarm systems) is amended by adding the following section:

1103.7.7(Group A-2). A Group A-2 occupancy that is permitted "Alterations - Level 2" according to the International Existing Building Code Chapter 8 and is dedicated predominantly to selling and consuming of alcoholic beverages rather than food and having an occupant load of 100 or more shall be equipped throughout with an automatic alarm system in accordance with section 907.2.1.

(87) Section 2304.1 (Supervision of Dispensing) is amended by deleting the section in its entirety and replacing with the following:

Section 2304.1 (Supervision of Dispensing). The dispensing of flammable or combustible liquids into the fuel tank of a vehicle or into an approved container shall be under the supervision of a qualified attendant, except service stations not open to the public. Such stations may be used by commercial, industrial governmental or manufacturing establishments for fueling vehicles in connection with their business."

(88) Section 2304.3 (Unattended Self-Service Motor Fuel Dispensing Facilities) is amended by deleting the section in its entirety.

(89) Section 2304.3.1 (General) is amended by deleting the section in its entirety.

(90) Section 2304.3.2 (Dispensers) is amended by deleting the section in its entirety.

(91) Section 2304.3.3 (Emergency Controls) is amended by deleting the section in its entirety.

(92) Section 2304.3.4 (Operating Instructions) is amended by deleting the section in its entirety.

(93) Section 2304.3.5 (Emergency Procedures) is amended by deleting the section in its entirety.

(94) Section 2304.3.6 (Communications) is amended by deleting the section in its entirety.

(95) Section 2304.3.7 (Quantity Limits) is amended by deleting the section in its entirety.

(96) Section 3106.3.1 (Occupant Load) is amended by deleting the section in its entirety.

(97) Section 3106.4.2 (Weather monitoring person) is amended by deleting the section in its entirety.

(98) Section 5706.6.1.2 (Leaving Vehicle Unattended) is amended by deleting the section in its entirety and replacing with the following:

Section 5706.6.1.2 (Leaving Vehicle Unattended). At no time while discharging flammable, combustible or ignitable liquids shall the driver or operator be out of sight and reach of the discharge valves. If at any time while discharging flammable, combustible or ignitable liquids, the driver or operator must leave the vehicle for any reason, the driver or operator shall shut down all valves until the driver or operator returns and shall be totally responsible

for any and all spillage. When the delivery hose is attached to the vehicle it is presumed to be discharging flammable, combustible or ignitable liquids.

(99) Chapter 80 (Referenced Standards) is amended by adding under NFPA, all referenced NFPA will be the most current editions.

(100) Appendix D, Section D102.1 (Required access) is amended by replacing 79,000 pounds (34050 kg) with 84,000 pounds (38101.76 kg).

(101) Appendix D, Section D102 (Required Access) is amended by adding the following:

Section D102.2 (Alternative Approved Access). If a product is used other than asphalt or concrete for the access surface it must be approved prior to installation. Once installed an installation certificate with an engineer stamp confirming it was installed according to manufacturer's specification must be submitted. In the case of base material a certificate with an engineer stamp stating that it has been tested and will support the imposing load of a fire apparatus weighing at least 84,000 pounds (38101.76 kg).

(102) Appendix D, Section D103.1 (Access road width with hydrant) is amended with replacing "26 feet" with "20 feet".

(103) Appendix D, Section D103.2 (Grade) is amended by adding the following:

Section 103.2.1 (Aerial Access Grade) where aerial access is required the aerial access portion of the road shall not exceed 6 percent in grade.

(104) Appendix D, Section D103.4 (Dead Ends) and Table D103.4 are amended by replacing "150 feet" with "100 feet."

Sec. 16-78. Life Safety Code Handbook adopted.

The Life Safety Code Handbook, specifically the 2021 Edition published by the National Fire Protection Association, a copy of which is on file in the Office of the City Secretary, is hereby adopted and designated as the Life Safety Code of the City. Said code is adopted to the same extent as though such code was copied at length herein, subject, however, to the omissions, additions, supplements, and amendments contained in this article.

April 28, 2022

Item No. 9.5.

Annual Price Agreement for Curb, Gutter, and Flatwork Change Order No. 1

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding Change Order No. 1 in the amount of \$863,750 to the annual price agreement with Larry Young Paving, Inc. for Curb, Gutter, and Concrete Flatwork.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

Recommendation(s): Staff recommends approval.

Summary: The original contract for \$3,455,000 was approved by City Council on May 27, 2021. More work has been done this year than previous ones due to revised contract language, availability of crews, and fewer weather delays. Therefore, an increase in the contract capacity is needed to continue performing concrete curb, gutter, and flatwork services for March, April, and May of 2022. This change order is for \$863,750, which revises the amount not to exceed to \$4,318,750.

Budget & Financial Summary: Funding for the Annual Blanket Purchase Order for the Concrete Curb, Gutter and Flatwork Installation is available in the Roadway Maintenance and Water Services operational budgets.

Attachments:

1. 21300494 Chg Ord 1 42822



CITY OF COLLEGE STATION
Home of Texas A&M University®

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 22300494 PROJECT#: _____ BID/RFP/RFQ#: 21-033

Project Name / Contract Description: Annual Curb, Gutter, and Flatwork; Change Order 1 to increase Contract Capacity for work in March-April 2022

Name of Contractor: Larry Young Paving Inc

CONTRACT TOTAL VALUE: \$ 4,318,750.00

Grant Funded ☐ Yes ☒ No
If yes, what is the grant number:

Debarment Check ☐ Yes ☒ No ☐ N/A

Section 3 Plan Incl. ☐ Yes ☒ No ☐ N/A

Davis Bacon Wages Used ☐ Yes ☒ No ☐ N/A

Buy America Required ☐ Yes ☒ No ☐ N/A

Transparency Report ☐ Yes ☒ No ☐ N/A

☐ **NEW CONTRACT** ☐ **RENEWAL #** _____ ☒ **CHANGE ORDER #** 1 ☐ **OTHER** _____

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)

Funding is available in the Roadway Maintenance Fund (39131798-5315) and Water Services Operation Budgets

CRC Approval Date*: N/A *(If required)** **Council Approval Date*:** 04/28/2022 **Agenda Item No*:** _____

--Section to be completed by Risk, Purchasing or City Secretary's Office Only--

Insurance Certificates: _____ **Performance Bond:** N/A **Payment Bond:** N/A **Info Tech:** N/A

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

LEGAL DEPARTMENT

DATE

ASST CITY MGR – CFO

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

CHANGE ORDER NO.	DATE: 3/24/2022	Contract No. 21300494
PO No.	PROJECT: Annual Curb Gutter & Flatwork	
OWNER:		
City of College Station P.O. Box 9960 College Station, Texas 77842		
CONTRACTOR:		
Larry Young Paving, Inc. PO Box 117779 College Station, Tx 77842		
Ph: 979-823-4888 Fax: 979-823-4888		
PURPOSE OF THIS CHANGE ORDER:		
A. A change order is needed to increase the contract capacity for concrete work in progress for March and April.		
B.		
C.		
ITEM NO	UNIT	DESCRIPTION
1	1	Removal & replacement of curb and gutter
2		
3		
		TOTAL
		\$863,750.00
THE NET AFFECT OF THIS CHANGE ORDER IS % INCREASE/DECREASE.		
LINE 1 (acct./work order number) LINE 2 (acct./work order number) LINE 3 (acct./work order number) TOTAL CHANGE ORDER ORIGINAL CONTRACT AMOUNT CHANGE ORDER NO. 1 CHANGE ORDER NO. 2 REVISED CONTRACT AMOUNT ORIGINAL CONTRACT TIME Time Extension No. 1 Revised Contract Time SUBSTANTIAL COMPLETION DATE REVISED SUBSTANTIAL COMPLETION DATE \$863,750.00 \$0.00 \$0.00 \$863,750.00 \$3,455,000.00 \$863,750.00 \$4,318,750.00 25.00% % CHANGE 0.00% % CHANGE 25.00% % TOTAL CHANGE Days Days Days 		
APPROVED		
N/A		
A/E CONTRACTOR	Date	DEPARTMENT DIRECTOR
		Date
CONSTRUCTION CONTRACTOR	Date	ASST CITY MGR - CFO
		Date
PROJECT MANAGER	Date	CITY ATTORNEY
		Date
CITY ENGINEER	Date	CITY MANAGER
		Date

April 28, 2022

Item No. 9.6.

Annual Price Agreement for Curb, Gutter, and Flatwork Renewal

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a renewal of the Annual Price Agreement for Concrete Curb, Gutter, and Flatwork installation with Larry Young Paving, Inc. for an amount not to exceed \$4,318,750.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

Recommendation(s): Staff recommends approval of the contract with Larry Young Paving, Inc. for an amount not to exceed \$4,318,750.

Summary: Larry Young Paving, Inc. has requested a 10% increase due to supply chain increases for the renewal period. The term will be for the period beginning May 1, 2022, through April 30, 2023. This is the first of two possible renewals for this contract.

Budget & Financial Summary: Funding for the Annual Blanket Purchase Order for the Concrete Curb, Gutter and Flatwork Installation is available in the Roadway Maintenance and Water Services operational budgets.

Attachments:

1. C 21300494 R1 Larry Young Paving Inc.



CITY OF COLLEGE STATION
Home of Texas A&M University®

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 22300494R1 PROJECT#: _____ BID/RFP/RFQ#: 21-033

Project Name / Contract Description: Annual Curb, Gutter, and Flatwork Renewal #1

Name of Contractor:

Larry Young Paving Inc

CONTRACT TOTAL VALUE:

\$ 4,318,750.00

Grant Funded ☐ Yes ☒ No

If yes, what is the grant number:

Debarment Check ☐ Yes ☒ No ☐ N/A

Section 3 Plan Incl. ☐ Yes ☒ No ☐ N/A

Davis Bacon Wages Used ☐ Yes ☒ No ☐ N/A

Buy America Required ☐ Yes ☒ No ☐ N/A

Transparency Report ☐ Yes ☒ No ☐ N/A

☐ NEW CONTRACT ☐ RENEWAL # _____ ☒ CHANGE ORDER # 1 ☐ OTHER _____

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)

Funding is available in the Roadway Maintenance Fund (39131798-5315) and Water Services Operation Budgets

CRC Approval Date*: N/A (If required)* Council Approval Date*: 04/28/2022 Agenda Item No*: _____

--Section to be completed by Risk, Purchasing or City Secretary's Office Only--

Insurance Certificates: _____ Performance Bond: N/A Payment Bond: N/A Info Tech: N/A

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

LEGAL DEPARTMENT

DATE

ASST CITY MGR – CFO

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____



March 24, 2022

ATTN: Mr. Mark Schinzler
Larry Young Paving, Inc.
P.O. Box 11779
College Station, TX 77842

RE: Bid#21-007 C# 21300494 Renewal #1
Annual Concrete Curb, Gutter and Flatwork

Dear Mr. Schinzler,

The City of College Station appreciates the products and services provided by Larry Young Paving Inc., this last year. We would like to exercise our option to renew the above referenced agreement for the term of May 1, 2022, through April 30, 2023, with contract amount not to exceed Four Million, Three Hundred Eighteen Thousand Seven Hundred Fifty and 00/100 Dollars (\$4,318,750.00). This is the first of two possible renewals for this contract.

If this contract renewal meets your company's approval, please provide your confirmation for renewal via return e-mail to rforsyth@cstx.gov, no later than March 28, 2022.

Sincerely,

Robyn Forsyth
Buyer C.T.P.M.
City of College Station
1101 Texas Avenue S
College Station, Tx 77840
rforsyth@cstx.gov
979-764-3437

Attachment

PO Box 9960
1101 Texas Avenue
College Station, TX 77842

www.cstx.gov

.....

CONTRACT #21300494 RENEWAL #1 ACCEPTANCE

By signing herewith, I acknowledge and agree to Bid#21-033, Contract #21300494 Renewal One (1), for the “Annual Concrete Curb, Gutter and Flatwork” in accordance with all terms and conditions agreed to and accepted, for an amount not to exceed Four Million, Three Hundred Eighteen Thousand Seven Hundred Fifty and 00/100 Dollars (\$4,318,750). This includes the vendor requested price increases to all line items as shown on the following page.

I understand this renewal term will be for the period beginning May 1, 2022, through April 30, 2023. This is the first of two possible renewals for this contract.

LARRY YOUNG PAVING INC.

