



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

June 23, 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
- d. Shana Elliott and Lawrence Kalke v. The City of College Station, et al.

Real Estate {Gov't Code Section 551.072};

Possible action. The City Council may deliberate the purchase, exchange, lease or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. After executive session discussion, any final action or vote taken will be in public. The following subject(s) may be discussed:

- a. Property generally located in the southwest quadrant of Texas State Highway 6 and Harvey Road.
- b. Property generally located at the intersection of Texas State Highway 6 and Corporate Parkway.
- c. Real estate negotiations for property located generally at the intersection of Texas Avenue and Francis Drive in College Station.

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. City Secretary
- c. Council Self-Evaluation

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. 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.

6. Workshop Items.

- 6.1. Presentation, discussion, and possible actions regarding additional landscaping on Texas Avenue and converting other roadways to landscaped boulevards.

Sponsors: Emily Fisher

Attachments: None

- 6.2. Presentation, discussion, and possible action related to the current off-leash ordinance and enforcement in the City of College Station.

Sponsors: Steve Wright

Attachments: None

- 6.3. Presentation, discussion, and possible action related to a land management category of nature & wildlife preserves, encouraging proper practices as our city continues to grow.

Sponsors: Steve Wright

Attachments: None

7. Consent Agenda.

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.

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

- June 9, 2022 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM060922 DRAFT Minutes

7.2. Presentation, discussion, and possible action on the second reading of a franchise agreement ordinance with Rocking H Dumpsters LLC for the collection of recyclables from commercial businesses and multi-family locations.

Sponsors: Emily Fisher

Attachments: 1. 22300503 Rocking H Dumpsters - COCS Recyclables Collection Franchise Agreement 4.28.22

7.3. Presentation, discussion, and possible action regarding a landscape maintenance agreement with the Texas Department of Transportation for the removal and replanting of trees located along State Highway 6.

Sponsors: Emily Fisher

Attachments: 1. 22300594 SH 6 - LMA - College Station

7.4. Presentation, discussion, and possible action regarding a professional services contract with Freese and Nichols, INC. in the amount of \$400,000 for the development of a City of College Station Industrial Pretreatment Program.

Sponsors: Gary Mechler

Attachments: 1. Contract No. 22300515

7.5. 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 at Any Time", by removing parking on the west side of Dogwood Street and adding parking on the east side of Dogwood Street.

Sponsors: Emily Fisher

Attachments: 1. No Parking Ordinance Form
2. Parking Change

7.6. Presentation, discussion, and possible action regarding the award of Annual Agreement for City Wide Landscape Maintenance and Mowing to Green Teams, Inc. not to exceed the amount of \$1,077,221.

Sponsors: Emily Fisher

Attachments: 1. 2022 Bid Analysis Summary
2. 22300567 -- BW

7.7. Presentation, discussion, and possible action regarding Change Order 1 to the Greens Prairie Road Widening Phase 2 Project construction contract with Larry Young Paving, Inc in the amount of \$226,830.

Sponsors: Emily Fisher

Attachments: 1. 21300707 -- BW(CC6.23.22)

- 7.8. Presentation, discussion, and possible action regarding approval of the City's award for an Annual Price Agreement for Di-Electric Switchgears with annual expenditures not to exceed \$1,584,270, awarded to Techline, Inc.

Sponsors: Mary Ellen Leonard

Attachments: 1. 22-061 Bid Award

8. Regular Agenda.

- 8.1. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan Future Land Use and Character Map from Suburban Residential to Neighborhood Commercial for approximately 5 acres of land, located at 2354 Barron Road.

Sponsors: Derrick Williams

Attachments:

1. Ordinance
2. Vicinity Map, Aerial, and Small Area Map
3. Future Land Use and Character Map
4. Comprehensive Plan Exhibit
5. Background Information
6. Supporting Information

- 8.2. Public Hearing, presentation, discussion, and possible action regarding an ordinance 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 boundaries from R Rural to PDD Planned Development District on approximately 5 acres of land located at 2354 Barron Road.

Sponsors: Derrick Williams

Attachments:

1. Ordinance
2. Concept Plan
3. Bulk Variances Letter
4. Vicinity Map, Aerial, and Small Area Map
5. Future Land Use and Character Map
6. Rezoning Map
7. Rezoning Exhibit
8. Background Information
9. Applicant's Supporting Information

- 8.3. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, "Unified Development Ordinance," Article 8, "Subdivision Design and Improvements," Section 8.8 "Requirements for Park Land Dedication," of the Code of Ordinances of the City of College Station, Texas, in its entirety, including amending the official Park Zones Map and land dedication and fee amounts.

Sponsors: Michael Ostrowski

Attachments:

1. Ordinance Amendment - UDO 8.8 Parkland Dedication - Final
2. Ordinance Amendment - UDO 8.8 Parkland Dedication - Final with Changes

- 8.4. Public Hearing, presentation, discussion, and possible action regarding an ordinance adopting the standards of care for the City's Parks and Recreation Department's elementary age

(5-13) Youth Recreational Program in compliance with the exemptions for childcare licensing according to Texas Human Resources Code Section 42.041(b)(14).

Sponsors: Steve Wright

Attachments: 1. Ch 42 Ordinance

9. Council Calendar - Council May Discuss Upcoming Events.

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 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.

11. 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)

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.

13. 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 June 17, 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."

June 23, 2022

Item No. 6.1.

Possible paths to completing landscaping on boulevards

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible actions regarding additional landscaping on Texas Avenue and converting other roadways to landscaped boulevards.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): n/a

Summary: Presentation outlining possible areas to landscape on Texas Avenue and other boulevard road sections in the city.

Budget & Financial Summary: n/a

Attachments:

None

June 23, 2022
Item No. 6.2.
Off Leash Ordinance & Enforcement

Sponsor: Steve Wright

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action related to the current off-leash ordinance and enforcement in the City of College Station.

Relationship to Strategic Goals:

- . Providing Core Services and Infrastructure
- Neighborhood Integrity

Recommendation(s): Council requested item. Topic was discussed at the Parks Advisory Board with no action taken.

Summary: College Station Code of Ordinances, Section 32-25 states except as provided in Texas Human Resources Code § 121.003, ensuring accessibility to disabled persons, or any designated "leash free" area, it shall be unlawful for any owner or person in control of any dog to keep or permit the same in or about any park or recreation area unless such dog is kept under restraint at all times by means of a leash.

Budget & Financial Summary: NA

Attachments:

None

June 23, 2022
Item No. 6.3.
Land Management

Sponsor: Steve Wright

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action related to a land management category of nature & wildlife preserves, encouraging proper practices as our city continues to grow.

Relationship to Strategic Goals:

1. Providing Core Services and Infrastructure
2. Neighborhood Integrity

Recommendation(s): Council requested item.

Summary: While park land is protected through multiple sources, maintenance and use expectations are standardized throughout the industry. Reviewing the possibility of an additional layer of management, Nature & Wildlife Preserve, use, intent, and protection change.

Budget & Financial Summary: NA

Attachments:

None

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
JUNE 9, 2022

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Karl Mooney, Mayor

Council:

Bob Brick
John Crompton (Remote)
Linda Harvell
Elizabeth Cunha
John Nichols
Dennis Maloney

City Staff:

Jeff Capps, Deputy City Manager
Jeff Kersten, Assistant City Manager
Carla Robinson, City Attorney
Adam Falco, Deputy City Attorney
Ian Whittenton, Deputy City Secretary
Lisa McCracken, Records Management Administrator

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, June 9, 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, §551.072-Real Estate, §551.074-Personnel, and §551.087-Economic Incentive Negotiations, the College Station City Council convened into Executive Session at 4:02 p.m. on June 9, 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
- Shana Elliott and Lawrence Kalke v. The City of College Station, et al.

B. Consultation with attorney to receive legal advice; to wit:

- Legal advice related to a 2017 CDBG funding agreement and proposed change order with B/CS Habitat for Humanity.

C. Deliberation on the purchase, exchange, lease, or value of real property; to wit:

- Real estate negotiations for property located generally at the intersection of Texas Avenue and Francis Drive in College Station.

D. Deliberation on the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer; to wit:

- City Attorney
- City Manager
- Council Self-Evaluation

E. 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:

- Property generally located in the southwest quadrant of Texas State Highway 6 and Harvey Road.

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

Executive Session recessed at 6:37 p.m.

MOTION: Upon a motion made by Mayor Mooney and a second by Councilmember Harvell, the City Council voted seven (7) for and none (0) opposed to appoint Adam Falco as Interim City Attorney effective June 16, 2022. The motion carried unanimously.

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

5. Hear Visitors Comments

William Wright, College Station, came before Council to highlight the value of Citizens Fire Academy and encourage continued support for these types of programs.

Pam Smits, College Station, came before Council to express her thanks for programs like the Citizens Fire Academy.

Aiden Juge, College Station, came before Council to discuss the living conditions in and around their rental unit and speak in support of a proactive rental inspection program.

Ellis Howard, College Station, came before Council as organizer for a group promoting a proactive rental housing inspection program and encourages Council to take action to enact such a program.

TreVion Watson, College Station, came before Council to encourage a proactive rental inspection program be enacted in the city and cited what he believes are owner and community benefits.

Alice Rosenloch, College Station, came before Council to encourage that action be taken to assure better rental conditions in the city.

Nathan Varnell, College Station, came before Council to state his support for a proactive rental inspection program. He believes that the conditions renters face should be addressed on a city-wide basis and all renters should be ensured some basic measures of health and safety in their homes.

Leasa DeCuir, College Station, came before Council to highlight that this issue is not limited to apartment style units but includes homes rented to families. She believes the city should have some program to safeguard the safety of renters.

Jeff Wigginbotham, College Station, came before Council to speak about his experiences with an apartment he rented in the city. He believes that a proactive approach to rental inspections could help improve the health of the community.

Jessica Williams, College Station, came before Council to speak about a resolution passed by the student senate in support of a citywide proactive rental inspection program.

Alexia Hernandez, College Station, came before Council in support of a proactive rental inspection program as a way to improve living and health in the community.

Brian Alg, College Station, came before council to request information be provided on economic benefit from some of the proposed certificates of obligation.

6. WORKSHOP ITEMS

These items were taken out of order, 6.2 was taken first.

6.1. Presentation, discussion, and possible action regarding off-street parking requirements.

Jesse Dimeolo, Planning and Development, explained that this item is a part of the Plan of Work, the Planning and Zoning Commission requested that staff explore the option of reducing or eliminating off-street parking requirements for certain uses and/or areas. This presentation provided an overview of the minimum off-street parking requirements in the Unified Development Ordinance (UDO) Section 7.3 and suggestions on potential changes to the ordinance to modify or remove parking minimums for certain uses and/or areas of the city. Mr. Dimeolo stated that reducing and/or eliminating minimum parking requirements can have significant benefits for a community, such as allowing land that would otherwise be used for predominately empty parking lots to be used for more productive development or recreational areas; improving the walkability of a community; and reducing the cost of development. This item explored what other peer cities are currently doing regarding parking requirements and help cultivate discussion as to the appropriate path to pursue. Staff is seeking direction from the City Council on this topic.

The Planning & Zoning Commission heard this item at their May 19, 2022, Regular Meeting. The Commission added comments and suggestions with an overall theme of support for the item moving forward, especially for commercial uses. The Commission did express concern with reducing off-street parking requirements in residential neighborhood areas.

Council directed staff to move forward with evaluating off-street parking requirements, including reducing and/or eliminating requirements in targeted areas such as redevelopment districts, reducing them for nonresidential uses, as well as looking at potentially implementing maximum off-street parking requirements. There was not a desire to reduce them for residential uses at this time.

6.2. Presentation, discussion, and possible action regarding an update from the Regional Mobility Authority (RMA) provided by Daniel "Barry" Moore.

Barry Moore, Regional Mobility Authority (RMA), stated that the organization is seeking a referendum for a vehicle registration fee to be used on local projects. He requested that council consider a resolution in support of these community projects.

Potential Projects

- Near Term: Intersection of Arrington Road and William D. Fitch
- Intermediate Term: Access to Rellis Campus at Highway 21 and Highway 47
- Long Term: A potential Inner East Loop

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.

Items 7.6, 7.7, and 7.11 were pulled from Consent for clarification.

(7.6) Debbie Eller, Community Services, stated that last June the City Council provided feedback for staff to pursue an Interlocal Agreement with Grimes County similar to the agreement with Burleson County. She clarified that the City does not have the ability to unilaterally annex land and thus grow southeastward in predictable manner. There is a sizeable amount of flood hazard area in the Grimes County portion of the City's ETJ. Utility service to this region is not economical as there are sizeable BTU and Wellborn SUD certificated areas to the southeast, and thus a lack of planned College Station utilities for the area.

(7.7) Ian Whittenton, City Secretary's Office, stated that this item is an update to the Council Meeting Procedures which was last revised in 2010 by City Council. With changes over the years and since the pandemic, staff was directed by the Council to update the procedures. Suggested language from Legal and City Secretary has been added for the Council's consideration. The proposed changes will provide more citizen participation during the council meetings, online participation, and speaker protocol.

(7.11) Bryan Woods, City Manager, stated that this item could qualify the city for potential emergency relief funds, though he is not aware of any we may currently qualify for by renewing the order.

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

- **May 23, 2022 Special Meeting**
- **May 26, 2022 Council Meeting**

7.2. Presentation, discussion, and possible action on the second reading of a franchise agreement Ordinance No. 2022-4357 with BCS Curb Appeal Maintenance, LLC for the collection of

recyclables from commercial businesses and multi-family locations.

7.3. Presentation, discussion, and possible action on the first reading of a franchise agreement ordinance with Rocking H Dumpsters LLC for the collection of recyclables from commercial businesses and multi-family locations.

7.4. Presentation, discussion, and possible action regarding Resolution No. 06-09-22-7.4 adopting a substantial amendment to the 2021 Annual Action Plan to include \$1,740,263 of HOME Investment Partnership Program - American Rescue Plan funding and approving the City of College Station HOME Investment Partnerships Program - American Rescue Plan Allocation Plan to allow for the provision of homelessness assistance and supportive services.

7.5. Presentation, discussion, and possible action regarding a professional services contract with SynchroGrid, LLC. for \$400,000 for protection and controls electrical engineering services.

7.6. Presentation, discussion, and possible action regarding an Interlocal Agreement between the City of College Station and Grimes County regarding subdivision authority in the extraterritorial jurisdiction.

7.7. Presentation, discussion, and possible action regarding City Council's updated Council Meeting Procedures.

7.8. Presentation, discussion, and possible action regarding Ordinance No. 2022-4358 amending Chapter 2, "Administration," Article I, "In General," of the Code of Ordinances of The City of College Station, Texas, by adding Sec. 2-3., "City Boards, Commissions and Committees," relating to general rules established for city-council appointed boards, commissions, and committees.

7.9. Presentation, discussion, and possible action regarding an updated Boards, Committees, and Commissions Handbook.

7.10. Presentation, discussion, and possible action regarding Change Order No. 4 in the amount of \$118,806 to the professional services contract with Freese and Nichols, Inc. for the Lick Creek Wastewater Treatment Plant Capacity Expansion Project.

7.11. Presentation, discussion, and possible action regarding Ordinance No. 2022-4359 consenting to and extending the Mayor's renewal of a disaster declaration due to a public health emergency.

MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Brick, the City Council voted seven (7) for and none (0) opposed, to approve the Consent Items except for 7.6, 7.7 and 7.11, the was pulled for a separate vote. The motion carried unanimously.

(7.6) MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Harvell, the City Council voted three (3) for and four (4) opposed, with Councilmembers Crompton, Brick, Harvell, and Maloney voting against, to approve an Interlocal Agreement between the City of College Station and Grimes County regarding subdivision authority in the extraterritorial jurisdiction. The motion failed.

(7.7) MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Harvell, the City Council voted seven (7) for and none (0) opposed, to approve the Consent Item 7.7 as it appears on the dais including a change that meetings shall commence no earlier than 6:00 p.m. The motion carried unanimously.

(7.11) MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Maloney, the City Council voted seven (6) for and one (1) opposed, with Councilmember Cunha voting against, to approve an ordinance consenting to and extending the Mayor's renewal of a disaster declaration due to a public health emergency. The motion carried.

8. REGULAR ITEMS

8.1. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2022-4360 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 boundaries from C3 Light Commercial to GC General Commercial on approximately 1.26 acres of land located at 4180 State Highway 6 South.

Derrick Williams, Planning and Development, stated that this request is to rezone approximately 1.26 acres of land where the Arts Council of Brazos Valley is located from C-3 Light Commercial to GC General Commercial. The C-3 Light Commercial zoning district was retired in 2003 with the original adoption of the Unified Development Ordinance, and very few C-3-zoned properties still exist today. The district was intended to provide locations for commercial sites too small for many permitted uses in the GC General Commercial district and that are low traffic generators. Mr. Williams explained that with low traffic uses, the C-3 district does not allow the use of freestanding signage. The Arts Council moved onto the subject property when it was already developed. Also, while the Arts Council is an allowed use on their site, they would like to update the zoning to a current and more suitable district that would allow for better sign visibility along the highway.

The Planning and Zoning Commission heard this item at their May 19, 2022, meeting and voted unanimously to recommend approval. Staff also recommends approval of the rezoning.

At approximately 8:02 p.m., Mayor Mooney opened the Public Hearing.

There being no comments, the Public Hearing was closed at 8:02 p.m.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Nichols, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2022-4360, 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 boundaries from C3 Light Commercial to GC General Commercial on approximately 1.26 acres of land located at 4180 State Highway 6 South. The motion carried unanimously.

8.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2022-4361 amending Appendix A, “Unified Development Ordinance,” Section 2.3 “Zoning Board of Adjustment”, Section 3.17 “Written Interpretation”, Section 3.19 “Variance”, and Section 3.20 “Administrative Appeal” of the Code of Ordinances of the City of College Station, Texas, regarding the powers, duties, and processes of the Zoning Board of Adjustment.

Molly Hitchcock, Planning and Development, stated that this item is a Unified Development Ordinance (UDO) amendment is being proposed to align the ordinance with state statutes related to the Zoning Board of Adjustment. H.B. 1475 (87th Texas Legislature) allowed, for first time, financial hardships to be considered in variance proceedings for nonconforming structures. H.B. 2497 (86th Legislature) allowed for appeals to ordinance interpretations not related to a specific project or address to be brought forward by interested parties. H.B. 2497 also established a timeframe in which an administrative appeal may be made and how it is to be processed. Proposed amendments to Section 3.17 “Written Interpretation” and 3.20 “Administrative Appeal” are solely to bring current language into compliance with state statute. Section 3.19 “Variance” too has new language that also mirrors state statute, but also reorders the list of variance criteria into a more logical approach for discussion.

Mrs. Hitchcock explained that in addition to these necessary changes, the powers, and duties of the Zoning Board of Adjustment (Section 2.3) are proposed to be updated to reflect all responsibilities assigned to it throughout the Code of Ordinances of the City of College Station and by the Easterwood Field Joint Airport Zoning Board. Having a comprehensive list of ZBA responsibilities in the UDO will assist in the determination of the appropriate appellate body for Code variances and clearly establish minimum notification procedures.

State Statute Changes

Current

- Effect of final decision appeal on legal proceedings language
- 30-day deadline to appeal
- Hearing and final decision at same meeting

Proposed

- Effect of appeal language updated verbatim
- 20-day deadline to appeal
- Hearing and final decision at separate meetings

The Planning and Zoning Commission heard this item at their May 19, 2022, meeting where they voted unanimously (7-0) to recommend approval of the ordinance amendment. Staff also recommends approval.

At approximately 8:35 p.m., Mayor Mooney opened the Public Hearing.

There being no comments, the Public Hearing was closed at 8:35 p.m.

MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Brick, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2022-4361, amending Appendix A, “Unified Development Ordinance,” Section 2.3 “Zoning Board of Adjustment”, Section 3.17 “Written Interpretation”, Section 3.19 “Variance”, and Section 3.20 “Administrative Appeal” of the Code of Ordinances of the City of College Station, Texas, regarding the powers, duties, and processes of the Zoning Board of Adjustment. The motion carried unanimously.

8.3. Presentation, discussion, and possible action regarding Ordinance No. 2022-4362 amending in its entirety Chapter 8, “Businesses,” Article XIII, “Dockless Bike Share Program”.

Venessa Garza, Planning and Development, stated that Council adopted an ordinance in 2018 to regulate and permit bike share operators 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.

Proposed changes include:

- Renaming the ordinance to Shared Micro-mobility
- Allowing electric micro-mobility devices (bicycles and scooters)
- Including an abandonment fee
 - ✓ Operator forfeits any escrow balance if they leave without taking their devices
- Further defining the geofence zones
 - ✓ TAMU geofence
 - Area determined in partnership with TAMU, their operator and COCS
 - ✓ Other geofence zones
 - Areas outside TAMU owned property
- Requiring ‘lock-to’ parking, rebalancing, parking hubs, cycle liability insurance, and a 15-mph speed limit.
- Including the following requirements:
 - ✓ Cyber liability insurance
 - ✓ 15-mph speed limit
 - ✓ Rebalancing
 - If devices are left more than 5 days in one location, or
 - If 75% of available bicycle parking is occupied, or
 - Upon request by the City
 - ✓ Parking hubs
 - A minimum number of devices are maintained in one location
 - ✓ ‘Lock-to’ parking
 - Devices must be locked to a bicycle rack or operator designated parking area

Ms. Garza explained that this item was discussed by the Bicycle, Pedestrian and Greenways Advisory Board on April 18, 2022, and recommended approval with a proposed change to the geofence definitions to allow operators anywhere within the city limits and only restrict them on Texas A&M University owned property. Staff then presented proposed changes to City Council on April 28, 2022. Council directed staff to make the above change as well update language to allow parking at transit zones, including bus stops and shelters.

MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Cunha, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2022-4362, amending in its entirety Chapter 8, “Businesses,” Article XIII, “Dockless Bike Share Program”. 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 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.

Councilmember Nichols made note of City Attorney Carla Robinson's upcoming retirement reception and thanked her for the service she has provided to the citizens and Council.

Mayor Mooney reported on attending the 2022 International Town and Gown Association conference.

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 Maloney reported on a recent visit to a Sister City in Salamanca, Mexico.

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 Nichols requested an item to discuss proactive rental inspections.

The College Station City Council reconvened into Executive Session at 9:00 p.m. on June 9, 2022, in order to continue discussing matters listed above in the minutes.

Executive Session recessed at 10:21 p.m. no vote or action was taken in Executive Session.

13. Adjournment.

There being no further business, Mayor Mooney adjourned the Meeting of the City Council at 10:22 p.m. on Thursday, June 9, 2022.

Karl Mooney, Mayor

ATTEST:

Tanya Smith, City Secretary

June 23, 2022

Item No. 7.2.

Rocking H Dumpsters LLC Franchise Agreement Ordinance

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on the second reading of a franchise agreement ordinance with Rocking H Dumpsters LLC for the collection of recyclables from commercial businesses and multi-family locations.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): Staff recommends approval of this franchise agreement ordinance.

Summary: The proposed agreement would allow Rocking H Dumpsters LLC to collect recyclables from commercial businesses and multi-family locations within the City of College Station. The company will be responsible for developing on-site collection of recyclables so as not to interfere with the collection of municipal solid waste (MSW).

Budget & Financial Summary: N/A

Attachments:

1. 22300503 Rocking H Dumpsters - COCS Recyclables Collection Franchise Agreement 4.28.22

ORDINANCE NO. _____

RECYCLABLES COLLECTION FRANCHISE AGREEMENT

AN ORDINANCE GRANTING CONTRACTOR, ROCKING H DUMPSTERS LLC, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC RIGHTS OF WAY WITHIN THE CORPORATE LIMITS OF THE CITY OF COLLEGE STATION (“CITY”) FOR THE PURPOSE OF PROVIDING COLLECTION OF DEMOLITION AND CONSTRUCTION DEBRIS, RECYCABLES, AND ORGANIC WASTE FROM COMMERCIAL, INDUSTRIAL, AND MULTI-FAMILY SITES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR THE PERIOD OF THE GRANT; FOR ASSIGNMENT; FOR THE METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES; FOR PARTIAL INVALIDITY.

WHEREAS, the City, by ordinance, exclusively provides all solid waste collection and disposal services for solid waste aggregated from within the City limits including, but not limited to Recyclables; and

WHEREAS, the City pursuant to City Charter Article XI, may grant franchises to entities for use of public streets, alleys, and highways for collection of Solid Waste and Recyclables generated within the City limits; and

WHEREAS, the City of College Station desires to exercise the Charter’s authority and grant a non-exclusive franchise to Contractor for collection of demolition and construction debris and other waste for disposal using roll off containers, and recyclable materials, and organic waste from multifamily and commercial locations for the purpose of recycling.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS,

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ARTICLE I. DEFINITIONS

- 1.1 **Agreement** means this Franchise Agreement adopted by City Ordinance between City and Contractor for the collection of Recyclables within the City limits.
- 1.2 **Approved Customers** means those designated premises located within the City that generate Recyclables.
- 1.3 **Brazos Valley Solid Waste Management Agency, Inc. (BVSWMA, Inc.)** means the permitted municipal solid waste landfill and compost facility owned and operated by a Texas local government corporation.
- 1.4 **City Council or Council** means the governing body of the City of College Station, Texas.
- 1.5 **City** means the City of College Station, a Texas Home Rule Municipal Corporation.
- 1.6 **City's Representative** means the Recycling & Environmental Compliance Manager or the Manager's designated appointee.
- 1.7 **Collection** means the scheduled aggregation of Recyclables by Contractor.
- 1.8 **Construction and Demolition Debris** means buildings material waste resulting from demolition, remodeling, repairs, or construction, as well as materials discarded during periodic temporary facility clean-up generated within the City.
- 1.9 **Contaminated** means Recyclables mixed with solid waste or altered in a way that results in materials being unrecyclable or un-compostable.
- 1.10 **Contractor** means the Contractor franchised for the collection of Recyclables.
- 1.11 **Customers** means the locations designated by the City as a Commercial Business or Multifamily Residence.
- 1.12 **Organic Waste** means waste of biological origin recovered from the solid waste stream for the purposes of reuse, reclamation, or compost. Organic Waste is not solid waste, unless it is abandoned or disposed of, rather than reprocessed into another product.
- 1.13 **Receptacle** means a weatherproof container easily identifiable and designated for recycling or organic waste collection and shall not be made of any temporary materials.
- 1.14 **Recyclables or Recyclable Materials** mean materials, including construction and demolition debris recovered from the solid waste stream for the purpose of reuse or reclamation, a substantial portion of which are consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable materials are not solid waste unless they are abandoned or disposed of as garbage rather than reprocessed into another product.

- 1.15 **Residue** means the materials regularly associated with and attached to Recyclables, as a part of the original packaging or usage of that material that is not recyclable or compostable.
- 1.16 **Roll-Off / Compactor** means a container of varying capacity used for Recyclables collection.
- 1.17 **TAC** means the Texas Administrative Code now and as amended.
- 1.18 **TCEQ** means the Texas Commission on Environmental Quality.

ARTICLE II. GRANT OF AUTHORITY AND ACCEPTANCE

- 2.1 **Non-Exclusive.** City grants Contractor a non-exclusive franchise to operate and establish Recyclables collection from designated Customers. Nothing in this Agreement shall be construed as granting an exclusive franchise or right. City grants Contractor passage and rights-of-way on, along, and across City streets, highways, alleys, public places and all other real property for collecting demolition and construction debris, recyclables and organic waste from commercial, industrial, multifamily and residential construction sites for the purpose of disposal and/or recycling within the jurisdictional limits of the City. Contractor is expressly prohibited from collecting any recyclables from completed residences that are covered by the City's residential single stream recycling contract and program. All collection, work, activity, and undertakings by Contractor are subject to this Agreement and City's governmental and police powers.
- 2.2 **Acceptance.** By accepting this Agreement, Contractor represents it has, by careful examination, satisfied itself as to the nature and location of the services, character, quality, and quantity of services to be performed, the character of the equipment and facilities necessary to fulfill obligations under this Agreement, as well as the general and local conditions and all other matters affecting services performed under this Agreement.
- 2.3 **Option to Market Materials.** If City develops services or programs resulting in materials that may be recycled or composted, including but not limited to residential construction sites, multifamily, or commercial recycling or composting, the City shall have the option to market those to any contractor.
- 2.4 **Contract with City.** If City and Contractor contract for the collection and recycling or composting of materials, those terms will be incorporated into this Agreement by amendment.

ARTICLE III. PAYMENT AND TERM

- 3.1 **Franchise Fee.** For and in consideration of the grant of the franchise herein, Contractor agrees and will pay a Franchise Fee during the term of this Agreement, a sum based on the following graduated fee schedule depending on the percentage of aggregate recycling or composting accomplished:

- a. A fee is required, equivalent to five percent (5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in **Exhibit A**, generated from Contractor's provision of Recyclables collection services within the City if Contractor reports aggregate recycling or composting of at least sixty percent (60%) of Recyclables collected.
- b. A fee is required, equivalent to six and one half percent (6.5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in **Exhibit A**, generated from Contractor's provision of Recyclables collection services within the City if Contractor reports aggregate recycling or composting of at least fifty-five percent (55%) but less than sixty percent (60%) of Recyclables collected.
- c. A fee is required, equivalent to eight percent (8%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in **Exhibit A**, generated from Contractor's provision of Recyclables collection services within the City if Contractor reports aggregate recycling or composting less than fifty-five percent (55%) of Recyclables collected.

3.2 Payments. Revenue received by Contractor from this Agreement is subject to the Franchise Fee and shall be computed into Contractor's monthly gross revenues, delivery revenues, hauling revenues, and rates, as described in **Exhibit A**. Payment will be paid quarterly to the City, and shall be due by the twentieth (20th) day of the month following the end of the previous calendar quarter. Payment after that date shall incur a ten percent (10%) late fee on the outstanding account balance under Article V.

3.3 Failure to Pay. Failure by Contractor to pay any amount due under this franchise constitutes a Failure to Perform under this contract and is subject to the provisions of Article XV. General Terms of this Agreement (Termination for Cause).

3.4 Franchise Fee Requirements. Payments must state on a form approved by the City:

- a. The number and type of Customers collected from, for the previous quarter, for Customers included in this Agreement.
- b. The total tons landfilled, recycled or composted, within the jurisdictional limits of the City, for the previous quarter.
- c. The total gross revenues for the previous calendar quarter, for revenues generated under this agreement.
- d. The total payment amount.

3.5 Term. The term of this Agreement shall be for a period of five (5) years, beginning on the date of acceptance and approval by City Council.

ARTICLE IV. ACCESS TO RECORDS & REPORTING

- 4.1 Facilities.** The City shall have the right to inspect the Contractor's facilities, equipment, personnel, and operations to ensure compliance with this Agreement.
- 4.2 Records.** The City shall have the right to inspect Contractor's records, receipts, and all documentation relating to the performance of this Agreement. Those records include, but are not limited to, information concerning the quality and quantity of Recyclables collected, processed, and sold; number of Customers served, gross amounts paid to and paid by Contractor from the sale/processing of Recyclables. The City agrees to notify the Contractor at least twenty-four (24) hours prior to such inspection of operations and/or records.
- 4.3 Records Retention.** Contractor shall retain all records associated with this Agreement for a period of four (4) years. City shall have access to information regarding Contractor's markets and prices paid for each type of material's return/cost; all information obtained by City marked confidential or proprietary shall remain confidential or proprietary pursuant to the Texas Open Records Act.
- 4.4 Activity Report.** Contractor shall provide a Monthly Recycling Activity Report, on a form approved by the City, summarizing the previous month's collection. This report is due to the City's Representative no later than the twentieth (20th) calendar day of each month. Contractor's report shall include the following information:
- a. The Customer collection count, itemized by customer type.
 - b. Total tonnage of materials collected, recycled, composted and/or landfilled, itemized by type of material, within the jurisdictional limits of the City.
 - c. Any other information concerning the collections as required by the City's Representative.

ARTICLE V. RATES TO BE CHARGED BY CONTRACTOR

- 5.1** The Contractor shall follow the Schedule of Rates attached hereto as **Exhibit A** for the services described herein. The rates provided shall be kept current and made available to the City's Representative within thirty (30) days of an adopted rate change. The Contractor agrees to use due diligence to keep costs from increasing.

ARTICLE VI. APPEARANCE OF PERSONNEL AND EQUIPMENT

- 6.1 Equipment.** Contractor shall ensure all collection equipment and vehicles are attractively painted, well maintained and are in good working condition. Equipment must be washed at least one time per week. Equipment and vehicles must have sufficient carrying capacity for safe and efficient collection. The City shall have the right to inspect and approve the appearance of collection equipment. A standby vehicle shall be available at all times for collection.

- 6.2 Signage.** Contractor's vehicles shall at all times be clearly labeled with Contractor's name and phone number in visible letters and numbers not less than three (3) inches in height. Signage must be on both sides of the vehicle and placed in a conspicuous place. Only labeled vehicles shall perform collection activities under this Agreement. Contractor's roll-offs, compactors, and receptacles must be clearly marked as used for collection in letters at least twelve inches (12") in height on each side of the container.
- 6.3 Personnel.** All collection personnel shall wear a City-approved uniform to include, at minimum, matching labeled shirts with denim jeans or other standard work attire.

ARTICLE VII. COLLECTION AND TRANSPORT

- 7.1 Transport.** The Contractor shall only transport collected materials for storage, processing, disposal, or other necessary handling to locations in a manner permitted by the terms of this Agreement as well as federal, state, and local law. This Agreement does not authorize Contractor to utilize the streets, alleys, and public ways to dispose of municipal solid waste or any other type of waste intended for disposal from any other project.
- 7.2 Cover.** During transport of materials all vehicles shall be covered to prevent release of litter.

ARTICLE VIII. PLACEMENT OF RECEPTACLES

- 8.1 Placement.** All roll-offs, compactors, and receptacles placed in service shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall Contractor place roll-offs, compactors, or receptacles on public streets, alleys, or thoroughfares without prior approval of the City's Representative. City reserves the right to designate the exact location of any or all roll-offs, compactors, or containers placed in service in the City.
- 8.2 City Collection.** Collections shall not interfere with the City's collection of municipal solid waste. Under no circumstances shall contractor place roll-offs, compactors, or receptacles in existing enclosures designated for City roll-offs, compactors, and receptacles.

ARTICLE IX. SERVICE COMPLAINTS

- 9.1 Nature of Complaint.** Contractor shall handle directly any complaints pertaining to customer service, property damage, or personal injury from their commercial business and multifamily Recyclables collection service.
- 9.2 Intake.** Contractor shall develop written practices and procedures for receiving and resolving Customer complaints and collection issues. Any complaint received by the City shall be forwarded to the Contractor within one (1) business day of receipt.

- 9.3 Response.** Contractor shall respond to all complaints within one (1) business day of receiving a complaint from a Customer or notice of complaint from the City. Regardless of the nature of the complaint, Contractor shall report the action taken to the City in accordance with Article IV. Access to Records & Reporting.
- 9.4 Complaint Charges.** Upon receipt of ten (10) Customer complaints within a forty-five (45) day period, Contractor shall be assessed a charge of Three Hundred Dollars (\$300.00). Complaints are to be verified by the Contractor and the City's Representative. The City shall invoice the Contractor such charges.

ARTICLE X. DISPOSAL AND PROCESSING

- 10.1 Disposal Site.** Unless approved otherwise in writing by the City, Contractor shall utilize BVSWM, Inc. Landfill for the disposal of all non-recyclable waste material collected by Contractor within the corporate limits of the City.
- 10.2 Processing Facility.** Contractor shall only use a City-approved recycling or composting facility for processing of all Recyclables collected by Contractor within the corporate limits of the City under this Agreement.

ARTICLE XI. VIOLATION AND PENALTY

- 11.1 Fine.** It shall be unlawful for any person, firm or corporation to violate any provision or term of this Agreement and they shall receive a citation and fine not to exceed \$2,000.00 per offense per day. Each and every day a violation continues constitutes a separate offense.
- 11.2 Remedies.** In addition to any rights set out elsewhere in this Agreement, or other rights the City may possess at law or equity, the City reserves the right to apply any remedies, alone or in combination, in the event Contractor violates any provision of this Agreement. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the City at law or equity.

ARTICLE XII. INSURANCE

- 12.1** The Contractor shall procure and maintain, at its sole cost and expense for the term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services performed by the Contractor, its agents, representatives, volunteers, employees, or subcontractors.
- 12.2** The Contractor's insurance shall list the City of College Station, its employees, agents, volunteers, and officials as additional insureds. Insurance requirements are attached in **Exhibit B**. Certificates of insurance evidencing the required insurance coverages are attached in **Exhibit C**.

ARTICLE XIII. INDEMNIFICATION AND RELEASE

- 13.1 Indemnification.** Contractor shall indemnify, hold harmless, and defend the City, its officers, agents, volunteers, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work and services done by the Contractor under this Agreement. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party.
- 13.2 Release.** The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, volunteers, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property caused by, alleged to be caused by, arising out of, or in connection with the Contractor's work and services to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.

ARTICLE XIV. DISPUTES AND MEDIATION

- 14.1 Disputes.** If a dispute arises between City and Contractor during this Agreement, the dispute shall first be referred to the operational officers or representatives designated by the parties having oversight of the Agreement's administration. The officers or representatives shall meet within thirty (30) days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.
- 14.2 Mediation.** If the parties are not able to resolve the dispute under the procedure in this article, then the parties agree the matter shall be referred to non-binding mediation. The parties shall mutually agree upon a mediator to assist in resolving their differences. If the parties cannot agree upon a mediator, the parties shall jointly obtain a list of three (3) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall select the mediator from those mediators remaining on the list. The parties shall pay their own expenses of any mediation and will share the cost of the mediator's services.
- 14.3 Other Remedies.** If the parties fail to achieve a resolution of the dispute through mediation, either party may then pursue any available judicial remedies.

ARTICLE XV. GENERAL TERMS

15.1 Performance. Contractor, its employees, associates, or subcontractors shall perform all the services in a professional manner and be fully qualified and competent to perform those services.

15.2 Termination.

a. For Convenience. At any time, the City or Contractor may terminate this Agreement for convenience, in writing with thirty (30) days' written notice. City shall be compensated for outstanding Franchise Fees.

b. For Cause. City may terminate this Agreement if Contractor materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Agreement, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) days of City providing Contractor written notice, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time upon which the parties may agree.

c. Hearing. This Agreement shall not be terminated except upon a majority vote of the City Council, after giving reasonable notice to Contractor. The Contractor will have an opportunity to be heard, provided if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.

15.3 Venue. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

15.4 Amendment. This Agreement may only be amended by written instrument approved and executed by the parties.

15.5 Taxes. The City is tax exempt and is not responsible for the payment of any taxes.

15.6 Compliance with Laws. The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA.

15.7 Waiver of Terms. No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver of deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.

15.8 Assignment. This Agreement and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of City.

15.9 Invalid Provisions. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, and if by limiting that provision, the Agreement may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

15.10 Entire Agreement. This Agreement represents the entire agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

15.11 Agree to Terms. The parties' state they have read the terms and conditions of this Agreement and agree to the terms and conditions. Contractor shall evidence its unconditional written acceptance of all the terms and conditions of this Agreement by the execution of this Agreement.

15.12 Effective Date. According to City Charter, Section 105, after passage, approval and legal publication of this Agreement as provided by law, and provided it has been duly accepted by Contractor as herein above provided, this Agreement shall not take effect until sixty (60) days after its adoption on its second and final reading.

15.13 Notice. Any official notice under this Agreement will be sent to the following addresses:

City of College Station
Attn: Caroline Ask
PO BOX 9960
College Station, TX 77842
caskcstx.gov

ROCKING H DUMPSTERS LLC
Attn: CLINT HEBERT
12098 FM 1940
FRANKLIN, TX 77856
RHDUMPSTERS@GMAIL.COM

15.14 List of Exhibits. All exhibits to this Agreement are incorporated and made part of this Agreement for all purposes.

- A. Schedule of Rates
- B. Insurance Requirements
- C. Certificates of Insurance

15.15 Public Meetings and Readings. This Agreement was passed, adopted and approved according to Texas Government Code Chapter 551.

- a. First Consideration & Approval on the ____ day of _____, 2022.
- b. Second Consideration & Approval on the ____ day of _____, 2022.

ROCKING H DUMPSTERS LLC

By: _____

Printed Name: _____

Title: **Manager/Co-Owner**

Date: _____

CITY OF COLLEGE STATION

By: _____
Mayor

Date: _____

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

EXHIBIT A. SCHEDULE OF RATES

I. Contractor's base rates are set forth below and may increase, depending on a variety of conditions, including but not limited to:

- a. Location of Customer
- b. Impact on Existing Routes
- c. Ingress and Egress Capabilities
- d. Special Requests by Customers
- e. Frequency of Collections
- f. Volume of Materials
- g. Type of Materials
- h. External Contributing Conditions of Market Costs

A. 17 YARD

\$500 + TAX (10 DAY RENTAL) includes 1 dump up to 3 tons.

\$850 + TAX (30 DAY RENTAL) includes 2 dumps up to 3 tons each.

Any loads that exceed 3 tons will be charged \$50/ton for an overweight fee.

Additional dumps are \$450/each + Tax.

B. 20 YARD

\$550 + TAX (10 DAY RENTAL) includes 1 dump up to 3 tons.

\$900 + TAX (30 DAY RENTAL) includes 2 dumps up to 3 tons each.

Any loads that exceed 3 tons will be charged \$50/ton for an overweight fee.

Additional dumps are \$450/each + Tax.

These rates are subject to change and they will be updated on our RHD's website. The City will receive a revised rate schedule in writing.

EXHIBIT B. INSURANCE REQUIREMENTS

Throughout the term of this Agreement the Contractor must comply with the following:

I. Standard Insurance Policies Required:

- a. Commercial General Liability
- b. Business Automobile Liability
- c. Workers' Compensation

II. General Requirements Applicable to All Policies:

- a. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent.
- b. Certificates of Insurance and endorsements shall be furnished on the most current State of Texas Department of Insurance-approved forms to the City's Representative at the time of execution of this Agreement; shall be attached to this Agreement as **Exhibit C**; and shall be approved by the City before work begins.
- c. Contractor shall be responsible for all deductibles on any policies obtained in compliance with this Agreement. Deductibles shall be listed on the Certificate of Insurance and are acceptable on a per-occurrence basis only.
- d. The City will accept only licensed Insurance Carriers authorized to do business in the State of Texas.
- e. The City will not accept "claims made" policies.
- f. Coverage shall not be suspended, canceled, non-renewed or reduced in limits of liability before thirty (30) days written notice has been given to the City.

III. Commercial General Liability

- a. General Liability insurance shall be written by a carrier rated "A: VIII" or better under the current A. M. Best Key Rating Guide.
- b. Policies shall contain an endorsement listing 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.
- c. Limits of liability must be equal to or greater than \$500,000 per occurrence for bodily injury and property damage, with an annual aggregate limit of \$1,000,000. Limits shall be endorsed to be per project.
- d. No coverage shall be excluded from the standard policy without notification of individual exclusions being submitted for the City's review and acceptance
- e. The coverage shall include, but not be limited to the following:
premises/operations with separate aggregate; independent contracts;
products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, and Personal & Advertising Liability.

IV. Business Automobile Liability

- a. Business Automobile Liability insurance shall be written by a carrier rated "A: VIII" or better under the current A. M. Best Key Rating Guide.
- b. Policies shall contain an endorsement listing 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
- c. Combined Single Limit of Liability not less than \$1,000,000 per occurrence for bodily injury and property damage.
- d. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page
- e. The coverage shall include any autos, owned autos, leased or rented autos, non-owned autos, and hired autos.

