



College Station, TX

Meeting Agenda City Council

1101 Texas Ave, College Station, TX 77840

*Internet: www.microsoft.com/microsoft-teams/join-a-meeting

Meeting ID: 223 427 023 174 | Passcode: MvPmTr

Phone: 469-480-7460 | Phone Conference: 952 310 468#

July 27, 2023

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 Agenda.

Executive Session is closed to the public and will be held in the 1938 Executive Conference Room. The City Council may according to the Texas Open Meetings Act adjourn the Open Meeting during the Consent, Workshop or Regular Agendas and return into Executive Session to seek legal advice from the City Attorney regarding any item on the Workshop, Consent or Regular Agendas under Chapter 551, Texas Government Code.

2.1. 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:

- 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. Shana Elliott and Lawrence Kalke v. City of College Station, et al., Cause No. 22-001122-CV-85, in the 85th District Court, Brazos County, Texas.
- d. City of College Station v. 47 Oaks, LLC, Cause No. 626-CC, in the County Court at Law No. 2 of Brazos County, Texas.
- e. SOAH Docket No. 473-22-2464 and PUC Docket No. 52728 – Application of the City of College Station to Change Rates for Wholesale Transmission Services.
- f. Legal advice regarding the acquisition of property between Harvey Road, Holleman Drive and Highway 6 for utility relocations required by the Texas Department of Transportation Highway 6 Widening project.

2.2. 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. Council Self-Evaluation

2.3. Competitive Matters {Gov't Code Section 551.086};

Possible action. The City Council may deliberate, vote, or take final action on a competitive matter as that term is defined in Gov't Code Section 552.133 in closed session. The following is a general representation of the subject matter to be considered:

a. Power Supply

3. The Open Meeting will Reconvene No Earlier than 6:00 PM from Executive Session and City Council will take action, if any.

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

Speaker Protocol

An individual who desires to address the City Council regarding any agenda item other than those items posted for Executive Session must register with the City Secretary two (2) hours before 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 using a translator may speak for six (6) minutes. The speaker's microphone will mute when the allotted time expires and the speaker must leave the podium.

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. 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.

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

- July 11, 2023 Special Meeting
- July 13, 2023 Council Meeting

Sponsors: Tanya Smith

- Attachments:
1. SPM071123 DRAFT Minutes
 2. CCM071323 DRAFT Minutes

6.2. Presentation, discussion, and possible action on a contract with McCord Engineering for electric engineering and design services for the new CSU Northwest Substation, not to exceed \$1,090,000.

Sponsors: Timothy Crabb

Attachments: 1. Contract is available for review in the City Secretary's Office

- 6.3. Presentation, discussion, and possible action regarding a resolution to approve an Advance Funding Agreement for \$260,000 with the State of Texas, acting through the Texas Department of Transportation for constructing a traffic signal at FM 60 (University Drive) and Veterans Parkway.

Sponsors: Emily Fisher

Attachments: 1. Resolution FM 60 Veterans Pkwy AFA
2. AFA - FM 60 at Veteran's Parkway

- 6.4. Presentation, discussion, and possible action on a construction contract with Elliott Construction, LLC, not to exceed \$6,950,133 for Phase 3 of the Bee Creek Sanitary Sewer Trunk Line, plus \$250,000 in contingency for a total appropriation of \$7,200,133. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

Sponsors: Jennifer Cain

Attachments: 1. Bee Creek Trunkline Phase 3 Construction Contract
2. Bee Creek Trunkline Phase 3 Location Map

- 6.5. Presentation, discussion, and possible action on a construction contract with Teal Services, LLC., not to exceed \$3,075,545 plus the City's contingency amount of \$320,000 for a total appropriation of \$3,395,545 for the Carter's Creek Wastewater Treatment Plant (CCWWTP) Blower Building No. 2 and No. 3 Project. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

Sponsors: Jennifer Cain

Attachments: 1. CCWWTP Project Location Map
2. CCWWTP Blower Buildings 2 and 3 Vendor Signed Contract

- 6.6. Presentation, discussion, and possible action on renewing a 2013 Interlocal Agreement (ILA) for sewer use and pretreatment in the College Station city limits and in the City of Bryan's Certificate of Convenience and Necessity (CCN) certificated area.

Sponsors: Gary Mechler

Attachments: 1. Sewer Use and Pretreatment ILA Review & Renewal 7-2023
2. Sewer Use and Pretreatment ILA 12-2013

7. Workshop Agenda.

- 7.1. Presentation, discussion, and possible action regarding truck and trailer parking.

Sponsors: Emily Fisher

Attachments: None

8. Regular Agenda.

- 8.1. Presentation, discussion, and possible action regarding the Fiscal Year 2024 BVSWMMA, Inc. budget.

Sponsors: Pete Caler

Attachments: 1. FY24 BVSWMMA Budget

- 8.2. Public Hearing, presentation, discussion, and possible action on the City of College Station FY2023-2024 Proposed Budget.

Sponsors: Mary Ellen Leonard

Attachments: None

- 8.3. Public Hearing, presentation, discussion, and possible action regarding a resolution to approve a substantial amendment to the Program Year 2022 Annual Action Plan to add Rental Housing Construction as a Goal and Project and reprogram Community Development Block Grant funding in the amount of \$170,000 and HOME Investment Partnership Program funding in the amount of \$189,623.

Sponsors: Raney Whitwell

Attachments: 1. Resolution- 2022 Action Plan Substantial Amendment
2. Substantial Amendment to the 2022 Annual Action Plan

- 8.4. Presentation, discussion, and possible action regarding a Community Development Block Grant funding agreement with Elder Aid, Inc. in the amount of \$170,000 for the acquisition of 700 Pasler and presentation, discussion, and possible action regarding a HOME Investment Partnership Program funding agreement with Elder Aid, Inc. in the amount of \$189,650 for the construction of a single-family house on the lot at 700 Pasler.

Sponsors: Virgil Eric Barton

Attachments: 1. 700 Pasler Funding Agreement - CDBG
2. 700 Pasler Funding Agreement - HOME
3. Location Map - 700 Pasler

- 8.5. Public Hearing, presentation, discussion, and possible action(s) 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 as follows:

Area #1

- a. Changing the zoning district boundary from R-4 Multi-Family to MH Middle Housing for approximately 0.28 of an acre being Block 1, Lot 11 of the Cooner Addition, generally located at 207 Cooner Street.
- b. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.21 of an acre being Block 5, Lot 2 of the Cooner Addition, generally located at 502 Cooner Street.
- c. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.66 of an acre being Block 5, Lots 6 - 8 of the Cooner Addition, generally located at 510-514 Cooner Street.
- d. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.27 of an acre being Block 1, Lot 28 of the Cooner Addition, generally located at 511 Cooner Street.

Area #2

- e. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.17 of an acre being Block E, Lot 6 (10' of) & 7 of the College Vista Subdivision, generally located at 400 Live Oak Street.

Area #3

- f. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 5.41 acres being Lots 1-18 of the Little-Knight Addition, generally located at 400-513 Aurora Court.

Area #4

- g. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.18 of an acre being Block 1, Lot 3 and 10' of Lot 2 of the West Park Addition, generally located at 302 Park Place.
- h. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.36 of an acre being Block 1, Lot 1-R2 of the West Park Addition and Block D, Lot 1B & 35' of 2 of the WM Sparks Subdivision, generally located at 306 – 308 Park Place.
- i. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.35 of an acre being Block 2, Lots 8-R and 9-R of the West Park Addition, generally located at 611 – 613 Highlands Street.
- j. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.17 of an acre being Block 3, Lot 17 of the West Park Addition, generally located at 607 Maryem Street.
- k. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.16 of an acre being Block 1, Lot 2-R1 of the West Park Addition, generally located at 301 Luther Street.

Sponsors: Matthew Ellis , Robin Macias, Gabriel Schrum

Attachments:

- 1. Ordinance
- 2. Area #1 Supporting Materials
- 3. Area #2 Supporting Materials
- 4. Area #3 Supporting Materials
- 5. Area #4 Supporting Materials

- 8.6. 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 boundary from GS General Suburban to MH Middle Housing for approximately 1.05 acres being Lots 5-1 to 5-5 of the D.A. Smith Subdivision and generally located along Avenue A.

Sponsors: Matthew Ellis

Attachments:

- 1. Ordinance
- 2. Vicinity, Aerial, and Small Area Map
- 3. Rezoning Exhibit
- 4. Background Information
- 5. Applicant's Supporting Information
- 6. Rezoning Map
- 7. Existing Future Land Use
- 8. Ordinance

- 8.7. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Chapter 107, “Impact Fees,” Article II, “System-Wide Impact Fees,” Sections 107-71 “System-Wide Impact Fees For Water Services,” 107-72 “System-Wide Impact Fees For Wastewater Services,” and 107-73 “System-Wide Roadway Impact Fees” of the Code of Ordinances of the City of College Station, Texas, by amending certain sections relating to water, wastewater, and roadway impact fee collection rates.

Sponsors: Carol Cotter

- Attachments:
1. Impact Fee Ord 7-21-23
 2. Impact Fee Supporting Information
 3. Roadway Impact Fee Service Area Map
 4. Benchmark Comparisons

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.

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 July 21, 2023 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."

July 27, 2023
Item No. 6.1.
Minutes

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

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

- July 11, 2023 Special Meeting
- July 13, 2023 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. SPM071123 DRAFT Minutes
2. CCM071323 DRAFT Minutes

MINUTES OF THE CITY COUNCIL SPECIAL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
JULY 11, 2023

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

John P. Nichols, Mayor - absent

Council:

Mark Smith
William Wright
Linda Harvell
Elizabeth Cunha
Bob Yancy
Dennis Maloney

City Staff:

Bryan Woods, City Manager
Jeff Capps, Deputy City Manager
Adam Falco, City Attorney
Leslie Whitten, Deputy City Attorney
Tanya Smith, City Secretary
Ian Whittenton, Deputy City Secretary

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

With a quorum present, the Special Meeting of the College Station City Council was called to order by Mayor ProTem Maloney via In-Person and Teleconference at 4:00 p.m. on Tuesday, July 11, 2023, in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

2. SPECIAL ITEMS

2.1. Presentation, discussion, and possible action on the FY 2023-2024 Proposed Budget.

Mary Ellen Leonard, Director of Finance, presented the proposed FY 2023-2024 budget and noted that budget workshop meetings are scheduled for July 17th, 18th, and 19th to review the proposed budget of \$492,013,771. In this amount, \$357,068,355 is included for the operations and maintenance budget, and \$134,945,416 is included for the capital budget. Compared to FY23, the operating and maintenance budget increased approximately 10% while the capital budget increased 54%. A public hearing is to be scheduled for July 27th, adoption of the budget scheduled for August 24th, and according to the charter, final action on the proposed budget must take place on or before September 27th.

FUND TYPE	AMOUNT
GOVERNMENTAL FUNDS	\$ 146,837,897
ENTERPRISE FUNDS	186,847,052
SPECIAL REVENUE FUNDS	23,383,406
SUBTOTAL OPERATIONS & MAINTENANCE (O&M)	\$ 357,068,355
CASH FOR CAPITAL PROJECTS	9,500,000
CAPITAL PROJECTS	125,445,416
SUBTOTAL CAPITAL PROJECTS	\$ 134,945,416
TOTAL NET BUDGET	\$ 492,013,771

At approximately 4:35 p.m., Mayor ProTem Maloney opened for Citizen Comments.

Lloyd Davis, College Station, came before Council to discuss his concerns on impact fees related to the costs and expenses of development and what he sees as lost opportunity to recapture those cost through the impact fees.

There being no further comments, the Citizen Comments was closed at 4:38 p.m.

5.2. Presentation, discussion, and possible action on calling a public hearing on the City of College Station FY 2023-2024 Proposed Budget for Thursday July 27, 2023 at 6:00 PM in the City Hall Council Chambers.

Mary Ellen Leonard, Director of Finance, informed the Council that state law dictates that a notice of the public hearing on the budget must be made no less than 10 days prior to the meeting for the public hearing. After the public hearing, the Council may insert or delete items or may increase or decrease items so long as the total of any increases or insertions do not increase the total budget by 3% or more.

Staff recommends the City Council call a public hearing on the City of College Station FY 2023-2024 Proposed Budget for Thursday, July 27, 2023 at 6:00 PM in the City Hall Council Chambers.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, to set a Public Hearing on the proposed FY24 budget for the City of College Station at a regular council meeting on Thursday July 27th, 2023, at 6:00 pm in the City Council Chambers. The motion carried unanimously.

6. Adjournment.

There being no further business, Mayor ProTem Maloney adjourned the Special Meeting of the City Council at 4:41 p.m. on Tuesday, July 11, 2023.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
JULY 13, 2023

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

John Nichols, Mayor - absent

Council:

Mark Smith
William Wright
Linda Harvell
Elizabeth Cunha
Bob Yancy
Dennis Maloney

City Staff:

Bryan Woods, City Manager
Jeff Capps, Deputy City Manager
Adam Falco, City Attorney
Leslie Whitten, Deputy City Attorney
Tanya Smith, City Secretary
Ian Whittenton, Deputy City Secretary

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

With a quorum present, the meeting of the College Station City Council was called to order by Mayor Pro Tem Maloney via In-Person and Teleconference at 4:00 p.m. on July 13, 2023, in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

2. Executive Session Agenda.

In accordance with the Texas Government Code §551.071-Consultation with Attorney, and §551.074-Personnel, the College Station City Council convened into Executive Session at 4:01 p.m. on July 13, 2023, to continue discussing matters pertaining to:

2.1. 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
- Shana Elliott and Lawrence Kalke v. City of College Station, et al., Cause No. 22-001122-CV-85, in the 85th District Court, Brazos County, Texas; and

- SOAH Docket No. 473-22-2464 and PUC Docket No. 52728 – Application of the City of College Station to Change Rates for Wholesale Transmission Services; and

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

- City Manager
- Council Self-Evaluation

3. The Open Meeting Will Reconvene No Earlier than 6:00 PM from Executive Session and City Council will take action, if any.

Executive Session recessed at 6:00 p.m. No action was taken.

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

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, to accept Mayor Nichols' absence request for July 11, 2023 and July 13, 2023. The motion carried unanimously.

5. PRESENTATION - PROCLAMATIONS, AWARDS, AND RECOGNITIONS.

5.1. Presentation recognizing Ann Hays for her service to the Parks and Recreation Board, the Historic Preservation Committee, and the Senior Advisory Committee.

Mayor Pro Tem Maloney presented a Certificate of Recognition to Ann Hays for her service to the community, the Parks and Recreation Board, the Historic Preservation Committee, and the Senior Advisory Committee.

5.2. Proclamation recognizing the creation of the College Station Parks Foundation.

Mayor Pro Tem Maloney presented a proclamation to David White for the College Station Parks Foundation, which was formed as a private non-profit corporation intended to support the enhancement of parks and recreation in the City of College Station.

6. Hear Visitors Comments.

Nick Sutton, College Station Professional Firefighters Association, came before Council to speak on his concerns related to firefighter retention and the compensation. He believes many firefighters are leaving College Station because of the low compensation they receive when other entities offer higher pay, more preferred schedules, and better benefits.

John Halsell, Bryan, came before Council to state his concerns with College Station and the Rosemary residences relationship. Mr. Halsell explained that College Station has built a relationship with Southside but cannot do the same with Rosemary because of the issues related to a proposed sewer upgrade.

Charles Coats, College Station, came before Council representing Habit for Humanity and updated Council on some upcoming events. Mr. Coats also discussed his ideas about Middle Housing as it relates to low-income households.

Jes Linne, Bryan, came before Council to discuss his concerns on the College Station Trunkline, “Rosemary Drive vs Chimney Hill Lift Station. He cited the following:

- Gravity Fed SS lines are the most complex boring projects
- Optimum 300’-400’ between bore pits so Rosemary Drive would be 18 bore pits not 8
- In his “apples to apples” comparison Rosemary is a more expensive option

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 7.3, 7.4, 7.5, 7.7 and 7.10 was pulled from Consent for clarification.

(7.3) Jennifer Cain, Capital Projects Director, explained that the changes that are in the change order.

(7.4) Randall Lewis, Electric Assistant Director, explained that this contract is for three (3) years for labor and equipment necessary to provide electric right-of-way tree trimming of overhead power lines and the clearing of easements and rights-of-way for construction of new power lines. The RFP requested firm pricing for three years, with each year specifying areas of the electric system to be trimmed. Standard Electric utility practices have recommended a three (3) year system trimming cycle. The evaluations consider previous work and the safety records of respondents to the RFP.

(7.5) Bryan Woods, City Manager, explained that this item is an amendment to the lease agreement with the International Leadership of Texas School to renew the current lease for an additional two-year term as the organization works toward a new facility to serve as a permanent home for their high school. The initial three-year agreement in the amount of approximately \$1,015,580 was executed in May 2020 to coincide with the construction of the new Police Department building and the resulting vacancy of 2611 Texas Avenue. The agreement met ILT's interest in short-term space and has been mutually beneficial to both parties in fulfilling public and educational purposes. The city will continue to utilize the rent proceeds for public purposes while also retaining flexibility for the premises into the future.

(7.7) Councilmember Cunha made a comment on the tree protection in the contract and stressed advertising the public meetings for the citizens.

(7.10) Bryan Woods, City Manager, explained that rather than maintain this agreement through the duration of the remaining two years of compliance, both entities find it desirable to mutually terminate. The company is considering additional options concerning ownership of the building.

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

- **June 22, 2023 Council Meeting**

7.2. Presentation, discussion, and possible action on a professional services contract with Mitchell & Morgan, LLP, not to exceed \$852,307.15 for the Highway 6 Widening Utility Relocates Project.

7.3. Presentation, discussion, and possible action on Change Order No. 8 in the amount of \$119,873 for the Lick Creek Wastewater Treatment Plant Capacity Expansion construction contract with CSA Construction, Inc.

7.4. Presentation, discussion, and possible action on a three-year contract for Electric Right-of-Way Tree Trimming Services to Pannell Contracting, LLC, dba Pannell Co., not to exceed \$3,390,180.

7.5. Presentation, discussion, and possible action regarding an amendment to the lease of 3.1 acres including an approximately 28,949 square foot building at 2611 Texas Avenue South to International American Education Federation, Inc., d/b/a International Leadership of Texas, for two additional 1-year renewals for a total contract amount of approximately \$1,771,952.

7.6. Presentation, discussion, and possible action on bid awards to KBS Electrical Distributors for substation gas circuit breakers, not to exceed \$314,540 and to Texas Electric Cooperative for outdoor vacuum circuit breakers, not to exceed \$357,561 for Electric inventory.

7.7. Presentation, discussion, and possible action on a professional services contract with Kimley-Horn and Associates, Inc., not to exceed \$857,400; plus, the City's contingency amount of \$30,000; for a total appropriation of \$887,400 for the College Heights Utility Rehabilitation Project. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

7.8. Presentation, discussion, and possible action on a construction contract with A1 Pump, Inc. in the amount of \$199,554.42; for construction services for the Carters Creek Wastewater Treatment Plant Fuel Island Project, plus the City's contingency in the amount of \$21,450.00 for a total appropriation of \$221,004.42. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

7.9. Presentation, discussion, and possible action on a construction contract with Brazos Paving, Inc. in the amount of \$887,186.20; plus, the City's contingency in the amount of \$88,720 for a total appropriation of \$975,906.20 for drainage improvements at University Oaks Boulevard and Stallings Drive. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

7.10. Presentation, discussion, and possible action regarding the termination of an economic development agreement between the City of College Station and Viasat, Inc.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, to approve the Consent Items excepted for 7.3, 7.4, 7.5, 7.7, and 7.10. The motion carried unanimously.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, to approve the Consent Items 7.3, 7.4, 7.5, 7.7, and 7.10. The motion carried unanimously.

8. WORKSHOP ITEMS

8.1. Presentation, discussion, and possible action regarding an update from College Station Emergency Management.

Tradd Mills, Emergency Management Coordinator, presented an update regarding the actions of emergency management for the City of College Station as well as collaboration with partnering agencies.

Community Emergency Operations Center

- Multi-Jurisdictional Hazard Mitigation Action Plan Review and revision
- Emergency Management Basic Plan Annex Updates
- Extreme Weather/Hurricane prep and planning (Warming/Cooling/Education Outreach through media and community events)
- Trainings and Exercise: Multi Agency/City Tabletop Training (Train derailment), ICS 300/400, G402 (Elected Officials), L0388 (Advanced PIO), storm spotter/Skywarn community training
- SB 968 STEAR program requirements
- Ongoing community partner meetings: VOAD, ARC, BCHD, HSAC (plan updates and grants), LEPC

Month	CEOC TASKS – Battle Rhythm
January 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Schedule ICS 300/400 for Spring (Scheduled FEB/MAR) • Begin lease negotiations • Quarterly AV equipment check/refresher • Set 402 class up for new officials (March) • Winter Weather EMC and Brazos Health Mtg
February 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Continue severe weather planning and prep
March 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Review CEOC access/key holders • Extreme heat planning and prep • Begin reviewing THIRA and SPR
April 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Begin exercise planning for following year's schedule (MYTEP?) and identify needed trainings • Quarterly AV equipment check/refresher
May 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Hurricane season planning and prep • Review of HMAP
June 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i>
July 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Review CEOC inventory • Quarterly AV equipment check/refresher
August 2023	<i>(Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Annual MOU review and discussion
September 2023	<i>(TAMU's Fiscal Year Begins September 1; Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Schedule Storm Spotter training for Spring • Select Skywarn date
October 2023	<i>(Brazos County's Fiscal Year Begins October 1; Monthly Battle Rhythm Check-In, 1st Monday of the Month)</i> • Winter weather prep/discussion

REGULAR ITEMS

9.1. Presentation, discussion, and possible action regarding Resolution No. 07-13-23-9.1 supporting the planning, design, and development of enclosed tennis courts by the College Station Parks Foundation.

David White, Texas Parks Foundation, stated that the College Station Parks Foundation was formed earlier this year as a private, tax exempt 501 (c) 3 non-profit corporation, who's mission includes enhancing recreational opportunities and improving recreational facilities in the City of College Station Park system. The Foundation proposed fundraising for the planning, design, and construction of an enclosed tennis facility at Bee Creek Park, which the foundation fundraises in the community to support their mission. This item is a resolution supporting the College Station Parks Foundation creation and the development of an enclosed tennis facility.

At approximately 7:11 p.m., Mayor ProTem Maloney opened for Citizen Comments.

Dave Stelly, College Station, explained the importance of cover tennis courts for comfort and the how it helps with tracking the ball during play.

There being no further comments, the Citizen Comments was closed at 7:12 p.m.

MOTION: Upon a motion made by Councilmember Wright, and a second by Mayor Pro Tem Maloney, the City Council voted six (6) for and none (0) opposed, to approve Resolution No. 07-13-23-9.1, a supporting the planning, design, and development of enclosed tennis courts by the College Station Parks Foundation. The motion carried unanimously.

9.2. Public Hearing, presentation, discussion, and possible action regarding an update of Community Development activities, current programs, accomplishments, and future opportunities, and an overview of the proposed Program Year 2024 Annual Action Plan and Fiscal Year 2024 Community Development budget.

David Brower, Community Development Analyst, presented an update regarding Community Development activities, current programs, accomplishments, and future opportunities. The presentation also included the proposed Program Year (PY) 2023 Annual Action Plan and Fiscal Year (FY) 2024 Community Development Budget, which Raney Whitwell will be presenting. Historically, the City has utilized these funds for a variety of programs and activities, including affordable housing assistance programs (homebuyer assistance, security deposit assistance, rehabilitation, and minor repair); funding for direct services to low-income families through non-profit programs; demolition; economic development; infrastructure improvements to parks, facilities, and streets; and grant administration.

Community Development

- Community Development strives to benefit low- and moderate-income residents by:
 - ✓ Encouraging and expanding accessibility of human services
 - ✓ Expanding and improving public facilities
 - ✓ Expanding economic opportunities
 - ✓ Providing an adequate supply of safe and affordable housing
 - ✓ Rehabilitating rental and owner-occupied residential property
 - ✓ Expanding homeownership opportunities

Housing

- Down Payment Assistance Program
- Owner Housing Construction
- Minor Home Repair Program
- Tenant Based Rental Assistance (TBRA) – Security Deposit Assistance
- Rental Housing Rehabilitation / Construction

CDBG Public Service Agency Funding

- In past 5 years –
 - ✓ Partnered with 11 different agencies - \$1.2 million
 - ✓ 6,700 clients served
- New CDBG Public Service Agency Funding Process

Pandemic Driven Initiatives

- HOME Rent Assistance - \$207,000 / 90 Households
- Texas Emergency Rent Assistance Program - \$150,000 / 23 Households
- CDBG Economic Assistance Grant - \$1,209,000 / 65 Businesses / 550 Jobs Saved
- CDBG CARES Act Rent Assistance - \$1,240,488 / 797 Households
- GotEM Food Assistance - \$403,708 / 430 Clients

Raney Whitwell, Community Development Analyst, explained that the City is required to submit a one-year Annual Action Plan describing projects, activities, and budget to be funded with the community development grants received. Annual Action Plan activities must correspond to the 5-Year Consolidated Plan. The total grant funds available next year are \$2,938,761 in Community Development Block Grant (CDBG) funds and \$1,045,450 in HOME Investment Partnership Grant (HOME) funds. These amounts include carry-over funds from previous years, recaptured funds, and new year allocation (PY23) amounts of \$1,180,825 in CDBG and \$527,205 in HOME funding. PY 2023 funding will be available on 10/1/2023. The PY 2023 Annual Action Plan, that includes the FY23 Community Development budget, must be delivered to HUD no later than August 16, 2023. Therefore, this information is a separate process from the Council's consideration of the overall City budget. CDBG funds may only be used to: (1) benefit low-and moderate-income persons; (2) aid in the elimination of slum and blight influences; and/or (3) meet an urgent community need. Further, CDBG funds may be used to meet local needs through a wide range of community development activities, while HOME funds may only be used for affordable housing activities.

At approximately 7:58 p.m., Mayor Pro Tem Maloney opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 7:58 p.m.

MOTION: Upon a motion made by Councilmember Wright, and a second by Councilmember Harvell, the City Council voted six (6) for and none (0) opposed, to accept the update of Community Development activities, current programs, accomplishments, and future opportunities, and an overview of the proposed Program Year 2024 Annual Action Plan and Fiscal Year 2024 Community Development budget. The motion carried unanimously.

9.3. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2023-4447 vacating and abandoning a 0.8236 acre, 60-foot-wide Right-of-Way, Sienna Drive, generally located 550 feet southwest of the intersection of Marion Pugh Drive and Holleman Drive West according to the plat recorded in Volume 583, Page 177 and the replat recorded in Volume 705, Page 619, of the Official Records of Brazos County, Texas.

Items 9.3 and 9.4 were presented together.

9.4. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2023-4448 vacating and abandoning a 0.6922 acre, 25-foot wide Public Drainage Easement abutting Sienna Drive Right-of-Way, said portion lying in Lot 1, Block 2, of the Woodway West Phase 1 Subdivision, according to the replat recorded in Volume 705, Page 619, of the Official Records of Brazos County, Texas.

Lucas Harper, Planning and Development, stated that the Right-of-Way (ROW) abandonment is being requested by the applicant because of a desired change in the lot layout of this area. The public street constructed in the ROW is a cul-de-sac internal to the lot and does not serve the transportation needs of the public. A public utility easement will suffice for the needs of the City's utility infrastructure located in this area. Mr. Harper also presented that the public drainage easement (PDE) abandonment is being requested due to an application for abandonment of the adjacent public right-of-way (ROW). The drainage provided for by the easement is internal to the development and will not serve public drainage needs upon abandonment of the associated right-of-way.

At approximately 8:09 p.m., Mayor Pro Tem Maloney opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 8:09 p.m.

(9.3) MOTION: Upon a motion made by Councilmember Yancy, and a second by Councilmember Wright, the City Council voted four (4) for and two (2) opposed, with Mayor Pro Tem Maloney and Councilmember Cunha voting against, to adopt Ordinance No. 2023-4447, vacating and abandoning a 0.8236 acre, 60-foot-wide Right-of-Way, Sienna Drive, generally located 550 feet southwest of the intersection of Marion Pugh Drive and Holleman Drive West according to the plat recorded in Volume 583, Page 177 and the replat recorded in Volume 705, Page 619, of the Official Records of Brazos County, Texas. The motion carried.

(9.4) MOTION: Upon a motion made by Councilmember Yancy, and a second by Councilmember Wright, the City Council voted four (4) for and two (2) opposed, with Mayor Pro Tem Maloney and Councilmember Cunha voting against, to adopt Ordinance No. 2023-4448, vacating and abandoning a 0.6922 acre, 25-foot wide Public Drainage Easement abutting Sienna Drive Right-of-Way, said portion lying in Lot 1, Block 2, of the Woodway West Phase 1 Subdivision, according to the replat recorded in Volume 705, Page 619, of the Official Records of Brazos County, Texas. The motion carried.

9.5. Presentation, discussion, and possible action regarding Ordinance No. 2023-4449 amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, no parking here to corner and no parking any time" by removing parking on the south side of Ponderosa Drive.

Emily Fisher, Public Works Director, stated that the a business owner concern was received by staff regarding large commercial trucks and trailers parking along Ponderosa Drive, particularly near the intersection with Longmire Drive. Staff investigated the concern and found several trucks and other vehicles parked along both sides of the street. At times, trucks were near the stop sign at Longmire Drive, decreasing visibility for vehicles on Ponderosa Drive. Concerns about the amount of time trailers had been left in the same space were also raised and staff had noted trailers parked along Ponderosa. A public meeting was held on May 1, 2023 to collect public input on parking removal along Ponderosa Drive. Several businesses were in attendance as well as a truck driver that utilizes the street for parking. Several concerns were raised, including sight distance at Longmire, the number of crashes at the intersection with Longmire, and the amount of time trucks and trailers are parked. Concerns raised by truck drivers include limited places to park trucks near residences. One business does utilize a portion of the street for employee parking near the intersection with SH 6 frontage road.

Mrs. Fisher explained that this item was presented at the June 20, 2023 Council Transportation and Mobility Committee Meeting. The options discussed were a city-wide ordinance prohibiting truck

parking on public roads, prohibiting parking on the south side of Ponderosa from Longmire to SH 6 frontage road, prohibiting parking on the south side of Ponderosa from Longmire to the first driveway (in front of Party Time Rentals), or prohibiting truck parking from 10 p.m. to 6 a.m. along all of Ponderosa. The committee recommended presenting the two parking prohibitions on the south side of Ponderosa to council for action. Staff is seeking approval of one of the two presented options.

In summary, the two options for the council to consider are:

Option 1 - Remove parking on the south side of Ponderosa from Longmire to SH 6 frontage road.

Option 2 - Remove parking on the south side of Ponderosa from Longmire to 280 feet east.

At approximately 8:25 p.m., Mayor Pro Tem Maloney opened for Citizen Comments.

Delores M. Crum, College Station, came before Council to state her support of the proposed parking removal on one side, which would be the Premiere Events side of Ponderosa between Longmire Dr. and Hwy 6 Frontage Road.

There being no further comments, the Citizen Comments was closed at 8:28 p.m.

Kevin Ryan, College Station, came before council to support removing parking on the Premiere Events side of Ponderosa.

MOTION: Upon a motion made by Councilmember Wright, and a second by Councilmember Harvell, the City Council voted five (5) for and one (1) opposed, with Councilmember Cunha voting against, to adopt Ordinance No. 2023-4449 Option 1 - amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, no parking here to corner and no parking any time" by removing parking on the south side of Ponderosa Drive from Longmire to SH 6 frontage road. The motion carried.

AMENDED MOTION: Upon a motion made by Councilmember Yancy, and a second by Councilmember Smith, the City Council voted three (3) for and three (3) opposed, with Mayor Pro Tem Maloney and Councilmembers Harvell and Wright voting against, to adopt Ordinance No. 2023-4449 Option 2 - amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, no parking here to corner and no parking any time" by removing parking on the south side of Ponderosa Drive from Longmire to 280 feet east. The motion failed due to a tie.

9.6. Presentation, discussion, and possible action regarding the 2022 Incentive Compliance Report by the Brazos Valley Economic Development Corporation.

Chuck Martinez, Economic Development Corporation, stated that this item is the annual presentation on project compliance from the Brazos Valley Economic Development Corporation. Mr. Martinez turned the presentation over to Michael Camden, Director of Ryan, LLC, a Texas-based tax services and consulting firm.

Overview & Executive Summary

- For 2022, six (6) projects under agreement were monitored for performance compliance by the Brazos Valley Economic Development Corporation on behalf of Brazos County, the City of Bryan, and the City of College Station.

Name	Compliance Status	Metric Outstanding	Amount Owed / Not Paid
Axis Pipe & Tube	In Compliance	N/A	30% Personal Property Tax Abatement – Brazos County
Fuji Film (2014)	In Compliance	N/A	\$201,000 Cash Incentive – Brazos County \$57,600 Cash Incentive – City of Bryan \$153,000 Cash Incentive – City of College Station
Fuji Film (2022)	In Compliance	N/A	N/A Until 2026: Cash Incentive – Brazos County N/A Until 2026: Cash Incentive – City of Bryan N/A Until 2026: Cash Incentive – City of College Station
LSPI	In Compliance	N/A	40% Tax Abatement Cash Incentive – Brazos County 40% Tax Abatement Cash Incentive – City of Bryan
Viasat	Not Compliant	Payroll & Employment	30% Chapter 380/381 Cash Incentive – Brazos County – City of Bryan – City of College Station
Wayfair	Not Compliant	Payroll & Employment	N/A: BVEDC Incentives Grants Paid

- 2022 report highlights companies across multiple targeted industries with properties valued over \$522,674,606 and providing more than 1,171 quality jobs with local payrolls in excess of \$89,668,646.

2022 Incentives & Combined Impact				
Company	Incentives	Payroll	Property Value 2022	Employment
Axis Pipe & Tube	40% Tax Abatement	\$ 16,627,308.00	\$ 316,317,856	204
Fuji Film (2014)*	\$ 417,600.00	\$ 64,319,141.00	\$ 149,677,329	845
Fuji Film (2022)	-----	\$ 64,319,141.00	\$ 149,677,329	845
LSPI	50% Tax Abatement	\$ 2,517,438.00	\$ 34,685,970	29
Viasat	40% Tax Abatement	-----	\$ 20,454,664	-----
Wayfair	\$ 100,000.00	\$ 6,204,759.00	\$ 1,538,787	93
		\$89,668,646*	\$ 522,674,606*	1,171*

MOTION: Upon a motion made by Councilmember Harvell, and a second by Councilmember Wright, the City Council voted six (6) for and none (0) opposed, to accept the 2022 Incentive Compliance Report by the Brazos Valley Economic Development Corporation. The motion carried unanimously.

10. Council Calendar

Council reviewed the calendar.

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

Councilmember Harvell reported on the Police Alumni Association conference.

12. 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 Smith reported on the BVSWMA.

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

No future agenda items at this time.

14. Adjournment.

There being no further business, Mayor Pro Tem Maloney adjourned the meeting of the City Council at 9:10 p.m. on Thursday, July 13, 2023.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

July 27, 2023

Item No. 6.2.

Electrical Engineering Services Contract for CSU Northwest Substation

Sponsor: Timothy Crabb, Director of Electric

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on a contract with McCord Engineering for electric engineering and design services for the new CSU Northwest Substation, not to exceed \$1,090,000.

Relationship to Strategic Goals:

Financially Sustainable City
Core Services and Infrastructure

Recommendation(s): Staff recommends approval of the contract with McCord Engineering.

Summary: The City of College Station Electric Department will be constructing the Northwest Substation in fiscal year 2024. McCord Engineering will provide engineering and design services for this project. CSU Electric has utilized McCord Engineering, Inc. for electric engineering services for decades. McCord Engineering is a highly qualified local firm with demonstrated competence and qualifications. McCord Engineering's staff is extremely knowledgeable in the CSU electric system and responsive to the City's needs. Based on McCord's qualifications and unique familiarity with the City's electric system, it is in the City's best interest to continue to contract with McCord to provide these engineering and design services.