CITY OF COLLEGE STATION

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
City Manager
Date: _____

APPROVED:

City Attorney
Date: _____

Asst. City Manager/CFO
Date: _____

C#21300494 Larry Young Paving Inc
Proposed Price Increase

Contract Award #21300494		
Price for Linear Feet		
QTY	Cost	Total
1	\$ 31.00	\$ 31.00

Proposed Price Increases March 21, 2022					
Price for Linear Foot				Difference	% increase
QTY	Cost	Total			
1.00	\$	34.00	\$ 34.00	\$ 3.00	10%

Price for Cubic Yards		
QTY	Cost	Total
1	\$ 505.00	\$ 505.00

Price for Cubic Yards				Difference	% increase
QTY	Cost	Total			
1.00	\$	553.00	\$ 553.00	\$ 48.00	10%



LARRYOU-02

GAYLA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/24/2022

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 have ADDITIONAL INSURED provisions or 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 Anco Insurance PO Box 3889 Bryan, TX 77805	CONTACT NAME: Gayla Zientek, ACSR	
	PHONE (A/C, No, Ext): (979) 774-6575	FAX (A/C, No): (979) 774-5372
	E-MAIL ADDRESS: zientek@anco.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : United Fire & Casualty Company	13021
INSURED Larry Young Paving, Inc Silver Hill Equipment Co, LLC PO Box 11779 College Station, TX 77842	INSURER B : Texas Mutual Insurance Company	22945
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:			85322393	8/23/2021	8/23/2022	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			85322393	8/23/2021	8/23/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			85322393	8/23/2021	8/23/2022	EACH OCCURRENCE \$ 5,000,000
							AGGREGATE \$ 5,000,000
							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	TSF0001311091	8/23/2021	8/23/2022	☒ PER STATUTE ☐ 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	Equipment Floater			85322393	8/23/2021	8/23/2022	Rented/Leased Equipmt \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Contract #21300494: REF: Curb & Gutter

CERTIFICATE HOLDER

CANCELLATION

City of College Station
PO Box 9960
College Station, TX 77840

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

TEXAS - EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT**COMMERCIAL GENERAL LIABILITY EXTENSION ENDORSEMENT SUMMARY OF COVERAGES**

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary.

- * Extended Property Damage
- * Expanded Fire Legal Liability to include Explosion, Lightning and Sprinkler Leakage
- * Coverage for non-owned watercraft is extended to 51 feet in length
- * Property Damage – Borrowed Equipment
- * Property Damage Liability – Elevators
- * Coverage D – Voluntary Property Damage Coverage
\$5,000 Occurrence with a \$10,000 Aggregate
- * Coverage E – Care, Custody and Control Property Damage Coverage
\$25,000 Occurrence with a \$100,000 Aggregate – \$500 Deductible
- * Coverage F – Electronic Data Liability Coverage – \$50,000
- * Coverage G – Product Recall Expense
\$25,000 Each Recall Limit with a \$50,000 Aggregate – \$1,000 Deductible
- * Coverage H – Water Damage Legal Liability – \$25,000
- * Coverage I – Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program – Limited Coverage
- * Increase in Supplementary Payments: Bail Bonds to \$1,000
- * Increase in Supplementary Payments: Loss of Earnings to \$500
- * For newly formed or acquired organizations – extend the reporting requirement to 180 days
- * Broadened Named Insured
- * Automatic Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement With You – Including Upstream Parties
- * Contractors Blanket Additional Insured – Products – Completed Operations Coverage – Including Upstream Parties
- * Automatic Additional Insured – Vendors
- * Automatic Additional Insured – Lessor of Leased Equipment Automatic Status When Required in Lease Agreement With You
- * Automatic Additional Insured – Managers or Lessor of Premises
- * Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured
- * Additional Insured – State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations
- * Additional Insured – Consolidated Insurance Program (Wrap-Up) Off-Premises Operations Only – Owners, Lessees or Contractors Automatic Status When Required in Construction Agreement With You
- * Additional Insured – Employee Injury to Another Employee
- * Automatically included – Aggregate Limits of Insurance (per location)
- * Automatically included – Aggregate Limits of Insurance (per project)
- * Knowledge of occurrence – Knowledge of an "occurrence", "claim or suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee
- * Blanket Waiver of Subrogation
- * Liberalization Condition
- * Unintentional failure to disclose all hazards. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.
- * "Insured Contract" redefined for Limited Railroad Contractual Liability
- * Mobile equipment to include snow removal, road maintenance and street cleaning equipment less than 1,000 lbs GVW
- * Bodily Injury Redefined

REFER TO THE ACTUAL ENDORSEMENT FOLLOWING ON PAGES 2 THROUGH 14 FOR CHANGES AFFECTING YOUR INSURANCE PROTECTION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS – EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES

A. The following changes are made at **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

1. Extended Property Damage

At 2. Exclusions exclusion a. **Expected or Intended Injury** is replaced with the following:

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. Expanded Fire Legal Liability

At 2. Exclusions the last paragraph is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

3. Non-Owned Watercraft

At 2. Exclusions exclusion g. **Aircraft, Auto Or Watercraft (2) (a)** is deleted and replaced by the following:

(a) Less than 51 feet long;

4. Property Damage – Borrowed Equipment

At 2. Exclusions the following is added to paragraph (4) of exclusion j. **Damage To Property**:

This exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and while not being used to perform operations. The most we will pay for "property damage" to any one piece of borrowed equipment under this coverage is \$25,000 per occurrence. The insurance afforded under this provision is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

5. Property Damage Liability – Elevators

At 2. Exclusions the following is added to paragraphs (3), (4) and (6) of exclusion j. **Damage To Property**:

This exclusion does not apply to "property damage" resulting from the use of elevators. However, any insurance provided for such "property damage" is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

B. The following coverages are added:

1. **COVERAGE D – VOLUNTARY PROPERTY DAMAGE COVERAGE**

"Property damage" to property of others caused by the insured:

a. While in your possession; or

b. Arising out of "your work".

Coverage applies at the request of the insured, whether or not the insured is legally obligated to pay.

For the purposes of this **Voluntary Property Damage Coverage** only:

Exclusion j. **Damage to Property** is deleted and replaced by the following:

j. Damage to Property

"Property damage" to:

- (1) Property held by the insured for servicing, repair, storage or sale at premises you own, rent, lease, operate or use;
- (2) Property transported by or damage caused by any "automobile", "watercraft" or "aircraft" you own, hire or lease;
- (3) Property you own, rent, lease, borrow or use.

The amount we will pay is limited as described below in **SECTION III – LIMITS OF INSURANCE**.

For the purposes of this Voluntary Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted sole discretion in making payments under this coverage.

2. **COVERAGE E – CARE, CUSTODY AND CONTROL PROPERTY DAMAGE COVERAGE**

For the purpose of this Care, Custody and Control Property Damage Coverage only:

- a. Item (4) of Exclusion j. does not apply.

The amount we will pay is limited as described below in **SECTION III – LIMITS OF INSURANCE**.

For the purposes of this Care, Custody and Control Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted sole discretion in making payments under this coverage.

3. **COVERAGE F – ELECTRONIC DATA LIABILITY COVERAGE**

For the purposes of this Electronic Data Liability Coverage only:

- a. Exclusion p. of Coverage A – Bodily Injury And Property Damage Liability in Section I – Coverages is replaced by the following:

2. Exclusions

This insurance does not apply to:

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

However, this exclusion does not apply to liability for damages because of "bodily injury".

- b. "Property Damage" means:

- (1) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- (2) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or
- (3) Loss of, loss of use of, damage to, corruption of, inability to access or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this Electronic Data Liability Coverage, "electronic data" is not tangible property.

The amount we will pay is limited as described below in **SECTION III – LIMITS OF INSURANCE**.

4. **COVERAGE G – PRODUCT RECALL EXPENSE**

- a. Insuring Agreement

- (1) We will pay 90% of "product recall expense" you incur as a result of a "product recall" you initiate during the coverage period.
- (2) We will only pay for "product recall expense" arising out of "your products" which have been physically relinquished to others.

The amount we will pay is limited as described below in **SECTION III – LIMITS OF INSURANCE**.

b. Exclusions

This insurance does not apply to "product recall expense" arising out of:

- (1) Any fact, circumstance or situation which existed at the inception date of the policy and which you were aware of, or could reasonably have foreseen that would have resulted in a "product recall".
- (2) Deterioration, decomposition or transformation of a chemical nature, except if caused by an error in the manufacture, design, processing, storage, or transportation of "your product".
- (3) The withdrawal of similar products or batches that are not defective, when a defect in another product or batch has been found.
- (4) Acts, errors or omissions of any of your employees, done with prior knowledge of any of your officers or directors.
- (5) Inherent vice, meaning a natural condition of property that causes it to deteriorate or become damaged.
- (6) "Bodily Injury" or "Property Damage".
- (7) Failure of "your product" to accomplish its intended purpose, including any breach of warranty of fitness, quality, efficacy or efficiency, whether written or implied.
- (8) Loss of reputation, customer faith or approval, or any costs incurred to regain customer market, or any other consequential damages.
- (9) Legal fees or expenses.
- (10) Damages claimed for any loss, cost or expense incurred by you or others for the loss of use of "your product".
- (11) "Product recall expense" arising from the "product recall" of any of "your products" for which coverage is excluded by endorsement.
- (12) Any "product recall" initiated due to the expiration of the designated shelf life of "your product".

5. COVERAGE H – WATER DAMAGE LEGAL LIABILITY

The Insurance provided under Coverage H (Section I) applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

The Limit under this coverage shall not be in addition to the Damage To Premises Rented To You Limit.

The amount we will pay is limited as described below in **SECTION III – LIMITS OF INSURANCE**.

6. COVERAGE I – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

The following exclusion is added to Paragraph 2. Exclusions of **SECTION I – COVERAGES COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

- r. This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" for any "consolidated (Wrap-up) insurance program" which has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not a consolidated (Wrap-up) insurance program:

- a. Provides coverage identical to that provided by this Coverage Part; or
- b. Has limits adequate to cover all claims.

This exclusion does not apply if a "consolidated (Wrap-up) insurance program" covering your operations has been cancelled, non-renewed or otherwise no longer applies for reasons other than exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

For purposes of this exclusion a "consolidated (wrap-up) insurance program" is a program providing insurance coverage to all parties for exposures involved with a particular (typically major) construction project.

C. SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended:**1. To read SUPPLEMENTARY PAYMENTS****2. Bail Bonds**

Item 1.b. is amended as follows:

- b. Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

3. Loss of Earnings

Item 1.d. is amended as follows:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

4. The following language is added to Item 1.

However, we shall have none of the duties set forth above when this insurance applies only for **Voluntary Property Damage Coverage** and/or **Care, Custody or Control Property Damage Coverage** and we have paid the Limit of Liability or the Aggregate Limit for these coverages.

SECTION II – WHO IS AN INSURED**A. The following change is made:****Extended Reporting Requirements**

Item 3.a. is deleted and replaced by the following :

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. The following provisions are added:**4. BROAD FORM NAMED INSURED**

Item 1.f. is added as follows:

- f. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period only if there is no other similar insurance available to that entity. However:
 - (1) Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired more than 50 percent of the voting stock; and
 - (2) Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired more than 50 percent of the voting stock.

5. Additional Insured – Owners, Lessees or Contractors-Automatic Status When Required in Construction or Service Agreement With You – Including Upstream Parties

- a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy;
- b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph a. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" which may be imputed to that person or organization directly arising out of:

- 1. Your acts or omissions; or
 - 2. The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

- 1. Only applies to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- c. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
This insurance does not apply to:
 1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

6. Additional Insured – Products Completed Operations Coverage – Including Upstream Parties

- a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
- b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph a. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" which may be imputed to that person or organization directly arising out of "your work" specified in the "written contract" and included in the "products-completed operations hazard".

However:

- (1) The insurance afforded to such additional insureds only applies to the extent permitted by law;
- (2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- (3) Such coverage will not apply subsequent to the first to occur of the following:
 - i. The expiration of the period of time required by the "written contract"; or
 - ii. The expiration of any applicable statute of limitations or statute of repose with respect to claims arising out of "your work".
- c. With respect to the insurance afforded to any additional insured under this endorsement, the following additional exclusionary language shall apply:
This insurance does not apply to "bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architecture, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

7. Additional Insured – Vendors

- a. Any person(s) or organization(s) (referred to throughout this additional coverage as vendor), but only with respect to "bodily injury" or "property damage", which may be imputed to that person(s) or organization(s) arising out of "your products" shown with the Schedule which are distributed or sold in the regular course of the vendor's business is an insured.