V. Workers' Compensation Insurance

- a. Workers compensation insurance shall include the following terms:
 - i. Employer's Liability minimum limits of liability not less than \$500,000 for each accident/each disease/each employee are required
 - ii. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy
 - iii. 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"

EXHIBIT C. CERTIFICATES OF INSURANCE



ROCKHDU-01

JPHILLIPS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/26/2022

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 Rollo Insurance Group, Inc PO Box 407 Franklin, TX 77856	CONTACT NAME:		
	PHONE (A/C, No, Ext): (979) 828-4030	FAX (A/C, No): (979) 828-2060	
INSURED Rocking H Dumpsters LLC PO Box 494 Franklin, TX 77856	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Northland Insurance Company		24015
	INSURER B : Progressive County Mutual Insurance Company		29203
	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 ☐ PRO-JECT ☐ LOC OTHER:	X		WS468641	8/1/2021	8/1/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
	PRODUCTS - COMP/OP AGG	\$ 2,000,000						
							\$	
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY ☒ HIRED and non owned ☒ HIRED Autos	X		02383643-1	7/17/2021	7/17/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	EXCESS LIAB						AGGREGATE	\$
	DED							\$
	RETENTION \$							
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Additional Insureds consist of the City of College Station, its employees, agents, volunteers, and officials.

CERTIFICATE HOLDER

CANCELLATION

CITY OF COLLEGE STATION PO BOX 9960 College Station, TX 77842	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

Contract No. 22300503

Name of Project: Solid Waste & Recyclables Franchise Agreement

REQUEST FOR EXCEPTION TO WORKERS' COMPENSATION REQUIREMENT

I, the undersigned, am the sole owner, shareholder, principal or partner doing business as ROCKING H DUMPSTERS LLC I herein verify ROCKING H DUMPSTERS LLC does not have paid employees or subcontractors, nor does it conduct business in any way that would require it to have Workers' Compensation coverage when performing for the City of College Station under the above-referenced contract. Based on this, I request an exception to the City's Workers' Compensation contract insurance requirement be granted for this project.

I understand if ROCKING H DUMPSTERS LLC hires any employees or does anything to change its obligations under state law with respect to carrying Workers' Compensation insurance when performing for the City, it will promptly do so and notify the City of same.

ROCKING H DUMPSTERS LLC assumes full responsibility for its obligations, if any, under applicable law relating to workers' compensation.

Name of Business: ROCKING H DUMPSTERS LLC

SSN/FEIN No. 85-1444823 Telephone No. 979-398-2755

Address/P.O. Box: 12098 FM 1940

City: Franklin State: Texas Zip Code: 77856

Signature of Owner: Clint Hebert Date: 04/26/2022

Witnessed by: _____

RETURN SIGNED FORM TO mlucas@cstx.gov, OR

FAX TO N/A.

June 23, 2022

Item No. 7.3.

TXDOT Landscape Maintenance Agreement for State Highway 6 and University Drive tree replanting

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a landscape maintenance agreement with the Texas Department of Transportation for the removal and replanting of trees located along State Highway 6.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: TXDOT is currently designing the widening of SH 6 from SH 21 to SH 40. This agreement allows for the removal of trees within the right of way of SH 6 within the city of College Station (city limit to SH 40).

Several years ago, the city planted trees in all four quadrants of the SH 6 and University Dr interchange. As part of the widening project, all of the trees are in conflict and will need to be removed. With the tree spade purchased last year, Public Works crews plan on removing and replanting as many trees as possible from this intersection. Beginning in October of this year, crews will begin replanting in several areas of town, including Veterans Park and Athletic Complex and other park property. Trees will also be replanted within other rights of way and property as identified by city staff.

This agreement allows for the removal of the trees located within TXDOT's right of way. City crews will remove and replant as many trees as possible, although some trees will be too large in diameter to remove with the tree spade. TXDOT plans to start road construction in 2024.

Budget & Financial Summary: N/A

Attachments:

1. 22300594 SH 6 - LMA - College Station

THE STATE OF TEXAS

THE COUNTY OF TRAVIS

This AGREEMENT made this 15th day of February, 2022, by and between the Texas Department of Transportation, hereinafter referred to as the "State," and the City of College Station, Brazos County, Texas, acting by and through its duly authorized officers, hereinafter called the "City".

WITNESSETH

WHEREAS, Chapter 311 of the Transportation Code gives the City exclusive dominion, control, and jurisdiction over and under the public streets within its corporate limits and authorizes the City to enter into agreements with the State to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through its corporate limits; and

WHEREAS, Section 221.002 of the Transportation Code authorizes the State, at its discretion, to enter into agreements with cities to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through the corporate limits of such cities; and

WHEREAS, the State and the City have entered into a Municipal Maintenance Agreement dated May 18, 2009, **the provisions of which are incorporated herein by reference**, and wherein the City has agreed to retain all functions and responsibilities for maintenance and operations which are not specifically described as the responsibility of the department; and

WHEREAS, the State has existing and proposed landscape improvements, such as, but not limited to, the installation of tree, shrub, and turf plantings, irrigation systems, and other aesthetic elements for areas within the right of way of state highway routes within the City as shown on Attachment "A"; and

WHEREAS, the State will provide such landscape improvements, provided that the City agrees to be responsible for all required maintenance of the landscape improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, it is agreed as follows:

Contract Period

This Agreement becomes effective upon the date of final execution by the State, and shall remain in effect until terminated or modified as hereinafter provided.

Coverage

This agreement prescribes the responsibilities of the State and the City relating to the maintenance of the SH 6 Central Widening project which is located on SH 6, a controlled access state highway, as defined in the Municipal Maintenance Agreement. The maintenance is further described in Attachment A, the location map for this project, and limited to the portions along SH 6 from approximately 0.4 miles North of FM 60 to SH 40.

Amendment

The parties agree that this agreement may be amended. Such amendments, to be effective, must be in writing and signed by both parties.

State's Responsibilities

The State shall install landscape elements including but not limited to trees, shrubs, grasses, sidewalks, irrigation systems, and hardscape features through its employees or duly appointed agents.

City's Responsibilities

The City may install landscape elements including but not limited to trees, shrubs, grasses, sidewalks, irrigation systems, and hardscape features through its employees or duly appointed agents. Any installations shall be performed in accordance with Texas Department of Transportation specifications and standards, and must be approved by the State in writing prior to any work being performed.

The City shall maintain all landscape elements within the limits of the right of way including all median and island areas but excluding paved areas intended for vehicular travel. Landscape maintenance shall include but not be limited to plant maintenance, plant replacement, mowing and trimming, hardscape element maintenance, and irrigation system operation and maintenance. The City will be responsible for all utility costs associated with maintaining landscape elements. All landscape elements must be maintained in a functional and aesthetically pleasing condition.

TERMINATION

It is understood and agreed between the parties hereto that should either party fail to properly fulfill its obligations as herein outlined, the other party may terminate this agreement upon thirty days written notice. Additionally, this agreement may be terminated by mutual agreement and consent of both parties.

Should the City terminate this agreement, as prescribed here above, the City shall, at the option of the State, reimburse any reasonable costs incurred by the State.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the City of College Station on the _____ day of _____, year _____, and the Texas Department of Transportation, on the _____ day of _____, year _____.

ATTEST:

THE STATE OF TEXAS

CITY OF COLLEGE STATION

By _____
(Title of Signing Official)

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and the established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____
District Engineer

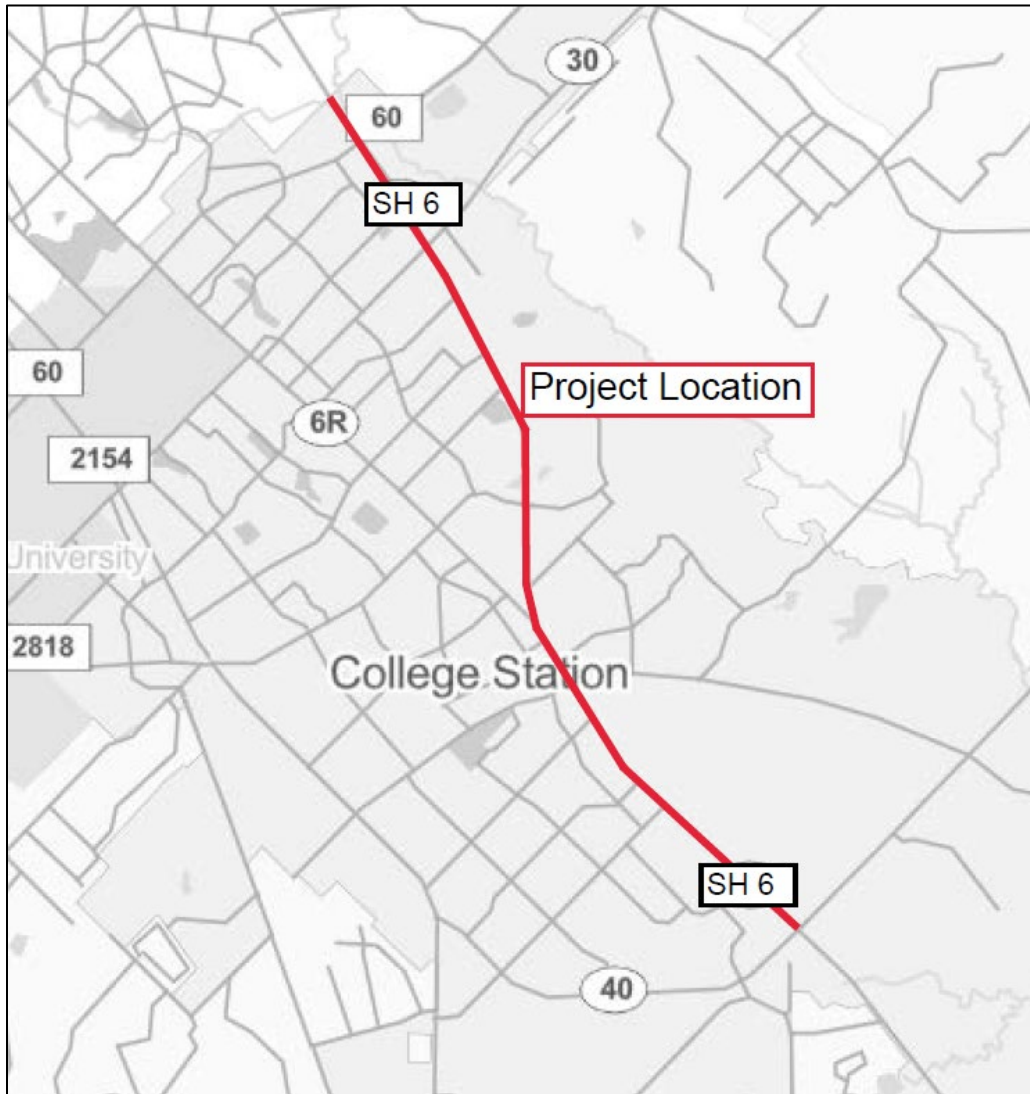
Bryan

District

[Contact/Help](#)

Attachments

Attachment A



The City shall, at its discretion, select trees for removal from the SH6 Corridor that lie within the College Station City limits. These limits extend south within the SH6 Corridor from approximately 0.4 miles North of FM 60 (University Drive) to SH 40 and from SH 6 Right-of-Way on the west to SH 6 Right-of-Way on the east.

Trees shall be selected from the Tree Survey provided by TxDOT to the City for this purpose. Trees removed can be considered for relocation into TxDOT Rights-of-Way with prior approval in writing.

TxDOT will not be responsible for the health of any tree that has been removed by the City. The City will restore any TxDOT Right-of-Way where a tree has been removed including, but not limited to, 1) refilling and compacting with native soil any hole left by the tree removal process and 2) grade the area of tree removal to match adjacent grade. Holes from the tree removal process shall not be left open overnight and shall be filled in by the end of the workday.

The City shall be responsible for verification of all existing utilities around trees to be removed as well as utilities in any new location if trees are being relocated into TxDOT Rights-of-Way.

TxDOT will not be responsible for moving or modifying any overhead utilities such as signal poles, power poles, and any similar utility on or adjacent to City streets to facilitate the removal of trees by the City from TxDOT Right-of-Way to the tree's final location. Should such modification to TxDOT Right-of-Way be required, the City will request written approval from TxDOT prior to making any modifications for the purpose of removing trees.

Maintenance activities not covered within this agreement will continue as outlined in the existing Municipal Maintenance Agreement.

It is mutually agreed upon that the agreement will terminate 30 days prior to the date set for receipt of the construction bids for the SH 6 Central Widening Project (CCSJ 0049-12-110).

June 23, 2022

Item No. 7.4.

Industrial Pretreatment Program Development

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a professional services contract with Freese and Nichols, INC. in the amount of \$400,000 for the development of a City of College Station Industrial Pretreatment Program.

Relationship to Strategic Goals:

Core services and infrastructure

Recommendation(s): Staff recommends approval.

Summary: The City of College Station owns and operates a wastewater system that conveys sanitary sewer from typical strength domestic/commercial users to three (3) wastewater treatment plants. An Industrial Pretreatment Program (IPP) is a cooperative effort of federal, state, and local environmental regulatory agencies established to protect water quality. This program is designed to protect the environment and a publicly owned sanitary sewer system by reducing/eliminating pollutant levels from higher/non-typical strength discharge contributed from industrial and/or nondomestic users. Currently, the City of College Station does not have an approved IPP and is limited on the ability to appropriately serve future industrial/nondomestic users.

This contract includes the development of an IPP that will develop an industrial user survey, sewer use ordinance, enforcement response plan, standard operating procedures, pretreatment forms/templates, technically based local limits, public relations/marketing plan, fats/oils/grease reduction plan, and a surcharge program.

Budget & Financial Summary: Funds in the amount of \$400,000 were included in the approved FY22 Wastewater Operating Budget as one-time SLA.

Attachments:

1. Contract No. 22300515



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 22300515 PROJECT#: _____ BID/RFP/RFQ#: 22-039

Project Name / Contract Description: Industrial Pretreatment & FOG Program Development

Name of Contractor: Freese and Nichols, Inc.

CONTRACT TOTAL VALUE: \$ 400,000

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

Debarment Check ☐ Yes ☐ No ☐ N/A

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

Section 3 Plan Incl. ☐ 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)

Funding for this contract was approved in Water Services' FY22 O&M budget as a one-time service level adjustment (SLA).

(If required)*
CRC Approval Date*: N/A Council Approval Date*: 06/09/2022 Agenda Item No*: _____

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

Insurance Certificates: RU Performance Bond: N/A Payment Bond: N/A Info Tech: N/A

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

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 ___

CONSULTANT CONTRACT

This Contract is by and between the **City of College Station**, a Texas Municipal Home-Rule Corporation (the "City") and Freese and Nichols Inc., a Texas Corporation (the "Consultant"), whereby Consultant agrees to perform and the City agrees to pay for the work described herein.

ARTICLE I SCOPE OF SERVICES

1.01 This Contract is for Industrial Pretreatment and FOG program development (22-039) (the "Project"). The scope and details of the work to be provided to the City by Consultant are set forth in **Exhibit "A"** to this Contract and are incorporated as though fully set forth herein by reference. Consultant agrees to perform or cause the performance of all the work described in **Exhibit "A."**

1.02 Consultant agrees to perform the work described in **Exhibit "A"** hereto and the City agrees to pay Consultant a fee based on the rates set forth in **Exhibit "B"** to this Contract for the services performed by Consultant. The invoices shall be submitted to the City following the 15th day and the last day of each month. The payment terms are net payable within thirty (30) calendar days of the City's receipt of the invoice. Upon termination of this Contract, payments under this paragraph shall cease, provided, however, that Consultant shall be entitled to payments for work performed in accordance with this Contract before the date of termination and for which Consultant has not yet been paid.

ARTICLE II PAYMENT

2.01 The total amount of payment, including reimbursements, by the City to Consultant for all services to be performed under this Contract may not, under any circumstances, exceed Four Hundred Thousand and NO / 100 Dollars (\$ 400,000.00).

ARTICLE III CHANGE ORDERS

3.01 The City may from time to time request changes in the scope and focus of the activities, investigations, and studies conducted or to be conducted by Consultant pursuant to this Contract, provided, however, that any such change that in the opinion of Consultant, the City Manager, or the City's Project Manager varies significantly from the scope of the work set out herein and would entail an increase in cost or expense to the City shall be mutually agreed upon in advance in writing by Consultant and the City's Project Manager.

- (a) When the original Contract amount plus all change orders is \$100,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work; and

- (b) When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work. Thereafter, any additional change orders exceeding \$50,000 or any additional change orders totaling 25 percent following such council approval, must be approved by City Council; and
- (c) **Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived.** If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

ARTICLE IV TIME OF PERFORMANCE

- ☒ **4.01** Except as provided in Article X herein below, the Consultant shall complete all of the work described in Exhibit "A" by the dates set forth below.

June 30, 2023

- OR -

- ☐ **4.01** Except as provided in Article X herein below, the term of this Contract shall be for one (1) year from the effective date of this Contract. Thereafter, upon the mutual consent of both parties, including budget approval by the City, this Contract may be renewed on an annual basis, under the same terms and conditions, for up to two (2) additional years (three (3) years total). If, for any reason, funds are not appropriated to continue the contract, the contract shall become null and void and shall terminate.

4.02 Time is of the essence of this Contract. The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

4.03 Consultant promises to work closely with the City Manager or his designee (the "Project Manager") or other appropriate City officials. Consultant agrees to perform any and all Project-related tasks reasonably required of it by the City in order to fulfill the purposes of the work to be performed. The work of Consultant under this Contract may be authorized by the Project Manager in various phases as set forth in **Exhibit "A."**

**ARTICLE V
INDEPENDENT CONSULTANT**

5.01 In all activities or services performed hereunder, the Consultant is an independent Consultant and not an agent or employee of the City. The Consultant, as an independent Consultant, shall be responsible for the final product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment and labor required for the execution of the work on the Project. The Consultant shall have ultimate control over the execution of the work under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subconsultants, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subconsultants except to the limited extent provided for in this Contract. Consultant shall be liable for any misrepresentations. Any negotiations by the Consultant on the City's behalf are binding on the City only when within the scope of work contained herein and approved by the City.

**ARTICLE VI
AUTHORIZATION**

6.01 The City shall direct Consultant to commence work on the Project by sending Consultant a "letter of authorization" to begin work on the Project.

6.02 Upon receipt of the letter of authorization to begin work on the implementation of the Project, Consultant shall meet with the City for the purpose of determining the nature of the Project, including but not limited to the following: meeting with the City's staff to coordinate Project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions and methodologies; devising the format for any interim reports and the final report to the City.

6.03 Consultant shall consult with the City and may in some limited circumstances, act as the City's representative, but it is understood and agreed by the parties that for all purposes related to this Contract, Consultant shall be an independent Consultant at all times and is not to be considered either an agent or an employee of the City.

**ARTICLE VII
WARRANTY**

7.01 As an experienced and qualified professional, Consultant warrants that the information provided by Consultant reflects high professional and industry standards, procedures, and performances. Approval or acceptance by the City of any of Consultant's work product under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Consultant, its employees, agents, or associates for the exercise of skill and diligence necessary to fulfill Consultant's responsibilities under this Contract. Nor shall the City's approval or acceptance be deemed to be the assumption of responsibility by the City for any defect or error in the work products prepared by Consultant, its employees, associates, agents, or subconsultants.

7.02 Consultant shall keep the City informed of the progress of the work and shall guard against any defects or deficiencies in its work.

7.03 Consultant shall be responsible for using due diligence to correct errors, deficiencies or unacceptable work product. Consultant shall, at no cost to the City, remedy any errors, deficiencies or any work product found unacceptable, in the City's sole discretion, as soon as possible, but no later than fifteen (15) calendar days after receiving notice of said errors, deficiencies, or unacceptable work product.

7.04 Any and all of Consultant's work product ("Work Product") hereunder shall be the exclusive property of the City. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all records, notes, data, memorandum, models, and equipment of any nature that are within Consultant's possession or control and that are the City's property or relate to the City or its business.

7.05 Consultant warrants to City that (i) Consultant has the full power and authority to enter into this Contract, (ii) Consultant has not previously assigned, transferred or otherwise encumbered the rights conveyed herein, (iii) Work Product is an original work of authorship created by Consultant's employees during the course of their employment by Consultant, and does not infringe on any copyright, patent, trademark, trade secret, contractual right, or any other proprietary right of any person or entity, (iv) Consultant has not published the Work Product (including any derivative works) or any portion thereof outside of the United States, and (v) to the best of the Consultant's knowledge, no other person or entity, except City, has any claim of any right, title, or interest in or to the Work Product.

7.06 Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this Article VII of the Contract.

ARTICLE VIII INDEMNIFICATION & RELEASE

8.01 INDEMNITY

- (a)** To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City, its Council members, officials, officers, agents, employees, and volunteers (separately and collectively referred to in this paragraph as "Indemnitee") from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising out of or resulting from any negligent act, error or omission, intentional tort or willful misconduct, intellectual property infringement or breach of contract including failure to pay a subconsultant, subconsultant, or supplier occurring in the course of performance of professional services pursuant to this Contract by Consultant, its employees, subconsultants, subconsultants, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. **IF THE CLAIMS, ETC. ARE CAUSED IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARATIVE BASIS, AND ONLY FOR THE**

AMOUNT FOR WHICH CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.

- (b) To the fullest extent permitted by law, Consultant agrees to defend the Indemnitees where the indemnifiable acts named in section 8.01 above occur outside the course of performance of professional services (i.e. non-professional services) and the claim is not based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, employee, or other entity over which the governmental agency exercises control, other than the Consultant or Consultant Parties.
- (c) It is mutually understood and agreed that the indemnification provided for in this section shall indefinitely survive any expiration, completion or termination of this Contract.
- (d) It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

8.02 Release. The Consultant releases, relinquishes, and discharges the City, its council members, officials, officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

**ARTICLE IX
INSURANCE**

9.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the

Consultant, its agents, representatives, volunteers, employees or subconsultants. The policies, limits and endorsements required are as set forth below:

During the term of this Contract all Consultant's insurance policies shall meet the minimum requirements of this section:

9.02 Types. Consultant shall have the following types of insurance:

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Workers' Compensation/Employer's Liability.
- (d) Professional Liability.

9.03 Certificates of Insurance. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as **Exhibit C**, and approved by the City before any letter of authorization to commence project will issue or any work on the Project commences.

9.04 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 named on the Certificate of Insurance.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station.
- (e) The 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 forms.

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

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- (c) No coverage shall be excluded from the standard policy without notification of

individual exclusions being attached for review and acceptance.

- (d) The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

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

- (a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current. A. M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

9.07 Workers’ Compensation/Employer’s Liability Insurance requirements. The Workers’ Compensation/Employer’s Liability Insurance shall include the following terms:

- (a) Employer's Liability limits of \$1,000,000 for each accident is 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 Worker's Compensation coverage or Item 3C must contain the following: All States except those named in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

9.08 Professional Liability requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum of \$1,000,000 per claim and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of College Station when requested.
- (c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of two years after completion of the Project or termination of this Contract, as may be amended, whichever occurs later. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting

period on this policy will not be sufficient to comply with the obligations hereunder.

- (d) Retroactive date must be shown on certificate.

ARTICLE X TERMINATION

10.01 At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Consultant, in writing, who shall cease work immediately. Consultant shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Consultant for the services properly performed and expenses incurred prior to the date of termination.

10.02 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City or because of any breach of contract by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

ARTICLE XI MISCELLANEOUS TERMS

11.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

11.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

CITY:

City of College Station
Attn: Stephen A. Maldonado
P.O. Box 9960
College Station, Texas 77842

CONSULTANT:

Freese and Nichols, Inc.
Attn: Murali Erat, PE
11200 Broadway Street Ste 2320
Pearland, Texas 77584

11.03 Consultant, its employees, associates or subconsultants shall perform all the work hereunder. Consultant agrees that all of its associates, employees, or subconsultants who work on this Project shall be fully qualified and competent to do the work described hereunder. Consultant shall undertake the work and complete it in a timely manner.

11.04 The Consultant shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA). The Consultant may not knowingly obtain the labor or services of an undocumented worker. The Consultant, not the City, must verify eligibility for employment as required by IRCA.

11.05 No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing. No waiver of any provision of the Contract shall be of any force or effect, unless such waiver is in writing, expressly stating to be a waiver of a specified provision of the Contract and is signed by the party to be bound thereby. In addition, no waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition and shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with the Contract or any portion or provision or right under the Contract.

11.06 This Contract and all rights and obligations contained herein may not be assigned by Consultant without the prior written approval of the City.

11.07 Invalidity. If any provision of this Contract shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the parties.

11.08 Prioritization. Contractor and City agree that City is a political subdivision of the State of Texas and is thus subject to certain laws. Because of this there may be documents or portions thereof added by Contractor to this Contract as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Contractor. In either case, the applicable law or the applicable provision of this Contract excluding such conflicting addition by Contractor shall prevail. The parties understand this section comprises part of this Contract without necessity of additional consideration.

11.09 This Contract represents the entire and integrated Contract between the City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

11.10 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

11.11 This Contract goes into effect when duly approved by all parties hereto..

11.12 Notice of Indemnification. City and Consultant hereby acknowledge and agree this Contract contains certain indemnification obligations and covenants.

11.13 Verification No Boycott. To the extent applicable, this Contract is subject to the following:

- (a) Boycott Israel. If this Contract is for goods and services subject to § 2270.002 Texas Government Code, Consultant verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Contract;

- (b) Boycott Firearms. If this Contract is for goods and services subject to § 2274.002 Texas Government Code, Consultant 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
- (c) Boycott Energy Companies. Subject to § 2274.002 Texas Government Code Consultant herein verifies that it i) does not boycott energy companies; and ii) will not boycott energy companies during the term of this Contract.

List of Exhibits

- A. Scope of Services
- B. Payment Schedule
- C. Certificates of Insurance

FREESE AND NICHOLS, INC.

By: _____
Printed Name: Gennady Boksiner
Title: Vice President
Date: _____

CITY OF COLLEGE STATION

By: _____
City Manager
Date: _____

APPROVED:

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

Exhibit A
Scope of Services

See Attached scope of services.

SCOPE OF SERVICES

City of College Station – Industrial Pretreatment and FOG Program Development

GENERAL DESCRIPTION OF PROJECT AND SERVICES

This Scope of Work includes development of a new Industrial Pretreatment Program in accordance with the latest requirements in 40 CFR Part 403 and TCEQ pretreatment regulations. The IPP in general will include the following components:

- Industrial User Survey
- Technically Based Local Limits (TBLLs)
- Sewer Use Ordinance (SUO)
- Enforcement Response Plan (ERP)
- Standard Operating Procedures (SOP)
- Pretreatment Forms/Templates
- Fats, Oils and Grease (FOG) Program
- Surcharge Program
- Staff Training and Development
- Public Relations/Outreach Materials

Also included in this Scope of Work is coordination with an analytical laboratory and training and consultation services for the CITY staff on the new IPP. The Scope of Work does not include legal review by an attorney. CITY shall provide coordination with an attorney for legal review of the IPP.

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

A. General

Perform general administrative duties associated with the project including progress monitoring, monthly progress reporting, scheduling, general correspondence, documentation, project administration and invoicing for the scope items identified herein. Documentation shall be in accordance with any regulatory requirements for the project. These duties include maintaining routine contact with the CITY to help meet the needs of the CITY in a timely manner and executing the work in accordance with the work plan, budget and schedule.

B. Meetings

1. Conduct a project kick-off meeting with the CITY to review scope and schedule of services, discuss project approach and work plan, and verify the CITY's project requirements.
2. Hold up to eight (8) in-person progress meetings and four (4) virtual meetings during the course of the project.
3. Conduct one (1) workshop with the CITY staff on implementation of the IPP.
4. Conduct one (1) work session with the CITY Council to present the IPP.

C. Industrial Pretreatment Program Development

1. **Industrial User Survey** – Assist CITY in compiling a Master List of potential Industrial Users (IUs) in the service area. The Master List of potential Industrial Users will be developed through an Industrial User Survey. The Industrial User Survey will list IUs within the treatment service area

including dental offices, EPA's Toxic Release Inventory (TRI), EPA's Envirofacts listing, high water users, Standard Industrial Classifications (SIC) code designated facilities, North America Industrial Classification (NAIC) code designated facilities, metal plating facilities, truck washing facilities, Grease & Grit processing facilities, Hospitals, meat and poultry products facilities, plastic molding and forming facilities, and other City-identified facilities which could potentially impact the treatment works or standards. The Master List of Potential Industrial Users will be used to identify Significant Industrial Users (SIUs). An SIU is any industry that discharges 25,000 gallons per day (gpd) or more of process wastewater or contributes 5% or more of the hydraulic or organic capacity of the wastewater treatment plant or is a Categorical Industrial User (CIU) (under 40 CFR Chapter I, Subchapter N under 40 CFR Chapter I, Subchapter N) or have a reasonable potential to adversely impact the Publicly Owned Treatment Works (POTW) or for violating any regulatory standard.

2. Technically Based Local Limits (TBLLs) – Develop TBLLs in accordance with the EPA's Local Limits Development Guidance, July 2004, and EPA Region 6's Technically Based Local Limits Development Guidance, October 12, 1993.

- a. **Sampling Plan:** Develop a sampling plan describing the monitoring to take place for the influent and effluent (and other points, as applicable) of the Carters Creek and Lick Creek WWTPs, domestic/commercial background, and sewage sludge for the TBLLs development.
 - i. Submit list of pollutants to be included in the Initial Influent Priority Pollutant Scan (IIPPS) and coordinate the sampling with the CITY and the analytical laboratory. Analyze the IIPPS results and identify the pollutants of concern (POC) in addition to the (15) pollutants identified by the EPA guidance manual as POC: arsenic, cadmium, chromium copper, cyanide, lead, mercury, nickel, silver, zinc, molybdenum, selenium, 5-day BOD, TSS, TKN and ammonia. It is also recommended to sample for total phosphorous, conductivity, total dissolved solids, chlorides, sulfates, total nitrogen, nitrate-N, nitrite-N and orthophosphate.
 - ii. Identify the influent, effluent and sludge sample locations at the Carters Creek and Lick Creek WWTPs and the sampling locations for the domestic/ commercial background.
 - iii. Prepare an electronic copy of the Draft Sampling Plan and provide to the CITY for review. Incorporate CITY review comments and submit two (2) hardcopies and one (1) electronic copy in PDF format for the Final Sampling Plan to the CITY.
 - iv. Coordinate the execution of the sampling plan with the CITY and CITY's preferred analytical laboratory for the sampling of the POCs:
 1. 7-day influent and effluent sampling
 2. 7-day sludge sampling
 3. 7-day domestic/commercial sampling
- b. **TBLL Development:** With the data collected from the sampling, calculate TBLLs to attain the Texas Surface Water Quality Standards [30 TAC Chapter 307] in water in the state, prevent pass through of pollutants, inhibition of or interference with the treatment facility, worker health and safety problems, and sludge contamination.
 - i. Calculate WWTP removal efficiency for the POCs
 - ii. Develop Maximum Allowable Headworks Loading (MAHL) based on Texas Surface Water Quality Standards, TexTox modeling toxicity limits, process inhibition standards, and sludge disposal criteria
 - iii. Develop Maximum Allowable Industrial Loading (MAIL)

- iv. Calculate TBLLs for the POCs
 - v. Prepare an electronic copy of the Draft TBLL Development Report and provide to the CITY for review. Incorporate CITY review comments and submit two (2) hardcopies and one (1) electronic copy in PDF format of the TBLL Development Report for the CITY.
- 3. Sewer Use Ordinance (SUO)**– Develop new sewer use ordinance incorporating applicable Pretreatment Streamlining Rule provisions to replace the current ordinance in Subpart A – General Ordinance, Chapter 40 Utilities, Division 4 “Industrial Waste”. The new sewer user ordinance will incorporate provisions of EPA model Pretreatment Ordinance, January 2007. EPA 833-B-06-002.
- 4. Enforcement Response Plan (ERP)** – Develop an ERP to establish protocols for identification and investigation of IU non-compliance, and appropriate enforcement actions. The ERP shall include an Enforcement Response Guide (ERG) table to assist CITY in selection of appropriate enforcement actions for non-compliance issues.
- 5. Standard Operating Procedures (SOPs)** – Develop standard operating procedures to assist CITY in day-to-day management and implementation of the IPP. SOPs will include procedures for sampling, inspection, permitting, reporting, and a data management program to implement the requirements of 40 CFR 403.8 and 403.12. The SOPs will include:
- a. General Procedures
 - b. Procedures for identifying and updating Industrial Users
 - c. Procedures for permitting Industrial Users
 - d. Procedures for determining Industrial User compliance
 - e. Procedures for Industrial User & POTW Reports
 - f. Enforcement Procedures
 - g. Procedures for Reassessment of Technically Based Local Limits
 - h. Procedures for Dental Office pretreatment standards
 - i. Procedures for evaluation of Slug Discharge Control Plans and Toxic Organic Management Plans (TOMPs)
 - j. Procedures for calculation of surcharges
 - k. Procedures for Pretreatment Program Modifications
 - l. Procedures for FOG monitoring and reporting
- 6. Pretreatment Forms** – Develop standard forms/templates needed for IPP implementation. Standard forms shall be developed for IU permit application, permit, inspection report, non-compliance enforcement actions, industrial user survey, etc. The standard forms will include:
- a. Industrial Wastewater Discharge Permit Application
 - b. Permit to Discharge Industrial Wastewater to Sanitary Sewer
 - c. No Enforcement Response Documentation
 - d. Documentation Record – Telephone Calls
 - e. Notice of Violation
 - f. Meeting Documentation Record
 - g. Formal Enforcement Cover Letter
 - h. Sample Show Cause Order
 - i. Sample Consent Order
 - j. Sample Compliance Order

- k. Sample Administrative Fine
- l. Sample Cease & Desist Order
- m. Sample Emergency Suspension
- n. Sample Termination of Service
- o. Review for Potential Industrial Users
- p. Industrial Pretreatment Questionnaire
- q. Industrial User Inspection Report
- r. Suspect Discharge Form
- s. Sample Chain of Custody Form
- t. Privileged and Confidential Information Form
- u. Monitoring Report Form
- v. Determining Fine, Recovery Cost, and Economic Benefit
- w. Permit Fact Sheet

7. Fats, Oils, and Grease (FOG) Program – Wastewater Training and Consulting (WTC) will be the FNI's subconsultant to assist the CITY with developing a FOG program for the prevention and control of FOG discharged from nondomestic and domestic sources to reduce the potential for sanitary sewer overflows (SSOs) caused by grease blockages and improve operation and maintain TPDES permit compliance of the WWTPs. The FOG Program will establish criteria for classifying and registering or permitting food service establishments (FSEs), proper sizing of grease traps and interceptors, installation, cleaning and maintenance, and policy on use of additives and alternative treatment.

a. FOG Program Assessment and Identification of Needed Modifications

- i. Prepare for and attend an initial two (2)-hour meeting with the CITY Departments and appropriate staff (i.e., Wastewater Treatment, Wastewater Collection, Development Services, Building Inspection, etc.) to discuss the following topics, at a minimum:
 - 1. Current efforts to prevent and control FOG discharges from non-residential and residential users (i.e., policies, rules, ordinances, plumbing codes, food service establishment (FSE) identification and classification, permitting, enforcement, grease trap or interceptor sizing, FSE notifications, installation, cleaning and maintenance, variances regarding installation and cleaning practices, grandfathering, policy on use of additives and alternative treatment, and information management). The CITY will provide an electronic list of currently permitted FSEs that includes the information on the FSE permit application form used by the CITY. If an electronic list is not available, the CITY will provide copies of the permit applications.
 - 2. Current practices to identify, track, and respond to sanitary sewer overflows (SSOs) that occur due to grease-blocked sewer lines. The CITY will provide an electronic list of SSOs for the last two (2) years that includes the date, location, volume, cause, and corrective action taken for each SSO.
 - 3. Current GIS capabilities to show location of FSEs and SSOs from grease-blockages.
 - 4. Current public education and outreach practices for FSEs and residential customers. The CITY will provide examples of materials used for public outreach and education.

- ii. Prepare a written summary of the meeting and recommended FOG program modifications (including rationale) based on an evaluation of the information provided to WTC. Send the meeting summary and recommended modifications to the City for review and consideration.
 - iii. Prepare for and meet with the City for up to two (2) hours to discuss and select which recommended FOG program modifications to incorporate into the FOG program
- b. Prepare a FOG ordinance to provide legal authority to implement and enforce the FOG program
 - i. Prepare a draft FOG ordinance that incorporates the TCEQ model grease management standards, as applicable, and CITY-selected modifications from Task 1. Send the draft FOG ordinance to the CITY for review and comments. Revise the FOG ordinance to address the CITY's comments and provide the final document to the CITY. Assist the CITY prepare presentation materials regarding FOG program modifications.

Note 1: Include in the FOG ordinance reference to pH, FOG, BOD, TSS, and TKN, and phosphorus discharge limits, as applicable, to the surcharge program being developed as part of the Industrial Pretreatment Program.

Note 2: The CITY is responsible for amending any other ordinances or portions thereof that are affected or replaced by the FOG ordinance.

- c. Prepare standard operating procedures (SOPs) and templates to implement the FOG program
 - i. Prepare written SOPs for the following, as needed: FSE identification and classification; review of FSE registration and/or permit applications; GT/GI sizing criteria, GT/GI installation approval; variance application and approval; "grandfather" documentation and approval; GT/GI installation, cleaning, and maintenance; evaluation of alternative treatment; FSE monitoring, inspection, compliance evaluation, FSE certification and employee training; enforcement responses; documentation and information management; and evaluation of program performance measures. Send the written documents to the CITY for review and comments. Revise the SOPs to address the CITY's comments and provide the electronic final documents to the CITY.
 - ii. Prepare forms and templates to include the following: FSE notification letters and forms; registration and/or permit application forms; registration and/or permit templates; best management practices certification form; GT/GI sizing and approval templates; FSE inspection forms; FSE enforcement cover letter and notice of violation and other enforcement forms; and FOG program performance measures tracking template. Send the templates to the City for review and comments. Revise the forms and templates to address the CITY's comments and provide the electronic final documents to the CITY.
 - d. Prepare a FOG program public education and outreach plan
 - i. Prepare written public outreach plan that includes recommendations on developing informational brochures on impacts of FOG, web pages ideas, suggested brochures, best kitchen practices posters, and other materials. Send to the City for review and

comments. Revise plan to address the CITY's comments and provide electronic final plan to the CITY.

- e. Prepare for and provide training to CITY personnel on FOG program implementation
 - i. Prepare FOG program staff training materials and conduct up to 24-hours of training to staff on how to do the following: identify and classify FSEs; review registration and/or permit applications; determine the size of grease traps and interceptors; conduct FSE inspections and follow up activities; determine compliance and enforcement action; document and track information; and measure and document FOG program performance measures. This task includes travel to and from the CITY for up to four, two-day trips to conduct hands-on training and 12-hours to prepare training materials for the CITY to use for future staff training.
- f. Prepare recommendations for an information management system and a preliminary budget that includes potential FOG program funding sources
 - i. Evaluate the existing information management system used by the CITY to track FSE permitting, inspections, grease trap/interceptor sizing, cleaning and maintenance, compliance, and enforcement and identify needs to augment the existing system, if possible, or for other information management software. Prepare written recommendations and submit to the CITY for review and consideration.
 - ii. Prepare a preliminary budget to implement and enforce the FOG program and submit to the CITY for consideration. The preliminary budget will include potential funding options, recommended staffing, materials and equipment, information management software, and other resource needs that are identified.
 - iii. Prepare for and participate in up to two (2), one-hour virtual meetings or conference calls to discuss FOG program resource needs and the preliminary budget. Include one round trip to attend an on-site meeting with CITY staff.

8. Surcharge Program – Develop surcharge rates to recover costs incurred by the CITY in treating wastewater discharged by industrial and commercial users that exceeds the strength of normal domestic wastewater. The surcharge rates will be developed for Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Total Kjeldahl Nitrogen (TKN), and Total Phosphorous (TP).

- a. Obtain and review historical data required for the development of surcharge rates such as Operation and Maintenance (O&M) costs of the WWTPs for the last five years; available insurance assessed value of assets or cost information of the construction of the Carters Creek and Lick Creek WWTPs, including improvements; number of employees associated with the WWTPs and collection operation; sewer rates, etc.
- b. Develop new surcharge rate evaluation criteria and methodology.
- c. Calculate new surcharge rates for the following conventional pollutants: Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Total Kjeldahl Nitrogen (TKN), and Total Phosphorous (TP). TKN will be used instead of Ammonia-Nitrogen since it is a true measure of the actual Ammonia-Nitrogen in the influent to the plant. The surcharge rates for the

pollutants shall be representative of the actual cost of treatment incurred by the CITY at the Carters Creek and Lick Creek WWTPs.

- d. Determine a maximum allowable concentration for BOD, TSS, TKN, and TP in discharges from IUs in order to protect the Carters Creek and Lick Creek WWTPs from slug loads. Incorporate the maximum discharge concentration into the new surcharge rate calculation.
 - e. Prepare a technical memorandum on the surcharge rate analysis with the list of recommended parameters; a description of the surcharge evaluation criteria; surcharge rate methodology; development of new surcharge rates; and maximum allowable discharge concentration for the surcharge pollutants.
- 9. Staff Training and Development** – Provide up to 40 hours of training to CITY staff on implementation of the IPP. Training will include day-to-day management of IPP, reporting and record keeping requirements, permitting process, IU inspection, sampling, monitoring reports evaluation for administration and management of the IPP. Provide initial set-up, training, and one-year subscription for Aquatic Informatics (AQI) software for data management and implementation of IPP and FOG programs. Software provided will include the basic packages for IPP (LinkoCTS) and FOG (LinkFOG); and additional modules for industrial user inspection (Remote Inspector) and FSE grease haulers management (POM Portal). FNI will pay for the initial set up, training, and first year subscription fee for the software. CITY will be responsible for the annual subscription fee beyond the first year.
- 10. Public Relations/Outreach Materials** – Assist the CITY in development of a public relations /outreach materials to educate public, city council and other stakeholders on the new IPP. Materials shall include the following:
- a. Digital copy of a brochure for mailing and electronic mailing to stakeholders (industries and other cities that CITY has interjurisdictional agreement with sewer service); and
 - b. Coordination with the CITY's Public Information Office staff to update CITY's website with pertinent information on the IPP.

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by CITY, which are not included in the above-described basic services, are described as follows:

- A. Meetings with the industries and other stakeholders to discuss proposed TBLLs, surcharge rates, and other components of the IPP.
- B. Consultation on IPP management and execution beyond the 40 total hours of training included in Basic Services.
- C. Coordination with TCEQ, if needed, to discuss proposed IPP.
- D. Industrial source identification of per- and polyfluoroalkyl substances (PFAS) if detected during IPPS sampling.
- E. Additional meetings, presentations, and workshops in excess of the quantity included in Basic Services.

- F. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
- G. Preparing data and reports for assistance to CITY in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- H. Assisting CITY in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- I. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

• Kick-off Meeting	15 days following Notice to Proceed (NTP)
• Industrial User (IU) Survey	Three months following NTP
• TBLL Sampling Plan	Four months following NTP
• Sewer Use Ordinance, ERP, SOP	Seven months following NTP
• FOG Program	Eight months following NTP
• Surcharge Program	Nine months following NTP
• TBLL Development Report	Ten months following NTP
• City Council Workshop	Twelve months following NTP
• Staff Training and Development	Twelve months following NTP

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in CITY or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

RESPONSIBILITIES OF CITY: CITY shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Legal review of the IPP Ordinance and certifications by an attorney.
- B. Development of financial programs, revenue sources, equipment, staffing, and organizational chart of those positions which will be employed to implement the pretreatment program
- C. Designate in writing a person to act as CITY's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to FNI's services for the Project.
- D. Provide all criteria and full information as to CITY's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CITY will require to be included in the drawings and specifications.
- E. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- F. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- G. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as CITY deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- H. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- I. Give prompt written notice to FNI whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services.
- J. Furnish, or direct FNI to provide, Additional Services as stipulated in this Agreement or other services as required.
- K. Bear all costs incident to compliance with the requirements this section.