Budget & Financial Summary: Funds are available as budgeted and approved in the Electric Utility's in Capital Improvement Projects.

Attachments:

1. Contract is available for review in the City Secretary's Office

Contract is available for review in the City Secretary's office.

July 27, 2023

Item No. 6.3.

Resolution approving Advance Funding Agreement with TXDOT for signal construction at FM 60 (University Drive) and Veterans Parkway

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a resolution to approve an Advance Funding Agreement for \$260,000 with the State of Texas, acting through the Texas Department of Transportation for constructing a traffic signal at FM 60 (University Drive) and Veterans Parkway.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

Recommendation(s): Staff recommends approval of the resolution.

Summary: After a number of accidents at the intersection of FM 60 (University Drive) and Veterans Parkway (entrance to Veterans Park), the Texas Department of Transportation (TXDOT), who maintains University Drive, approached the Cities of College Station and Bryan regarding participating in the design and construction of a traffic signal. The intersection lies within the city limits of College Station with the city limit line being the northern right of way line of University Drive. Veterans Parkway aligns with the driveway of three hotels that are within the city limits of Bryan. A location map is attached to the agreement as Attachment A.

The city of College Station agreed to begin the design of the signal and contracted with a consultant for \$65,000, which was paid from Public Works Traffic Engineering Division's operating budget. Ultimately, the two cities and TXDOT agreed to the following cost sharing breakdown for the design and construction of the signal:

City of College Station	\$325,000
City of Bryan	\$280,000
TXDOT	\$351,787
TOTAL	\$956,787

The City of College Station's portion includes the design of the signal, which includes utility relocations, environmental clearance and signal design, as well as certain portions of construction including the powder coating of the signal, and additional concrete work to realign Veterans Parkway to the driveway across University Drive.

This agreement is for the remainder payment from the city. TXDOT will be managing the construction of the signal and, since the city has already paid for the design of the signal, the remaining payment is \$260,000 (\$325,000 - \$65,000 = \$260,000). The City of Bryan's portion was covered under a separate agreement.

Construction of the signal is expected to start later this year.

Budget & Financial Summary: Budget in the amount of \$285,000 is included in the Streets Capital Improvement Projects Fund. Nothing has been expended or committed to date, leaving a balance of \$285,000 for this agreement and future project expenses.

Attachments:

1. Resolution FM 60 Veterans Pkwy AFA
2. AFA - FM 60 at Veteran's Parkway

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AN ADVANCE FUNDING AGREEMENT WITH THE STATE OF TEXAS ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION AUTHORIZING THE PARTICIPATION IN THE COST OF TRAFFIC SIGNAL IMPROVEMENTS ON FM 60 (UNIVERSITY DRIVE) AT THE INTERSECTION OF VETERANS PARKWAY.

WHEREAS, FM 60 is owned and maintained by the Texas Department of Transportation (“TXDOT”); and

WHEREAS, the TXDOT has deemed it necessary to make certain highway improvements generally described as traffic signal improvements on FM 60 (University Drive) at the intersection of Veterans Parkway (the “Project”); and

WHEREAS, any construction or improvements on TXDOT right of way must be approved through the TXDOT permitting process; and

WHEREAS, the City of College Station desires to participate in the Project by funding portions of the Project including utility, environmental, engineering and construction costs for the installation of a traffic signal; and by entering into this Advance Funding Agreement for Surface Transportation Block Grant (STBG) On-System.

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

PART 1: That the City Council hereby approves the agreement with TXDOT to contribute an amount not to exceed \$260,000 for the costs associated with construction of the traffic signal improvements at the intersection of FM 60 and Veterans Parkway.

PART 2: That the City Council hereby authorizes the City Manager to execute the agreement.

PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of July 2023.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
For
Surface Transportation Block Grant (STBG)
On-System

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **City of College Station**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **116073 and 116292** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **FM 60 at Veterans Parkway traffic signal**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated _____, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C). A map showing the Project location appears in Attachment A, Location Map Showing Project (Attachment A), which is attached to and made a part of this Agreement.

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

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

AGREEMENT

1. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1.	Local Government	Utilities	Article 8
2.	Local Government	Environmental Assessment and Mitigation	Article 9
3.	Local Government	Architectural and Engineering Services	Article 11
4.	Local Government	Construction Phase Services	Article 13
5.	State	Construction Responsibilities	Article 14
6.	N/A	Right of Way and Real Property	Article 16

2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of utilities, environmental, engineering, plans, specification, and estimate (PS&E), construction phase services, and construction of a traffic signal at FM 60 and Veteran's Parkway intersection in College Station, Texas as shown on Attachment A.

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

- continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.
- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
 - C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
 - D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
 - E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
 - F. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
 - G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
 - H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
 - I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment B. At a

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

- minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
 - K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
 - L. The State will not pay interest on any funds provided by the Local Government.
 - M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
 - N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
 - O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
 - P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
 - Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
 - R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the identification of utility facilities as well as adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. Utilities with a compensable interest shall be paid by the State with participation by the LG in accordance with state laws, regulations, rules, policies, and procedures. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

9. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

12. Automation Requirements

Planimetric design files (DGN) provided by the Local Government shall be fully compatible with the State's MicroStation graphics program without further modification or conversion as requested by the State.

If applicable, electronically collected and processed field survey data files must be fully compatible with the State's computer systems without further modification or conversion. All files must incorporate only those feature codes currently being used by the State. If applicable, Digital Terrain Models (DTM) must be fully compatible with the State's OpenRoads civil design system without further modification or conversion. All DTM must be fully edited and rectified to provide a complete digital terrain model with all necessary break lines.

13. Construction Phase Services

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Construction Phase Services at the written request of the State's Project Manager. The written request must include a description of the work requested, a mutually agreed upon time limit, and any special instructions for coordination and submittal. These services shall include, but are not limited to the following:
 - a. Calculate quantities and assist the area engineer in preparing change orders
 - b. Responding to requests for information (RFIs)
 - c. Providing redesign, which will include changes to the affected plan sheets and an updated copy of the 3D corridor model.
 - d. Answering general questions
 - e. Providing clarification
 - f. Other project related tasks in support of the State during construction

14. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- B. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- C. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- D. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

- E. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- F. If the Local Government is the responsible party, the State must review and approve change orders.
- G. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a “Notification of Completion” acknowledging the Project’s construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- H. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form “FHWA-1273” in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

15. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

16. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

17. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State’s Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

18. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

Local Government:	State:
City of College Station ATTN: Director of Public Works P.O. Box 9960 College Station, TX 77842	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

19. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

20. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

21. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

22. Compliance with Laws

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

23. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

24. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

25. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

26. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

27. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

28. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

29. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State’s federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State’s DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			AFA Not Used For Research & Development	

Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

30. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			AFA Not Used For Research & Development	

31. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

32. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website [http://fedgov.dnb.com/webform](http://fedgov.dnb.com/webform;); and

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			AFA Not Used For Research & Development	

3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

33. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

34. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Kenneth Stewart
Typed or Printed Name

Director of Contract Services
Typed or Printed Title

Date

Signature

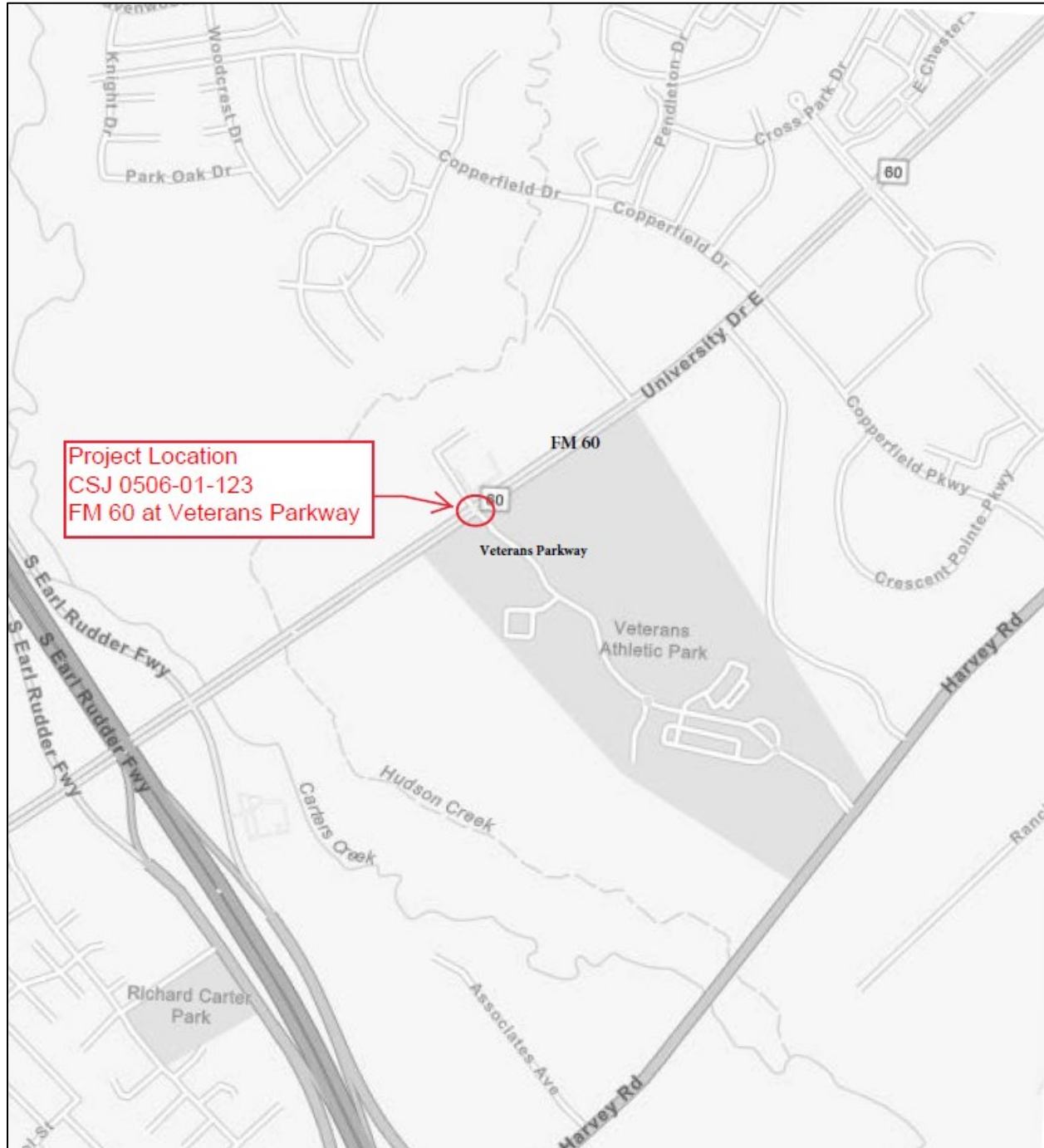
Bryan Woods
Typed or Printed Name

City Manager
Typed or Printed Title

Date

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			AFA Not Used For Research & Development	

ATTACHMENT A LOCATION MAP SHOWING PROJECT



TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			AFA Not Used For Research & Development	

ATTACHMENT B PROJECT BUDGET

Construction costs will be allocated based on 80% Federal funding and 20% State funding until the Federal funding reaches the maximum obligated amount, and a fixed amount of Local Government funding until Local Government funding reaches the maximum obligated amount. The State will then be responsible for 100% of the costs.

Engineering, Environmental, and Utilities costs will be allocated based on 100% Local Government funding including cost overruns.

Direct and Indirect State costs will be allocated based on 100% State funding including cost overruns.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Utilities (By LG)	\$3,250	0%	\$0	0%	\$0	100%	\$3,250
Environmental (By LG)	\$3,250	0%	\$0	0%	\$0	100%	\$3,250
Engineering (By LG)	\$58,500	0%	\$0	0%	\$0	100%	\$58,500
Construction (By State)	\$570,000	80%	\$248,000	20%	\$62,000	(fixed)	\$260,000
Subtotal	\$635,000		\$248,000		\$62,000		\$325,000
Utilities (Direct State Cost)	\$399	0%	\$0	100%	\$399	0%	\$0
Environmental (Direct State Cost)	\$399	0%	\$0	100%	\$399	0%	\$0
Engineering (Direct State Cost)	\$8,778	0%	\$0	100%	\$8,778	0%	\$0
Construction (Direct State Cost)	\$29,925	0%	\$0	100%	\$29,925	0%	\$0
Right of Way (Direct State Cost)	\$399	0%	\$0	100%	\$399	0%	\$0
Indirect State Costs (4.73%)	\$1,887	0%	\$0	100%	\$1,887	0%	\$0
TOTAL	\$676,787		\$248,000		\$103,787		\$325,000

Initial payment by the Local Government to the State: \$0

Payment by the Local Government to the State before construction: \$260,000

Total payment by the Local Government to the State: \$260,000

TxDOT:				Federal Highway Administration:	
CSJ #	0506-01-123			CFDA No.	20.205
District #	17 – BRY	AFA ID	Z00004967	CFDA Title	Highway Planning and Construction
Code Chart 64 #	09050 – City of College Station				
Project Name	FM 60 at Veterans Parkway			<i>AFA Not Used For Research & Development</i>	

ATTACHMENT C
RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER

July 27, 2023
Item No. 6.4.
Bee Creek Construction Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Elliott Construction, LLC, not to exceed \$6,950,133 for Phase 3 of the Bee Creek Sanitary Sewer Trunk Line, plus \$250,000 in contingency for a total appropriation of \$7,200,133. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project includes the installation of approximately 5,900 linear feet of 48-inch and 42-inch sanitary sewer main along Bee Creek from State Highway 6 to approximately Longmire Court. This project also includes approximately 3,200 linear feet of Cure-in-Place pipe rehabilitation from Texas Ave to Southwood Drive. This project was procured via Issue for Bid.

Budget & Financial Summary: A budget of \$7,602,461 is included in the Wastewater Capital Improvements Projects Fund with \$395,015 expended or committed to date, leaving a balance of \$7,207,446 for this contract and future expenses. This project was identified as an eligible use for ARPA funds. This contract and related construction costs will be covered by these funds.

Attachments:

1. Bee Creek Trunkline Phase 3 Construction Contract
2. Bee Creek Trunkline Phase 3 Location Map

**CITY OF COLLEGE STATION
STANDARD FORM OF CONSTRUCTION AGREEMENT**

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Elliott Construction, LLC (the "Contractor") for the construction and/or installation of the following:
as described in 23-062 Bee Creek Sewer Line.

1. DEFINITIONS

1.01 Calendar Day. The term "calendar day" shall mean any day of the week or month, no days being excepted.

1.02 City. The term "City" shall mean and be understood as referring to the City of College Station, Texas.

1.03 City's Consultant. The term "City's Consultant" or "Consultant" shall mean and be understood as referring to the City's design professional(s) for the Project.

1.04 City's Representative. The term "City's Representative" or "Representative" shall mean and be understood as referring to the City Manager or his delegate or delegates, including a project management firm if applicable, who shall act as City's agent.

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Six Hundred Ninety-Five Thousand and NO /100 Dollars (\$ 695,000.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Six Million Nine Hundred Fifty Thousand One Hundred Thirty Three and NO /100 Dollars (\$ 6,950,133.00).

1.07 Contract Documents. The term "Contract Documents" shall mean those documents listed in Section 2.01.

1.08 Contractor. The term "Contractor" shall mean the person(s), partnership, or corporation who has agreed to perform the Work contemplated in this Agreement and the other Contract Documents.

1.09 Contractor's Proposal. The term "Contractor's Proposal" shall mean the document provided by the Contractor in response to, and shall include all information required by the City's Request for Proposal/Invitation to Bid for the Project.

1.10 Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing *prior* to the work being done by the Contractor.

1.11 Final Completion. The term "Final Completion" shall mean that all the Work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.12 Hazardous Substance. The term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which is defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws").

1.13 Environmental Laws. The term "Environmental laws" shall mean collectively, any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws.

1.14 Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

1.15 Nonconforming work. The term "nonconforming work" shall mean Work or any part thereof that is rejected by City's Representative as not conforming with the Contract Documents.

1.16 Parties. The "parties" are the City and the Contractor.

1.17 Project. The term "Project" shall mean the construction of an improvement to real property where the Work comprises either whole or a part of such construction and which may include construction by the City or separate contractors.

1.18 Project Manager. The term "Project Manager" shall mean the Contractor's Project Manager. The Project Manager shall assist the City in performing various administrative and oversight duties relating to the Work, subject to limitations in authority that must be verified by Contractor.

1.19 Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

1.20 Substantially Completed. The term "Substantially Completed" means that in the opinion of the City's Representative the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the Work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

1.21 Work. The term "Work" as used in this Agreement shall mean the construction and services required by the Contract Documents and Exhibits, including any duly authorized change orders, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project. The Work includes but is not limited to all labor, parts, supplies, skill, supervision, transportation, services, and other facilities and all other items needed to produce, construct, and fully complete the Project.

1.22 Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays.

2. CONTRACT DOCUMENTS

2.01 The Contract Documents and their priority shall be as follows:

- (a) This signed Agreement.
- (b) Addendum to this Agreement.
- (c) General Conditions, as may be applicable.
- (d) Special Conditions, as may be applicable.
- (e) Specifications, including the technical specifications set out at BCS Unified Design Guidelines ("Specifications").
- (f) Plans.
- (g) Instructions to Bidders and any other notices to Bidders or Contractor.
- (h) Performance bond, Payment bonds, Bid bonds and Special bonds.
- (i) Contractor's Proposal.

2.02 Where applicable, the Contractor will be furnished three (3) sets of plans, specifications, and related Contract Documents for its use during construction. Plans and Specifications provided for use during construction shall be furnished directly to the Contractor only.

2.03 The Contractor shall distribute copies of the Plans and Specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the Plans and Specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the Work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

2.04 All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the Plans and Specifications and "as built" drawings, are to be returned to the City on request at the completion of the Work. All Contract Documents, models, mockups, or other representations are the property of the City.

2.05 In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement, either or both in accordance with the City's interpretation. The terms and conditions of this Section 2.05, however, shall not relieve the Contractor of any of the obligations set forth in Sections 8.01. and 8.02 of this Agreement.

3. AWARD OF CONTRACT

3.01 Upon the notice of intent to award of the contract by the City, the parties shall execute this Agreement, and the Contractor shall deliver to City's Representative all documents, bonds, and certificates of insurance required herein.

3.02 Time is of the essence of this Agreement. Accordingly, the Contractor shall be prepared to perform the Work in the most expedient and efficient possible manner in order to complete the Work by the times specified in this Agreement for Substantial Completion and Final Completion. In addition, the Contractor's work on the Project shall be commenced on the date to be specified in the City's written notice to proceed. **The notice to proceed may not be given, nor may any Work be commenced, until this Agreement is fully executed and complete, including all required exhibits and other attachments, particularly those required under Sections 27 and 28 (Insurance & Bonds).**

4. CITY'S REPRESENTATIVE

4.01 The Contractor shall forward all communications, written or oral, to the City through the City's Representative.

4.02 The City's Representative may periodically review and inspect the Work of the Contractor.

4.03 The City's Representative shall appoint, from time to time, such subordinate supervisors or inspectors as City's Representative may deem proper to inspect the Work performed under this Agreement and ensure that said Work is performed in accordance with the Plans and Specifications.

4.04 The City's Representative shall interpret questions concerning the Contract Documents. The City's inspector has authority to reject any of the Work for failure to comply with the Contract Documents and/or applicable laws.

4.05 Should the Contractor object to any orders by any subordinate supervisor or inspector, the Contractor may, within two (2) days from receipt of such order, make written appeal to City's Representative for his decision.

5. INDEPENDENT CONTRACTOR

5.01 In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment and labor required for the execution of the Work. The Contractor shall have ultimate control over the execution of the Work under this Agreement. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors except to the limited extent provided for in this Agreement.

5.02 Standard of Care. The Work shall be performed in a good and workmanlike manner, and in accordance with this Agreement, and all applicable laws, codes, and regulations. The construction of the Project is subject to amendments and adjustments to the Contract required by any applicable changes in regulations or requested or approved by in writing by the City. If at any time during the progress of the Work the Contractor becomes aware of any errors or omissions in the Plans or Specifications for this Project or that the Agreement deviates from applicable legal requirements, Contractor shall promptly provide written notice thereof to the City. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention.

5.03 The Contractor shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the Work and fulfillment of this Agreement. The Contractor shall be responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The subletting of any portion or feature of the Work or materials required in the performance of this Agreement shall not relieve the Contractor from its obligations to the City under this Agreement. The Contractor shall appoint and keep on the Project site during the progress of the Work, including at all times subcontractors are present at the Project site, a competent English speaking Project Manager and/or superintendent and any necessary assistants, all satisfactory to City's Representative, to act as the Contractor's representative and to supervise its employees and subcontractors. All directions given to the Project Manager and/or superintendent shall be binding as if given to the Contractor. Adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the Work, and lack of such supervision shall be grounds for suspending the operations of the Contractor and is a breach of this Agreement.

5.04 Unless otherwise stipulated, the Contractor shall provide and pay for all labor, materials, tools, equipment, transportation, facilities, and drawings, including engineering, and any other services necessary or reasonably incidental to the performance of the Work by the Contractor. Any additional work, material, or equipment needed to meet the intent of this provision shall be supplied by the Contractor *without* claim for additional payment, even though not specifically mentioned herein.

5.05 Any injury or damage to the Contractor or the Project caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the Contractor.

6. DISORDERLY EMPLOYEES

The Contractor agrees to employ only orderly and competent employees skillful in the performance of the type of work required, and agrees that whenever City's Representative shall inform the Contractor in writing that any person or persons on the Project are, in his opinion, incompetent, unfaithful, or disorderly, such person or person shall be discharged from the Project and shall not again be re-employed on the site or the Project without City's Representative's written permission.

7. HOURS OF WORK

The Contractor may work Monday through Friday from 7 a.m. to 6 p.m., exclusive of Saturdays, Sundays, or legal holidays. The Contractor may work overtime, weekends, and holidays only when approved in advance by the City's Representative. The time for Substantial Completion shall not be affected in any way by inclusion of this section or by the City's consent or lack of consent to work outside of the times specified in this Agreement.

8. NATURE OF THE WORK

8.01 It is understood and agreed that the Contractor has, by careful examination, studied and compared the Plans and other Contract Documents, satisfied itself as to the nature and location of the Work, the conditions of

the ground and soil, the nature of any structures, the character, quality, and quantity of the material to be utilized, the character of equipment and facilities needed for and during the prosecution of the Work, the time needed to complete the Work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, including but not limited to weather, and all other matters that in any way affect the Work under this Agreement. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered, or which reasonably should have been discovered by the Contractor shall be reported promptly to the City as a request for information in such form as the City may require. However, the Contractor shall not perform any act or do any Work that places the safety of persons at risk or potentially damages materials or equipment used in the Project, and the Contractor shall do nothing that would render any test or tests erroneous.

8.02 Any design errors or omissions noted by the Contractor shall be reported promptly to the City, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Any nonconformity discovered by or which reasonably should have been discovered or made known to the Contractor shall be reported promptly to the City.

8.03 If the Contractor fails to perform the obligations of Sections 8.01. and 8.02., the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the City for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the City.

9. POST-AGREEMENT AWARD MEETINGS

9.01 Prior to the commencement of the Work, the parties shall meet and attend a post-agreement award meeting at the time and place determined by City's Representative. At the post-agreement award meeting, the parties shall meet, discuss, and finalize all schedules, including commencement date, and/or specifications submitted for review. No later than ten (10) days prior to the post-agreement award meeting, the Contractor shall submit to City's Representative the following documents:

(a) Schedule for performance of the Work ("Construction Schedule"). Project Schedule contemplated, including the starting and ending date, as well as an indication of the completion of stages of Work hereunder. Such document, once approved by the City and, if applicable, the City's Consultant shall be incorporated into this Agreement as a Contract Document and attached hereto as **Exhibit E**. If not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the City and Consultant and resubmitted for acceptance. The Construction Schedule shall not be modified except by written change order. Additional days or changes to the number of days in the Construction Schedule shall also be by written change order. After a written change order is approved and fully executed by all parties, the Contractor shall submit an updated Construction Schedule that reflects changes authorized by approved change orders. The Construction Schedule shall not exceed time limits current under the Contract Documents, shall be submitted with each pay application, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

(b) The names and addresses of all proposed subcontractors in writing.

- (c) Schedules of the starting and ending dates of subcontractors and the scope of Work contemplated for subcontractors.
- (d) Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.
- (e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof, including PDF/electronic versions and CAD files.
- (f) Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

9.02 The City's Representative, within five (5) working days after the initial post-agreement award conference or any other meetings, may submit minutes of the meeting to the Contractor. The Contractor shall thereafter have five (5) working days to review the minutes and make its objections, changes, or reductions thereto in writing. The Contractor shall thereafter sign the minutes and promptly return them to City's Representative. Where there is disagreement, City's Representative will make the final determination.

10. PROGRESS OF WORK

10.01 The Construction Schedule shall be in a detailed precedence-style critical path method ("CPM") or primavera-type format satisfactory to the City and the Consultant. The Construction Schedule shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). If not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the City and Consultant and resubmitted for acceptance.

10.02 Further, the parties shall be subject to the following:

- (a) The Contractor shall submit a Construction Schedule and schedule of values at the initial post-agreement award meeting and subsequent meetings.
- (b) City's Representative shall be entitled to make objections to the Contractor's Construction Schedule submitted herein. The Contractor shall promptly resubmit a revised Construction Schedule to City's Representative.
- (c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.
- (d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the Work with dates at which the Contractor will start the several parts of the Work and the estimated dates of completion of the several parts.
- (e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.

(f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.

(g) In the event that it is determined by the City that the progress of the Work is not in accordance with the approved Construction Schedule, the City may so inform the Contractor and require the Contractor to take such action as is necessary to insure completion of the Project within the time specified.

10.03 The process of approving the Construction Schedule and updates to the Construction Schedule shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Construction Schedule. Approval of the Construction Schedule does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than the City would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs beyond its control to a minimum. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the City of any delays or potential delays. In the event the Construction Schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any adjustment to the Construction Schedule constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

10.04 The Contractor shall also prepare a submittal schedule promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Consultant's approval. The Consultant's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (i) be coordinated with the Contractor's Construction Schedule; and (ii) allow the Consultant reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

10.05 In the event the City determines that the performance of the Work, as of a Milestone Date or otherwise, has not progressed or reached the level of completion required by the Contract Documents, the City shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule.

(a) The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the City under or pursuant to this Subsection.

(b) The City may exercise the rights furnished the City under or pursuant to this Subsection as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

10.06 Work Stoppage. If in the judgment of either the City or City's Representative any of the Work or materials furnished is not in strict accordance with this Agreement or any portion of the Work is being performed so as to create a hazardous condition, they may, in their sole discretion, order the Work of the Contractor or any subcontractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

11. SITE CONDITIONS AND MANAGEMENT

11.01 Where the Contractor is working around or in existing structures, it shall verify conditions at the site, including but not limited to, door openings and passages. Any items constructed or manufactured off-site or outside of buildings shall be done so that they are not too bulky for existing facilities. The Contractor shall provide special apparatus as required to handle any such items. All special handling equipment charges shall be at the Contractor's expense. Further, Contractor shall include in its price for the Work, all labor, materials, equipment and/or engineering services required to protect the adjacent properties and/or structures from damage due to performance of the Work.

11.02 The Contractor shall be responsible for all power, light, and water required to perform the Work.

11.03 Throughout the progress of the Work, the Contractor shall keep the working area free from debris of all types, and remove from premises all rubbish, resulting from any work being done by him. At the completion of the Work, the Contractor shall leave the premises in a clean and finished condition. Any failure to do so may be remedied and charged back to the Contractor.

11.04 Layout of Work. Except as specifically provided herein, the Contractor shall lay out all Work in a manner acceptable to City's Representative in accordance with applicable City of College Station codes and ordinances. City's Representative will review the Contractor's layout of all structures and any other layout work done by the Contractor at the construction meeting, or at the Contractor's request, but this review does not relieve the Contractor of the responsibility of accurately locating all Work in accordance with the Plans and Specifications.

11.05 Lines and Grades. All lines and grades shall be furnished by the Contractor. Benchmarks and control stakes have been provided by the City's Representative. All benchmarks and control stakes shall be carefully preserved by the Contractor. In case of destruction or removal of the same by the Contractor, its subcontractors, or employees, such stakes, marks, etc. shall be replaced by the Contractor at the Contractor's expense. If the Contractor fails to do so, the City may do so and charge back the Contractor. Additional construction staking as needed for the Work, including lines and grades, shall be the sole responsibility of the Contractor, and the Contractor shall receive no extra time or compensation therefor.

11.06 The Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as any information furnished by the City, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the City and the Consultant any errors, inconsistencies or omissions discovered by or made known to the Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor acknowledges the City does not represent nor warrant the accuracy or completeness of information provided by the City related to existing conditions and

locations of existing utilities and services. Such information if provided, is provided to the Contractor as a matter of convenience and does not substitute for the Contractor using due diligence to reasonably observe and or to access space to determine errors, inconsistencies or omissions. In all cases of interconnection of the Work with existing conditions, Contractor shall verify at the site all dimensions relating to such existing conditions.

11.07 Contractor's Structures. The building or locating of structures or the erection of tents or other forms of protection will be permitted only at such places as City's Representative shall permit. The Contractor shall not damage the property where such structures are allowed and shall at all times maintain sanitary conditions in and about such structures in a manner satisfactory to the City. The City may charge the Contractor for any damage or injury to the City, its property, or third persons as a result of the location or use of such structures.

11.08 The Contractor and any entity over whom the Contractor has control shall not erect any sign on the Project site without the prior written consent of the City.

11.09 City may have other work related to the Project performed at the Project site during the time the Work is performed. Contractor should schedule its Work to coordinate with the work of other contractors and utilities with the understanding that some of that work may be performed at times other than as set out in the Contract Documents or as otherwise anticipated. City will endeavor to have such other work performed so as not to unduly interfere with Contractor's performance when Contractor notifies City of specific reasonable needs well in advance of those needs and where it is possible to do so. In the event of substantial delay caused by another contractor or a utility, after advance notice of its needs by Contractor, Contractor will be entitled to make a claim for an extension of time as provided herein.

11.10 When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

12.01 Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do

not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

12.02 All materials shall be approved by the City prior to purchase by the Contractor. Unless otherwise specified herein, the Contractor shall purchase all materials and equipment outright and shall not subject the materials and equipment utilized in the Project to any conditional sales agreement, bailment, lease, or other agreement reserving unto seller any right, title, or interest therein. Title to all materials, but not risk of loss, shall pass to the City upon delivery to the Project.

12.03 Where the City deems it necessary to supply materials, it may furnish to the Contractor the list of materials set forth in the attached "List of City Furnished Materials". Upon receipt of said materials, the Contractor shall immediately furnish to the City a written receipt. Moreover, the Contractor shall, on behalf of the City, accept delivery of the materials set forth in the attached "List of Materials Ordered by the City". Under such circumstances, the Contractor shall promptly forward to the City for payment the supplier's invoice together with the Contractor's receipt in writing for such materials.

- (a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.
- (b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.
- (c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.
- (d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.
- (e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

12.04 Materials and supplies shall be new and of good quality. Upon request, the Contractor shall supply proof of quality and manufacturer. No refurbished, reconditioned, or other previously utilized materials or supplies will be used without the prior signed authorization of City's Representative. The Contractor may utilize substitutes of equal quality and function only upon the prior written authorization of the City's Representative. The City's Representative may require documentation as to quality and function, including manufacturer's specifications, to insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole discretion over the use of substitute materials and supplies. Contractor shall bear the risk of any delay in performance caused by submitting substitutions.

12.05 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly

removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

12.06 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

12.07 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

12.08 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

12.09 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals.

12.10 The Contractor shall review for compliance with the Contract Documents, approve and submit to the City's Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the City's Consultant or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors.

12.11 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the City and City's Consultant that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

12.12 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the City's Consultant.

12.13 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the City's Consultant in writing of such deviation at the time of submittal and (1) the City's Consultant has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the City's Consultant's approval thereof.

12.14 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the City's Consultant on previous submittals. In the absence of such written notice, the City's Consultant's approval of a resubmission shall not apply to such revisions.

12.15 Contractor shall be liable for and the City may withhold from Contractor's payments any amount of additional fees charged by City's Consultant for excessive resubmittal review.

13. ENTRY, OBSERVATION, TESTING & POSSESSION

13.01 The City reserves the right to enter the Project site or sites by such employee(s) or agent(s) as it may elect for the purpose of inspecting the work. The City further reserves the right to enter the Project site or sites for the purpose of performing such collateral work as the City may desire.

13.02 The City's Representative shall have the right, at all reasonable times, to observe and test the work. The Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location where the Work or any part thereof is in preparation or progress. The Contractor shall ascertain the scope of any observation that may be contemplated by City's Representative and shall give ample notice as to the time each part of the Work will be ready for observation.

13.03 The City's Representative may require Contractor to remove, dismantle, or uncover completed work. If the work is not in accordance with the Plans, Specifications, or other Contract Documents, the Contractor shall pay the costs of repair and restoration of the work required to be removed, dismantled, or uncovered. Unless Contractor is obligated to provide advance notice of inspection, prior to covering up the work, and fails to do so, if said work is in accordance with the -Plans, -Specifications, and other Contract Documents, the City shall pay the costs of repair and restoration of the work.

13.04 City shall have the right to take possession of and use any completed or partially completed portions of the Project prior to the time for completing the entire Project or such portions which may not have expired. The parties agree and understand that possession and use shall not constitute an acceptance of any work not completed in accordance with this Agreement. Further, insurance changes required to keep Contractor's insurance in effect shall be the responsibility of Contractor.

14. REJECTED WORK

14.01 All work deemed not in conformity with this Agreement as determined by the City in its sole discretion, may be rejected by the City. City's Representative may reject any work found to be defective or not in accordance with the Contract Documents, regardless of the stage of the work's completion or the time or place of discovery of such defects or inconsistencies and regardless of whether City's Representative has previously accepted the work through oversight or otherwise. Neither observations nor inspections, tests, or approvals made by City's Representative, or other persons authorized under this Agreement to make such observations, inspections, tests, or approvals, shall relieve the Contractor from the obligation to perform the Work in accordance with the requirements of this Agreement and the other Contract Documents.

14.02 If the work or any part thereof is rejected by the City, it shall be deemed by City's Representative as not in conformity with this Agreement. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

- (a)** The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.

(b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

14.03 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including City's expenses and compensation for the City's Consultant's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

15. SUBCONTRACTING & SUBCONTRACTORS

15.01 The Contractor agrees that it will retain personal control and will give its personal attention to the fulfillment of this Agreement. The Contractor further agrees that subletting of any portion or feature of the Work or materials required in the performance of this Agreement shall not relieve the Contractor from its full obligation to the City as provided by this Agreement.

15.02 Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the Work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. Contractor's subcontract agreement shall provide that subcontractors shall assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which the Contractor, by these Documents, assumes toward the City and Consultant. 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.

16. PAYMENT

16.01 The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Agreement. The Contractor shall issue exemption certificates to its suppliers and subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969.

16.02 Progress Payment Applications. The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by City's Representative. Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require ("Schedule of Values"). The Schedule of Values shall not overvalue early job activities and shall follow the trade divisions of the Specifications so far as possible. Modifications must be approved by City. This schedule, unless objected to by the City, shall be incorporated into this Agreement as a Contract Document and attached hereto as **Exhibit F**. The Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment. On or before the 15th day of each month, the Contractor shall submit to City's Representative, for approval or

modification, an updated Project Schedule and a statement, backed by the Schedule of Values, showing as completely as practicable the total value of the actual work performed by the Contractor and accepted by the City up to and including the last day of the *preceding* month. The statement shall also include the value of all materials not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the Work.