However:

- (1) The insurance afforded to such vendor only applies to the extent permitted by law; and
 - (2) If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.
- b. With respect to the insurance afforded to these vendors, the following additional exclusions apply:
- (1) This insurance afforded the vendor does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.
 - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of products.
 - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product.
 - (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
 - (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - i. The exceptions contained in Sub-paragraphs d. or f.; or
 - ii. Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
 - (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You

- a. Any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to your liability for "bodily injury", "property damage" or "personal and advertising injury" directly arising out of the maintenance, operation or use of equipment leased to you, which may be imputed to such person or organization as the lessor of equipment.

However, the insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

9. Additional Insured – Managers or Lessors of Premises

- a. Any person(s) or organization(s), but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

- (1) The insurance afforded to such additional insured only applies to the extent permitted by law; and
- (2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

10. Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured

- a. Any architects, engineers or surveyors who are not engaged by you are insureds, but only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" which may be imputed to that architect, engineer or surveyor arising out of:

- (1) Your acts or omissions; or
- (2) Your acts or omissions of those acting on your behalf;

in the performance of your ongoing operations performed by you or on your behalf.

But only if such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

However, the insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law; and
 - (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
- (2) Supervisory, inspection or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services.

11. Additional Insured – State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations

Any state or governmental agency or subdivision or political subdivision is an insured, subject to the following provisions:

- a. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

- (1) The insurance afforded to such additional insured only applies to the extent permitted by law; and
- (2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- b. This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

12. Additional Insured Consolidated Insurance Program (Wrap-Up) Off-Premises Operations Only – Owners, Lessees or Contractors

- a. Any persons or organizations for whom you are performing operations, for which you have elected to seek coverage under a Consolidated Insurance Program, when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy as an insured. Such person or organization is an additional insured only with respect to your liability which may be imputed to that person or organization directly arising out of your ongoing operations performed for that person or organization at a premises other than any project or location that is designated as covered under a Consolidated Insurance Program. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies.

This insurance does not apply to:

"Bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- (2) Supervisory, inspection, architectural or engineering activities.

13. Additional Insured – Employee Injury to Another Employee

With respect to your "employees" who occupy positions which are supervisory in nature:

Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED** is amended to read:

- a. "Bodily injury" or "personal and advertising injury":

- (1) To you, to your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
- (2) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph (1)(a) above; or
- (3) Arising out of his or her providing or failing to provide professional healthcare services. Paragraph 3.a. is deleted.

For the purpose of this Item 12 only, a position is deemed to be supervisory in nature if that person performs principle work which is substantially different from that of his or her subordinates and has authority to hire, direct, discipline or discharge.

SECTION III – LIMITS OF INSURANCE

A. The following Items are deleted and replaced by the following:

2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B; and
 - d. Damages under Coverage H.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" and Coverage G.
6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage while rented to you or temporarily occupied by you with permission of the owner.

B. The following are added:

8. Subject to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE** \$25,000 is the most we will pay under Coverage H for **Water Damage Legal Liability**.

9. Coverage G – Product Recall Expense

Aggregate Limit \$50,000

Each Product Recall Limit \$25,000

- a. The Aggregate Limit shown above is the most we will pay for the sum of all "product recall expense" you incur as a result of all "product recalls" you initiate during the endorsement period.
- b. The Each Product Recall Limit shown above is the most we will pay, subject to the Aggregate and \$1,000 deductible, for "product recall expense" you incur for any one "product recall" you initiate during the endorsement period.

We will only pay for the amount of Product Recall Expenses which are in excess of the deductible amount. The deductible applies separately to each Product Recall. The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount. Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

10. Aggregate Limits of Insurance (Per Location)

The General Aggregate Limit applies separately to each of your "locations" owned by or rented to you or temporarily occupied by you with the permission of the owner.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

11. Aggregate Limits of Insurance (Per Project)

The General Aggregate Limit applies separately to each of your projects away from premises owned by or rented to you.

12. With respects to the Insurance afforded to additional insureds afforded coverage by items 5 through 13 of **SECTION II – WHO IS AN INSURED** above, the following is added:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement;
- b. Available under the applicable Limits of Insurance shown in the Declarations;

Whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

13. Subject to 5. of **SECTION III – LIMITS OF INSURANCE**, a \$5,000 "occurrence" limit and a \$10,000 "aggregate" limit is the most we will pay under Coverage A for damages because of "property damage" covered under Coverage D – Voluntary Property Damage Coverage.

For the purposes of this Voluntary Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted sole discretion in making payments under this coverage.

14. Subject to 5. of **SECTION III – LIMITS OF INSURANCE**, a \$25,000 "occurrence" limit and a \$100,000 "aggregate" limit is the most we will pay under Coverage E – Care, Custody and Control Coverage regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

Deductible - Our obligation to pay damages on your behalf applies only to the amount of damages in excess of \$500.

This deductible applies to all damages because of "property damage" as the result of any one "occurrence" regardless of the number of persons or organizations who sustain damages because of that "occurrence".

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

As respects this coverage "Aggregate" is the maximum amount we will pay for all covered "occurrences" during one policy period.

For the purposes of this Care, Custody and Control Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted sole discretion in making payments under this coverage.

15. Subject to 5. of **SECTION III – LIMITS OF INSURANCE**, the most we will pay for "property damage" under Coverage F – Electronic Data Liability Coverage for loss of "electronic data" is \$50,000 without regard to the number of "occurrences".

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

- A. The following conditions are amended:

1. Knowledge of Occurrence

- a. Condition 2., Items a. and b. are deleted and replaced by the following:

(1) Duties In The Event Of Occurrence, Offense, Claim Or Suit

- (a) You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. Knowledge of an "occurrence" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee. To the extent possible, notice should include:

- i. How, when and where the "occurrence" took place;
- ii. The names and addresses of any injured persons and witnesses, and
- iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

(b) If a claim is made or "suit" is brought against any insured, you must:

- i. Immediately record the specifics of the claim or "suit" and the date received; and
- ii. Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable. Knowledge of a claim or "suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee.

2. Where **Broad Form Named Insured** is added in **SECTION II – WHO IS AN INSURED** of this endorsement, **Condition 4. Other Insurance b. Excess Insurance (1).(a)** is replaced by the following:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to an insured solely by reason of ownership by you of more than 50 percent of the voting stock, and not withstanding any other language in any other policy. This provision does not apply to a policy written to apply specifically in excess of this policy.

B. The following are added:

1. Condition (5) of 2. "Duties in the event Occurrence, Offense, Claim or Suit" c. You or any other involved insured must:

- (5) Upon our request, replace or repair the property covered under Voluntary Property Damage Coverage at your actual cost, excluding profit or overhead.

10. Blanket Waiver Of Subrogation

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of: premises owned or occupied by or rented or loaned to you, ongoing operations performed by you or on your behalf, done under a contract with that person or organization, "your work", or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you before the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

11. Liberalization

If a revision to this Coverage Part, which would provide more coverage with no additional premium becomes effective during the policy period in the state designated for the first Named Insured shown in the Declarations, your policy will automatically provide this additional coverage on the effective date of the revision.

12. Unintentional Failure to Disclose All Hazards

Based on our reliance on your representations as to existing hazards, if you unintentionally should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

13. The following conditions are added in regard to **Coverage G – Product Recall Expense**

In event of a "product recall", you must

- a. See to it that we are notified as soon as practicable of a "product recall". To the extent possible, notice should include how, when and where the "product recall" took place and estimated "product recall expense".
- b. Take all reasonable steps to minimize "product recall expense". This will not increase the limits of insurance.
- c. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. Your answers must be signed.
- d. Permit us to inspect and obtain other information proving the loss. You must send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request.
- e. Cooperate with us in the investigation or settlement of any claim.
- f. Assist us upon our request, in the enforcement of any rights against any person or organization which may be liable to you because of loss to which this insurance applies.

g. Claims Handling

- (1) Within 15 days after we receive written notice of claim, we will:
 - (a) Acknowledge receipt of the claim. If we do not acknowledge receipt of the claim in writing, we will keep a record of the date, method and content of the acknowledgment;
 - (b) Begin any investigation of the claim; and
 - (c) Request a signed, sworn proof of loss, specify the information you must provide and supply you with the necessary forms. We may request more information at a later date, if during the investigation of the claim such additional information is necessary.
- (2) We will notify you in writing as to whether:
 - (a) The claim or part of the claim will be paid;
 - (b) The claim or part of the claim has been denied, and inform you of the reasons for denial;
 - (c) More information is necessary; or
 - (d) We need additional time to reach a decision. If we need additional time, we will inform you of the reasons for such need.
- (3) We will provide notification, as described in (2)(a) through (2)(d) above, within:
 - (a) 15 business days after we receive the signed, sworn proof of loss and all information we requested; or
 - (b) 30 days after we receive the signed, sworn proof of loss and all information we requested, if we have reason to believe the loss resulted from arson.

If we have notified you that we need additional time to reach a decision, we must then either approve or deny the claim within 45 days of such notice.

h. We will pay for covered loss or damage within 5 business days after:

- (1) We have notified you that payment of the claim or part of the claim will be made and have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

However, if payment of the claim or part of the claim is conditioned on your compliance with any of the terms of this policy, we will make payment within 5 business days after the date you have complied with such terms.

i. Catastrophe Claims

If a claim results from a weather related catastrophe or a major natural disaster, the claim handling and claim payment deadlines described in a. and b. above are extended for an additional 15 days.

Catastrophe or Major Natural Disaster means a weather related event which is:

- (1) Declared a disaster under the Texas Disaster Act of 1975; or
- (2) Determined to be a catastrophe by the State Board of Insurance.

j. The term "business day", as used in this endorsement, means a day other than Saturday, Sunday or a holiday recognized by the state of Texas.

k. We will issue loss payment to the first Named Insured shown in the Declarations and any mortgagee or loss payee as designated.

14. Limited Railroad Contractual Liability

The following conditions are applicable only to coverage afforded by reason of the redefining of an "insured contract" in the **DEFINITIONS** section of this endorsement:

- a. Railroad Protective Liability coverage provided by **Railroad Protective Liability Coverage Form (CG 00 35)** with minimum limits of \$2,000,000 per occurrence and a \$6,000,000 general aggregate limit must be in place for the entire duration of any project.
- b. Any amendment to the Other Insurance condition of **Railroad Protective Liability Coverage Form (CG 00 35)** alters the primacy of the coverage or which impairs our right to contribution will rescind any coverage afforded by the redefined "insured contract" language.
- c. For the purposes of the Other Insurance condition of **Railroad Protective Liability Coverage Form (CG 00 35)** you, the named insured, will be deemed to be the designated contractor.

SECTION V – DEFINITIONS

- A. At item 12. **Mobile Equipment** the wording at f.(1) is deleted and replaced by the following:
- f. (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 except for such vehicles that have a gross vehicle weight less than 1,000 lbs which are not designed for highway use.
- B. Item 3. **"bodily injury"** is deleted and replaced with the following:
- 3. "bodily injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.
- C. Item 9. **"Insured Contract"** c. is deleted and replaced with the following:
- c. Any easement or license agreement;
- D. Item 9. **"Insured Contract"** f.(1) is deleted.
- E. The following definitions are added for this endorsement only:
- 23. **"Electronic data"** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tape drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 - 24. **"Product recall"** means a withdrawal or removal from the market of "your product" based on the determination by you or any regulatory or governmental agency that:
 - a. The use or consumption of "your product" has caused or will cause actual or alleged "bodily injury" or "property damage"; and
 - b. Such determination requires you to recover possession or control of "your product" from any distributor, purchaser or user, to repair or replace "your product", but only if "your product" is unfit for use or consumption, or is hazardous as a result of:
 - (1) An error or omission by an insured in the design, manufacturing, processing, labeling, storage, or transportation of "your product"; or
 - (2) Actual or alleged intentional, malicious or wrongful alteration or contamination of "your product" by someone other than you.
 - 25. **"Product recall expense"** means reasonable and necessary expenses for:
 - a. Telephone, radio and television communication and printed advertisements, including stationery, envelopes and postage.
 - b. Transporting recalled products from any purchaser, distributor or user, to locations designated by you.
 - c. Remuneration paid to your employees for overtime, as well as remuneration paid to additional employees or independent contractors you hire.
 - d. Transportation and accommodation expense incurred by your employees.
 - e. Rental expense incurred for temporary locations used to store recalled products.
 - f. Expense incurred to properly dispose of recalled products, including packaging that cannot be reused.
 - g. Transportation expenses incurred to replace recalled products.
 - h. Repairing, redistributing or replacing covered recalled products with like products or substitutes, not to exceed your original cost of manufacturing, processing, acquisition and/or distribution.
 These expenses must be incurred as a result of a "product recall".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED TO NAME AS ADDIT- IONAL INSURED BY WRITTEN CONTRACT OR AGREEMENT IF THE CONTRACT OR AGREEMENT IS EXECUTED PRIOR TO LOSS	AGREEMENT IS EXECUTED PRIOR TO DESCRIBED IN THE ABOVE MENTIONED WRITTEN CONTRACT OR AGREEMENT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

PREMIUM 1,000

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products -completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on be half of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER: 8532239

COMMERCIAL GENERAL LIABILITY
CG 02 05 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CHANGES - AMENDMENT OF CANCELLATION PROVISIONS OR COVERAGE CHANGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

In the event of cancellation or material change that reduces or restricts the insurance afforded by this Coverage Part, we agree to mail prior written notice of cancellation or material change to:

SCHEDULE

1.	Name: PER SCHEDULE ON FILE
2.	Address: CANCELLATION FOR NONPAYMENT OF PREMIUM 10 DAYS
3.	Number of days advance notice: 30 DAYS
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO ULTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

COMMON POLICY CONDITIONS

COVERAGE INDEX

DESCRIPTION	PAGE
Temporary Substitute Auto Physical Damage	2
Broad Form Insured	2
Employee as Insureds	2
→ Additional Insured Status by Contract, Agreement or Permit	2
Bail Bond Coverage	3
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Personal Effects Coverage	4
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Vehicle Wrap Coverage	5
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→ Amended Duties in the Event of Accident, Claim, Suit or Loss	6
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Mental Anguish	7
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The COVERAGE INDEX set forth above is informational only and grants no coverage.