Exhibit B
Payment Terms

SELECT ONE:

☐ Compensation is based on **actual** hours of work/time devoted to providing the described professional services. The Consultant will be paid at a rate of \$_____ per hour, or at the rates per service or employee shown below. The City will reimburse the Consultant for **actual**, non-salary expenses at the rate of _____ percent (_____%) above the Consultant's actual costs, or at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract (\$_____).

The Consultant must submit **monthly** invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

-OR-

☒ Payment is a fixed fee in the amount listed in Article II of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

The Consultant may submit **monthly** invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

Schedule of Payment for each phase:

Lump Sum amount: \$400,000 See attached for additional details

City of College Station Industrial Pretreatment Program and FOG Program Summary of Fee by Task	
Project Management (Task A)	\$ 8,337
Meetings (Task B)	\$ 59,554
Industrial User Survey (Task C.1)	\$ 30,273
TBL Development (Task C.2)	\$ 123,978
Program Administration and Training (Tasks C.3 - C.6, C.9-C.10)	\$ 97,872
FOG Program (Task C.7)	\$ 42,932
Surcharge Program (Task C.8)	\$ 37,055
Basic Services Total (Lump Sum) \$ 400,000	

Exhibit C
Certificates of Insurance



FREEAND-02

KSUTTON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/2/2022

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 Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME: PHONE (A/C, No, Ext): (703) 827-2277 FAX (A/C, No): (703) 827-2279 E-MAIL ADDRESS: admin@amesgough.com
INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Underwriters Insurance Company A+ (XV) 30104 INSURER B: Twin City Fire Insurance Company A+ (XV) 29459 INSURER C: Hartford Casualty Insurance Company A+ (XV) 29424 INSURER D: Hartford Accident and Indemnity Company A+ (XV) 22357 INSURER E: Continental Casualty Company (CNA) A, XV 20443 INSURER F: AIG Specialty Insurance Company A(XV) 26883

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 ☒ Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:			42UUNOL5238	10/23/2021	10/23/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			42UENOL5558	10/23/2021	10/23/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			42 HXU OL 5747	10/23/2021	10/23/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
D	☒ 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	42WBOL6H3F	10/23/2021	10/23/2022	☒ 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
E	Professional Liab.			AEH008214422	10/23/2021	10/23/2022	Per Claim 5,000,000
F	Professional Liab.			011819611	10/23/2021	10/23/2022	Aggregate 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
PROFESSIONAL LIABILITY AGGREGATE LIMIT: \$10,000,000

RE: Industrial Pretreatment and FOG Program Development

CERTIFICATE HOLDER

CANCELLATION

City of College Station, TX P. O. Box 9960 College Station, TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ADDITIONAL REMARKS SCHEDULE

AGENCY Ames & Gough		NAMED INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:

Umbrella Liability and Workers Compensation policies include a Waiver of Subrogation in favor of the Additional Insured where permissible by state law and when required by written contract. 30-day Notice of Cancellation will be issued for the General Liability, Auto Liability, Umbrella Liability, Workers Compensation and Professional Liability policies in accordance with policy terms and conditions.

Retro Date for the Professional Liability Policy is: 11/01/1965.



COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice And Good Samaritan Coverage**
- "Bodily injury" arising out of the rendering of or failure to render the following health care services by any "employee" or "volunteer worker" shall be deemed to be caused by an "occurrence" for:

- (1) Professional health care services such as:
 - (a) Medical, surgical, dental, laboratory, x-ray or nursing services or treatment, advice or instruction, or the related furnishing of food or beverages;
 - (b) Any health or therapeutic service, treatment, advice or instruction; or
 - (c) The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
- (2) First aid services, which include:
 - (a) Cardiopulmonary resuscitation, whether performed manually or with a defibrillator; or
 - (b) Services performed as a Good Samaritan.

For the purpose of determining the limits of insurance, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

However, this Incidental Medical Malpractice And Good Samaritan Coverage provision applies only if you are not engaged in the business or occupation of providing any of the services described in this provision.

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"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.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured 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:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- (i) Any insured; or
- (ii) Any person or organization for whom you may be legally responsible;

- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the

operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

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" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1)** A watercraft while ashore on premises you own or rent;
- (2)** A watercraft you do not own that is:
 - (a)** Less than 51 feet long; and
 - (b)** Not being used to carry persons for a charge;
- (3)** 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;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

(5) "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 where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or

(6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement,

enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" arising from the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at the job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Access or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph **(1)** above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, 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, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Employment-Related Practices

"Bodily injury" to:

- (1)** A person arising out of any "employment-related practices"; or
- (2)** The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1)** Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (2)** Whether the insured may be liable as an employer or in any other capacity; and
- (3)** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

r. Asbestos

- (1)** "Bodily injury" or "property damage" arising out of the "asbestos hazard".
- (2)** Any damages, judgments, settlements, loss, costs or expenses that:
 - (a)** May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
 - (b)** Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - (c)** Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating,

detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

s. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1)** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2)** The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3)** The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4)** Any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You - Exception For Damage By Fire, Lightning Or Explosion

Exclusions **c.** through **h.** and **j.** through **n.** do not apply to damage by fire, lightning or explosion 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**.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
 - (1)** The amount we will pay for damages is limited as described in Section **III - Limits Of Insurance**; and
 - (2)** Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or

settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" arising out of an offense committed by, at the direction or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral, written or electronic publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral, written or electronic publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement".

g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

i. Infringement Of Intellectual Property Rights

- (1)** "Personal and advertising injury" arising out of any actual or alleged infringement or violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, trade dress, service mark or other designation of origin or authenticity; or
- (2)** Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

- (1)** Infringement, in your "advertisement", of:
 - (a)** Copyright;
 - (b)** Slogan; or
 - (c)** Title of any literary or artistic work; or
- (2)** Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1)** Advertising, broadcasting, publishing or telecasting;
- (2)** Designing or determining content of web sites for others; or
- (3)** An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** of the definition of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the

insured hosts, owns, or over which the insured exercises control.

i. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Internet Advertisements And Content Of Others

"Personal and advertising injury" arising out of:

- (1) An "advertisement" for others on your web site;
- (2) Placing a link to a web site of others on your web site;
- (3) Content, including information, sounds, text, graphics, or images from a web site of others displayed within a frame or border on your web site; or

- (4) Computer code, software or programming used to enable:

(a) Your web site; or

(b) The presentation or functionality of an "advertisement" or other content on your web site.

q. Right Of Privacy Created By Statute

"Personal and advertising injury" arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act.

r. Violation Of Anti-Trust law

"Personal and advertising injury" arising out of a violation of any anti-trust law.

s. Securities

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

t. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

u. Employment-Related Practices

"Personal and advertising injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

v. Asbestos

- (1) "Personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
 - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

w. Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- 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.
- c. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 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.
- e. All court costs taxed against the insured in the "suit". However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed to the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been

assumed by the insured in the same "insured contract";

- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1)** "Bodily injury" or "personal and advertising injury":
 - (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that

"volunteer worker" as a consequence of Paragraph **(1)(a)** above;

- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(1)(b)** above; or

- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services:

- (a)** Subparagraphs **(1)(a)**, **(1)(b)** and **(1)(c)** above do not apply to any "employee" or "volunteer worker" providing first aid services; and

- (b)** Subparagraph **(1)(d)** above does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b)** Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1)** With respect to liability arising out of the maintenance or use of that property; and
- (2)** Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which such insured is also a named insured under another policy or would be a named insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- 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. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance 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 the 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; or

(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.

b. Lessors Of Equipment

(1) Any person(s) or organization(s) from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

(2) 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.

c. Lessors Of Land Or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land; or
2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or

omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded 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 the failure to render any professional services by or for you, 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.

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 by or for you.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an additional insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;

- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within 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.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"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:

- (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.

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 by or for you.

The limits of insurance that apply to additional insureds is described in Section III - Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV - Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

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.

3. Products-Completed Operations Aggregate Limit

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".

4. Personal And Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

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, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- a. The limits of insurance specified in the written contract or written agreement; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insureds Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or the additional insured is a partnership;

- (3) Any manager, if you or the additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or the additional insured is a corporation;
- (5) Any trustee, if you or the additional insured is a trust; or
- (6) Any elected or appointed official, if you or the additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability;

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **j.** of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a.** We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b.** Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c.** The first Named Insured must keep records of the information we need for premium

computation, and send us copies at such times as we may request.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1)** The statements in the Declarations are accurate and complete;
- (2)** Those statements are based upon representations you made to us; and
- (3)** We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a.** As if each Named Insured were the only Named Insured; and
- b.** Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the

nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. **"Advertisement"** means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper; or
- b. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
 - b. An interactive conversation between or among persons through a computer network.
2. **"Advertising idea"** means any idea for an "advertisement".
3. **"Asbestos hazard"** means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.
4. **"Auto"** means:
- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

5. **"Bodily injury"** means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. **"Coverage territory"** means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or

c. All other parts of the world if the injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in a. above;
- (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
- (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.

7. **"Employee"** includes a "leased worker". "Employee" does not include a "temporary worker".

8. **"Employment-Related Practices"** means:

- a. Refusal to employ that person;
- b. Termination of that person's employment; or
- c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person.

9. **"Executive officer"** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. **"Hostile fire"** means one which becomes uncontrollable or breaks out from where it was intended to be.

11. **"Impaired property"** means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work", or your fulfilling the terms of the contract or agreement.

12. **"Insured contract"** means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage to

Premises Rented To You Limit described in Section III - Limits of Insurance;

- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral, written or electronic publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral, written or electronic publication, in any manner, of material that violates a person's right of privacy;
- f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
- g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".

18. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

19. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

20. "Property damage" means:

- a. 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
- b. 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.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

- a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from;
- computer software, including systems and applications software, hard or floppy disks, CD-

ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who

- a. Is not your "employee";
- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional Conditions:

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B.** If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10)

days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% 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.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 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.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
 - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE 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.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a.If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b.The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c.Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a.A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b.A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

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 provision 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.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional Conditions:

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B.** If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10)

days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

Policy Number: 42 WB OL6H3F

Endorsement Number:

Effective Date 10/23/21 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: FREESE AND NICHOLS, INC.
801 CHERRY STREET, SUITE 2800
FORT WORTH TX 76102

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. ☐ Special 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 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:



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

Policy Number: 42 WB OL6H3F

Endorsement Number:

Effective Date: 10/23/20

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: FREESE AND NICHOLS, INC.
801 CHERRY STREET, SUITE 2800
FORT WORTH TX 76102

This policy is subject to the following additional Conditions:

- A. If this policy is cancelled by the Company, other than for non-payment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B. If this policy is cancelled by the Company for non-payment of premium, or by the insured, notice of such cancellation will be provided within ten (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the certificate holder(s) will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF OTHER INSURANCE CONDITION -
PRIMARY OR PRIMARY AND NON-CONTRIBUTORY WHEN
REQUIRED BY WRITTEN CONTRACT OR WRITTEN
AGREEMENT FOR SCHEDULED ADDITIONAL INSUREDS

This endorsement modifies insurance provided under the following:

UMBRELLA LIABILITY POLICY

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Designated Project(s) Or Location(s) Of Covered Operations:
BLANKET TO ALL THAT ARE REQUIRED BY WRITTEN CONTRACT	BLANKET TO ALL THAT ARE REQUIRED BY WRITTEN CONTRACT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- I. With respect to those person(s) or organization(s) shown in the Schedule above when you have agreed in a written contract or written agreement to provide insurance such as is afforded under this policy to them, Paragraph **B.2** of Section **III – Who Is An Insured** is replaced by the following:

2. Any person or organization with whom you agreed, because of a written contract, written agreement or because of a permit issued by a state or political subdivision, to provide insurance such as is afforded under this policy, but only with respect to your operations, "your work" or facilities owned or used by you.

This provision does not apply:

a. Unless the written contract or written agreement has been executed, or the permit has been issued prior to the "bodily injury", "property damage", or "personal and advertising injury"; and
- b. Unless the limits of liability specified in such written contract, written agreement or permit are greater than the limits shown for "underlying insurance"; or

c. Beyond the period of time required by the written contract or written agreement.

In no event shall any coverage afforded to any such person or organization apply to any claim or "suit" to which "underlying insurance" does not apply. Coverage provided by this policy for any such additional insured will follow the provisions, exclusions and limitations of the "underlying insurance".
- II. Solely as respects the insurance afforded to any person or organization qualifying as an additional insured under Paragraph **I.** above, the **Other Insurance** condition in Section **VI – Conditions** is replaced by the following:

G. Other Insurance

1. This policy shall apply in excess of all "underlying insurance" whether or not valid and collectible. It shall also apply in excess of other valid and collectible insurance (except other insurance purchased specifically to apply in excess of this insurance) which also applies to any loss for which insurance is provided by this policy.

These excess provisions apply, whether such other insurance is stated to be:

- a. Primary;
- b. Contributing;
- c. Excess; or
- d. Contingent.

2. However, the following provisions apply to other insurance available to any person or organization qualifying as an additional insured under Paragraph **B.2.** of Section **III – Who Is An Insured**, as amended by Item **I.** of this endorsement and who is also an additional insured under the Commercial General Liability Coverage Part scheduled in the "underlying insurance":

a. **Primary Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit to provide primary insurance to the additional insured, then, after the "underlying insurance" is exhausted, this insurance will be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Paragraph **3.** below.

b. **Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement, or permit to provide insurance to the additional insured that is primary and non-contributory, then, after the "underlying insurance" is exhausted, this insurance will be primary and we will not seek contribution from the additional insured's own insurance.

Paragraphs **a.** and **b.** do not apply to other insurance on which the additional insured qualifies as an additional insured pursuant to the terms of that policy or has been added as an additional insured by endorsement.

3. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

III. The following is added to **Section IV – Limits Of Insurance**:

H. **How Limits Apply To Additional Insureds**

If you have agreed in a written contract, written agreement or permit that another person or organization be added as an additional insured on the Commercial General Liability Coverage Part scheduled in the "underlying insurance" and such person or organization also qualifies as an additional insured under this policy, the most we will pay on behalf of such insured is the lesser of:

- a. The limits of insurance specified in the written contract, written agreement or permit, less any amounts payable by any "underlying insurance"; or
- b. The Limits of Insurance shown in the Umbrella Liability Policy Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Umbrella Liability Policy Declarations and described in other provisions of this Section.



UMBRELLA LIABILITY POLICY PROVISIONS

In this policy the words "you" and "your" refer to the Named Insured first shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. "We", "us" and "our" refer to the stock insurance company member of The Hartford Financial Services Group Inc. shown in the Declarations.

Other words and phrases that appear in quotation marks also have special meaning. Refer to DEFINITIONS (Section VII).

IN RETURN FOR THE PAYMENT OF THE PREMIUM, in reliance upon the statements in the Declarations made a part hereof and subject to all of the terms of this policy, we agree with you as follows:

SECTION I - COVERAGES

INSURING AGREEMENTS

A. Umbrella Liability Insurance

1. We will pay those sums that the "insured" becomes legally obligated to pay as "damages" in excess of the "underlying insurance" or of the "self-insured retention" when no "underlying insurance" applies, because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies caused by an "occurrence". But, the amount we will pay as "damages" is limited as described in **Section IV - LIMITS OF INSURANCE.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section II - INVESTIGATION, DEFENSE, SETTLEMENT.**

2. This insurance applies to "bodily injury", "property damage" or "personal and advertising injury" only if:
 - a. The "bodily injury", "property damage" or "personal and advertising injury" occurs during the "policy period"; and
 - b. Prior to the "policy period", no insured listed under Paragraph A. of Section III - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the "policy period", that

the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the "policy period" will be deemed to have been known prior to the "policy period".

3. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under paragraph A. of Section III - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - c. Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

B. Exclusions

This policy does not apply to:

1. Pollution

Any obligation:

- a. To pay for the cost of investigation, defense or settlement of any claim or suit against any "insured" alleging actual or threatened injury or damage of any nature or kind to persons or property which arises out of or would not have occurred but for the pollution hazard; or
- b. To pay any "damages", judgments, settlements, loss, costs or expenses that may be awarded or incurred:
 - i. By reason of any such claim or suit or any such injury or damage; or
 - ii. In complying with any action authorized by law and relating to such injury or damage.

As used in this exclusion, pollution hazard means an actual exposure or threat of exposure to the corrosive, toxic or other harmful properties of any solid, liquid, gaseous or thermal:

- a. Pollutants;
- b. Contaminants;

- c. Irritants; or
- d. Toxic substances;

Including:

Smoke;

Vapors;

Soot;

Fumes;

Acids;

Alkalies;

Chemicals, and

Waste materials consisting of or containing any of the foregoing. Waste includes materials to be recycled, reconditioned or reclaimed.

EXCEPTION

This exclusion does not apply:

- a. To "bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or
- b. To injury or damage as to which valid and collectible "underlying insurance" with at least the minimum limits shown in the Schedule of Underlying Insurance Policies is in force and applicable to the "occurrence". In such event, any coverage afforded by this policy for the "occurrence" will be subject to the pollution exclusions of the "underlying insurance" and to the conditions, limits and other provisions of this policy. In the event that "underlying insurance" is not maintained with limits of liability as set forth in the Schedule of Underlying Insurance Policies, coverage under any of the provisions of this exception does not apply.

Exception b. does not apply to:

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) That are, or that are contained in any property that is :
 - (a) Being transported or towed by, handled, or handled for movement into, onto or from, any "auto";

(b) Otherwise in the course of transit by or on behalf of the "insured"; or

(c) Being stored, disposed of, treated or processed in or upon any "auto";

- (2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or
- (3) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph (1) above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

- a. The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- b. The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any following equipment:
 - i. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment; and
 - ii. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers.

Paragraphs (2) and (3) above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto"

covered by the "underlying insurance" if:

- a. The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto", and
- b. The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

2. Workers Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

3. Contractual Liability

Liability assumed by the "insured" under any contract or agreement with respect to an "occurrence" taking place before the contract or agreement is executed.

4. Personal And Advertising Injury

This policy does not apply to "personal and advertising injury".

EXCEPTION

This exclusion does not apply to the extent that coverage for such "personal and advertising injury" is provided by "underlying insurance", but in no event shall any "personal and advertising injury" coverage provided under this policy apply to any claim or "suit" to which "underlying insurance" does not apply.

Any coverage restored by this **EXCEPTION** applies only to the extent that such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Schedule of Underlying Insurance Policies.

5. Underlying Insurance

Any injury or damage:

- a. Covered by "underlying insurance" but for any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its policy; or
- b. For which "damages" would have been payable by "underlying insurance" but for the actual or alleged insolvency or financial impairment of an underlying insurer.

6. Aircraft

"Bodily injury" or "property damage" arising out of the ownership, operation,

maintenance, use, entrustment to others, loading or unloading of any aircraft:

- a. Owned by any "insured"; or
- b. Chartered or loaned to any "insured".

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to aircraft that is:

- a. Hired, chartered or loaned with a paid crew; but
- b. Not owned by any "insured".

This exclusion does not apply to "bodily injury" to any of your "employees" arising out of and in the course of their employment by you.

7. Watercraft

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, loading or unloading of any watercraft.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- a. Watercraft you do not own that is:
 - (1) Less than 51 feet long, and
 - (2) Not being used to carry persons or property for a charge;
- b. "Bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or
- c. Any watercraft while ashore on premises owned by, rented to or controlled by you.

8. War

Any injury or damage, however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war; or

- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

9. Damage To Property

"Property damage" to property you own.

10. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

11. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

12. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

13. Recall Of Products, Work Or Impaired Property

"Damages" claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";
- b. "Your work"; or
- c. "Impaired Property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect,

deficiency, inadequacy or dangerous condition in it.

14. Expected Or Intended

"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.

15. Employer Liability

Coverage afforded any of your "employees" for "bodily injury" or "personal and advertising injury":

- a. To other "employees" arising out of and in the course of their employment;
- b. To the spouse, child, parent, brother or sister of that "employee" as a consequence of such "bodily injury" to that "employee".
- c. To you or, any of your partners or members, (if you are a partnership, joint venture), or your members (if you are a limited liability company); or
- d. Arising out of the providing or failing to provide professional health care services.

Subparagraphs a. and b. of this exclusion apply:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

EXCEPTION

Subparagraphs a. and b. of this exclusion do not apply if "underlying insurance" is maintained providing coverage for such liability with minimum underlying limits, as described in the Schedule of Underlying Insurance Policies.

16. Property Damage To Employee's Property

Coverage afforded any of your "employees" for "property damage" to property owned or occupied by or rented or loaned to:

- a. That "employee";
- b. Any of your other "employees";
- c. Any of your partners or members (if you are a partnership or joint venture); or
- d. Any of your members (if you are a limited liability company).

17. Uninsured Or Underinsured Motorists

Any claim for:

- a. Uninsured or Underinsured Motorists Coverage;
- b. Personal injury protection;
- c. Property protection; or
- d. Any similar no-fault coverage by whatever name called;

Unless this policy is endorsed to provide such coverage.

18. Employment Practices Liability

- a. Any injury or damage to:
 - (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as but not limited to: coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
 - (2) The spouse, child, parent, brother or sister of that person, as a consequence of any injury or damage to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- i. Whether the injury-causing event described in part (1) above occurs before employment, during employment or after employment of that person;
- ii. Whether the "insured" may be liable as an employer or in any other capacity; and
- iii. To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

19. Employee Retirement Income Security Act

Any liability arising out of intentional or unintentional violation of any provision of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (commonly referred to as the Revision Act of 1974), or any amendments to them.

20. Asbestos

Any injury, damages, loss, cost or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" arising out of, or relating to, in whole or in part, the "asbestos hazard" that:

- a. May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard"; or
- b. Arise out of any request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of any "asbestos hazard"; or
- c. Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

21. Racing And Stunting Activities

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, or loading or unloading of any "auto" or "mobile equipment" while being used in any:

- a. Prearranged or organized racing, speed or demolition contest;
- b. Stunting activity; or
- c. Preparation for any such contest or activity.

22. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit

monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, 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, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

23. Limited Underlying Coverage

Any injury, damage, loss, cost or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" for which:

- a. an "underlying insurance" policy or policies specifically provides coverage; but
- b. because of a provision within the "underlying insurance" such coverage is provided at a limit or limits of insurance that are less than the limit(s) for the "underlying insurance" policy or policies shown on the Schedule of Underlying Insurance Policies.

24. Recording And Distribution Of Material Or Information In Violation Of Law

Any injury, damage, loss, cost or expense, including but not limited to "bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or

limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

SECTION II - INVESTIGATION, DEFENSE, SETTLEMENT

A. With respect to "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies (whether or not the "self-insured retention" applies) and

1. For which no coverage is provided under any "underlying insurance"; or
2. For which the underlying limits of any "underlying insurance" policy have been exhausted solely by payments of "damages" because of "occurrences" during the "policy period",

We:

1. Will have the right and the duty to defend any "suit" against the "insured" seeking "damages" on account thereof, even if such "suit" is groundless, false or fraudulent; but our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under coverages afforded by this policy;
2. May make such investigation and settlement of any claim or "suit" as we deem expedient;
3. Will pay all expenses incurred by us, all court costs taxed against the "insured" in any "suit" defended by us and all interest on the entire amount of any judgment therein which accrues after the entry of the judgment and before we have paid or tendered or deposited in court that part of the judgment which does not exceed the applicable limit of insurance. However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed to the insured;
4. Will pay all premiums on appeal bonds required in any such "suit", premiums on bonds to release attachments in any such "suit" for an amount not in excess of the applicable limit of insurance, and the cost of bail bonds required of the "insured" because of an accident or traffic law violation arising out of the operation of any vehicle to which this policy applies, but we will have no obligation to apply for or furnish any such bonds;
5. Will pay all reasonable expenses incurred by the "insured" at our request in assisting us in the investigation or defense of any claim or "suit", including actual loss of earnings not to exceed \$500 per day per "insured";

and the amounts so incurred, except settlement of claims and "suits," are not subject to the "self-insured retention" and are payable in addition to any applicable limit of insurance.

The "Insured" agrees to reimburse us promptly for amounts paid in settlement of claims or "suits" to the extent that such amounts are within the "self-insured retention".

- B. You agree to arrange for the investigation, defense or settlement of any claim or "suit" in any country where we may be prevented by law from carrying out this agreement. We will pay defense expenses incurred with our written consent in connection with any such claim or "suit" in addition to any applicable limit of insurance. We will also promptly reimburse you for our proper share, but subject to the applicable limit of insurance, of any settlement above the "self-insured retention" made with our written consent.
- C. We will have the right to associate at our expense with the "insured" or any underlying insurer in the investigation, defense or settlement of any claim or "suit" which in our opinion may require payment hereunder. In no event, however, will we contribute to the cost and expenses incurred by any underlying insurer.

SECTION III - WHO IS AN INSURED

- A. If you are doing business as:
 - 1. An individual, you and your spouse are "insureds", but only with respect to the conduct of a business of which you are the sole owner.
 - 2. A partnership or joint venture, you are an "insured". Your members, your partners, and their spouses are also "insureds", but only with respect to the conduct of your business.
 - 3. A limited liability company, you are an "insured". Your members are also "insureds", but only with respect to the conduct of your business. Your managers are "insureds", but only with respect to their duties as your managers.
 - 4. An organization other than a partnership, joint venture or limited liability company, you are an "insured". Your "executive officers" and directors are "insureds", but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.
 - 5. A trust, you are an "insured". Your trustees are also "insureds", but only with respect to their duties as trustees.
- B. Each of the following is also an "insured":
 - 1. Your "volunteer workers" only while performing duties related to the conduct of

your business, or your "employees," other than your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts:

- a. Within the scope of their employment by you or while performing duties related to the conduct of your business; and
 - b. Only if such "volunteer workers" or "employees" are insureds under "underlying insurance" with limits of liability no less than stated in the Schedule of Underlying Insurance Policies, subject to all the coverage, terms, conditions and limitations of such "underlying insurance".
- 2. Any person or organization with whom you agreed, because of a written contract, written agreement or because of a permit issued by a state or political subdivision, to provide insurance such as is afforded under this policy, but only with respect to your operations, "your work" or facilities owned or used by you.

This provision does not apply:

 - a. Unless the written contract or written agreement has been executed, or the permit has been issued prior to the "bodily injury," "property damage," or "personal and advertising injury"; and
 - b. Unless limits of liability specified in such written contract, written agreement or permit is greater than the limits shown for "underlying insurance"; or
 - c. Beyond the period of time required by the written contract or written agreement.
- 3. Any person or organization having proper temporary custody of your property if you die, but only:
 - a. With respect to liability arising out of the maintenance or use of that property; and
 - b. Until your legal representative has been appointed.
- 4. Your legal representative if you die, but only with respect to his or her duties as such. That representative will have all your rights and duties under this policy.
- C. With respect to "auto", any "insured" in the "underlying insurance" is an "insured" under this insurance policy, subject to all the limitations of such "underlying insurance".
- D. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain

financial interest of more than 50% of the voting stock, will qualify as an "insured" if there is no other similar insurance available to that organization.

However:

1. 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;
2. This insurance does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
3. This insurance does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

E. Each person or organization, not included as an "insured" in Paragraphs A., B., C., or D., who is an "insured" in the "underlying insurance" is an "insured" under this insurance subject to all the terms, conditions and limitations of such "underlying insurance".

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

With respect to any person or organization who is not an "insured" under "underlying insurance", coverage under this policy shall apply only to loss in excess of the amount of the "underlying insurance" or "self-insured retention" applicable to you.

However, coverage afforded by reason of the provisions set forth above applies only to the extent:

- (i) Of the scope of coverage provided by the "underlying insurance" but in no event shall coverage be broader than the scope of coverage provided by this policy and any endorsements attached hereto; and
- (ii) That such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Schedule of Underlying Insurance Policies.

SECTION IV - LIMITS OF INSURANCE

- A.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. "Insureds";
 2. Claims made or "suits" brought;
 3. Persons or organizations making claims or bringing "suits"; or
 4. Coverages under which damages are covered under this policy.

B. The Limit of Insurance stated as the General Aggregate Limit is the most we will pay for the sum of "damages", other than "damages":

1. Because of injury or damage included within the "products-completed operations hazard";
2. Because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you; and
3. Because of "bodily injury" and "property damage" arising out of the ownership, operations, maintenance, use, entrustment to others, loading or unloading of any "auto".

C. The Limit of Insurance stated as the Products Completed Operations Aggregate Limit is the most we will pay for "damages" because of injury or damage included within the "products-completed operations hazard".

D. The Limit of Insurance stated as the Bodily Injury By Disease Aggregate Limit is the most we will pay for "damages" because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you.

E. Subject to **B.**, **C.**, or **D** above, whichever applies, the Each Occurrence Limit is the most we will pay for "damages" because of all "bodily injury", "property damage", and "personal and advertising injury" arising out of any one "occurrence".

F. Our obligations under this insurance end when the applicable Limit of Insurance available is used up. If we pay any amounts for "damages" in excess of that Limit of Insurance, you agree to reimburse us for such amounts.

G. The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "policy period" shown in the Declarations. However, if the "policy period" is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for the purpose of determining the Limits of Insurance.

SECTION V - NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)

A. The insurance does not apply:

1. To "bodily injury" or "property damage":
 - a. With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured

under any such policy but for its termination upon exhaustion of its limit of liability; or

- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. To "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material" if:
 - a. The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
 - b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or
 - c. The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

B. As used in this exclusion:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

"Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or

concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (1) Any "nuclear reactor";
- (2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing "spent fuel," or (c) handling, processing or packaging "waste";
- (3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste"; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

SECTION VI - CONDITIONS

A. Premium

All premiums for this policy shall be computed in accordance with Item 5 of the Declarations. The premium stated as such in the Declarations is a deposit premium only which shall be credited to the amount of any earned premium. At the close of each "policy period", the earned premium shall be computed for such period, and upon notice thereof to the Named Insured first shown in the Declarations shall become due and payable by such Named Insured.

If the total earned premium for the "policy period" is less than the premium previously paid and more than the minimum premium, we shall return to such Named Insured the unearned portion paid by such Named Insured.

The Named insured first shown in the Declarations shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to us at the end of the "policy period" and at such times during the "policy period" as we may direct.

B. Inspection And Audit

We shall be permitted but not obligated to inspect your property and operations at any time. Neither our right to make inspections, nor the making thereof, nor any report thereon, shall constitute an undertaking on your behalf or for your benefit or that of others to determine or warrant that such property or operations are:

1. Safe;
2. Healthful; or
3. In compliance with any law, rule or regulation.

We may examine and audit your books and records at any time during the "policy period" and extensions thereof and within three years after the final termination of this policy, insofar as they relate to the subject matter of this policy.

C. Duties In The Event Of Occurrence, Claim Or Suit

1. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim under this policy. This requirement applies only when such "occurrence" is known to any of the following:
 - a. You or any additional insured that is an individual;
 - b. Any partner, if you or an additional insured are a partnership;
 - c. Any manager, if you or an additional insured are a limited liability company;
 - d. Any "executive officer" or insurance manager, if you or an additional insured are a corporation;
 - e. Any trustee, if you or an additional insured is a trust; or
 - f. Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

To the extent possible, notice should include:

- a. How, when and where the "occurrence" took place;
 - b. The names and addresses of any injured persons and witnesses; and
 - c. The nature and location of any injury or damage arising out of the "occurrence" or "offense".
2. If a claim is made or "suit" is brought against any insured, you must:
 - a. Immediately record the specifics of the claim or "suit" and the date received; and

- b. Notify us in writing as soon as practicable if the claim is likely to exceed the amount of the "self-insured retention" or "underlying insurance", whichever applies.

3. You and any other involved insured must:

- a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit" involving or likely to involve a sum in excess of any "self-insured retention" or "underlying insurance", whichever applies";
- b. Authorize us to obtain records and other information;
- c. Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- d. Assist us, upon our request in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this policy or any "underlying insurance" or "self-insured retention" may apply.

4. No insured will, except at that insured's own cost, make or agree to any settlement for a sum in excess of:

- a. The total limits of "underlying insurance"; or
- b. The "self-insured retention" if no "underlying insurance" applies without our consent.

5. No insureds will, except at that insured's own cost, make a payment, assume any obligation, or incur any expenses, other than first aid, without our consent.

D. Assistance And Cooperation Of The Insured

The "insured" shall:

1. Cooperate with us and comply with all the terms and conditions of this policy; and
2. Cooperate with any of the underlying insurers as required by the terms of the "underlying insurance" and comply with all the terms and conditions thereof.

The "insured" shall enforce any right of contribution or indemnity against any person or organization who may be liable to the "insured" because of "bodily injury", "property damage" or "personal and advertising injury" with respect to this policy or any "underlying insurance".

E. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this policy unless all of its terms and those of the "underlying insurance" have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but, we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the limit of liability. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

F. Appeals

In the event the "insured" or the "insured's" underlying insurer elects not to appeal a judgment in excess of the "underlying insurance" or the "self-insured retention," we may elect to make such appeal, at our cost and expense.

If we so elect, we shall be liable in addition to the applicable Limit of Insurance, for the:

1. Taxable costs;
 2. Disbursements; and
 3. Additional interest incidental to such appeal;
- But in no event will we be liable for "damages" in excess of the applicable aggregate Limit of Insurance.

If a judgment is rendered in excess of the limits of "underlying insurance" and we offer to pay our full share of such judgment, but you or your underlying insurers elect to appeal it, you, your underlying insurers or both will bear:

- a. The cost and duty of obtaining any appeal bond;
- b. The taxable costs, disbursements and additional interest incidental to such appeal; and
- c. Any increase in damages over the amount the matter could have been settled for after the verdict was entered and before the appeal was filed.

G. Other Insurance

This policy shall apply in excess of all "underlying insurance" whether or not valid and collectible. It shall also apply in excess of other valid and collectible insurance (except other insurance purchased specifically to apply in excess of this insurance) which also applies to any loss for which insurance is provided by this policy.

These excess provisions apply, whether such other insurance is stated to be:

1. Primary;
2. Contributing;
3. Excess; or
4. Contingent.

H. Transfer Of Rights Of Recovery Against Others To Us

1. Transfer Of Rights Of Recovery

If the insured has rights to recover all or a part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after a loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

- a. Recoveries shall be applied to reimburse:

- (1) First, any interest (including the Named Insured) that paid any amount in excess of our limit of liability;
- (2) Second, us, along with any other insurers having a quota share interest at the same level;
- (3) Third, such interests (including the Named Insured) of whom this insurance is excess.

However, a different apportionment may be made to effect settlement of a claim by agreement signed by all interests.

- b. Reasonable expenses incurred in the exercise of rights of recovery shall be apportioned among all interests in the ratio of their respective losses for which recovery is sought.

2. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the "insured" has waived any rights of recovery against any person or organization for all or part of any payment we have made under this policy, we also waive that right, provided the "insured" waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

I. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. Notice to any agent, or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this policy, or stop us from asserting any rights under the terms of this policy.

The Named Insured first shown in the Declarations is authorized on behalf of all "insureds" to agree with us on changes in the terms of this policy.

If the terms are changed, the changes will be shown in an endorsement issued by us and made a part of this policy.

J. Separation Of Insureds

Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this policy to the Named Insured first shown in the declarations, this insurance applies:

- a. As if each Named Insured were the only Named Insured: and
- b. Separately to each insured against whom claim is made or "suit" is brought.

K. Maintenance Of Underlying Insurance

Policies affording in total the coverage and limits stated in the Schedule of Underlying Insurance Policies shall be maintained in full effect during the currency of this policy. Your failure to comply with the foregoing shall not invalidate this policy, but in the event of such failure, we shall be liable only to the extent that we would have been liable had you complied herewith.

The Named Insured first shown in the Declarations shall give us written notice as soon as practicable of any of the following:

1. Any change in the coverage or in the limits of any "underlying insurance", including but not limited to a change from occurrence coverage to claims made coverage;
2. Termination of part or all of one or more of the policies of "underlying insurance";
3. Reduction or exhaustion of an aggregate limit of liability of any "underlying insurance".

The "self-insured retention" shall not apply should the "underlying insurance" be exhausted by the payment of claims or "suits" which are also covered by this policy.

L. Cancellation

1. The Named Insured first shown in the Declarations may cancel this policy by mailing or delivering to us or to any of our authorized agents advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the Named Insured first shown in the Declarations at the address shown in this policy, written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if such Named Insured fails to pay the premium or any installment when due; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. If notice is mailed, proof of mailing will be sufficient proof of notice. Notice will state the effective date of cancellation. The "policy period" will end on that date.

Delivery of such notice by the Named Insured first shown in the Declarations or by us will be equivalent to mailing.

4. If the Named Insured first shown in the Declarations cancels, the refund may be less than pro rata, but we will retain any minimum premium stated as such in the Declarations. If we cancel, the refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.

M. Non-Renewal

1. If we decide not to renew, we will mail or deliver to the Named Insured first shown in the Declarations, at the address shown in this policy, written notice of non-renewal at least 30 days before the end of the "policy period".
2. If notice is mailed, proof of mailing will be sufficient proof of notice.
3. If we offer to renew but such Named Insured does not accept, this policy will not be renewed at the end of the current "policy period".

N. Workers' Compensation Agreement

With respect to "bodily injury" to any officer or other employee arising out of and in the course of employment by you, you represent and agree that you have not abrogated and will not abrogate your common-law defenses under any Workers' Compensation Law by rejection of such law or otherwise. If at any time during the "policy period" you abrogate such defenses, the insurance for "bodily injury" to such officer or other employee automatically terminates at the same time.

O. Bankruptcy Or Insolvency

In the event of the bankruptcy or insolvency of the "insured" or any entity comprising the "insured", we shall not be relieved of any of our obligations under this policy.

P. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. The statements in the Schedule Of Underlying Insurance Policies are accurate and complete;
- c. The statements in a. and b. are based upon representations you made to us;
- d. We have issued this policy in reliance upon your representations; and
- e. If unintentionally you should fail to disclose all hazards at the inception of this policy, we shall not deny coverage under this policy because of such failure.

SECTION VII - DEFINITIONS

Except as otherwise provided in this section or amended by endorsement, the words or phrases that appear in quotation marks within this policy shall follow the definitions of the applicable "underlying insurance" policy.

"Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

"Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

"Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

"Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement; or
2. Any claim or "suit" by or on behalf of a governmental authority demanding

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) That are, or that are contained in any property that is:
 - a. Being transported or towed by, handled, or handled for movement into, onto or from, any "auto";
 - b. Otherwise in the course of transit by or on behalf of the "insured"; or
 - c. Being stored, disposed of, treated or processed in or upon any "auto"; or
- (2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or
- (3) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in paragraphs **6.b** and **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto" covered by the "underlying insurance" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

"Damages" include prejudgment interest awarded against the "insured" on that part of the judgment we pay.

"Damages" do not include:

1. Fines;
2. Penalties; or
3. Damages for which insurance is prohibited by the law applicable to the construction of this policy.

Subject to the foregoing, "damages" include damages for any of the following which result at any time from "bodily injury" to which this policy applies:

1. Death;
2. Mental anguish;
3. Shock;
4. Disability; or
5. Care and loss of services or consortium.

"Insured" means any person or organization qualifying as an insured in the applicable WHO IS AN INSURED provision of this policy. The insurance afforded applies separately to each "insured" against whom claim is made or "suit" is brought, except with respect to the limit of our liability under LIMITS OF INSURANCE (SECTION IV).

"Occurrence" means

1. With respect to "bodily injury" or "property damage": an accident, including continuous or

repeated exposure to substantially the same general harmful conditions, and

2. With respect to "personal and advertising injury": an offense described in one of the numbered subdivisions of that definition in the "underlying insurance".

"Policy period" means the period beginning with the inception date stated as such in the Declarations and ending with the earlier of:

1. The date of cancellation of this policy; or
2. The expiration date stated as such in the Declarations.

"Self-insured retention" means the amount stated as such in the Declarations which is retained and payable by the "insured" with respect to each "occurrence".

"Underlying insurance" means the insurance policies listed in the Schedule of Underlying Insurance Policies, including any renewals or replacements thereof, which provide the underlying coverages and limits stated in the Schedule of Underlying Insurance Policies. The limit of "underlying insurance" includes:

1. Any deductible amount;
2. Any participation of any "insured"; and
3. Any "self-insured retention" above or beneath any such policy;

Less the amount, if any, by which the aggregate limit of such insurance has been reduced by any payment relating to any act, error, omission, injury, damage or offense for which insurance is provided by this policy, including Medical Payments Coverage as described in the "underlying insurance." The coverages and limits of such policies and any such deductible amount, participation or "self-insured retention" shall be deemed to be applicable regardless of:

1. Any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its policy; or
2. The actual or alleged insolvency or financial impairment of any underlying insurer or any "insured".

The risk of insolvency or financial impairment of any underlying insurer or any "insured" is borne by you and not by us.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional Conditions:

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B.** If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10)

days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.



NOTICE ENDORSEMENT - NOTICE OF CANCELLATION, NON-RENEWAL OR REDUCTION IN LIMITS
WHERE REQUIRED BY WRITTEN CONTRACT

It is understood and agreed that if the **Named Insured** has agreed in a written contract with its client to provide such client with notice of cancellation or non-renewal of this Policy, or notice of a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide such notice of cancellation, non-renewal or reduction in Limits to the client as set forth herein.

Within ten (10) business days of the Insurer's request, the **Named Insured** will deliver to the Insurer, or cause to be delivered by the broker or agent of record, a list acceptable to the Insurer containing the names and addresses of all entities entitled to receive notice. If the list is not provided to the Insurer within such time period, the Insurer will not provide notification. The Insurer will assume that the list provided to the Insurer by the **Named Insured** or the broker is a complete and accurate list of certificate holders. Only those persons or entities listed on the schedule will receive notification. The Insurer will keep no other record of any certificate holders in the Insurer's file. Such notice will be delivered to such client at the address recorded by certificate on file with the broker or agent of record and provided to the Insurer.

With respect to cancellation or non-renewal of this Policy, the Insurer will provide the **Named Insured's** client with the greater of:

- (1) thirty (30) days' notice; or
- (2) the number of days' notice set forth in the applicable State Provisions endorsement attached to this Policy in accordance with the Cancellation/Non-Renewal condition of the Policy.

With respect to a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide the **Named Insured's** client with the lesser of:

- (1) sixty (60) days' notice; or
- (2) the number of days' notice required in the **Named Insured's** contract with such client.

The Insurer's failure to provide such notification will not extend the Policy cancellation date, negate cancellation or non-renewal of the Policy, invalidate any endorsement to the Policy or be cause for legal action against the Insurer.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

June 23, 2022

Item No. 7.5.

Dogwood No Parking - Removing on west side and allowing on east side of street

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

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 at Any Time", by removing parking on the west side of Dogwood Street and adding parking on the east side of Dogwood Street.

Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

Recommendation(s): Staff recommends approval of the ordinance amendment.