16.03 Progress Payments. On or before the **30th** calendar day following the City's receipt of a progress payment application made in conformity with Section 16.02, the City shall pay to the Contractor the approved amount of the progress payment based on the Contractor's applications for payment, and the recommendation and approval of City's Representative. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of Work completed by the Contractor and approved by the City, but in each case less the aggregate of payments previously made, less retainage, and less amounts as City's Representative shall determine and the City may withhold in accordance with this Agreement. Upon Final Completion, including the delivery of all close out documents, such as "as built" drawings, warranties, guarantees, required additional materials, releases, operation and maintenance manuals, and acceptance of the Work in accordance with this Agreement, the City shall pay the remainder of the balance due under this Agreement, less any sums withheld under other terms of this Agreement and less the retainage, which shall be retained for a period of thirty (30) calendar days from the date of Final Completion. Acceptance of retainage by Contractor shall constitute a Waiver and Release of all claims by Contractor.

☒ **16.04 Retainage.** From each approved statement, the City shall retain until final payment, ten percent (10%), where the full contract amount is less than \$400,000.00, and five percent (5%), where the full contract amount is \$400,000.00 or more. The City may also retain from each approved statement any other sums authorized under the terms of this Agreement.

OR:

☐ **16.04 Retainage.** This section has been removed. No retainage will be deducted.

16.05 If the actual amount of work to be done and the materials to be furnished differ from estimates and where the basis for payment is the unit price method, then payment shall be for the actual amount of accepted work done and materials furnished on the Project.

16.06 Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

16.07 The Contractor shall have the sole obligation to pay any and all charges or fees and give all notices necessary to and incidental to the lawful prosecution of the Work hereunder. The Contractor shall not and shall have no authority whatsoever to obligate the City to make any payments to another party nor make any promises or representation of any nature on behalf of the City, without the specific written approval of the City.

16.08 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

16.09 Unless otherwise provided in the Contract Documents:

- (a) Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Amount but not in the allowances; and
- (c) Whenever costs are more than or less than allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 16.9(a) and (2) changes in the Contractor's costs under Section 16.9(b).

16.10 Suspension of Payments. The City, at any time, may suspend monthly progress payments on the Work if it determines that the projected liquidated damages may exceed retainage. The City, at any time, may suspend monthly progress payments if it believes that the Contractor will not complete the Work due to actual default or that the Contractor has represented or done some act that indicates that it will not complete the Work in accordance with this Agreement or within the time period submitted in its bid. Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Section.

16.11 Withhold Funds. Regardless of any bond, the City may, on account of subsequently discovered evidence and in addition to the retainage withheld under Section 16.04, withhold funds or nullify all or part of any acceptance or certificate to such extent as may be necessary to protect itself from loss on account of any of the following, or as otherwise provided in this Agreement:

- (a) Defective work other than defects in design provided to Contractor by a person other than Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier for non-critical infrastructure.
- (b) Failure to timely disclose in writing to the City of a known defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications or other design documents.
- (c) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (d) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (f) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.
- (g) Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.
- (h) City's determination of an amount of liquidated damages.
- (i) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.
- (j) Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.
- (k) Corrections of mistakes, errors and overpayments in relation to prior pay applications and payments.

Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Section.

17. EXTRA WORK CHARGES

17.01 No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid for except upon the written order from authorized personnel of the City.

17.02 City Manager Approval. When the original contract amount plus all change orders is **One Hundred Thousand Dollars (\$100,000)** or less, the City Manager or his designee may approve the written change order in accordance with 17.03 below, provided the change order does not increase the total amount set forth in the Contract to more than **One Hundred Thousand Dollars (\$100,000)**. For such contracts, when a change order results in a total contract amount that exceeds **One Hundred Thousand Dollars (\$100,000)**, the City Council of the City must approve such change order prior to commencement of the services or work.

☒ **17.03** For "Extra Work", as defined in this Agreement and authorized through written change orders, and pursuant to Section 252.048(d) of the Texas Local Government Code, the original Contract price may not be increased by more than **twenty-five percent (25%)**. Written change orders that do not exceed **twenty-five percent (25%)** of the original Contract Amount may be made or approved by the City Manager or his delegate if the change order is equal to or less than **Fifty Thousand Dollars (\$50,000.00)**. Changes in excess of **Fifty Thousand Dollars (\$50,000.00)** must be approved by the City Council prior to commencement of the services or work. **Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract Schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non-included cost.

OR:

☐ **17.03** For construction contracts funded in whole or in part by Certificates of Obligations, for "Extra Work," as defined in this Agreement and authorized through written change orders, and pursuant to Section 271.060 of the Texas Local Government Code, a contract with an original contract price of \$1 million or more may not be increased by more than **twenty-five percent (25%)**. If a change order for a construction contract funded in whole or in part with certificates of obligation that has an original price of less than \$1 million increases the Contract Amount to \$1 million or more, subsequent change orders may not increase the revised Contract Amount by more than **twenty-five percent (25%)**. Written change orders may be made or approved by the City Manager or his delegate if the change order is equal to or less than **Fifty Thousand Dollars (\$50,000.00)**. Changes in excess of **Fifty Thousand Dollars (\$50,000.00)** must be approved by the City Council prior to commencement of the services or work. **Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract Schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non-included cost.

17.04 The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the Work shall not excuse the Contractor from

performing all the Work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the Work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the Work and the Contractor shall assume and pay the costs of the performance of the Work as contracted.

(a) It is agreed that the Contractor shall perform all Extra Work under the direction of City's Representative when presented with a written work order signed by City.

(b) **No claim for Extra Work of any kind will be allowed unless ordered in writing by the City.** In case any orders or instructions appear to the Contractor to involve Extra Work for which it should receive compensation or an adjustment in the construction time, it shall make written request to City's Representative for a written order from City authorizing such Extra Work.

(c) Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the City insists upon its performance, then the Contractor shall proceed with the Work after making written requests for written orders in a change order and shall keep adequate and accurate account of the actual field costs therefor, as provided under Method C.

(d) It is also agreed that the compensation to be paid to the Contractor for performing Extra Work shall be determined by one or more of the following methods:

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

Method C - If neither Method A nor Method B is agreed upon before the Extra Work is commenced, then the Contractor shall be paid the actual field cost (as defined in subsection (g) below) of the Work.

(e) **Method A - Unit Prices.** The Contractor agrees to perform Extra Work for the unit prices in the Contractor's Proposal. The Contractor also agrees and warrants that when it is necessary to construct units not shown in the Contract Documents, it shall construct such units for a price arrived at as follows:

(1) The cost of materials shall be determined by the invoices;

(2) The cost of labor shall be the reasonable cost thereof, as determined by the City, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio. Provided, however, that the ratio shall be calculated for only those units that are similar to the new unit for which a price is to be determined.

(f) **Method B - Lump Sum.** The lump sum shall be reasonably close to the amount for similar work previously done or combinations of similar units. Invoices for materials used shall be provided in support of the agreed lump sum.

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, workers' compensation, and all other insurance as may be required by law or ordinances or required and agreed to

by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

- (1) No indirect or consequential damages will be allowed.
- (2) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned man loading to actual man loading, or any other analysis that is used to show damages indirectly.
- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

18.01 The date of beginning, the time for Substantial Completion and Final Completion of Work as specified in this Agreement are of the essence of this Agreement.

18.02 The Work embraced by this Agreement shall be commenced on the date specified in the notice to proceed. Said notice to proceed may be given orally or set by the City's Representative at the post-award conference.

18.03 The Work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor bid calendar days for the time within which it shall reach Substantial Completion of the Project.

18.04 The Work shall reach Final Completion and be ready for final payment within **thirty (30) calendar days** from the date of Substantial Completion.

19. SUBSTANTIAL COMPLETION

19.01 The Contractor shall notify City's Representative when, in the Contractor's opinion, the Contract is Substantially Completed. Within ten (10) calendar days after the Contractor has given City's Representative written notice that the Work has been Substantially Completed, City's Representative shall inspect the Work for the preparation of a final punch list.

(a) If City's Representative and the City find that the Work is not Substantially Completed, then they shall so notify the Contractor who shall then complete the Work. City's Representative shall not be required to provide a list of unfinished work.

(b) If the City Representative and City find that the Work is Substantially Completed, the City shall issue to the Contractor its certificate of Substantial Completion.

19.02 The Substantial Completion of the Work shall not excuse the Contractor from performing all of the Work, whether of a minor or major nature, necessary for Final Completion and thereby completing the Project in accordance with the Contract Documents.

20. FINAL COMPLETION

20.01 Contractor shall notify the City's Representative when it believes that the Work has reached Final Completion as defined in this Agreement. If the City's Representative and the City accept and deems such Work Finally Complete, then Contractor shall be so notified and certificates of completion and acceptance, as provided herein, shall be issued. A complete itemized statement of this Agreement account, certified by the City's Representative as correct, shall then be prepared and delivered to Contractor. Contractor or City, as the case may be, shall pay the balance due as reflected by said statement within thirty (30) calendar days.

20.02 The Contractor shall procure all required certificates of acceptance or completions issued by state, municipal, or other authorities and submit the same to the City. The City may withhold any payments due under this Agreement until the necessary certificates are procured and delivered.

20.03 Neither the final payment nor any acceptance nor certificate nor any provision of this Agreement shall relieve the Contractor of any responsibility for faulty workmanship or materials. At the option of the City, the Contractor shall remedy any such defects and pay for any damage to other work which may appear after final acceptance of the Work.

21. DELAYS

21.01 The Contractor, in undertaking to complete the Work within the times herein fixed, has taken into consideration and made allowance for all hindrances and delays incident to such Work, whether growing out of delays in securing material or workmen or delays arising from inclement weather or otherwise.

21.02 The City may, in its sole discretion, delay the Work during inclement weather in order to preserve the Project, insure safety of work forces, and the preservation of materials and equipment. In such event and upon a written request from the Contractor, the City may grant an extension of time pursuant to Section 22 to offset for such stoppage of the Work.

21.03 No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance or delay in the progress of the Work, unless such delays (1) are caused by the actual interference, fraud, bad faith or misrepresentation by the City or its agents, (ii) extend for an unreasonable length of time; or (iii) were not contemplated by the parties at the time of contracting. In the event of any delay entitling Contractor to an increase in Contract Amount, except when due to City's intentional interference or fraud, Contractor's recovery shall be limited as outlined in Section 21.04 below. The City's reasonable exercise of any of its rights or remedies under the Contract, regardless of the extent or frequency, shall not under any circumstances be construed as interference with the Contractor's performance of the Work.

21.04 In the event of delays resulting from changes ordered in the Work by the City or other delays caused by the City or for the City's convenience, the Contractor may apply to the City for recovery of incidental damages resulting from increased storage costs or other costs necessary to protect the value of the Work. In no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.

22. EXTENSIONS OF TIME

22.01 The Contractor has submitted its proposal in full recognition of the time required for the completion of this Project, taking into consideration all factors including, but not limited to the average climatic range and industrial conditions. The Contractor has considered the liquidated damage provision of this Agreement and understands and agrees that it shall not be entitled to, nor will it request, an extension of time for either Substantial Completion or Final Completion, except when the Work has been delayed by one or more of the following:

- (a) An act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
- (b) By changes ordered in the Work, or reductions thereto approved in writing;
- (c) By "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the National Weather Service Forecast Office for Easterwood Airport in College Station, Texas (KCLL/CLL); or
- (d) By other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and unpredictable events. This term does **not** include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's Proposal or decision to bid.

22.02 If one or more of the foregoing conditions is present, the Contractor may apply in writing for an extension of time, within thirty (30) days of the occurrence of the event causing the delay, submitting therewith all written justification as may be required by the City's Representative. Within ten (10) calendar days after receipt of a written request for an extension of time, which is supported by all requested documentation, the City shall, in writing and in its sole discretion, grant or deny the request. Under no circumstances shall any extension of time by the City be valid and binding unless it is in writing and in conformity with the other terms of this Agreement.

23. LIQUIDATED DAMAGES

23.01 The time for the Substantial and Final Completion of the Work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industry conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02 Milestone Specific Liquidated Damages (Project Milestones set forth in Exhibit E. Construction Schedule)

- (a) **MILESTONE #1:** As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work contained in **Milestone #1**, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work contained in **Milestone #1** within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of **FIVE HUNDRED and 00/100 DOLLARS (\$500.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.
- (b) **MILESTONES #2, #3, AND #4:** As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work contained in **Milestones #2, #3, and #4**, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work contained in **Milestones #2, #3, and #4** within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of **ONE THOUSAND and 00/100 DOLLARS (\$1,000.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

24.01 The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

24.02 The Contractor shall take the necessary precautions to protect any areas adjacent to its Work.

24.03 The Work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

25. WARRANTY

25.01 Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

The Contractor warrants that all materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative, and all work will be of good quality, free from faults and defects (other than defects from third parties as set out in Chapter 59 Texas Business and Commerce Code relating to non-critical infrastructure), and in conformance with this Agreement, the other Contract Documents, and recognized industry standards .

25.02 All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

25.03 This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

25.04 Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

25.05 This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

25.06 Defective Work Discovered During Warranty Period. If any of the Work is found or determined to be either defective, including obvious defects under warranty as set forth in this Section 25, or otherwise not in accordance with this Agreement 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 Agreement, the Contractor shall promptly, upon receipt of written notice by the City, correct the defective work at no cost to the City.

25.07 The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

25.08 If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the Work, the Contractor 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 the Contractor or its surety.

25.09 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 the Contractor or by the surety.

25.10 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 this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the Work.

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

26.01 Wage Rates. Pursuant to Section 2258.023(a) of the Texas Government Code, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages attached hereto as Exhibit A.

26.02 Statutory Penalty. Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of Section 26.01, the Contractor or subcontractor as the case may be shall pay the City **sixty dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

26.03 The Contractor and each subcontractors shall pay all of their employees engaged in work on the Project in full (less mandatory legal deductions) in cash or by check readily cashable, without discount, no less than once each week.

26.04 No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

26.05 Payment of Subcontractors. The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed against any property owned by the City. In the event a statutory lien notice is sent to the City, the Contractor shall, where no payment bond covers the Work, upon written notice from the City, immediately obtain a bond at its expense and hold the City harmless from any losses that may result from the filing or enforcement of any said lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

26.06 Affidavit of Bills Paid. Prior to Final Acceptance of the Project, the Contractor shall provide a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Contractor has been notified.

27. INSURANCE

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

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

27.02 Types. Contractor shall have the following types of insurance:

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Excess Liability – required for contract amounts exceeding \$1,000,000.
- (d) Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage, builder's risk policy shall be written on "all risks" form.
- (e) Workers' Compensation/ Employer's Liability.

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

- (a) Only licensed Insurance Carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.
- (e) The City of College Station, its agents, officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents, officials, employees or volunteers.

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

27.05 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 in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (c) 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) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00, where such exposures exist.

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

Unless otherwise agreed in writing, excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the Agreement, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

27.07 Additional Insured.

Those policies set forth in Sections 27.04, 27.05, and 27.06 shall contain an endorsement listing the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit C, and approved by the City before Work commences.

27.08 Builder's Risk

Until the Work is completed and accepted by the City, the Contractor shall purchase and maintain builder's risk insurance upon the entire Work at the Project site to the full insurable value thereof, including any increases in value due to duly authorized change orders to the Work and Project. The builder's risk insurance shall also cover portions of the Work stored off site after written approval of the City of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the City, the Contractor, subcontractors and sub-subcontractors in the Work and shall insure against the perils of fire, wind, storm, hail, lightning and extended coverage including flood and earthquake and shall include all-risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. The insurance shall cover reasonable compensation for City's Consultant's services and expenses required as a result of an insured loss. This must be an all-risk policy incorporating the following language:

Permission is given for the Project insured hereunder to become occupied, the insurance remaining in full force and effect until such time as the Project has been accepted by the City, all as currently approved by the Texas Board of Insurance Commissioners

When permissible by law, the Certificate of Insurance must include the names of the insured Contractor and the City. The deductible under the policy, including that for flood shall not exceed \$100,000.00 without the written approval of the City.

27.09 Workers' Compensation/Employer's Liability Insurance. The following Workers' Compensation Insurance requirements shall apply.

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance

Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

- (b) Workers' Compensation/ Employer's Liability insurance shall include the following terms:
1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. 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.

- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

“A. Definitions:

Certificate of coverage (“certificate”) – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers’ Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the Work on the project until the Contractor’s/person’s Work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (“subcontractors” in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor’s current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all

persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) A certificate of coverage, prior to the other person beginning work on the project; and

(b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that

materially affects the provision of coverage of any person providing services on the project; and

(7) Contractually require each person with whom it contracts to perform as required by Sections (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this Agreement, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the Agreement void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."

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

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

28. BOND PROVISIONS

28.01 Pursuant to Section 2253.021 of the Texas Government Code, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds \$50,000, and a performance bond is required if the Contract Amount exceeds \$100,000. Below those amounts, the City *may* require payment and/or performance bonds. In the event a performance or payment bond or both is required either by law or in the City's discretion, such bonds shall be executed in accordance with all requirements of Chapter 3503 of the Texas Insurance Code, all other applicable law, and the following:

- (a)** The Contractor shall execute performance and payment bonds for the full Contract Amount and, if required by Contractor's surety to cover increases in the dollar amounts or amount of Work that is increased by a duly authorized change order, Contractor shall secure performance and payment bond riders to increase the dollar amounts and coverages of the performance and payment bonds.
- (b)** The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.

(c) The Contractor shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by the Contract Documents, which are attached as Exhibit B, together with valid original powers of attorney, **at the time of execution of this Agreement by Contractor and prior** to the commencement of work. Copies of the executed bonds shall be attached hereto as **Exhibit B**.

(d) The performance and payment bonds, and any subsequently issued bond riders, shall remain in effect for a period of one (1) year after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.

(e) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

28.02 The Contractor may make such changes and alterations as the City may require in the Work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the Work as originally planned, in accordance with the provisions of Article 17.

29. SURETY

29.01 If the Contractor has abandoned the Project or the City has terminated the Contract for cause and the Contractor's Surety, after notice demanding completion is sent, fails to commence the completion of the Work in compliance with this Agreement, then the City at its option may provide for completion of the Work in either of the following manners:

(a) The City may employ such force of men and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor and Surety.

(b) The City may, after notice published as required by law, accept sealed bids and let this Agreement for the completion of the Work under substantially the same terms and conditions that are provided in this Agreement. In case of any increase in cost to the City under the new agreement as compared to what would have been the cost under this Agreement, such increase together with all of the City's damages due to Contractor's abandonment and/or default, including liquidated damages, as provided pursuant to Section 38, entitled "TERMINATION FOR CAUSE" shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete such new agreement prove to be less than that which would have been the cost to complete the Work under this Agreement, the Contractor shall be credited therewith after all deductions are made in accordance with this Agreement.

29.02 Should the cost to complete the Work exceed the Contract Amount and the Contractor fails to pay the amount due to the City within the time designated and there remains any machinery, equipment, tools, materials, or supplies on the Project site, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual

written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City's Representative to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, City's Representative may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City's Representative may elect. City's Representative shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

29.03 In the event the account shows that the cost to complete the Work is less than that which would have been the cost to City had the Work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the Project site shall be turned over to the Contractor.

30. COMPLIANCE WITH LAW

30.01 The Contractor's work and materials shall comply with all state and federal laws, municipal ordinances, regulations, codes, and directions of inspectors appointed by proper authorities having jurisdiction.

30.02 The Contractor shall perform and require all subcontractors to perform the Work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws as they apply to its employees. In the event any of the conditions of the specifications violate the code for any industry, then such code conditions shall prevail.

30.03 The Contractor shall follow all applicable state and federal laws, municipal ordinances, and guidelines concerning soil erosion and sediment control throughout the Project and warranty term.

31. SAFETY PRECAUTIONS

31.01 All safety measures, policies and precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the College Station Fire Department marked "Attn.: Assistant Chief".

31.02 The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the Work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the Work as may be necessary.

31.03 The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the Work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

31.04 Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in this Agreement, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as defined in this Agreement). **In the event Contractor**

engages in any of the activities prohibited in this Section 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this section 31.04.

31.05 In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to City in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon encountering a Hazardous Substance at the Project site, **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.**

31.06 City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

31.07 It is the Contractor's responsibility to comply with all Environmental Laws (as defined in this Agreement) based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

32. TRENCH SAFETY

The Contractor must comply with Texas law regarding trench excavation exceeding five feet in depth and in accordance with the following items:

32.01 The Contractor must comply with the requirements of Subchapter 756 of the Tex. Health & Safety Code Ann. §756.022-023, and the requirements of 29 C.F.R., Subpart P – Excavations (sections 1926.650 et. seq.) of the Occupational Safety and Health Administration Standards, as amended.

32.02 The Contractor must include a separate pay item for trench safety complying with trench safety requirements, stating a unit price per linear foot of trench safety systems, as measured along the centerline of trench including manholes and other line structures.

32.03 Before beginning work on this project, the Contractor must submit to the City a complete trench safety program that complies with state and federal regulations. It is the sole duty, responsibility and prerogative of the Contractor, not the City, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project.

32.04 The Contractor must provide the City the name of the “competent person” required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems

comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

32.05 If evidence of possible cave-ins or slides is apparent, the Contractor must cease all work in the trench and surrounding area until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench.

33. INDEMNITY

33.01 CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THE CONTRACT DOCUMENTS. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.

33.02 The indemnification contained in Section 33.01 shall include but not be limited to the following specific instances:

- (a) The City is damaged due to the act, omission, mistake, fault or default of the Contractor.**
- (b) In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.**
- (c) In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.**
- (d) In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.**
- (e) The removal of all debris related to the Work.**
- (f) The acts and omissions of the subcontractors it hired.**
- (g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.**

33.03 The indemnification obligations of the Contractor under this section shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

33.04 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 Section 33.01, 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.

33.05 The indemnity provisions provided herein shall survive the termination or expiration of this Agreement.

33.06 The indemnification obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers compensation acts, disability benefit acts or other employee benefit acts. 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.

34. RELEASE

34.01 The Contractor assumes full responsibility for the Work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its 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 or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or 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 in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City. 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.

35. PERMITS AND LICENSES

35.01 The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the Work. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work.

36. ROYALTIES AND LICENSING FEES

36.01 THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSING FEES. THE CONTRACTOR SHALL HOLD THE CITY HARMLESS AND INDEMNIFY THE CITY FROM THE PAYMENT OF ANY ROYALTIES, DAMAGES, LOSSES OR EXPENSES INCLUDING ATTORNEY'S FEES FOR SUITS, CLAIMS OR OTHERWISE, GROWING OUT OF INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS, MATERIALS AND METHODS USED IN THE PROJECT. IT SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT RIGHTS. FURTHER, IF THE CONTRACTOR HAS REASON TO BELIEVE THAT THE DESIGN, SERVICE, PROCESS, OR PRODUCT

SPECIFIED IS AN INFRINGEMENT OF A PATENT, IT SHALL PROMPTLY GIVE SUCH INFORMATION TO CITY'S REPRESENTATIVE.

37. BREACH OF CONTRACT & DAMAGES

37.01 The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate, or terminate the Contractor's obligations under this Agreement.

37.02 Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (a) If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b) If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- (c) If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

38. TERMINATION FOR CAUSE

38.01 At any time, and without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to terminate this Agreement in its entirety for any of the following:

- (a) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or
- (b) If a receiver, trustee, or liquidator of any of the property or income of the Contractor is appointed; or
- (c) If the Contractor fails to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- (d) If the Contractor fails to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or
- (e) If the Contractor fails for any reason other than the failure by City's Representative to make payments called upon when due; or
- (f) If the Contractor abandons the Work.

- (g) If the Contractor commits a material default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

39.01 The performance of the Work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the Work is terminated, and the date upon which termination becomes effective.

39.02 In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

40.01 If this Agreement is terminated for cause, the City shall have the right but shall not be obligated to complete the Work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment, without rental obligation therefor, and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the Work itself or by others, pursuant to the foregoing, then the Contractor and/or Contractor's surety will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, administrative expenses, field overhead, the cost of necessary equipment, materials, field labor, additional fees paid to architects, engineers, attorneys or others to assist the City in connection with the termination and liquidated damages) in completing and/or correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

41. CLOSE OUT

41.01 After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City's Representative, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City's Representative, do the following:

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the Work as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination;

(d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the Work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred.

42. TERMINATION CONVERSION

42.01 Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Section 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Section 39 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 39.

43. HIRING

43.01 During the term of this Agreement and for a period of one (1) year thereafter, the Contractor agrees not to solicit for hire any employee or employees of the City that were associated with work specified under this Agreement. In the event that this provision is breached by the Contractor, the Contractor agrees to pay the City damages in the amount equal to twelve (12) months of the employee's total compensation plus any legal expenses associated with enforcement of this provision.

44. ASSIGNMENT

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

45. EFFECTIVE DATE

45.01 This Agreement goes into effect when duly approved by all the parties hereto and is contingent upon Contractor obtaining the bonds required herein.

46. OTHER TERMS

46.01 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.

46.02 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.

46.03 Written Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such change.

46.04 Entire Agreement. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

46.05 Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

46.06 Mediation. After receipt of a written notice of a claim, the City may elect to refer the matter to the City's Consultant, City's Representative or another party for review. Contractor will attend meetings called to review and discuss the claims and mitigation of the problem, and shall furnish any reasonable factual backup for the claim requested. The City may also elect to defer consideration of the claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City, at its sole discretion, is entitled to refer a claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under City's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in College Station, Texas.

46.07 Arbitration. In the event of a dispute and upon the mutual written consent of both parties, the parties may agree to arbitration without waiving any of their other rights hereunder.

46.08 Choice of Law and Place of Performance. This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

46.09 Authority to do business. The Contractor represents that it has a certificate of authority, authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this Agreement.

46.10 Authority to Contract. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

46.11 Waiver. Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

46.12 Headings, Gender, Number. The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

46.13 Agreement Read. The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

46.14 Multiple Originals. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

46.15 Notice of Indemnification. City and Contractor hereby acknowledge and agree that this Agreement contains certain indemnification obligations and covenants.

46.16 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. Wage Rates
- B. Performance & Payment Bonds
- C. Certificates of Insurance
- D. Plans & Specifications
- E. Construction Schedule
- F. Schedule of Values

ELLIOTT CONSTRUCTION, LLC

CITY OF COLLEGE STATION

By: _____

By: _____

Printed Name: _____

City Manager

Date: _____

Title: _____

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20220007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClellon and Williamson Counties) and HIGHWAY Construction Projects

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

Modification Number Publication Date
0 01/06/2023

SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.56	**
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.94	**
Structures.....	\$ 12.87	**
LABORER Asphalt Raker.....	\$ 12.12	**
Flagger.....	\$ 9.45	**
Laborer, Common.....	\$ 10.50	**
Laborer, Utility.....	\$ 12.27	**
Pipelayer.....	\$ 12.79	**
Work Zone Barricade Servicer.....	\$ 11.85	**
PAINTER (Structures).....	\$ 18.34	
POWER EQUIPMENT OPERATOR: Agricultural Tractor.....	\$ 12.69	**
Asphalt Distributor.....	\$ 15.55	**
Asphalt Paving Machine.....	\$ 14.36	**
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	**
Concrete Pavement Finishing Machine.....	\$ 15.48	**
Crane, Hydraulic 80 tons or less.....	\$ 18.36	
Crane, Lattice Boom 80 tons or less.....	\$ 15.87	**
Crane, Lattice Boom over 80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	**
Directional Drilling Locator.....	\$ 11.67	**
Directional Drilling Operator.....	\$ 17.24	
Excavator 50,000 lbs or Less.....	\$ 12.88	**
Excavator over 50,000 lbs...	\$ 17.71	
Foundation Drill, Truck Mounted.....	\$ 16.93	
Front End Loader, 3 CY or Less.....	\$ 13.04	**
Front End Loader, Over 3 CY.	\$ 13.21	**
Loader/Backhoe.....	\$ 14.12	**
Mechanic.....	\$ 17.10	
Milling Machine.....	\$ 14.18	**
Motor Grader, Fine Grade....	\$ 18.51	
Motor Grader, Rough.....	\$ 14.63	**
Pavement Marking Machine....	\$ 19.17	
Reclaimer/Pulverizer.....	\$ 12.88	**

Roller, Asphalt.....\$ 12.78 **
 Roller, Other.....\$ 10.50 **
 Scraper.....\$ 12.27 **
 Spreader Box.....\$ 14.04 **
 Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....\$ 14.00 **
 Structural.....\$ 19.29

TRAFFIC SIGNALIZATION:

Traffic Signal Installation

Traffic Signal/Light Pole
 Worker.....\$ 16.00 **

TRUCK DRIVER

Lowboy-Float.....\$ 15.66 **
 Off Road Hauler.....\$ 11.88 **
 Single Axle.....\$ 11.79 **
 Single or Tandem Axle Dump
 Truck.....\$ 11.68 **
 Tandem Axle Tractor w/Semi
 Trailer.....\$ 12.81 **

WELDER.....\$ 15.97 **

 WELDERS - Receive rate prescribed for craft performing
 operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher
 minimum wage under Executive Order 14026 (\$16.20) or 13658
 (\$12.15). Please see the Note at the top of the wage
 determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
 for Federal Contractors applies to all contracts subject to the
 Davis-Bacon Act for which the contract is awarded (and any
 solicitation was issued) on or after January 1, 2017. If this
 contract is covered by the EO, the contractor must provide
 employees with 1 hour of paid sick leave for every 30 hours
 they work, up to 56 hours of paid sick leave each year.
 Employees must be permitted to use paid sick leave for their
 own illness, injury or other health-related needs, including
 preventive care; to assist a family member (or person who is
 like family to the employee) who is ill, injured, or has other
 health-related needs, including preventive care; or for reasons
 resulting from, or to assist a family member (or person who is
 like family to the employee) who is a victim of, domestic
 violence, sexual assault, or stalking. Additional information
 on contractor requirements and worker protections under the EO
 is available at
<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within
 the scope of the classifications listed may be added after
 award only as provided in the labor standards contract clauses
 (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current

negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.
5. Except for Heavy/Highway Construction, building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

EXHIBIT B
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Bond No. _____

THE STATE OF TEXAS

§

§

THE COUNTY OF BRAZOS

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Six Million Nine Hundred Fifty Thousand One Hundred Thirty-Three and NO /100 Dollars (\$ 6,950,133.00) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for as described in 23-062 Bee Creek Sewer Line

_____, all of such Work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of College Station or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Contract in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of College Station shall retain certain amounts due the Contractor until the expiration of thirty (30) days from the acceptance of the Work is intended for the City's benefit, and the City of College Station shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of College Station or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be

done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom. Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall not in anywise affect its obligation on this bond and it does hereby waive notice of any such change in Contract Time or Contract Sum.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of College Station from any liability, loss, cost, expense, or damage arising out of or in connection with the Work done by the Contractor under the Contract. In the event that the City of College Station shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in Brazos County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party. A copy of surety agent's "Power of Attorney" must be attached hereto.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

Bond No. _____

FOR THE CONTRACTOR:

ELLIOTT CONSTRUCTION, LLC

ATTEST & SEAL: (if a corporation) (SEAL)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: July 27, 2023

Date: July 27, 2023

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____

Name: _____

Title: _____

(Address of Surety for Notice)

Date: July 27, 2023

By: _____

Name: _____

Title: _____

Date: July 27, 2023

FOR THE CITY:

**THE FOREGOING BOND IS ACCEPTED ON
BEHALF OF THE CITY OF COLLEGE
STATION, TEXAS:**

REVIEWED:

City Attorney

City Manager

NOTE: Date of bonds must be on or after the date of execution by City.

TEXAS STATUTORY PAYMENT BOND

Bond No. _____

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, a _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Six Million Nine Hundred Fifty Thousand One Hundred Thirty-Three _____ and NO _____/100 Dollars (\$6,950,133.00) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 27th day of July _____, 2023, for as described in 23-062 Bee Creek Sewer Line _____, referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the Work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall not in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Sum. A copy of surety agent's "Power of Attorney" must be attached hereto.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

Bond No. _____

FOR THE CONTRACTOR:

ELLIOTT CONSTRUCTION, LLC.

ATTEST & SEAL: (if a corporation) (SEAL)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: July 27, 2023

Date: July 27, 2023

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____

Name: _____

Title: _____

(Address of Surety for Notice)

Date: July 27, 2023

By: _____

Name: _____

Title: _____

Date: July 27, 2023

FOR THE CITY:

**THE FOREGOING BOND IS ACCEPTED ON
BEHALF OF THE CITY OF COLLEGE
STATION, TEXAS:**

REVIEWED:

City Attorney

City Manager

NOTE: Date of bonds must be on or after the date of execution by City.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



ELLICON-02

ECALLEN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/27/2023

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 Boley-Featherston Insurance 701 Lamar Street Wichita Falls, TX 76301	CONTACT NAME: PHONE (A/C, No, Ext): (940) 723-7111 FAX (A/C, No): (940) 723-7531 E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE INSURER A : FCCI Insurance Company INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :
INSURED Elliott Construction, LLC P. O. Box 3788 Bryan, TX 77805	NAIC # 10178

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC ☐ OTHER:			CPP100058266-03	7/1/2023	7/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			CA100058267-03	7/1/2023	7/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			UMB100058268-03	7/1/2023	7/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	☒ 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	WC0100058269-03	7/1/2023	7/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Installation / Build			CPP100058266-03	7/1/2023	7/1/2024	Installation Floater 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of College Station it's agents, officials, employees & volunteers Attn: Risk Management 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
--	---



ADDITIONAL REMARKS SCHEDULE

AGENCY Boley-Featherston Insurance		NAMED INSURED Elliott Construction, LLC P. O. Box 3788 Bryan, TX 77805	
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

Additional Information

The Auto, Umbrella and General Liability policies include a blanket additional insured endorsement that provides additional insured status to any person or organization when there is a written contract that requires such status.

The General Liability policy includes a blanket additional insured endorsement that provides additional insured status in regard to completed operations to any person or organization when there is a written contract that require such status.

The Auto, General Liability, Umbrella and Workers Compensation policies include a blanket waiver of subrogation endorsement that provides waiver of subrogation to any person or organization when there is a written contract that requires such status.

The general liability and auto policies contains a special endorsement with "Primary and Noncontributory" wording.

EXHIBIT D
PLANS AND SPECIFICATIONS

EXHIBIT E CONSTRUCTION SCHEDULE

Milestone #1 - Effective Start Date shall be no longer than 40 Calendar days after City Council award of this project.

Milestone #2 - 160 Consecutive Working Days 2,600 linear feet of 48" FRP installed 362 linear feet of 24" CIPP installed 1,000 linear feet of 21" CIPP installed
This should have the main gravity line past Dartmouth and the 24" rehab completed under Texas Ave.

Milestone #3 - 240 Consecutive Working Days
4,000 linear feet of 48" FRP installed
1,500 linear feet of 42" FRP installed
2,500 linear feet of 21" CIPP installed
3,000 linear feet of 4" Fiber Conduit installed
This should have the main gravity line approaching Texas Avenue, and over 50% of the 21" rehab completed. Fiber Conduit installation would be lagging a bit behind the sewer main construction.