Terms set forth in ***(Bold Italics)*** are likewise for information only and by themselves shall be deemed to grant no coverage.

(Temporary Substitute Auto Physical Damage)

A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

SECTION I – COVERED AUTOS, paragraph C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos is amended by adding the following at the end of the existing language:

If Physical Damage Coverage is provided under this Coverage form for an "auto" you own, the Physical Damage coverages provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of its breakdown, repair, servicing, "loss", or destruction

B. BROADENED LIABILITY COVERAGES

SECTION II – LIABILITY COVERAGE In Paragraph A. Coverage at 1. Who Is An Insured is amended to include the following:

(Broad Form Insured)

- d. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "Insured" under any other automobile policy or would be an "Insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- e. Any organization that is acquired or formed by you, during the term of this policy and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (1) That is a joint venture or partnership,
 - (2) That is an "Insured" under any other policy,
 - (3) That has exhausted its Limits of Insurance under any other policy, or
 - (4) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation

Coverage does not apply to "bodily injury" or "property damage" that results from an accident that occurred before you formed or acquired the organization.

(Employee as Insureds)

- 
- f. Any employee of yours while acting in the course of your business or your personal affairs while using a covered "auto" you do not own, hire or borrow.

(Additional Insured Status by Contract, Agreement or Permit)

- g. Any person or organization whom you are required to add as an additional Insured on this policy under a written contract or agreement; but the written contract or agreement must be:
 - (1) Currently in effect or becoming effective during the term of this policy; and
 - (2) Executed prior to the "bodily injury" or "property damage."

The additional Insured status will apply only with respect to your liability for "bodily injury" or "property damage" which may be imputed to that person(s) or organization(s) directly arising out of the ownership, maintenance or use of the covered "autos" at the location(s) designated, if any.

Coverage provided by this endorsement will not exceed the limits of liability required by the written contract or written agreement even if the limits of liability stated in the policy exceed those limits. This endorsement shall not increase the limits stated in **Section II, C. Limits of Insurance**.

For any covered "auto" you own this Coverage Form provides primary coverage.

C. BROADENED SUPPLEMENTARY PAYMENTS

SECTION II. LIABILITY A. Coverage 2. Coverage Extensions a. Supplementary Payments (2) and (4) are replaced by the following:

(Ball Bond Coverage)

- (2) Up to \$5,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(Loss of Earnings Coverage)

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earning up to \$500 a day because of time off from work.

(Amended Fellow Employee Exclusion)

D. AMENDED FELLOW EMPLOYEE EXCLUSION

Only with respect to your "employees" who occupy positions which are supervisory in nature, **SECTION II. LIABILITY B. Exclusion 5. Fellow Employee** is replaced by:

5. Fellow Employee

"Bodily Injury":

- a. To you, or your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
- b. To your "executive officers" and directors (if you are an organization other than a partnership, joint venture, or limited liability company) but only with respect to performance of their duties as your officers or directors;
- c. For which there is an obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph a and b above; or
- d. Arising out of his or her providing or failing to provide professional health care services.

For purposes of this endorsement, a position is deemed to be supervisory in nature if that person performs principle work which is substantially different from that of his or her subordinates and has authority to hire, transfer, direct, discipline or discharge.

E. BROADENED PHYSICAL DAMAGE COVERAGES

SECTION III -- PHYSICAL DAMAGE COVERAGE A. Coverage is amended as follows:

(Towing and Labor)

2. Towing is deleted and replaced with the following:

2. Towing and Labor

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" is disabled:

- a. For private passenger type vehicles we will pay up to \$100 per disablement.
- b. For all other covered "auto's" we will pay up to \$500 per disablement

However, the labor must be performed at the place of disablement.

(Physical Damage Additional Transportation Expense Coverage)

4. Coverage Extensions

- a. **Transportation Expenses** is amended to provide the following limits:

We will pay up to \$60 per day to a maximum of \$1,800. All other terms and provisions of this section remain applicable.

The following language is added to **4. Coverage Extensions**:

(Extra Expense -- Theft)

c. Theft Recovery Expense

If you have purchased Comprehensive Coverage on an "auto" that is stolen, we will pay the expense of returning that stolen auto to you. The limit for this coverage extension is \$5,000.

(Rental Reimbursement and Additional Transportation Expense)

d. Rental Reimbursement

We will provide Rental Reimbursement and Additional Expense coverage only for those Physical Damage coverages for which a premium is shown in the Declarations or schedule pages. Coverage applies only to a covered "auto".

- (1) We will pay for auto rental expense and the expense incurred by you because of "loss" to remove and transfer your materials and equipment from a covered "auto" to a covered "auto." Payment applies in addition to the otherwise applicable coverage you have on a covered "auto." No deductible applies to this coverage.
- (2) We will pay only for expenses incurred during the policy period and beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
 - (a) The number of days reasonably required to repair or replace the covered "auto." If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you, or
 - (b) 30 days.
- (3) Our payment is limited to the lesser of the following amounts:
 - (a) Necessary and actual expenses incurred; or
 - (b) \$75 per day.
 - (c) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
 - (d) If "loss" results from the total theft of a covered "auto" of the private passenger or light truck type, we will pay under this coverage only that amount of your rental reimbursement expense which is not already provided for under the **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, a. Transportation Expenses.**

(Personal Effects Coverage)

e. Personal Effects

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$500 for Personal Effects stolen with the "auto". The insurance provided under this provision is excess over any other collectible insurance. For this coverage extension, Personal Effects means tangible property that is worn or carried by an "insured".

(Personal Property of Others)

f. Personal Property of Others

We will pay up to \$500 for loss to personal property of others in or on your covered "auto." This coverage applies only in the event of "loss" to your covered "auto" caused by fire, lightning, explosion, theft, mischief or vandalism, the covered "auto's" collision with another object, or the covered "auto's" overturn. No deductibles apply to this coverage.

(Locksmith Coverage)

g. Locksmith Coverage

We will pay up to \$250 per occurrence for necessary locksmith services for keys locked inside a covered private passenger "auto". The deductible is waived for these services.

(Vehicle Wrap Coverage)

h. Vehicle Wrap Coverage

If you have Comprehensive or Collision coverage on an "auto" that is a total loss, in addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

(Airbag Accidental Discharge)

F. SECTION III – PHYSICAL DAMAGE COVERAGE, B. Exclusions is amended at 3. to include the following language:

If you have purchased Comprehensive or Collision Coverage under this policy, this exclusion does not apply to mechanical breakdown relating to the accidental discharge of an air bag. This coverage applies only to a covered auto you own and is excess of any other collectible insurance or warranty. No deductible applies to this coverage.

G. BROADENED LIMITS OF INSURANCE

(Audio, Visual and Data Electronic Equipment Coverage)

SECTION III – PHYSICAL DAMAGE COVERAGE – C. Limit of Insurance at 1.b. is amended to provide the following limits:

- b. Limits of \$1,000 per "loss" is increased to \$5,000 per "loss". All other terms and provisions of this section remain applicable.

(Auto Loan/Lease Total Loss Protection)

SECTION III – PHYSICAL DAMAGE COVERAGE – C. Limit of Insurance is amended by adding the following language:

- 4. In the event of a total "loss" to a covered "auto" shown in the Schedule pages, subject at the time of the "loss" to a loan or lease, we will pay any unpaid amount due including up to a maximum of \$500 for early termination fees or penalties on the lease or loan for a covered "auto" less:
 - a. The amount paid under the Physical Damage Coverage Section of the policy; and
 - b. Any:
 - (1) Overdue lease / loan payments at the time of the "loss";
 - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (3) Security deposits not returned by the lessor;
 - (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - (5) Carry-over balances from previous loans or leases.

(Glass Repair – Deductible Amendment)

H. GLASS REPAIR – DEDUCTIBLE

SECTION III – PHYSICAL DAMAGE COVERAGE – D. Deductible is amended by adding the following:

Any deductible shown in the Declarations as applicable to the covered "auto" will not apply to glass breakage if the damaged glass is repaired, rather than replaced.

(Amended Duties in the Event of Accident, Claim, Suit or Loss)

I. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

Under SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, the following is added to paragraph 2. Duties In The Event of Accident, Suit or Loss:

- d. Knowledge of any "accident", "claim", "suit" or "loss" will be deemed knowledge by you when notice of such "accident", "claim", "suit" or "loss" has been received by:
 - (1) You, if you are an individual;
 - (2) Any partner or insurance manager if you are a partnership;
 - (3) An executive officer or insurance manager, if you are a corporation;
 - (4) Your members, managers or insurance manager, if you are a limited liability company; or
 - (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization.

(Waiver of Subrogation by Contract)

J. WAIVER OF SUBROGATION REQUIRED BY CONTRACT

Under SECTION IV, BUSINESS AUTO CONDITIONS, A. Loss Conditions 5. Transfer of Rights of Recovery Against Others to Us the following language is added:

However, we waive any rights of recovery we may have against the person or organization with whom you have agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under the policy to which this endorsement is attached. This provision does not apply unless the written contract or written agreement has been executed, or permit has been issued, prior to the "bodily injury" or "property damage."

(Unintentional Failure to Disclose)

K. UNINTENTIONAL FAILURE TO DISCLOSE

Under SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, the following is added to 2. Concealment, Misrepresentation Or Fraud:

Your unintentional error in disclosing, or failing to disclose, any material fact existing at the effective date of this Coverage Form, or during the policy period in connection with any additional hazards, will not prejudice your rights under this Coverage Form.

(Hired, Leased, Rented or Borrowed Auto Physical Damage)

L. HIRED, LEASED, RENTED OR BORROWED AUTO PHYSICAL DAMAGE

Under SECTION IV – BUSINESS AUTO CONDITIONS B. General Conditions 5. Other Insurance Paragraph 5.b. is replaced by the following:

- b. (1) For "Comprehensive" and "Collision" Auto Physical Damage coverage provided by this endorsement, the following are deemed to be covered "autos" you own:
 - (a) Any Covered "auto" you lease, hire, rent or borrow; and
 - (b) Any Covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto"

(2) Limit of Insurance For This Section

The most we will pay for any one "loss" is the lesser of the following:

- (a) \$75,000 per accident, or
- (b) actual cash value at the time of loss, or
- (c) cost of repair.

Minus a \$500 deductible. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss. No deductible applies to "loss" caused by fire or lightning.

(3) This Hired Auto Physical Damage coverage is excess over any other collectible insurance.

(4) Definitions For This Section

- (a) Comprehensive Coverage: from any cause except the covered "auto's" collision with another object or the covered "auto's" overturn. We will pay glass breakage, "loss" caused by hitting a bird or animal and, "loss" caused by falling objects or missiles.
- (b) Collision Coverage: caused by the covered "auto's" collision with another object or by the covered "auto's" overturn.

(Mental Anguish)

M. MENTAL ANGUISH

Under SECTION V – DEFINITIONS, C. is replaced by the following:

C. "Bodily Injury" means bodily injury, sickness or disease sustained by a person including mental anguish or death resulting from bodily injury, sickness, or disease.

(Extended Cancellation Condition)

N. EXTENDED CANCELLATION CONDITION

Under CANCELLATION, of the COMMON POLICY CONDITIONS form, Item 2.b. is replaced by the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason.