Summary: A resident complaint was received by staff regarding the safety of drivers and pedestrians on Dogwood Street as a result of on-street parking on the West side of the street. The request was made to allow parking on the East side and prohibit parking on the West side of the street. There are no houses on the East side of Dogwood Street and therefore no driveways. With this change, there will be better sight conditions for residents utilizing their driveways as well as pedestrians on the West Side of Dogwood Street. With the unique nature of this modification to a no parking zone, a public meeting was held in addition to a neighborhood vote on the proposition. 60% of the returned votes were needed in favor of the action to approve the proposition. From the 8 ballots sent, 4 were in favor of the change and one vote was cast against the change during the public meeting. The approval rate of 80% (4/5) was obtained through the public engagement process. This process and the parking prohibition have been discussed and approved by the Traffic Management Team.

Budget & Financial Summary: The "NO PARKING" signs are planned operation and maintenance expenses accounted for in the Public Works Traffic Operations budget.

Attachments:

1. No Parking Ordinance Form
2. Parking Change

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 WEST SIDE OF DOGWOOD 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 _____ day of _____, 20__.

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 as follows:

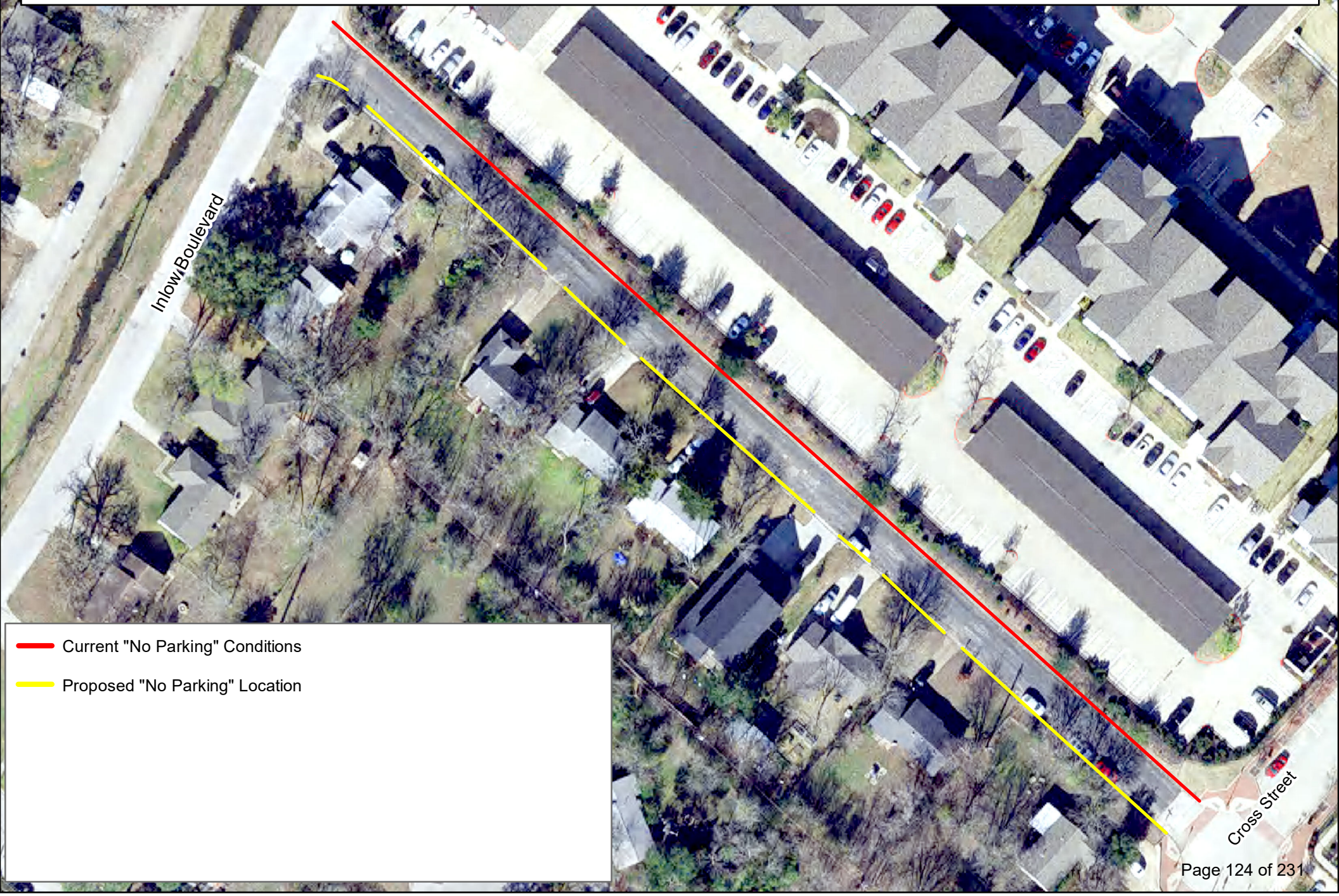
The following is removed:

<i>Traveling on</i>	<i>Between</i>	<i>Travel Direction</i>	
Dogwood Street	Cross Street and Inlow Boulevard	North	No parking anytime

And is replaced with the following:

<i>Traveling on</i>	<i>Between</i>	<i>Travel Direction</i>	
Dogwood Street	Cross Street and Inlow Boulevard	South	No parking anytime

Proposed Dogwood Street No Parking Change



Inlow Boulevard

Cross Street

- Current "No Parking" Conditions
- Proposed "No Parking" Location

June 23, 2022

Item No. 7.6.

Annual Agreement City Wide Landscape Maintenance and Mowing

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding the award of Annual Agreement for City Wide Landscape Maintenance and Mowing to Green Teams, Inc. not to exceed the amount of \$1,077,221.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: In 2022, staff solicited proposals for all of the city's mowing and landscape maintenance services (except regional parks and athletic fields). Request for Proposals solicited from contractors for mowing and landscape maintenance were divided into five (5) categories:

- 1) Facilities – city buildings and Northgate District
- 2) Electric – CSU electric substations and buildings
- 3) Water/Wastewater – CSU water and wastewater sites
- 4) Parks – includes neighborhood parks and cemeteries
- 5) Finish mowing – primarily street right of ways and medians

Two vendors responded to RFP 22-054. Green Teams, Inc. was selected as the most responsible bidder to provide all city-wide mowing and landscape services. The Green Teams, Inc. contract is in the amount of \$1,077,221. The initial term of the contract is for one (1) year with the option to renew for two (2) additional one (1) year terms for a total of three (3) years.

Budget & Financial Summary: Operation and maintenance funds are budgeted in the General Fund (Streets, Facilities and Parks), Electric Fund, and Water/Wastewater Funds for citywide mowing needs.

Attachments:

1. 2022 Bid Analysis Summary
2. 22300567 -- BW

	GREEN TEAMS	LANDMARK
PARD Operations (1001-1140-5212)	\$ 479,513.00	\$ 746,513.00
General Fund (1001-0720-5212)	\$ 75,934.00	\$ 88,427.00
City Greenways (1001-0541-5212)	\$ 774.00	\$ 1,350.00
Utility Cust. Service Fund (2226-0260-5212)	\$ 6,086.00	\$ 6,465.00
Northgate District (5202-0621-5212)	\$ 1,550.00	\$ 3,156.00
Electric (8205629-5212)	\$ 22,618.00	\$ 62,124.00
USC/MTF (Graham Road) (810935-5212)	\$ 32,964.00	\$ 30,552.00
Water Production (90W9320M-5212)	\$ 23,170.00	\$ 54,430.00
Water Distribution (91W9320M-5212)	\$ 4,340.00	\$ 7,056.00
Wastewater Treatment (96S9320M-5212)	\$ 25,654.00	\$ 87,278.00
Wastewater Collection (95S9320M-5212)	\$ 11,418.00	\$ 15,696.00
ROW (1001-0760-5212)	\$ 296,704.00	\$ 265,035.00
 Mowing Total	 \$ 980,725.00	 \$ 1,368,082.00
Contingency Total	\$ 98,071.00	\$ 136,810.00
Contract Total	\$ 1,078,796.00	\$ 1,504,892.00

CITY OF COLLEGE STATION GENERAL SERVICE CONTRACT

This General Service Contract is by and between the **City of College Station**, a Texas Home-Rule Municipal Corporation (the “City”) and Green Teams, Inc. (the “Contractor”), for the following work:
Annual Agreement for Citywide Landscape Maintenance and Mowing, as described in RFP 22-054
as described in the Scope of Services attached as **Exhibit “A”**.

ARTICLE I PAYMENT AND TERM

1.01 Consideration. In consideration for the services performed in the Scope of Services and Contractor’s Completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed One Million Seventy-Seven Thousand Two Hundred Twenty-One and NO /100 Dollars (\$ 1,077,221.00).

1.02 Payment Application. Within **seven (7)** calendar days of completion of the services the Contractor will submit its payment application to the City.

1.03 City’s Payment and Approval. The City will pay Contractor as shown in **Exhibit “B”** Payment Schedule, for the services performed no later than **thirty (30)** calendar days from the date of the City’s receipt of the payment application and the City’s approval of the services.

☐ **1.04 Time is of the Essence.** The Contractor must complete all the services described in the Scope of Services by the following dates:
_____.

OR

☒ **1.04 Term.** The initial term of the Contract is for one (1) year with the option to renew for two (2) additional one (1) year terms for a total of three (3) years. Any renewal must be in writing and executed by the parties.

1.05 Executed Contract. The “Notice to Proceed” will not be given nor shall any work commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to the Contract.

ARTICLE II CHANGE ORDERS

2.01 Changes will not be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid, except upon the prior written order from authorized personnel of the City. The Contractor will not execute change orders on behalf of the City

or otherwise alter the financial scope of the services except in the event of a duly authorized change order approved by the City as provided in this Contract.

- (a) **City Manager Approval.** When the original Contract amount plus all change orders is \$100,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work; and
- (b) **City Council Approval.** When the original contract amount plus all change orders is greater than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000. For such contracts, when a change order exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work. The sum of all change orders may not exceed 25% of the original contract amount.
- (c) **Increase in Scope.** Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in Article I of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.
- (d) **Dispute.** If there is a dispute between the Contractor and the City respecting any service provided or to be provided hereunder by the Contractor, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Contractor agrees to continue providing on a timely basis all services to be provided by the Contractor hereunder, including any service as to which there is a dispute.

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

3.01 Independent Contractor. It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services. The Contractor shall be solely responsible for and have control over the means, methods, techniques and procedures, and for coordination of all portions of the work or services. Unless otherwise provided in the Contract, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work or services. In addition, at the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the work or services required by the Contract or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The City will not control the manner or the means of the Contractor's performance, but shall be entitled to a work product as in the Scope of Services. The City will not be responsible for reporting or paying employment taxes or other similar levies that

may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.

3.02 Subcontractor. The term “subcontractor” shall mean and include only those hired by and having a direct contact with Contractor for performance of work or services on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work or services on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

ARTICLE IV INSURANCE

4.01 The Contractor shall procure and maintain, at its sole cost and expense for the duration of this Contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services performed by the Contractor, its officers, agents, volunteers, and employees.

4.02 The Contractor’s insurance shall list the City of College Station, its officers, agents, volunteers, and employees as additional insureds. More specifically, the following shall be required. Certificates of insurance evidencing the required insurance policies are attached in **Exhibit “C”**.

During the term of this Agreement Contractor’s insurance policies shall meet the minimum requirements of this section.

4.03 Types. Contractor shall have the following types of insurance:

- (a) Commercial General Liability;
- (b) Business Automobile Liability; and
- (c) Workers' Compensation/Employer’s Liability.

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

- (a) Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent.
- (b) Certificates of Insurance and endorsements shall be furnished on the most current State of Texas Department of Insurance-approved forms to the City’s Representative at the time of execution of this Agreement; shall be attached to this Agreement as **Exhibit C**; and shall be approved by the City before work begins.
- (c) Contractor shall be responsible for all deductibles on any policies obtained in compliance with this Agreement. Deductibles shall be listed on the Certificate of Insurance and are acceptable on a per-occurrence basis only.

- (d) The City will accept only licensed Insurance Carriers authorized to do business in the State of Texas.
- (e) The City will not accept “claims made” policies.
- (f) Coverage shall not be suspended, canceled, non-renewed or reduced in limits of liability before thirty (30) days written notice has been given to the City.

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

- (a) General Liability insurance shall be written by a carrier rated “A:VIII” or better under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement listing 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.
- (c) Limits of liability must be equal to or greater than \$1,000,000 per occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000.00. Limits shall be endorsed to be per project.
- (d) No coverage shall be excluded from the standard policy without notification of individual exclusions being submitted 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, and Personal & Advertising Liability.

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

- (a) Business Automobile Liability insurance shall be written by a carrier rated “A:VIII” or better under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement listing 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.
- (c) Combined Single Limit of Liability not less than \$1,000,000 per occurrence for bodily injury and property damage.
- (d) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (e) The coverage shall include any autos, owned autos, leased or rented autos, non-owned autos, and hired autos.

4.07 Workers’ Compensation/Employer’s Liability Insurance. The following Workers’ Compensation Insurance shall include the following terms:

- (a) Employer's Liability minimum limits of liability not less than \$1,000,000 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; and
- (c) TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those named in Item 3A and the States of NV, ND, OH, WA, WV, and WY".

ARTICLE V INDEMNIFICATION AND RELEASE

5.01 Indemnification. The Contractor shall indemnify, hold harmless, and defend the City, its Council members, officials, officers, agents, volunteers, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work or services done by the Contractor under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

5.02 Release. The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, volunteers, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

ARTICLE VI GENERAL TERMS

6.01 Performance. Contractor, its employees, associates, or subcontractors shall perform all the work or services described in the Scope of Services in a good, workmanlike, and professional manner and in accordance with this Contract, and all applicable laws, codes, and regulations. Contractor shall be fully qualified and competent to perform the work or services. Contractor shall undertake and complete the work or services in a timely manner.

6.02 Termination. The City may terminate the Project and this Contract, at any time, for convenience. In the event of such termination the City will notify the Contractor in writing and the Contractor shall cease work immediately. Contractor shall be compensated for the work or services performed. Should the City terminate this Contract for convenience, the City shall pay Contractor for the work or services performed and expenses incurred before the date of termination.

6.03 Venue. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

6.04 Amendment. This Contract may only be amended by written instrument approved and executed by the parties.

6.05 Taxes. The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

6.06 Compliance with Laws. The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA.

6.07 Waiver of Terms. No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.

6.08 Assignment. This Contract and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of City.

6.09 Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

6.10 Prioritization. Contractor and City agree that City is a political subdivision of the State of Texas and is thus subject to certain laws. Because of this there may be documents or portions thereof added by Contractor to this Agreement as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Contractor. In either case, the applicable law or the applicable provision of this Agreement excluding such conflicting addition by Contractor shall prevail. The parties understand this section comprises part of this Agreement without necessity of additional consideration.

6.11 Entire Agreement. This Contract represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

6.12 Agree to Terms. The parties state that they have read the terms and conditions of this Contract and agree to the terms and conditions contained in this Contract.

6.13 Effective Date. This Contract goes into effect when duly approved by all the parties hereto.

6.14 Notice. Any official notice under this Contract will be sent to the following addresses:

CITY OF COLLEGE STATION

Green Teams, Inc.

Attn: Marshall Wallace

Attn: Len Gallagher

PO BOX 9960

731 Industrial BLVD

1101 Texas Ave

Bryan, TX 77803

College Station, TX 77842

mwallace@cstx.gov

len@greenteamsinc.com

6.15 Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and in lieu of each provision that is invalid, illegal or unenforceable, there shall be added a new provision to this Contract as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and yet be valid, legal and enforceable, by means of good faith negotiation by the Parties to this Contract or by reform by a court of competent jurisdiction.

6.16 Duplicate Originals. The parties may execute this Contract in duplicate originals, each of equal dignity.

6.17 Exhibits. All exhibits to this Contract are incorporated and made part of this Agreement for all purposes.

6.18 Verification No Boycott. To the extent applicable, this Contract is subject to the following:

- (a) Boycott Israel. If this Contract is for goods and services subject to § 2270.002 Texas Government Code, Contractor verifies that it i) does not

boycott Israel; and ii) will not boycott Israel during the term of this Contract;

- (b) Boycott Firearms. If this Contract is for goods and services subject to § 2274.002 Texas Government Code, Contractor 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
- (c) Boycott Energy Companies. Subject to § 2274.002 Texas Government Code Contractor herein verifies that it i) does not boycott energy companies; and ii) will not boycott energy companies during the term of this Contract.

List of Exhibits

- A.** Scope of Services
- B.** Payment Schedule
- C.** Certificates of Insurance

GREEN TEAMS, 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 SCOPE OF SERVICES

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

The services as described in RFP 22-054 with the removal of the following items from the Electric Sites - Graham Road Substation - all 18 cycles of Hard-scape weed control , Turf Weed control, and Ant control.

Hours of Service. The Contractor shall perform the Services or a between 7:00 a.m. and 6:00 p.m. on Monday through Saturday.

Contractor's Employees. The Contractor agrees its employees will at all times, present a neat, clean and uniform appearance while working on City premises. The Contractor shall only use competent employees. The Contractor will replace any employee at the City's request.

The Contractor's employees working at City premises shall not:

- (1) have a felony conviction in the last ten (10) years
- (2) be under a felony indictment
- (3) have felony criminal charges pending
- (4) be without legal documentation authorizing the employee to work in this country

Crew Leader. The Contractor will provide a competent crew leader while working on City premises. The crew leader must have full authority to act for the Contractor and be able to receive, communicate, and execute requests from the City Representative.

D. City Representative. The City's authorized representative shall be the Public Works Superintendent.

E. City Locations - See attached RFP 22-054

F. Services. See attached scope of work from RFP 22-054

EXHIBIT B
PAYMENT SCHEDULE

- ☒ The Contractor must submit *monthly* invoices to the City, accompanied by an explanation of charges, fees, services, and expenses. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

-OR-

- ☐ Payment is a fixed fee in the amount listed in Article I of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

Schedule of Payment for each phase:

Bid Form attached.

CITY PARKS	Turf Maintenance											Bed Maintenance											Tree Maintenance							
City of College Station 2022 Mowing RFP	Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost Tree Maintenance	Grand Total by Facility
PARD Operations (1001-1140-5212)	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		
Anderson Park	18	\$ 298			18	\$ 17					\$ 5,670.00																			\$ 5,670.00
Art & Myra Bright Park	18	\$ 255	18	\$ 102	18	\$ 23					\$ 6,840.00																			\$ 6,840.00
Barracks - Park 1 (Exercise)	18	\$ 34			18	\$ 10					\$ 792.00																			\$ 792.00
Barracks - Park 2 (Horse Shoe Pits)	18	\$ 26			18	\$ 16					\$ 756.00																			\$ 756.00
Barracks - Park 3 (Undeveloped)	18	\$ 34			18	\$ 12					\$ 828.00	12	\$ 77	1	\$ 684	4	\$ 23	2	\$ 27	2	\$ 21	2	\$ 583	\$ 2,962.00						\$ 3,790.00
Barracks - Park 4 (Walking Paths)	18	\$ 86			18	\$ 21					\$ 1,926.00	12	\$ 37	1	\$ 456	4	\$ 26	2	\$ 16	2	\$ 75	2	\$ 350	\$ 1,886.00						\$ 3,812.00
Barracks - Park 5 (Basketball Courts)	18	\$ 86			18	\$ 26					\$ 2,016.00	12	\$ 54	1	\$ 318	4	\$ 24	2	\$ 12	2	\$ 14	2	\$ 350	\$ 1,814.00						\$ 3,830.00
Barracks - Park 6 (Volleyball Courts)	18	\$ 34			18	\$ 12					\$ 828.00																			\$ 828.00
Barracks - Park 7 (Dog Park)	18	\$ 60			18	\$ 11					\$ 1,278.00																			\$ 1,278.00
Barracks - Park 7, mow strip (Jogging Track in Design)	18	\$ 153			18	\$ 40					\$ 3,474.00																			\$ 3,474.00
Billie Madeley Park	18	\$ 60			18	\$ 36					\$ 1,728.00																			\$ 1,728.00
Bridgewood	18	\$ 68			18	\$ 35					\$ 1,854.00																			\$ 1,854.00
Brison Park	18	\$ 255			18	\$ 39					\$ 5,292.00																			\$ 5,292.00
Brothers Pond Park	18	\$ 272			18	\$ 60	2	\$ 598			\$ 7,172.00																			\$ 7,172.00
Business Center - Block 3/Lot 1			18	\$ 195							\$ 3,510.00																			\$ 3,510.00
Business Center - Hwy. 6 frontage (City Sign)			18	\$ 136							\$ 2,448.00																			\$ 2,448.00
Business Center - Lakeway Drive			18	\$ 44							\$ 792.00																			\$ 792.00
Business Center - Main Site	18	\$ 578			18	\$ 50					\$ 11,304.00	12	\$ 272	1	\$ 5,546	4	\$ 177	2	\$ 156	2	\$ 42	2	\$ 2,970	\$ 15,854.00						\$ 27,158.00
Business Center - Technology Way			18	\$ 44							\$ 792.00																			\$ 792.00
Carters Crossing Park Primary	18	\$ 196			18	\$ 23					\$ 3,942.00	12	\$ 45	1	\$ 74	4	\$ 18	2	\$ 6	2	\$ 21		\$ 740.00							\$ 4,682.00
Carters Crossing Park Secondary			18	\$ 102							\$ 1,836.00																			\$ 1,836.00
Castlegate Lake Area			18	\$ 145							\$ 2,610.00																			\$ 2,610.00
Castlegate Park	18	\$ 153			18	\$ 46	2	\$ 309			\$ 4,200.00																			\$ 4,200.00
Castlerock Park	18	\$ 153			18	\$ 46	2	\$ 334			\$ 4,250.00																			\$ 4,250.00
Cove of Nantucket Park	18	\$ 153			18	\$ 25					\$ 3,204.00																			\$ 3,204.00
Creek View Park	18	\$ 255			18	\$ 21					\$ 4,968.00																			\$ 4,968.00
Crescent Pointe Park	18	\$ 204			18	\$ 23					\$ 4,086.00																			\$ 4,086.00
Cy Miller	18	\$ 60			18	\$ 29					\$ 1,602.00																			\$ 1,602.00
Eastgate Park	18	\$ 77			18	\$ 19					\$ 1,728.00	12	\$ 116	1	\$ 1,472	4	\$ 69	2	\$ 48	2	\$ 24	2	\$ 1,167	\$ 5,618.00						\$ 7,346.00
Edelweiss Park	18	\$ 425			18	\$ 46	2	\$ 1,310			\$ 11,098.00																			\$ 11,098.00
Edelweiss Gartens Park	18	\$ 476			18	\$ 96	2	\$ 676			\$ 11,648.00	12	\$ 61	1	\$ 228	4	\$ 18	2	\$ 24	2	\$ 12	2	\$ 1,167	\$ 3,438.00						\$ 15,086.00
Emerald Forest Park	18	\$ 119			18	\$ 22					\$ 2,538.00	12	\$ 30	1	\$ 102	4	\$ 18	2	\$ 21	2	\$ 12	2	\$ 311	\$ 1,222.00						\$ 3,760.00
Etonbury Park	18	\$ 153			18	\$ 19					\$ 3,096.00																			\$ 3,096.00
Freeman Tract	18	\$ 315									\$ 5,670.00																			\$ 5,670.00
Gabbard Park	18	\$ 340			18	\$ 25					\$ 6,570.00																			\$ 6,570.00
Georgie K. Fitch Park	18	\$ 178			18	\$ 22					\$ 3,600.00											</								

CITY FACILITIES		Turf Maintenance										Bed Maintenance														Tree Maintenance						
City of College Station 2022 Mowing RFP		Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost	Grand Total by Facility	
General Fund (1001-0720-5212)		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle			
City Hall Complex		18	\$ 178			18	\$ 20			2	\$ 89	\$ 3,742.00	12	\$ 138	1	\$ 2,580	4	\$ 65	2	\$ 84	2	\$ 41	2	\$ 1,065	\$ 6,876.00	1	\$ 535			\$ 535.00	\$ 11,153.00	
College Station Library		18	\$ 204			18	\$ 21	4	\$ 584	2	\$ 138	\$ 6,662.00	12	\$ 123	1	\$ 622	4	\$ 30	2	\$ 30	2	\$ 23			\$ 2,324.00	1	\$ 409			\$ 409.00	\$ 9,395.00	
Fire Station #1		18	\$ 68			18	\$ 11			2	\$ 36	\$ 1,494.00													1	\$ 220			\$ 220.00	\$ 1,714.00		
Fire Station #2		18	\$ 77			18	\$ 20			2	\$ 33	\$ 1,812.00													1	\$ 180			\$ 180.00	\$ 1,992.00		
Fire Station #3		18	\$ 94			18	\$ 11			2	\$ 48	\$ 1,986.00	12	\$ 100	1	\$ 3,390	4	\$ 48	2	\$ 66	2	\$ 32			\$ 4,978.00	1	\$ 445	1	\$ 300	\$ 745.00	\$ 7,709.00	
Fire Station #5		18	\$ 68			18	\$ 11			2	\$ 42	\$ 1,506.00	12	\$ 60	1	\$ 1,352	4	\$ 36	2	\$ 45	2	\$ 21			\$ 2,348.00	1	\$ 232	1	\$ 96	\$ 328.00	\$ 4,182.00	
Fire Station #6		18	\$ 68			18	\$ 11			2	\$ 27	\$ 1,476.00	12	\$ 68	1	\$ 1,208	4	\$ 35	2	\$ 45	2	\$ 20			\$ 2,294.00	1	\$ 384	1	\$ 248	\$ 632.00	\$ 4,402.00	
Fueling Station - Arnold Road (future site)		18	\$ 34			18	\$ 10			2	\$ 29	\$ 850.00	12	\$ 58	1	\$ 944	4	\$ 20	2	\$ 26	2	\$ 23			\$ 1,818.00						\$ 2,668.00	
Municipal Court Building		18	\$ 153			18	\$ 19			2	\$ 71	\$ 3,238.00	12	\$ 57	1	\$ 922	4	\$ 38	2	\$ 30	2	\$ 14	2		\$ 1,846.00	1	\$ 138			\$ 138.00	\$ 5,222.00	
New Police Department		18	\$ 238			18	\$ 54			2	\$ 152	\$ 5,560.00	12	\$ 247	1	\$ 5,478	4	\$ 226	2	\$ 323	2	\$ 58	2	\$ 152	\$ 10,412.00	1	\$ 556			\$ 556.00	\$ 16,528.00	
Old Police Department		18	\$ 128			18	\$ 11					\$ 2,502.00	12	\$ 83	1	\$ 1,084	4	\$ 35	2	\$ 39	2	\$ 21	2	\$ 630	\$ 3,600.00	1	\$ 212			\$ 212.00	\$ 6,314.00	
Public Works Service Center		18	\$ 128			18	\$ 19					\$ 2,646.00	12	\$ 86	1	\$ 165	4	\$ 11	2	\$ 14	2	\$ 15	2	\$ 101	\$ 1,501.00	1	\$ 508			\$ 508.00	\$ 4,655.00	
		General Fund (1001-0720-5212)																								\$ 75,934.00	\$ 75,934.00					
City Greenways (1001-0541-5212)																																
SH6 Greenway (between LaQuinta Inn & Maria Mia Tex Mex)		18	\$ 43									\$ 774.00																		\$ 774.00		
		City Greenways (1001-0541-5212)																								\$ 774.00	\$ 774.00					
Utility Cust. Service Fund (2226-0260-5212)																																
Utility Customer Service Bldg. (Krenek Tap Road)		18	\$ 128			18	\$ 37					\$ 2,970.00	12	\$ 58	1	\$ 1,758	4	\$ 54	2	\$ 67	2	\$ 23			\$ 2,850.00	1	\$ 266			\$ 266.00	\$ 6,086.00	
		Utility Cust. Service Fund (2226-0260-5212)																								\$ 6,086.00	\$ 6,086.00					
Northgate District (5202-0621-5212)																																
Northgate Parking Garage, 2nd St./Patricia St. Promenade		18	\$ 51			18	\$ 19			2	\$ 24	\$ 1,308.00										2	\$ 16	2	\$ 105	\$ 242.00					\$ 1,550.00	
*ALL Services will be done on an "As Needed" basis		Northgate District (5202-0621-5212)																								\$ 1,550.00	\$ 1,550.00					
ELECTRIC SITES		Turf Maintenance										Bed Maintenance														Tree Maintenance						Grand Total by Facility
City of College Station 2022 Mowing RFP		Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost		
Electric (8205629-5212)		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle			
Dowling Road Substation		18	\$ 250									\$ 4,500.00																	\$ -	\$ 4,500.00		
Graham Road Substation				18	\$ 128							\$ 2,304.00																	\$ -	\$ 2,304.00		
Greens Prairie Substation		18	\$ 170									\$ 3,060.00																	\$ -	\$ 3,060.00		
Post Oak Mall Substation		18	\$ 153									\$ 2,754.00																	\$ -	\$ 2,754.00		
Southwood Valley Substation		18	\$ 85									\$ 1,530.00																	\$ -	\$ 1,530.00		
Spring Creek Substation		18	\$ 85									\$ 1,530.00																	\$ -	\$ 1,530.00		
Switch Station Substation 1		18	\$ 306									\$ 5,508.00																	\$ -	\$ 5,508.00		
Note: Northgate Substation does not receive services		Electric (8205629-5212)																								\$ 21,186.00	\$ 21,186.00					
Utility Service Center (USC) & MTF - (Graham Road) (810935-5212)																																
USC - Primary		18	\$ 248			18	\$ 32	4	\$ 669	2	\$ 181	\$ 8,078.00	12	\$ 62	2	\$ 1,230	4	\$ 68	2	\$ 69	2	\$ 30	2	\$ 720	\$ 5,114.00	1	\$ 270			\$ 270.00	\$ 13,462.00	
USC - Secondary				18	\$ 366	18	\$ 20	4	\$ 1,614	2	\$ 226	\$ 13,856.00	12	\$ 71	2	\$ 446	4	\$ 22	2	\$ 24	2	\$ 24	2	\$ 600	\$ 3,128.00	1	\$ 718			\$ 718.00	\$ 17,702.00	
USC - White Rock Area *						4	\$ 450					\$ 1,800.00																		\$ 1,800.00		
* Should include complete coverage quarterly, not spot treatment		USC/MTF (Graham Road) (810935-5212)																								\$ 32,964.00	\$ 32,964.00					

WATER / WASTEWATER SITES	Turf Maintenance											Bed Maintenance											Tree Maintenance							
City of College Station 2022 Mowing RFP	Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost	Grand Total by Facility
	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		
Water Production (90W9320M-5212)																														
Dowling Road Pump Station - 401 N Dowling Rd			18	\$ 204					2	\$ 205	\$ 4,082.00														1	\$ 144			\$ 144.00	\$ 4,226.00
Sandy Point Pump Station - 7290 Sandy Point Rd	18	\$ 182	18	\$ 51	18	\$ 43	4	\$ 1,033	2	\$ 257	\$ 9,614.00													1	\$ 56			\$ 56.00	\$ 9,670.00	
Transmission Line Easement - 2910 W 28th St			18	\$ 44					2	\$ 60	\$ 912.00																		\$ 912.00	
Water Well #1 - 7901 Sandy Point Rd			18	\$ 83					2	\$ 62	\$ 1,618.00																		\$ 1,618.00	
Water Well #2 - 8351 Sandy Point Rd			18	\$ 96					2	\$ 67	\$ 1,862.00																		\$ 1,862.00	
Water Well #3 - 8628 Sandy Point Rd			18	\$ 66					2	\$ 45	\$ 1,278.00																		\$ 1,278.00	
Water Well #5 - 4665 Old San Antonio Rd			18	\$ 64					2	\$ 51	\$ 1,254.00																		\$ 1,254.00	
Water Well #6 - 9620 Sandy Point Rd			18	\$ 64					2	\$ 51	\$ 1,254.00																		\$ 1,254.00	
Water Well #7 - 4210 Old San Antonio Rd			18	\$ 54					2	\$ 62	\$ 1,096.00																		\$ 1,096.00	
*Five foot mow strip required outside of fenced area, except where there is dense brush or trees.																														
Water Production (90W9320M-5212) \$ 23,170.00 \$ 23,170.00																														
Water Distribution (91W9320M-5212)																														
Greens Prairie Elevated Storage Tank - 1600 WD Fitch Pkwy			18	\$ 64					2	\$ 40	\$ 1,232.00																		\$ 1,232.00	
Park Place Elevated Storage Tank - 1710 Park Place			18	\$ 98					2	\$ 54	\$ 1,872.00																		\$ 1,872.00	
Rock Prairie Elevated Storage Tank & Lift Station			18	\$ 64					2	\$ 42	\$ 1,236.00																		\$ 1,236.00	
*Five foot mow strip required outside of fenced area, except where there is dense brush or trees.																														
Water Distribution (91W9320M-5212) \$ 4,340.00 \$ 4,340.00																														
Wastewater Treatment (96S9320M-5212)																														
Carter Lake WWTP - 2401 Carter Lake Dr			18	\$ 94					2	\$ 68	\$ 1,828.00																		\$ 1,828.00	
Carters Creek WWTP - 2200 N Forest Pkwy - improved areas	18	\$ 68			18	\$ 26	4	\$ 80	2	\$ 37	\$ 2,086.00													1	\$ 162			\$ 162.00	\$ 2,248.00	
Carters Creek WWTP - 2200 N Forest Pkwy - unimproved areas			18	\$ 740							\$ 13,320.00																		\$ 13,320.00	
Lick Creek WWTP - 14802 Rock Prairie Rd			18	\$ 412					2	\$ 421	\$ 8,258.00																		\$ 8,258.00	
*Five foot mow strip required outside of fenced area, except where there is dense brush or trees.																														
Wastewater Treatment (96S9320M-5212) \$ 25,654.00 \$ 25,654.00																														
Wastewater Collection (95S9320M-5212)																														
Aggie Acres Lift Station - 4430B Reveille Rd			18	\$ 43					2	\$ 27	\$ 828.00																		\$ 828.00	
Castlegate 2 Lift Station - 3340 Greens Prairie Rd			18	\$ 43					2	\$ 18	\$ 810.00																		\$ 810.00	
Creek Meadow Lift Station - 4275 Greens Prairie Trl			18	\$ 43					2	\$ 18	\$ 810.00																		\$ 810.00	
Crooked Creek Path Lift Station - Crooked Creek Path			18	\$ 43					2	\$ 18	\$ 810.00																		\$ 810.00	
Eastside Lift Station (Yaupon Trails)			18	\$ 45					2	\$ 24	\$ 858.00																		\$ 858.00	
Foxfire Lift Station - 2700 Faulkner Dr			18	\$ 44					2	\$ 18	\$ 828.00																		\$ 828.00	
Hensel Park Lift Station - 540 Floriculture Rd			18	\$ 44					2	\$ 18	\$ 828.00																		\$ 828.00	
Lift Station #2 - 4130 SH 6 S			18	\$ 42					2	\$ 36	\$ 828.00																		\$ 828.00	
Lift Station #3 - 4040 SH 6 S			18	\$ 34					2	\$ 18	\$ 648.00																		\$ 648.00	
Lift Station #4 - 2220 WD Fitch Pkwy			18	\$ 34					2	\$ 18	\$ 648.00																		\$ 648.00	
Luther Street Lift Station - 1250 Harvey Mitchell Pkwy S			18	\$ 44					2	\$ 24	\$ 840.00																		\$ 840.00	
Mission Ranch Lift Station			18	\$ 43					2	\$ 18	\$ 810.00																		\$ 810.00	
Rock Prairie Lift Station - 4055 SH 6 S (combined with Rock Prairie Elevated Storage Tank)																													\$ -	
Southern Point Lift Station			18	\$ 34					2	\$ 18	\$ 648.00																		\$ 648.00	
Valley Park Lift Station - 404 Harvey Mitchell Pkwy S			18	\$ 32					2	\$ 18	\$ 612.00																		\$ 612.00	
Westminster Lift Station - 14363 FM 2154			18	\$ 32					2	\$ 18	\$ 612.00																		\$ 612.00	
Wastewater Collection (95S9320M-5212) \$ 11,418.00 \$ 11,418.00																														

FINISH MOWING SITES		Turf Maintenance										Bed Maintenance														Tree Maintenance						
City of College Station 2022 Mowing RFP		Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost	Grand Total by Facility	
		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle			
Finish Mowing (1001-0760-5212)																																
Barron Road - SH6 Interchange		18	\$ 178									\$ 3,204.00																		\$ 3,204.00		
Barron Road - W.D. Fitch Pkwy Interchange		18	\$ 60									\$ 1,080.00																		\$ 1,080.00		
Barron Road (Alexandria Ave-Longmire Dr)		18	\$ 70			18	\$ 21			2	\$ 22	\$ 1,682.00	12	\$ 111	1	\$ 1,900	4	\$ 37	2	\$ 110	2	\$ 40			\$ 3,680.00	1	\$ 70			\$ 70.00	\$ 5,432.00	
Barron Road (Longmire Dr-SH6)		18	\$ 40			18	\$ 12			2	\$ 24	\$ 984.00	12	\$ 92	1	\$ 1,668	4	\$ 27	2	\$ 64	2	\$ 28			\$ 3,064.00	1	\$ 666			\$ 666.00	\$ 4,714.00	
Barron Road (Victoria Ave-Alexandria Ave)		18	\$ 210			18	\$ 46			2	\$ 73	\$ 4,754.00	12	\$ 155	1	\$ 2,964	4	\$ 116	2	\$ 141	2	\$ 52			\$ 5,674.00	1	\$ 103			\$ 103.00	\$ 10,531.00	
Barron Road (WD Fitch-Victoria Ave)		18	\$ 155			18	\$ 43			2	\$ 51	\$ 3,666.00	12	\$ 120	1	\$ 2,210	4	\$ 65	2	\$ 117	2	\$ 46			\$ 4,236.00	1	\$ 66			\$ 66.00	\$ 7,968.00	
Dartmouth St Medians (Krenek Tap Rd-FM2818)		18	\$ 327			18	\$ 38					\$ 6,570.00			1	\$ 910									\$ 910.00	1	\$ 490	1	\$ 180	\$ 670.00	\$ 8,150.00	
Dartmouth St. & Southwestk Pkwy - street frontage		18	\$ 155									\$ 2,790.00																		\$ 2,790.00		
Dominik / Glenhaven Medians		18	\$ 34			18	\$ 10					\$ 792.00																		\$ 792.00		
Eagle Avenue - street frontage		18	\$ 196									\$ 3,528.00																		\$ 3,528.00		
FM 2818 Crepe Myrtle Plantings		18	\$ 172									\$ 3,096.00	12	\$ 100			4	\$ 231							\$ 2,124.00	1	\$ 412			\$ 412.00	\$ 5,632.00	
George Bush Drive (Wellborn Rd-FM2818)		18	\$ 200			18	\$ 132	4	\$ 188			\$ 6,728.00																		\$ 6,728.00		
George Bush Drive East - (KBB & Medians)		18	\$ 250			18	\$ 20	4	\$ 204	2	\$ 108	\$ 5,892.00	12	\$ 94	1	\$ 800	4	\$ 42	2	\$ 48	2	\$ 21			\$ 2,234.00	1	\$ 124			\$ 124.00	\$ 8,250.00	
Greens Prairie Rd (Royder Rd - Long Creek Ln)		18	\$ 190			18	\$ 90					\$ 5,040.00	12	\$ 22	1	\$ 274					2	\$ 42			\$ 622.00						\$ 5,662.00	
Hereford/Winding - Median						18	\$ 18					\$ 324.00	12	\$ 53	1	\$ 168	4	\$ 18				2	\$ 15			\$ 906.00						\$ 1,230.00
Holleman Dr S (FM2818-Rock Prairie Rd W)		18	\$ 826			18	\$ 40					\$ 15,588.00																		\$ 15,588.00		
Krenek Tap Crossing - Bed Maintenance													12	\$ 56	1	\$ 524	4	\$ 10	2	\$ 54	2	\$ 24	2	\$ 175	\$ 1,742.00	1	\$ 394			\$ 394.00	\$ 2,136.00	
Lakeway Dr / Venture Dr		18	\$ 126									\$ 2,268.00																		\$ 2,268.00		
Midtown Dr (Corporate Pkwy-WD Fitch)		18	\$ 412									\$ 7,416.00																		\$ 7,416.00		
Midtown Dr (Medical Ave-Corporate Pkwy) new map		18	\$ 344									\$ 6,192.00																		\$ 6,192.00		
Nantucket Dr / SH6 Interchange map language		11	\$ 207									\$ 2,277.00																		\$ 2,277.00		
Rock Prairie Rd - Medians		18	\$ 60									\$ 1,080.00			1	\$ 420									\$ 420.00	1	\$ 150	1	\$ 62	\$ 212.00	\$ 1,712.00	
Tarrow St - Medians		18	\$ 43			18	\$ 24					\$ 1,206.00	12	\$ 75	1	\$ 702	4	\$ 44							\$ 1,778.00						\$ 2,984.00	
Texas Ave (University Dr-FM2818)		18	\$ 511			18	\$ 162					\$ 12,114.00	12	\$ 296	1	\$ 2,757	4	\$ 157	2	\$ 180	2	\$ 81			\$ 7,459.00	1	\$ 1,310	1	\$ 760	\$ 2,070.00	\$ 21,643.00	
Texas Ave & Walton Islands - seasonal flower plantings		18	\$ 86			18	\$ 10					\$ 1,728.00	12	\$ 149	1	\$ 1,360	4	\$ 78	2	\$ 66	2	\$ 81	2	\$ 3,467	\$ 10,688.00	1	\$ 348	1	\$ 210	\$ 558.00	\$ 12,974.00	
Unity Plaza - street frontage		18	\$ 86			18	\$ 24					\$ 1,980.00	12	\$ 76	1	\$ 1,402	4	\$ 65	2	\$ 66	2	\$ 61			\$ 2,828.00	1	\$ 306			\$ 306.00	\$ 5,114.00	
University Dr E (Copperfield Pkwy-FM158)		18	\$ 155			18	\$ 48					\$ 3,654.00														1	\$ 350	1	\$ 412	\$ 762.00	\$ 4,416.00	
University Dr E (SH6 Interchange) - Tree Farm				18	\$ 2,408							\$ 43,344.00																		\$ 43,344.00		
University Dr E (SH6-Copperfield Pkwy)		18	\$ 172			18	\$ 94					\$ 4,788.00														1	\$ 120	1	\$ 188	\$ 308.00	\$ 5,096.00	
University Dr E (Texas Ave-SH6)		18	\$ 60			18	\$ 80					\$ 2,520.00	12	\$ 71	1	\$ 2,224	4	\$ 65	2	\$ 129	2	\$ 46			\$ 3,686.00	1	\$ 210	1	\$ 150	\$ 360.00	\$ 6,566.00	
Victoria (Barron Rd-WD Fitch)		18	\$ 172									\$ 3,096.00																		\$ 3,096.00		
Victoria Ave / W.D. Fitch Pkwy Interchange		18	\$ 35									\$ 630.00																		\$ 630.00		
W.D. Fitch Pkwy (Lakeway Dr-Pebble Creek Pkwy)		18	\$ 120			18	\$ 66					\$ 3,348.00	12	\$ 120	1	\$ 502	4	\$ 29	2	\$ 51	2	\$ 41			\$ 2,242.00	1	\$ 2,082	1	\$ 900	\$ 2,982.00	\$ 8,572.00	
W.D. Fitch Pkwy (Pebble Creek Pkwy-Rock Prairie Rd)		18	\$ 189			18	\$ 28					\$ 3,906.00	12	\$ 74	1	\$ 314	4	\$ 41	2	\$ 78	2	\$ 12			\$ 1,546.00	1	\$ 908	1	\$ 694	\$ 1,602.00	\$ 7,054.00	
Wellborn Rd (Cain Rd/Navarro Dr-Rock Prairie Rd)		18	\$ 344			18	\$ 55					\$ 7,182.00	12	\$ 80	1	\$ 1,252	4	\$ 55	2	\$ 36	2	\$ 58			\$ 2,620.00	1	\$ 643	1	\$ 505	\$ 1,148.00	\$ 10,950.00	
Wellborn Rd (FM2818-Cain Rd/Navarro Dr)		18	\$ 361			18	\$ 42					\$ 7,254.00	12	\$ 69	1	\$ 418	4	\$ 44	2	\$ 78	2	\$ 24			\$ 1,626.00	1	\$ 1,856	1	\$ 1,581	\$ 3,437.00	\$ 12,317.00	
Wellborn Rd (Graham Rd-Southern Trace Dr)		18	\$ 309			18	\$ 54					\$ 6,534.00	12	\$ 38	1	\$ 194	4	\$ 24	2	\$ 24	2	\$ 24			\$ 842.00	1	\$ 310	1	\$ 238	\$ 548.00	\$ 7,924.00	
Wellborn Rd (Rock Prairie Rd-Graham Rd)		18	\$ 309			18	\$ 54					\$ 6,534.00	12	\$ 49	1	\$ 192	4	\$ 41	2	\$ 40	2	\$ 40			\$ 1,104.00	1	\$ 322	1	\$ 212	\$ 534.00	\$ 8,172.00	
Wellborn Rd / FM2818 Interchange		18	\$ 1,135			18	\$ 119					\$ 22,572.00																		\$ 22,572.00		
		ROW (1001-0760-5212)																									\$ 296,704.00	\$ 296,704.00				
		Mowing Total																									\$979,293.00	\$ 979,293.00				
		Contingency Total																									\$97,928.00	\$ 97,928.00				
		Contract Total																									\$1,077,221.00	\$ 1,077,221.00				

EXHIBIT C
CERTIFICATES OF INSURANCE

Contract No. 22300567
General Service Contract
Form 08-10-2021

June 23, 2022

Item No. 7.7.