Milestone #4
All wastewater main installations and rehabilitation work will include all creek crossing, road crossings, gabion mattress improvements, concrete rip rap, existing sewer connections, fiber conduit installation, and site restoration. **The work shall be completed within 320 consecutive working days.**

EXHIBIT F
SCHEDULE OF VALUES

City of College Station
Bee Creek Sewer Line
Bid No. 23-062
Bid Opening Tuesday, June 6, 2023 at 2:00pm CT

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
GENERAL ITEMS					
1	1	LS	Mobilization	\$295,000.00	\$ 295,000.00
2	1	LS	Traffic Control	\$8,000.00	\$ 8,000.00
3	3.5	AC	Clearing and Grubbing	\$5,500.00	\$ 19,250.00
4	1	LS	Erosion and Sedimentation Control	\$140,000.00	\$ 140,000.00
5	6020	LF	Trench Safety	\$5.00	\$ 30,100.00
6	1	LS	Bypass Pumping Line A	\$150,000.00	\$ 150,000.00
7	1	LS	Bypass Pumping Line B	\$150,000.00	\$ 150,000.00

Subtotal: General Items \$ 792,350.00

REMOVALS					
8	35	LF	Remove Existing 21" DIP Aerial Crossing on Concrete Piers	\$210.00	\$ 7,350.00
9	60	LF	Remove Existing 24" Sanitary Sewer Line	\$50.00	\$ 3,000.00
10	265	LF	Remove Existing 21" Sanitary Sewer Line	\$50.00	\$ 13,250.00
11	5	EA	Cut & Plug Existing 24" Sanitary Sewer	\$1,800.00	\$ 9,000.00
12	7	EA	Cut & Plug Existing 21" Sanitary Sewer	\$1,800.00	\$ 12,600.00
13	1	EA	Cut & Plug Existing 18" Sanitary Sewer	\$1,800.00	\$ 1,800.00
14	1	EA	Cut & Plug Existing 15" Sanitary Sewer	\$1,200.00	\$ 1,200.00
15	1	EA	Cut & Plug Existing 8" Sanitary Sewer	\$1,000.00	\$ 1,000.00
16	90	LF	Flowable Fill Existing 24" Sanitary Sewer Line	\$85.00	\$ 7,650.00
17	2	EA	Abandon Existing Sanitary Sewer Junction Box	\$2,500.00	\$ 5,000.00
18	16	EA	Abandon Existing Sanitary Sewer Manhole	\$1,100.00	\$ 17,600.00
19	1	EA	Remove Existing Sanitary Sewer Manhole	\$2,400.00	\$ 2,400.00

Subtotal: Demolition Items \$ 81,850.00

ROADWAY & EARTHWORK					
20	73	LF	18" Dia. ASTM C76 CL III RCP w/ Cement Stabilized Sand Backfill	\$145.00	\$ 10,585.00
21	1	EA	Precast Safety End Treatment w/ Rip-Rap Apron	\$8,800.00	\$ 8,800.00
22	1	EA	Concrete Fill & Regrout Ex. Junction Box and Connect Prop. 18" RCP	\$2,000.00	\$ 2,000.00
23	20	LF	Remove and Replace Existing 8" PVC Drain Pipe	\$50.00	\$ 1,000.00
24	20	LF	Remove and Replace Existing 24" RCP	\$180.00	\$ 3,600.00
25	20	LF	Remove and Replace Existing 48" RCP	\$320.00	\$ 6,400.00
26	1	EA	Remove and Replace Existing 12'X33' Concrete Apron	\$9,800.00	\$ 9,800.00

Subtotal: Storm Sewer Items \$ 42,185.00

City of College Station
Bee Creek Sewer Line
Bid No. 23-062
Bid Opening Tuesday, June 6, 2023 at 2:00pm CT

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
DRAINAGE					
27	119	LF	60" Steel Casing Pipe, on Piers, by Dry Mechanical Bore (Excludes Carrier Pipe)	2,100.00	\$ 249,900.00
28	150	LF	54" Steel Casing Pipe, by Dry Mechanical Bore (Excludes Carrier Pipe)	2,000.00	\$ 300,000.00
29	125	LF	54" Steel Casing Pipe on Piers, by Open Cut (Excludes Carrier Pipe)	1,485.00	\$ 185,625.00
30	4138	LF	48" Dia. Fiberglass-Reinforced Polymer Mortar Pipe (SN 72) w/Grade 4 Stone Emb.	\$490.00	\$ 2,027,620.00
31	1670	LF	42" Dia. Fiberglass-Reinforced Polymer Mortar Pipe (SN 72) w/Grade 4 Stone Emb.	\$444.00	\$ 741,480.00
32	79	LF	48" Ductile Iron Pipe (Class 200), by Open Cut on Piers	3,150.00	\$ 248,850.00
33	30	LF	24" Dia. ASTM F679 PVC Pipe, by Open Cut	\$420.00	\$ 12,600.00
34	5	LF	15" Dia. SDR-26 PVC Pipe, by Open Cut	\$400.00	\$ 2,000.00
35	68	LF	8" Dia. SDR-35 PVC Pipe, by Open Cut	\$85.00	\$ 5,780.00
36	16	LF	6" Dia. SDR-35 PVC Pipe, by Open Cut	\$80.00	\$ 1,280.00
37	362	LF	Rehabilitate Existing 24" Conc. Sanitary Sewer with Cured in Place Pipe (CIPP)	\$315.00	\$ 114,030.00
38	2851	LF	Rehabilitate Existing 21" Conc. Sanitary Sewer with Cured in Place Pipe (CIPP)	\$235.00	\$ 669,985.00
39	20	EA	Point Repairs (CIPP)	1,500.00	\$ 30,000.00
40	3	EA	5' Dia Fiberglass Tee Base Watertight/Bolted Sanitary Sewer Manhole (Up to 12' Depth)	45,000.00	\$ 135,000.00
41	9	EA	5' Dia Fiberglass Tee Base Watertight/Bolted Sanitary Sewer Manhole (Over to 12' Depth)	48,200.00	\$ 433,800.00
42	2	EA	5' Dia Fiberglass Tee Base Watertight/Bolted Sanitary Sewer Drop Manhole (Over to 12' Depth)	59,500.00	\$ 119,000.00
43	3	EA	Standard 4' Dia. Watertight Sanitary Sewer Manhole	6,600.00	\$ 19,800.00
44	2	EA	6' Dia. Watertight Sanitary Sewer Manhole w/ Epoxy Lining	35,600.00	\$ 71,200.00
45	3	EA	Sanitary Sewer Manhole Vent	9,800.00	\$ 29,400.00
46	18	EA	Rehabilitate Existing Manhole	5,700.00	\$ 102,600.00
47	7	EA	Reconnect Existing 4" Lateral (Line B)	1,200.00	\$ 8,400.00
48	14	EA	Transfer Existing 4" Service to Existing 4" Lateral Stubout	1,800.00	\$ 25,200.00
49	2	EA	Connect to Existing 42" Stubout	20,300.00	\$ 40,600.00
50	1	EA	Connect to Existing 24" Stubout	5,100.00	\$ 5,100.00
51	1	EA	Connect to Existing 15" Stubout	3,800.00	\$ 3,800.00
52	2	EA	Connect to Existing 6" Stubout	1,100.00	\$ 2,200.00
53	303	SY	Gabion Mattress	\$285.00	\$ 86,355.00
54	350	SY	Remove and Replace Rock Rip-Rap	\$120.00	\$ 42,000.00
55	10	SY	Remove and Replace Concrete Sidewalk	\$70.00	\$ 700.00
56	3.5	AC	Hydromulch Seeding	2,200.00	\$ 7,700.00
57	43	CY	Cement Stabilized Sand Backfill	\$100.00	\$ 4,300.00
58	3213	LF	Pre-Construction Television Inspection (Line B)	\$7.00	\$ 22,491.00
59	9219	LF	Post-Construction Television Inspection (Line A & B)	\$8.00	\$ 73,752.00
Subtotal: Sewer Line Base				\$	5,822,548.00
WATER					
60	5240	LF	4" hdpe Fiber Conduit w/4-1" SDR11 Interducts, Pull Rope, Tape & 18 GA Tracer w/1'X1' Cement Stabilized Sand Backfill, Min. 42" Cover.	\$30.00	\$ 157,200.00
61	12	ea	HDPE Fiber Pull Box w/ Tier 22 Bolt Down Cover & Marker Post.	\$4,500.00	\$ 54,000.00
Subtotal: Fiber Optics				\$	211,200.00
Per Addendum #3				Total Bid	\$ 6,950,133.00

ARPA FUNDS ADDENDUM TO CONSTRUCTION CONTRACT

This Addendum is attached to Contract No. 23300615, by and between the City of College Station (“City”) and Elliott Construction, LLC (“Contractor”), and is incorporated into said Contract. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the City’s terms and conditions, including any attachments, schedules, or exhibits to the City’s Contract or purchase order, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract or purchase order applies. Hyperlinks and legal references are provided for convenience only; broken hyperlinks or typographical errors will not relieve Contractor from compliance with the law.

Some or all of the following may apply depending on the Contract amount, subject matter of the Contract, source of funding and so on. Contractor assumes full responsibility for complying with the requirements set forth below in accordance with applicable law, as amended.

The Contract or purchase order to which this Addendum is attached is made using federal assistance provided to the City of College Station, Texas by the US Department of Treasury under the American Rescue Plan Act (“ARPA”), Sections 602(b) and 603(b) of the Social Security Act, Pub. L. No. 117-2 (March 11, 2021), as amended.

The following terms and conditions apply to you, the contractor or vendor, as a contractor of the City of College Station, Texas, according to the requirements, stipulations, and limitations attached to the funding received from the Federal Government for this Contract or purchase order; by ARPA and its implementing regulations; and as established by the US Treasury Department. The entire preamble of this Addendum is incorporated fully into this Addendum.

1.01. Breach by Contractor; Termination for Cause. In the event of a breach of this Contract by Contractor, the City shall have the immediate right to terminate this Contract by notifying Contractor of such breach. Contractor shall be compensated only for the work or services already performed at the time Contractor is notified of such breach. The City may withhold payments to the Contractor for the purpose of setoff until the exact amount of damages due to the City from the Contractor is determined and paid.

1.02. Federally Assisted Construction. If this Contract is for “construction work” or is a “federally assisted construction contract” as these terms are defined in 41 CFR 60 and 41 CFR 60-1.3, the following provisions will apply:

A. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion,

sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this

Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties

for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

1.03. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contract** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”), and during performance of this Contract the Contractor agrees as follows:

- A.** All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- B.** Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- C.** Additionally, contractors are required to pay wages not less than once a week.

1.04. Compliance with Copeland “Anti-Kickback” Act.

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland “Anti- Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- A. Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Contract.

- B. Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach.** A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

1.05. Compliance with Contract Work Hours and Safety Standards Act.

If the Contract is in excess of \$100,000 the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) **Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (A) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- (3) **Withholding for Unpaid Wages and Liquidated Damages.** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other

federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

- (4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

1.06. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal “funding agreement” as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

1.07. Clean Air Act and Federal Water Pollution Control Act.

If this Contract is in excess of \$150,000, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

In the event this Contract is for more than \$150,000, the following provisions apply:

A. Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Texas Commission on Environmental Quality, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

B. Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will in turn, report each violation as required to assure notification to the Texas Commission on Environmental Quality, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

1.08. Debarment and Suspension.

A “contract award” (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (51 FR 6370; February 21, 1986) and 12689 (54 FR 34131; August 18, 1989), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. In the event this Contract is a “covered transaction” for the purposes of 2 CFR Part 180 and 2 CFR Part 3000, the following provisions shall apply:

- A.** This Contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
- B.** The Contractor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C.** This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to the City, the

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D.** Contractor agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this Contract is in effect and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1.09. Byrd Anti-Lobbying Certification. In the event this Contract is for \$100,000 or more, the following provision will apply:

- A.** Contractors who apply or bid for an award of \$100,000 or more shall file the following required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- B. Required Certification for Contracts, Grants, Loans, and Cooperative Agreements.**

"The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$ 100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official

Name and Title of Contractor’s Authorized Official

Date”

1.10. Domestic Preferences for Procurements.

- A.** § 200.322 of 2 CFR 200 requires a Contractor, as appropriate and to the extent consistent with law, and to the greatest extent practicable under a Contract involving a Federal award or Federal funds, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- B.** For purposes of the above section:
 - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

1.11. Procurement of Recovered Materials.

Under 2 CFR 200.323, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In the event this Contract is for more than \$10,000, the following provision applies:

- A. In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (2) Meeting contract performance requirements; or
 - (3) At a reasonable price.
- B. Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

1.12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

- A. Contractor, as part of this Contract and project, is prohibited from obligating or expending Federal funds to:
- (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
2. Telecommunications or video surveillance services provided by such entities or using such equipment.
3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

1.13. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

- A. The prime Contractor, if subcontracts are to be let, must take the affirmative steps listed below and in paragraphs (b)(1) through (5) of Section § 200.321 located in 2 CFR 200.
- B. Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

1.14. Access to Records.

- A.** The Contractor agrees to provide the City, the US Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C.** The Contractor agrees to provide the City, US Department of Treasury, Comptroller General of the United States, or any of their authorized representatives, access to construction or other work sites pertaining to the work being completed under the Contract.

1.15. Federal Seal, Logo, and Flags. The Contractor shall not use any Federal Government seal(s), logos, crests, or reproductions of flags or likenesses of any Federal Government agency officials without specific Federal Government pre-approval.

1.16. Changes. The Contract provisions regarding modifications, change orders, notices, or amendments to the Contract shall control.

1.17. Compliance with Federal Law, Regulations, and Executive Orders. The Contractor acknowledges that Federal Government funds will be used to fund this Contract. The Contractor will comply with all federal law, regulations, executive orders, US Department of Treasury policies, procedures, and directives.

1.18. No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, City, contractor, or any other party pertaining to any matter resulting from the Contract.

1.19. Fraud and False Statements. The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

1.20. Effective Date. This Addendum goes into effect when duly approved by all the parties hereto.

(Signature Page Immediately Follows)

ELLIOTT CONSTRUCTION, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

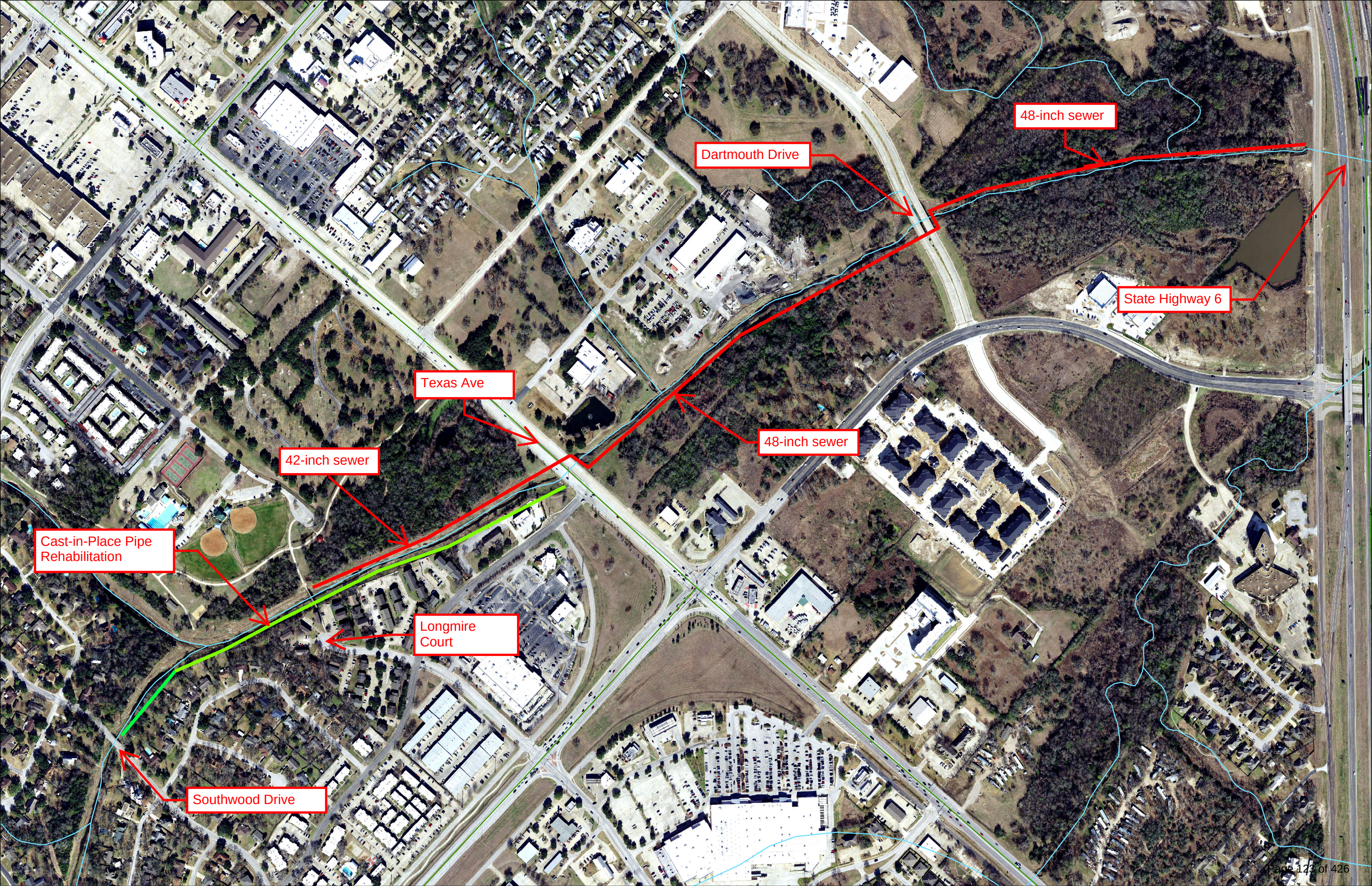
APPROVED:

City Attorney

Date: _____

Assistant City Manager / CFO

Date: _____



Dartmouth Drive

48-inch sewer

State Highway 6

Texas Ave

48-inch sewer

42-inch sewer

Cast-in-Place Pipe
Rehabilitation

Longmire
Court

Southwood Drive

July 27, 2023

Item No. 6.5.

CCWWTP Blower Buildings Nos. 2 and 3 Project

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Teal Services, LLC., not to exceed \$3,075,545 plus the City's contingency amount of \$320,000 for a total appropriation of \$3,395,545 for the Carter's Creek Wastewater Treatment Plant (CCWWTP) Blower Building No. 2 and No. 3 Project. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary:

This project replaces the turbo blowers in Blower Building Nos. 2 and 3 at the Carters Creek Wastewater Treatment Plant. As part of the 2016 Wastewater Master Plan Update a condition assessment of the Carters Creek Wastewater Treatment Plant was performed and prioritized multiple rehabilitation projects at the facility. Replacement of the existing Carters Creek aeration blowers within blower building numbers 2 and 3 was identified as a high priority project because the equipment is essential for operation, it has limited redundancy, and it is approaching the end of its useful service life. This project will replace the existing aeration blowers and aeration basin diffusers with a more efficient and modern design.

The project was procured via a competitive sealed proposal (CSP) and two responses were received. Upon review of both proposals, it was determined that Teal Services, LLC provided the best value to the City.

Budget & Financial Summary: A combined total budget of \$3,845,417 is included for these projects in the Wastewater Capital Improvement Projects Fund. A combined total of \$438,744 has been expended or committed to date, leaving a combined balance of \$3,406,673 for this contract and future expenses.

Attachments:

1. CCWWTP Project Location Map
2. CCWWTP Blower Buildings 2 and 3 Vendor Signed Contract





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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 23300626 PROJECT#: WW1800003/WW1900003 BID/RFP/RFQ#: RFP(CSP)-23-056

Project Name / Contract Description: CCWWTP Blower Buildings Replacements Nos. 2 and 3

Name of Contractor: Teal Services, LLC

CONTRACT TOTAL VALUE: \$ 3,075,545.00

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

Debarment Check ☐ Yes ☐ No ☐ N/A

Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

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

Buy America Required ☐ Yes ☐ No ☒ N/A

Transparency Report ☐ Yes ☐ No ☒ N/A

☒ NEW CONTRACT ☐ RENEWAL # N/A ☐ CHANGE ORDER # N/A ☐ OTHER N/A

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

A combined total budget of \$3,845,417 is included for these projects in the Wastewater Capital Improvement Projects Fund.

A combined total of \$438,744 has been expended or committed to date, leaving a combined balance of \$3,406,673 for this contract and future expenses.

The amount for construction is \$3,075,545.00, plus the City's contingency amount of \$320,000.00 for a total appropriation of \$3,395,545.00

Contractor was chosen as the best of two responses from the RFP(CSP)-23-056 formal solicitation process.

(If required)*
CRC Approval Date*: N/A Council Approval Date*: 07/27/2023 Agenda Item No*: TBD

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

Insurance Certificates: RY Performance Bond: AD Payment Bond: AD Info Tech: N/A

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

6/29/2023
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 _____

**CITY OF COLLEGE STATION
STANDARD FORM OF CONSTRUCTION AGREEMENT**

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Teal Services, LLC (the "Contractor") for the construction and/or installation of the following:
CCWWTP blower buildings numbers 2 and 3 replacements.

1. DEFINITIONS

1.01 Calendar Day. The term "calendar day" shall mean any day of the week or month, no days being excepted.

1.02 City. The term "City" shall mean and be understood as referring to the City of College Station, Texas.

1.03 City's Consultant. The term "City's Consultant" or "Consultant" shall mean and be understood as referring to the City's design professional(s) for the Project.

1.04 City's Representative. The term "City's Representative" or "Representative" shall mean and be understood as referring to the City Manager or his delegate or delegates, including a project management firm if applicable, who shall act as City's agent.

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Three Hundred Twenty Thousand and 00 /100 Dollars (\$320,000.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Three Million Seventy Five Thousand Five Hundred Forty-Five and 00 /100 Dollars (\$3,075,545.00).

1.07 Contract Documents. The term "Contract Documents" shall mean those documents listed in Section 2.01.

1.08 Contractor. The term "Contractor" shall mean the person(s), partnership, or corporation who has agreed to perform the Work contemplated in this Agreement and the other Contract Documents.

1.09 Contractor's Proposal. The term "Contractor's Proposal" shall mean the document provided by the Contractor in response to, and shall include all information required by the City's Request for Proposal/Invitation to Bid for the Project.

1.10 Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing **prior** to the work being done by the Contractor.

1.11 Final Completion. The term "Final Completion" shall mean that all the Work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.12 Hazardous Substance. The term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which is defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws").

1.13 Environmental Laws. The term "Environmental laws" shall mean collectively, any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws.

1.14 Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

1.15 Nonconforming work. The term "nonconforming work" shall mean Work or any part thereof that is rejected by City's Representative as not conforming with the Contract Documents.

1.16 Parties. The "parties" are the City and the Contractor.

1.17 Project. The term "Project" shall mean the construction of an improvement to real property where the Work comprises either whole or a part of such construction and which may include construction by the City or separate contractors.

1.18 Project Manager. The term "Project Manager" shall mean the Contractor's Project Manager. The Project Manager shall assist the City in performing various administrative and oversight duties relating to the Work, subject to limitations in authority that must be verified by Contractor.

1.19 Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

1.20 Substantially Completed. The term "Substantially Completed" means that in the opinion of the City's Representative the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the Work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

1.21 Work. The term "Work" as used in this Agreement shall mean the construction and services required by the Contract Documents and Exhibits, including any duly authorized change orders, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project. The Work includes but is not limited to all labor, parts, supplies, skill, supervision, transportation, services, and other facilities and all other items needed to produce, construct, and fully complete the Project.

1.22 Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays.

2. CONTRACT DOCUMENTS

2.01 The Contract Documents and their priority shall be as follows:

- (a) This signed Agreement.
- (b) Addendum to this Agreement.
- (c) General Conditions, as may be applicable.
- (d) Special Conditions, as may be applicable.
- (e) Specifications, including the technical specifications set out at BCS Unified Design Guidelines ("Specifications").
- (f) Plans.
- (g) Instructions to Bidders and any other notices to Bidders or Contractor.
- (h) Performance bond, Payment bonds, Bid bonds and Special bonds.
- (i) Contractor's Proposal.

2.02 Where applicable, the Contractor will be furnished three (3) sets of plans, specifications, and related Contract Documents for its use during construction. Plans and Specifications provided for use during construction shall be furnished directly to the Contractor only.

2.03 The Contractor shall distribute copies of the Plans and Specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the Plans and Specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the Work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

2.04 All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the Plans and Specifications and "as built" drawings, are to be returned to the City on request at the completion of the Work. All Contract Documents, models, mockups, or other representations are the property of the City.

2.05 In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement, either or both in accordance with the City's interpretation. The terms and conditions of this Section 2.05, however, shall not relieve the Contractor of any of the obligations set forth in Sections 8.01. and 8.02 of this Agreement.

3. AWARD OF CONTRACT

3.01 Upon the notice of intent to award of the contract by the City, the parties shall execute this Agreement, and the Contractor shall deliver to City's Representative all documents, bonds, and certificates of insurance required herein.

3.02 Time is of the essence of this Agreement. Accordingly, the Contractor shall be prepared to perform the Work in the most expedient and efficient possible manner in order to complete the Work by the times specified in this Agreement for Substantial Completion and Final Completion. In addition, the Contractor's work on the Project shall be commenced on the date to be specified in the City's written notice to proceed. **The notice to proceed may not be given, nor may any Work be commenced, until this Agreement is fully executed and complete, including all required exhibits and other attachments, particularly those required under Sections 27 and 28 (Insurance & Bonds).**

4. CITY'S REPRESENTATIVE

4.01 The Contractor shall forward all communications, written or oral, to the City through the City's Representative.

4.02 The City's Representative may periodically review and inspect the Work of the Contractor.

4.03 The City's Representative shall appoint, from time to time, such subordinate supervisors or inspectors as City's Representative may deem proper to inspect the Work performed under this Agreement and ensure that said Work is performed in accordance with the Plans and Specifications.

4.04 The City's Representative shall interpret questions concerning the Contract Documents. The City's inspector has authority to reject any of the Work for failure to comply with the Contract Documents and/or applicable laws.

4.05 Should the Contractor object to any orders by any subordinate supervisor or inspector, the Contractor may, within two (2) days from receipt of such order, make written appeal to City's Representative for his decision.

5. INDEPENDENT CONTRACTOR

5.01 In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment and labor required for the execution of the Work. The Contractor shall have ultimate control over the execution of the Work under this Agreement. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors except to the limited extent provided for in this Agreement.

5.02 Standard of Care. The Work shall be performed in a good and workmanlike manner, and in accordance with this Agreement, and all applicable laws, codes, and regulations. The construction of the Project is subject to amendments and adjustments to the Contract required by any applicable changes in regulations or requested or approved by in writing by the City. If at any time during the progress of the Work the Contractor becomes aware of any errors or omissions in the Plans or Specifications for this Project or that the Agreement deviates from applicable legal requirements, Contractor shall promptly provide written notice thereof to the City. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention.

5.03 The Contractor shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the Work and fulfillment of this Agreement. The Contractor shall be responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The subletting of any portion or feature of the Work or materials required in the performance of this Agreement shall not relieve the Contractor from its obligations to the City under this Agreement. The Contractor shall appoint and keep on the Project site during the progress of the Work, including at all times subcontractors are present at the Project site, a competent English speaking Project Manager and/or superintendent and any necessary assistants, all satisfactory to City's Representative, to act as the Contractor's representative and to supervise its employees and subcontractors. All directions given to the Project Manager and/or superintendent shall be binding as if given to the Contractor. Adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the Work, and lack of such supervision shall be grounds for suspending the operations of the Contractor and is a breach of this Agreement.

5.04 Unless otherwise stipulated, the Contractor shall provide and pay for all labor, materials, tools, equipment, transportation, facilities, and drawings, including engineering, and any other services necessary or reasonably incidental to the performance of the Work by the Contractor. Any additional work, material, or equipment needed to meet the intent of this provision shall be supplied by the Contractor *without* claim for additional payment, even though not specifically mentioned herein.

5.05 Any injury or damage to the Contractor or the Project caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the Contractor.

6. DISORDERLY EMPLOYEES

The Contractor agrees to employ only orderly and competent employees skillful in the performance of the type of work required, and agrees that whenever City's Representative shall inform the Contractor in writing that any person or persons on the Project are, in his opinion, incompetent, unfaithful, or disorderly, such person or person shall be discharged from the Project and shall not again be re-employed on the site or the Project without City's Representative's written permission.

7. HOURS OF WORK

The Contractor may work Monday through Friday from 7 a.m. to 6 p.m., exclusive of Saturdays, Sundays, or legal holidays. The Contractor may work overtime, weekends, and holidays only when approved in advance by the City's Representative. The time for Substantial Completion shall not be affected in any way by inclusion of this section or by the City's consent or lack of consent to work outside of the times specified in this Agreement.

8. NATURE OF THE WORK

8.01 It is understood and agreed that the Contractor has, by careful examination, studied and compared the Plans and other Contract Documents, satisfied itself as to the nature and location of the Work, the conditions of

the ground and soil, the nature of any structures, the character, quality, and quantity of the material to be utilized, the character of equipment and facilities needed for and during the prosecution of the Work, the time needed to complete the Work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, including but not limited to weather, and all other matters that in any way affect the Work under this Agreement. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered, or which reasonably should have been discovered by the Contractor shall be reported promptly to the City as a request for information in such form as the City may require. However, the Contractor shall not perform any act or do any Work that places the safety of persons at risk or potentially damages materials or equipment used in the Project, and the Contractor shall do nothing that would render any test or tests erroneous.

8.02 Any design errors or omissions noted by the Contractor shall be reported promptly to the City, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Any nonconformity discovered by or which reasonably should have been discovered or made known to the Contractor shall be reported promptly to the City.

8.03 If the Contractor fails to perform the obligations of Sections 8.01. and 8.02., the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the City for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the City.

9. POST-AGREEMENT AWARD MEETINGS

9.01 Prior to the commencement of the Work, the parties shall meet and attend a post-agreement award meeting at the time and place determined by City's Representative. At the post-agreement award meeting, the parties shall meet, discuss, and finalize all schedules, including commencement date, and/or specifications submitted for review. No later than ten (10) days prior to the post-agreement award meeting, the Contractor shall submit to City's Representative the following documents:

(a) Schedule for performance of the Work ("Construction Schedule"). Project Schedule contemplated, including the starting and ending date, as well as an indication of the completion of stages of Work hereunder. Such document, once approved by the City and, if applicable, the City's Consultant shall be incorporated into this Agreement as a Contract Document and attached hereto as **Exhibit E**. If not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the City and Consultant and resubmitted for acceptance. The Construction Schedule shall not be modified except by written change order. Additional days or changes to the number of days in the Construction Schedule shall also be by written change order. After a written change order is approved and fully executed by all parties, the Contractor shall submit an updated Construction Schedule that reflects changes authorized by approved change orders. The Construction Schedule shall not exceed time limits current under the Contract Documents, shall be submitted with each pay application, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

(b) The names and addresses of all proposed subcontractors in writing.

- (c) Schedules of the starting and ending dates of subcontractors and the scope of Work contemplated for subcontractors.
- (d) Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.
- (e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof, including PDF/electronic versions and CAD files.
- (f) Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

9.02 The City's Representative, within five (5) working days after the initial post-agreement award conference or any other meetings, may submit minutes of the meeting to the Contractor. The Contractor shall thereafter have five (5) working days to review the minutes and make its objections, changes, or reductions thereto in writing. The Contractor shall thereafter sign the minutes and promptly return them to City's Representative. Where there is disagreement, City's Representative will make the final determination.

10. PROGRESS OF WORK

10.01 The Construction Schedule shall be in a detailed precedence-style critical path method ("CPM") or primavera-type format satisfactory to the City and the Consultant. The Construction Schedule shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). If not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the City and Consultant and resubmitted for acceptance.

10.02 Further, the parties shall be subject to the following:

- (a) The Contractor shall submit a Construction Schedule and schedule of values at the initial post-agreement award meeting and subsequent meetings.
- (b) City's Representative shall be entitled to make objections to the Contractor's Construction Schedule submitted herein. The Contractor shall promptly resubmit a revised Construction Schedule to City's Representative.
- (c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.
- (d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the Work with dates at which the Contractor will start the several parts of the Work and the estimated dates of completion of the several parts.
- (e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.

(f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.

(g) In the event that it is determined by the City that the progress of the Work is not in accordance with the approved Construction Schedule, the City may so inform the Contractor and require the Contractor to take such action as is necessary to insure completion of the Project within the time specified.

10.03 The process of approving the Construction Schedule and updates to the Construction Schedule shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Construction Schedule. Approval of the Construction Schedule does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than the City would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs beyond its control to a minimum. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the City of any delays or potential delays. In the event the Construction Schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any adjustment to the Construction Schedule constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

10.04 The Contractor shall also prepare a submittal schedule promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Consultant's approval. The Consultant's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (i) be coordinated with the Contractor's Construction Schedule; and (ii) allow the Consultant reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

10.05 In the event the City determines that the performance of the Work, as of a Milestone Date or otherwise, has not progressed or reached the level of completion required by the Contract Documents, the City shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule.

(a) The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the City under or pursuant to this Subsection.

(b) The City may exercise the rights furnished the City under or pursuant to this Subsection as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

10.06 Work Stoppage. If in the judgment of either the City or City's Representative any of the Work or materials furnished is not in strict accordance with this Agreement or any portion of the Work is being performed so as to create a hazardous condition, they may, in their sole discretion, order the Work of the Contractor or any subcontractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

11. SITE CONDITIONS AND MANAGEMENT

11.01 Where the Contractor is working around or in existing structures, it shall verify conditions at the site, including but not limited to, door openings and passages. Any items constructed or manufactured off-site or outside of buildings shall be done so that they are not too bulky for existing facilities. The Contractor shall provide special apparatus as required to handle any such items. All special handling equipment charges shall be at the Contractor's expense. Further, Contractor shall include in its price for the Work, all labor, materials, equipment and/or engineering services required to protect the adjacent properties and/or structures from damage due to performance of the Work.

11.02 The Contractor shall be responsible for all power, light, and water required to perform the Work.

11.03 Throughout the progress of the Work, the Contractor shall keep the working area free from debris of all types, and remove from premises all rubbish, resulting from any work being done by him. At the completion of the Work, the Contractor shall leave the premises in a clean and finished condition. Any failure to do so may be remedied and charged back to the Contractor.

11.04 Layout of Work. Except as specifically provided herein, the Contractor shall lay out all Work in a manner acceptable to City's Representative in accordance with applicable City of College Station codes and ordinances. City's Representative will review the Contractor's layout of all structures and any other layout work done by the Contractor at the construction meeting, or at the Contractor's request, but this review does not relieve the Contractor of the responsibility of accurately locating all Work in accordance with the Plans and Specifications.

11.05 Lines and Grades. All lines and grades shall be furnished by the Contractor. Benchmarks and control stakes have been provided by the City's Representative. All benchmarks and control stakes shall be carefully preserved by the Contractor. In case of destruction or removal of the same by the Contractor, its subcontractors, or employees, such stakes, marks, etc. shall be replaced by the Contractor at the Contractor's expense. If the Contractor fails to do so, the City may do so and charge back the Contractor. Additional construction staking as needed for the Work, including lines and grades, shall be the sole responsibility of the Contractor, and the Contractor shall receive no extra time or compensation therefor.

11.06 The Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as any information furnished by the City, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the City and the Consultant any errors, inconsistencies or omissions discovered by or made known to the Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor acknowledges the City does not represent nor warrant the accuracy or completeness of information provided by the City related to existing conditions and

locations of existing utilities and services. Such information if provided, is provided to the Contractor as a matter of convenience and does not substitute for the Contractor using due diligence to reasonably observe and or to access space to determine errors, inconsistencies or omissions. In all cases of interconnection of the Work with existing conditions, Contractor shall verify at the site all dimensions relating to such existing conditions.

11.07 Contractor's Structures. The building or locating of structures or the erection of tents or other forms of protection will be permitted only at such places as City's Representative shall permit. The Contractor shall not damage the property where such structures are allowed and shall at all times maintain sanitary conditions in and about such structures in a manner satisfactory to the City. The City may charge the Contractor for any damage or injury to the City, its property, or third persons as a result of the location or use of such structures.

11.08 The Contractor and any entity over whom the Contractor has control shall not erect any sign on the Project site without the prior written consent of the City.