POLICY NUMBER: 8532239

COMMERCIAL AUTO
CA 71 33 12 10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CANCELLATION PROVISION OR COVERAGE CHANGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:
Named Insured: Larry Young Paving	(Authorized Representative)

SCHEDULE

Number of Days' Notice 30
Name Of Person Or Organization
PER SCHEDULE ON FILE
Address

If this policy is canceled or materially changed to reduce or restrict coverage, we will mail notice of cancellation or change to the person or organization named in the Schedule. We will give the number of day's notice indicated in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO LIABILITY FOLLOW FORM

Except to the extent that valid "underlying insurance" for the full limit of insurance as shown in the Schedule of Underlying Insurance exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage" arising out of the ownership, maintenance, use or entrustment to others of any "auto" owned or operated by or rented or loaned to any insured, coverage provided by this policy will follow the provisions, exclusions and limitations of the "underlying insurance" unless otherwise directed by this insurance.

The provisions, exclusions and limitations apply even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "auto" that is owned or operated by or rented or loaned to any insured.

The provisions, exclusions and limitations do not apply to:

1. Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured; or
2. "Bodily injury" or "property damage" arising out of:
 - a. The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - b. The operation of any equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

In the event the operation of any "auto" is excluded from the application of "underlying insurance", then no coverage under this policy will be provided to any insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
COMMERCIAL UMBRELLA COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance;
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured;
- (3) The additional insured gives us prompt written notice of any "occurrence" which may result in a claim and prompt written notice of "suit";
- (4) The additional insured immediately forwards all legal papers to us, cooperates in the investigation or settlement of the claim or defense against the "suit", and otherwise complies with policy conditions.
- (5) The additional insured must tender the defense and indemnity of any claim or "suit" to any other insurer which also insures against a loss we cover under this policy. This includes, but is not limited to, any insurer which has issued a policy of insurance in which the additional insured qualifies as an insured. For the purpose of this requirement, the term "insures against" refers to any self-insurance and to any insurer which issued a policy of insurance that may provide coverage for the loss, regardless of whether the additional insured has actually requested that the insurer provide the additional insured with a defense and/or indemnity under that policy of insurance.
- (6) The additional insured agrees to make available any other insurance that the additional insured has for a loss we cover under this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – CONTROLLING INTEREST

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Person(s) Or Organization(s):

ANY PERSON OR ORGANIZATION YOU HAVE
AGREED TO NAME AS ADDITIONAL
INSURED BY WRITTEN CONTRACT OR
AGREEMENT IF THE CONTRACT OR
AGREEMENT IS EXECUTED PRIOR TO LOSS

LOCATIONS DESIGNATED AND
DESCRIBED IN THE WRITTEN
CONTRACT OR AGREEMENT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to their liability arising out of:

1. Their financial control of you; or
2. Premises they own, maintain or control while you lease or occupy these premises.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. This Insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 05 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – CONTROLLING INTEREST

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Person(s) Or Organization(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to their liability arising out of:

1. Their financial control of you; or
2. Premises they own, maintain or control while you lease or occupy these premises.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: All Texas operations

3. Premium:

The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 8/23/21 at 12:01 a.m. standard time, forms a part of:

Pol no. TSF0001311091 of Texas Mutual Insurance Company effective on 8/23/21

Issued to: LARRY YOUNG PAVING INC

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

8/18/21

POLICY NUMBER: 85322393

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION YOU HAVE AGREED TO NAME AS ADDITIONAL INSURED BY WRITTEN CONTRACT OR AGREEMENT IF THE CONTRACT OR AGREEMENT IS EXECUTED PRIOR TO LOSS	LOCATIONS DESIGNATED AND DESCRIBED IN THE WRITTEN CONTRACT OR AGREEMENT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

PREMIUM 250

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

April 28, 2022
Item No. 9.7.
1207 Texas Ave Renovation Project GMP

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding approval of Amendment No. 2 to the Construction Manager at Risk (CMAR) contract with JaCody Construction, LP accepting the Guaranteed Maximum Price (GMP) of \$3,871,798 for the Renovation of 1207 Texas Avenue.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This amendment to the current construction manager at risk contract with JaCody Construction, accepting the guaranteed maximum price, includes all needed work for the construction of the 1207 Texas Renovation project.

The City is currently designing a renovation for the facility located at 1207 Texas Avenue. The Human Resources department and Facilities Maintenance division are currently located in this building. HR will be moving into the new city hall building next month and Facilities Maintenance will be moving once the construction of a new building at 300 Krenek Tap Rd is complete. The renovation project includes updating the building to current codes and upgrading mechanical, plumbing, and electrical systems, as well as adding an event space in the old fire station bays. Extensive facade work to the exterior of the building is also included.

Staff determined that a construction manager at risk (CMAR) procurement method was the most beneficial for this project. The city issued RFP No. 22-005 and after review, recommends award to Jacody Construction, LP. The submitted CMAR fee is 5% of the construction cost. Once design is further along, the contractor will submit a guaranteed maximum price (GMP) for council consideration and approval.

Budget & Financial Summary: A transfer of \$305,000 was made to this project from other completed project savings. The new combined budget in the amount of \$4,305,000 is included for this project in the Facilities and Technology Capital Improvement Projects Fund and the Hotel Occupancy Tax Fund. A total of \$404,411 has been expended or committed to date, leaving a balance of \$3,900,589 for this contract and related expenses.

Attachments:

1. 1207 Texas Ave Estimate
2. 1207 GMP #3 Exhibits

Division	Description	COMMENTS	Quantity	Unit	Unit Cost	Total
Division 1	General Conditions					
	Utility Consumption		6	MO	\$ 1,500.00	\$ 9,000
	Superintendent		6	MO	\$ 8,500.00	\$ 51,000
	Project Manager		6	MO	\$ 7,500.00	\$ 45,000
	Dumpster		24	Pull	\$ 400.00	\$ 9,600
	Temp Toilets		6	MO	\$ 600.00	\$ 3,600
	Office Supplies			MO	\$ -	\$ -
	Final Clean		1	LS	\$ 10,000.00	\$ 10,000
	Material Handling		6	MO	\$ 1,500.00	\$ 9,000
	Survey		1	LS	\$ 2,500.00	\$ 2,500
	Testing	By Owner				\$ -
	JaCody Sign		1	EA	\$ 1,500.00	\$ 1,500
						\$ -
Division 2	TEMP Fence		1	LS	\$ 3,807.78	\$ 3,808
	Temp Fence Screening and Part Replacement		952	LF	\$ 2.00	\$ 1,904
	Building Demo		1	LS	\$ 46,500.00	\$ 46,500
	Flooring demo		1	LS	\$ 3,839.00	\$ 3,839
	Cut detach Stoop before demolition		1	LS	\$ 10,000.00	\$ 10,000
	Temp Walls Dust Control		1	LS	\$ 2,500.00	\$ 2,500
	Cutting and Coring		1	LS	\$ 36,682.00	\$ 36,682
	Electrical power for cutting/coring/polishing		1	LS	\$ 4,500.00	\$ 4,500
						\$ -
						\$ -
Division 3	Base Site Concrete		224.40	CY	\$ 116.91	\$ 26,235
	Base Fuel Surcharge per load		27.50	EA	\$ 30.00	\$ 825
	Base Site Rebar		1.00	LS	\$ 12,694.48	\$ 12,694
	Base Site Labor		1.00	LS	\$ 20,352.85	\$ 20,353
		if accepted, permit to pour needs to be ready when we do base site paving				
	ALT 1 - Driveway Add Site Concrete		64.90	CY	\$ 116.91	\$ 7,587
	ALT 1 - Driveway Add Fuel Surcharge per load		10.00	EA	\$ 30.00	\$ 300
	ALT 1 - Driveway Add Site Rebar		1.00	LS	\$ 4,330.00	\$ 4,330
	ALT 1 - Driveway Add Site Labor		1.00	LS	\$ 5,198.60	\$ 5,199
	ALT 1 - Driveway Add Earthwork - demo/grade/lime		1.00	LS	\$ 19,500.00	\$ 19,500
	ALT 1 - Driveway Add Traffic Control		1.00	LS	\$ 5,500.00	\$ 5,500
	Building Concrete		47.50	CY	\$ 116.91	\$ 5,553
	Building Concrete - premium for topping mix		35.00	CY	\$ 153.72	\$ 5,380
	Fuel Surcharge per load		6.00	EA	\$ 30.00	\$ 180
		no rebar included except at Slab on Carton				
	Building Rebar		1.00	LS	\$ 1,315.00	\$ 1,315
	Building Labor		1.00	LS	\$ 14,100.00	\$ 14,100
	Handicap Ramp - Material Only		5	EA	\$ 125.00	\$ 625
	Drilled Piers	None		LS	\$ -	\$ -
	Pump Truck		1	LS	\$ 2,500.00	\$ 2,500
	Misc. Carpentry for Form boards		1	LS	\$ 7,500.00	\$ 7,500
	Equipment		1	LS	\$ 3,500.00	\$ 3,500
	Light Pole Bases	None		EA	\$ 650.00	\$ -
	Site Sealants		14195	SF	\$ 0.10	\$ 1,420
	Equipment Pad	None		LS	\$ -	\$ -
	Concrete Misc. Materials, equipment,		1	LS	\$ 18,797.45	\$ 18,797
						\$ -
Division 4	Masonry		1	LS	\$ 170,900.00	\$ 170,900
	Clean substrate behind masonry		1	LS	\$ 56,280.00	\$ 56,280
	Clean substrate at paint locations		1	LS	\$ 26,000.00	\$ 26,000
	Tooth in cmu and add steel supports at storage rooms		1	LS	\$ 5,500.00	\$ 5,500
Division 5						\$ -
	Structural Steel - Supply and Install		1	LS	\$ 16,550.00	\$ 16,550
Division 6	Tube steel support at RR counters		2	EA	\$ 600.00	\$ 1,200
						\$ -
Division 6	Millwork		1	LS	\$ 139,286.00	\$ 139,286
	Millwork Mockup		1	LS	\$ 2,000.00	\$ 2,000
	Rough Carpentry - blocking		1	LS	\$ 8,000.00	\$ 8,000
	Wood Blocking for window shades		300	LF	\$ 10.00	\$ 3,000
						\$ -
Division 7	Waterproofing		538	SF	\$ 5.00	\$ 2,690
	STUCCO/EIFS EXTERIOR			LS	\$ 109,087.00	\$ -
	Rigid Insulation		6596	SF	\$ 3.00	\$ 19,788
	Wall Insulation Exterior		14570	SF	\$ 0.60	\$ 8,742
	Wall Insulation Interior		28355	SF	\$ 0.60	\$ 17,013
	Spray Foam	used spray foam instead of spec	1	LS	\$ 11,880.00	\$ 11,880
	Roofing		1	LS	\$ 46,572.00	\$ 46,572
Division 8						\$ -
	Door/Frame/HDWRE		1	LS	\$ 94,300.00	\$ 94,300
	Install Door/Frame/Hdwre		53	EA	\$ 250.00	\$ 13,250
	Glass /Glazing		1	LS	\$ 1,410.00	\$ 1,410
Division 9	Overhead doors	50k cycles	1	LS	\$ 140,868.00	\$ 140,868
						\$ -
	Painting Drywall		71444	SF	\$ 0.60	\$ 42,866
	Painting Drywall Ceilings		2085	SF	\$ 1.00	\$ 2,085
	Paint Furrdown		507	SF	\$ 3.00	\$ 1,521
	PAINT Doors/Frames		53	EA	\$ 150.00	\$ 7,950
Division 9	Paint exposed Structure -		6315	SF	\$ 1.50	\$ 9,473
	Paint Bollards	None		EA	\$ 100.00	\$ -
	Paint Building Exterior		4747	SF	\$ 1.50	\$ 7,121
						\$ -