Greens Prairie Road Widening Phase 2 Project Construction 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 1 to the Greens Prairie Road Widening Phase 2 Project construction contract with Larry Young Paving, Inc in the amount of \$226,830.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

Recommendation(s): Staff recommends approval.

Summary: This project will widen Greens Prairie Road from the city limit line (west of Castlegate II entrance) to Arrington Road. The current road is a two-lane asphalt street and will be widened to a four-lane concrete street with pedestrian facilities. Construction began earlier this year and will be completed by the summer of 2023.

As part of the storm sewer and water line utility installation, rock was encountered in the subgrade in several areas. Although there is a unit price included in the construction contract for rock excavation and removal, the quantity was lower than what had been encountered in the field. Because of this, we are increasing the quantity to cover a portion of work already completed and anticipated excavation as the project moves forward. The contractor along with the city project manager and city inspector will confirm quantities of rock excavated. Any portion of the requested increase that is not used will be credited back to the city.

Budget & Financial Summary: Budget in the amount of \$11,214,00.00 is included for this project in the Streets Capital Projects Fund. A total of \$9,999,845.00 has been expended or committed to date, leaving a balance of \$1,214,155.00 in the total project budget for this design contract and future construction.

Attachments:

1. 21300707 -- BW(CC6.23.22)

CHANGE ORDER NO. 1		DATE: 5/26/2022		Contract No. 21300707		
P.O.# 22200562-00		PROJECT: ST1702 Greens Prairie Widening Phase 2				
OWNER:			CONTRACTOR:			
City of College Station P.O. Box 9960 College Station, Texas 77842			Larry Young Paving, Inc. PO Box 11779 College Station, TX 77842 Ph: 979-823-4884 Fax:			
PURPOSE OF THIS CHANGE ORDER:						
This change order is for the overage in rock excavation for the placement of utilities on the Greens Prairie Widening Project. We had 100 CY in the base bid and the contractor has currently excavated 740.25 CY of rock. Contractor estimates an additional 1990.25 of rock excavation.						
ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
160	CY	Rock Excavation from Utility Placement	\$120.00	100	740.25	\$76,830.00
160	CY	Rock Excavation Estimate for Future Months	\$120.00	740	1990.25	\$150,000.00
					TOTAL	\$226,830.00
THE NET AFFECT OF THIS CHANGE ORDER IS A 2.6% INCREASE						
Line 4 ST1702CONSTRUCT/41399971-6561			\$226,830.00			
TOTAL CHANGE ORDER			226,830.00			
ORIGINAL CONTRACT AMOUNT			\$8,799,523.75			
CHANGE ORDER NO. 1			\$226,830.00			
REVISED CONTRACT AMOUNT			\$9,026,353.75			
			2.6% CHANGE			
			2.6% TOTAL CHANGE			
ORIGINAL CONTRACT TIME			550 Days			
Time Extension No. 1			0 Days			
Revised Contract Time			550 Days			
APPROVED						
N/A						
A/E CONTRACTOR			Date		CHIEF FINANCIAL OFFICER	
Date			Date		Date	
6/14/2022			6/14/2022		6/14/2022	
CONSTRUCTION CONTRACTOR			Date		CITY ATTORNEY	
Date			Date		Date	
6/14/2022			6/14/2022		6/14/2022	
PROJECT MANAGER			Date		CITY MANAGER	
Date			Date		Date	
N/A			N/A		N/A	
CITY ENGINEER			Date		MAYOR	
Date			Date		Date	
6/14/2022			6/14/2022		6/14/2022	
DEPARTMENT DIRECTOR			Date		CITY SECRETARY	
Date			Date		Date	

February

	Ditch Width	Rock Depth	Length	Total Area(CY)
15-Feb				136.30
21-Feb				80
28-Feb				47.41

February Total	263.70 CY
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March

3-Mar	77.27
4-Mar	69.33
7-Mar	40.88
9-Mar	47.11
24-Mar	21.33
25-Mar	53.53
28-Mar	145.77
29-Mar	21.33

March Total	476.55 CY
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Grand Total	740.25 CY
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Already Billed	100 CY
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Balance	640.25 CY
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June 23, 2022

Item No. 7.8.

Annual Price Agreement for Di-Electric Switchgears with annual expenditures

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding approval of the City's award for an Annual Price Agreement for Di-Electric Switchgears with annual expenditures not to exceed \$1,584,270, awarded to Techline, Inc.

Relationship to Strategic Goals:

Core Services and Infrastructure

Financially Sustainable City

Recommendation(s): Staff recommends award of the annual price agreement for Di-Electric Switchgears with Techline, Inc. This purchase is comparable with quantities of previous fiscal years' history for city-wide electrical warehouse needs.

Summary: Staff issued Bid #22-061 on May 9, 2022, for Electric Di-Electric Switchgears, and the bid was opened on June 1, 2022. One (1) responsive proposal was received and reviewed by Electric staff to ensure the compliance of required specifications. The previous bid, 21-037, was awarded to Techline Inc., but due to the economic conditions with Electrical Commodities, this contract could not be renewed.

Staff is requesting approval to award Bid 22-061 to Techline Inc. in the amount of \$1,584,270.00.

Upon Council approval, staff will issue purchase orders to the Vendor as Electric Warehouse manages inventory restock throughout the year.

Budget & Financial Summary: Funds are available and budgeted within the Electrical Fund. Various projects may be expensed as supplies are pulled from inventory and issued for specific projects.

Attachments:

1. 22-061 Bid Award

City of College Station - College Station Utilities Electric Department

ITB#22-061: Solid Dielectric Switchgear Bid Sheet

Item	Quantity	Description	
A-1	10	Pad-Mounted Solid Dielectric Switchgear, (2) Source (2) Load ways with Front and Back Access, 15 kV, 95 kV BIL.	
		Source way switches to be 600 ampere continuous and load-break amps and consist of six (6) standard 600 ampere bushings, rated 20 kA asymmetrical momentary amperes, and 12.5 kA symmetrical short time amperes.	
		Each load way to consist of three (3) 200 ampere (continuous and load-break amps) single-phase interrupter switches. Each load way entrance shall consist of three (3) standard 200 ampere bushings rated 10 kA symmetrical short time amperes with removable threaded studs, and 1.3 kA asymmetrical short time amperes. The load side interrupter shall be a non-reclosing, manual reset device. Switching unit shall have a selectable single-phase or three-phase trip on load side interrupter, and selectable time-current settings to emulate and preset to the Kearney T fuse characteristics.	
		SCADA interface provisions are required for this switchgear. Switch shall be in full and complete conformance with the Detailed Specifications for 15 kV Solid Dielectric Pad-Mounted Switchgear attached with these specifications.	
		Manufacturer	ABB/ELASTIMOLD
		Catalog No.	MD3142T2J62XFXGHSW
		304 Stainless Steel Delivery Time (weeks)	26-28 WKS
		Mild Steel Delivery Time (weeks)	26-28 WKS
		304 Stainless Steel Unit Price (\$)	\$ 78,492.00
		Mild Steel Unit Price (\$)	\$ 70,133.00
A-2	10	Pad-Mounted Solid Dielectric Switchgear, (3) Source (1) Load ways with Front and Back Access, 15 kV, 95 kV BIL.	
		Source way switches to be 600 ampere continuous and load-break amps and consist of nine (9) standard 600 ampere bushings, rated 20 kA asymmetrical momentary amperes, and 12.5 kA symmetrical short time amperes.	
		Load way to consist of three (3) 200 ampere (continuous and load-break amps), single-phase interrupter switches. Load way entrance shall consist of three (3) standard 200 ampere bushings rated 10 kA symmetrical short time amperes with removable threaded studs, and 1.3 kA asymmetrical short time amperes. The load side interrupter shall be a non-re-closing, manual reset device. Switching unit shall have a selectable single-phase or three-phase trip on load side interrupter, and selectable time-current settings to emulate and preset to the Kearney T fuse characteristics.	
		SCADA interface provisions are required for this switchgear. Switch shall be in full and complete conformance with the Detailed Specifications for 15 kV Solid Dielectric Pad-Mounted Switchgear attached with these specifications.	
		Manufacturer	ABB/ELASTIMOLD
		Catalog No.	MD3143T-1146557
		304 Stainless Steel Delivery Time (weeks)	26-28 WKS
		Mild Steel Delivery Time (weeks)	26-28 WKS
		304 Stainless Steel Unit Price (\$)	\$ 69,347.00
		Mild Steel Unit Price (\$)	\$ 61,000.00

City of College Station - College Station Utilities Electric Department

ITB#22-061: Solid Dielectric Switchgear Bid Sheet

Item	Quantity	Description	
A-3	5	Pad-Mounted Solid Dielectric Switchgear, (4) Source ways with Front and Back Access, 15 kV, 95 kV BIL.	
		Source way switches to be 600 ampere continuous and load-break amps and consist of twelve (12) standard 600 ampere bushings, rated 20 kA asymmetrical momentary amperes, and 12.5 kA symmetrical short time amperes.	
		SCADA interface provisions are required for this switchgear. Switch shall be in full and complete conformance with the Detailed Specifications for 15 kV Solid Dielectric Pad-Mounted Switchgear attached with these specifications.	
		Manufacturer	ABB/ELASTIMOLD
		Catalog No.	MD3142T-YYYYYYY
		304 Stainless Steel Delivery Time (weeks)	26-28 WKS
		Mild Steel Delivery Time (weeks)	26-28 WKS
		304 Stainless Steel Unit Price (\$)	\$ 62,933.00
		Mild Steel Unit Price (\$)	\$ 54,588.00
		304 Stainless Steel Extended Price (\$)	\$ 314,665.00
Mild Steel Extended Price (\$)	\$ 272,940.00		
Bidder:		TECHLINE, INC.	
Comments from Bidder:			
Bid Grand Total for 304 Stainless Steel:		\$	1,793,055.00
Bid Grand Total for Mild Steel:		\$	1,584,270.00

Name of Vendor
 Company Responding
 Date of Response

ABB/ELASTIMOLD
 TECHLINE, INC.
 5/27/2022

June 23, 2022
Item No. 8.1.
Comprehensive Plan Amendment – Barron & Victoria

Sponsor: Derrick Williams, Staff Planner

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan Future Land Use and Character Map from Suburban Residential to Neighborhood Commercial for approximately 5 acres of land, located at 2354 Barron Road.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): The Planning and Zoning Commission heard this item at their June 2, 2022 meeting and voted to recommend approval. Staff also recommends approval.

Summary: The applicant is requesting an amendment to the Comprehensive Plan Future Land Use and Character Map from Suburban Residential to Neighborhood Commercial on approximately 5 acres of land located at 2354 Barron Road. The subject property and properties to the north and west are primarily designated as Suburban Residential on the Comprehensive Plan Future Land Use and Character Map, while the property to the east is Neighborhood Commercial, and the property to the south is Institutional/Public where College Station High School is located. The comprehensive plan amendment request is in conjunction with a proposed rezoning on the property from R Rural to PDD Planned Development District with a Suburban Commercial base to allow for small-scale commercial opportunities.

REVIEW CRITERIA

1. Changed or changing conditions in the subject area of the City: The subject property and the surrounding properties have a designation of Suburban Residential. Suburban Residential consists primarily of single-family residential lots that include townhomes, duplexes, other housing types as well as some non-residential uses that are compatible with surrounding single-family areas. The Neighborhood Commercial land use designation is generally for concentrations of commercial activities that cater primarily to nearby residents versus the larger community or region. Generally, these areas tend to be small in size and located adjacent to major roads (arterials and collectors). The design of structures is intended to be compatible with surrounding single-family residential neighborhoods. An Institutional/Public land use is located at the south corner of the intersection of Barron and Victoria and is developed as College Station High School. Properties to the west and across Victoria to the east have a Suburban Residential land use designation and are developed as residential properties within the nearby subdivisions. The land across the intersection of Barron and Victoria to the east is designated as Neighborhood Commercial and is partially developed as a medical clinic. The character of this area has changed in the last 10 years with developments such as CSHS and medical office spaces bringing educational and medical uses to a primarily residential area. Staff analyzed this property with the 10-Year evaluation and update to the Comprehensive Plan but kept the existing residential land use classification (which was renamed to Suburban Residential) to allow for a more neighborhood-scale discussion at a future date if private development and market pressures requested commercial uses on this property. The change of this property to Neighborhood

Commercial is appropriate and would serve the nearby residents and students from CSHS as they can utilize commercial spaces where they live and attend school.

2. Compatibility with the existing uses, development patterns, and character of the immediate area concerned, the general area, and the City as a whole: The Neighborhood Commercial land use designation is intended for commercial uses that are of a scale and design aesthetic to be compatible with surrounding single-family residential neighborhoods. This area of southern College Station is primarily residential in nature with limited commercial uses. While the current land use designation on the property would allow for residential uses, being located at the intersection of Victoria Ave. (a 2-Lane Major Collector) and Barron Rd. (a 4-Lane Minor Arterial) is not an ideal location for residential development. The proposed Neighborhood Commercial use would allow additional small scale commercial uses at the intersection of two major roadways and support the surrounding residential areas.

3. Impact on environmentally sensitive and natural areas: There is no FEMA designated floodplain on the property. The applicant has stated that the subject property will follow city codes and ordinances and will not have adverse impacts on the surrounding areas.

4. Impacts on infrastructure including water, wastewater, drainage, and the transportation network: Sanitary sewer service, water service, and fire flow will be provided by College Station Utilities. Stormwater will be designed according to B/CS Unified Stormwater Design Guidelines and will be collected in an on-site detention pond before being released into an underground storm water system. The subject property is not encumbered by FEMA Special Flood Hazard Area. Drainage and all other infrastructure required with site development shall be designed and constructed in accordance with the B/CS Unified Design Guidelines. A traffic impact analysis (TIA) was required and performed for the rezoning request and did not identify any traffic mitigation needed.

5. Consistency with the goals and strategies set forth in the Comprehensive Plan: The goal for College Station's Future Land Use and Character Map is to create a community with strong, unique neighborhoods, protected rural areas, special districts, distinct corridors, and a protected and enhanced natural environment. The area as a whole is very limited with commercial, as a vast majority is residential. With its location near a major collector and a minor arterial, commercial uses at the intersection in that area will support the surrounding residential areas which allow for residents of the nearby subdivisions as well as students at nearby CSHS to take advantage of the commercial uses.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Vicinity Map, Aerial, and Small Area Map
3. Future Land Use and Character Map
4. Comprehensive Plan Exhibit
5. Background Information
6. Supporting Information

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF COLLEGE STATION, TEXAS, AMENDING THE OFFICIAL CITY OF COLLEGE STATION COMPREHENSIVE PLAN BY AMENDING THE COMPREHENSIVE PLAN – FUTURE LAND USE & CHARACTER MAP FROM SUBURBAN RESIDENTIAL TO NEIGHBORHOOD COMMERCIAL FOR APPROXIMATELY 5 ACRES, GENERALLY LOCATED AT 2354 BARRON ROAD; 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 “E.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 23rd day of June, 2022.

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 “E.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 4351, dated April 28, 2022.

E. Map Amendments

The following Map Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Future Land Use & Character Map:

- a. Approximately 5 acres of land generally located at 2354 Barron Road from Suburban Residential to Neighborhood Commercial – by this Ordinance, dated June 23, 2022.

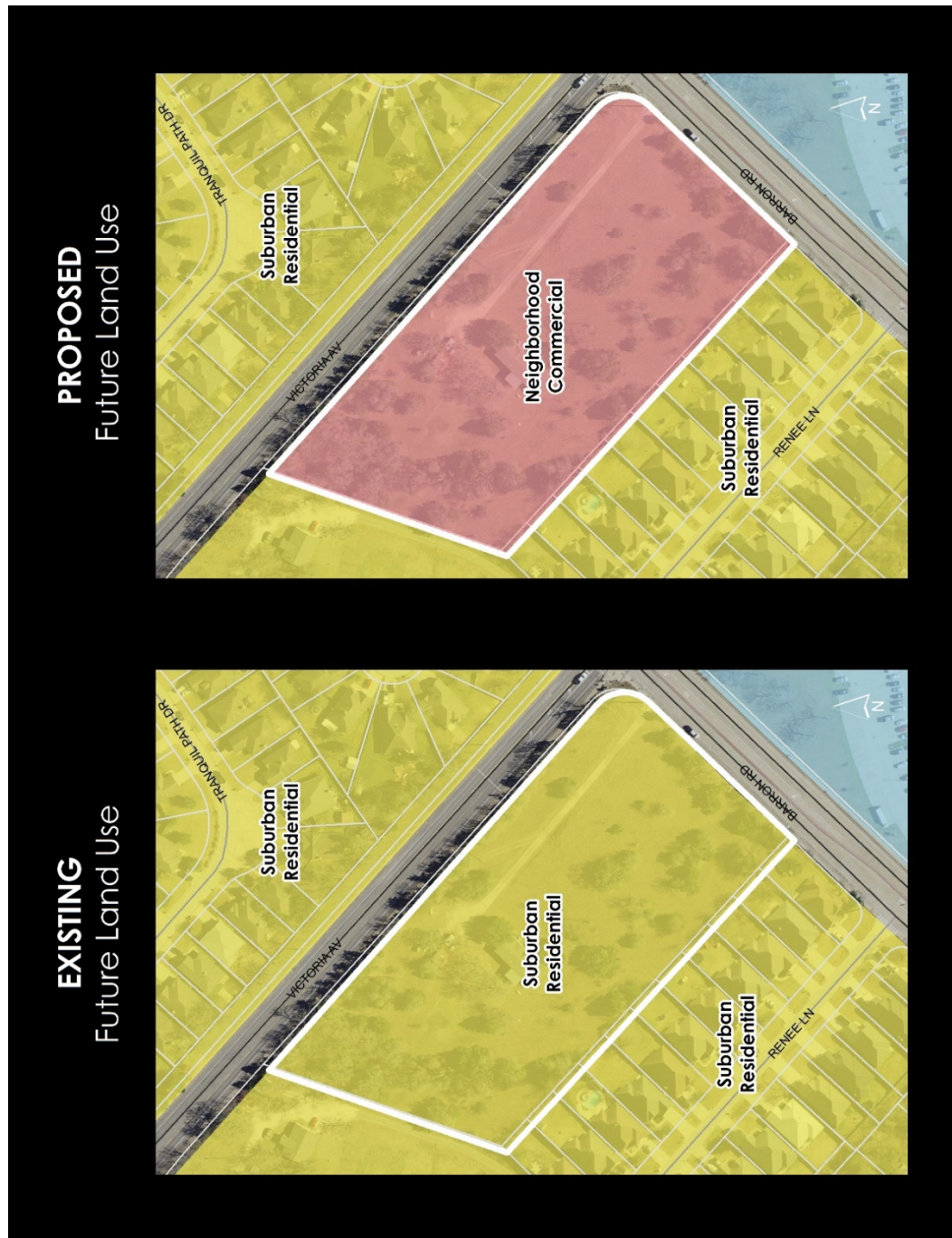
F. General

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.

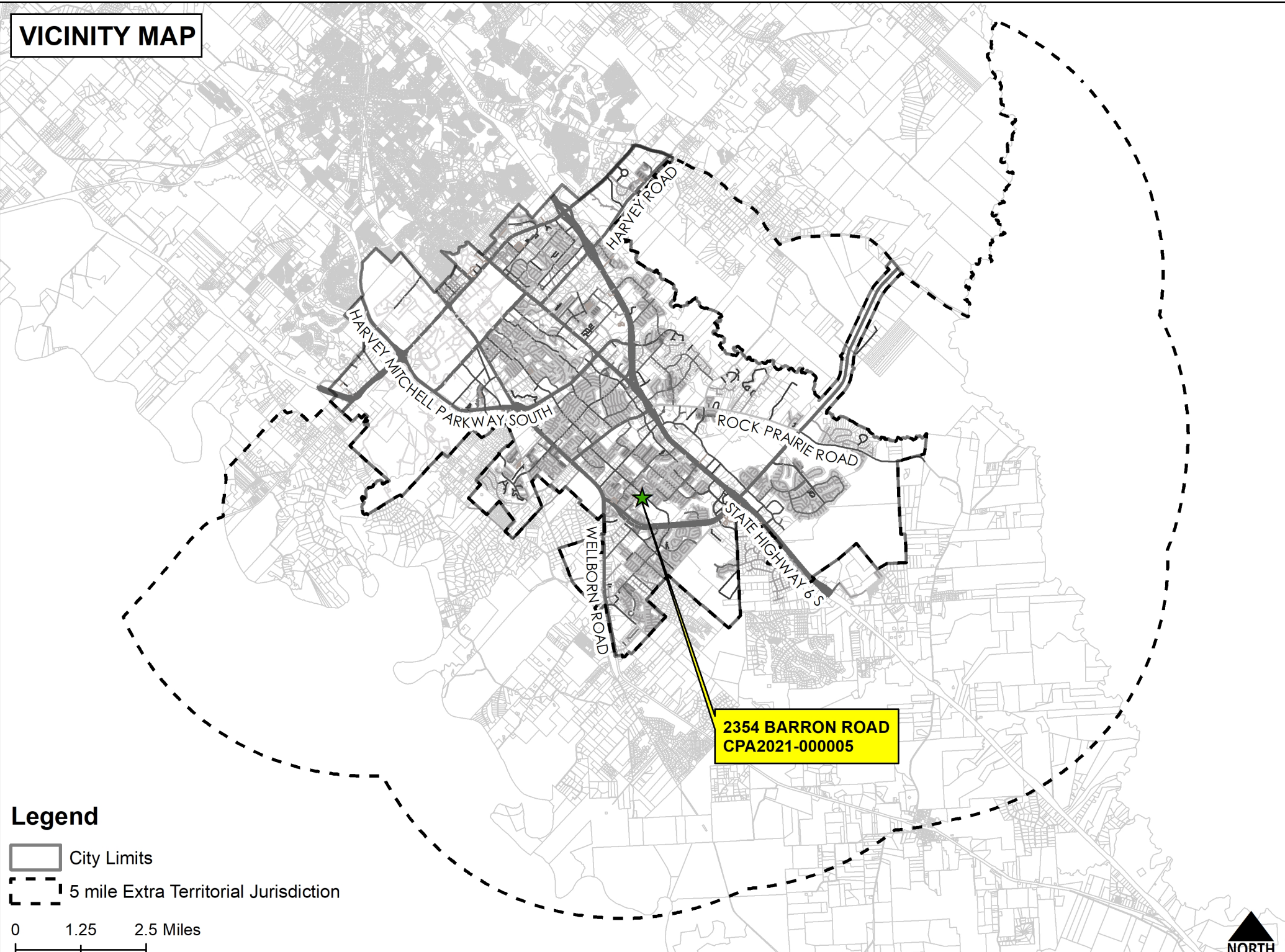
4. **General nature of College Station Comprehensive Plan.** The Comprehensive Plan and any additions, amendments, master plans and subcategories thereto depict same in generalized terms including future locations; and are subject to modifications by the City to fit local conditions, budget constraints, 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 a portion of the map titled “Future Land Use & Character” from Suburban Residential to Neighborhood Commercial for the following property:

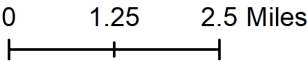


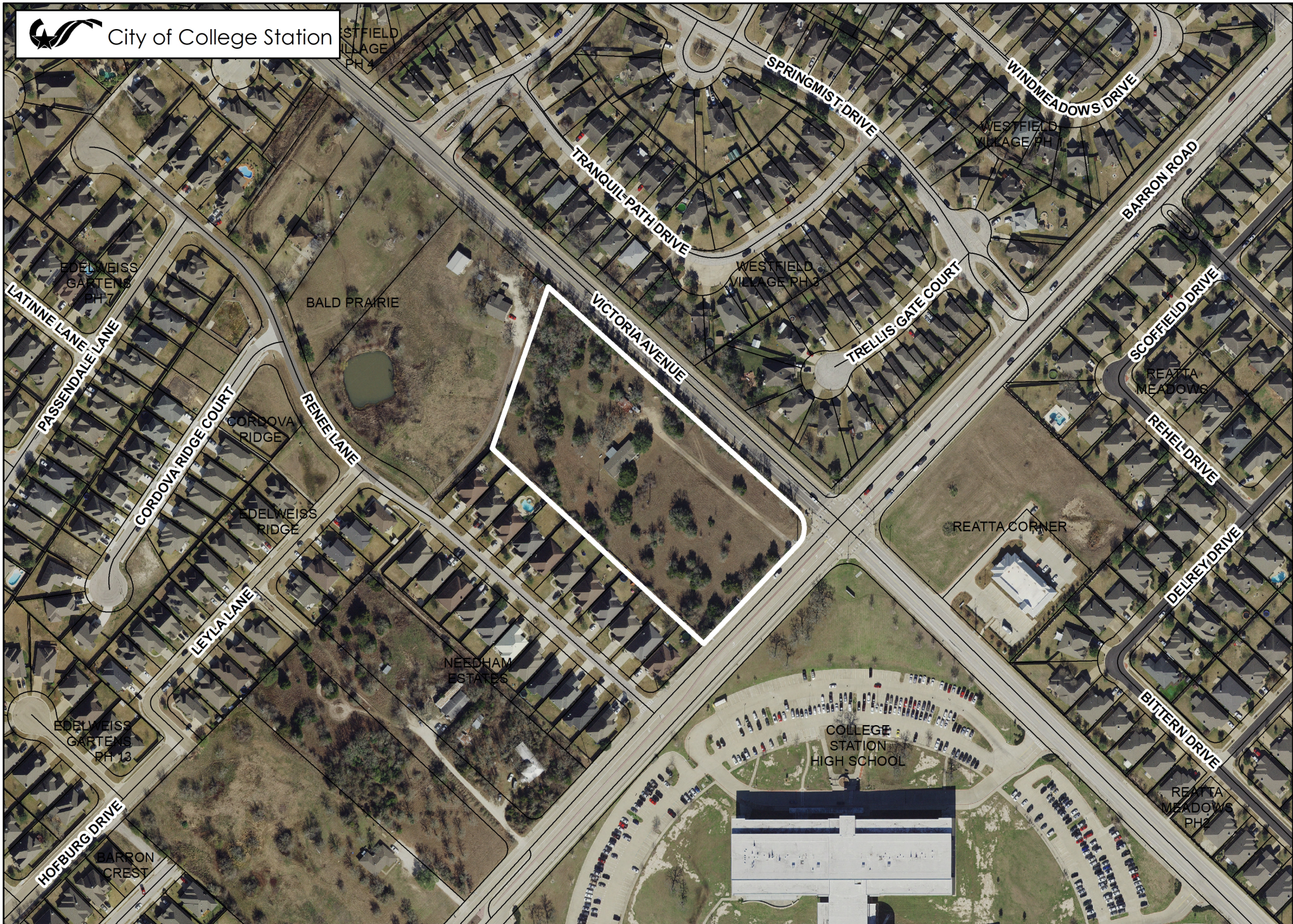
VICINITY MAP



Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction



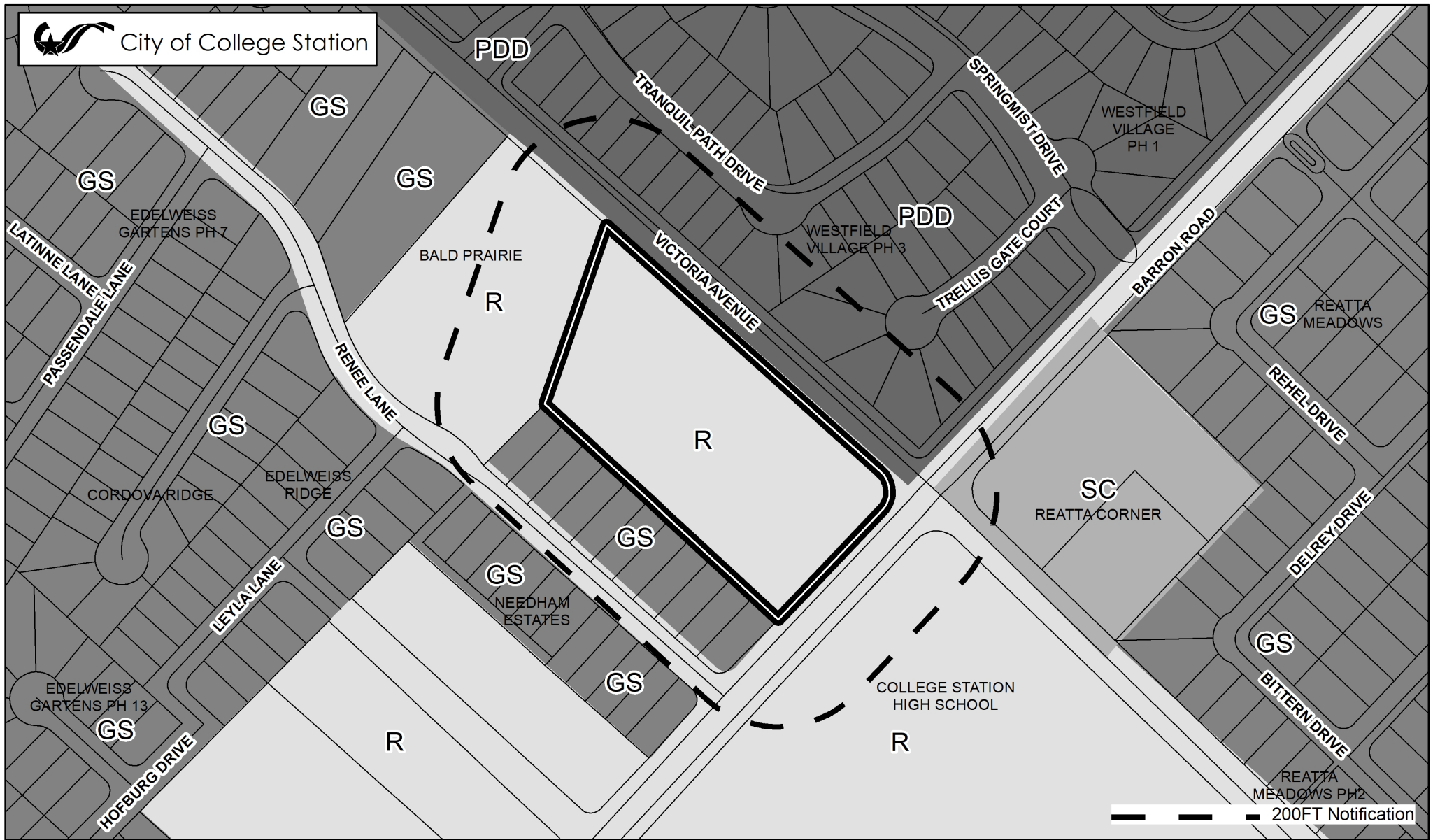


0 255 510 Feet

2354 BARRON ROAD

Case:
CPA2021-000005

COMPREHENSIVE PLAN
AMENDMENT



ZONING DISTRICTS (In Grayscale)

Residential		
R	Rural	MF Multi-Family
WE	Wellborn Estate	MU Mixed-Use
E	Estate	MHP Manufactured Home Pk.
WRS	Wellborn Restricted Suburban	
RS	Restricted Suburban	
GS	General Suburban	
D	Duplex	
T	Townhome	

Non-Residential

NAP	Natural Area Protected
O	Office
SC	Suburban Commercial
WC	Wellborn Commercial
GC	General Commercial
CI	Commercial Industrial
BP	Business Park
BPI	Business Park Industrial
C-U	College and University

Planned Districts

P-MUD	Planned Mixed-Use Dist.
PDD	Planned Develop. Dist.

Design Districts

WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts

OV	Corridor Ovr.
RDD	Redevelopment District
KO	Krenek Tap Ovr.
NPO	Nbrhd. Prevailing Ovr.
NCO	Nbrhd. Conservation Ovr.
HP	Historic Preservation Ovr.

Retired Districts

R-1B	Single Family Residential
R-4	Multi-Family
R-6	High Density Multi-Family
C-3	Light Commercial
RD	Research and Dev.
M-1	Light Industrial
M-2	Heavy Industrial



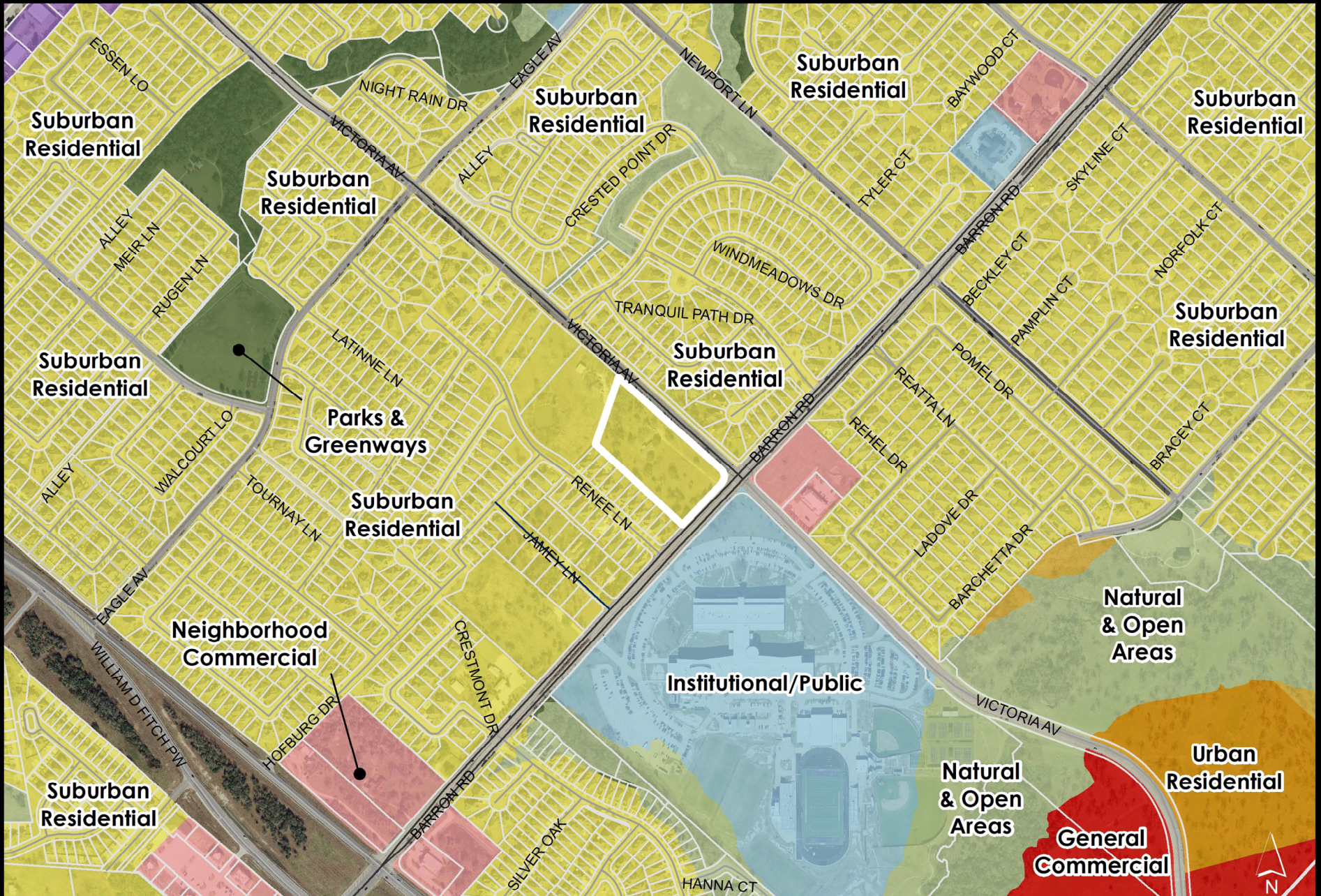
0 255 510 Feet

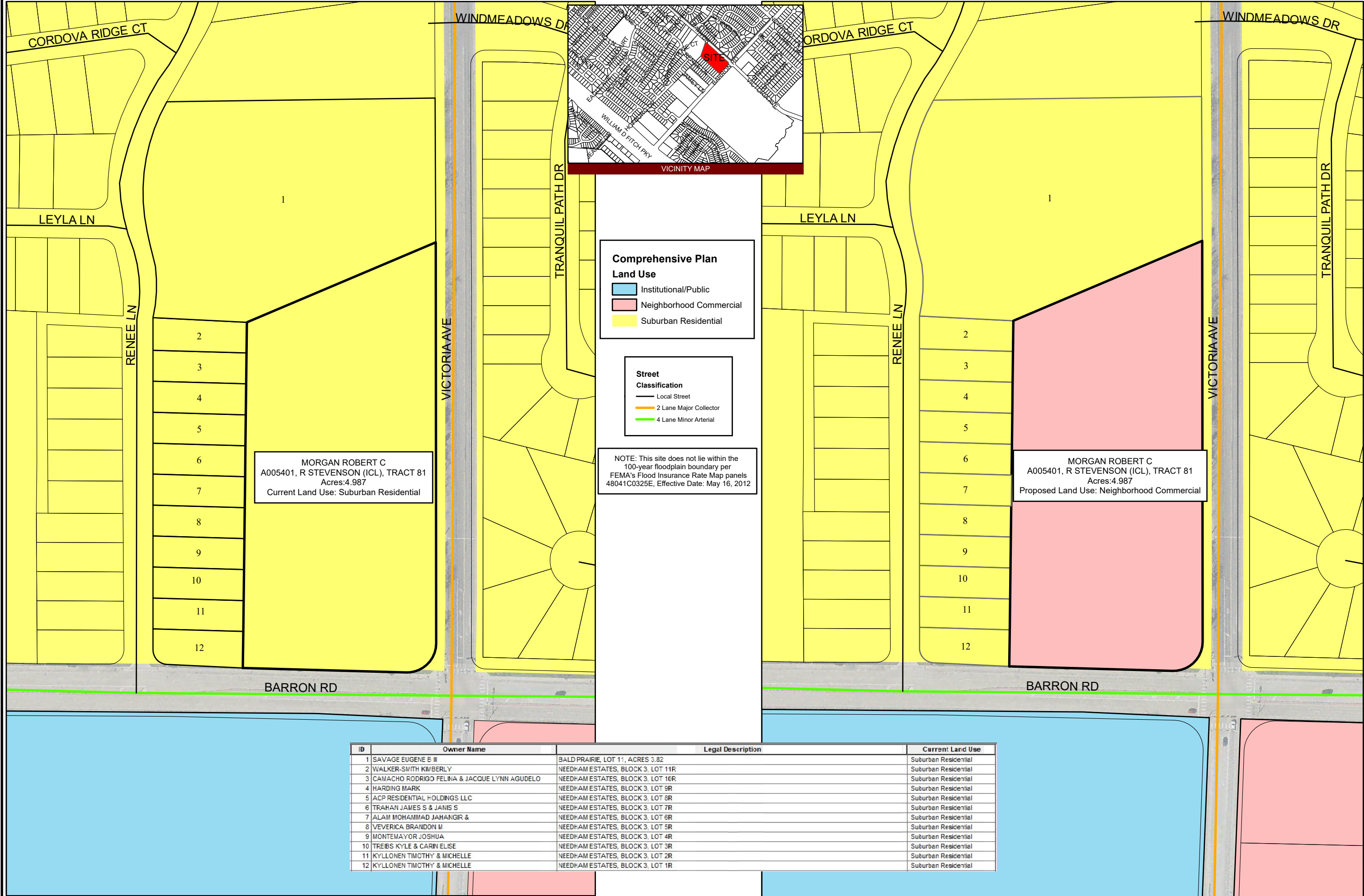
2354 BARRON ROAD

Case:
CPA2021-000005

**COMPREHENSIVE PLAN
AMENDMENT**

EXISTING Future Land Use





1 inch = 150 feet

**Comprehensive Plan
Land Use**

- Institutional/Public
- Neighborhood Commercial
- Suburban Residential

**Street
Classification**

- Local Street
- 2 Lane Major Collector
- 4 Lane Minor Arterial

NOTE: This site does not lie within the 100-year floodplain boundary per FEMA's Flood Insurance Rate Map panels 48041C0325E, Effective Date: May 16, 2012

ID	Owner Name	Legal Description	Current Land Use
1	SAVAGE EUGENE B III	BALD PRAIRIE, LOT 11, ACRES 3.82	Suburban Residential
2	WALKER-SMITH KIMBERLY	NEEDHAM ESTATES, BLOCK 3, LOT 11R	Suburban Residential
3	CAMACHO RODRIGO FELINA & JACQUE LYNN AGUDELO	NEEDHAM ESTATES, BLOCK 3, LOT 10R	Suburban Residential
4	HARDING MARK	NEEDHAM ESTATES, BLOCK 3, LOT 9R	Suburban Residential
5	ACP RESIDENTIAL HOLDINGS LLC	NEEDHAM ESTATES, BLOCK 3, LOT 8R	Suburban Residential
6	TRAHAN JAMES S & JANIS S	NEEDHAM ESTATES, BLOCK 3, LOT 7R	Suburban Residential
7	ALAM MOHAMMAD JAHANGIR &	NEEDHAM ESTATES, BLOCK 3, LOT 6R	Suburban Residential
8	VEVERICA BRANDON M	NEEDHAM ESTATES, BLOCK 3, LOT 5R	Suburban Residential
9	MONTEMAYOR JOSHUA	NEEDHAM ESTATES, BLOCK 3, LOT 4R	Suburban Residential
10	TREBS KYLE & CARIN ELISE	NEEDHAM ESTATES, BLOCK 3, LOT 3R	Suburban Residential
11	KYLLONEN TIMOTHY & MICHELLE	NEEDHAM ESTATES, BLOCK 3, LOT 2R	Suburban Residential
12	KYLLONEN TIMOTHY & MICHELLE	NEEDHAM ESTATES, BLOCK 3, LOT 1R	Suburban Residential

MITCHELL
M&M
MORGAN

T. 979.260.6963
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3204 Earl Rudder Fwy S
College Station, TX 77845
Plan & Design Specialists in
Civil · Engineering · Hydraulics
Hydrology · Utilities · Streets
Site Plans · Subdivisions
www.mitchellandmorgan.com

Land Use Plan
Amendment
Map

2354
Barron
Road

March
2022

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: June 2, 2022
Advertised Council Hearing Date: June 23, 2022

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

Westfield Village
Edelweiss Gartens

Property owner notices mailed: 28

Contacts in support: None at the time of this report
Contacts in opposition: 2 at the time of this report
Inquiry contacts: 2 at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Suburban Residential	R Rural	Mobile/Manufactured Home
South	Institution/Public	R Rural	Public Facilities
East	Suburban Residential	PDD	Single-Family Residential
West	Suburban Residential	GS General Suburban	Single-Family Residential

DEVELOPMENT HISTORY

Annexation:

Zoning: 1995 – R Rural

Final Plat: Unplatted

Site development: Site is undeveloped



COMP PLAN APPLICATION SUPPORTING INFORMATION

Name of Project: 2354 BARRON ROAD

Address: 2354 BARRON RD

Legal Description: A005401, R STEVENSON (ICL), TRACT 81, 4.9699 ACRES

Total Acreage: 4.97

Applicant:: MITCHELL & MORGAN

Property Owner: MORGAN ROBERT C

What element of the Comprehensive Plan and at what location is requested to be amended?