11.09 City may have other work related to the Project performed at the Project site during the time the Work is performed. Contractor should schedule its Work to coordinate with the work of other contractors and utilities with the understanding that some of that work may be performed at times other than as set out in the Contract Documents or as otherwise anticipated. City will endeavor to have such other work performed so as not to unduly interfere with Contractor's performance when Contractor notifies City of specific reasonable needs well in advance of those needs and where it is possible to do so. In the event of substantial delay caused by another contractor or a utility, after advance notice of its needs by Contractor, Contractor will be entitled to make a claim for an extension of time as provided herein.

11.10 When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

12.01 Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do

not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

12.02 All materials shall be approved by the City prior to purchase by the Contractor. Unless otherwise specified herein, the Contractor shall purchase all materials and equipment outright and shall not subject the materials and equipment utilized in the Project to any conditional sales agreement, bailment, lease, or other agreement reserving unto seller any right, title, or interest therein. Title to all materials, but not risk of loss, shall pass to the City upon delivery to the Project.

12.03 Where the City deems it necessary to supply materials, it may furnish to the Contractor the list of materials set forth in the attached "List of City Furnished Materials". Upon receipt of said materials, the Contractor shall immediately furnish to the City a written receipt. Moreover, the Contractor shall, on behalf of the City, accept delivery of the materials set forth in the attached "List of Materials Ordered by the City". Under such circumstances, the Contractor shall promptly forward to the City for payment the supplier's invoice together with the Contractor's receipt in writing for such materials.

(a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.

(b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.

(c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

(d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.

(e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

12.04 Materials and supplies shall be new and of good quality. Upon request, the Contractor shall supply proof of quality and manufacturer. No refurbished, reconditioned, or other previously utilized materials or supplies will be used without the prior signed authorization of City's Representative. The Contractor may utilize substitutes of equal quality and function only upon the prior written authorization of the City's Representative. The City's Representative may require documentation as to quality and function, including manufacturer's specifications, to insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole discretion over the use of substitute materials and supplies. Contractor shall bear the risk of any delay in performance caused by submitting substitutions.

12.05 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly

removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

12.06 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

12.07 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

12.08 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

12.09 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals.

12.10 The Contractor shall review for compliance with the Contract Documents, approve and submit to the City's Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the City's Consultant or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors.

12.11 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the City and City's Consultant that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

12.12 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the City's Consultant.

12.13 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the City's Consultant in writing of such deviation at the time of submittal and (1) the City's Consultant has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the City's Consultant's approval thereof.

12.14 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the City's Consultant on previous submittals. In the absence of such written notice, the City's Consultant's approval of a resubmission shall not apply to such revisions.

12.15 Contractor shall be liable for and the City may withhold from Contractor's payments any amount of additional fees charged by City's Consultant for excessive resubmittal review.

13. ENTRY, OBSERVATION, TESTING & POSSESSION

13.01 The City reserves the right to enter the Project site or sites by such employee(s) or agent(s) as it may elect for the purpose of inspecting the work. The City further reserves the right to enter the Project site or sites for the purpose of performing such collateral work as the City may desire.

13.02 The City's Representative shall have the right, at all reasonable times, to observe and test the work. The Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location where the Work or any part thereof is in preparation or progress. The Contractor shall ascertain the scope of any observation that may be contemplated by City's Representative and shall give ample notice as to the time each part of the Work will be ready for observation.

13.03 The City's Representative may require Contractor to remove, dismantle, or uncover completed work. If the work is not in accordance with the Plans, Specifications, or other Contract Documents, the Contractor shall pay the costs of repair and restoration of the work required to be removed, dismantled, or uncovered. Unless Contractor is obligated to provide advance notice of inspection, prior to covering up the work, and fails to do so, if said work is in accordance with the -Plans, -Specifications, and other Contract Documents, the City shall pay the costs of repair and restoration of the work.

13.04 City shall have the right to take possession of and use any completed or partially completed portions of the Project prior to the time for completing the entire Project or such portions which may not have expired. The parties agree and understand that possession and use shall not constitute an acceptance of any work not completed in accordance with this Agreement. Further, insurance changes required to keep Contractor's insurance in effect shall be the responsibility of Contractor.

14. REJECTED WORK

14.01 All work deemed not in conformity with this Agreement as determined by the City in its sole discretion, may be rejected by the City. City's Representative may reject any work found to be defective or not in accordance with the Contract Documents, regardless of the stage of the work's completion or the time or place of discovery of such defects or inconsistencies and regardless of whether City's Representative has previously accepted the work through oversight or otherwise. Neither observations nor inspections, tests, or approvals made by City's Representative, or other persons authorized under this Agreement to make such observations, inspections, tests, or approvals, shall relieve the Contractor from the obligation to perform the Work in accordance with the requirements of this Agreement and the other Contract Documents.

14.02 If the work or any part thereof is rejected by the City, it shall be deemed by City's Representative as not in conformity with this Agreement. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

- (a)** The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.

(b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

14.03 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including City's expenses and compensation for the City's Consultant's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

15. SUBCONTRACTING & SUBCONTRACTORS

15.01 The Contractor agrees that it will retain personal control and will give its personal attention to the fulfillment of this Agreement. The Contractor further agrees that subletting of any portion or feature of the Work or materials required in the performance of this Agreement shall not relieve the Contractor from its full obligation to the City as provided by this Agreement.

15.02 Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the Work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. Contractor's subcontract agreement shall provide that subcontractors shall assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which the Contractor, by these Documents, assumes toward the City and Consultant. 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.

16. PAYMENT

16.01 The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Agreement. The Contractor shall issue exemption certificates to its suppliers and subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969.

16.02 Progress Payment Applications. The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by City's Representative. Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require ("Schedule of Values"). The Schedule of Values shall not overvalue early job activities and shall follow the trade divisions of the Specifications so far as possible. Modifications must be approved by City. This schedule, unless objected to by the City, shall be incorporated into this Agreement as a Contract Document and attached hereto as **Exhibit F**. The Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment. On or before the 15th day of each month, the Contractor shall submit to City's Representative, for approval or

modification, an updated Project Schedule and a statement, backed by the Schedule of Values, showing as completely as practicable the total value of the actual work performed by the Contractor and accepted by the City up to and including the last day of the *preceding* month. The statement shall also include the value of all materials not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the Work.

16.03 Progress Payments. On or before the 30th calendar day following the City's receipt of a progress payment application made in conformity with Section 16.02, the City shall pay to the Contractor the approved amount of the progress payment based on the Contractor's applications for payment, and the recommendation and approval of City's Representative. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of Work completed by the Contractor and approved by the City, but in each case less the aggregate of payments previously made, less retainage, and less amounts as City's Representative shall determine and the City may withhold in accordance with this Agreement. Upon Final Completion, including the delivery of all close out documents, such as "as built" drawings, warranties, guarantees, required additional materials, releases, operation and maintenance manuals, and acceptance of the Work in accordance with this Agreement, the City shall pay the remainder of the balance due under this Agreement, less any sums withheld under other terms of this Agreement and less the retainage, which shall be retained for a period of thirty (30) calendar days from the date of Final Completion. Acceptance of retainage by Contractor shall constitute a Waiver and Release of all claims by Contractor.

☒ **16.04 Retainage.** From each approved statement, the City shall retain until final payment, ten percent (10%), where the full contract amount is less than \$400,000.00, and five percent (5%), where the full contract amount is \$400,000.00 or more. The City may also retain from each approved statement any other sums authorized under the terms of this Agreement.

OR:

☐ **16.04 Retainage.** This section has been removed. No retainage will be deducted.

16.05 If the actual amount of work to be done and the materials to be furnished differ from estimates and where the basis for payment is the unit price method, then payment shall be for the actual amount of accepted work done and materials furnished on the Project.

16.06 Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

16.07 The Contractor shall have the sole obligation to pay any and all charges or fees and give all notices necessary to and incidental to the lawful prosecution of the Work hereunder. The Contractor shall not and shall have no authority whatsoever to obligate the City to make any payments to another party nor make any promises or representation of any nature on behalf of the City, without the specific written approval of the City.

16.08 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

16.09 Unless otherwise provided in the Contract Documents:

- (a) Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Amount but not in the allowances; and
- (c) Whenever costs are more than or less than allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 16.9(a) and (2) changes in the Contractor's costs under Section 16.9(b).

16.10 Suspension of Payments. The City, at any time, may suspend monthly progress payments on the Work if it determines that the projected liquidated damages may exceed retainage. The City, at any time, may suspend monthly progress payments if it believes that the Contractor will not complete the Work due to actual default or that the Contractor has represented or done some act that indicates that it will not complete the Work in accordance with this Agreement or within the time period submitted in its bid. Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Section.

16.11 Withhold Funds. Regardless of any bond, the City may, on account of subsequently discovered evidence and in addition to the retainage withheld under Section 16.04, withhold funds or nullify all or part of any acceptance or certificate to such extent as may be necessary to protect itself from loss on account of any of the following, or as otherwise provided in this Agreement:

- (a) Defective work other than defects in design provided to Contractor by a person other than Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier for non-critical infrastructure.
- (b) Failure to timely disclose in writing to the City of a known defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications or other design documents.
- (c) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (d) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (f) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.
- (g) Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.
- (h) City's determination of an amount of liquidated damages.
- (i) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.
- (j) Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.
- (k) Corrections of mistakes, errors and overpayments in relation to prior pay applications and payments.

Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Section.

17. EXTRA WORK CHARGES

17.01 No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid for except upon the written order from authorized personnel of the City.

17.02 City Manager Approval. When the original contract amount plus all change orders is **One Hundred Thousand Dollars (\$100,000)** or less, the City Manager or his designee may approve the written change order in accordance with 17.03 below, provided the change order does not increase the total amount set forth in the Contract to more than **One Hundred Thousand Dollars (\$100,000)**. For such contracts, when a change order results in a total contract amount that exceeds **One Hundred Thousand Dollars (\$100,000)**, the City Council of the City must approve such change order prior to commencement of the services or work.

☒ **17.03** For "Extra Work", as defined in this Agreement and authorized through written change orders, and pursuant to Section 252.048(d) of the Texas Local Government Code, the original Contract price may not be increased by more than **twenty-five percent (25%)**. Written change orders that do not exceed **twenty-five percent (25%)** of the original Contract Amount may be made or approved by the City Manager or his delegate if the change order is equal to or less than **Fifty Thousand Dollars (\$50,000.00)**. Changes in excess of **Fifty Thousand Dollars (\$50,000.00)** must be approved by the City Council prior to commencement of the services or work. **Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract Schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non-included cost.

OR:

☐ **17.03** For construction contracts funded in whole or in part by Certificates of Obligations, for "Extra Work," as defined in this Agreement and authorized through written change orders, and pursuant to Section 271.060 of the Texas Local Government Code, a contract with an original contract price of \$1 million or more may not be increased by more than **twenty-five percent (25%)**. If a change order for a construction contract funded in whole or in part with certificates of obligation that has an original price of less than \$1 million increases the Contract Amount to \$1 million or more, subsequent change orders may not increase the revised Contract Amount by more than **twenty-five percent (25%)**. Written change orders may be made or approved by the City Manager or his delegate if the change order is equal to or less than **Fifty Thousand Dollars (\$50,000.00)**. Changes in excess of **Fifty Thousand Dollars (\$50,000.00)** must be approved by the City Council prior to commencement of the services or work. **Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract Schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non-included cost.

17.04 The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the Work shall not excuse the Contractor from

performing all the Work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the Work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the Work and the Contractor shall assume and pay the costs of the performance of the Work as contracted.

(a) It is agreed that the Contractor shall perform all Extra Work under the direction of City's Representative when presented with a written work order signed by City.

(b) **No claim for Extra Work of any kind will be allowed unless ordered in writing by the City.** In case any orders or instructions appear to the Contractor to involve Extra Work for which it should receive compensation or an adjustment in the construction time, it shall make written request to City's Representative for a written order from City authorizing such Extra Work.

(c) Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the City insists upon its performance, then the Contractor shall proceed with the Work after making written requests for written orders in a change order and shall keep adequate and accurate account of the actual field costs therefor, as provided under Method C.

(d) It is also agreed that the compensation to be paid to the Contractor for performing Extra Work shall be determined by one or more of the following methods:

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

Method C - If neither Method A nor Method B is agreed upon before the Extra Work is commenced, then the Contractor shall be paid the actual field cost (as defined in subsection (g) below) of the Work.

(e) **Method A - Unit Prices.** The Contractor agrees to perform Extra Work for the unit prices in the Contractor's Proposal. The Contractor also agrees and warrants that when it is necessary to construct units not shown in the Contract Documents, it shall construct such units for a price arrived at as follows:

(1) The cost of materials shall be determined by the invoices;

(2) The cost of labor shall be the reasonable cost thereof, as determined by the City, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio. Provided, however, that the ratio shall be calculated for only those units that are similar to the new unit for which a price is to be determined.

(f) **Method B - Lump Sum.** The lump sum shall be reasonably close to the amount for similar work previously done or combinations of similar units. Invoices for materials used shall be provided in support of the agreed lump sum.

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, workers' compensation, and all other insurance as may be required by law or ordinances or required and agreed to

by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

- (1) No indirect or consequential damages will be allowed.
- (2) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned man loading to actual man loading, or any other analysis that is used to show damages indirectly.
- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

18.01 The date of beginning, the time for Substantial Completion and Final Completion of Work as specified in this Agreement are of the essence of this Agreement.

18.02 The Work embraced by this Agreement shall be commenced on the date specified in the notice to proceed. Said notice to proceed may be given orally or set by the City's Representative at the post-award conference.

18.03 The Work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor bid calendar days for the time within which it shall reach Substantial Completion of the Project.

18.04 The Work shall reach Final Completion and be ready for final payment within **thirty (30) calendar days** from the date of Substantial Completion.

19. SUBSTANTIAL COMPLETION

19.01 The Contractor shall notify City's Representative when, in the Contractor's opinion, the Contract is Substantially Completed. Within ten (10) calendar days after the Contractor has given City's Representative written notice that the Work has been Substantially Completed, City's Representative shall inspect the Work for the preparation of a final punch list.

(a) If City's Representative and the City find that the Work is not Substantially Completed, then they shall so notify the Contractor who shall then complete the Work. City's Representative shall not be required to provide a list of unfinished work.

(b) If the City Representative and City find that the Work is Substantially Completed, the City shall issue to the Contractor its certificate of Substantial Completion.

19.02 The Substantial Completion of the Work shall not excuse the Contractor from performing all of the Work, whether of a minor or major nature, necessary for Final Completion and thereby completing the Project in accordance with the Contract Documents.

20. FINAL COMPLETION

20.01 Contractor shall notify the City's Representative when it believes that the Work has reached Final Completion as defined in this Agreement. If the City's Representative and the City accept and deems such Work Finally Complete, then Contractor shall be so notified and certificates of completion and acceptance, as provided herein, shall be issued. A complete itemized statement of this Agreement account, certified by the City's Representative as correct, shall then be prepared and delivered to Contractor. Contractor or City, as the case may be, shall pay the balance due as reflected by said statement within thirty (30) calendar days.

20.02 The Contractor shall procure all required certificates of acceptance or completions issued by state, municipal, or other authorities and submit the same to the City. The City may withhold any payments due under this Agreement until the necessary certificates are procured and delivered.

20.03 Neither the final payment nor any acceptance nor certificate nor any provision of this Agreement shall relieve the Contractor of any responsibility for faulty workmanship or materials. At the option of the City, the Contractor shall remedy any such defects and pay for any damage to other work which may appear after final acceptance of the Work.

21. DELAYS

21.01 The Contractor, in undertaking to complete the Work within the times herein fixed, has taken into consideration and made allowance for all hindrances and delays incident to such Work, whether growing out of delays in securing material or workmen or delays arising from inclement weather or otherwise.

21.02 The City may, in its sole discretion, delay the Work during inclement weather in order to preserve the Project, insure safety of work forces, and the preservation of materials and equipment. In such event and upon a written request from the Contractor, the City may grant an extension of time pursuant to Section 22 to offset for such stoppage of the Work.

21.03 No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance or delay in the progress of the Work, unless such delays (i) are caused by the actual interference, fraud, bad faith or misrepresentation by the City or its agents, (ii) extend for an unreasonable length of time; or (iii) were not contemplated by the parties at the time of contracting. In the event of any delay entitling Contractor to an increase in Contract Amount, except when due to City's intentional interference or fraud, Contractor's recovery shall be limited as outlined in Section 21.04 below. The City's reasonable exercise of any of its rights or remedies under the Contract, regardless of the extent or frequency, shall not under any circumstances be construed as interference with the Contractor's performance of the Work.

21.04 In the event of delays resulting from changes ordered in the Work by the City or other delays caused by the City or for the City's convenience, the Contractor may apply to the City for recovery of incidental damages resulting from increased storage costs or other costs necessary to protect the value of the Work. In no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.

22. EXTENSIONS OF TIME

22.01 The Contractor has submitted its proposal in full recognition of the time required for the completion of this Project, taking into consideration all factors including, but not limited to the average climatic range and industrial conditions. The Contractor has considered the liquidated damage provision of this Agreement and understands and agrees that it shall not be entitled to, nor will it request, an extension of time for either Substantial Completion or Final Completion, except when the Work has been delayed by one or more of the following:

- (a) An act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
- (b) By changes ordered in the Work, or reductions thereto approved in writing;
- (c) By "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the National Weather Service Forecast Office for Easterwood Airport in College Station, Texas (KCLL/CLL); or
- (d) By other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and unpredictable events. This term does **not** include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's Proposal or decision to bid.

22.02 If one or more of the foregoing conditions is present, the Contractor may apply in writing for an extension of time, within thirty (30) days of the occurrence of the event causing the delay, submitting therewith all written justification as may be required by the City's Representative. Within ten (10) calendar days after receipt of a written request for an extension of time, which is supported by all requested documentation, the City shall, in writing and in its sole discretion, grant or deny the request. Under no circumstances shall any extension of time by the City be valid and binding unless it is in writing and in conformity with the other terms of this Agreement.

23. LIQUIDATED DAMAGES

23.01 The time for the Substantial and Final Completion of the Work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02 As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either

Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of Two Thousand Twenty Five and 00 /100 DOLLARS (\$2,025.00) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

24.01 The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

24.02 The Contractor shall take the necessary precautions to protect any areas adjacent to its Work.

24.03 The Work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

25. WARRANTY

25.01 Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

The Contractor warrants that all materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative, and all work will be of good quality, free from faults and defects (other than defects from third parties as set out in Chapter 59 Texas Business and Commerce Code relating to non-critical infrastructure), and in conformance with this Agreement, the other Contract Documents, and recognized industry standards .

25.02 All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

25.03 This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

25.04 Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

25.05 This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

25.06 Defective Work Discovered During Warranty Period. If any of the Work is found or determined to be either defective, including obvious defects under warranty as set forth in this Section 25, or otherwise not in accordance with this Agreement 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 Agreement, the Contractor shall promptly, upon receipt of written notice by the City, correct the defective work at no cost to the City.

25.07 The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

25.08 If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the Work, the Contractor 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 the Contractor or its surety.

25.09 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 the Contractor or by the surety.

25.10 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 this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the Work.

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

26.01 Wage Rates. Pursuant to Section 2258.023(a) of the Texas Government Code, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages attached hereto as Exhibit A.

26.02 Statutory Penalty. Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of Section 26.01, the Contractor or subcontractor as the case may be shall pay the City **sixty dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

26.03 The Contractor and each subcontractors shall pay all of their employees engaged in work on the Project in full (less mandatory legal deductions) in cash or by check readily cashable, without discount, no less than once each week.

26.04 No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

26.05 Payment of Subcontractors. The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed against any property owned by the City. In the event a statutory lien notice is sent to the City, the Contractor shall, where no payment bond covers the Work, upon written notice from the City, immediately obtain a bond at its expense and hold the City harmless

from any losses that may result from the filing or enforcement of any said lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

26.06 Affidavit of Bills Paid. Prior to Final Acceptance of the Project, the Contractor shall provide a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Contractor has been notified.

27. INSURANCE

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

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

27.02 Types. Contractor shall have the following types of insurance:

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Excess Liability – required for contract amounts exceeding \$1,000,000.
- (d) Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage, builder's risk policy shall be written on "all risks" form.
- (e) Workers' Compensation/ Employer's Liability.

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

- (a) Only licensed Insurance Carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.
- (e) The City of College Station, its agents, officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents, officials, employees or volunteers.

27.04 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 in accordance with

the current A.M. Best Key Rating Guide.

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

27.05 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 in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (c) 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) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00, where such exposures exist.

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

Unless otherwise agreed in writing, excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the Agreement, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

27.07 Additional Insured.

Those policies set forth in Sections 27.04, 27.05, and 27.06 shall contain an endorsement listing the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit C, and approved by the City before Work commences.

27.08 Builder's Risk

Until the Work is completed and accepted by the City, the Contractor shall purchase and maintain builder's risk insurance upon the entire Work at the Project site to the full insurable value thereof, including any increases in value due to duly authorized change orders to the Work and Project. The builder's risk insurance shall also cover portions of the Work stored off site after written approval of the City of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the City, the Contractor, subcontractors and sub-subcontractors in the Work and shall insure against the perils of fire, wind, storm, hail, lightning and extended coverage including flood and earthquake and shall include all-risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. The insurance shall cover reasonable compensation for City's Consultant's services and expenses required as a result of an insured loss. This must be an all-risk policy incorporating the following language:

Permission is given for the Project insured hereunder to become occupied, the insurance remaining in full force and effect until such time as the Project has been accepted by the City, all as currently approved by the Texas Board of Insurance Commissioners

When permissible by law, the Certificate of Insurance must include the names of the insured Contractor and the City. The deductible under the policy, including that for flood shall not exceed \$100,000.00 without the written approval of the City.

27.09 Workers' Compensation/Employer's Liability Insurance. The following Workers' Compensation Insurance requirements shall apply.

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) Workers' Compensation/ Employer's Liability insurance shall include the following terms:
 - 1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 - 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - 3. 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.

- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

"A. Definitions:

Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers' Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the Work on the project until the Contractor's/person's Work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all*

persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) A certificate of coverage, prior to the other person beginning work on the project; and

(b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that

materially affects the provision of coverage of any person providing services on the project; and

(7) Contractually require each person with whom it contracts to perform as required by Sections (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this Agreement, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the Agreement void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."

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

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

28. BOND PROVISIONS

28.01 Pursuant to Section 2253.021 of the Texas Government Code, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds \$50,000, and a performance bond is required if the Contract Amount exceeds \$100,000. Below those amounts, the City *may* require payment and/or performance bonds. In the event a performance or payment bond or both is required either by law or in the City's discretion, such bonds shall be executed in accordance with all requirements of Chapter 3503 of the Texas Insurance Code, all other applicable law, and the following:

- (a)** The Contractor shall execute performance and payment bonds for the full Contract Amount and, if required by Contractor's surety to cover increases in the dollar amounts or amount of Work that is increased by a duly authorized change order, Contractor shall secure performance and payment bond riders to increase the dollar amounts and coverages of the performance and payment bonds.
- (b)** The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.

(c) The Contractor shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by the Contract Documents, which are attached as Exhibit B, together with valid original powers of attorney, **at the time of execution of this Agreement by Contractor and prior** to the commencement of work. Copies of the executed bonds shall be attached hereto as **Exhibit B**.

(d) The performance and payment bonds, and any subsequently issued bond riders, shall remain in effect for a period of one (1) year after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.

(e) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

28.02 The Contractor may make such changes and alterations as the City may require in the Work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the Work as originally planned, in accordance with the provisions of Article 17.

29. SURETY

29.01 If the Contractor has abandoned the Project or the City has terminated the Contract for cause and the Contractor's Surety, after notice demanding completion is sent, fails to commence the completion of the Work in compliance with this Agreement, then the City at its option may provide for completion of the Work in either of the following manners:

(a) The City may employ such force of men and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor and Surety.

(b) The City may, after notice published as required by law, accept sealed bids and let this Agreement for the completion of the Work under substantially the same terms and conditions that are provided in this Agreement. In case of any increase in cost to the City under the new agreement as compared to what would have been the cost under this Agreement, such increase together with all of the City's damages due to Contractor's abandonment and/or default, including liquidated damages, as provided pursuant to Section 38, entitled "TERMINATION FOR CAUSE" shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete such new agreement prove to be less than that which would have been the cost to complete the Work under this Agreement, the Contractor shall be credited therewith after all deductions are made in accordance with this Agreement.

29.02 Should the cost to complete the Work exceed the Contract Amount and the Contractor fails to pay the amount due to the City within the time designated and there remains any machinery, equipment, tools, materials, or supplies on the Project site, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual

written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City's Representative to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, City's Representative may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City's Representative may elect. City's Representative shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

29.03 In the event the account shows that the cost to complete the Work is less than that which would have been the cost to City had the Work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the Project site shall be turned over to the Contractor.

30. COMPLIANCE WITH LAW

30.01 The Contractor's work and materials shall comply with all state and federal laws, municipal ordinances, regulations, codes, and directions of inspectors appointed by proper authorities having jurisdiction.

30.02 The Contractor shall perform and require all subcontractors to perform the Work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws as they apply to its employees. In the event any of the conditions of the specifications violate the code for any industry, then such code conditions shall prevail.

30.03 The Contractor shall follow all applicable state and federal laws, municipal ordinances, and guidelines concerning soil erosion and sediment control throughout the Project and warranty term.

31. SAFETY PRECAUTIONS

31.01 All safety measures, policies and precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the College Station Fire Department marked "Attn.: Assistant Chief".

31.02 The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the Work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the Work as may be necessary.

31.03 The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the Work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

31.04 Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in this Agreement, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as defined in this Agreement). **In the event Contractor**

engages in any of the activities prohibited in this Section 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this section 31.04.

31.05 In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to City in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon encountering a Hazardous Substance at the Project site, **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.**

31.06 City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

31.07 It is the Contractor's responsibility to comply with all Environmental Laws (as defined in this Agreement) based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

32. TRENCH SAFETY

The Contractor must comply with Texas law regarding trench excavation exceeding five feet in depth and in accordance with the following items:

32.01 The Contractor must comply with the requirements of Subchapter 756 of the Tex. Health & Safety Code Ann. §756.022-023, and the requirements of 29 C.F.R., Subpart P – Excavations (sections 1926.650 et. seq.) of the Occupational Safety and Health Administration Standards, as amended.

32.02 The Contractor must include a separate pay item for trench safety complying with trench safety requirements, stating a unit price per linear foot of trench safety systems, as measured along the centerline of trench including manholes and other line structures.

32.03 Before beginning work on this project, the Contractor must submit to the City a complete trench safety program that complies with state and federal regulations. It is the sole duty, responsibility and prerogative of the Contractor, not the City, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project.

32.04 The Contractor must provide the City the name of the “competent person” required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems

comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

32.05 If evidence of possible cave-ins or slides is apparent, the Contractor must cease all work in the trench and surrounding area until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench.

33. INDEMNITY

33.01 CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THE CONTRACT DOCUMENTS. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.

33.02 The indemnification contained in Section 33.01 shall include but not be limited to the following specific instances:

- (a) The City is damaged due to the act, omission, mistake, fault or default of the Contractor.**
- (b) In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.**
- (c) In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.**
- (d) In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.**
- (e) The removal of all debris related to the Work.**
- (f) The acts and omissions of the subcontractors it hired.**
- (g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.**

33.03 The indemnification obligations of the Contractor under this section shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

33.04 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 Section 33.01, 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.

33.05 The indemnity provisions provided herein shall survive the termination or expiration of this Agreement.

33.06 The indemnification obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers compensation acts, disability benefit acts or other employee benefit acts. 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.

34. RELEASE

34.01 The Contractor assumes full responsibility for the Work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its 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 or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or 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 in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City. 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.

35. PERMITS AND LICENSES

35.01 The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the Work. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work.

36. ROYALTIES AND LICENSING FEES

36.01 THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSING FEES. THE CONTRACTOR SHALL HOLD THE CITY HARMLESS AND INDEMNIFY THE CITY FROM THE PAYMENT OF ANY ROYALTIES, DAMAGES, LOSSES OR EXPENSES INCLUDING ATTORNEY'S FEES FOR SUITS, CLAIMS OR OTHERWISE, GROWING OUT OF INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS, MATERIALS AND METHODS USED IN THE PROJECT. IT SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT RIGHTS. FURTHER, IF THE CONTRACTOR HAS REASON TO BELIEVE THAT THE DESIGN, SERVICE, PROCESS, OR PRODUCT

SPECIFIED IS AN INFRINGEMENT OF A PATENT, IT SHALL PROMPTLY GIVE SUCH INFORMATION TO CITY'S REPRESENTATIVE.

37. BREACH OF CONTRACT & DAMAGES

37.01 The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate, or terminate the Contractor's obligations under this Agreement.

37.02 Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (a) If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b) If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- (c) If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

38. TERMINATION FOR CAUSE

38.01 At any time, and without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to terminate this Agreement in its entirety for any of the following:

- (a) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or
- (b) If a receiver, trustee, or liquidator of any of the property or income of the Contractor is appointed; or
- (c) If the Contractor fails to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- (d) If the Contractor fails to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or
- (e) If the Contractor fails for any reason other than the failure by City's Representative to make payments called upon when due; or
- (f) If the Contractor abandons the Work.

- (g) If the Contractor commits a material default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

39.01 The performance of the Work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the Work is terminated, and the date upon which termination becomes effective.

39.02 In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

40.01 If this Agreement is terminated for cause, the City shall have the right but shall not be obligated to complete the Work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment, without rental obligation therefor, and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the Work itself or by others, pursuant to the foregoing, then the Contractor and/or Contractor's surety will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, administrative expenses, field overhead, the cost of necessary equipment, materials, field labor, additional fees paid to architects, engineers, attorneys or others to assist the City in connection with the termination and liquidated damages) in completing and/or correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

41. CLOSE OUT

41.01 After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City's Representative, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City's Representative, do the following:

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the Work as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination;

(d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the Work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred.

42. TERMINATION CONVERSION

42.01 Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Section 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Section 39 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 39.

43. HIRING

43.01 During the term of this Agreement and for a period of one (1) year thereafter, the Contractor agrees not to solicit for hire any employee or employees of the City that were associated with work specified under this Agreement. In the event that this provision is breached by the Contractor, the Contractor agrees to pay the City damages in the amount equal to twelve (12) months of the employee's total compensation plus any legal expenses associated with enforcement of this provision.

44. ASSIGNMENT

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

45. EFFECTIVE DATE

45.01 This Agreement goes into effect when duly approved by all the parties hereto and is contingent upon Contractor obtaining the bonds required herein.

46. OTHER TERMS

46.01 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.

46.02 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.

46.03 Written Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such change.

46.04 Entire Agreement. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

46.05 Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

46.06 Mediation. After receipt of a written notice of a claim, the City may elect to refer the matter to the City's Consultant, City's Representative or another party for review. Contractor will attend meetings called to review and discuss the claims and mitigation of the problem, and shall furnish any reasonable factual backup for the claim requested. The City may also elect to defer consideration of the claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City, at its sole discretion, is entitled to refer a claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under City's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in College Station, Texas.

46.07 Arbitration. In the event of a dispute and upon the mutual written consent of both parties, the parties may agree to arbitration without waiving any of their other rights hereunder.

46.08 Choice of Law and Place of Performance. This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

46.09 Authority to do business. The Contractor represents that it has a certificate of authority, authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this Agreement.

46.10 Authority to Contract. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

46.11 Waiver. Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

46.12 Headings, Gender, Number. The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

46.13 Agreement Read. The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

46.14 Multiple Originals. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

46.15 Notice of Indemnification. City and Contractor hereby acknowledge and agree that this Agreement contains certain indemnification obligations and covenants.

46.16 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. Wage Rates
- B. Performance & Payment Bonds
- C. Certificates of Insurance
- D. Plans & Specifications
- E. Construction Schedule
- F. Schedule of Values

TEAL SERVICES, LLC

By: Chad Smith

Printed Name: Chad Smith

Title: Managing Member

Date: 6/29/2023

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.
5. Except for Heavy/Highway Construction, building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

EXHIBIT B
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Bond No. 1098027

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Teal Services, LLC, as Principal, hereinafter called "Contractor" and the other subscriber hereto The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Million Seventy-Five Thousand Five Hundred Forty-Five and 00 /100 Dollars (\$ \$3,075,545.00) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for CCWWTP Blower Building No. 2 and No. 3 Replacement

all of such Work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of College Station or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Contract in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of College Station shall retain certain amounts due the Contractor until the expiration of thirty (30) days from the acceptance of the Work is intended for the City's benefit, and the City of College Station shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of College Station or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be

done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom. Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall not in anywise affect its obligation on this bond and it does hereby waive notice of any such change in Contract Time or Contract Sum.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of College Station from any liability, loss, cost, expense, or damage arising out of or in connection with the Work done by the Contractor under the Contract. In the event that the City of College Station shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in Brazos County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party. A copy of surety agent's "Power of Attorney" must be attached hereto.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

Bond No. 1098027

FOR THE CONTRACTOR:

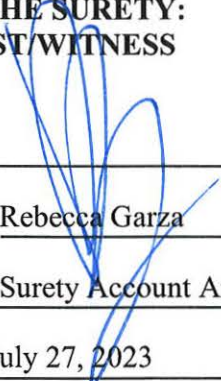
ATTEST & SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

By: 
Name: Amber Smith
Title: Office manager
Date: July 27, 2023

Teal Services, LLC
(Name of Contractor)

By: 
Name: Chad Smith
Title: Managing Member
Date: July 27, 2023

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: 
Name: Rebecca Garza
Title: Surety Account Analyst
Date: July 27, 2023

The Hanover Insurance Company
(Full Name of Surety)

440 Lincoln Street
Worcester, MA 01653
(Address of Surety for Notice)

By: 
Name: Jillian O'Neal
Title: Attorney-in-Fact
Date: July 27, 2023

FOR THE CITY:

REVIEWED:

**THE FOREGOING BOND IS ACCEPTED ON
BEHALF OF THE CITY OF COLLEGE
STATION, TEXAS:**

City Attorney

City Manager

NOTE: Date of bonds must be on or after the date of execution by City.

TEXAS STATUTORY PAYMENT BOND

Bond No. 1098027

THE STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

THAT WE, a Teal Services, LLC, as Principal, hereinafter called "Principal" and the other subscriber hereto The Hanover Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Million Seventy-Five Thousand Five Hundred Forty-Five and 00 /100 Dollars (\$ \$3,075,545.00) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 27th day of July, 2023, for CCWWTP Blower Building No. 2 and No. 3 Replacement, referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the Work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall not in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Sum. A copy of surety agent's "Power of Attorney" must be attached hereto.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

Bond No. 1098027

FOR THE CONTRACTOR:

ATTEST & SEAL: (if a corporation) (SEAL)

WITNESS: (if not a corporation)

Teal Services, LLC
(Name of Contractor)

By: Amber Smith

Name: Amber Smith

Title: Office Manager

Date: July 27, 2023

By: Chad Smith

Name: Chad Smith

Title: Managing Member

Date: July 27, 2023

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Rebecca Garza

Name: Rebecca Garza

Title: Surety Account Analyst

Date: July 27, 2023

The Hanover Insurance Company
(Full Name of Surety)

440 Lincoln Street

Worcester, MA 01653

(Address of Surety for Notice)

By: Jillian O'Neal

Name: Jillian O'Neal

Title: Attorney-in-Fact

Date: July 27, 2023

FOR THE CITY:

REVIEWED:

**THE FOREGOING BOND IS ACCEPTED ON
BEHALF OF THE CITY OF COLLEGE
STATION, TEXAS:**

City Attorney

City Manager

NOTE: Date of bonds must be on or after the date of execution by City.