	Mural	not shown in drawings	1	LS	\$	10,000.00	\$	10,000
	Tape and Float Walls		71444	SF	\$	0.55	\$	39,294
	Tape and Float Ceilings		2592	SF	\$	0.55	\$	1,426
	Tape and Float Furrdown		718	SF	\$	14.00	\$	10,052
	WC-1	none - Deleted		SF	\$	-	\$	-
	Drywall Framing- Interior walls -12 - New Walls		785	LF	\$	85.00	\$	66,725
	Drywall Framing- Interior walls -18		300	LF	\$	95.00	\$	28,500
	Add Sheer truck to exterior walls		33437	SF	\$	1.75	\$	58,515
	Drywall Ceiling Framing		2085	SF	\$	8.00	\$	16,680
	Drywall Furrdown		169	LF	\$	140.00	\$	23,660
	Drywall Furrdown (Hanging)		163	LF	\$	150.00	\$	24,450
	Exterior Infill Framing at OH		538	SF	\$	10.00	\$	5,380
	Exterior infill framing at Recesses		718	SF	\$	15.00	\$	10,770
	Ceilings - ACT		8126	SF	\$	5.00	\$	40,630
	Flooring/Tile		1	LS	\$	94,857.21	\$	94,857
	Additional Floor Prep		1	LS	\$	5,500.00	\$	5,500
	Concrete Floor Sealing		1	LS	\$	-	\$	-
	Concrete Polishing		1	LS	\$	23,175.00	\$	23,175
Division 10	Toilet Accessories - Supply		1	LS	\$	18,700.00	\$	18,700
	Toilet Accessories - Install		1	LS	\$	6,500.00	\$	6,500
	Fire Extinguishers - Supply		1	LS	\$	2,250.00	\$	2,250
	Fire Extinguishers - Install		1	LS	\$	400.00	\$	400
	Knox Box		1	ea.	\$	750.00	\$	750
	Signage		53	ea.	\$	150.00	\$	7,950
	Exterior Pin Letter Signage		8	ea.	\$	500.00	\$	4,000
	Aluminum Canopy -		1	LS	\$	110,380.00	\$	110,380
	Canopy Connector Plates		1	LS	\$	5,500.00	\$	5,500
	Markerboards		1	LS	\$	2,730.00	\$	2,730
	Marker board install		1	LS	\$	360.00	\$	360
	FRP panels			SF	\$	3.00	\$	-
	Residential Appliances		1	LS	\$	22,407.00	\$	22,407
	Corner Guards		39	EA	\$	250.00	\$	9,750
Division 12	Window Treatments	wireless system	1	LS	\$	24,118.00	\$	24,118
Division 21 - Fire Sprinkler	Fire Protection - Interior		1	LS	\$	80,163.00	\$	80,163
Division 22 - Plumbing	Plumbing		1	LS	\$	107,887.00	\$	107,887
Division 23 - HVAC	HVAC		1	LS	\$	265,760.00	\$	265,760
	HVAC Demo		1	LS	\$	5,000.00	\$	5,000
	HVAC Repairs to existing equipment	scope TBD	1	LS	\$	30,000.00	\$	30,000
Division 26	Electrical		1	LS	\$	294,300.00	\$	294,300
	Electrical Demo		1	LS	\$	19,200.00	\$	19,200
	External 10KVA UPS System		1	LS	\$	11,250.00	\$	11,250
	Bring exiting wiring up to code		1	LS	\$	15,000.00	\$	15,000
	Relocate gear for CT can and extend rework feeders as required and provide new secondary service		??					
	Remove and reinstall generator for masonry installation		??					
	Fire Alarm		1	LS	\$	19,676.00	\$	19,676
	Data/Telecom	Includes Demo	1	LS	\$	97,430.35	\$	97,430
	AV		1	LS	\$	160,163.00	\$	160,163
	AV - Alt 1, 2, 3		1	LS	\$	13,790.00	\$	13,790
	Security Cameras		1	LS	\$	34,205.00	\$	34,205
	Security		1	LS	\$	59,998.00	\$	59,998
Division 31 - Site work	Earthwork		1	LS	\$	59,200.00	\$	59,200
	SWPPP		1	LS	\$	4,770.00	\$	4,770
	SWPPP - Inspections		6	MO	\$	350.00	\$	2,100
	Tree Protection		1	LS	\$	2,500.00	\$	2,500
	Termite Treatment	None		SF	\$	0.15	\$	-
	Bike Rack	None		EA	\$	550.00	\$	-
	Traffic Control		1	LS	\$	1,500.00	\$	1,500
Division 32	Parking Lot Stripping		1	LS	\$	2,105.00	\$	2,105
	Landscape and Irrigation		1	LS	\$	28,866.00	\$	28,866
	Irrigation Sleeves	w/ landscaping		LF	\$	20.00	\$	-
	Fencing	none		LS	\$	-	\$	-
Division 33 - Utilities	Site Utilities	Riser entry outside building	1	LS	\$	35,500.00	\$	35,500
	Meters	assume no charge from owner		EA	\$	2,500.00		

Sub Total	\$	3,296,342
Permit - None Included	\$	-
Insurance	\$	58,077
Bond	\$	38,788
OHP	\$	178,589.89
Total	\$	3,571,798
Contingency	\$	300,000
Job total w/ Contingency	\$	3,871,798

Amendment No. 3



JaCody Construction LP,
10770 SH 30, Suite 400
College Station, TX 77845
Phone: 979.774.5613
Fax: 979.774.5693

April 22, 2022

City of College Station
1101 Texas Avenue
College Station, Tx 77840
Attn: Ryan Key

Project No. HM2100, RFP: 22-005: CMAR-The Renovation of 1207 Texas Avenue

RE: Guaranteed Maximum Price Proposal

Mr. Ryan Key,

JaCody Construction is pleased to present the attached Guaranteed Maximum Price Proposal; inclusive of our Basis of Estimate entitled, "CMAR-1207", Dated April 22, 2022. Our proposal includes Construction Management Services to construct the renovation of City of College Station Building located at 1207 Texas Ave., College Station, Tx 77840.. In accordance with the Construction Manager at Risk Standard Form of Agreement, executed November 22, 2021, between the City of College Station and JaCody Construction, LP, please refer to the GMP Package for further proposal details.

The GMP Proposal Guaranteed Maximum Price is in the amount of Three Million, Eight Hundred Seventy-One Thousand, Seven Hundred Ninety-Eight Dollars, \$3,871,798.

The Substantial Completion date for the Work is as per the attached GMP Proposal Baseline Project Schedule, subject to adjustments as provided for the Contract Documents.

Upon approval of the City Council and receipt of the required approval signatures, this Amendment will be incorporated into the Agreement.

Please contact me if you should have any questions.

Best Regards,

Forrest Couch
Partner

*Required Approvals on Page 2



Agreed:

JACODY CONSTRUCTION, LP

BY: _____

Printed Name: Forrest Couch II

Title: Partner

Date: _____

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

BY: _____

City Attorney

Date: _____

BY: _____

Assistant City Manager/CFO

Date: _____

QUALIFICATIONS & ASSUMPTIONS

Phase: GMP – Stamped drawings no permit comments

Document Date: April 21, 2022

General Qualifications

1. Our estimate includes no provisions to pay the cost of a 3rd party commissioning agent. We have included assistance for the commissioning agent to accomplish their work.
2. Our estimate has no provisions for unusual, undocumented, or unanticipated subsurface conditions.
3. Our estimate excludes the excavation or transportation of hazardous materials discovered in a foreseen or unforeseen condition.
4. Our estimate excludes materials testing.
5. Our estimate does not include any provisions to provide 3rd party environmental (i.e. asbestos, lead, mold, etc...) monitoring.
6. Our estimate is based on performing work during normal work hours Monday through Friday, 7:00AM to 3:30PM, and intermittent weekend work as required.
7. Our estimate does not include any provisions for building code changes, life safety code changes, or other regulatory changes that may occur beyond what is currently designed.
8. The following scopes of work are excluded:
 - a. Signage, except as specially included.
 - b. Fixtures, Furnishings, Furniture, and Equipment
9. Our proposal is contingent upon the Owner and/or its lender providing evidence satisfactory to us and our bonding company that sufficient funds are available and have been set aside specifically to pay the construction contract, before starting work.
10. Our estimate assumes complete use of the entire defined work area.
11. Our estimate is based on JaCody Construction having access to contingency funds for the use of acceleration of the project schedule at any time during the project for any activity.

12. This is not a line items GMP. Contractor only guarantees the total GMP. Subtotals are for convenience only.
13. Any allowances stated below are a max amount set aside for that item. Any cost for these issues that goes beyond stated allowance will be considered to be “in-addition” to the GMP.
14. Pricing is based on drawing dated on 5/13/21
15. Exclude all equipment, moveable fixtures, furniture, furnishings and appliance unless specifically stated otherwise.
16. Exclude moving/disconnecting any equipment/furniture/fixtures.
17. Exclude any LEED certifications or documentation.
18. Exclude any forthcoming changes from the City of College Station that deviate from current drawings
19. Assumes the Design Team shall specify flooring products and adhesives compatible with curing compounds.
20. Our GMP excludes providing on-site security personnel.
21. City Building Permit is excluded as well as cost related to the water meter and tap fees. Any additional city fees are excluded.
22. Excludes security personnel presence during existing building related activities
23. The schedule assumes we can procure all material in the allotted time frame.
24. We exclude all/any delegated design except for fire sprinkler design and fire alarm within in the building.
25. GMP excludes sole sourcing of any products
26. Assume existing structure is adequate for any new imposed loads added to the building per the design scope. This includes but is not limited to exterior masonry veneer loads, aluminum canopies added to the structure as well as construction loads like man lifts equipment on existing structural slab.

27. We assume the design team has adequately reviewed and verified all locations for structural integrity where we are to cut structural concrete precast roof T's and concrete precast walls. We assume no liability for any issues resulting from cutting this opening.
28. Exclude scanning and or testing any concrete (structural T's, precast walls, structural slab, paving) before cutting it.

03.00 – Concrete

1. All concrete will have a manual screed finish, we are not using a laser screed as this would not be typical practice for this area and this type of building. Floor Flatness test will not be provided. SOG will be built with typical local means and methods for slab on grade.
2. All sidewalks and ramps along the streets are by others.
3. New driveway that connects to Texas Avenue needs to be permitted and ready at the start of the project to maintain current pricing.

4.00 – Masonry

1. All new adhered masonry is attached to an existing structure and existing foundation system. We provide no warranty that masonry will not crack due to movement.

6.02 – Architectural Millwork

1. AWI certification not included.
2. Bradley quartz SS-1 not available for specified locations. Provided SS-2 quartz for all countertops and lavatories.
3. Salvaged wood referenced on finish schedule is to be provided by City of College Station.

7.000 – Roofing/waterproofing/insulation

1. Interior side of exterior wall where existing framing is not to be removed will be sprayed with open cell foam.
2. No stucco or EIFS work is included.
3. We exclude re-sealing/waterproofing the exterior precast concrete walls.

08.01 – Doors/Frames/Hardware

1. Overhead doors to be based on 50k cycles not 100k cycles.
2. Exclude new exterior windows
3. Exclude flashing/sealing existing windows in precast walls.

09.00 – Floor Finishes

1. Concrete polishing will be class b exposure and level 4 polish

2. Floor prep allowance is \$5,500. Additional floor prep may be required.
3. Specified Tile is not available in beveled version. We included flat tile of the specified color, size and finish.
4. RTF – The material color selection name (Antique Light Oak) and material color ID number (A00415 do not reconcile. The color ID number for Antique Light Oak is A00406. The color ID number for Antique Oak is A00415.
5. RBA-1 - The base material with TOE to be installed in office Spaces and general areas with hard surface floors.
6. RBA-1 - The base material with no TOE to be installed in office spaces and general areas with carpet tile.
7. RBA -2 – in reception area and specified front of house areas.

09.12 – Painting and Wall Coverings

1. Owner requested mural has an allowance of \$10,000
2. No wall coverings included.

10.00 – Specialties

1. Two visual display boards have been included.

10.25– Window Coverings

1. Window shades in open assembly 155 with be controlled with radio transmitted with switches capable of grouping up to 5 groups with one switch.

21.01 – Fire Protection

1. New fire line shall be to within 5’ of the building by others.
2. Fire Sprinkler will come up on the outside of the building and will penetrate through the exterior wall into building.
3. Assume city water pressure is adequate and no booster pumps

22.01 - Plumbing

1. None

23.01 - HVAC

1. HVAC system is to be Carrier and current lead time is 25 weeks once design team approves submittals.
2. Allowance for repair on existing units is \$30,000

26.01 - Electrical

1. Cable Trays not included.
2. Use of MC cable where allowed by code

3. Lightning protection is excluded.
4. Exclude any work with generator including any recommissioning if required.
5. Exclude relocate gear for CT can and feeders to provide secondary service.
6. Allowance of \$15,000 for brining current electrical up to code.
7. Exclude any coordination studies.
8. Allowance of \$11,250 for external KVA ups system.