Land Use Plan Amendment at 2354 Barron Road

What is the amendment requested?

We request to amend the Land Use Plan from Residential Suburban to Neighborhood Commercial.

What is the reason for the amendment?

The subject property is adjacent to properties that are already developed as single-family or developed as a single large-lot residence. This tract would be developed independently and would not be cohesively integrated into the surrounding residential developments, nor have access to the residential street network. Additionally, the property is located at the intersection of a Minor Arterial and Major Collector. The Comprehensive Plan states that Neighborhood Commercial land uses tend to be located adjacent to major roads along the fringe of residential areas. This tract is more ideal and better suited for commercial activities than residential development.

How will this change be compatible with the existing uses, development patterns, and character of the immediate area concerned, the general area, and the city as a whole?

Residential uses developed around this property and was left without opportunity to integrate into the existing subdivisions surrounding it. With its location at the corner of two thoroughfares and without opportunity to seamlessly integrate into the residential areas, the best use for this tract has evolved into small-scale neighborhood commercial uses.

Explain the impact on environmentally sensitive and natural areas and infrastructure, including water, wastewater, drainage and transportation network.

Neighborhood commercial land uses are intended to cater primarily to nearby residents. According to the Comprehensive Plan, these areas tend to be smaller format than general commercial and the structures are compatible in size, architecture and lot coverage with surrounding residential uses. Neighborhood commercial at this scale is designed to be compatible with residential and blend in with the character of the neighborhoods. This neighborhood commercial development will provide small scale retail and services that will cater to the residents and complement the character of the neighborhoods and school activities that make up this part of College Station.

Explain how this change will be consistent with the goals and strategies set forth in the Comprehensive Plan.

Neighborhood commercial land uses are intended to cater primarily to nearby residents. According to the Comprehensive Plan, these areas tend to be smaller format than general commercial and the structures are compatible in size, architecture and lot coverage with surrounding residential uses. Neighborhood commercial at this scale is designed to be compatible with residential and blend in with the character of the neighborhoods. This neighborhood commercial development will provide small scale retail and services that will cater to the residents and complement the character of the neighborhoods and school activities that make up this part of College Station.

List any other reasons to support this zone change.

N/A

List any other additional properties.

N/A

June 23, 2022
Item No. 8.2.
Rezoning – Barron & Victoria

Sponsor: Derrick Williams, Staff Planner

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance 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 boundaries from R Rural to PDD Planned Development District on approximately 5 acres of land located at 2354 Barron Road.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): The Planning and Zoning Commission heard this item at their June 2, 2022 meeting and recommend approval with the addition of the following community benefit:

- No building on the property shall exceed a building height of 28 feet facing Victoria Avenue (northeast) and a building height of 16 feet facing Renee Lane (southwest).

Staff also recommends approval of the rezoning and concept plan, as well as the additional community benefit recommended by the Planning and Zoning Commission.

Summary: The applicant is requesting to rezone approximately 5 acres of land located where Barron Road and Victoria Road intersect from R Rural to PDD Planned Development District with a base zoning of SC Suburban Commercial. The change in the zoning district boundaries from R Rural to PDD Planned Development District, would bring small scale commercial opportunities to a vacant tract of land located at the intersection of Victoria Ave. (a 2-Lane Major Collector) and Barron Rd. (a 4-Lane Minor Arterial)

REVIEW CRITERIA

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject property has a future land use designation on the Comprehensive Plan Future Land Use and Character Map as Suburban Residential. The Comprehensive Plan states that Suburban Residential is intended for 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.

This rezoning request is accompanied by a Comprehensive Plan amendment request for Neighborhood Commercial. The Comprehensive Plan generally describes the Neighborhood Commercial land use designation as follows: 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.

With the approval of the comprehensive plan amendment, smaller scaled commercial opportunities would be in line with Neighborhood Commercial as stated in the comprehensive plan where they are usually along the fringe of residential areas.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

PDD Planned Development District will be based on the SC Suburban Commercial zoning district which is designed to be compatible with residential land uses. Given the property's proximity to existing single-family uses, the intended use of commercial could be appropriate in the context with the existing developments. Small scale commercial uses at a major intersection will support the surrounding residential areas which allow residents of the nearby subdivisions as well as students at nearby CSHS to take advantage of the commercial uses. This allows for a range of limited commercial uses that are compatible with nearby neighborhoods while not allowing any single structure in this district to exceed 15,000 square feet in area. Also, as a community benefit being offered with this proposed PDD, the applicant is proposing to remove fuel sales as a permitted use on this tract of land.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

While adjacent to a neighborhood, the subject property does not have direct right-of-way access to the adjacent residential properties. There is no FEMA-designated floodplain on the property. The subject property is physically suitable for the proposed zoning district.

4. Whether there is available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

Sanitary sewer service, water service, and fire flow will be provided by College Station Utilities. Stormwater will be designed according to B/CS Unified Stormwater Design Guidelines and will be collected in an on-site detention pond before being released into an underground storm water system. The subject property is not encumbered by FEMA Special Flood Hazard Area. Drainage and all other infrastructure required with site development shall be designed and constructed in accordance with the B/CS Unified Design Guidelines. A traffic impact analysis was performed for the rezoning requested and did not identify any traffic mitigation needed.

5. The marketability of the property:

The property in its current state, is an undeveloped area where agricultural and rural uses would not be marketable nor appropriate for its location. However, the marketability of the property would increase if rezoned for small scaled commercial uses. This area of southern College Station is primarily residential in nature with limited commercial uses. While the current land use designation on the property would allow for residential uses, being located at the intersection of Victoria Ave. (a 2-Lane Major Collector) and Barron Rd. (a 4-Lane Minor Arterial) is not an ideal location for residential development. The proposed rezoning would allow for small scale commercial uses at the intersection of two major roadways and support the surrounding residential areas.

REVIEW OF CONCEPT PLAN

The Concept Plan provides an illustration of the general layout of the proposed building and parking areas as well as other site related features. In proposing a PDD, an applicant may also request variations to the general platting and site development standards provided that those variations are outweighed by demonstrated community benefits of the proposed development. The Unified Development Ordinance provides the following review criteria as the basis for reviewing PDD

Concept Plans:

1. The proposal will constitute an environment of sustained stability and will be in harmony with the character of the surrounding area;
2. The proposal is in conformity with the policies, goals, and objectives of the Comprehensive Plan, and any subsequently adopted Plans, and will be consistent with the intent and purpose of this Section;
3. The proposal is compatible with existing or permitted uses on abutting sites and will not adversely affect adjacent development;
4. Every dwelling unit need not front on a public street but shall have access to a public street directly or via a court, walkway, public area, or area owned by a homeowners association;
5. The development includes provision of adequate public improvements, including, but not limited to, parks, schools, and other public facilities;
6. The development will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity; and
7. The development will not adversely affect the safety and convenience of vehicular, bicycle, or pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area.

Purpose, Intent and Community Benefits:

The proposed Planned Development District for this property outlines the purpose, intent, and community benefit of the proposed development which is to promote and encourage innovative development that is sensitive to surrounding land uses and natural environment.

Base Zoning and Meritorious Modifications:

At the time of site plan, the project will need to meet all applicable site development standards and platting requirements of the Unified Development Ordinance for the SC Suburban Commercial zoning district, except where meritorious modifications are granted with the PDD zoning. The applicant is requesting the following meritorious modification:

- None

Community Benefits: The applicant offers the following as community benefits:

- To remove fuel sales as a permitted use.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Concept Plan
3. Bulk Variances Letter
4. Vicinity Map, Aerial, and Small Area Map
5. Future Land Use and Character Map
6. Rezoning Map
7. Rezoning Exhibit
8. Background Information
9. Applicant's Supporting Information

ORDINANCE NO. _____

AN ORDINANCE 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 BOUNDARIES AFFECTING APPROXIMATELY 5 ACRES OF LAND LOCATED AT 2354 BARRON ROAD FROM R RURAL TO PDD PLANNED DEVELOPMENT DISTRICT; 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 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, be amended as set out in **Exhibit “A”, Exhibit “B”, Exhibit “C”, and Exhibit “D”** 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 23rd day of June, 2022.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That 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, is hereby amended as follows:

The following property is rezoned from R Rural to PDD Planned Development District:



FIELD NOTES DESCRIPTION
OF A
4.98 ACRE TRACT
ROBERT STEVENSON LEAGUE, ABSTRACT 54
COLLEGE STATION, BRAZOS COUNTY, TEXAS

A FIELD NOTES DESCRIPTION OF 4.98 ACRES IN THE ROBERT STEVENSON LEAGUE, ABSTRACT 54, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, BEING THE REMAINDER OF A CALLED 5 ACRE TRACT OF LAND CONVEYED TO ROBERT C. MORGAN IN VOLUME 2751, PAGE 185 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS (ORBCT), BEING THE SAME 5 ACRE TRACT CONVEYED IN VOLUME 7814, PAGE 172 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT); SAID 4.98 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8 inch iron rod with yellow plastic cap stamped 'KERR 4502' found in the southwest right-of-way line of Victoria Avenue (70' wide right-of-way, 6058/231 OPRBCT) at the north corner of said remainder of 5 acre tract and the east corner of Lot 11, Bald Prairie Sub'd as shown on the subdivision plat recorded in Volume 321, Page 571 of the Deed Records of Brazos County, Texas (DRBCT);

THENCE, with the southwest right-of-way line of Victoria Avenue, the following two (2) courses and distances:

- 1) **S 48° 48' 31" E**, for a distance of **104.80 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' set;
- 2) **S 47° 58' 40" E**, for a distance of **579.75 feet** to a 1/2 inch iron rod with orange plastic cap stamped 'H.P. MAYO RPLS 5045' found for a point of curvature;

THENCE, with a curve to the right, having a radius of **50.00 feet**, an arc length of **79.87 feet**, a delta angle of **91° 31' 44"**, and a chord which bears **S 02° 12' 48" E**, a distance of **71.65 feet** to a 1/2 inch iron rod with blue plastic cap stamped "KERR SURVEYING" set on the northwest right-of-way line of Barron Road (90' wide right-of-way, 9311/199 & 9354/197 OPRBCT) for the point of tangency;

THENCE, with the northwest right-of-way line of Barron Road, **S 43° 33' 04" W**, for a distance of **280.78 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' set for the south corner hereof, from which a 1/2 inch iron rod with yellow plastic cap stamped 'K MCCLURE RPLS 5650' found bears, **S 47° 18' 58" E**, a distance of 0.41 feet;

THENCE, with the common line of said remainder of 5 acre tract and Block 3 of Needham Estates as shown on the plat recorded in volume 8422, page 225 of the Official Public Records of Brazos County, Texas, **N 47° 18' 58" W**, for a distance

of **589.06 feet** to a 1/2 inch iron rod with yellow plastic cap stamped 'K MCCLURE RPLS 5650' found on the southeast line of said Lot 11, at the west corner of said remainder of 5 acre tract and the north corner of said Block 3;

THENCE, with the common line of said remainder of 5 acres and said Lot 11, **N 18° 55' 56" E**, for a distance of **351.88 feet** to the **POINT OF BEGINNING** hereof and containing 4.98 acres, more or less.

Surveyed on the ground June 2021 under my supervision. See plat prepared July 2021 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.0009999352839 (calculated using GEOID12B). Reference drawing: 21-470.


Nathan Paul Kerr
Registered Professional Land Surveyor No. 6834



KERR SURVEYING

Kerr Surveying, LLC | 409 N. Texas Ave. Bryan, TX 77803

Office: (979) 268-3195 | Web: www.kerrlandsurveying.com

Surveys@kerrsurveying.net | TBPELS Firm No. 10018500

21-470.docx

2 | Page

Exhibit B



Exhibit C**Purpose, Intent and Community Benefits:**

The proposed Planned Development District for this property outlines the purpose, intent, and community benefit of the proposed development which is to promote and encourage innovative development that is sensitive to surrounding land uses and natural environment.

Base Zoning and Meritorious Modifications

At the time of site plan, the project will need to meet all applicable site development standards and platting requirements of the Unified Development Ordinance for the SC Suburban Commercial zoning district, except where meritorious modifications are granted with the PDD zoning. The applicant is requesting the following meritorious modification:

- None

Community Benefits: The applicant offers the following as community benefits:

- To remove fuel sales as a permitted use.
- No building on the property shall exceed a building height of 28 feet facing Victoria Avenue (northeast) and a building height of 16 feet facing Renee Lane (southwest).

Exhibit D

NOTES:

1. TOTAL SITE AREA= 4.96 AC
2. THERE IS NO FEMA REGULATED 100-YEAR FLOODPLAIN ON THIS SITE PER FEMA MAP PANEL #48041C0325E DATED MAY 18, 2012.
3. THE DEVELOPMENT WILL NOT INCLUDE PARKS, GREENWAYS, CONSERVATION AREAS, SCHOOLS, OR TRAILS.
4. ALL SITE LIGHTING WILL COMPLY WITH CITY OF COLLEGE STATION ORDINANCES.
5. BUFFER WILL COMPLY WITH CITY OF COLLEGE STATION ORDINANCES.

NEIGHBORHOOD RETAIL CENTER

CONCEPT PLAN

CP

DATE: 05/18/2012
 DRAWN BY: J. MORGAN
 CHECKED BY: J. MORGAN
 PROJECT NO: 1025M
 CLIENT: J. MORGAN

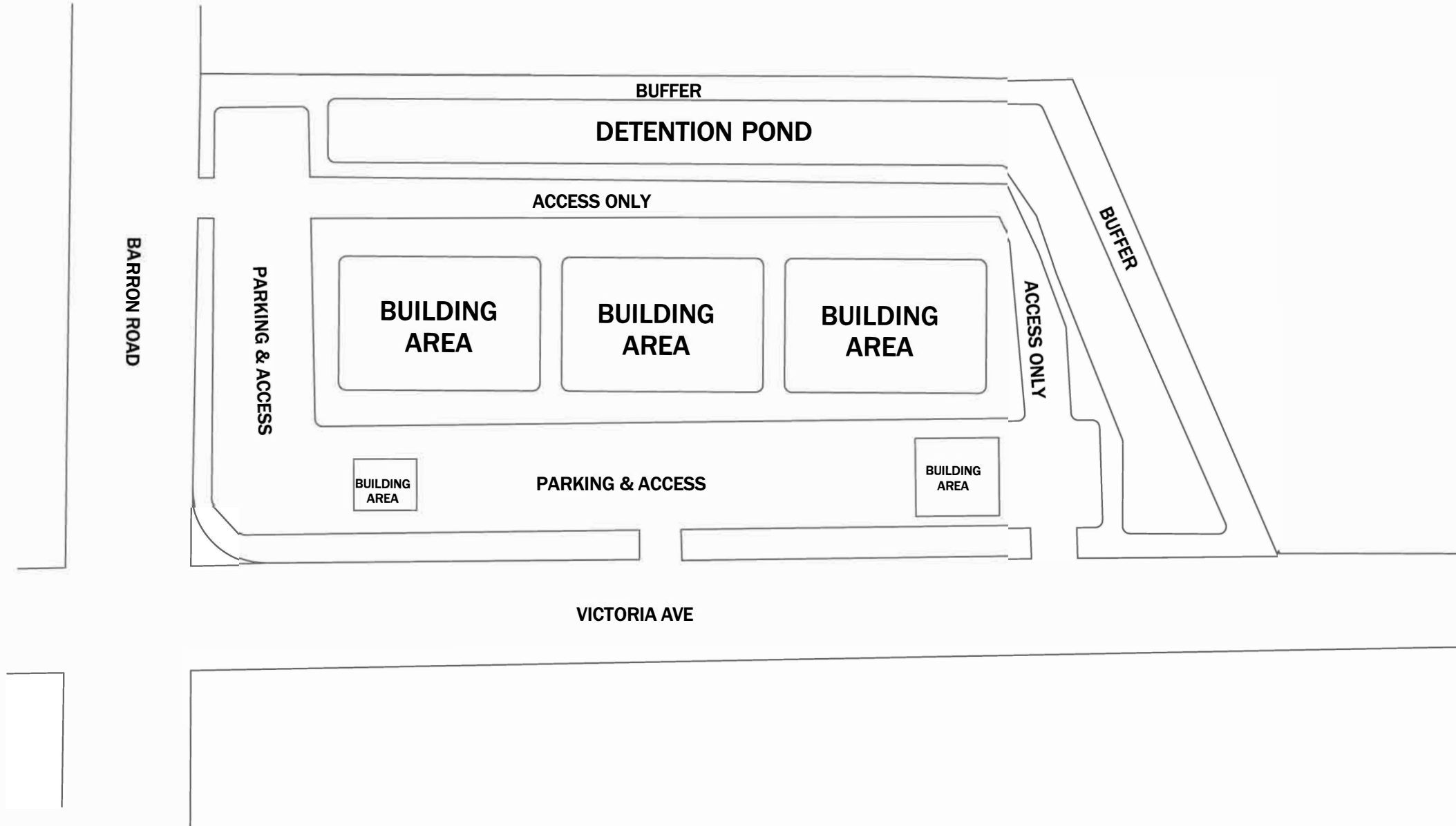
MITCHELL
M M
 MORGAN

1. 979.260.6963
 F. 979.260.3664
 TEL. FROM # 1-143

THIS PLAN, SPECIFICATIONS, AND
 NOTES, DRAWINGS, AND EXHIBITS
 ARE THE PROPERTY OF MITCHELL
 MORGAN. IT IS TO BE USED ONLY
 FOR THE PROJECT AND SITE
 IDENTIFIED HEREON.

FOR INTERIM REVIEW ONLY
 THESE DOCUMENTS ARE NOT
 INTENDED FOR CONSTRUCTION,
 BIDDING, OR PERMIT PURPOSES.
 REQUEST BY:
 VICTORIA AVE. MORGAN, P.L.
 NO. 77555

NTS



NOTES:

1. TOTAL SITE AREA: 4.96 AC
2. THERE IS NO FEMA REGULATED 100-YEAR FLOODPLAIN ON THIS SITE PER FEMA MAP PANEL #48041C0325E DATED MAY 16, 2012.
3. THE DEVELOPMENT WILL NOT INCLUDE PARKS, GREENWAYS, CONSERVATION AREAS, SCHOOLS, OR TRAILS.
4. ALL SITE LIGHTING WILL COMPLY WITH CITY OF COLLEGE STATION ORDINANCES.
5. BUFFER WILL COMPLY WITH CITY OF COLLEGE STATION ORDINANCES.

For Interim Review Only
These documents are not
intended for construction,
bidding, or permit purposes
Prepared by:
Veronica J.B. Morgan, P.E.
No. 77689

NOVEMBER, 2021
Designed by: VJBM
Drawn By: BEW
Checked By: VJBM

Revisions



T.979.260.6963
F.979.260.3564
TX: FIRM # F-1443

3204 EARL RUDDER FWY S
COLLEGE STATION, TX 77840

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CONCEPT PLAN

NEIGHBORHOOD RETAIL CENTER

CP



Planning & Development Services
Staff Planner
City of College Station
P.O. Box 9960
College Station, TX 77842

January 20, 2022

Re: 2354 Barron Road Neighborhood Retail Center (PDD Rezoning)

To Whom It May Concern,

Understanding that we must choose a base zoning district for the neighborhood retail center upon which we base all development standards, we have chosen SC Suburban Commercial. Given these standards, we do not request to vary from these standards.

As stated in the UDO, the purpose of the Planned Development district is to promote and encourage development that is sensitive to surrounding land uses and to the natural environment. A PDD may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts. Finally, the PD District allows development to vary from certain development standards so long as there are community benefits which outweigh the requested modifications. We believe that this project offers a desired development opportunity and its community benefits make this a desired development for the area. These community benefits are as follows:

1. Based on comments from the residents who attended the neighborhood meeting, we would like to remove fuel sales as a permitted use.

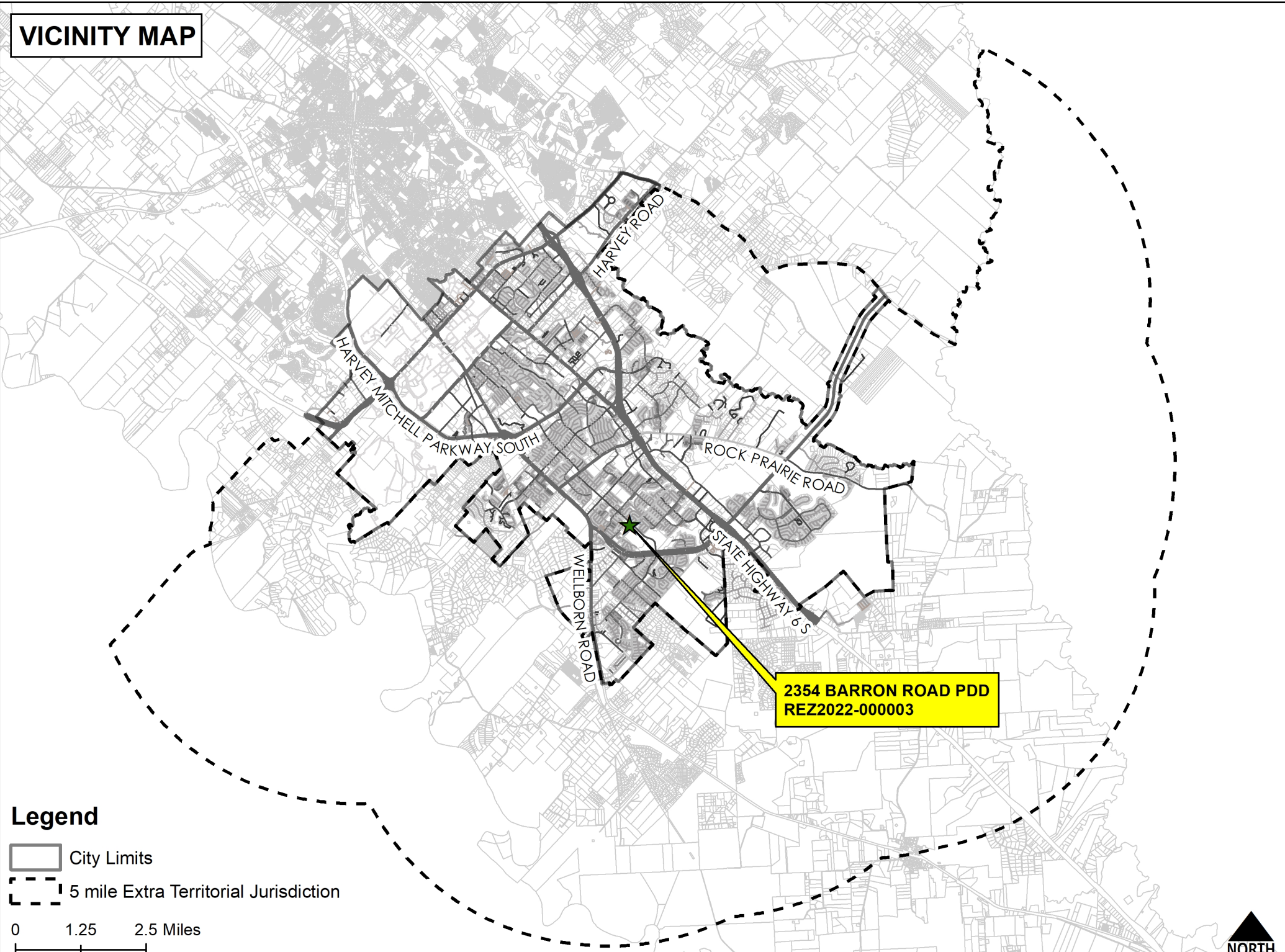
We believe we are offering a development that is both compatible and sensitive to nearby residences in use and design and this facility will be a good neighbor to the many surrounding neighborhoods and a great asset this area of College Station.

Thank you very much. If you have any questions, please do not hesitate to call.

Sincerely,

Crissy Hartl, AICP
Staff Planner

VICINITY MAP

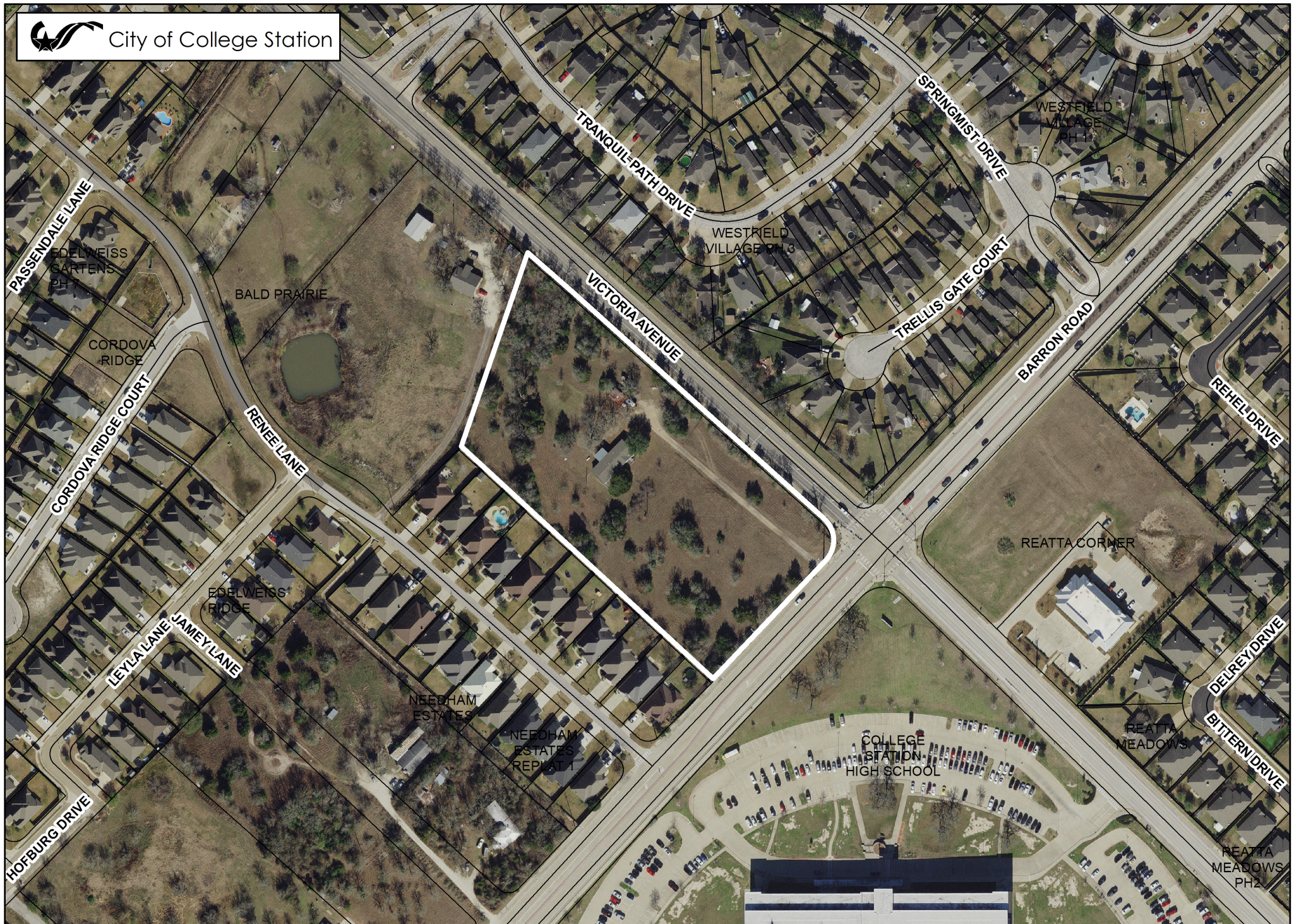


Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction

0 1.25 2.5 Miles





0

212.5

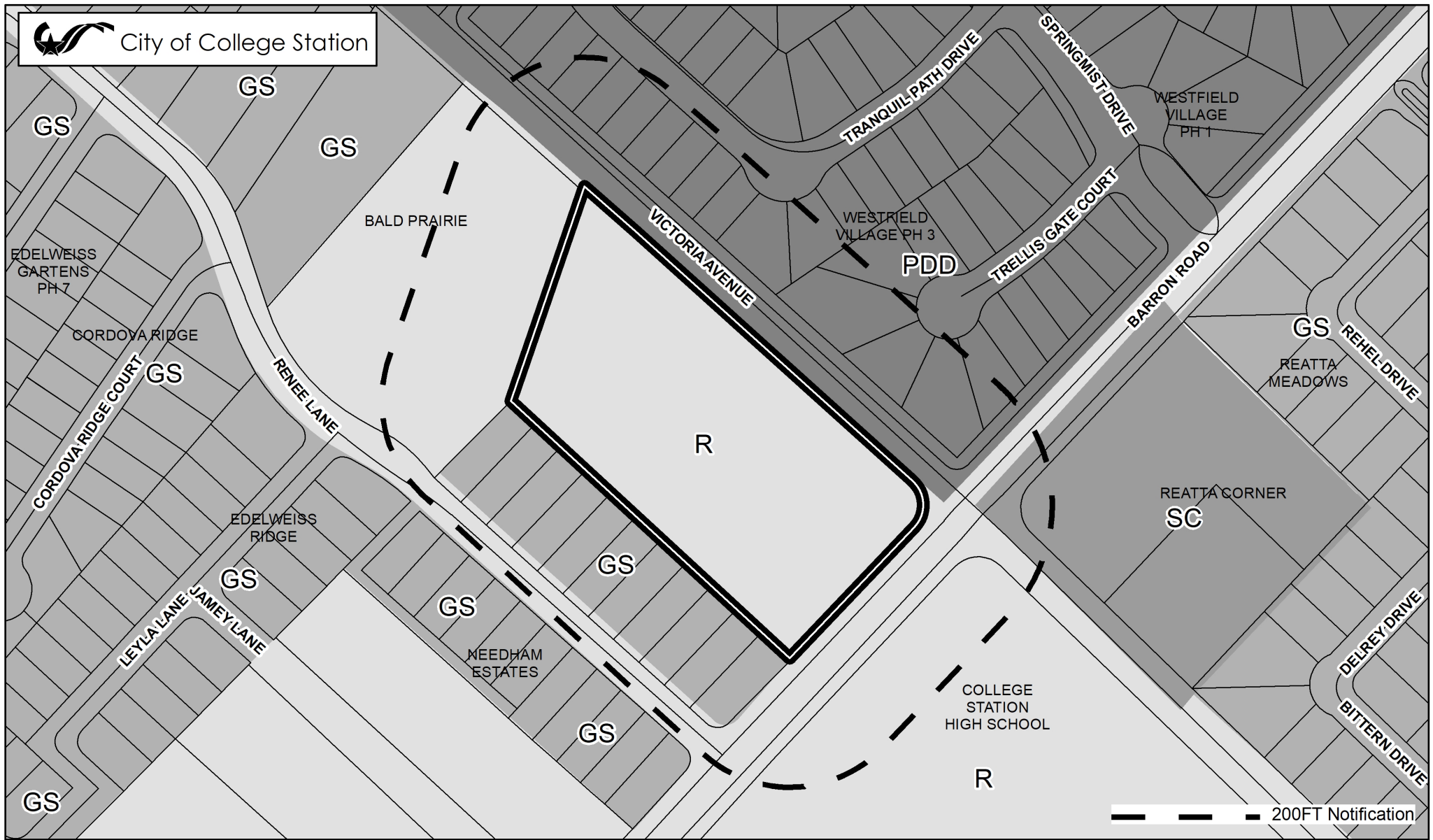
425

Feet

2354 BARRON ROAD PDD

Case:
REZ2022-000003

REZONING



ZONING DISTRICTS (In Grayscale)

<u>Residential</u>		
R	Rural	MF Multi-Family
WE	Wellborn Estate	MU Mixed-Use
E	Estate	MHP Manufactured Home Pk.
WRS	Wellborn Restricted Suburban	
RS	Restricted Suburban	
GS	General Suburban	
D	Duplex	
T	Townhome	

Non-Residential

NAP	Natural Area Protected
O	Office
SC	Suburban Commercial
WC	Wellborn Commercial
GC	General Commercial
CI	Commercial Industrial
BP	Business Park
BPI	Business Park Industrial
C-U	College and University

Planned Districts

P-MUD	Planned Mixed-Use Dist.
PDD	Planned Develop. Dist.

Design Districts

WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts

OV	Corridor Ovr.
RDD	Redevelopment District
KO	Krenak Tap Ovr.
NPO	Nbrhd. Prevailing Ovr.
NCO	Nbrhd. Conservation Ovr.
HP	Historic Preservation Ovr.

Retired Districts

R-1B	Single Family Residential
R-4	Multi-Family
R-6	High Density Multi-Family
C-3	Light Commercial
RD	Research and Dev.
M-1	Light Industrial
M-2	Heavy Industrial



0 212.5 425 Feet

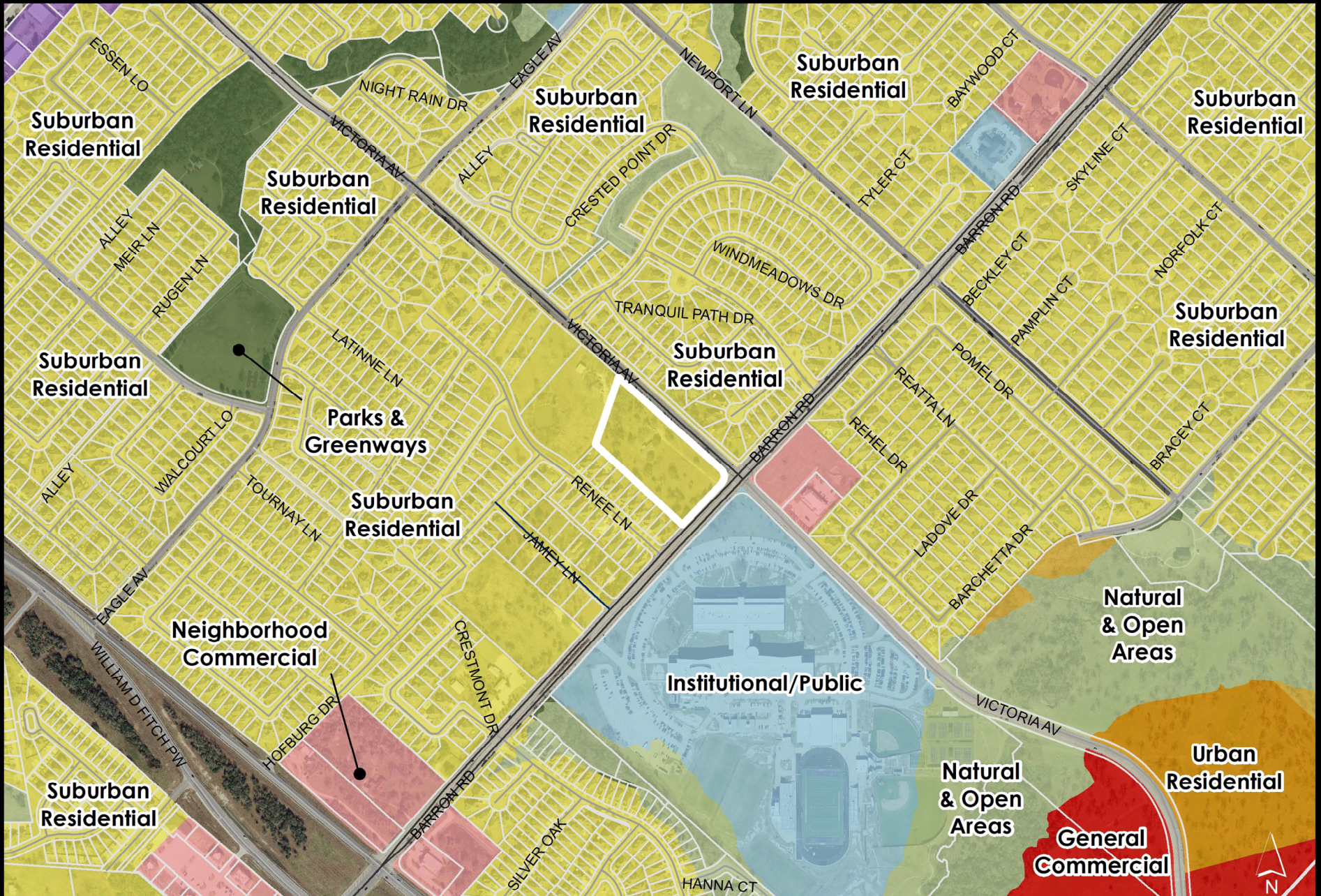
2354 BARRON ROAD PDD

Case:
REZ2022-000003

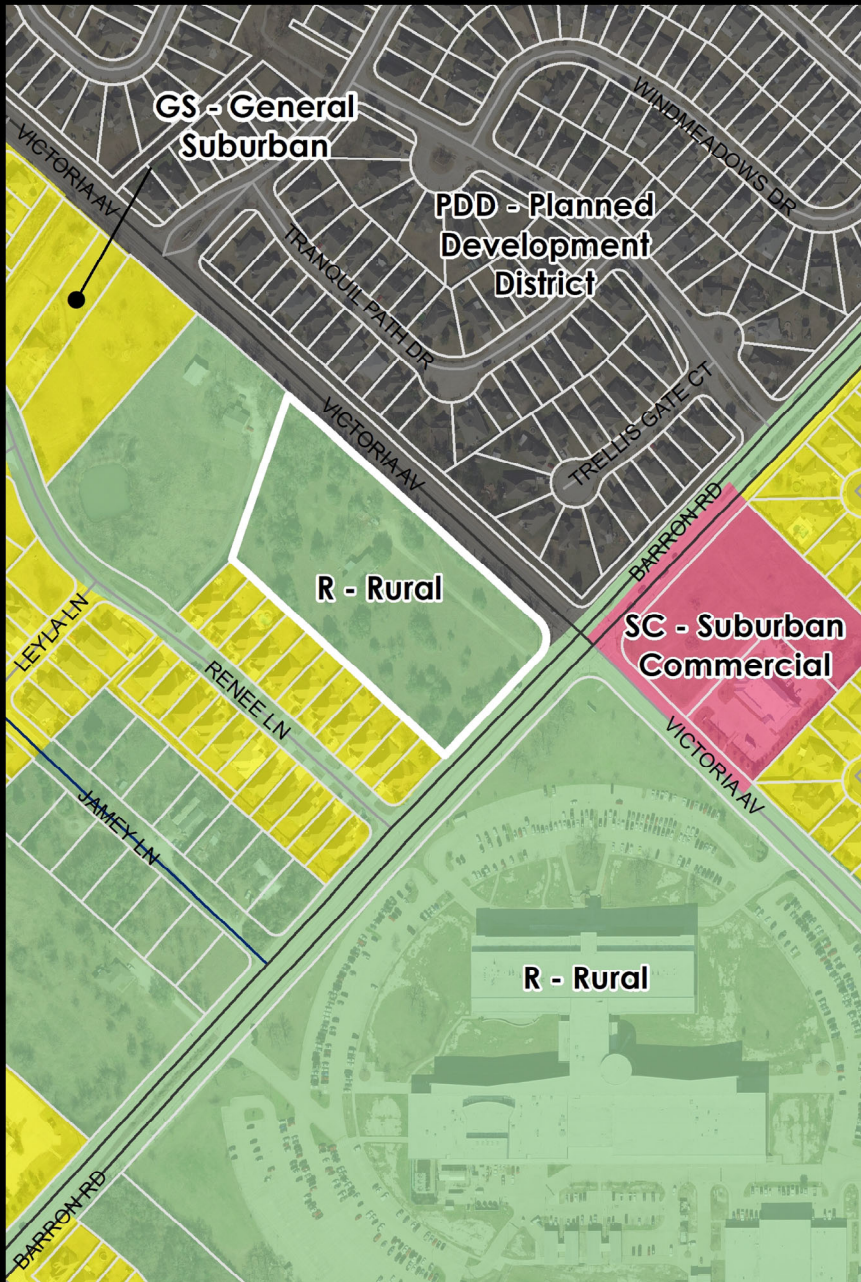
REZONING

EXISTING

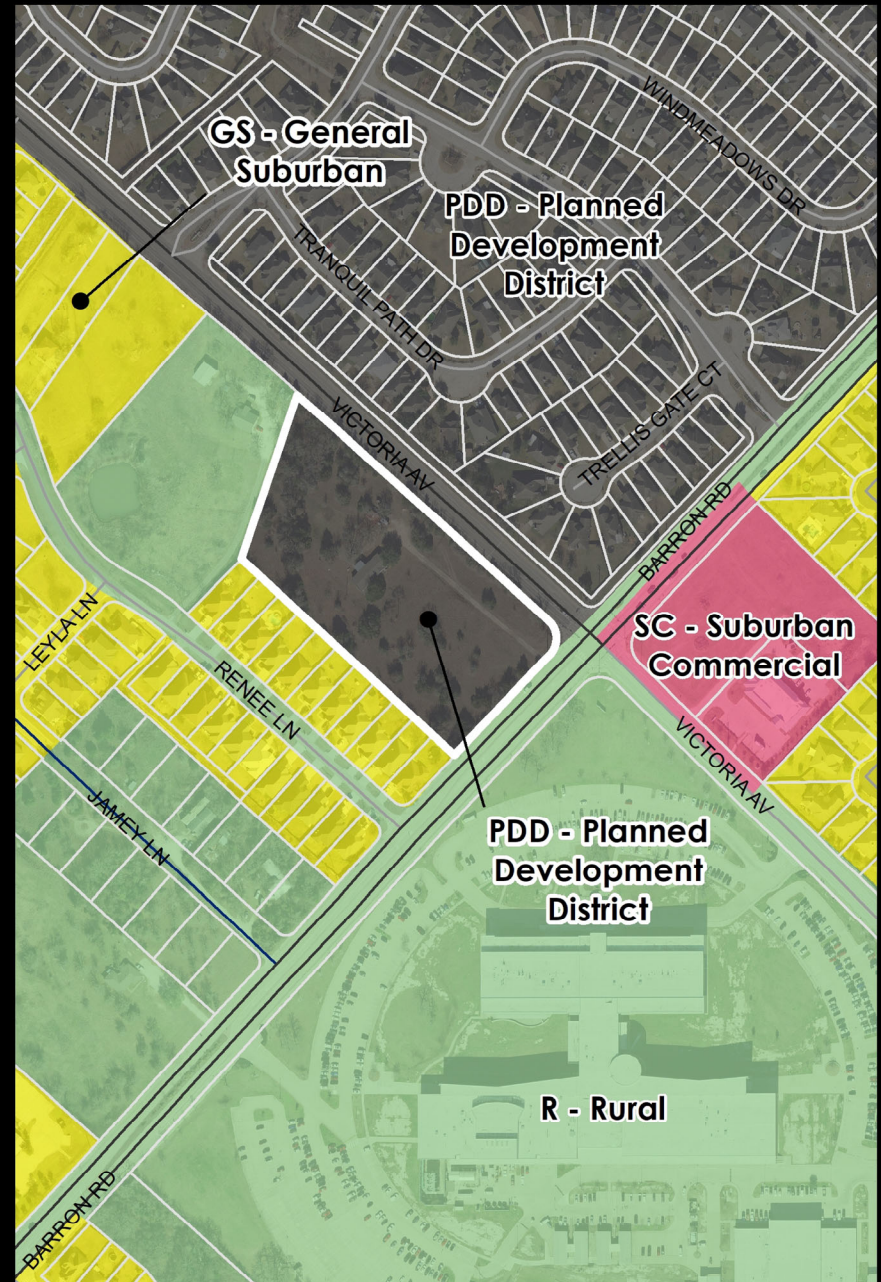
Future Land Use

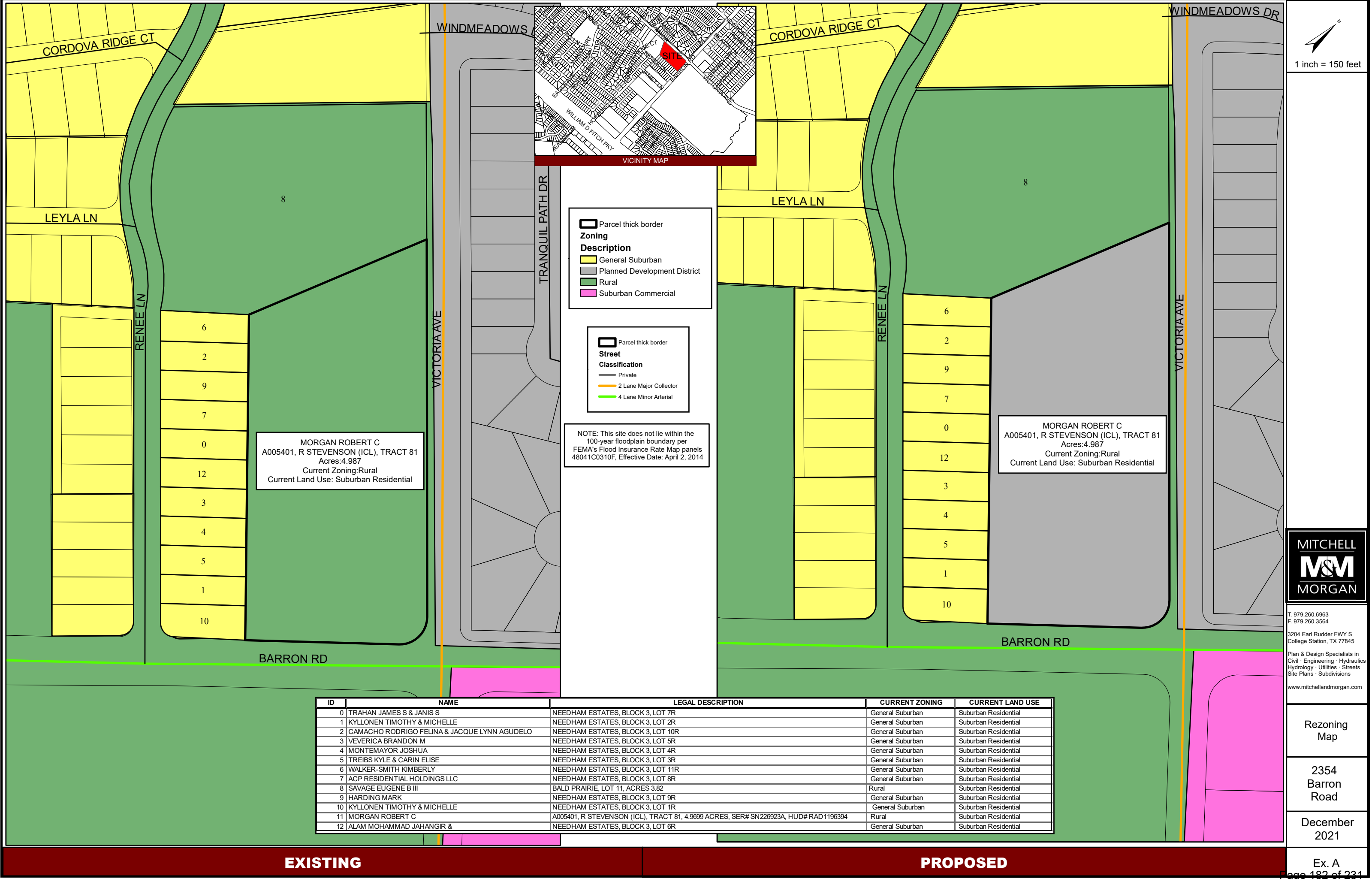


EXISTING Zoning



PROPOSED Zoning





1 inch = 150 feet

Parcel thick border

Zoning

Description

General Suburban

Planned Development District

Rural

Suburban Commercial

Parcel thick border

Street

Classification

Private

2 Lane Major Collector

4 Lane Minor Arterial

NOTE: This site does not lie within the 100-year floodplain boundary per FEMA's Flood Insurance Rate Map panels 48041C0310F, Effective Date: April 2, 2014