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Shelly Bolender, Phillip Baker, Edward Arens, Erica Anne Cox, Jillian O'Neal, Michele Bonnin and/or Rebecca Garza

Of Technical Assurance LLC The Woodlands, Texas each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Any such obligations in the United States, not to exceed Fifty Million and No/100 (\$50,000,000) in any single instance

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America and affirmed by each Company on March 24, 2014)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 8th day of February, 2022.

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA


Bryan J. Bolender, Executive Vice President



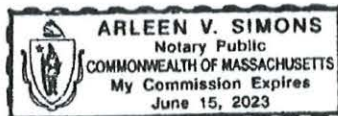
THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

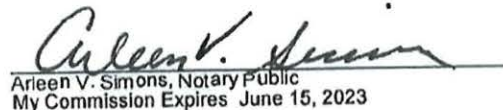

James H. Kawiecki, Vice President



THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 8th day of February, 2022 before me came the above named Executive Vice President and Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.




Arleen V. Simons, Notary Public
My Commission Expires June 15, 2023

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 27th day of July, 2023.

CERTIFIED COPY

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

John A. Rowedder, Vice President

Texas Complaint Notice

Commercial Lines

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call The Hanover Insurance Company/
Citizens Insurance Company of America's toll-free
telephone number for information or to make a
complaint at:

1-800-343-6044

You may also write to The Hanover Insurance Company/
Citizens Insurance Company of America at:

440 Lincoln Street
Worcester, MA 01653

You may contact the Texas Department of Insurance
to obtain information on companies, coverages,
rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium
or about a claim you should contact the agent or the
company first. If the dispute is not resolved, you may
contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This
notice is for information only and does not become
a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de
The Hanover Insurance Company/Citizens Insurance
Company of America's para informacion o para
someter una queja al:

1-800-343-6044

Usted tambien puede escribir a The Hanover Insurance
Company/Citizens Insurance Company of America al:

440 Lincoln Street
Worcester, MA 01653

Puede comunicarse con el Departamento de Seguros
de Texas para obtener informacion acerca de
companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un
reclamo, debe comunicarse con el agente o la com-
pania primero. Si no se resuelve la disputa, puede
entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo
para proposito de informacion y no se convierte en
parte o condicion del documento adjunto.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



TEALSER01C

BMEYER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/27/2023

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 INSURICA TX Insurance Services, Inc. 19450 State Highway 249 Suite 550 Houston, TX 77070	CONTACT NAME: Brenda Meyer, CIC, CISR	
	PHONE (A/C, No, Ext): (713) 934-2013 FAX (A/C, No): (866) 652-9382	
	E-MAIL ADDRESS: Brenda.Meyer@INSURICA.COM	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : United Fire Lloyds	43559
	INSURER B : Texas Mutual Insurance Company	22945
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

INSURED
Teal Services, LLC
P O Box 817
Anderson, TX 77830

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 ☒ Employee Benefit Lia GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			85321569	8/18/2022	8/18/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 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
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			85321569	8/18/2022	8/18/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			85321569	8/18/2022	8/18/2023	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☒ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	0001311540	8/23/2022	8/23/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Inland Marine			85321569	8/18/2022	8/18/2023	Equip 250,000
A	Builders Risk			85321569	8/18/2022	8/18/2023	Per Project 110,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: CCWWTP Blower Building No. 2 and No 3 Replacement Project

Certificate Holders Include: The City of College Station, its agents, officialsm employees and volunteers

CERTIFICATE HOLDER

CANCELLATION

City of College Station, Texas
Purchasing Division-City Hall
P O Box 9960
College Station, TX 77841

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



ADDITIONAL REMARKS SCHEDULE

AGENCY INSURICA TX Insurance Services, Inc.		NAMED INSURED Teal Services, LLC P O Box 817 Anderson, TX 77830 Harris	
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

Page 2 of 2

GENERAL LIABILITY: Additional Insured as required by written contract per form CG2010 1219 and CG2037 1219, Waiver of Subrogation as required by written contract per form CG7208 0717, Primary & Non-Contributory as required by written contract per form CG2001 1219.

AUTOMOBILE: Additional Insured and Wavier of Subrogation as required by written contract per form CA7109 0117, Primary & Non-Contributory as required by written contract per form CA0449 1116

WORKERS COMPENSATION: Blanket waiver of Subrogation per form WC420304B.

UMBRELLA follows form of underlying.
30 Day Notice of Cancellation is provided

EXHIBIT D
PLANS AND SPECIFICATIONS

PROPOSAL FORM

Date: 5/18/2023

PROPOSAL FROM: Teal Services LLC.

PROPOSAL TO: City Of College Station
1101 Texas Ave.
College Station, TX 77842

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for the construction of the Veterans Park Phase 1B Project and to perform the work required for the construction of said Southside Safety Improvements Project at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

Please type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Please initial all corrections and do not round totals.

In submitting this Proposal, it is understood that this Proposal may not be altered or withdrawn for ninety (90) days, and that the Owner has reserved the right to reject any and all Proposals.

The Undersigned certifies that this Proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering Proposals on this work, for the following sum or prices to wit:

BASE PROPOSAL: Stipulated Total Bid of: (\$ 3,075,545.00)

CALENDAR DAYS: Total number of calendar days to substantial completion is 360⁴⁵⁰ days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: 1,2

CONTRACTOR NAME: Chad Smith

CONTRACTOR SIGNATURE: 

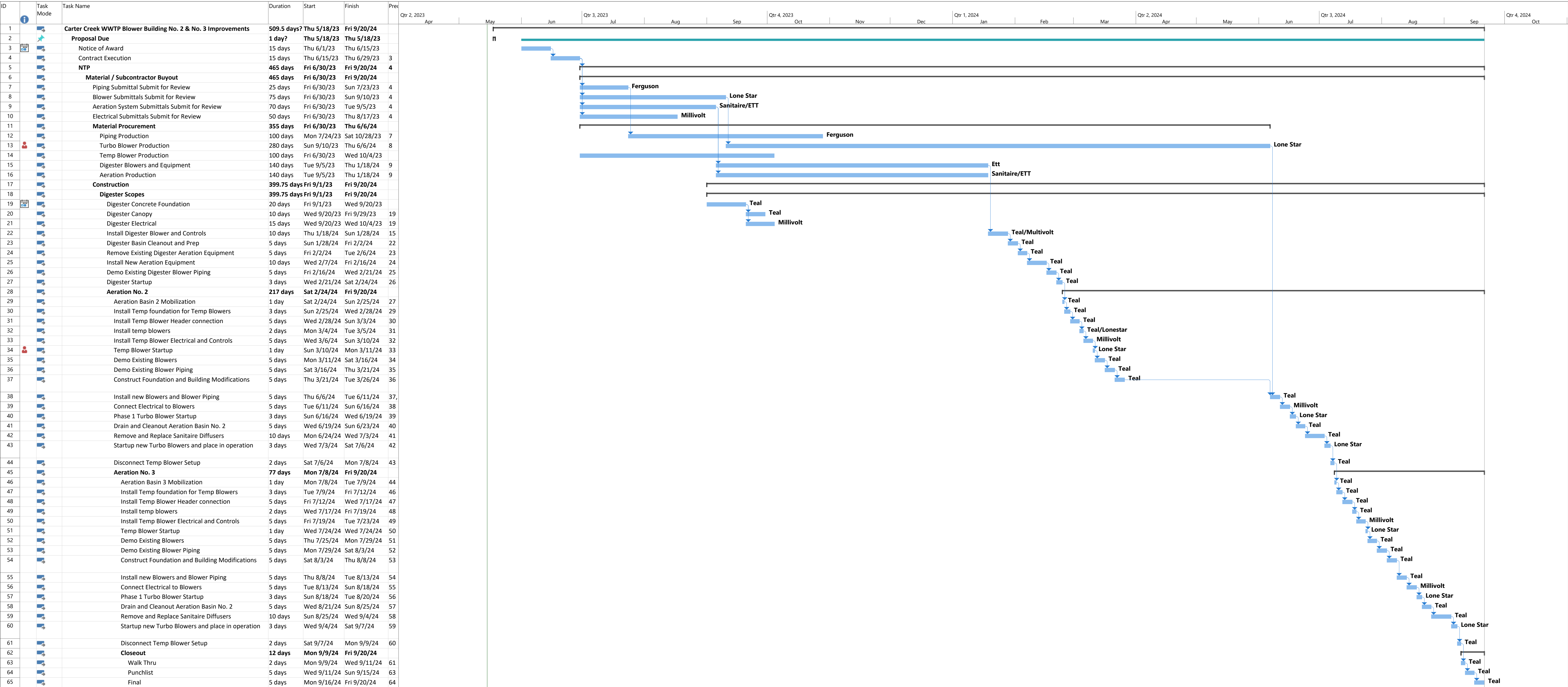
CITY OF COLLEGE STATION
BID FORM
CARTER'S CREEK WWTP BLOWER BUILDING NO 2 AND NO 3
FEBRUARY 2023

BID ITEM	DESCRIPTION ¹	UNIT	QUANTITY	UNIT PRICE	AMOUNT
1	Mobilization and Demobilization	LS	1	\$100,000.00	\$100,000.00
2	Blower Building No 2 Turbo Blower Improvements	LS	1	\$1,047,850.00	\$1,047,850.00
3	Blower Building No 3 Turbo Blower Improvements	LS	1	\$1,045,000.00	\$1,045,000.00
4	Aeration Basin No 2 Fine Bubble Membrane Disc Diffuser Improvements	LS	1	\$40,000.00	\$40,000.00
5	Aeration Basin No 3 Fine Bubble Membrane Disc Diffuser Improvements	LS	1	\$41,760.00	\$41,760.00
6	Aeration Basin No 2 Settled Material Removal and Disposal	CY	250	\$353.00	\$88,250.00
7	Aeration Basin No 3 Settled Material Removal and Disposal	CY	250	\$353.00	\$88,250.00
8	Digested Sludge Holding Tank No 2 PD Blower Building	LS	1	\$221,785.00	\$221,785.00
9	Digested Sludge Holding Tank No 2 Medium Bubble Diffuser Aeration System Improvements	LS	1	\$385,000.00	\$385,000.00
10	Digested Sludge Holding Tank No 2 Settled Material Removal and Disposal	CY	50	\$353.00	\$17,650.00
TOTAL BID					\$ 3,075,545.00

¹ Refer to Section 01025.3.2.B (Measurement and Payment) for more detailed description of bid items.

___450___ Number of Calendar Days to reach Substantial Completion

EXHIBIT E
CONSTRUCTION SCHEDULE



July 27, 2023

Item No. 6.6.

Renewal of Interlocal Agreement for Sewer Use and Pretreatment

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on renewing a 2013 Interlocal Agreement (ILA) for sewer use and pretreatment in the College Station city limits and in the City of Bryan's Certificate of Convenience and Necessity (CCN) certificated area.

Relationship to Strategic Goals:

Core services and infrastructure

Recommendation(s): Staff recommends approval.

Summary: The City of Bryan (Bryan) operates a Texas Commission on Environmental Quality (TCEQ) - approved pretreatment program in their CCN which is located within the City of College Station's (College Station) city limits. An Interlocal Agreement (ILA) exists between College Station and Bryan requiring the establishment of legally binding procedures to ensure that extra jurisdictional system users are subject to Bryan's pretreatment standards and sewer use requirements, and that all requirements of Bryan's TCEQ-approved pretreatment program are satisfied.

As required by the TCEQ and the ILA, College Station has adopted a sewer and pretreatment ordinance that requires:

- 1) The system users located within College Station city limits and Bryan's CCN and that are discharging to Bryan's system, must comply with necessary sewer use and pretreatment controls, and
- 2) Authorizes Bryan to implement and civilly enforce College Station's sewer use and pretreatment ordinance, as an agent of College Station.

The ILA has been reviewed as required during the initial 10 year period, and both parties have determined:

- 1) The agreement is still in compliance with the Federal Clean Water Act,
- 2) The current boundary of the Bryan CCN 20136 is accurate, and
- 3) Renewal of the agreement for another 10 years is desired to ensure sewer service is maintained in the defined area.

Budget & Financial Summary: There is not a requirement for College Station to fund any aspects of the Bryan pretreatment program.

Attachments:

1. Sewer Use and Pretreatment ILA Review & Renewal 7-2023
2. Sewer Use and Pretreatment ILA 12-2013

STATE OF TEXAS §

COUNTY OF BRAZOS §

**10-YEAR REVIEW
INTERLOCAL AGREEMENT FOR SEWER USE AND PRETREATMENT**

WHEREAS, on 9th day of December, 2013, the City of Bryan (“Bryan”) and the City of College Station (“College Station”) entered into an interlocal agreement for sewer use and pre-treatment (“Agreement”) which requires as a condition of renewal, that the agreement be reviewed every ten (10) years; and

WHEREAS, the parties have reviewed the Agreement and find that it is still in compliance with the Federal Clean Water Act, and desire to renew the Agreement for another term; and

WHEREAS, the parties agree with the current boundary of the Bryan Certificate of Convenience and Necessity (CCN) 20136 for sewer; and

THEREFORE THE PARTIES AGREE AS FOLLOWS:

In accordance with Section 5.06(b) of the Agreement, both parties have reviewed the Agreement and found it to be in compliance with the Federal Clean Water Act and all related regulations. Both parties agree to renew the Agreement, when the current term expires, for an additional ten (10) year period, unless sooner terminated.

CITY OF COLLEGE STATION

CITY OF BRYAN

Mayor/Mayor Pro Tem
Date: _____

Bobby Gutierrez, Mayor
Date: _____

ATTEST

ATTEST

City Secretary

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

APPROVED AS TO FORM

City Attorney

Thomas A. Leeper, City Attorney



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 14-147 PROJECT#: _____ BID#: _____ RFP: _____

Contract Description:

Inter-Local Agreement with City of Bryan

Project Name:

Industrial Wastewater Pre-Treatment Program

Name of Contractor:

City of Bryan

CONTRACT TOTAL VALUE: \$ _____

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

Debarment Check ☐ Yes ☐ No ☒ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Davis Bacon Wages Used ☐ Yes ☐ No ☒ N/A
Buy America Required ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

Not applicable

One original goes back to City of Bryan. Thanks - Dave

(If required)*
CRC Approval Date*: _____ Council Approval Date*: 25 Nov 13 Agenda Item No*: R-2

Insurance Certificates: N/A Performance Bond: N/A Payment Bond: N/A

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

LEGAL DEPARTMENT

EXECUTIVE DIRECTOR, BUSINESS SERVICES

APPROVED & EXECUTED

CITY MANAGER

MAYOR (if applicable)

CITY SECRETARY (if applicable)

26 Nov 2013

DATE

12-2-13

DATE

12-3-13

DATE

12-4-13

DATE

12-9-13

DATE

12-9-13

DATE

2 Original(s) sent to CSO on 12-4-13

Scanned into Laserfiche on 12-10-13

1 Original(s) sent to Fiscal on 12-10-13

STATE OF TEXAS

COUNTY OF BRAZOS

§
§
§

**INTERLOCAL AGREEMENT FOR
SEWER USE AND PRETREATMENT**

This Interlocal Agreement (the "Agreement") is made by and between the City of Bryan, Texas ("Bryan"), and the City of College Station, Texas ("College Station"), acting by and through their respective authorized representatives. The Cities of Bryan and College Station are collectively referred to herein as the "Cities," or the "Parties," and each is individually referred to as a "City," or a "Party".

RECITALS:

WHEREAS, Bryan operates a TCEQ-approved pretreatment program; and

WHEREAS, Bryan's Sewer CCN extends into the incorporated limits of College Station as shown on the map in Exhibit "A"; and

WHEREAS, Operation and maintenance of the infrastructure providing collection, conveyance, and treatment of wastewater received from System Users within Bryan's System located in College Station's boundaries and Bryan's Sewer CCN is the responsibility of Bryan; and

WHEREAS, Bryan must enforce a pretreatment program to control discharges from System Users of its wastewater treatment system pursuant to requirements set out in 40 CFR Part 403 and 30 TAC Chapter 315; and

WHEREAS, Legally binding procedures must be established to ensure that all extra jurisdictional System Users are subject to Bryan's pretreatment standards and sewer use requirements, and that all requirements of Bryan's TCEQ-approved pretreatment program are satisfied; and

WHEREAS, College Station has adopted a sewer use and pretreatment ordinance that requires the system users located within its city limits and Bryan's Sewer CCN and discharging to Bryan's System to comply with necessary sewer use and pretreatment controls; and

WHEREAS, College Station authorizes Bryan, as the owner and operator of said sewer system to implement and enforce civilly, College Station's sewer use and pretreatment ordinance, as an agent of the City of College Station; and

NOW THEREFORE, in conjunction with the foregoing and the mutual covenants and promises set forth herein, the parties agree as follows:

Article I Definitions

In this Agreement:

“CCN” means a certificate of convenience and public necessity issued by the TCEQ for water or sanitary sewer service in accordance with Chapter 13 of the Texas Water Code, as amended.

“CFR” means the Code of Federal Regulations.

“System User” means a sewer user meeting the criteria set forth in 40 CFR Part 403 and 30 TAC Chapter 315, located within College Station’s city limits, Bryan’s Sewer CCN, and discharging into Bryan’s System, or any commercial or domestic sewer use located within College Station’s city limits, Bryan’s Sewer CCN, and discharging into Bryan’s System.

“System” means sewage or wastewater treatment works as defined by the Federal Clean Water Act and owned by Bryan. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage sludge or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

“TAC” means Texas Administrative Code.

“TCEQ” means Texas Commission on Environmental Quality.

Article II Adoption and Revisions of Sewer Use and Pretreatment Ordinance

2.01 Initial Ordinance

- a. In furtherance of this Agreement, College Station in conjunction with this Agreement has adopted a sewer use and pretreatment ordinance which incorporates the provisions of Chapter 122 of the City of Bryan Code of Ordinances, Article IV Wastewater System, to regulate all System Users located within College Station’s city limits and Bryan’s Sewer CCN and discharging into Bryan’s System. The College Station ordinance provides for civil penalties and further authorizes Bryan, as an agent College Station, to civilly enforce said administrative penalties, in the name of the City of College Station.

2.02 Revisions to Ordinance

- a. Whenever Bryan revises its sewer use and pretreatment ordinance, prior to forwarding the proposed ordinance amendment to TCEQ for approval, Bryan will forward a copy of the proposed ordinance amendments to College Station for its review and comment, which shall be provided to Bryan within 30 days of College Station’s receipt of the proposed ordinance amendments. Upon Bryan’s receipt

and review of College's Station's comments or after the expiration of the 30 day period, whichever may occur sooner, Bryan may submit the proposed ordinance amendments to the TCEQ, along with a copy of this Agreement, and such other documentation required by TCEQ, for review and approval by the TCEQ.

- b. College Station agrees to place on its City Council agenda the proposed College Station ordinance amendment for consideration by the College Station City Council within 60 days of receipt of notification from the TCEQ of its approval of the ordinance amendment.

Article III

Designation of Enforcement Agent

- a. College Station designates Bryan as an agent of College Station for the purposes of implementation and civil enforcement of College Station's sewer use and pretreatment ordinance against System Users located in College Station's city limits, Bryan's Sewer CCN, and discharging to Bryan's System. The parties agree that Bryan may bring a civil enforcement action in the name of the City of College Station, as an agent of the City of College Station, against System Users of Bryan's System located in the City of College Station city limits and within Bryan's sewer CCN territory to recover civil penalties for violations of College Station's sewer use and pretreatment ordinance and may take any civil action under College Station's sewer use and pretreatment ordinance that could have been taken by College Station. All such actions taken by Bryan shall be at its own cost.
- b. As agent for College Station, Bryan will, at its own expense, perform technical and administrative duties necessary to implement and civilly enforce College Station's sewer use and pretreatment ordinance for System Users of Bryan's System located in College Station's city limits and Bryan's Sewer CCN. Bryan will: (1) complete industrial waste surveys; (2) issue permits to all industrial users required to obtain a permit; (3) conduct inspections and sampling; (4) take all appropriate enforcement action as outlined in Bryan's enforcement response plan and provided for in College Station's sewer use and pretreatment ordinance; (5) review plumbing and development plans of system users; and (6) perform any other technical or administrative duties the Parties deem appropriate.
- c. As agent of College Station, Bryan, at its own expense, may take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, compromises System integrity, or which threatens to cause interference, pass through, or sludge contamination.
- d. As agent, Bryan has the responsibility and authority under federal, state, and local laws to establish:

- i. Types and quantities of discharges that are prohibited for entry into the System;
 - ii. Discharge prohibitions for certain substances, as may be amended from time to time;
 - iii. Pretreatment, permitting, monitoring, and other requirements for System Users; and
 - iv. Measures to protect the System, including, without limitation, any portion of the sanitary sewer, and any receiving stream receiving a discharge of wastewater effluent from harmful discharges.
 - v. Surcharge System Users in accordance with published rates approved by the Bryan City Council.
 - vi. Bring a civil action for the enforcement of College Station's sewer use and pretreatment ordinance, as it may be amended from time to time, in the name of the City of College Station against Bryan System Users, located within the city limits of College Station, failing to comply with requirements of College Station's sewer use and pretreatment ordinance.
- e. College Station will provide assistance as necessary to ensure Bryan has access to the facilities of System Users located in College Station's city limits and Bryan's Sewer CCN for the purposes of inspection, sampling, and any other duties deemed necessary by Bryan. College Station will promptly provide Bryan with all information provided to College Station from System Users related to the System User's industrial discharges.
- f. If the authority of Bryan to act as agent for College Station under this Agreement is questioned by a System User, court of law, or otherwise, College Station will take whatever action is reasonably necessary to ensure that implementation and enforcement of its sewer use and pretreatment ordinance against its System Users discharging to the System, including, but not limited to, implementing and enforcing its sewer use and pretreatment ordinance on its own behalf or amending this Agreement to clarify Bryan's authority.
- g. The College Station, City Manager is hereby authorized, without further action by the College Station Council, to execute any documents or instruments as may be required by a court of law or administrative hearing officer, verifying the scope of agency granted to the City of Bryan by this Interlocal Agreement.
- h. Bryan shall retain any award of attorney's fees or cost awarded in a civil action authorized under this Section. In addition, in the event of the recovery of an award of monetary damages, Bryan shall retain such amount of the award that is attributable to actual loss or damage sustained by Bryan or its System.

- i. Notwithstanding any provision to the contrary, nothing in this agreement shall preclude the City of Bryan from asserting alternative causes of action, in its sole capacity, including but not limited to negligence, nuisance or trespass, against any party who discharges pollutants into its sanitary sewer system located within the corporate limits of College Station.

Article IV

Permit for Industrial Sewer Connection and Wastewater Discharge

4.01. Before a System User meeting the pretreatment requirements of the Federal Pretreatment Rule discharges into Bryan's System, the System User must obtain a permit from Bryan, detailing the limits, conditions, and charges related to any discharge from the System User. This permit will also contain language permitting Bryan access to the System User's facility for the purpose of inspection and sampling.

4.02 College Station agrees to the inclusion of the following language in the Bryan System User permit: *The System User agrees to comply with the requirements of the City of Bryan's sewer use and pretreatment ordinance, as they may be amended from time to time, and the City of College Station's sewer use and pretreatment ordinance, as may be amended from time to time. In the event the requirements may differ, the System User agrees to comply with the more stringent requirement. In the event that the System User is unable to determine which requirement is more stringent, the System User shall request explanation in writing from the City of Bryan and failure to request such explanation shall be inferred irrefutably that System User has knowledge of the requirements that applied to System User. The obligation to comply with the aforementioned requirements is contractual in nature and the City of Bryan may enforce the terms of this Agreement, including but not limited to the obligation to comply with the aforementioned requirement, of either the City of Bryan or the City of College Station, whichever is more stringent, in any manner available in law or equity, including but not limited to injunctive relief, and System User agrees that System User shall be liable to the City of Bryan or College Station for all costs associated with the successful enforcement of this Agreement, including but not limited to reimbursement of City of Bryan's or City of College Station's attorney fees and expenses, and reimbursement of any costs charged by the City of College Station to the City of Bryan for any City of College Station's enforcement action against System User for enforcement of the City of College Station's sewer use and pretreatment ordinance.*

Article V.

Miscellaneous

5.01 Authority to Enter Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

5.02 Entire Agreement. This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

5.03 Amendment. This Agreement may be amended by the mutual written agreement of the Cities.

5.04 Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party.

5.05 Force Majeure. Neither Party shall be liable to the other Party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond their respective control, including, but not limited to: war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected Party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the Party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

5.06 Term; Termination.

- a. This Agreement shall become effective on the last date of execution hereof (the "Effective Date") following the approval of this Agreement by the governing bodies of both Parties and shall be in effect for an initial period of ten (10) years, except as may be otherwise provided herein.
- b. The Parties will review and revise this Agreement to ensure compliance with the Federal Clean Water Act (42 U.S.C. §1251 et seq.) and rules and regulations (see 40 CFR Part 403 and 30 TAC Chapter 315) issued thereunder, as necessary, but at least once every 10 years on a date to be determined by both Parties. Thereafter this Agreement shall renew for an additional ten (10) year period, unless sooner terminated as provided herein.
- c. Notwithstanding any of the foregoing, this Agreement may be terminated at anytime by the mutual written agreement of the Cities.
- d. This Agreement may be terminated by either Party if the other Party fails to perform an obligation of such Party under this Agreement and such failure is not cured within sixty (60) days after written notice thereof. Before any termination of this Agreement occurs the Parties will submit the dispute to the TCEQ's Alternative Dispute Resolution Program or an independent mediator mutually agreed upon by the parties to resolve any disputes. In the event, the parties cannot agree upon a mediator, each party shall select a mediator and the two mediators shall agree upon a third party mediator to mediate the dispute. All benefits and

obligations under this Agreement will cease following sixty (60) days from receipt of such notice. Notwithstanding the foregoing, the Non-Breaching Party may grant additional time to cure or waive a failure to perform an obligation.

5.07 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or electronic or facsimile transmission confirmed by mailing written confirmation substantially the same time as such electronic or facsimile transmission, and addressed to the respective City at the following address:

City of Bryan, Texas
Attn: City Manager
300 South Texas Avenue
Bryan, Texas 77803

City of College Station, Texas
Attn: City Manager
PO Box 9960
College Station, Texas 77842

5.08 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Brazos County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

5.09 Severability. In the event any one or more of the provisions contained in this Agreement 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 Agreement 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 Agreement or by reform by a court of competent jurisdiction.

5.10 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

EXECUTED this 20th day of November, 2013.

CITY OF BRYAN, TEXAS

By: [Signature]
Jason P. Bienski, Mayor

APPROVED AS TO FORM

By: [Signature]
Janis K. Hampton, City Attorney

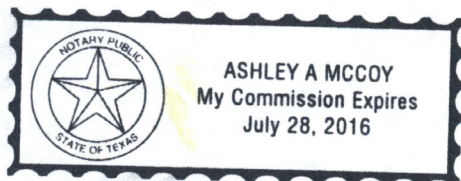
ATTEST:

By: [Signature]
Mary Lynne Stratta, City Secretary

City of Bryan Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 20th day of November, 2013, by Jason Bienski, in his capacity as Mayor of the City of Bryan, a Texas home-rule municipality, on behalf of said municipality.



[Signature]
Notary Public, State of Texas

EXECUTED this the 9th day of December, 2013 by
College Station.

CITY OF COLLEGE STATION

By: Nancy J. Berry
Mayor, City of College Station

ATTEST:

Sherry Mashburn
Sherry Mashburn
City Secretary

APPROVED AS TO FORM:

for Carla Robinson
Carla Robinson
City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **NANCY BERRY**, Mayor of College Station, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed it for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th
December, A.D. 2013



Tanya McNutt
Notary Public, State of Texas
My Commission Expires: 2-14-14

July 27, 2023
Item No. 7.1.
Truck Parking within City Limits

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding truck and trailer parking.

Relationship to Strategic Goals:

1. Improving Mobility

Recommendation(s): n/a

Summary: Presentation regarding truck parking within City, including where trucks are currently parking, where we have removed parking, and what options are available to address citizen concerns about truck parking.

Budget & Financial Summary: n/a

Attachments:

None

July 27, 2023
Item No. 8.1.
BVSWMA, Inc. FY2024 Budget

Sponsor: Pete Caler, Assistant Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding the Fiscal Year 2024 BVSWMA, Inc. budget.

Relationship to Strategic Goals:

1. Financially Sustainable City
2. Core Services and Infrastructure

Recommendation(s): Staff recommends approval of the FY2024 BVSWMA, Inc. Budget.

Summary: The BVSWMA, Inc. proposed budget was considered and approved by BVSWMA, Inc. Board of Directors on June 28, 2023.

According to the BVSWMA, Inc., By-Laws and Operating Agreement, the BVSWMA budget will be presented to the College Station and Bryan City Councils for consideration after being approved by the BVSWMA Board. The City of Bryan considered and approved this item on July 11, 2023.

Budget & Financial Summary: The FY2024 BVSWMA, Inc. Budget Total Revenue is \$12,587,610. The Total Expenses are \$9,341,107 and Capital Expenses are \$4,670,000.

The budget also reduces the gate rate for both cities from \$12.00 to \$9.00 per ton.

Attachments:

1. FY24 BVSWMA Budget

BVSWMA, Inc. Budget
Fiscal Year Ending September 30, 2024

APPROVED AND ADOPTED BY VOTE OF THE BOARD OF DIRECTORS OF THE BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC. AT A REGULAR MEETING HELD ON THE 21st DAY OF JUNE, 2023.

APPROVED:

Twin Oaks Landfill Gate Rates

Twin Oaks Gate Rates

		City of Bryan City of College Station	Non-City
	FYE	Gate Rate	Gate Rate
	2011	\$21.50	\$27.00
	2012	\$21.50	\$27.00
	2013	\$21.50	\$27.00
	2014	\$21.50	\$27.00
	2015	\$21.19	\$26.69
	2016	\$21.19	\$26.69
	2017	\$20.50	\$26.69
	2018	\$20.00	\$26.69
	2019	\$18.50	\$26.69
	2020	\$17.50	\$28.00
	2021	\$15.00	\$28.00
	2022	\$13.00	\$28.00
Current	2023	\$12.00	\$30.00
Proposed	2024	\$9.00	\$30.00
<i>Projected</i>	2025	\$9.00	\$30.00

Gate Rate includes \$0.94/ton TCEQ Fee

City rate for special waste remains \$15.00/ton.

BVSWMA, Inc.
Fiscal Year Ending 2024 Proposed Budget

	2023 Projected Results	2024 Proposed Budget			
Landfill Volume					
City of College Station	71,400	71,500			
City of Bryan	62,900	62,000			
Third party	362,000	360,000			
Total Tons	496,300	493,500			
Landfill Rates					
City of College Station	\$ 11.06	\$ 8.06	Rate	TCEQ	Net
City of Bryan	\$ 11.06	\$ 8.06	\$ 9.00	\$ 0.94	\$ 8.06
Third party	\$ 29.06	\$ 29.06	\$ 9.00	\$ 0.94	\$ 8.06
			\$ 30.00	\$ 0.94	\$ 29.06
OPERATING REVENUE					
Landfill Revenue	\$ 11,977,558	\$ 11,537,610			
Compost Facility	\$ 281,720	\$ 300,000			
Other Operating Revenues	\$ 600,000	\$ 750,000			
Total Operating Revenue	\$ 12,859,278	\$ 12,587,610			
OPERATING EXPENSES					
Other Expenses					
Debt Serv.Interest - City of College Station	\$ 81,550	\$ 69,050			
Debt Serv.Interest - City of Bryan	\$ 76,043	\$ 67,002			
Bad Debt - Uncollectible Accounts	\$ 20,000	\$ 1,000			
Contingency	\$ -	\$ 100,000			
Community Support - Household Haz.Waste	\$ 600,000	\$ 600,000			
Community Support - Misc. Activities	\$ 20,000	\$ 25,000			
Total Other Expenses	\$ 797,593	\$ 862,052			
Maintenance Expense					
Maintenance - Computer Software	\$ 30,000	\$ 30,000			
Office Maintenance - Other	\$ 1,000	\$ 1,000			
Office Maintenance - Equipment	\$ 1,000	\$ 1,000			
Office Maintenance - Furniture	\$ 9,000	\$ 7,000			
Office Maintenance - Computer	\$ 1,000	\$ 1,000			
Maintenance - Building	\$ 32,000	\$ 32,000			
Maintenance - Grounds	\$ 15,000	\$ 35,000			
Maintenance - Fence & Gates	\$ 2,000	\$ 2,000			
V&E Maintenance - Machine/Tool	\$ 766	\$ 1,500			
V&E Maintenance - Heavy Equipment	\$ 500,000	\$ 500,000			
V&E Maintenance - Radios	\$ 11,800	\$ 12,000			
V&E Maintenance - Phones	\$ 5,000	\$ 5,000			
V&E Maintenance - Pagers/Other	\$ 19,000	\$ 20,000			
V&E Maintenance - Pumps/Motors	\$ 20,000	\$ 20,000			
V&E Maintenance - Motor Vehicle	\$ 15,000	\$ 15,000			
V&E Maintenance - Other	\$ 3,500	\$ 3,500			
Wet Weather Access	\$ 300,000	\$ 300,000			
Total Maintenance Expense	\$ 966,066	\$ 986,000			
Closure, Post Closure & Pre-Closure Costs					
Closure Costs - Twin Oaks LF	\$ 200,000	\$ 238,864			

Post Closure Maintenance Costs-Twin Oaks LF	\$	250,000	\$	238,864
Pre-Closure & Interim Cover Costs-Twin Oaks	\$	115,000	\$	122,787
Total Closure, Post Closure & Pre-Closure Costs	\$	565,000	\$	600,515

Purchased Services

Advertising & Promotional Services	\$	20,000	\$	20,000
Insurance - Liability & Property	\$	107,478	\$	130,000
Other Services - Other	\$	18,000	\$	18,000
Other Services - Contract Labor	\$	150,000	\$	150,000
Other Services - Security	\$	18,000	\$	18,000
Printing - External	\$	1,192	\$	2,000
Printing - Signs & Banners	\$	7,500	\$	7,500
Prof. Service - Audit	\$	38,000	\$	40,200
Prof. Service - Engineering	\$	175,000	\$	175,000
Prof. Service - Legal	\$	45,000	\$	45,000
Prof. Service - Medical	\$	1,000	\$	1,000
Prof. Service - Spec. Studies	\$	-	\$	35,000
Prof. Service - Other	\$	205,000	\$	205,000
Rentals - Equipment	\$	65,000	\$	65,000
Sundry - Credit Card Fees	\$	73,000	\$	73,000
Sundry - Freight	\$	35,000	\$	35,000
Sundry - Permits & Licenses	\$	5,000	\$	5,000
Sundry - Penalty & Interest	\$	500	\$	500
Sundry - Postage	\$	2,500	\$	2,500
Sundry-Bank Service Charges	\$	500	\$	500
Tech. Service - Janitorial	\$	50,000	\$	50,000
Tech. Service - Pest Control	\$	4,500	\$	4,500
Tech. Service - Inspection & License Fees	\$	15,000	\$	15,000
Training - Inhouse Training	\$	1,000	\$	1,000
Training - Memberships	\$	7,000	\$	7,000
Training - Outside Training	\$	15,000	\$	15,000
Training - Subscriptions	\$	2,500	\$	2,500
Training - Travel & Lodging	\$	7,000	\$	7,000
Training-Travel Meals & Ent.	\$	2,000	\$	2,000
Utility Service - Cable Services	\$	4,000	\$	4,000
Utility Service - Disposal Fees	\$	40,000	\$	40,000
Utility Service - Electric	\$	75,000	\$	75,000
Utility Service - Local Phone	\$	3,500	\$	3,500
Utility Service - Mobile Phone	\$	12,000	\$	12,000
Utility Service - Water	\$	30,000	\$	30,000

Total Purchased Services	\$	1,236,170	\$	1,296,700
---------------------------------	-----------	------------------	-----------	------------------