Division	Description	COMMENTS	Quantity	Unit	Unit Cost	Total
Division 1	General Conditions					
	Utility Consumption		6	MO	\$ 1,500.00	\$ 9,000
	Superintendent		6	MO	\$ 8,500.00	\$ 51,000
	Project Manager		6	MO	\$ 7,500.00	\$ 45,000
	Dumpster		24	Pull	\$ 400.00	\$ 9,600
	Temp Toilets		6	MO	\$ 600.00	\$ 3,600
	Office Supplies			MO	\$ -	\$ -
	Final Clean		1	LS	\$ 10,000.00	\$ 10,000
	Material Handling		6	MO	\$ 1,500.00	\$ 9,000
	Survey		1	LS	\$ 2,500.00	\$ 2,500
	Testing	By Owner				\$ -
	JaCody Sign		1	EA	\$ 1,500.00	\$ 1,500
						\$ -
Division 2	TEMP Fence		1	LS	\$ 3,807.78	\$ 3,808
	Temp Fence Screening and Part Replacement		952	LF	\$ 2.00	\$ 1,904
	Building Demo		1	LS	\$ 46,500.00	\$ 46,500
	Flooring demo		1	LS	\$ 3,839.00	\$ 3,839
	Cut detach Stoop before demolition		1	LS	\$ 10,000.00	\$ 10,000
	Temp Walls Dust Control		1	LS	\$ 2,500.00	\$ 2,500
	Cutting and Coring		1	LS	\$ 36,682.00	\$ 36,682
	Electrical power for cutting/coring/polishing		1	LS	\$ 4,500.00	\$ 4,500
						\$ -
						\$ -
Division 3	Base Site Concrete		224.40	CY	\$ 116.91	\$ 26,235
	Base Fuel Surcharge per load		27.50	EA	\$ 30.00	\$ 825
	Base Site Rebar		1.00	LS	\$ 12,694.48	\$ 12,694
	Base Site Labor		1.00	LS	\$ 20,352.85	\$ 20,353
		if accepted, permit to pour needs to be ready when we do base site paving				
	ALT 1 - Driveway Add Site Concrete		64.90	CY	\$ 116.91	\$ 7,587
	ALT 1 - Driveway Add Fuel Surcharge per load		10.00	EA	\$ 30.00	\$ 300
	ALT 1 - Driveway Add Site Rebar		1.00	LS	\$ 4,330.00	\$ 4,330
	ALT 1 - Driveway Add Site Labor		1.00	LS	\$ 5,198.60	\$ 5,199
	ALT 1 - Driveway Add Earthwork - demo/grade/lime		1.00	LS	\$ 19,500.00	\$ 19,500
	ALT 1 - Driveway Add Traffic Control		1.00	LS	\$ 5,500.00	\$ 5,500
	Building Concrete		47.50	CY	\$ 116.91	\$ 5,553
	Building Concrete - premium for topping mix		35.00	CY	\$ 153.72	\$ 5,380
	Fuel Surcharge per load		6.00	EA	\$ 30.00	\$ 180
		no rebar included except at Slab on Carton				
	Building Rebar		1.00	LS	\$ 1,315.00	\$ 1,315
	Building Labor		1.00	LS	\$ 14,100.00	\$ 14,100
	Handicap Ramp - Material Only		5	EA	\$ 125.00	\$ 625
	Drilled Piers	None		LS	\$ -	\$ -
	Pump Truck		1	LS	\$ 2,500.00	\$ 2,500
	Misc. Carpentry for Form boards		1	LS	\$ 7,500.00	\$ 7,500
	Equipment		1	LS	\$ 3,500.00	\$ 3,500
	Light Pole Bases	None		EA	\$ 650.00	\$ -
	Site Sealants		14195	SF	\$ 0.10	\$ 1,420
	Equipment Pad	None		LS	\$ -	\$ -
	Concrete Misc. Materials, equipment,		1	LS	\$ 18,797.45	\$ 18,797
						\$ -
Division 4	Masonry		1	LS	\$ 170,900.00	\$ 170,900
	Clean substrate behind masonry		1	LS	\$ 56,280.00	\$ 56,280
	Clean substrate at paint locations		1	LS	\$ 26,000.00	\$ 26,000
	Tooth in cmu and add steel supports at storage rooms		1	LS	\$ 5,500.00	\$ 5,500
Division 5						\$ -
	Structural Steel - Supply and Install		1	LS	\$ 16,550.00	\$ 16,550
Division 6	Tube steel support at RR counters		2	EA	\$ 600.00	\$ 1,200
						\$ -
Division 6	Millwork		1	LS	\$ 139,286.00	\$ 139,286
	Millwork Mockup		1	LS	\$ 2,000.00	\$ 2,000
	Rough Carpentry - blocking		1	LS	\$ 8,000.00	\$ 8,000
	Wood Blocking for window shades		300	LF	\$ 10.00	\$ 3,000
						\$ -
Division 7	Waterproofing		538	SF	\$ 5.00	\$ 2,690
	STUCCO/EIFS EXTERIOR			LS	\$ 109,087.00	\$ -
	Rigid Insulation		6596	SF	\$ 3.00	\$ 19,788
	Wall Insulation Exterior		14570	SF	\$ 0.60	\$ 8,742
	Wall Insulation Interior		28355	SF	\$ 0.60	\$ 17,013
	Spray Foam	used spray foam instead of spec	1	LS	\$ 11,880.00	\$ 11,880
	Roofing		1	LS	\$ 46,572.00	\$ 46,572
Division 8						\$ -
	Door/Frame/HDWRE		1	LS	\$ 94,300.00	\$ 94,300
	Install Door/Frame/Hdwre		53	EA	\$ 250.00	\$ 13,250
	Glass /Glazing		1	LS	\$ 1,410.00	\$ 1,410
Division 9	Overhead doors	50k cycles	1	LS	\$ 140,868.00	\$ 140,868
						\$ -
	Painting Drywall		71444	SF	\$ 0.60	\$ 42,866
	Painting Drywall Ceilings		2085	SF	\$ 1.00	\$ 2,085
	Paint Furrdown		507	SF	\$ 3.00	\$ 1,521
	PAINT Doors/Frames		53	EA	\$ 150.00	\$ 7,950
Division 9	Paint exposed Structure -		6315	SF	\$ 1.50	\$ 9,473
	Paint Bollards	None		EA	\$ 100.00	\$ -
	Paint Building Exterior		4747	SF	\$ 1.50	\$ 7,121
						\$ -

	Mural	not shown in drawings	1	LS	\$	10,000.00	\$	10,000
	Tape and Float Walls		71444	SF	\$	0.55	\$	39,294
	Tape and Float Ceilings		2592	SF	\$	0.55	\$	1,426
	Tape and Float Furrdown		718	SF	\$	14.00	\$	10,052
	WC-1	none - Deleted		SF	\$	-	\$	-
	Drywall Framing- Interior walls -12 - New Walls		785	LF	\$	85.00	\$	66,725
	Drywall Framing- Interior walls -18		300	LF	\$	95.00	\$	28,500
	Add Sheer truck to exterior walls		33437	SF	\$	1.75	\$	58,515
	Drywall Ceiling Framing		2085	SF	\$	8.00	\$	16,680
	Drywall Furrdown		169	LF	\$	140.00	\$	23,660
	Drywall Furrdown (Hanging)		163	LF	\$	150.00	\$	24,450
	Exterior Infill Framing at OH		538	SF	\$	10.00	\$	5,380
	Exterior infill framing at Recesses		718	SF	\$	15.00	\$	10,770
	Ceilings - ACT		8126	SF	\$	5.00	\$	40,630
	Flooring/Tile		1	LS	\$	94,857.21	\$	94,857
	Additional Floor Prep		1	LS	\$	5,500.00	\$	5,500
	Concrete Floor Sealing		1	LS	\$	-	\$	-
	Concrete Polishing		1	LS	\$	23,175.00	\$	23,175
Division 10	Toilet Accessories - Supply		1	LS	\$	18,700.00	\$	18,700
	Toilet Accessories - Install		1	LS	\$	6,500.00	\$	6,500
	Fire Extinguishers - Supply		1	LS	\$	2,250.00	\$	2,250
	Fire Extinguishers - Install		1	LS	\$	400.00	\$	400
	Knox Box		1	ea.	\$	750.00	\$	750
	Signage		53	ea.	\$	150.00	\$	7,950
	Exterior Pin Letter Signage		8	ea.	\$	500.00	\$	4,000
	Aluminum Canopy -		1	LS	\$	110,380.00	\$	110,380
	Canopy Connector Plates		1	LS	\$	5,500.00	\$	5,500
	Markerboards		1	LS	\$	2,730.00	\$	2,730
	Marker board install		1	LS	\$	360.00	\$	360
	FRP panels			SF	\$	3.00	\$	-
	Residential Appliances		1	LS	\$	22,407.00	\$	22,407
	Corner Guards		39	EA	\$	250.00	\$	9,750
Division 12	Window Treatments	wireless system	1	LS	\$	24,118.00	\$	24,118
Division 21 - Fire Sprinkler	Fire Protection - Interior		1	LS	\$	80,163.00	\$	80,163
Division 22 - Plumbing	Plumbing		1	LS	\$	107,887.00	\$	107,887
Division 23 - HVAC	HVAC		1	LS	\$	265,760.00	\$	265,760
	HVAC Demo		1	LS	\$	5,000.00	\$	5,000
	HVAC Repairs to existing equipment	scope TBD	1	LS	\$	30,000.00	\$	30,000
Division 26	Electrical		1	LS	\$	294,300.00	\$	294,300
	Electrical Demo		1	LS	\$	19,200.00	\$	19,200
	External 10KVA UPS System		1	LS	\$	11,250.00	\$	11,250
	Bring exiting wiring up to code		1	LS	\$	15,000.00	\$	15,000
	Relocate gear for CT can and extend rework feeders as required and provide new secondary service	??						
	Remove and reinstall generator for masonry installation	??						
	Fire Alarm		1	LS	\$	19,676.00	\$	19,676
	Data/Telecom	Includes Demo	1	LS	\$	97,430.35	\$	97,430
	AV		1	LS	\$	160,163.00	\$	160,163
	AV - Alt 1, 2, 3		1	LS	\$	13,790.00	\$	13,790
	Security Cameras		1	LS	\$	34,205.00	\$	34,205
	Security		1	LS	\$	59,998.00	\$	59,998
Division 31 - Site work	Earthwork		1	LS	\$	59,200.00	\$	59,200
	SWPPP		1	LS	\$	4,770.00	\$	4,770
	SWPPP - Inspections		6	MO	\$	350.00	\$	2,100
	Tree Protection		1	LS	\$	2,500.00	\$	2,500
	Termite Treatment	None		SF	\$	0.15	\$	-
	Bike Rack	None		EA	\$	550.00	\$	-
	Traffic Control		1	LS	\$	1,500.00	\$	1,500
Division 32	Parking Lot Stripping		1	LS	\$	2,105.00	\$	2,105
	Landscape and Irrigation		1	LS	\$	28,866.00	\$	28,866
	Irrigation Sleeves	w/ landscaping		LF	\$	20.00	\$	-
	Fencing	none		LS	\$	-	\$	-
Division 33 - Utilities	Site Utilities	Riser entry outside building	1	LS	\$	35,500.00	\$	35,500
	Meters	assume no charge from owner		EA	\$	2,500.00		

Sub Total	\$	3,296,342
Permit - None Included	\$	-
Insurance	\$	58,077
Bond	\$	38,788
OHP	\$	178,589.89
Total	\$	3,571,798
Contingency	\$	300,000
Job total w/ Contingency	\$	3,871,798