MORGAN ROBERT C
A005401, R STEVENSON (ICL), TRACT 81
Acres:4.987
Current Zoning:Rural
Current Land Use: Suburban Residential

MORGAN ROBERT C
A005401, R STEVENSON (ICL), TRACT 81
Acres:4.987
Current Zoning:Rural
Current Land Use: Suburban Residential

ID	NAME	LEGAL DESCRIPTION	CURRENT ZONING	CURRENT LAND USE
0	TRAHAN JAMES S & JANIS S	NEEDHAM ESTATES, BLOCK 3, LOT 7R	General Suburban	Suburban Residential
1	KYLLONEN TIMOTHY & MICHELLE	NEEDHAM ESTATES, BLOCK 3, LOT 2R	General Suburban	Suburban Residential
2	CAMACHO RODRIGO FELINA & JACQUE LYNN AGUDELO	NEEDHAM ESTATES, BLOCK 3, LOT 10R	General Suburban	Suburban Residential
3	VEVERICA BRANDON M	NEEDHAM ESTATES, BLOCK 3, LOT 5R	General Suburban	Suburban Residential
4	MONTEMAYOR JOSHUA	NEEDHAM ESTATES, BLOCK 3, LOT 4R	General Suburban	Suburban Residential
5	TREIBS KYLE & CARIN ELISE	NEEDHAM ESTATES, BLOCK 3, LOT 3R	General Suburban	Suburban Residential
6	WALKER-SMITH KIMBERLY	NEEDHAM ESTATES, BLOCK 3, LOT 11R	General Suburban	Suburban Residential
7	ACP RESIDENTIAL HOLDINGS LLC	NEEDHAM ESTATES, BLOCK 3, LOT 8R	General Suburban	Suburban Residential
8	SAVAGE EUGENE B III	BALD PRAIRIE, LOT 11, ACRES 3.82	Rural	Suburban Residential
9	HARDING MARK	NEEDHAM ESTATES, BLOCK 3, LOT 9R	General Suburban	Suburban Residential
10	KYLLONEN TIMOTHY & MICHELLE	NEEDHAM ESTATES, BLOCK 3, LOT 1R	General Suburban	Suburban Residential
11	MORGAN ROBERT C	A005401, R STEVENSON (ICL), TRACT 81, 4.9699 ACRES, SER# SN226923A, HUD# RAD1196394	Rural	Suburban Residential
12	ALAM MOHAMMAD JAHANGIR &	NEEDHAM ESTATES, BLOCK 3, LOT 6R	General Suburban	Suburban Residential

MITCHELL

MORGAN

T. 979.260.6963
F. 979.260.3564
3204 Earl Rudder Fwy S
College Station, TX 77845
Plan & Design Specialists in
Civil · Engineering · Hydraulics
Hydrology · Utilities · Streets
Site Plans · Subdivisions
www.mitchellandmorgan.com

Rezoning Map

2354 Barron Road

December 2021

Ex. A

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: June 2, 2022
Advertised Council Hearing Date: June 23, 2022

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

Westfield Village
Edelweiss Gartens

Property owner notices mailed: 28

Contacts in support: None at the time of this report
Contacts in opposition: 2 at the time of this report
Inquiry contacts: 2 at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Suburban Residential	R Rural	Mobile/Manufactured Home
South	Institution/Public	R Rural	Public Facilities
East	Suburban Residential	PDD	Single-Family Residential
West	Suburban Residential	GS General Suburban	Single-Family Residential

DEVELOPMENT HISTORY

Annexation:

Zoning: 1995 – R Rural
Final Plat: Unplatted
Site development: Site is undeveloped



REZONING PDD APPLICATION SUPPORTING INFORMATION

Name of Project: 2354 BARRON ROAD PDD

Address: 2354 BARRON RD

Legal Description: A005401, R STEVENSON (ICL), TRACT 81, 4.9699 ACRES

Total Acreage: 4.97

Applicant: MITCHELL & MORGAN

Property Owner: MORGAN ROBERT C

List the changed or changing conditions in the area or in the City which make this zone change necessary.

Residential uses developed around this property and the tract was left without opportunity to integrate into the existing subdivisions surrounding it. With its location at the corner of two thoroughfares and without opportunity to seamlessly integrate into the residential areas, the best use for this tract has evolved into small-scale neighborhood commercial uses.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

We have requested a Land Use Plan Amendment from Suburban Residential to Neighborhood Commercial. Residential uses developed around this property and the tract was left without opportunity to integrate into the existing subdivisions surrounding it. Developing this property for single-family is an inefficient use of land and not using it as the highest and best use at this location. We believe Neighborhood Commercial is more suitable for the tract than Suburban Residential.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

The property is currently zoned R Rural, which was the zoning placed on the property upon annexation. This area of College Station is largely developed for single-family residences and supporting uses. This tract is not suitable for rural and agricultural uses.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Neighborhood commercial uses are intended to serve the residential areas nearby and the ordinances ensure that the size and design of the site as well as the buildings are compatible to the adjacent residences. This property is surrounded by several subdivisions that would benefit from the convenience of the small-scale retail and services in their neighborhood.

Explain the suitability of the property for uses permitted by the current zoning district.

Neighborhood commercial uses are intended to serve the residential areas nearby and the ordinances ensure that the size and design of the site as well as the buildings are compatible to the adjacent residences. This property is surrounded by several subdivisions that would benefit from the convenience of the small-scale retail and services in their neighborhood.

Explain the marketability of the property for uses permitted by the current zoning district.

This is a developed area of College Station where agricultural and rural uses would not be marketable.

List any other reasons to support this zone change.

N/A

Maximum Building Height.

23-42'

Proposed Drainage.

Stormwater will be designed according to BCS Unified Stormwater Design Guidelines and will be collected in an underground stormwater system.

Variations Sought.

Please see the attached letter.

Community Benefits.

Please see the attached letter.

Sustained Stability.

– This development is designed to be compatible with the neighborhood and will contribute to the surrounding area's character and stability. Having a mix of uses that serve and complement the neighborhood will be an asset to the area.

Conformity.

Based on the desires stated in the Comprehensive Plan for infill development, providing neighborhood services and retail uses at this location would implement the goals to promote a walkable, sustainable residential area. This property is located in the heart of a large residential area that could benefit from the convenience of these uses. There is the potential for this center to be a gathering place, and a neighborhood destination. If the Comprehensive Plan Amendment is approved, the rezoning would be in compliance with the Comprehensive Plan.

Compatibility with use.

The concept plan displays required buffer yards that will protect the abutting residential uses from the commercial activities.

Access to Streets.

This development does not include any dwelling units.

Public Improvements.

This development will provide all necessary infrastructure to the site.

Public Health.

The concept plan is respective of development standards for neighborhood commercial sites and will not be a detriment to the community. Rather, the neighborhood retail site will be a valued addition to the surrounding neighborhoods.

Safety.

This development is required to provide a Traffic Impact Analysis and make improvements to the site as directed by the recommendations in the analysis and by the Transportation Planning staff. We intend to make any improvements required for vehicular circulation. Bike lanes and sidewalks are available on Barron Road and Victoria Avenue and will remain. We intend to make sure that all pedestrians can access and travel safely to and from this development.

June 23, 2022
Item No. 8.3.
Parkland Dedication Ordinance Amendment

Sponsor: Michael Ostrowski, Director of Planning and Development

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, "Unified Development Ordinance," Article 8, "Subdivision Design and Improvements," Section 8.8 "Requirements for Park Land Dedication," of the Code of Ordinances of the City of College Station, Texas, in its entirety, including amending the official Park Zones Map and land dedication and fee amounts.

Relationship to Strategic Goals:

- Financial Sustainability
- Core Services & Infrastructure
- Diverse & Growing Economy

Recommendation(s): The Parks and Recreation Board heard this item at their May 10, 2022 meeting and recommended approval. The Planning and Zoning Commission heard this item at their May 19, 2022 meeting and recommended approval. Staff recommends approval. **Please note, as part of the City Council action, the City Council will need to set the Collection Rate.**

Summary: For parkland dedication purposes, developers are required to dedicate either land and/or fee in lieu of land for new residential development (both single-family and multi-family). The intent is that this dedication or fee will offset the demand that the new residents will place on the parks system. In addition to land, developers are also required to either construct or provide a fee for the improvements of the parks facilities. These funds are not to be used for maintenance, but rather new or improved parks facilities. The land and improvements required for each development are to be located within the same park zone where the development is taking place.

Through a couple of City Council work sessions, the City Council has directed staff to make several changes to the parkland dedication requirements within the Unified Development Ordinance (UDO). While there are several changes to the ordinance, they generally fall into the following categories: (1) zones, (2) credits, (3) appeals, and (4) fees.

Zones

With respect to zones, the current ordinance splits park zones into two different categories (community and neighborhood). Within these categories, there are two community park zones and 16 neighborhood park zones. To help provide for a more effective distribution of parkland dedication funds, it has been requested to eliminate the distinction of categories for ordinance purposes, and to reduce the number of parkland dedication zones. The proposed ordinance has been reflected as such. Furthermore, a new map has been created to identify four different zones.

Credits

Direction was also given to provide credit to developers who construct private parks. The thought behind this is that with the construction of private parks in new developments, some of the demand

that is created by the new residences will be offset by the private park. However, those residents will also likely use other parks in the city and therefore, some dedication and/or fees should still be provided. It is recommended that a 25% credit be given for private parks that are constructed to certain standards and approved by the City.

Appeals

It was requested that an appeals section be incorporated into the ordinance. Staff has drafted an appeals section (Section 8.8.D.11), which is similar to the appeals process for impact fees.

Fees

In terms of fees, City Council has directed staff to ensure that (1) there is a standard review of fees, (2) that the cost per acre of land reflects market costs, (3) that the park development fee recognizes passive parks, (4) that Extraterritorial Jurisdiction (ETJ) projects pay the same fee, and (5) that the fees are calculated based on current data. All these changes have been incorporated into the revised ordinance. As it relates to fees, the new ordinance includes a proportionate rate, and the City Council will need to consider what collection rate will be charged. The fee calculations are identified in Section 8.8.K.

The following are the existing fees for parkland dedication:

<u>Land dedication</u>	
Single-family: One acre per number of dwelling units	61
Multi-family: One acre per number of bedrooms	145
<u>Fee in lieu of land dedication</u>	
Single-family per dwelling unit	\$524
Multi-family per bedroom	\$220
<u>Park development fee</u>	
Single-family per dwelling unit	\$737
Multi-family per bedroom	\$467
<u>Total park fees</u>	
Single-family per dwelling unit	\$1,261
Multi-family per bedroom	\$687

In addition to the changes above, staff has made other cleanup changes throughout the ordinance and therefore recommends amending Section 8.8 in its entirety.

Budget & Financial Summary: The financial impact will be dependent on the adopted collection rate.

Attachments:

- 1. Ordinance Amendment - UDO 8.8 Parkland Dedication - Final
- 2. Ordinance Amendment - UDO 8.8 Parkland Dedication - Final with Changes

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A, "UNIFIED DEVELOPMENT ORDINANCE," ARTICLE 8, "SUBDIVISION DESIGN AND IMPROVEMENTS," SECTION 8.8, "REQUIREMENTS FOR PARK LAND DEDICATION," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING THE SECTION IN ITS ENTIRETY; 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 Appendix A, "Unified Development Ordinance," Article 8, "Subdivision Design and Improvements," Section 8.8, "Requirements for Park Land Dedication," 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 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 _____, 2022.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Appendix A, “Unified Development Ordinance,” Article 8, “Subdivision Design and Improvements,” Section 8.8, “Requirements for Park Land Dedication,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

Sec. 8.8. Requirements for Park Land Dedication.

A. Purpose.

It is hereby declared by the College Station City Council that public park, conservation, and greenway areas are valuable assets that advance the public’s health, safety, and welfare. This Section is adopted to provide active and passive recreational areas in the form of park facilities as a function of subdivision and site development in the City of College Station and its Extraterritorial Jurisdiction (ETJ). This Section is enacted in accordance with the home rule powers of the City of College Station granted under the Texas Constitution, and the statutes of the State of Texas, including, but not by way of limitation, Texas Local Government Code Chapter 212 as may be amended from time to time.

This Section recognizes that parkland dedication is a fair, reasonable, and uniform method of financing these assets that does not impose an unfair burden on new or existing development. The intent is to require new development to pay its proportionate costs that are associated with providing new, expanded, and renovated parks, so they are borne by the new residents who are responsible for creating the additional demand. This is done by integrating such requirements into the procedure for planning and developing property or subdivisions in the City and its ETJ, whether such development consists of new construction on vacant land or rebuilding and remodeling of multi-family dwellings that results in an increase in the number of bedrooms on existing residential property.

The intent of these assets is to provide a variety of outdoor recreational opportunities for new residents within reasonable proximity of their homes. The primary cost of purchasing, developing, or improving parks should be borne by the landowners of residential property who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities. To ensure this nexus, park zones have been established by the College Station City Council. They are shown on the Park Zones Map and they shall be *prima facie* proof that any park area located therein is within a convenient distance from any residence located therein.

Parkland dedication is consistent with, and furthers the objectives and policies of, the City’s Comprehensive Plan and the Recreation, Park, & Open Space Master Plan to protect the health, safety, and general welfare of the public. It is coordinated with other city policies, ordinances, and resolutions by which the City seeks to ensure the provision of adequate park facilities in conjunction with the development of land.

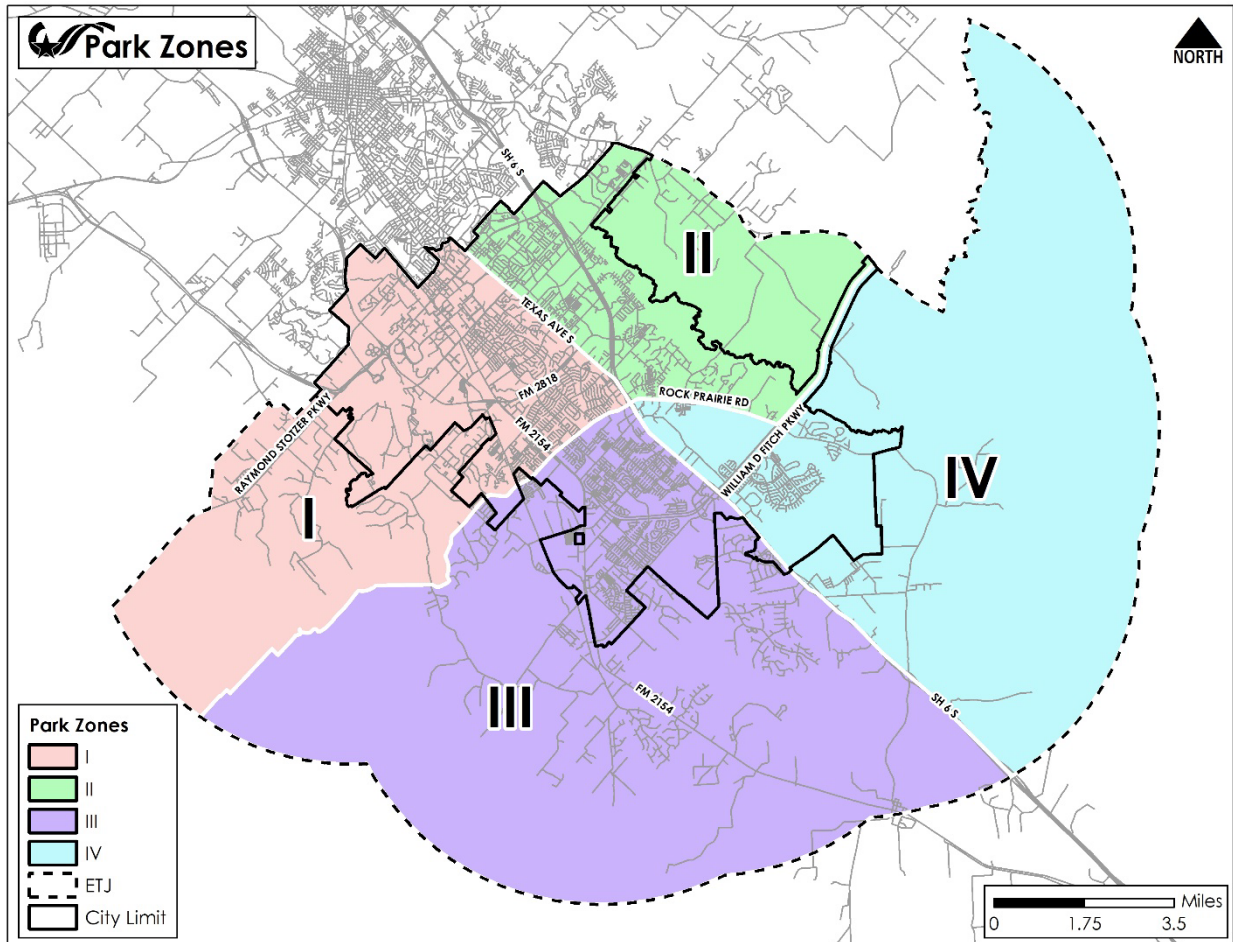
B. Applicability.

This Section applies to a landowner who develops land for residential use located within the City or within its ETJ.

C. Park Zones.

The City is hereby divided into park zones, as shown on the official Park Zones Map, located below, together with all explanatory matter thereon.

Zone boundaries typically follow key topographic features such as major thoroughfares, streams, City limit, and ETJ boundary lines. New park zones may be created or existing zones amended pursuant to procedures for amending the UDO.



D. Requirements.

1. General.

The City Manager or his/her designee shall administer this Section with certain review, recommendation, and approval authorities being assigned to the Planning and Zoning Commission, the Parks and Recreation Advisory Board, and various City departments as specified herein.

Generally, the developer of residential property must address the following requirements pursuant to this Section: dedication of land for park use or payment of a fee in lieu thereof, and payment of a development fee for park improvements necessary to transform the land into a useable park. Requirements herein are based on actual dwelling units or bedrooms for an entire development. Increases or decreases in final unit or

bedroom count may require an adjustment in fees paid or land dedicated. If the actual number of dwelling units or bedrooms exceeds the original estimate, additional park land and additional park development fees may be required in accordance with the requirements in this Section.

The schedule of fees and required land dedications are identified in Section K “Park Land Dedication and Development Fees”. The delineation of park zones is identified in Section C “Park Zones”.

2. Land Dedication.

- a. The amount of land to be dedicated for park purposes shall be as set forth in Section K “Park Land Dedication and Development Fees”.

The total amount of land dedicated for the development shall be dedicated to the City in fee simple:

- 1) Prior to the issuance of any building permits for multi-family development,
- 2) Concurrently with the final plat for each phase of the development, or
- 3) In accordance with the terms of a valid Development Agreement associated with the property.

If land dedication is to occur in future phases of a multiple-phase development, the developer may provide the City with financial security against the current dedication requirements by providing a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit in the amount equal to the number of acres park land required and, in a form acceptable to the City. The amount of the financial guarantee shall be the amount of fee in lieu of land dedication and improvements as set forth in Section K “Park Land Dedication and Development Fees”. The financial guarantee will be released to the developer, without interest, upon the filing of the final plat for the subsequent phase that dedicates the required park land and payment of the fee for the required improvements.

- b. Since residents living in the ETJ are likely to use the City’s park facilities, they should contribute to the cost of providing them. As a result of the difficulty faced by the City in maintaining property outside its corporate limits, the City will generally require a fee in lieu rather than the dedication of land. Alternatively, the dedication requirements of this Section may be met through the creation of private parkland in the same amount required as set forth in Section K “Park Land Dedication and Development Fees” provided the developer enters into a written agreement that all such private parkland be dedicated to the City at the time of full purpose annexation into the City and provided that any plat related to such development is inscribed with a notation regarding same. If the private parkland option is chosen, a provision for private upkeep of the facilities as described in Section H “Credit for Private Park Amenities” shall be made.

3. Fee in Lieu of Land.

In lieu of dedicating land for parks, a developer may request to meet some or all of the land dedication requirements through payment of a fee in lieu thereof in the amounts set

forth in Section K “Park Land Dedication and Development Fees”. Such fees shall be due at the same time as fees are due for final platting or for issuance of a building permit, based on the type of residential development.

4. City Final Approval.

The City shall have the final authority in determining what proportion of land or fee may be accepted in lieu of required land dedication. The City may, from time to time, require that a fee be submitted in lieu of land dedication in amounts as set forth in Section K “Park Land Dedication and Development Fees” for the park land dedication. Likewise, the City may, from time to time, require that land be dedicated in amounts as set forth in Section K and that no fee in lieu of land will be accepted.

5. Approval Process for Park Land Dedication.

a. For land dedication of five (5) acres or more to be accepted by the City, the landowner must:

- 1) Obtain a recommendation from the Parks and Recreation Advisory Board, and
- 2) Obtain approval from the Planning and Zoning Commission pursuant to the Plat Review in Article 3 of this UDO.

The Planning and Zoning Commission shall consider the recommendation from the Parks and Recreation Advisory Board but may make a decision contrary to its recommendation by majority vote.

b. The City of College Station will generally not accept dedications of land for parks that are less than five (5) acres, as maintaining small parks is inefficient and too costly for the City to sustain over the long-term. However, the City Manager or his/her designee is authorized to accept and approve land dedications of less than five (5) acres if the following criteria are met:

- 1) The proposed dedication provides a sufficient amount of park land in the park zone of the proposed development for required park land dedication, or such land provides a valuable link to the greater park system;
- 2) The proposed dedication has especially attractive park features, as determined by the City Manager or his/her designee;
- 3) Where the proposed dedication is insufficient for a park site under existing park design standards, some or all of the dedication requirements may be in the form of a fee in amounts as set forth in Section K “Park Land Dedication and Development Fees”; and
- 5) The proposed development of the park is consistent with College Station's Recreation, Park, & Open Space Master Plan, as may be amended from time to time.

In making his/her decision, the City Manager or his/her designee may choose to submit such application to the Parks and Recreation Advisory Board for its recommendation. In such event, the City Manager or his/her designee shall consider such recommendation but may make a decision contrary in accordance with the criteria set forth herein.

6. Park Development Fee.

In addition to the land dedication requirements for parks, there are also park development fees established herein sufficient to develop parks in ways that meet the City Park Facility and Equipment Standards. The amount of development fees assessed to a developer subject to this Section for parks is as shown in Section K “Park Land Dedication and Development Fees”. The process for the approval and collection of development fees shall be the same as for the park land dedication requirements to which the development relates, and shall be processed simultaneously with the park land dedication requirements.

7. Construction of Park Improvements in Lieu of Development Fee.

A developer may elect to construct park improvements in lieu of paying the associated development fees as set forth herein. In such event:

- a. A park site plan, developed in cooperation with the Parks and Recreation Department staff, must be submitted and approved by the Director of Parks and Recreation Department or his/her designee and the Parks and Recreation Advisory Board upon submission of final plat or upon application for a site plan and/or building permit, whichever is applicable.
- b. Detailed plans and specifications for park improvements hereunder shall be due and processed in accordance with the procedures and requirements pertaining to public improvements for final plats, site plans, and for building permits issuance, whichever is applicable.
- c. All plans and specifications shall meet or exceed the City Park Facility and Equipment Standards in effect at the time of the submission.
- d. If the improvements are constructed on land that has already been dedicated to and/or is owned by the City, then the Developer must post payment and performance bonds equal to park development fees to guarantee the payment to subcontractors and suppliers and to guarantee the developer completes the work in accordance with the approved plans, specifications, ordinances, and other applicable laws.
- e. The construction of all improvements must be completed in accordance with the requirements relating to the construction of public improvements for final plats, site plans, and issuance of building permits, whichever is applicable. This includes the guaranteeing of performance in lieu of completing the park improvements prior to final plat approval. Notwithstanding any other applicable ordinances, park improvements should be completed within two (2) years from the date of the approval.

f. Completion and Acceptance.

Park development will be considered complete and a Certificate of Completion will be issued after the following requirements are met:

- 1) Improvements have been constructed in accordance with the approved plans,

- 2) All park land upon which the improvements have been constructed has been dedicated as required under this Section; and
 - 3) All manufacturers' warranties have been provided for any equipment installed in the park as part of these improvements.
- g. Upon issuance of a Certificate of Completion, the developer warrants the improvements for a period of one (1) year as set forth in the requirements in the City Park Facility and Equipment Standards.
- h. The developer shall be liable for any costs required to complete park development if:
 - 1) Developer fails to complete the improvements in accordance with the approved plans; or
 - 2) Developer fails to complete any warranty work.
8. **Submitting Fee.**

Any fees required to be paid pursuant to this Section shall be remitted:

 - a. Prior to the issuance of any building permits for multi-family development; or
 - b. Upon the submission of each final plat for single-family, duplex, or townhouse development.
9. **Use of Fees.**

Fees may be used only for the acquisition, development, and/or improvement of park facilities to which they relate; fees shall not be used for maintenance purposes. Fees in lieu of land dedication may only be used for purchase, development and/or improvement of parks located within the same zone as the development, or in an adjacent zone in a scenario where the development occurs close to a zone border.
10. **Reimbursement for City Acquired Park Land.**

The City may from time to time acquire land for parks in advance of actual or potential development. If the City does take such action, then it may require subsequent dedications to be in fee in lieu of land only. The fees will serve to reimburse the City for the cost(s) of acquisition.
11. **Appeals.**

The property owner or applicant for new development may appeal the following decisions to the Director of Planning and Development Services, or his or her designee:

 - a. The applicability of the land dedication, fee in lieu, or development fee;
 - b. The amount of the land dedication or fee due;
 - c. The determination of credit for private property amenities; and/or
 - d. The amount of the refund due, if any.

All appeals shall be taken within 30 days of notice of the action from which the appeal is taken.

The burden of proof shall be on the appellant to demonstrate that the amount of the dedication, fee, refund, or credit was not calculated according to the requirements of this ordinance.

The appellant may appeal the decision of the Director of Planning and Development Services to the City Council. A notice of appeal to the Council must be filed by the applicant with the City Secretary within 30 days following the Director's decision. The filing of an appeal shall not stay the collection of the fee due. If the notice of appeal is accompanied by a payment in an amount equal to the fee due as calculated by the City, the plat or building permit application shall be processed.

E. Prior Dedication or Absence of Prior Dedication.

If a dedication requirement arose prior to enactment or amendment of this Section, subsequent development for the subject tract to which the dedication requirements applies may be subject to vesting as set forth in Chapter 245 Texas Local Government Code. Depending on the circumstances, additional dedication may be required for the increase in dwelling units or bedrooms from what was originally proposed.

F. Comprehensive Plan Considerations.

The City's Recreation, Park, & Open Space Master Plan is intended to provide the Parks and Recreation Advisory Board with a guide upon which to base its recommendations. Because of the need to consider specific characteristics in the site selection process and future development, the park locations indicated on the Plan are general. The actual locations, sizes, and number of parks will be determined when development occurs or when sites are acquired by the City, including by donations.

G. Special Fund; Right to Refund.

The City shall account for all fees in lieu of land and all development fees paid under this Section with reference to the individual plat(s) involved. Any fees paid for such purposes must be encumbered or expended by the City within 10 years from the date received by the City for acquisition, development, and/or improvement of a park as required herein. Such funds shall be considered to be spent on a first-in, first-out basis. If the funds are not so encumbered by contract of purchase order or expended, then the owners of the property on the last day of the 10-year period will be entitled to a refund of the unexpended sum upon request. The owners of the property as shown on the current tax roll or proven by other instrument, must request a refund within one year of the expiration of the 10-year period. The request must be made in writing to the Director of Parks and Recreation.

H. Credit for Private Park Amenities.

1. Up to 25% of the total fee in lieu and park development fee required by this Section to be paid by a developer may be eligible for reimbursement if the developer provides private park land and/or amenities on the site. The remaining percentage is retained for deposit in the City's parkland dedication fund for the purpose of defraying the financial burden that new residential units impose on the existing public park system in the City, beyond the immediate development in which the dwelling is located.

2. Private facilities eligible for credit are those outdoor amenities typically found in city public parks, which will substitute for the improvements otherwise funded by a dedication fee to meet the outdoor recreation needs of residents.
3. The amount of credit shall be based on actual out-of-pocket dollar costs that the developer incurred in providing the outdoor recreation amenities:
 - a. The improvements must be constructed in accordance with the City Park Facility and Equipment Standards.
 - b. The developer is required to submit to the City all invoices paid toward the construction of the private amenities.
 - c. In order to receive the credit, the improvement must be inspected and approved by all appropriate City staff.
4. Yards, court areas, setbacks, and other open areas required to be maintained under the City's UDO, and other regulations, shall not be included in the credit computation.
5. Private recreation improvements shall be owned by an incorporated nonprofit homeowners' association comprised of all property owners in the subdivision. The organization should operate under recorded land agreements through which each property unit owner in the subdivision is automatically a member, and each unit is subject to a charge for a proportionate share of expenses for maintaining the facilities.
6. Should the homeowners' association fail to maintain the developer-provided private park facilities in compliance with City standards, each property owner agrees that the City may access the facilities to operate, maintain, and repair them. The costs of such maintenance, operations, and repairs shall be charged to the homeowners' association. Such requirement shall be by recorded covenant, which runs with the land in favor of future owners of the property, and which cannot be defeated or eliminated without the written consent of the City.
7. Use of the private park shall be restricted for park and recreation purposes by recorded covenant, which runs with the land in favor of future owners of the property, and which cannot be defeated or eliminated without the written consent of the City.
8. Facilities must be similar or comparable to what would be required to meet public park standards and recreational needs as set forth in Section I "Park Land Guidelines and Requirements".
9. The design of private park amenities must be reviewed and approved by the City prior to final plat approval.
10. All private park amenities shall be constructed in accordance with Section D (7) "Construction of Park Improvements in Lieu of Development Fee".

I. Park Land Guidelines and Requirements.

Parks should be easy to access and open to public view so as to benefit area development, enhance the visual character of the City, protect public safety, and minimize conflict with adjacent land uses. The following guidelines and requirements shall be used in designing parks and adjacent development.

1. Any land dedicated to the City under this Section must be suitable for park and recreation uses. The dedication shall be free and clear of any and all liens and encumbrances that interfere with its use for park purposes. The City Manager or his/her designee shall determine whether any encumbrances interfere with park use. Minerals may be reserved from the conveyance provided that there is a complete waiver of the surface use by all mineral owners and lessees. A current title report must be provided with the land dedication. The property owner shall pay all taxes or assessments owed on the property up to the date of acceptance of the dedication by the City. A tax certificate from the Brazos County Tax Assessor shall be submitted with the dedication or plat.
2. Consideration will be given to land that is in the floodplain or may be considered "floodable" even though not in a federally regulated floodplain as long as, due to its elevation, it is suitable for park improvements. Sites should not be severely sloping or have unusual topography which would render the land unusable for recreational activities, as set forth in the City Park Facility and Equipment Standards.
3. At the discretion of the City, land in floodplains will be considered on a three (3) for one (1) basis. Three (3) acres of floodplain will be equal to one (1) acre of park land.
4. Where feasible, park sites should be located adjacent to greenways and/or schools in order to encourage shared facilities and joint development of new sites.
5. Unless intended to serve a larger area, park sites should be adjacent to residential areas in a manner that serves the greatest number of users and should be located to minimize users having to cross arterial roadways to access them. Furthermore, park sites should not be encumbered by overhead utility lines or easements which may limit the opportunity for park development.
6. Where appropriate, sites with existing trees or other scenic elements are preferred.
7. Detention/retention areas will not be considered to meet dedication requirements, but may be accepted as a donation in addition to the required dedication. If accepted as part of the park, the detention/retention area design must meet specific parks specifications in the City Park Facility and Equipment Standards.
8. Where park sites are adjacent to greenways, schools, or existing or proposed subdivisions, access ways may be required to facilitate public access to parks.
9. It is desirable that 50% of the perimeter of a park should abut a public street.

J. Warranty Required.

1. All materials and equipment provided to the City shall be new unless otherwise approved in advance by the City Manager or his/her designee and all work shall be of good quality, free from faults and defects, and in conformance with the designs, plans, specifications, and drawings, and recognized industry standards. This warranty, any other warranties express or implied, and any other consumer rights, shall inure to the benefit of the City only and are not made for the benefit of any party other than the City.
2. All work by the developer or landowner not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.
3. This warranty is in addition to any rights or warranties expressed or implied by law.

4. Where more than a one (1) year warranty is specified in the applicable plans, specifications, or submittals for individual products, work, or materials, the longer warranty shall govern.
5. This warranty obligation may be covered by any performance or payment bonds tendered in compliance with this Section.
6. If any of the work performed by the developer or landowner is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Section, the designs, plans, drawings or specifications within one (1) year after the date of the issuance of a Certificate of Final Completion of the work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this ordinance, developer shall promptly correct the defective work at no cost to the City.
7. During the applicable warranty period and after receipt of written notice from the City to begin corrective work, developer shall promptly begin the corrective work. The obligation to correct any defective work shall be enforceable under this Code of Ordinances. The guarantee to correct the defective work shall not constitute the exclusive remedy of the City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.
8. If within twenty (20) calendar days after the City has notified developer of a defect, failure, or abnormality in the work, developer has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by developer.
9. The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by developer, its contractors, or subcontractors or by the surety.
10. The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all work, equipment, and materials that are part of the improvements made under this Section of the ordinance.

K. Park Land Dedication and Development Fees.

Park land dedication and development fees for developments located within the City limits and ETJ are indicated below. The City shall review the fees established and the amount of park land dedication required in this ordinance at least every five (5) years. Failure to review by the City shall not invalidate this ordinance. The amount indicated in the Collection Rate column shall be the amount required for each unit or bedroom proposed.

Total dedication and fee amounts

<i>Land dedication</i>	Proportionate Rate	Collection Rate
Single-family: One acre per number of dwelling units	48	
Multi-family: One acre per number of bedrooms	83	
<i>Fee in lieu of land dedication</i>		
Single-family per dwelling unit	\$1,106	
Multi-family per bedroom	\$396	
<i>Park development fee</i>		
Single-family per dwelling unit	\$4,150	
Multi-family per bedroom	\$1,486	
<i>Total dedication and development fees</i>		
Single-family per dwelling unit	\$5,256	
Multi-family per bedroom	\$1,881	

The following calculations were used to determine the Proportionate Rate for the dedication and fee amounts:

Input Data

Neighborhood park acres	567
Community park acres (ex. Lick Creek and Veterans)	354
Passive park acres	198
Total park acres	1,119
Single-family dwelling units	27,343
Multi-family dwelling units	19,010
Total number of dwelling units	47,796
Persons per household (PPH) - Overall	2.58
PPH - Single-family structures	2.89
PPH - Multi-family structures	2.20
Ratio of MFU/SFU PPH <i>(PPH - multi-family structures / PPH - single-family structures)</i>	0.76
Dwelling units per acres of parks <i>(total number of dwelling units / total park acres)</i>	42.71
Adjustment ratio MFU/SFU <i>((1 - ratio of MFU/SFU PPH)/2)</i>	0.12

Land dedication

Single-family dwelling units per acre of park land <i>(dwelling units per acres of parks (1 + adjustment ratio MFU/SFU))</i>	48
Multi-family-family bedroom units per acre of park land <i>((dwelling units per acres of parks (1 - adjustment ratio MFU/SFU) * PPH - multi-family structures))</i>	83

Fee in lieu of land dedication

Average cost per acre of neighborhood park land	\$50,000
Average cost per acre of community park land	\$44,250
Average cost per acre of passive park land	\$16,250
Fair market value of existing neighborhood park land <i>(average cost per acre of neighborhood park land * neighborhood park acres)</i>	\$28,374,335
Fair market value of existing community park land <i>(average cost per acre of community park land * community park acres)</i>	\$15,655,778
Fair market value of existing passive park land <i>(average cost per acre of passive park land * passive park acres)</i>	\$3,213,481
Total fair market value of existing park land	\$47,243,595

Average fair market value of an acre of land \$42,218
(total fair market value of existing park land / total park acres)

Average fee-in-lieu \$988
(average fair market value of an acre of land / dwelling units per acres of parks)

Fee in-lieu of land per single-family unit \$1,106
*(average fee-in-lieu * (1 + adjustment ratio MFU/SFU))*

Fee in-lieu of land per multi-family bedroom \$396
*((average fee-in-lieu * (1 - adjustment ratio MFU/SFU)) / PPH - multi-family structures)*

Park development fee

Reatta Meadows

Cost (December 2017, adjusted for inflation to March 2022)	\$513,141.76
Acres	3.00
Cost per acre <i>(cost/acres)</i>	\$171,047

Northgate

Cost (April 2019, adjusted for inflation to March 2022)	\$470,270.45
Acres	1.87
Cost per acre <i>(cost/acres)</i>	\$251,482

Average developed park cost per acre

<i>(average park cost/acres)</i>	\$211,264
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Average passive park cost per acre (15% of developed)

<i>((neighborhood parks value + community parks value) / (neighborhood park acres + community park acres))</i>	\$27,974
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Neighborhood parks value

\$97,067,042

Community parks value

\$74,745,953

Passive parks value

\$5,531,890

Total parks value

\$177,344,885

Average development cost per acre

<i>(total parks value / total park acres)</i>	\$158,479
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Average development cost per dwelling unit

<i>(average development cost per acre / dwelling units per acres of parks)</i>	\$3,710
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Development cost per single-family unit

\$4,150

*(development cost per dwelling unit * (1 + adjustment ratio MFU/SFU))*

Development cost per multi-family bedroom

\$1,486

*((development cost per dwelling unit * (1 - adjustment ratio MFU/SFU)) / PPH - multi-family structures)*

Exhibit B

That Appendix A, “Unified Development Ordinance,” Article 8, “Subdivision Design and Improvements,” Section 8.8, “Requirements for Park Land Dedication,” Appendix I of the Code of Ordinances of the City of College Station, Texas, is hereby repealed.

Sec. 8.8. Requirements for Park Land Dedication.