Salaries & Benefits

Administrative	\$	553,449	\$	580,000
Fulltime Labor	\$	1,425,000	\$	1,570,000
Overtime	\$	530,000	\$	500,000
Bonuses	\$	40,000	\$	40,000
FICA/Medicare & Unemployment Taxes	\$	180,000	\$	195,000
Retirement	\$	350,000	\$	378,000
Group Health Insurance	\$	615,562	\$	875,000
Group Life Insurance	\$	9,178	\$	10,000
Workers Compensation	\$	90,647	\$	100,000
Group Long-Term Disability Insurance	\$	8,989	\$	10,000
Supplemental Insurance	\$	35,000	\$	40,000
Taxable Employee Benefits	\$	7,800	\$	10,000
Non-Taxable Employee Benefits	\$	194	\$	500

Total Salaries & Benefits	\$ 3,845,819	\$ 4,308,500	
Supplies			
Office Supplies - General	\$ 15,000	\$ 15,000	
Office Supplies - Minor Equipment	\$ 2,500	\$ 2,500	
Office Supplies - Computer Hardware	\$ 10,000	\$ 10,000	
Office Supplies - Computer Software	\$ 2,000	\$ 2,000	
V&E - Oil & Lubricants	\$ 68,944	\$ 80,000	
V&E - Fuel	\$ 32,000	\$ 32,000	
V&E - Diesel	\$ 1,000,000	\$ 1,000,000	
V&E - Minor Tools	\$ 12,899	\$ 20,000	
V&E - Other	\$ 7,000	\$ 7,000	
Clothing - Uniforms	\$ 20,000	\$ 23,000	
Chemical - Janitorial	\$ 14,000	\$ 14,000	
Chemical - Pesticide	\$ 1,000	\$ 1,000	
Crew - Safety	\$ 15,000	\$ 15,000	
Misc. Supply - Promo Mater	\$ 4,000	\$ 5,000	
Misc. Supply - Goodwill	\$ 2,500	\$ 2,500	
Misc. Supply - Food & Ice	\$ 22,514	\$ 25,000	
Misc. Supply - Other	\$ 20,000	\$ 20,000	
Total Supplies	\$ 1,249,357	\$ 1,274,000	
NON-OPERATING REVENUES & (EXPENSES)			
Investment Income	\$ 400,000	\$ 300,000	
Non-Operating Revenue	\$ 1,790	\$ 2,500	
Host Fee Expense	\$ (315,181)	\$ (315,840)	\$ 0.64 /ton
Total Non Operating Revenue (Expense)	\$ 86,609	\$ (13,340)	
Summary			
Revenue	\$ 12,859,278	\$ 12,587,610	
Total Expenses	\$ 8,573,397	\$ 9,341,107	
Capital	\$ 4,257,799	\$ 4,670,000	
Cash Flow	\$ 28,082	\$ (1,423,497)	

BVSWMA, Inc.
Capital Budget

	0	1	2	3	4	5	6
	2023	2024	2025	2026	2027	2028	2029
Equipment Capital							
Broom	\$ 86,842						
Dump Truck	\$ 593,600						
850 Dozer	\$ 487,491						
299 Skid Steer addition to fleet	\$ 124,850						
Light Plant	\$ 15,539						
100KW Generator	\$ 70,000						
Crew Pickup	\$ 45,784						
Crew Pickup FY2022 Order	\$ 47,965						
Crew Pickup-Insurance	\$ 45,784						
4-40yrd Roll Off Containers	\$ 29,500						
Tarps for Tarp Machine	\$ 32,000						
Server and phone system	\$ 6,962						
Handheld radios	\$ 6,482						
Fuel Service Truck	\$ 245,000						
Tarp machine	\$ 150,000.00						
Rotochopper	\$ 50,000.00						
Roll Off Truck	\$ 218,000						
Mechanic Service Truck	\$ 190,000						
850 Dozer	\$ 450,000						
Compactor 43	\$ 1,555,000						
Crew Pickup	\$ 50,000						
Compactor 42	\$ 775,000						
Utility Vehicle	\$ 25,000						
Digital traffic signs	\$ 10,000						
Evaporation Pump	\$ 80,000						
Radios	\$ 22,000						
Utility Vehicle		\$ 25,000					
Dump Truck		\$ 600,000					
Tractor		\$ 70,000					
Shredder		\$ 15,000					
Generator		\$ 70,000					
Water Truck		\$ 100,000					
Trackhoe (Big)		\$ 600,000					
6" Electric Pump		\$ 25,000					
6" Diesel Pump		\$ 40,000					
ForkLift		\$ 60,000					
850 Dozer 35		\$ 450,000					
D8 41		\$ 850,000					
Compactor 40		\$ 1,555,000					
Radios		\$ 7,000					
UPS		\$ 35,000					
836 Compactor				\$ 1,555,000			
Scarab				\$ 400,000			
Wheel Loader				\$ 230,000			
Crew Pickup				\$ 45,000			
Tahoe				\$ 50,000			
D4 Dozer				\$ 110,000			
Radios				\$ 7,000			
Dump Truck					\$ 600,000.00		
D8					\$ 850,000.00		
Trackhoe (Little)					\$ 350,000.00		
Tahoe					\$ 50,000.00		
Crew Truck					\$ 45,000.00		
Compactor						\$ 1,555,000.00	
GPS						\$ 400,000.00	

Dumptruck								\$ 600,000.00
Trommel Screen								\$ 325,000.00
Grinder								\$ 750,000.00
Capital Repairs	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
Future Estimate								

Debt Service

City of College Station	\$ 240,000	\$ 260,000	\$ 275,000	\$ 290,000	\$ 305,000	\$ 310,000	\$ 325,000
City of Bryan	\$ 295,000	\$ 310,000	\$ 320,000	\$ 335,000	\$ 350,000	\$ 365,000	\$ 201,413

Capital Projects

Landfill Cell Development	\$ 1,830,000	\$ -	\$ 1,000,000	\$ 1,000,000			
Twin Oaks site projects	\$ 100,000	\$ 100,000	\$ 100,000		\$ 50,000		
Twin Oaks Entry/Exit Road Repair	\$ 100,000						
Compost Scale		\$ 80,000					
East Expansion							
other				\$ 250,000			
other							
other							
other							
other							

Total Capital	\$ 4,257,799	\$ 4,670,000	\$ 6,297,000	\$ 4,372,000	\$ 2,700,000	\$ 2,730,000	\$ 2,301,413
----------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------

BVSWMA, Inc.
Cash Flow

Price & Cost increase assumption				3%	3%	3%	3%	3%
	2022	2023	2024	2025	2026	2027	2028	2029
Landfill Volume								
City of College Station		71,400	71,500	71,500	71,500	71,500	71,500	71,500
City of Bryan		62,900	62,000	62,000	62,000	62,000	62,000	62,000
Third party		362,000	360,000	361,440	362,886	364,337	365,795	367,258
Total Tons		496,300	493,500	494,940	496,386	497,837	499,295	500,758
Landfill Rates								
City of College Station	\$	11.06	\$ 8.06	\$ 8.06	\$ 8.06	\$ 8.06	\$ 8.06	\$ 8.06
City of Bryan	\$	11.06	\$ 8.06	\$ 8.06	\$ 8.06	\$ 8.06	\$ 8.06	\$ 8.06
Third party	\$	29.06	\$ 29.06	\$ 29.93	\$ 30.83	\$ 31.75	\$ 32.71	\$ 33.69
OPERATING REVENUE								
Landfill Revenue	\$	11,977,558	\$ 11,537,610	\$ 11,894,560	\$ 12,263,689	\$ 12,645,412	\$ 13,040,160	\$ 13,448,377
Compost Facility	\$	281,720	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000
Other Operating Revenues	\$	600,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000
Total Operating Revenue	\$	12,859,278	\$ 12,587,610	\$ 12,944,560	\$ 13,313,689	\$ 13,695,412	\$ 14,090,160	\$ 14,498,377
OPERATING EXPENSES								
Other Expenses								
Debt Serv.Interest - City of College Station	\$	81,550	\$ 69,050	\$ 55,675	\$ 41,550	\$ 26,675	\$ 14,400	\$ 4,875
Debt Serv.Interest - City of Bryan	\$	76,043	\$ 67,001	\$ 57,386	\$ 44,825	\$ 36,657	\$ 22,657	\$ 8,057
Bad Debt - Uncollectible Accounts	\$	20,000	\$ 1,000	\$ 1,030	\$ 1,061	\$ 1,093	\$ 1,126	\$ 1,159
Contingency	\$	-	\$ 100,000	\$ 103,000	\$ 106,090	\$ 109,273	\$ 112,551	\$ 115,927
Community Support - Household Haz.Waste	\$	600,000	\$ 600,000	\$ 618,000	\$ 636,540	\$ 655,636	\$ 675,305	\$ 695,564
Community Support - Misc. Activities	\$	20,000	\$ 25,000	\$ 25,750	\$ 26,523	\$ 27,318	\$ 28,138	\$ 28,982
Total Other Expenses	\$	797,593	\$ 862,052	\$ 860,841	\$ 856,589	\$ 856,651	\$ 854,176	\$ 854,564
Maintenance Expense								
Maintenance - Computer Software	\$	30,000	\$ 30,000	\$ 30,900	\$ 31,827	\$ 32,782	\$ 33,765	\$ 34,778
Office Maintenance - Other	\$	1,000	\$ 1,000	\$ 1,030	\$ 1,061	\$ 1,093	\$ 1,126	\$ 1,159
Office Maintenance - Equipment	\$	1,000	\$ 1,000	\$ 1,030	\$ 1,061	\$ 1,093	\$ 1,126	\$ 1,159
Office Maintenance - Furniture	\$	9,000	\$ 7,000	\$ 7,210	\$ 7,426	\$ 7,649	\$ 7,879	\$ 8,115
Office Maintenance - Computer	\$	1,000	\$ 1,000	\$ 1,030	\$ 1,061	\$ 1,093	\$ 1,126	\$ 1,159
Maintenance - Building	\$	32,000	\$ 32,000	\$ 32,960	\$ 33,949	\$ 34,967	\$ 36,016	\$ 37,097
Maintenance - Grounds	\$	15,000	\$ 35,000	\$ 36,050	\$ 37,132	\$ 38,245	\$ 39,393	\$ 40,575
Maintenance - Fence & Gates	\$	2,000	\$ 2,000	\$ 2,060	\$ 2,122	\$ 2,185	\$ 2,251	\$ 2,319
V&E Maintenance - Machine/Tool	\$	766	\$ 1,500	\$ 1,545	\$ 1,591	\$ 1,639	\$ 1,688	\$ 1,739
V&E Maintenance - Heavy Equipment	\$	500,000	\$ 500,000	\$ 515,000	\$ 530,450	\$ 546,364	\$ 562,754	\$ 579,637
V&E Maintenance - Radios	\$	11,800	\$ 12,000	\$ 12,360	\$ 12,731	\$ 13,113	\$ 13,506	\$ 13,911
V&E Maintenance - Phones	\$	5,000	\$ 5,000	\$ 5,150	\$ 5,305	\$ 5,464	\$ 5,628	\$ 5,796
V&E Maintenance - Pagers/Other	\$	19,000	\$ 20,000	\$ 20,600	\$ 21,218	\$ 21,855	\$ 22,510	\$ 23,185
V&E Maintenance - Pumps/Motors	\$	20,000	\$ 20,000	\$ 20,600	\$ 21,218	\$ 21,855	\$ 22,510	\$ 23,185
V&E Maintenance - Motor Vehicle	\$	15,000	\$ 15,000	\$ 15,450	\$ 15,914	\$ 16,391	\$ 16,883	\$ 17,389
V&E Maintenance - Other	\$	3,500	\$ 3,500	\$ 3,605	\$ 3,713	\$ 3,825	\$ 3,939	\$ 4,057
Wet Weather Access	\$	300,000	\$ 300,000	\$ 309,000	\$ 318,270	\$ 327,818	\$ 337,653	\$ 347,782
Total Maintenance Expense	\$	966,066	\$ 986,000	\$ 1,015,580	\$ 1,046,047	\$ 1,077,429	\$ 1,109,752	\$ 1,143,044
Closure, Post Closure & Pre-Closure Costs								
Closure Costs - Twin Oaks LF	\$	200,000	\$ 238,864	\$ 239,561	\$ 240,261	\$ 240,963	\$ 241,669	\$ 242,377
Post Closure Maintenance Costs-Twin Oaks LF	\$	250,000	\$ 238,864	\$ 239,561	\$ 240,261	\$ 240,963	\$ 241,669	\$ 242,377
Pre-Closure & Interim Cover Costs-Twin Oaks	\$	115,000	\$ 122,787	\$ 123,146	\$ 123,505	\$ 123,866	\$ 124,229	\$ 124,593
Total Closure, Post Closure & Pre-Closure Costs	\$	565,000	\$ 600,515	\$ 602,268	\$ 604,027	\$ 605,793	\$ 607,567	\$ 609,347
Purchased Services								
Advertising & Promotional Services	\$	20,000	\$ 20,000	\$ 20,600	\$ 21,218	\$ 21,855	\$ 22,510	\$ 23,185
Insurance - Liability & Property	\$	107,478	\$ 130,000	\$ 133,900	\$ 137,917	\$ 142,055	\$ 146,316	\$ 150,706
Other Services - Other	\$	18,000	\$ 18,000	\$ 18,540	\$ 19,096	\$ 19,669	\$ 20,259	\$ 20,867
Other Services - Contract Labor	\$	150,000	\$ 150,000	\$ 154,500	\$ 159,135	\$ 163,909	\$ 168,826	\$ 173,891
Other Services - Security	\$	18,000	\$ 18,000	\$ 18,540	\$ 19,096	\$ 19,669	\$ 20,259	\$ 20,867
Printing - External	\$	1,192	\$ 2,000	\$ 2,060	\$ 2,122	\$ 2,185	\$ 2,251	\$ 2,319
Printing - Signs & Banners	\$	7,500	\$ 7,500	\$ 7,725	\$ 7,957	\$ 8,195	\$ 8,441	\$ 8,695
Prof. Service - Audit	\$	38,000	\$ 40,200	\$ 41,406	\$ 42,648	\$ 43,928	\$ 45,245	\$ 46,603
Prof. Service - Engineering	\$	175,000	\$ 175,000	\$ 180,250	\$ 185,658	\$ 191,227	\$ 196,964	\$ 202,873
Prof. Service - Legal	\$	45,000	\$ 45,000	\$ 46,350	\$ 47,741	\$ 49,173	\$ 50,648	\$ 52,167
Prof. Service - Medical	\$	1,000	\$ 1,000	\$ 1,030	\$ 1,061	\$ 1,093	\$ 1,126	\$ 1,159
Prof. Service - Spec. Studies	\$	-	\$ 35,000	\$ 36,050	\$ 37,132	\$ 38,245	\$ 39,393	\$ 40,575
Prof. Service - Other	\$	205,000	\$ 205,000	\$ 211,150	\$ 217,485	\$ 224,009	\$ 230,729	\$ 237,651
Rentals - Equipment	\$	65,000	\$ 65,000	\$ 66,950	\$ 68,959	\$ 71,027	\$ 73,158	\$ 75,353
Sundry - Credit Card Fees	\$	73,000	\$ 73,000	\$ 75,190	\$ 77,446	\$ 79,769	\$ 82,162	\$ 84,627
Sundry - Freight	\$	35,000	\$ 35,000	\$ 36,050	\$ 37,132	\$ 38,245	\$ 39,393	\$ 40,575
Sundry - Permits & Licenses	\$	5,000	\$ 5,000	\$ 5,150	\$ 5,305	\$ 5,464	\$ 5,628	\$ 5,796
Sundry - Penalty & Interest	\$	500	\$ 500	\$ 515	\$ 530	\$ 546	\$ 563	\$ 580
Sundry - Postage	\$	2,500	\$ 2,500	\$ 2,575	\$ 2,652	\$ 2,732	\$ 2,814	\$ 2,898
Sundry-Bank Service Charges	\$	500	\$ 500	\$ 515	\$ 530	\$ 546	\$ 563	\$ 580
Tech. Service - Janitorial	\$	50,000	\$ 50,000	\$ 51,500	\$ 53,045	\$ 54,636	\$ 56,275	\$ 57,964
Tech. Service - Pest Control	\$	4,500	\$ 4,500	\$ 4,635	\$ 4,774	\$ 4,917	\$ 5,065	\$ 5,217

Tech. Service - Inspection & License Fees	\$ 15,000	\$ 15,000	\$ 15,450	\$ 15,914	\$ 16,391	\$ 16,883	\$ 17,389
Training - Inhouse Training	\$ 1,000	\$ 1,000	\$ 1,030	\$ 1,061	\$ 1,093	\$ 1,126	\$ 1,159
Training - Memberships	\$ 7,000	\$ 7,000	\$ 7,210	\$ 7,426	\$ 7,649	\$ 7,879	\$ 8,115
Training - Outside Training	\$ 15,000	\$ 15,000	\$ 15,450	\$ 15,914	\$ 16,391	\$ 16,883	\$ 17,389
Training - Subscriptions	\$ 2,500	\$ 2,500	\$ 2,575	\$ 2,652	\$ 2,732	\$ 2,814	\$ 2,898
Training - Travel & Lodging	\$ 7,000	\$ 7,000	\$ 7,210	\$ 7,426	\$ 7,649	\$ 7,879	\$ 8,115
Training-Travel Meals & Ent.	\$ 2,000	\$ 2,000	\$ 2,060	\$ 2,122	\$ 2,185	\$ 2,251	\$ 2,319
Utility Service - Cable Services	\$ 4,000	\$ 4,000	\$ 4,120	\$ 4,244	\$ 4,371	\$ 4,502	\$ 4,637
Utility Service - Disposal Fees	\$ 40,000	\$ 40,000	\$ 41,200	\$ 42,436	\$ 43,709	\$ 45,020	\$ 46,371
Utility Service - Electric	\$ 75,000	\$ 75,000	\$ 77,250	\$ 79,568	\$ 81,955	\$ 84,413	\$ 86,946
Utility Service - Local Phone	\$ 3,500	\$ 3,500	\$ 3,605	\$ 3,713	\$ 3,825	\$ 3,939	\$ 4,057
Utility Service - Mobile Phone	\$ 12,000	\$ 12,000	\$ 12,360	\$ 12,731	\$ 13,113	\$ 13,506	\$ 13,911
Utility Service - Water	\$ 30,000	\$ 30,000	\$ 30,900	\$ 31,827	\$ 32,782	\$ 33,765	\$ 34,778
Total Purchased Services	\$ 1,236,170	\$ 1,296,700	\$ 1,335,601	\$ 1,375,669	\$ 1,416,939	\$ 1,459,447	\$ 1,503,231
Salaries & Benefits							
Administrative	\$ 553,449	\$ 580,000	\$ 597,400	\$ 615,322	\$ 633,782	\$ 652,795	\$ 672,379
Fulltime Labor	\$ 1,425,000	\$ 1,570,000	\$ 1,617,100	\$ 1,665,613	\$ 1,715,581	\$ 1,767,049	\$ 1,820,060
Overtime	\$ 530,000	\$ 500,000	\$ 515,000	\$ 530,450	\$ 546,364	\$ 562,754	\$ 579,637
Bonuses	\$ 40,000	\$ 40,000	\$ 41,200	\$ 42,436	\$ 43,709	\$ 45,020	\$ 46,371
FICA/Medicare & Unemployment Taxes	\$ 180,000	\$ 195,000	\$ 200,850	\$ 206,876	\$ 213,082	\$ 219,474	\$ 226,058
Retirement	\$ 350,000	\$ 378,000	\$ 389,340	\$ 401,020	\$ 413,051	\$ 425,442	\$ 438,206
Group Health Insurance	\$ 615,562	\$ 875,000	\$ 901,250	\$ 928,288	\$ 956,136	\$ 984,820	\$ 1,014,365
Group Life Insurance	\$ 9,178	\$ 10,000	\$ 10,300	\$ 10,609	\$ 10,927	\$ 11,255	\$ 11,593
Workers Compensation	\$ 90,647	\$ 100,000	\$ 103,000	\$ 106,090	\$ 109,273	\$ 112,551	\$ 115,927
Group Long-Term Disability Insurance	\$ 8,989	\$ 10,000	\$ 10,300	\$ 10,609	\$ 10,927	\$ 11,255	\$ 11,593
Supplemental Insurance	\$ 35,000	\$ 40,000	\$ 41,200	\$ 42,436	\$ 43,709	\$ 45,020	\$ 46,371
Taxable Employee Benefits	\$ 7,800	\$ 10,000	\$ 10,300	\$ 10,609	\$ 10,927	\$ 11,255	\$ 11,593
Non-Taxable Employee Benefits	\$ 194	\$ 500	\$ 515	\$ 530	\$ 546	\$ 563	\$ 580
Total Salaries & Benefits	\$ 3,845,819	\$ 4,308,500	\$ 4,437,755	\$ 4,570,888	\$ 4,708,014	\$ 4,849,255	\$ 4,994,732
Supplies							
Office Supplies - General	\$ 15,000	\$ 15,000	\$ 15,450	\$ 15,914	\$ 16,391	\$ 16,883	\$ 17,389
Office Supplies - Minor Equipment	\$ 2,500	\$ 2,500	\$ 2,575	\$ 2,652	\$ 2,732	\$ 2,814	\$ 2,898
Office Supplies - Computer Hardware	\$ 10,000	\$ 10,000	\$ 10,300	\$ 10,609	\$ 10,927	\$ 11,255	\$ 11,593
Office Supplies - Computer Software	\$ 2,000	\$ 2,000	\$ 2,060	\$ 2,122	\$ 2,185	\$ 2,251	\$ 2,319
V&E - Oil & Lubricants	\$ 68,944	\$ 80,000	\$ 82,400	\$ 84,872	\$ 87,418	\$ 90,041	\$ 92,742
V&E - Fuel	\$ 32,000	\$ 32,000	\$ 32,960	\$ 33,949	\$ 34,967	\$ 36,016	\$ 37,097
V&E - Diesel	\$ 1,000,000	\$ 1,000,000	\$ 1,030,000	\$ 1,060,900	\$ 1,092,727	\$ 1,125,509	\$ 1,159,274
V&E - Minor Tools	\$ 12,899	\$ 20,000	\$ 20,600	\$ 21,218	\$ 21,855	\$ 22,510	\$ 23,185
V&E - Other	\$ 7,000	\$ 7,000	\$ 7,210	\$ 7,426	\$ 7,649	\$ 7,879	\$ 8,115
Clothing - Uniforms	\$ 20,000	\$ 23,000	\$ 23,690	\$ 24,401	\$ 25,133	\$ 25,887	\$ 26,663
Chemical - Janitorial	\$ 14,000	\$ 14,000	\$ 14,420	\$ 14,853	\$ 15,298	\$ 15,757	\$ 16,230
Chemical - Pesticide	\$ 1,000	\$ 1,000	\$ 1,030	\$ 1,061	\$ 1,093	\$ 1,126	\$ 1,159
Crew - Safety	\$ 15,000	\$ 15,000	\$ 15,450	\$ 15,914	\$ 16,391	\$ 16,883	\$ 17,389
Misc. Supply - Promo Mater	\$ 4,000	\$ 5,000	\$ 5,150	\$ 5,305	\$ 5,464	\$ 5,628	\$ 5,796
Misc. Supply - Goodwill	\$ 2,500	\$ 2,500	\$ 2,575	\$ 2,652	\$ 2,732	\$ 2,814	\$ 2,898
Misc. Supply - Food & Ice	\$ 22,514	\$ 25,000	\$ 25,750	\$ 26,523	\$ 27,318	\$ 28,138	\$ 28,982
Misc. Supply - Other	\$ 20,000	\$ 20,000	\$ 20,600	\$ 21,218	\$ 21,855	\$ 22,510	\$ 23,185
Total Supplies	\$ 1,249,357	\$ 1,274,000	\$ 1,312,220	\$ 1,351,587	\$ 1,392,134	\$ 1,433,898	\$ 1,476,915
NON-OPERATING REVENUES & (EXPENSES)							
Investment Income	\$ 400,000	\$ 300,000	\$ 309,000	\$ 318,270	\$ 327,818	\$ 337,653	\$ 347,782
Non-Operating Revenue	\$ 1,790	\$ 2,500	\$ 2,575	\$ 2,652	\$ 2,732	\$ 2,814	\$ 2,898
Host Fee Expense	\$ (315,181)	\$ (315,840)	\$ (325,315)	\$ (335,075)	\$ (345,127)	\$ (355,481)	\$ (366,145)
Total Non Operating Revenue (Expense)	\$ 86,609	\$ (13,340)	\$ (13,740)	\$ (14,152)	\$ (14,577)	\$ (15,014)	\$ (15,465)
Summary							
Revenue	\$ 12,859,278	\$ 12,587,610	\$ 12,944,560	\$ 13,313,689	\$ 13,695,412	\$ 14,090,160	\$ 14,498,377
Total Expenses	\$ 8,573,397	\$ 9,341,107	\$ 9,578,005	\$ 9,818,959	\$ 10,071,538	\$ 10,329,109	\$ 10,597,299
Capital	\$ 4,257,799	\$ 4,670,000	\$ 6,297,000	\$ 4,372,000	\$ 2,700,000	\$ 2,730,000	\$ 2,301,413
Cash Flow	\$ 28,082	\$ (1,423,497)	\$ (2,930,445)	\$ (877,270)	\$ 923,874	\$ 1,031,052	\$ 1,599,665
Cash and Investments	\$ 8,242,924	\$ 6,080,509	\$ 3,150,063	\$ 2,272,794	\$ 3,196,668	\$ 4,227,719	\$ 5,827,385
Transfer to Rock Prairie Closure 9/30/23	\$ (767,000)						
	\$ 7,504,006						

BVSWMA, Inc.
Twin Oaks Closure Funds

Closure/Post Closure Cost Estimate

JBS Engineering February 6, 2023	\$	22,378,908	
Conservative Estimate		115%	
	\$	25,735,744	
Accrued to date 9/30/2022	\$	3,312,957	
Projected current FY	\$	450,000	
Remaining accrual	\$	21,972,787	
Remaining Airspace current FY		22,698,201	tons
Accrual Rate	\$	0.97	\$/ton

Interium Closure & Pre Post Closure

Assumed 25% of closure/post closure	\$	6,433,936	
Accrued to date 9/30/2022	\$	671,420	
Projected current FY	\$	115,000	
Remaining accrual	\$	5,647,517	
Remaining Airspace current FY		22,698,201	tons
Accrual Rate	\$	0.25	\$/ton

Year	2023	2024	2025	2026	2027	2028	2029	2030
Landfill Tons		493,500	494,940	496,386	497,837	499,295	500,758	502,227

Twin Oaks Closure/Post Closure Fund

Starting	\$	3,312,957	\$ 3,762,957	\$ 4,240,685	\$ 4,719,807	\$ 5,200,329	\$ 5,682,256	\$ 6,165,593	\$ 6,650,348
Additional Funds	\$	450,000	\$ 477,728	\$ 479,122	\$ 480,522	\$ 481,927	\$ 483,338	\$ 484,754	\$ 486,176
Ending	\$	3,762,957	\$ 4,240,685	\$ 4,719,807	\$ 5,200,329	\$ 5,682,256	\$ 6,165,593	\$ 6,650,348	\$ 7,136,524

Interium & Pre-Post closure Fund

Starting	\$	671,420	\$ 786,420	\$ 909,207	\$ 1,032,352	\$ 1,155,858	\$ 1,279,724	\$ 1,403,953	\$ 1,528,546
Rate/ton	\$	115,000	\$ 122,787	\$ 123,146	\$ 123,505	\$ 123,866	\$ 124,229	\$ 124,593	\$ 124,959
Ending	\$	786,420	\$ 909,207	\$ 1,032,352	\$ 1,155,858	\$ 1,279,724	\$ 1,403,953	\$ 1,528,546	\$ 1,653,505

BVSWMA, Inc.
Rock Prairies Closure Funds

Rock Prairie Closure & Post Closure Reserve

	2023	2024	2025	2026	2027	2028	2029	2030
PC Years Remaining	22	21	20	19	18	17	16	15
Starting	\$ 1,893,408	\$ 2,525,408	\$ 2,410,617	\$ 2,295,825	\$ 2,181,034	\$ 2,066,243	\$ 1,951,452	\$ 1,836,660
Additions	\$ 767,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Expenses	\$ (135,000)	\$ (114,791)	\$ (114,791)	\$ (114,791)	\$ (114,791)	\$ (114,791)	\$ (114,791)	\$ (114,791)
Ending	\$ 2,525,408	\$ 2,410,617	\$ 2,295,825	\$ 2,181,034	\$ 2,066,243	\$ 1,951,452	\$ 1,836,660	\$ 1,721,869

July 27, 2023

Item No. 8.2.

Public Hearing on the City of College Station FY2023-2024 Proposed Budget

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Public Hearing, presentation, discussion, and possible action on the City of College Station FY2023-2024 Proposed Budget.

Relationship to Strategic Goals:

Good Governance

Financial Sustainability

Core Services & Infrastructure

Neighborhood Integrity

Diverse & Growing Economy

Improving Mobility

Sustainable City

Recommendation(s): Hold a public hearing on the Proposed Budget and receive citizen input. Provide directions for staff on budget.

Summary: The City Charter requires that the City Council call and hold a public hearing on the proposed budget; and that after such public hearing, the Council may insert or decrease items so long as the total of any increases and insertions do not increase the total budget by more than 3%.

The Proposed Budget was presented to the City Council on July 11, 2023. Budget workshops were held to review the proposed budgets on July 17th and July 18th.

On July 11, 2023, the City Council called a public hearing on the FY2023-2024 Proposed Budget. A notice announcing the public hearing was published in accordance with City Charter and State Law requirements.

The FY2023-2024 Budget is tentatively scheduled to be adopted on August 24, 2023.

Budget & Financial Summary: The following is an overall summary of the proposed budget.

Subtotal Operation and Maintenance:	\$357,068,355
Subtotal Capital:	<u>\$134,945,416</u>
Total Proposed Budget:	\$492,013,771

Attachments:

None

July 27, 2023

Item No. 8.3.

Substantial Amendment to PY 2022 Annual Action Plan

Sponsor: Raney Whitwell, Community Development Analyst

Reviewed By CBC: City Council

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding a resolution to approve a substantial amendment to the Program Year 2022 Annual Action Plan to add Rental Housing Construction as a Goal and Project and reprogram Community Development Block Grant funding in the amount of \$170,000 and HOME Investment Partnership Program funding in the amount of \$189,623.

Relationship to Strategic Goals:

Core Services & Infrastructure, Neighborhood Integrity

Recommendation(s): Staff Recommends that City Council adopt the resolution approving a substantial amendment to the PY 2022 Annual Action Plan.

Summary: Staff determined that the addition of Rental Housing Construction is necessary as a way to continue to produce affordable housing units for low- and moderate-income residents. Due to the volatility and low supply of affordable real estate in our local real estate market, adding Rental Housing Construction as a project to the Annual Action Plan allows more flexibility and options to non-profit housing partners.

The Substantial Amendment includes:

The addition of Rental Housing - Construction as a project.

Reprograms: \$150,369 from HOME Investment Partnership Grant Rental Housing Rehabilitation, \$39,254 from HOME Investment Partnership Grant Down Payment Assistance, and \$170,000 from Community Development Block Grant Rental Housing Rehabilitation to Rental Housing Construction for a total of \$359,623.

A 30-day public review and comment period began June 17, 2023, and ended July 17, 2023. The amendment was available to be viewed on the City of College Station website Community Development Publication page. Citizens could submit comments by mail, email, or by phone.

The Rental Housing Construction funds will be reserved for Elder Aid to construct a new one bedroom/ one bath rental home located at 700 Pasler St. in College Station. The new rental home will be constructed using sustainable materials that provide energy and water efficiency and will be handicap friendly. Once constructed, the home will be rented to a low-income, elderly household.

Budget & Financial Summary: CDBG in the amount of \$189,623 & HOME funds in the amount of \$170,000 are available in the FY2023 Community Development budget.

Attachments:

1. Resolution- 2022 Action Plan Substantial Amendment
2. Substantial Amendment to the 2022 Annual Action Plan

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS APPROVING SUBSTANTIAL AMENDMENT #1 TO THE 2022 ANNUAL ACTION PLAN TO ADD RENTAL HOUSING CONSTRUCTION AS A GOAL AND PROJECT; AND TO MOVE \$150,369 FROM HOME INVESTMENT PARTNERSHIP GRANT RENTAL HOUSING REHABILITATION, \$39,254 FROM HOME INVESTMENT PARTNERSHIP GRANT DOWN PAYMENT ASSISTANCE, AND \$170,000 FROM COMMUNITY DEVELOPMENT BLOCK GRANT RENTAL HOUSING REHABILITATION TO RENTAL HOUSING CONSTRUCTION FOR A TOTAL OF \$359,623.

WHEREAS, the City of College Station, Texas, has a Five-Year Consolidated Plan that has been approved by City and HUD that guides the development of the annual Action Plan and Budget; and

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

WHEREAS, the City of College Station has prepared Substantial Amendment #1 to the 2022 Action Plan that (1) adds Rental Housing Construction as a Goal and Project; and (2) moves \$150,369 from HOME Investment Partnership grant Rental Housing Rehabilitation, \$39,254 from HOME Investment Partnership Grant Down Payment Assistance, and \$170,000 from Community Development Block Grant Rental Housing Rehabilitation to Rental Housing Construction for a Total of \$359,623.

WHEREAS, the City of College Station has provided adequate information to the citizens and an opportunity to participate in the development of Substantial Amendment #1 to the 2022 Action Plan; and

WHEREAS, the City of College Station acknowledges that the adoption of Substantial Amendment #1 to the 2022 Annual Action Plan is in the best interest of the City; now, therefore,

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

PART 1: That the City Council hereby approves Substantial Amendment #1 to the 2022 Annual Action Plan to add Rental Housing Construction as a Goal and Project; and (1) adds Rental Housing Construction as a Goal and Project; and (2) moves \$150,369 from HOME Investment Partnership grant Rental Housing Rehabilitation, \$39,254 from HOME Investment Partnership Grant Down Payment Assistance, and \$170,000 from Community Development Block Grant Rental Housing Rehabilitation to Rental Housing Construction for a Total of \$359,623

PART 2: That the City Council hereby designates and authorizes and the City Manager to sign all required applications, certifications, evaluations and other forms required by HUD for Substantial Amendment #1 to the 2022 Annual Action Plan.

PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____ 2023.

ATTEST:

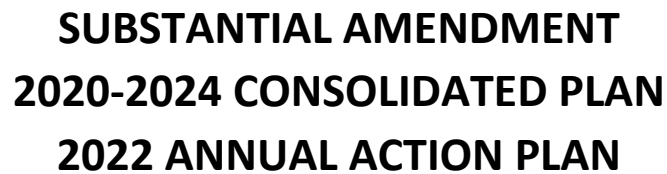
APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney



Page 220 of 426

7/27/2023

2022 ANNUAL ACTION PLAN SUBSTANTIAL AMENDMENT

Substantial Amendment 1) revises the City of College Station’s 2022 Action Plan to add Rental Housing Construction as a project and provide funding. Funds will be moved as follows: \$150,369 from Rental Housing Rehabilitation (HOME) to Rental Housing Construction (HOME); \$39,254 from Down Payment Assistance (HOME) to Rental Housing Construction (HOME); and \$170,000 in Rental Housing Rehabilitation (CDBG) to Rental Housing Construction (CDBG). This will result in a total available funding of \$359,623 for Rental Housing Construction (HOME \$189,623) and (CDBG \$170,000). Funding will be allocated to an affordable housing activity located at 700 Pasler St. in College Station that will result in the acquisition of 700 Pasler St. and the construction of one housing unit that will be rented to low-income elderly who are over the age of 60.