ID		Task Mode	Task Name	Duration	Start	Finish	Predecessors	Mar	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quar								
								Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
0			1207 Renovation	230 days	Tue 5/10/22	Mon 3/27/23															
1			Notice to Proceed	0 days	Tue 5/10/22	Tue 5/10/22															
2			HVAC Procurement	130 days	Tue 5/10/22	Mon 11/7/22	1														
3			Overhead Door Procurement	150 days	Tue 5/10/22	Mon 12/5/22	1														
4			Mobilization	3 days	Tue 5/10/22	Thu 5/12/22	1														
5			Interior Demolition	20 days	Fri 5/13/22	Thu 6/9/22	4														
6			Spray Insulation at Exterior Wall	5 days	Fri 6/10/22	Thu 6/16/22	5														
7			Interior Framing	20 days	Fri 6/17/22	Thu 7/14/22	6														
8			In-Wall MEP Rough In	20 days	Fri 7/1/22	Thu 7/28/22	7SS+10 days														
9			Restroom Countertop Supports	5 days	Mon 7/25/22	Fri 7/29/22	10FF														
10			In-Wall Inspection	1 day	Fri 7/29/22	Fri 7/29/22	8														
11			Sheetrock	20 days	Mon 8/1/22	Fri 8/26/22	10														
12			Overhead MEP Rough In	25 days	Fri 7/29/22	Thu 9/1/22	8														
13			Aluminum Frames	5 days	Fri 9/2/22	Thu 9/8/22	11,12														
14			First Coat Paint	5 days	Fri 9/9/22	Thu 9/15/22	13														
15			Ceiling Grid (areas not affected by HVAC equipment)	20 days	Fri 9/16/22	Thu 10/13/22	14														
16			Light Fixtures	10 days	Fri 9/30/22	Thu 10/13/22	15SS+10 days														
17			Diffusers and Grilles	10 days	Fri 9/30/22	Thu 10/13/22	15SS+10 days														
18			Install Remaining HVAC Equipment	10 days	Tue 11/8/22	Mon 11/21/22	2														
19			Overhead Inspection	1 day	Tue 11/22/22	Tue 11/22/22	18														
20			Ceiling Cover Up	5 days	Wed 11/23/22	Tue 11/29/22	19														
21			Install Millwork	10 days	Wed 11/30/22	Tue 12/13/22	20														
22			Flooring	15 days	Wed 12/14/22	Tue 1/3/23	21														
23			Hang Doors	3 days	Wed 1/4/23	Fri 1/6/23	22														
24			Hard Ceilings at Restrooms	10 days	Wed 11/23/22	Tue 12/6/22	19														
25			Final Paint	15 days	Mon 1/9/23	Fri 1/27/23	23														
26			Restroom Floor Tile	10 days	Wed 12/7/22	Tue 12/20/22	24														
27			Restroom Wall Tile	10 days	Wed 12/21/22	Tue 1/3/23	26														
28			Restroom Countertops	3 days	Wed 1/4/23	Fri 1/6/23	9,27														
29			Restroom Partitions/Accessories	10 days	Mon 1/9/23	Fri 1/20/23	28														
30			Restroom Fixtures	5 days	Mon 1/23/23	Fri 1/27/23	29														
31			Restroom Final Paint	3 days	Mon 1/30/23	Wed 2/1/23	30														
32			Sawcut Concrete at Floor Drains and Overhead Doors	15 days	Tue 11/8/22	Mon 11/28/22	3FF-5 days														
33			Install Overhead Doors	10 days	Tue 11/29/22	Mon 12/12/22	32														
34			Prepare Exterior Substrate	25 days	Tue 10/4/22	Tue 11/8/22	32SF														
35			Exterior Masonry	50 days	Tue 11/8/22	Mon 1/16/23	34														
36			Canopies	15 days	Tue 1/17/23	Mon 2/6/23	35														

Project: 1207 Renovation
Date: Fri 4/22/22

Task



Inactive Task



Manual Summary Rollup



External Milestone



Manual Progress



Split



Inactive Milestone



Manual Summary



Deadline



Milestone



Inactive Summary



Start-only



Critical



Summary



Manual Task



Finish-only



Critical Split



Project Summary



Duration-only



External Tasks



Progress

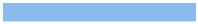


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ID		Task Mode	Task Name	Duration	Start	Finish	Predecessors	Mar	2nd Quarter				3rd Quarter			4th Quarter			1st Quarter			2nd Quar							
								Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr								
37			Site Concrete	15 days	Tue 2/7/23	Mon 2/27/23	36																						
38			Landscaping	20 days	Tue 2/28/23	Mon 3/27/23	37																						
39			Parking Lot Striping	3 days	Tue 2/28/23	Thu 3/2/23	37																						
40			Construction Clean	3 days	Fri 3/3/23	Tue 3/7/23	39,31																						
41			Inspections and Punch List	3 days	Wed 3/8/23	Fri 3/10/23	40																						
42			Final Clean	3 days	Mon 3/13/23	Wed 3/15/23	41																						
43			CO and Substantial Completion	1 day	Thu 3/16/23	Thu 3/16/23	42																						

Project: 1207 Renovation
Date: Fri 4/22/22

Task



Inactive Task



Manual Summary Rollup



External Milestone



Manual Progress



Split



Inactive Milestone



Manual Summary



Deadline



Milestone



Inactive Summary



Start-only



Critical



Summary



Manual Task



Finish-only



Critical Split



Project Summary



Duration-only



External Tasks



Progress



Project No. CMAR 22-005

PERFORMANCE BOND

Bond #4452513

PERFORMANCE BOND

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
THE COUNTY OF BRAZOS §

THAT WE, JaCody Construction, LP, as Principal, hereinafter called "Contractor" and the other subscriber hereto SureTec Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Million Five Hundred Thousand (\$ 2,500,000) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Agreement in writing with the City of College Station for the 1207 Texas Avenue renovation (RFP 22-005), all of such work to be done as set out in full in said Agreement Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Agreement in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Agreement Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of College Station or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Agreement in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Agreement and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Agreement that the City of College Station shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of College Station shall have the right to pay or withhold such retained amounts or any other amount owing under the Agreement without changing or affecting the liability of the Surety hereon in any degree.

Contract No. 22300122

CMAR- Construction

Form 07-23-2021

It is further expressly agreed by Surety that the City of College Station or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom. Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall not in anywise affect its obligation on this bond and it does hereby waive notice of any such change in Contract Time or Contract Sum.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of College Station from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of College Station shall bring any suit or other proceeding at law on the Agreement or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in Brazos County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Agreement Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party. A copy of surety agent "Power of Attorney" must be attached hereto.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

JACODY CONSTRUCTION, LP

ATTEST, SEAL: (if a corporation)

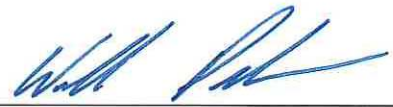
WITNESS: (if not a corporation)

By: 
Name: Cari Richter
Title: office manager
Date: November 22, 2021

(Name of Contractor)

By: 
Name: Forrest L Cochett
Title: Partner
Date: November 22, 2021

ATTEST, WITNESS (SEAL)

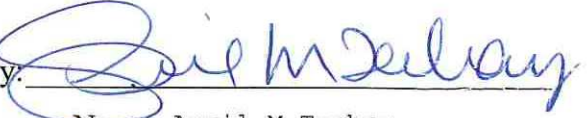
By: 
Name: Will Peckham
Title: Witness
Date: November 22, 2021

SureTec Insurance Company

(Full Name of Surety)

2103 City West Blvd., Suite 1300
Houston, Texas 77042

(Address of Surety for Notice)

By: 
Name: April M Terbay
Title: Attorney-In-Fact
Date: November 22, 2021

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF COLLEGE STATION,
TEXAS:

City Attorney's Office

City Manager

TEXAS STATUTORY PAYMENT BOND

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
THE COUNTY OF BRAZOS §

THAT WE, JaCody Construction, LP, as Principal, hereinafter called "Principal" and the other subscriber hereto SureTec Insurance Company, a corporation organized and existing under the laws of the State of Texas, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Million Five Hundred Thousand (\$ 2,500,000) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain Agreement with City of College Station dated the 22 day of Day November, 20 21, for the 1207 Texas Avenue renovation (RFP 22-005), which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

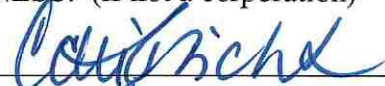
Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall not in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Sum. A copy of surety agent's "Power of Attorney" must be attached hereto.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST, SEAL: (if a corporation)

JACODY CONSTRUCTION, LLC.

WITNESS: (if not a corporation)

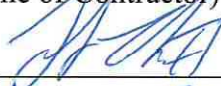
By: 

Name: Cari Richter

Title: Office manager

Date: November 22, 2021

(Name of Contractor)

By: 

Name: Forrest L Cackitt

Title: Partner

Date: November 22, 2021

ATTEST, WITNESS (SEAL)

SureTec Insurance Company

By: 

Name: Will Peckham

Title: Witness

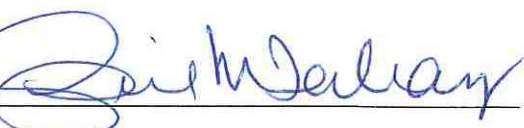
Date: November 22, 2021

(Full Name of Surety)

2103 City West Blvd., Suite 1300

Houston, Texas 77042

(Address of Surety for Notice)

By: 

Name: April M Terbay

Title: Attorney-In-Fact

Date: November 22, 2021

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF COLLEGE STATION,
TEXAS:

City Attorney's Office

City Manager

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Patrick L Watkins, Sheila Pennington Noxon, Joy Holten, Rodney T Watkins, James F Siddons, April M Terbay, Andrew Webb, Hanna Ogle

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided; however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Ten Million and 00/100 Dollars (\$10,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

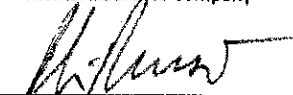
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 18th day of September, 2020.

SureTec Insurance Company

By: 
Michael C. Keimig, President



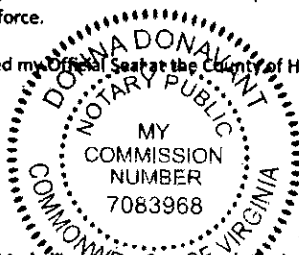
Markel Insurance Company

By: 
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 18th day of September, 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Henrico, the day and year first above written.

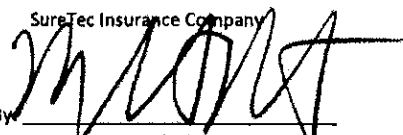


By: 
Donna Donavant, Notary Public
My commission expires 1/31/2023

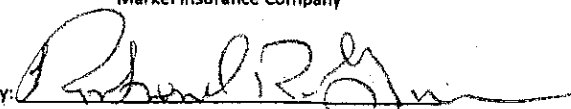
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 22nd day of November, 2021.

SureTec Insurance Company

By: 
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: 
Richard R. Grinnan, Vice President and Secretary

SureTec Insurance Company

IMPORTANT NOTICE Statutory Complaint Notice/Filing of Claims

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252- 3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-490-1007
Web: <http://www.tdi.texas.gov>
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

SureTec Insurance Company

2103 CityWest Boulevard, Suite 1300
Houston, TX 77042
713-812-0800

CHANGE RIDER

TO BE ATTACHED TO AND FORM A PART OF:

Bond Number: 4452513

Principal: JaCody Construction, LP

Obligee: City of College Station

Said bond, issued by SureTec Insurance Company, as Surety, is hereby amended as follows:

Original Contract Bond Penalty from \$2,500,000.00 To \$3,864,520.00

Effective date of rider: April 21, 2022

All other terms and conditions shall remain the same.

Signed and sealed this 21 day of April, 2022.

SureTec Insurance Company
Surety

By:


April M Terbay

, Attorney-in-fact

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Patrick L. Watkins, Sheila Pennington Noxon, Rodney T. Watkins, James F. Siddons, April M. Terbay, Andrew Webb, Hanna Ogle

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Ten Million and 00/100 Dollars (\$10,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

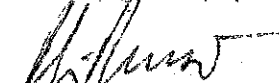
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 30th day of November, 2021.

SureTec Insurance Company

By: 
Michael C. Keimig, President



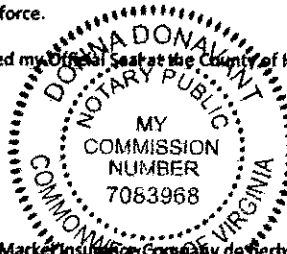
Markel Insurance Company

By: 
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 30th day of November, 2021 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Henrico, the day and year first above written.



By: 
Donna Donavant, Notary Public
My commission expires 1/31/2023

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company, hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 21st day of April, 2022.

April 28, 2022

Item No. 12.1.

Council Reports on Committees, Boards, and Commissions

Sponsor: City Council

Reviewed By CBC: City Council

Agenda Caption: A Council Member may make a report regarding meetings of City Council boards and commissions or meetings of boards and committees on which a Council Member serves as a representative that have met since the last council meeting. (Committees listed in Coversheet)

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Review meetings attended.

Summary: Animal Shelter Board, Arts Council of Brazos Valley, Architectural Advisory Committee, Audit Committee, Bond Citizens Advisory Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Economic Development Corporation, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, Census Committee Group, Compensation and Benefits Committee, Experience Bryan-College Station, Design Review Board, Economic Development Committee, Gulf Coast Strategic Highway Coalition, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Metropolitan Planning Organization, Operation Restart, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Technology Council, Regional Transportation Committee for Council of Governments, Sister Cities Association, Spring Creek Local Government Corporation, Transportation and Mobility Committee, TAMU Student Senate, Texas Municipal League, Walk with the Mayor, YMCA, Zoning Board of Adjustments. (Notice of Agendas posted on City Hall bulletin board.)

Budget & Financial Summary: None.

Attachments:

None