A. Purpose.

It is hereby declared by the College Station City Council that public park, conservation, and greenway areas are valuable assets that advance the public's health, safety, and welfare. This Section is adopted to provide active and passive recreational areas in the form of ~~neighborhood park facilities as well as community~~ park facilities as a function of subdivision and site development in the City of College Station and its ~~Extra-Territorial~~ Extraterritorial Jurisdiction (ETJ). This Section is enacted in accordance with the home rule powers of the City of College Station granted under the Texas Constitution, and the statutes of the State of Texas, including, but not by way of limitation, Texas Local Government Code Chapter 212 as may be amended from time to time.

~~It is hereby declared by the City Council that recreational areas in the form of neighborhood parks and community parks are necessary and in the public welfare, and that the only adequate procedure to provide for neighborhood parks and community parks is~~ This Section recognizes that parkland dedication is a fair, reasonable, and uniform method of financing these assets that does not impose an unfair burden on new or existing development. The intent is to require new development to pay its proportionate costs that are associated with providing new, expanded, and renovated parks, so they are borne by the new residents who are responsible for creating the additional demand. This is done by integrating such requirements into the procedure for planning and developing property or subdivisions in the City and its ETJ, whether such development consists of new construction on vacant land or rebuilding and remodeling of ~~structures~~ multi-family dwellings that results in an increase in the number of bedrooms on existing residential property.

~~Neighborhood parks are those parks providing for~~ The intent of these assets is to provide a variety of outdoor recreational opportunities ~~and located for new residents within convenient distances from a majority of the residences to be served thereby located within park zones established by the City. The park zones established by the College Station Parks and Recreation Department and shown on the official Parks and Recreation map for the City~~ reasonable proximity of College Station shall be prima facie proof that any park located therein is within such a convenient distance from any residence located therein ~~their homes~~. The primary cost of purchasing, developing, or improving ~~neighborhood~~ parks should be borne by the landowners of residential property who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities. ~~Typically, the landowner of a proposed residential development is the developer. To ensure this nexus, park zones have been established by the College Station City Council. They are shown on the Park Zones Map and they shall be~~ prima facie proof that any park area located therein is within a convenient distance from any residence located therein.

~~A typical community park in College Station is designed to serve the needs of residents from several neighborhoods located within one-half to three-mile radius. Community parks provide amenities that should complement neighborhood parks. Together, neighborhood parks and community parks can meet more of the recreational needs of residents.~~

~~Community parks are generally twenty-five (25) to seventy (70) acres in size. However, larger and smaller community parks may be purchased, developed and/or improved to meet specific requirements of a particular area of town.~~

~~Community parks, by their nature, serve both active and passive leisure needs of residents, and use by organizations and individuals from surrounding areas larger than for neighborhood parks. The acquisition, development, and improvement of the "basic" infrastructure and facilities for the usage of these community parks should be based upon the demand from the area residents it is intended to serve.~~

~~Therefore, the following requirements are adopted to affect the purposes stated above.~~

Parkland dedication is consistent with, and furthers the objectives and policies of, the City's Comprehensive Plan and the Recreation, Park, & Open Space Master Plan to protect the health, safety, and general welfare of the public. It is coordinated with other city policies, ordinances, and resolutions by which the City seeks to ensure the provision of adequate park facilities in conjunction with the development of land.

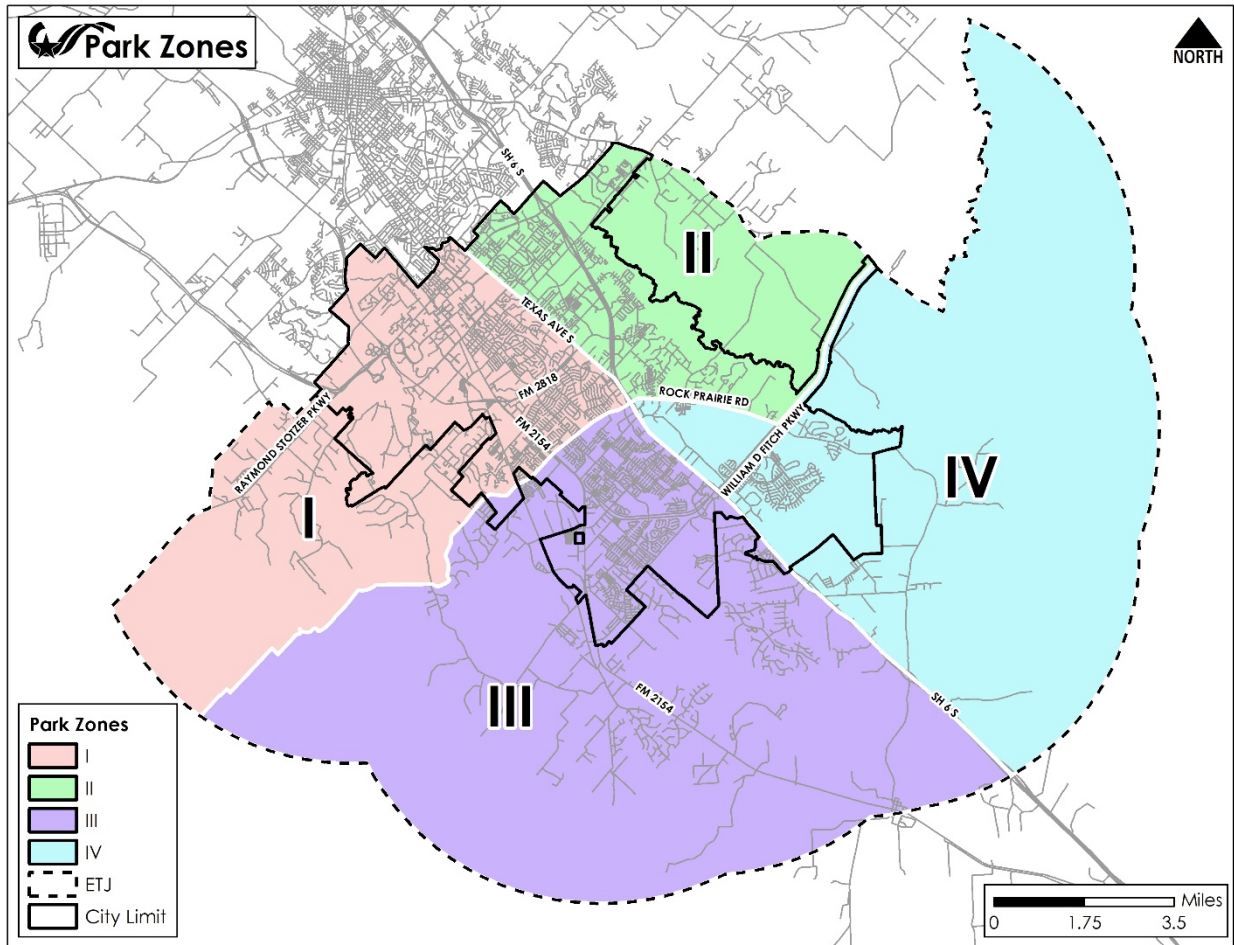
B. Applicability.

This Section applies to a landowner who develops land for residential use located within the City or within its ~~extraterritorial jurisdiction~~ETJ.

C. Park Zones.

The City is hereby divided into park zones, as shown on the official Park Zones Map, located below, together with all explanatory matter thereon.

Zone boundaries typically follow key topographic features such as major thoroughfares, streams, City limit, and ETJ boundary lines. New park zones may be created or existing zones amended pursuant to procedures for amending the UDO.



D. Requirements.

1. General.

The City Manager or his/her designee shall administer this Section with certain review, recommendation, and approval authorities being assigned to the Planning and Zoning Commission, the Parks and Recreation Advisory Board, and various City departments as specified herein.

Generally, the developer of residential property must address the following requirements pursuant to this Section: dedication of land for ~~neighborhood~~ park use or payment of a fee in lieu thereof, ~~dedication of land for community parks or payment of a fee in lieu thereof, payment of a development fee for neighborhood parks or construction of the neighborhood park improvements to which such fee relates,~~ and payment of a development fee for ~~community parks or construction of the community parkspark~~ improvements necessary to which such fee relates transform the land into a useable park. Requirements herein are based on actual dwelling units or bedrooms for an entire development. Increases or decreases in final unit or bedroom count may require an adjustment in fees paid or land dedicated. If the actual number of dwelling units or bedrooms exceeds the original estimate, additional park land and additional park development fees may be required in accordance with the requirements in this Section.

The schedule of fees and required land dedications ~~is attached hereto as Appendix I and incorporated and made a part of this Section for all purposes. The identification of park zones for neighborhood parks is as shown on City's Recreation, Park and Open Space Master Plan referenced herein and incorporated by reference.~~ are identified in Section K "Park Land Dedication and Development Fees". The delineation of park zones is identified in Section C "Park Zones".

2. Land Dedication.

- a. The amount of land to be dedicated for ~~neighborhood park land purposes and for community~~ park purposes shall be as set forth in ~~Appendix I.~~Section K "Park Land Dedication and Development Fees".

The total amount of land dedicated for the development shall be dedicated to the City in fee simple:

- 1) Prior to the issuance of any building permits for multi-family development,
- 2) Concurrently with the final plat for ~~a single~~each phase of the development, or
- ~~3) For a phased development the entire park shall be either platted concurrently with the plat of the first phase of the development or~~
- ~~4) The~~3) In accordance with the terms of a valid Development Agreement associated with the property.

If land dedication is to occur in future phases of a multiple-phase development, the developer may provide the City with financial security against the futurecurrent dedication requirements by providing a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit in the amount equal to the number of acres park land required and, in a form acceptable to the City. The amount of the financial guarantee shall be the amount of fee in lieu of land dedication and improvements as set forth in ~~Appendix I.~~Section K "Park Land Dedication and Development Fees". The financial guarantee will be released to the developer, without interest, upon the filing of the final plat for the subsequent phase that dedicates the required park land, and payment of the fee for the required improvements.

- ~~b. For development located within the extraterritorial jurisdiction of the City.~~
b. Since residents living in the ETJ are likely to use the City's park facilities, they should contribute to the cost of providing them. As a result of the difficulty faced by the City in maintaining property outside its corporate limits, the City will generally require a fee in lieu rather than the dedication of land. Alternatively, the dedication requirements of this Section may be met through the creation of private parkland in the same amount required as set forth in Appendix I.Section K "Park Land Dedication and Development Fees" provided the developer enters into a written agreement that all such private parkland be dedicated to the City at the time of full purpose annexation into the City and provided that any plat related to such development, is inscribed with a notation regarding same. If the private parkland option is chosen, a provision for private upkeep of the facilities as described in Section H "Credit for Private Park Amenities" shall be made.

3. **Fee in Lieu of Land.**

In lieu of dedicating ~~park~~ land for ~~neighborhood parks and for community~~ parks, a developer may request to meet some or all of the ~~neighborhood park land dedication requirements, and some or all of the community park~~ land dedication requirements through payment of a fee in lieu thereof in the amounts set forth in Appendix I, Section K “Park Land Dedication and Development Fees”. Such fees shall be due at the same time as fees are due for final platting or for issuance of a building permit, ~~whichever occurs first~~ based on the type of residential development.

4. **City Final Approval.**

The City shall have the final authority in determining ~~how much, if any, what proportion of~~ land or fee may be accepted in lieu of required land dedication. The City may, from time to time, require that a fee be submitted in lieu of land dedication in amounts as set forth in ~~Appendix I for either, both, some or all of neighborhood park land or community~~ Section K “Park Land Dedication and Development Fees” for the park land dedication. Likewise, the City may, from time to time, require that land be dedicated in amounts as set forth in Appendix I, Section K and that no fee in lieu of land will be accepted.

5. **Approval Process for Park Land Dedication.**

- a. ~~Land Dedications equal or exceeding five (5) acres, and Dedications of Floodplains and Greenways:~~

For ~~any proposed required neighborhood park land dedication equaling or exceeding five (5) acres of land or equaling or exceeding payment of a fee in lieu thereof, for any proposed required community park land dedication equaling or exceeding five (5) acres of land or equaling or exceeding of five (5) acres or more to be accepted by the payment of a fee in lieu thereof, or for any proposed land dedication containing floodplain or greenway~~ City, the landowner must:

- 1) Obtain a recommendation from the Parks and Recreation Advisory Board, and
- 2) Obtain approval from the Planning and Zoning Commission pursuant to the Plat Review ~~Section~~ in Article 3 of this UDO.

The Planning and Zoning Commission shall consider the recommendation from the Parks and Recreation Advisory Board but may make a decision contrary to its recommendation by majority vote.

- b. ~~Dedications~~ The City of College Station will generally not accept dedications of land for parks that are less than five (5) acres ~~not including floodplains or greenways:~~

~~For any proposed neighborhood park land dedication less than five (5) acre of land or the payment of a fee in lieu thereof, for any proposed required community park land dedication less than five (5) acres of land or the payment of a fee in lieu thereof, or, as maintaining small parks is inefficient and too costly for any proposed land dedication containing floodplain or greenway~~ the City to sustain over the long-term. However, the City Manager or his/her designee is authorized to accept and approve same land dedications of less than five (5) acres if the following criteria are met:

- 1) The proposed dedication ~~or fee~~ provides a sufficient amount of ~~neighborhood~~ park land ~~existing~~ in the park zone of the proposed development for required ~~neighborhood~~ park land dedication, or ~~the proposal~~ such land provides a ~~sufficient amount of community park land existing for~~ valuable link to the greater park system;
- 2) The proposed dedication has especially attractive park features, as determined by the proposed development for required community park land dedication requirements, whichever applies; City Manager or his/her designee;
- 23) Where the proposed dedication is insufficient for a ~~neighborhood park site or for a community~~ park site under existing park design standards, some or all of the dedication requirements may be in the form of a fee in amounts as set forth in Appendix I; Section K "Park Land Dedication and Development Fees"; and
- 3) ~~Determination of acceptability of a proposed neighborhood park land dedication and for a proposed community park land dedication is based upon the City of College Station's Recreation, Park and Open Space Master Plan, as may be amended from time to time; and~~
- 45) The proposed development of the ~~neighborhood park or community~~ park is consistent with College Station's Recreation, Park ~~and, &~~ Open Space Master Plan, as may be amended from time to time.

In making his/her decision, the City Manager or his/her designee may choose to submit such application to the Parks and Recreation Advisory Board for its recommendation. In such event, the City Manager or his/her designee shall consider such recommendation but may make a decision contrary in accordance with the criteria set forth herein.

6. **Park Development Fee.**

In addition to the land dedication requirements for ~~neighborhood parks and for community~~ parks, there are also park development fees established herein sufficient to develop ~~neighborhood parks and community~~ parks in ways that meet the City ~~of College Station's Manual of~~ Park Improvements Facility and Equipment Standards. The amount of development fees assessed to a developer subject to this Section for ~~neighborhood and community~~ parks is as shown in Appendix I; Section K "Park Land Dedication and Development Fees". The process for the approval and collection of development fees shall be the same as for the park land dedication requirements to which the development relates, and shall be processed simultaneously with the park land dedication requirements.

7. **Construction of Park Improvements in Lieu of Development Fee.**

A developer may elect to construct ~~required neighborhood park improvements and/or community~~ park improvements in lieu of paying the associated development fees as set forth herein. In such event:

- a. A park site plan, developed in cooperation with the Parks and Recreation Department staff, must be submitted and approved by the Director of Parks and Recreation Department or his/her designee and the Parks and Recreation Advisory

Board upon submission of final plat or upon application for a site plan and/or building permit, whichever is applicable.

- b. Detailed plans and specifications for park improvements hereunder shall be due and processed in accordance with the procedures and requirements pertaining to public improvements for final plats, site plans, and for building permits issuance, whichever is applicable.
- c. All plans and specifications shall meet or exceed the ~~City's Manual of City~~ Park Improvement Facility and Equipment Standards in effect at the time of the submission.
- d. If the improvements are constructed on land that has already been dedicated to and/or is owned by the City, then the Developer must post payment and performance bonds equal to park development fees to guarantee the payment to subcontractors and suppliers and to guarantee the developer completes the work in accordance with the approved plans, specifications, ordinances, and other applicable laws.
- e. The construction of all improvements must be completed in accordance with the requirements relating to the construction of public improvements for final plats, site plans, and issuance of building permits, whichever is applicable. This includes the guaranteeing of performance in lieu of completing the park improvements prior to final plat approval. Notwithstanding any other applicable ordinances, park improvements should be completed within two (2) years from the date of the approval.
- f. **Completion and Acceptance.**

Park development will be considered complete and a Certificate of Completion will be issued after the following requirements are met:

- 1) Improvements have been constructed in accordance with the approved plans,
 - 2) All park land upon which the improvements have been constructed has been dedicated as required under this Section; and
 - 3) All manufacturers' warranties have been provided for any equipment installed in the park as part of these improvements.
- g. Upon issuance of a Certificate of Completion, the developer warrants the improvements for a period of one (1) year as set forth in the requirements in the City ~~of College Station's Manual of Park~~ Improvements Facility and Equipment Standards.
 - h. The developer shall be liable for any costs required to complete park development if:
 - 1) Developer fails to complete the improvements in accordance with the approved plans; or
 - 2) Developer fails to complete any warranty work.

8. **Submitting Fee.**

Any fees required to be paid pursuant to this Section shall be remitted:

- a. Prior to the issuance of any building permits for multi-family development; or
- b. Upon the submission of each final plat for single-family, duplex, or townhouse development.

9. Use of Fees.

Fees may be used only for the acquisition, development, and/or improvement of park facilities to which they relate. ~~For; fees shall not be used for maintenance purposes. Fees in lieu of neighborhood park land dedication, fees may only be used for purchase, development and/or improvement of neighborhood parks located within the same zone as the development. For fees, or in lieu of community park land dedication, fees may only be used for an adjacent zone in a scenario where the purchase, development, and/or improvement of community parks occurs close to a zone border.~~

10. Reimbursement for City Acquired Park Land.

The City may from time to time acquire land for parks in ~~or near an area~~ advance of actual or potential development. If the City does ~~acquire park land in a park zone for a neighborhood park or acquires park land for a community park, the City~~ take such action, then it may require subsequent dedications to be in fee- in lieu- of- land only. ~~This~~ The fees will ~~be serve~~ to reimburse the City for the cost(s) of acquisition.

D11. Appeals.

The property owner or applicant for new development may appeal the following decisions to the Director of Planning and Development Services, or his or her designee:

- a. The applicability of the land dedication, fee in lieu, or development fee;
- b. The amount of the land dedication or fee due;
- c. The determination of credit for private property amenities; and/or
- d. The amount of the refund due, if any.

All appeals shall be taken within 30 days of notice of the action from which the appeal is taken.

The burden of proof shall be on the appellant to demonstrate that the amount of the dedication, fee, refund, or credit was not calculated according to the requirements of this ordinance.

The appellant may appeal the decision of the Director of Planning and Development Services to the City Council. A notice of appeal to the Council must be filed by the applicant with the City Secretary within 30 days following the Director's decision. The filing of an appeal shall not stay the collection of the fee due. If the notice of appeal is accompanied by a payment in an amount equal to the fee due as calculated by the City, the plat or building permit application shall be processed.

E. Prior Dedication or Absence of Prior Dedication.

If a dedication requirement arose prior to enactment or amendment of this Section, subsequent development for the subject tract to which the dedication requirements applies may be subject

to vesting as set forth in Chapter 245 Texas Local Government Code. Depending on the circumstances, additional dedication may be required for the increase in dwelling units or bedrooms from what was originally proposed.

FF. Comprehensive Plan Considerations.

The City's Recreation, Park ~~and, &~~ Open Space Master Plan is intended to provide the Parks and Recreation Advisory Board with a guide upon which to base its recommendations. Because of the need to consider specific characteristics in the site selection process and future development, the park locations indicated on the Plan are general. The actual locations, sizes, and number of parks will be determined when development occurs or when sites are acquired by the City, including by donations.

~~Park zones for neighborhood parks are established by the City's Recreation, Park and Open Space Master Plan as a component of the City's Comprehensive Plan, and indicate service areas for neighborhood parks. Zone boundaries typically follow key topographic features such as major thoroughfares, streams, City limit and ETJ boundary lines. New park zones may be created or existing zones amended pursuant to procedures for amending the City's Recreation, Park and Open Space Master Plan as land acquisitions or other circumstances dictate.~~

FG. Special Fund; Right to Refund.

~~1. All neighborhood park land dedication fees will be deposited in a fund referenced to the park zone to which it relates. Community park land dedication fees will be deposited in a fund referenced to community parks.~~

~~2. The City shall account for all fees in lieu of land and all development fees paid under this Section with reference to the individual plat(s) involved. Any fees paid for such purposes must be encumbered or expended by the City within ~~ten~~(10) years from the date received by the City for acquisition, development, and/or improvement of a ~~neighborhood park or a community~~ park as required herein. Such funds shall be considered to be spent on a first-in, first-out basis. If the funds are not so encumbered by contract or of purchase order or expended, then the landowners owners of the property on the expiration last day of such the 10-year period shall will be refunded entitled to a prorated refund of such the unexpended sum, computed upon request. The owners of the property as shown on a square footage of area basis the current tax roll or proven by the City, other instrument, must request a refund within one year of the expiration of the 10-year period. The request must be made in writing to the Director of Parks and Recreation.~~

H. Credit for Private Park Amenities.

- ~~1. Up to 25% of the total fee in lieu and park development fee required by this Section to be paid by a developer may be eligible for reimbursement if the developer provides private park land and/or amenities on the site. The remaining percentage is retained for deposit in the City's parkland dedication fund for the purpose of defraying the financial burden that new residential units impose on the existing public park system in the City, beyond the immediate development in which the dwelling is located.~~
- ~~2. Private facilities eligible for credit are those outdoor amenities typically found in city public parks, which will substitute for the improvements otherwise funded by a dedication fee to meet the outdoor recreation needs of residents.~~

3. ~~G~~The amount of credit shall be based on actual out-of-pocket dollar costs that the developer incurred in providing the outdoor recreation amenities:
 - a. The improvements must be constructed in accordance with the City Park Facility and Equipment Standards.
 - b. The developer is required to submit to the City all invoices paid toward the construction of the private amenities.
 - c. In order to receive the credit, the improvement must be inspected and approved by all appropriate City staff.
4. Yards, court areas, setbacks, and other open areas required to be maintained under the City's UDO, and other regulations, shall not be included in the credit computation.
5. Private recreation improvements shall be owned by an incorporated nonprofit homeowners' association comprised of all property owners in the subdivision. The organization should operate under recorded land agreements through which each property unit owner in the subdivision is automatically a member, and each unit is subject to a charge for a proportionate share of expenses for maintaining the facilities.
6. Should the homeowners' association fail to maintain the developer-provided private park facilities in compliance with City standards, each property owner agrees that the City may access the facilities to operate, maintain, and repair them. The costs of such maintenance, operations, and repairs shall be charged to the homeowners' association. Such requirement shall be by recorded covenant, which runs with the land in favor of future owners of the property, and which cannot be defeated or eliminated without the written consent of the City.
7. Use of the private park shall be restricted for park and recreation purposes by recorded covenant, which runs with the land in favor of future owners of the property, and which cannot be defeated or eliminated without the written consent of the City.
8. Facilities must be similar or comparable to what would be required to meet public park standards and recreational needs as set forth in Section I "Park Land Guidelines and Requirements".
9. The design of private park amenities must be reviewed and approved by the City prior to final plat approval.
10. All private park amenities shall be constructed in accordance with Section D (7) "Construction of Park Improvements in Lieu of Development Fee".

I. Park Land Guidelines and Requirements.

Parks should be easy to access and open to public view so as to benefit area development, enhance the visual character of the City, protect public safety, and minimize conflict with adjacent land uses. The following guidelines and requirements shall be used in designing parks and adjacent development.

1. Any land dedicated to the City under this Section must be suitable for park and recreation uses. The dedication shall be free and clear of any and all liens and encumbrances that interfere with its use for park purposes. The City Manager or his/her designee shall determine whether any encumbrances interfere with park use. Minerals may be reserved

from the conveyance provided that there is a complete waiver of the surface use by all mineral owners and lessees. A current title report must be provided with the land dedication. The property owner shall pay all taxes or assessments owed on the property up to the date of acceptance of the dedication by the City. A tax certificate from the Brazos County Tax Assessor shall be submitted with the dedication or plat.

2. Consideration will be given to land that is in the floodplain or may be considered "floodable" even though not in a federally regulated floodplain as long as, due to its elevation, it is suitable for park improvements. Sites should not be severely sloping or have unusual topography which would render the land unusable for recreational activities~~-, as set forth in the City Park Facility and Equipment Standards.~~
3. ~~Land~~At the discretion of the City, land in floodplains ~~or designated greenways~~ will be considered on a three (3) for one (1) basis. Three (3) acres of floodplain~~or greenway~~ will be equal to one (1) acre of park land.
4. Where feasible, park sites should be located adjacent to greenways and/or schools in order to encourage shared facilities and joint development of new sites.
- ~~5. Neighborhood~~5. Unless intended to serve a larger area, park sites should be adjacent to residential areas in a manner that serves the greatest number of users and should be located to minimize users having to cross arterial roadways to access them. Furthermore, park sites should not be encumbered by overhead utility lines or easements which may limit the opportunity for park development.
6. Where appropriate, sites with existing trees or other scenic elements are preferred.
7. Detention/retention areas ~~may will~~ not be considered to meet dedication requirements, but may be accepted as a donation in addition to the required dedication. If accepted as part of the park, the detention/retention area design must meet specific parks specifications in the ~~City's Manual of~~City Park Improvements~~Facility and Equipment Standards.~~
8. Where park sites are adjacent to greenways, schools, or existing or proposed subdivisions, access ways may be required to facilitate public access to ~~provide public access to~~ parks.
9. It is desirable that ~~fifty (50) percent~~% of the perimeter of a park should abut a public street.
- ~~10. Community Parks should be accessible for major arterial streets so as to be accessible by large groups of people from large surrounding areas.~~

HJ. Warranty Required.

1. All materials and equipment provided to the City shall be new unless otherwise approved in advance by the City Manager or his/her designee and ~~that~~ all work ~~will~~shall be of good quality, free from faults and defects, and in conformance with the designs, plans, specifications, and drawings, and recognized industry standards. This warranty, any other warranties express or implied, and any other consumer rights, shall inure to the benefit of the City only and are not made for the benefit of any party other than the City.

2. All work by the developer or landowner not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.
3. This warranty is in addition to any rights or warranties expressed or implied by law.
4. Where more than a one (1) year warranty is specified in the applicable plans, specifications, or submittals for individual products, work, or materials, the longer warranty shall govern.
5. This warranty obligation may be covered by any performance or payment bonds tendered in compliance with this ~~Ordinance~~Section.
6. If any of the work performed by the developer or landowner is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this ~~ordinance~~Section, the designs, plans, drawings or specifications within one (1) year after the date of the issuance of a ~~certificate~~Certificate of Final Completion of the work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this ordinance, developer shall promptly correct the defective work at no cost to the City.
7. During the applicable warranty period and after receipt of written notice from the City to begin corrective work, developer shall promptly begin the corrective work. The obligation to correct any defective work shall be enforceable under this Code of Ordinances. The guarantee to correct the defective work shall not constitute the exclusive remedy of the City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.
8. If within twenty (20) calendar days after the City has notified developer of a defect, failure, or abnormality in the work, developer has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by developer.
9. The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by ~~Developer~~developer, its contractors, or subcontractors or by the surety.
10. The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one- ~~(1)~~ year warranty shall cover all work, equipment, and materials that are part of the improvements made under this Section of the ordinance.

~~APPENDIX I.~~

~~PARK LAND DEDICATION AND DEVELOPMENT FEES~~

~~I.—Neighborhood and Community Parks.~~

~~A.—K. Park Land Dedication Requirements and Development Fees.~~

Park land dedication and development fees for ~~Neighborhood Parks~~ developments located within the City limits and ETJ are indicated below. The City shall review the fees established

and the amount of park land dedication required in this ordinance at least every five (5) years. Failure to review by the City shall not invalidate this ordinance. The amount indicated in the Collection Rate column shall be the amount required for each unit or bedroom proposed.

~~1.—Land dedication.~~

~~Single Family: One (1) acre per 117 Dwelling Units (DU)~~

~~Multi Family: One (1) acre per 278 bedrooms (BR)~~

~~2.—Fee in lieu of land dedication.~~

~~Single Family: \$274.00 per Dwelling Unit (DU)~~

~~Multi Family: \$115.00 per Bedroom (BR)~~

Total dedication and fee amounts

<u>Land dedication</u>	<u>Proportionate Rate</u>	<u>Collection Rate</u>
<u>Single-family: One acre per number of dwelling units</u>	<u>48</u>	-
<u>Multi-family: One acre per number of bedrooms</u>	<u>83</u>	-

Fee in lieu of land dedication

<u>Single-family per dwelling unit</u>	<u>\$1,106</u>	-
<u>Multi-family per bedroom</u>	<u>\$396</u>	-

Park development fee

<u>Single-family per dwelling unit</u>	<u>\$4,150</u>	-
<u>Multi-family per bedroom</u>	<u>\$1,486</u>	-

Total dedication and development fees

<u>Single-family per dwelling unit</u>	<u>\$5,256</u>	-
<u>Multi-family per bedroom</u>	<u>\$1,881</u>	-

The following calculations were used to determine the Proportionate Rate for the dedication and fee amounts:

Input Data

<u>Neighborhood park acres</u>	<u>567</u>
<u>Community park acres (ex. Lick Creek and Veterans)</u>	<u>354</u>
<u>Passive park acres</u>	<u>198</u>
<u>Total park acres</u>	<u>1,119</u>

<u>Single-family dwelling units</u>	<u>27,343</u>
<u>Multi-family dwelling units</u>	<u>19,010</u>
<u>Total number of dwelling units</u>	<u>47,796</u>

<u>Persons per household (PPH) - Overall</u>	<u>2.58</u>
<u>PPH - Single-family structures</u>	<u>2.89</u>
<u>PPH - Multi-family structures</u>	<u>2.20</u>

<u>Ratio of MFU/SFU PPH</u>	<u>0.76</u>
<i><u>(PPH - multi-family structures / PPH - single-family structures)</u></i>	

<u>Dwelling units per acres of parks</u>	<u>42.71</u>
<i><u>(total number of dwelling units / total park acres)</u></i>	

<u>Adjustment ratio MFU/SFU</u>	<u>0.12</u>
<i><u>((1 - ratio of MFU/SFU PPH)/2)</u></i>	

Land dedication

<u>Single-family dwelling units per acre of park land</u>	<u>48</u>
<i><u>(dwelling units per acres of parks (1 + adjustment ratio MFU/SFU))</u></i>	-
<u>Multi-family-family bedroom units per acre of park land</u>	<u>83</u>
<i><u>((dwelling units per acres of parks (1 - adjustment ratio MFU/SFU) * PPH - multi-family structures))</u></i>	

Fee in lieu of land dedication

<u>Average cost per acre of neighborhood park land</u>	<u>\$50,000</u>
<u>Average cost per acre of community park land</u>	<u>\$44,250</u>
<u>Average cost per acre of passive park land</u>	<u>\$16,250</u>

<u>Fair market value of existing neighborhood park land</u>	<u>\$28,374,335</u>
<i>(average cost per acre of neighborhood park land * neighborhood park acres)</i>	
<u>Fair market value of existing community park land</u>	<u>\$15,655,778</u>
<i>(average cost per acre of community park land * community park acres)</i>	
<u>Fair market value of existing passive park land</u>	<u>\$3,213,481</u>
<i>(average cost per acre of passive park land * passive park acres)</i>	
<u>Total fair market value of existing park land</u>	<u>\$47,243,595</u>

<u>Average fair market value of an acre of land</u>	<u>\$42,218</u>
<i>(total fair market value of existing park land / total park acres)</i>	

<u>Average fee-in-lieu</u>	<u>\$988</u>
<i>(average fair market value of an acre of land / dwelling units per acres of parks)</i>	

<u>Fee in-lieu of land per single-family unit</u>	<u>\$1,106</u>
<i>-(average fee-in-lieu * (1 + adjustment ratio MFU/SFU))</i>	-
<u>Fee in-lieu of land per multi-family bedroom</u>	<u>\$396</u>
<i>-(average fee-in-lieu * (1 - adjustment ratio MFU/SFU)) / PPH - multi-family structures)</i>	-

Park development fee

Reatta Meadows

<u>Cost (December 2017, adjusted for inflation to March 2022)</u>	<u>\$513,141.76</u>
<u>Acres</u>	<u>3.00</u>
<u>Cost per acre</u> <i>(cost/acres)</i>	<u>\$171,047</u>

Northgate

<u>Cost (April 2019, adjusted for inflation to March 2022)</u>	<u>\$470,270.45</u>
<u>Acres</u>	<u>1.87</u>
<u>Cost per acre</u> <i>(cost/acres)</i>	<u>\$251,482</u>

Average developed park cost per acre

<i>(average park cost/acres)</i>	<u>\$211,264</u>
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Average passive park cost per acre (15% of developed)

<i>((neighborhood parks value + community parks value) / (neighborhood park acres + community park acres))</i>	<u>\$27,974</u>
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Neighborhood parks value

\$97,067,042

Community parks value

\$74,745,953

Passive parks value

\$5,531,890

Total parks value

\$177,344,885

Average development cost per acre

<i>(total parks value / total park acres)</i>	<u>\$158,479</u>
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Average development cost per dwelling unit

<i>(average development cost per acre / dwelling units per acres of parks)</i>	<u>\$3,710</u>
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Development cost per single-family unit

\$4,150

*(development cost per dwelling unit * (1 + adjustment ratio MFU/SFU))*

-

Development cost per multi-family bedroom

\$1,486

*((development cost per dwelling unit * (1 - adjustment ratio MFU/SFU)) / PPH - multi-family structures)*

~~3.~~ **Park development fee.**

Single Family: \$362.00 per Dwelling Unit (DU)

~~Multi-Family: \$152.00 per Bedroom (BR)~~

~~4. Total neighborhood park fees.~~

~~Single-Family: \$636.00 per Dwelling Unit (DU)~~

~~Multi-Family: \$267.00 per Bedroom (BR)~~

~~B. Dedication Requirements for Community Parks.~~

~~1. Land dedication.~~

~~Single-Family: One (1) acre per 128 Dwelling Units (DU)~~

~~Multi-Family: One (1) acre per 305 Bedrooms (BR)~~

~~2. Fee in lieu of land dedication.~~

~~Single-Family: \$250.00 per Dwelling Unit (DU)~~

~~Multi-Family: \$105.00 per Bedroom (BR)~~

~~3. Park development fee.~~

~~Single-Family: \$375.00 per Dwelling Unit (DU)~~

~~Multi-Family: \$315.00 per Bedroom (BR)~~

~~4. Total community park fees.~~

~~Single-Family: \$625.00 per Dwelling Unit (DU)~~

~~Multi-Family: \$420.00 per Bedroom (BR)~~

~~(Ord. No. 2012-3434 , Pt. 1(Exh. A), 8-9-2012; Ord. No. 2012-3449 , Pt. 1(Exh. K), 9-27-2012;
Ord. No. 2015-3728 , Pt. 1(Exh. A), 12-10-2015; Ord. No. 2017-3953 , Pt. 1(Exhs. A-C), 10-
26-2017; Ord. No. 2019-4111 , Pt. 1(Exh. A), 7-25-2019)~~

June 23, 2022
Item No. 8.4.
Standard of Care Ordinance

Sponsor: Steve Wright

Reviewed By CBC: City Council

Agenda Caption:Public Hearing, presentation, discussion, and possible action regarding an ordinance adopting the standards of care for the City's Parks and Recreation Department's elementary age (5-13) Youth Recreational Program in compliance with the exemptions for childcare licensing according to Texas Human Resources Code Section 42.041(b)(14).

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends Council adopt the proposed Standard of Care Ordinance.

Summary: The Department of Human Services and Department of Protective and Regulatory Services passed updated legislation specifically regarding the regulation of certain facilities, homes, and agencies that provide child-care services. According to Section 42.041, the services provided by the Parks and Recreation Department within the City of College Station meet all exemptions to this legislation. However, our compliance must be evidenced through an approved Standard of Care Ordinance. In conjunction with the Legal Department, Parks & Recreation staff has drafted the ordinance for adoption.

Budget & Financial Summary: NA

Attachments:

1. Ch 42 Ordinance

ORDINANCE NO. _____

AN ORDINANCE ADOPTING LOCAL STANDARDS OF CARE FOR THE CITY PARKS AND RECREATION DEPARTMENT'S ELEMENTARY AGE (5 - 13) YOUTH RECREATION PROGRAMS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION:

PART 1. AUTHORITY.

The Council adopts these local standards of care for the Parks and Recreation Department children's Recreational Programs under Texas Human Resources Code Section 42.041(b)(14) (Required License and Accreditation) and its home rule authority.

PART 2. DEFINITIONS.

In this ordinance:

- (1) RECREATION ASSISTANT means a person responsible for the direct care or administration, clerical support, food preparation, or Facility maintenance.
- (2) DEPARTMENT means the Parks and Recreation Department.
- (3) DIRECTOR means the director of the Parks and Recreation Department.
- (4) DESIGNEE means a person appointed by the Director to act on the Director's behalf.
- (5) FACILITY means a building or improvement operated or used by the Department in conducting a Recreational Program.
- (6) PARTICIPANT means a child age five to 13 years old who is enrolled in a Recreational Program and is under the supervision of Department staff.
- (7) RECREATIONAL PROGRAM OR PROGRAM means a fee-based children's program or activity offered and supervised by the Department that requires a Participant to enroll or register to participate.
- (8) STAFF means a person who is employed by the Department to work in a Recreational Program.
- (9) VOLUNTEER means a person assisting without remuneration in the care or supervision of Participants.

PART 3. PROGRAM ADMINISTRATION.

- (A) The Department shall operate Recreational Programs in compliance with this Ordinance and the Department's rules adopted under this Ordinance.
- (B) The Director, or Designee, shall administer the programs.

PART 4. PROGRAM RULES; MONITORING.

- (A) The Director shall adopt rules relating to the operation of the programs. A rule adopted under this Ordinance may be more restrictive than the minimum standards adopted by this Ordinance.
- (B) The Director shall monitor the programs to ensure compliance with the standards adopted in this Ordinance and the rules.

PART 5. REQUIRED SUPERVISION FOR NON-AQUATIC RECREATIONAL PROGRAMS.

- (A) Except as provided in Subsection (B), the Department shall provide Recreation Assistants during a Recreational Program at a minimum as follows:
 - (1) one Recreation Assistant for each 12 Participants between the ages of five and nine years old; and
 - (2) one Recreation Assistant for each 15 Participants between the ages of ten and 13 years old.
- (B) The Department shall provide activity leaders during a Recreational Program designed for Participants with a disability at a minimum as follows:
 - (1) one Recreation Assistant for each four Participants between the ages of five and 12; and
 - (2) one Recreation Assistant for each eight Participants between the ages of 12 and 13 years old.

PART 7. REQUIREMENTS FOR ACTIVITY LEADERS.

- (A) The Department shall provide a minimum of one Recreation Assistant for each class or group enrolled in a Recreational Program.
- (B) A Recreation Assistant must be at least 16 years old.
- (C) A Recreation Assistant must retain the following certification from a nationally recognized organization approved by the Director:
 - (1) cardiopulmonary resuscitation for adults, children and infants;
 - (2) use of an automated external defibrillator; and
 - (3) first aid.

PART 8. STAFF AND VOLUNTEER TRAINING REQUIREMENTS.

- (A) The Director shall establish training requirements for all Staff and Volunteers who provide direct care or supervision to Participants.

- (B) At least one Staff member at each Facility must have current training in first aid, automated external defibrillator, and cardiopulmonary resuscitation for adults, children and infants from a nationally recognized program that has been approved by the Director.

PART 9. PERSONNEL RESTRICTION.

- (A) A person may not be employed or serve as a Volunteer in a Recreational Program if:
 - (1) the person would be permanently barred from being present at a child care operation while children are in care under the Texas Administrative Code Title 40, Part 19, Chapter 745 (Licensing); or
 - (2) the Director determines that, based on the criminal history and other relevant and credible information, the person poses a risk to the safety or health of Participants.
- (B) The Director may obtain a criminal history record of any employee or Volunteer working or applying to work in a Recreational Program.

PART 10. FACILITY OPERATION; PHYSICAL ENVIRONMENT.

- (A) The Department may not operate a Recreational Program at a Facility unless the Facility meets the following requirements:
 - (1) The Facility and equipment used in the Program do not present fire, health, or safety hazards and are kept free of refuse and debris;
 - (2) The Facility is inspected annually for safety by the Department;
 - (3) The Facility is kept free of insects, rodents, and stray animals;
 - (4) The Facility has clearly marked emergency exits;
 - (5) The Facility has a disaster and evacuation procedure posted in a visible location;
 - (6) The Facility is used and maintained in accordance with the fire prevention requirements of Chapter 25-12 (Technical Codes) and the directives of the fire chief, including not fewer than four fire drills each year;
 - (7) First aid and infection control kit are kept at the Facility, including sufficient additional kits to be taken to other locations at which Participants engage in a Program activity;
 - (8) First aid guidelines are on file and visibly posted at the facility, including: (a) cardio pulmonary resuscitation and rescue breathing sequence guidelines; (b) first aid review; and (c) emergency action plans; and

- (9) The Facility has a sufficient number of restrooms that are equipped for independent use by children and that are designed to permit Staff supervision if necessary.
- (B) The Department shall maintain a campground or primitive Facility used for a Recreation Program in compliance with the requirements of Subsection (A) to the extent possible.
- (C) The Department shall maintain equipment used in the programs in good condition. Department Staff shall remove a defective tool, machinery, appliance, or other equipment and report the defective item to a supervisor. Unauthorized Staff may not repair defective equipment.

PART 11. PHYSICAL HEALTH STANDARDS.

- (A) A Staff member shall supervise a Participant who is ill or injured until a parent or other authorized adult removes the Participant from the Facility.
- (B) Staff shall keep a Participant whose illness or medical condition would compromise the health or safety of the others separate from the others until the child is removed from the Facility.
- (C) Staff shall call a Participant's parent or guardian if Participant has an oral temperature of 100.4 degrees Fahrenheit or greater, accompanied by behavior changes or other signs or symptoms of illness.
- (D) Staff may not admit or readmit a Participant whose illness or medical condition prevents the Participant from comfortably participating in Program activities or places other Participants at risk to the Facility for the duration of the illness or condition
- (E) In the case of an acute illness or injury to a Participant, Staff shall call for an emergency vehicle to transport the Participant to an authorized medical facility.

PART 12. MEDICATION STANDARDS.

- (A) A Staff member may not administer medication to a Participant without a parental medication authorization. Staff may not administer medication that is not in its original container or past the expiration date on the container.
- (B) A Staff member may not administer an injection or an amount of medication that is inconsistent with the prescribed dosage. A Staff member may administer an epinephrine auto-injector device if the Staff member has completed training approved by the Department.
- (C) A Staff member may not accept more than a daily supply of medication for a Participant and the member shall return the unused medication to the parent on at the end of the day

(D) Staff must keep medication in a locked and secured location that is not accessible by Participants.

(E) A Staff member shall maintain a medication log that includes the name of the child to whom the medication is administered, the time the medication is dispensed, and the name of the person dispensing the medication.

PART 13. DISTRIBUTION OF STANDARDS.

(A) The Department shall post and make available copies of the standards adopted in this Ordinance or by rules adopted under this Ordinance.

(B) The Department shall inform parents or guardians of each Participant that the Recreational Programs are not licensed by the state. The programs may not be advertised as child-care facilities.

PART 14. ENFORCEMENT.

The Director or Designee shall monitor and enforce this Ordinance and the standards herein as required by law.

PASSED ADOPTED, AND APPROVED this _____ day of _____, 2022.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:

City Attorney

June 23, 2022

Item No. 11.1.

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