AP 20 Annual Goals and Objectives

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Rental Housing – Rehabilitation	2020	2024	Affordable Housing	City Wide	Rental Housing Special Needs	CDBG: Original: \$835,197 Amended: \$665,197 HOME: Original: \$587,216 Amended: \$436,847	Rental units rehabilitated: 64 Household Housing Unit Amended: 60
6	Homeownership – Down Payment Assistance	2020	2024	Affordable Housing	City Wide	Homeownership	HOME: Original: \$309,996 Amended: \$270,742	Direct Financial Assistance to Homebuyers: 7 Amended: 6 Households Assisted
2	Rental Housing Construction	2020	2024	Affordable Housing	City Wide	Rental Housing Special Needs	CDBG: Original: \$0 Amended: \$170,000 HOME: Original: \$0 Amended: \$189,623	Rental Housing Units Constructed: 1

AP 35 Projects

IDIS Project ID	Project Title	Original Amount	Revised Amount
3	Rental Housing Rehabilitation	HOME: \$587,216	HOME: \$436,847
2	Rental Housing Construction	HOME: \$0	HOME: \$150,369

IDIS Project ID	Project Title	Original Amount	Revised Amount
8	Homeownership-Down Payment Assistance	HOME: \$309,996	HOME: \$270,742
2	Rental Housing Construction	HOME: \$0	HOME: \$39,254

IDIS Project ID	Project Title	Original Amount	Revised Amount
3	Rental Housing Rehabilitation	CDBG: \$835,197	CDBG: \$665,197
2	Rental Housing Rehabilitation	CDBG: \$0	CDBG: \$170,000

Goal Descriptions Added

12	Goal Name	Rental Housing Construction
	Goal Description	Encourage and facilitate the construction of new affordable rental units through nonprofit and for-profit partners.

According to the Public Participation Plan, a substantial amendment is required whenever a project is deleted or added as required by HUD regulatory requirement.

Approved: _____ Amendment Date: _____

July 27, 2023

Item No. 8.4.

Elder Aid funding agreements for 700 Pasler

Sponsor: Virgil Eric Barton

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a Community Development Block Grant funding agreement with Elder Aid, Inc. in the amount of \$170,000 for the acquisition of 700 Pasler and presentation, discussion, and possible action regarding a HOME Investment Partnership Program funding agreement with Elder Aid, Inc. in the amount of \$189,650 for the construction of a single-family house on the lot at 700 Pasler.

Relationship to Strategic Goals:

Core Services & Infrastructure, Neighborhood Integrity

Recommendation(s): Staff recommends that City Council approve two funding agreements with Elder Aid for the acquisition of 700 Pasler and the construction of a house to be used as an elderly rental unit.

Summary: The 2020 - 2024 adopted Community Development Consolidated Plan and the 2023 Annual Action Plan identified the need to work with partners for the development of affordable housing for both homeowners and renters. Staff released a 2023 Affordable Housing Development Funding Request for Proposal (RFP) on April 14, 2023. Three (3) proposals were received in response to the RFP. Staff recommends the approval of two (2) funding agreements with Elder Aid: a Community Development Block Grant funding agreement in the amount of \$170,000 for the acquisition of 700 Pasler and a HOME Investment Partnership Program funding agreement in the amount of \$189,650 for the new construction of a single-family home that will be used as an elderly rental unit for households at or below 60% of the area median income.

Elder Aid works to minimize the stress to the elderly as they cope with affordable housing, health and wellness, inadequate funding for basic needs, loneliness, disabilities, and the loss of loved ones. Their mission is to ensure that the elderly in the Brazos Valley remain independent and in the community for as long as possible.

Elder Aid has partnered with the City of College Station since 2015 and has received \$2,515,518 to purchase 11 duplexes in College Station that created 22 affordable rental units for low-income elderly households. Elder Aid has successfully utilized the new construction model with funding from the City of Bryan through Community Development funds for many years. Due to challenges in locating duplexes for sale at reasonable prices or finding sellers who are willing to accept a delayed closing date due to federal requirements, Elder Aid will construct a new rental home at 700 Pasler.

Budget & Financial Summary: Funds budgeted in the FY23 Community Development budget. \$170,000 in Community Development Block Grant funds and \$189,650 in HOME Investment Partnership Program funds.

Attachments:

1. 700 Pasler Funding Agreement - CDBG
2. 700 Pasler Funding Agreement - HOME
3. Location Map - 700 Pasler



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 23300571 PROJECT#: CD2318 BID/RFP/RFQ#: 23-063

Project Name / Contract Description: Elder-Aid 700 Pasler Development - A Funding Agreement with Elder-Aid for the lot acquisition and construction of a

new single family housing unit at 700 Pasler to be used as a LMI elderly rental unit. This funding agreement allocates CDBG funds to the Acquisition of an undeveloped lot at 700 Pasler.

Name of Contractor: Elder-Aid, Inc.

CONTRACT TOTAL VALUE: \$ 170,000.00

Grant Funded Yes ☒ No ☐

If yes, what is the grant number: B-20-MC-48-0007

Debarment Check ☒ Yes ☐ No ☐ N/A

Section 3 Plan Incl. ☒ Yes ☐ No ☐ N/A

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

Buy America Required ☐ Yes ☒ No ☐ N/A

Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

RFP 23-063 - 2023 Affordable Housing RFP was released on April 11th, 2023 and was closed on May 12th, 2023. One eligible response was received from Elder-Aid Inc. These funds are allocated in the FY21 Community Development Budget.

CRC Approval Date*: 7/6/23 *(If required)** **Council Approval Date*:** 7/27/23 **Agenda Item No*:**

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

Insurance Certificates: RY **Performance Bond:** n/a **Payment Bond:** n/a **Info Tech:** n/a

SIGNATURES RECOMMENDING APPROVAL

Debbie Eller
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

7/13/2023
DATE

[Signature]
ASST CITY MGR – CFO

7/14/2023
DATE

[Signature]
LEGAL DEPARTMENT

7/17/2023
DATE

APPROVED & EXECUTED

CITY MANAGER

n/a

MAYOR (if applicable)

n/a

CITY SECRETARY (if applicable)

Original(s) sent to CSO on

Scanned into Laserfiche on

Original(s) sent to Fiscal on

**CITY OF COLLEGE STATION COMMUNITY DEVELOPMENT
BLOCK GRANT FUNDING AGREEMENT**

This Agreement is by and between the CITY OF COLLEGE STATION, a Home Rule Municipal Corporation incorporated under the laws of the State of Texas (hereinafter referred to as the "City"), and ELDER-AID, INC., a private non-profit agency (hereinafter referred to as "Agency").

WHEREAS, the City has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the City wishes to engage Agency in utilizing such funds; and

WHEREAS, the City desires to assist Agency in the acquisition, rehabilitation, or new construction of housing unit(s) for the purpose of providing affordable rental unit(s) for income eligible tenants through funds provided by the Community Development Block Grant (hereinafter referred to as "CDBG") program administered by the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") (Federal Award Identification CFDA 14.218 _____ and Federal Award Date 10/1/2022); and

NOW, THEREFORE, FOR AND IN CONSIDERATION of funding in an amount not to exceed ONE HUNDRED AND SEVENTY THOUSAND and 00 /100 DOLLARS (\$170,000.00) to be paid to Agency by the City as set forth herein below, the City and Agency covenant and agree as follows:

**ARTICLE I
STATEMENT OF WORK**

1.01 Agency will provide no less than one (1) affordable rental unit in the City of College Station rented to a low- or moderate-income household ("Project"). Agency shall provide services as specified in the Detailed Statement of Work attached as Exhibit A. Agency shall provide such services utilizing CDBG funds as specified in the Budget attached as Exhibit B.

**ARTICLE II
PAYMENT**

2.01 During the City's Fiscal Year Budget 2022-2023, City shall reimburse Agency, in an amount not to exceed ONE HUNDRED AND SEVENTY THOUSAND and 00 /100 DOLLARS (\$170,000.00), for services or expenditures as referenced in Article I of this Agreement.

2.03. No funds will be reimbursed until City receives the Reimbursement Request Form along with all required receipts, bills, payroll records, canceled checks and other proofs of expenditures,

as determined by City, in its sole discretion. Agency may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount of money needed to pay eligible costs actually incurred, and may not include amounts for prospective or future needs. Unexpended funds may be reallocated. Unexpended funds will remain in the possession of City.

2.04. This Agreement and the payments made herein, are contingent upon receipt by City of U.S. Department of Housing and Urban Development Community Development Block Grant funds and the City of College Station City Council funding approval. Should funds be unavailable, discontinued or disapproved, this Agreement may be revised or terminated as determined by the HUD or the City, in their sole discretion.

2.05. The City retains the right, in its sole discretion, to recapture and seek full reimbursement from Agency for any funds used for prohibited activities, prohibited purposes, or usages of funds which cause a breach of this Agreement.

ARTICLE III TERM

3.01 The term of this Agreement shall commence on July 27th, 2023 and the Project shall be completed by September 30th, 2024, or until the date in which funds awarded by the City are completely expended by Agency, unless the Agreement is terminated as provided for herein. This Agreement will remain valid throughout the "Period of Affordability", which will be Fifteen (15) years.

3.02 Agency agrees to impose restrictive covenants on property funded through this Agreement, in the form of a Land Use Restriction Agreement ("LURA"). The LURA will be in a form approved by the City and will continue for the duration of the Period of Affordability.

3.03 The term of this Agreement may be extended by mutual agreement of the parties, in writing, provided that the City has approved and budgeted sufficient funds from the current budget year to satisfy any additional expenditures that result from such extension.

ARTICLE IV BENEFICIARY POPULATIONS

4.01 Direct services provided through programs supported by CDBG shall target residents of College Station and Bryan whose annual family income is at or below 80% of the median family income for the College Station Metropolitan Statistical Area as established by the U.S. Department of Housing and Urban Development Income Limits attached as Exhibit E. All of the clients served through this program must be determined to be at or below 80% of the median family income.

4.02 Annually or as tenant occupancy changes, whichever occurs earlier, the Agency will submit to the City a copy of the lease and proof of income of the tenants occupying the units. This information will be submitted for the duration of the affordability period as noted in the Land Use Restriction Agreement.

4.03 Agency agrees not to prohibit a Section 8 tenant from occupying a funded unit. Agency is not prohibited from conducting a background check on credit history or criminal history.

ARTICLE V VERIFICATION OF INCOME

5.01 Verification of income will be pursuant to 24 CFR 5.609 . Agency shall document income verification for low-income beneficiaries receiving assistance through programs supported by CDBG funds and may use the following documents for verification:

- (a) W-2 Forms.
- (b) 1040 Forms.
- (c) Pay check stubs.

5.02 In lieu of the above documents, Agency may substitute:

- (a) Documentation of client participation in other programs of public assistance including Temporary Assistance for Needy Families Program (TANF), Supplemental Security Income (SSI), Food Stamps, Low-Income Energy Assistance, Title XX General Assistance, Public Housing, Section 8 Rental Assistance, Job Training Partnership Act (JTPA) or similar income tested programs having the income qualification criteria at least as restrictive as that used under the Section 8 low-income limit established by HUD;
- (b) Evidence that the assisted person is homeless; or
- (c) A notice that the assisted person is a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be low and moderate-income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.

5.03 Recipients of services designed to meet critical emergency needs such as, assistance to abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers do not need to meet an income test.

ARTICLE VI PROGRAM INCOME

6.01 Agency shall report annually all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Agency shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Agency may use such income during the term of this Agreement for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the City at the end of the Agreement period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.

ARTICLE VII RECORDS AND REPORTS

7.01 Agency shall maintain fiscal records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other mutually agreed upon documentation to verify all expenditures of funds under the terms of this Agreement. Said documentation shall conform to HUD and the City's accounting practices. Said documentation and accounting principles shall comply with 2 CFR 200, including the utilization of adequate internal controls.

7.02 Agency shall maintain written records and supporting documents as required under this Agreement for all applicable, generally accepted, and required administrative and operating policies. Agency shall maintain such records, accounts, reports, files or other documents for a minimum of four (4) years beginning with the submission of the Consolidated Annual Performance and Evaluation Report for the fiscal year 2022-2023. City and HUD's right to access Agency's files shall continue during this period and for as long as the records are retained past the minimum four (4) year period by Agency.

7.03 Agency shall provide the City and HUD representative reasonable access during regular business hours to any financial records, client records, administrative reports, board documentation, files or other papers belonging to or in use by Agency.

7.04 Agency shall submit activity reports to the City on an annual basis. The format of such reports shall be prescribed by the City. Annual reports will be due no later than October 30th of each year during the term of this Agreement. Failure to provide timely and complete reports may result in forfeiture of funds or termination of this Agreement pursuant to Article VIII herein.

7.05 The City reserves the right to carry out regular and periodic field inspections to ensure compliance with the requirements of this Agreement. After each monitoring visit, City shall provide Agency with a written report of the monitor's findings. If the monitoring reports note deficiencies in Agency's performances under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by Agency. Failure by Agency to take action specified in the monitoring report may be cause for suspension or termination of this Agreement as provided in Article VIII of this Agreement. In addition to the limitations on liability otherwise specified in this Agreement, it is expressly understood and agreed by the Parties hereto that if Agency fails to promptly submit to City any report required by this Agreement, City may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by Agency hereunder. If City withholds such payments, it shall notify Agency in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by City until such time as Agency fully cures or performs any and all delinquent obligations which are identified as the reason funds are withheld

ARTICLE VIII AGREEMENT SUSPENSION/TERMINATION

8.01 The City has the right to terminate this Agreement, in whole or in part, at any time if the City determines that Agency has failed to comply with any part of this Agreement or if funds are unavailable, discontinued or disapproved, as determined by the City or HUD, at their sole discretion. In addition, the City has the right, in its sole discretion, to terminate this Agreement if it determines that the information contained in its application for CDBG funding was materially incorrect, if the City determines that Agency is not delivering the services approved in its application for CDBG funding, if Agency fails to file the reports required under Article VII of this Agreement, or if Agency fails to fulfill any other obligations required under this Agreement.

8.02 The City retains the right to terminate this Agreement, in whole or in part, at any time, for convenience.

8.03 The City shall notify Agency, in writing, thirty (30) days prior to the date of termination. The notice shall include the reason for termination and the effective date of termination.

8.04 If this Agreement is terminated for any of the reasons referenced in Section 8.01 hereinabove, excluding funding discontinuance or disapproval, Agency shall have the right to attempt to cure its failure, during the thirty (30) day period prior to termination to the satisfaction of the City at the City's sole discretion. The City retains the right to terminate this Agreement, in whole or in part, at any time, for convenience.

8.05 Either party to this Agreement has the right to terminate this Agreement, in whole or in part, upon the mutual written agreement of the parties that the continuation of the activities funded under this Agreement would not produce beneficial results commensurate with the further expenditure of funds.

ARTICLE IX REVERSION OF ASSETS

9.01 Upon the expiration of the term of this Agreement, the Agency shall transfer to City any CDBG Grant funds on hand at the time of expiration and any accounts receivable attributable to the use of Grant funds. Any real property under Agency's control that was acquired or improved in whole or in part with Grant funds in excess of \$25,000 shall:

- (a) be used to meet one of the national objectives of the Federal CDBG until five (5) years after expiration of this Agreement, or for such a longer period of time as determined to be appropriate by the City; or

- (b) be disposed of in a manner which results in City being reimbursed in the amount of the fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of or improvement to the property. Such reimbursement is not required after the period of time specified above.

ARTICLE X ADMINISTRATIVE REQUIREMENTS

10.01 City and Agency agree to perform their duties in relation to this Agreement in compliance with all applicable HUD regulations.

10.02 Agency shall administer this Agreement in compliance with U.S. Department of Housing and Urban Development applicable Uniform Administrative Requirements, 2 CFR 200 as modified by 24 CFR 570.502.

10.03 Non-federal entities that receive at least seven hundred fifty thousand dollars (\$750,000) a year in Federal Awards shall have an audit made in accordance with the requirements set forth in 2 CFR 200.501. If applicable, Agency will provide a financial audit within three (3) months of the ending of their fiscal year covered by this Agreement.

ARTICLE XI CIVIL RIGHTS COMPLIANCE

11.01 Agency hereby agrees and binds itself that no person shall, on the ground of race, color, national origin, religion, sex, age or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, such as is provided under this Agreement, in compliance with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

11.02 Agency hereby agrees and binds itself that no person shall, on the ground of race, color, religion (creed), national origin, sex, age, reprisal or disability be discriminated against in any phase of employment during the performance of this Agreement. Further, Agency shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship. Agency agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act are still applicable.

11.03 This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement, Agency shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Agency, in undertaking its obligation to carry out the Program, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

11.04 Agency agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. The City shall provide Agency with any guidelines necessary for compliance with that portion of the regulations in force during the time of this Agreement.

ARTICLE XII ENVIRONMENTAL REQUIREMENTS

12.01 Agency understands and agrees that by the execution of this Agreement, City shall assume the responsibilities for environmental review, decision making, and other action which would otherwise apply to City in accordance with and to the extent specified in 24 CFR 58. In accordance with 24 CFR 58.77(b), Agency further understands and agrees that City shall handle inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

12.02 City shall prepare and maintain a written Environmental Review Record for this project in accordance with 24 CFR 58 to ensure compliance with the National Environmental Policy Act (NEPA). Agency must also maintain a copy of the Environmental Review Record in Agency's project file. City shall document its compliance with such other requirements in its environmental review file.

ARTICLE XIII EMPLOYMENT AND CONTRACTING OPPORTUNITIES

13.01 In accordance with Executive Order 11246, as amended and the regulations issued pursuant thereto, Agency hereby agrees and binds itself that no person shall, on the ground of race, color, religion (creed), national origin, sex, age, reprisal or disability be discriminated against in any phase of employment during the performance of this Agreement. Further, Agency shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

13.02 In accordance with Section 3 of the Housing and Urban Development Act of 1968, Agency agrees that, to the greatest extent feasible, opportunities for training and employment will be given to low and moderate income persons residing within the City of College Station, and, to the greatest

extent feasible, contracts for work in connection with the project will be awarded to eligible business concerns which are located in or owned by persons residing in the City of College Station.

13.03 Agency will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. Agency may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

13.04 Agency is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

13.05 Agency agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Agency agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Agency shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request. Agency agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Agency of its obligation, if any, to require payment of the higher wage. Agency shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

13.06 "Section 3" Clause - Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the City, Agency and any of the Agency's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, Agency and any of Agency's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. Agency certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Agency further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the city in which the project is located.”

Agency further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs. Agency certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

Agency agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker’s representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

Agency will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Agency will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

13.07 Subcontracts - Agency shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the City prior to the execution of such agreement. Agency will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Agency shall cause all of the provisions of this Agreement in its entirety to be included in and

made a part of any subcontract executed in the performance of this Agreement. Agency shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

13.08 Hatch Act - Agency agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of 5 U.S.C Pt. II, Ch. 15

13.09 Lobbying – Agency hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:
- d. **Lobbying Certification:** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C §1352 Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE XIV

ARCHITECTURAL BARRIERS ACT AND AMERICANS WITH DISABILITIES ACT

14.01 In accordance with the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151-4157, Agency agrees to abide by laws and regulations requiring certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered.

14.02 In accordance with standards that ensure accessibility to, and use by, persons with physical disabilities. A building or facility designed, constructed, or altered with funds allocated or reallocated, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 is subject to the requirements of this Act and shall comply with the Uniform Federal Accessibility Standards.

14.03 In accordance with the Americans with Disabilities Act 42 U.S.C. §12131; 47 U.S.C. §§ 155, 201, 218 and 225 (ADA), the Agency agrees to comply with the provision of comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable.

ARTICLE XV USE OF DEBARRED, SUSPENDED, INELIGIBLE CONTRACTORS OR SUBRECIPIENTS

15.01 Agency agrees and binds itself that it has not and will not directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or other subrecipient of CDBG monies during any period of that agency's or subrecipient's debarment, suspension, or placement in ineligible status under the provisions of 2 CFR 200.214.

ARTICLE XVI CONFLICT OF INTEREST

16.01 Agency agrees to abide by the provisions of 2 CFR 200 and 24 CFR 570.611, which include maintaining a written code or standards of conduct governing the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds

16.02 Agency certifies that no employee, agent, consultant, officer, elected or appointed official of the Agency who exercises or has exercised any functions or responsibilities with respect to CDBG activities or who is in a position to participate in a decision-making process or gain inside information with regard to such activities has or will have any personal or financial interest or benefit to obtain from this Agreement and the CDBG-assisted activity, nor any interest in any contract, subcontract or Agreement with respect thereto, or the proceeds thereunder, either for the official or those with whom they have family or business ties, either during the official's tenure or for one year after completion of the Agreement term.

ARTICLE XVII WHERE AGENCY IS A RELIGIOUS ENTITY

17.01 Where Agency is a religious entity, Agency certifies that all CDBG funds shall be used wholly for secular purposes. Agency agrees and binds itself that it will not discriminate against any person applying for such public services on the basis of religion and will not limit such services

or give preference to persons on the basis of religion. Agency agrees and binds itself that it will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of public services funded by this Agreement.

ARTICLE XVIII RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

18.01 Agency agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. Agency shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. Agency also agrees to comply with applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

ARTICLE XIX INDEMNIFICATION AND RELEASE

19.01 Agency agrees to indemnify and hold harmless the City, its officers, agents, volunteers, and employees from and against any and all loss, costs, or damage of any kind, nature, or description that may arise out of or in connection with this Agreement whether or not the claim or cause of action results from any negligence of the City or any of its officers, agents, or employees. 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.

19.02 Agency assumes full responsibility for the work to be performed and services to be provided hereunder, and hereby releases, relinquishes and discharges the City, its officers, agents, volunteers, and employees from any and all claims, demands, causes of action of every kind and character, including the cost of defense thereof, for any injury to, including death of, any person (whether employees or agents of either of the parties hereto or third persons) and any loss of or damage to property (whether the property is that of either of the parties hereto or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Agency's work or services provided hereunder whether or not said claims, demands, or causes of actions are covered in whole or part by insurance. 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 XX INSURANCE

19.01 General. The Agency shall procure and maintain, at its sole cost and expense for the duration of this Agreement, insurance against claims for injuries to persons or damages to property

that may arise from or in connection with the performance of the services performed by the Agency, its agents, representatives, volunteers, employees, or subcontractors.

19.02 The Agency's insurance shall list the City of College Station, its employees, agents, volunteers, and officials as additional insureds. Insurance requirements are as set forth below. Certificates of insurance evidencing the required insurance coverages are attached in Exhibit C.

During the term of this Agreement the Agency's insurance policies shall meet the minimum requirements of this section:

19.03 Types. Agency shall have the following types of insurance:

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

19.04 General Requirements Applicable to All Policies. The following General requirements 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) Agency 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 Insurance Carriers licensed and 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.

19.05 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 naming the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain.

- (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 \$1,000,000.00. 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 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.

19.06 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 rating under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement naming the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain.
- (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.

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

- (a) Employer's Liability minimum limits of liability not less than \$500,000 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.
- (c) TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

ARTICLE XXI GENERAL PROVISIONS

20.01 The parties to this Agreement agree and understand that Agency is an independent contractor and not an agent or representative of the City and that the obligation to compensate its employees and personnel furnished or used by Agency to provide the services specified in Article

I shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose.

20.02 The City's Community Services Department shall provide "technical" assistance to Agency as requested and as mutually agreed upon in the performance of Agency's duties under this Agreement. "Technical" assistance is described as including, but not limited to staff assistance to ensure compliance to CDBG regulations and to ensure that proper accountability and program delivery results are achieved; and providing orientation to Agency staff and board members regarding CDBG regulations and procedures. The provision of "technical" assistance is dependent on time constraints and priorities of the Community Services Department staff, at City's sole discretion. **City shall have no liability to Agency or any third party in providing any "technical" assistance.**

20.03 No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

20.04 This Agreement has been made under and shall be governed by the laws of the State of Texas.

20.05 Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

20.06 Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.

20.07 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

20.08 The parties acknowledge that they have read, understand, and intent to be bound by terms and conditions of this Agreement.

20.09 This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.

20.10 It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

20.11 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.

20.12 Prioritization. Agency 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 Agency to this Agreement as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Agency. In either case, the applicable law or the applicable provision of this Agreement excluding such conflicting addition by Agency shall prevail. The parties understand this section comprises part of this Agreement without necessity of additional consideration.

20.13 It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

20.14 Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as named herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

Agency: Attn: Carol Jones
Elder-Aid, Inc.
307 S. Main Street, Suite 202
Bryan, TX 77803

City: Attn: Joshua Brooks
Community Services Department
City of College Station
1101 Texas Ave.
P.O. Box 9960
College Station, Texas 77842

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

- (a) Boycott Israel. If this Agreement is for goods and services subject to § 2270.002 Texas Government Code, Agency verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Agreement;
- (b) Boycott Firearms. If this Agreement is for goods and services subject to § 2274.002 Texas Government Code, Agency 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, Agency herein verifies that it i) does not boycott energy companies; and ii) will not boycott energy companies during the term of this Agreement.

List of Exhibits

- A** Statement of Work
- B** Budget
- C** Certificates of Insurance
- D** Reimbursement Request
- E** HUD Income Limits
- F** Project Compliance Report

ELDER AID, INC.

By: Carol Jones

Printed Name: Carol Jones

Title: Executive Director

Date: 7/13/2023

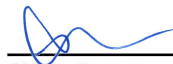
CITY OF COLLEGE STATION

By: _____

City Manager

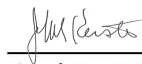
Date: _____

APPROVED:



City Attorney

Date: 7/17/2023



Assistant City Manager / CFO

Date: 7/14/2023

EXHIBIT A
DETAILED STATEMENT OF WORK

ELDER-AID, INC. will use funds under this contract for the acquisition of the following property:

Elder-Aid, Inc., is proposing to purchase 1 undeveloped plot of land for the purpose of providing an affordable rental unit for income eligible tenants. Elder-Aid, Inc. intends to target all applicants at or below 60% of the area median income (AMI) and those applicants that are in transition from homelessness.

It is Elder-Aid, Inc.'s intent to purchase the following property and then construct a new, single-family housing unit for low- to moderate-income rental use as a part of the Affordable Rental Program. This property will be located in College Station and available for rent soon after purchase.

Properties for proposed purchase are as follows:

The undeveloped plot of land at:
700 Pasler Street, College Station, TX, 4,265 sqft.

This property will be made available for lease to income-eligible households at or below 80% of the Area Median Income for the duration of the LURA.

Agency shall dedicate all easements required by City, including blanket easements which shall be substituted with as-built easements for all City utilities.

Agency is not prohibited from conducting a background check, including credit history and criminal history

The project must be completed no later than September 30th, 2024, and the contract shall be considered completed when the following terms are met: Proof of Ownership of referenced property, Waiver of Lien & Affidavit of Bills paid by Contractor & Agency, and within six (6) months from issuance of the Certificate of Occupancy, said units must be occupied by an eligible resident.

Payment by City on valid and eligible invoices shall not exceed the maximums established in Exhibit B, Budgets.

**EXHIBIT B
BUDGET**

Agency: ELDER-AID, INC.

SOURCES OF FUNDS:

Maximum Proceeds of grant under the Agreement
\$170,000.00

USES OF FUNDS:

Acquisition*\$ 170,000.00
Total.....\$ 170,000.00
*At least 1 plot of land at 700 Pasler Street

EXHIBIT C
CERTIFICATES OF INSURANCE



ELDEINC-01

HLAPP

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/11/2023

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 Jones & Associates Inc. 1580 Copperfield Pkwy College Station, TX 77845	CONTACT NAME:	
	PHONE (A/C, No, Ext): (979) 776-4740	FAX (A/C, No): (979) 776-4745
INSURED Elder-Aid, Inc. 307 S Main St, Suite 202 Bryan, TX 77803-6949	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Nautilus Insurance Company	NAIC # 17370
	INSURER B : Hochheim Prairie Farm Mutual Ins.	31054
	INSURER C : Texas Mutual Workers' Compensation Ins	22945
	INSURER D : United States Fire Insurance Co	21113
	INSURER E : Travelers Casualty & Surety Co	19038
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	X	X	NN1475001	11/2/2022	11/2/2023	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COM/OP AGG \$ 2,000,000
							\$
B	☐ AUTOMOBILE LIABILITY						
	☐ ANY AUTO OWNED AUTOS ONLY			BO-5678342	1/13/2023	1/13/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☒ HIRED AUTOS ONLY						BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	☐ UMBRELLA LIAB						EACH OCCURRENCE \$
	☐ EXCESS LIAB						AGGREGATE \$
							\$
	DED						\$
C	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	☐ ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N		0001220341	3/10/2023	3/10/2024	☒ PER STATUTE ☐ OTH-ER \$
	If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A				E L EACH ACCIDENT \$ 1,000,000
							E L DISEASE - EA EMPLOYEE \$ 1,000,000
							E L DISEASE - POLICY LIMIT \$ 1,000,000
D	Accident			US1674586	1/13/2023	1/13/2024	Benefit Amt 15,000
E	Surety			106406989	11/5/2022	11/5/2025	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of College Station
1101 Texas Avenue
College Station, TX 77840

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

AUTHORIZED REPRESENTATIVE

B. a. J.

EXHIBIT D **REIMBURSEMENT REQUEST FORM**



CITY OF COLLEGE STATION

COMMUNITY SERVICES DEPARTMENT **COMMUNITY DEVELOPMENT BLOCK GRANT** **REIMBURSEMENT REQUEST FORM**

AGENCY:			
CONTRACT EXPENSES:	BUDGETED	CURRENT REQUEST	YEAR TO DATE REQUESTED
	\$	\$	\$
(INVOICES OR ACCEPTABLE ALTERNATIVE DOCUMENTATION MUST BE SUBMITTED)			
TOTAL	\$	\$	\$
REIMBURSEMENT REQUEST		\$	
EXPENSES FOR THE PERIOD OF:			
AMOUNT REMAINING IN CDBG CONTRACT	\$		

I hereby request reimbursement for approved program expenses to date in the amount of \$ _____.

Signature of Authorized Agency Representative

Date

Contract Number: 23300571
CDBG Funding Agreement
Form 07-06-2023

Agency's Certification and Reimbursement Request Form	
Agency Name	Contract #
Program Name	
Name of Agency Contact	Agency's Address
I. Agency's Certification and Reimbursement Request	
I hereby certify: ☐ The information presented on this form is true and complete to the best of my knowledge; ☐ All programs and services have been executed in accordance with the terms and requirements of the contract; ☐ All expenses for which payment is being requested herein were incurred by the above-referenced program(s); ☐ All approved Board minutes and agendas have been received by the Community Services Department; ☐ A signed and dated Client Report, Narrative Report, and Fund-Raising Report have been received by the Community Services Department; ☐ All supporting documentation to substantiate this request has been received by the Community Services Department. ☐ The agency is in full compliance with the terms and conditions of the above referenced contract. I hereby request reimbursement for approved program expenses to date in the amount of \$ _____. _____ Signature of Authorized Agency Representative _____ Date	
II. Monitor's Certification	
I have reviewed the documents submitted for the _____ quarter by the above-referenced agency and agree that all services and expenditures have been satisfactorily completed in accordance with all applicable requirements and terms of the above referenced contract number. I hereby approve payment to the agency in the amount of \$ _____. _____ Signature of Monitor _____ Date	
III. Director of Community Services' Certification	
I hereby approve payment to the agency in the amount of \$ _____. _____ Signature of Director of Community Services _____ Date	

EXHIBIT E
HUD INCOME LIMITS

2023 MEDIAN INCOME LIMITS
City of College Station
Community Services

This list supersedes all other lists of prior dates.

Household	30%	50%	80%
1	\$16,900	\$28,150	\$45,050
2	\$19,720	\$32,300	\$51,450
3	\$24,860	\$36,200	\$57,900
4	\$30,000	\$40,200	\$64,300
5	\$35,140	\$43,450	\$69,450
6	\$40,280	\$46,650	\$74,600
7	\$45,420	\$49,850	\$79,750
8	\$50,560	\$53,100	\$84,900

The left column (Household) refers to the number of people in the home. The highlighted column (80%) refers to your maximum income allowed per year by HUD guidelines.

Source: <https://www.huduser.gov/portal/datasets/il.html#2023>

EXHIBIT F
PROJECT COMPLIANCE REPORT

A	B	C	D	E	F	G	H
Unit Number	Tenant Name	Household Size	No. Bedrooms	Max Rent	Monthly Rent	Tenants Annual Gross Income	Compliance Y/N?



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 23300572 PROJECT#: CD2318 BID/RFP/RFQ#: 23-063

Project Name / Contract Description: Elder-Aid 700 Pasler Development - A Funding Agreement with Elder-Aid for the lot acquisition and construction of a new single family housing unit at 700 Pasler to be used as a LMI elderly rental unit. This funding agreement allocates HOME funds to the New Construction of a Rental Housing Unit.

Name of Contractor: Elder-Aid, Inc.

CONTRACT TOTAL VALUE: \$ 189,650.00

Grant Funded Yes ☒ No ☐

If yes, what is the grant number: M-21-MC-48-0219

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)

RFP 23-063 - 2023 Affordable Housing RFP was released on April 11th, 2023 and was closed on May 12th, 2023. One eligible response was received from Elder-Aid Inc. These funds are allocated in the FY20, 21, 22, and 24 Community Development Budgets.

CRC Approval Date*: 06/08/23 *(If required)** **Council Approval Date*:** 07/27/23 **Agenda Item No*:**

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

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

SIGNATURES RECOMMENDING APPROVAL

Debbie Eller
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

7/13/2023
DATE

[Signature]
ASST CITY MGR – CFO

7/14/2023
DATE

[Signature]
LEGAL DEPARTMENT

7/17/2023
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

**CITY OF COLLEGE STATION
HOME INVESTMENT PARTNERSHIP FUNDING AGREEMENT**

**ARTICLE I
PARTIES**

1.01 This HOME Allocation of Funding Agreement (the “Agreement”) is between the **City of College Station** (“City”), a **Texas Home Rule Municipal Corporation, and Elder-Aid, Inc.**, (“Recipient”), a Texas Non-Profit Corporation (collectively referred to as the “Parties”).

**ARTICLE II
AGREEMENT PERIOD**

2.01 This Agreement will terminate on September 30, 2024, unless extended by a written agreement. This Agreement will remain valid throughout the “Period of Affordability” as defined in 22.02.

**ARTICLE III
RECIPIENT PERFORMANCE**

3.01 Recipient may administer at least one project for acquisition of Suitable property and construction of at least one new affordable single family residence (“Project” or “Projects”) in the City of College Station in accordance with the HOME INVESTMENT PARTNERSHIPS ACT, 42 U.S.C. § 12701 (THE ACT) and the implementing regulations, 24 C.F.R. PART 92, and the HOME INVESTMENT PARTNERSHIPS PROGRAM RULES.

3.02 Recipient shall perform all activities in accordance with the terms of the Performance Statement, (“**Exhibit A**”); the Budget, (“**Exhibit B**”); the Project Implementation Schedule, (“**Exhibit C**”); the Applicable Laws and Regulations, (“**Exhibit D**”); the Certifications, (“**Exhibit E**”); the Insurance Requirements and Certificates of Insurance (“**Exhibit F**”), the assurances, covenants, warranties, certifications, and all other statements made by Recipient in its application for the project funded under this Agreement; and with all other terms, provisions, and requirements set forth in this Agreement.

3.03 In the event the affordability requirements of 24 C.F.R. § 92.254 are not satisfied by Recipient hereunder, Recipient shall bear ultimate responsibility for repayment of HOME funds to the City.

3.04 In the event that there is program income, repayments, or recaptured funds, the funds must be used in accordance with the requirements of 24 C.F.R. § 92.503, as outlined in the Performance Statement, “**Exhibit A**”.

3.05 If applicable, Recipient agrees that all prospective purchasers of housing funded under this Agreement will comply with the City of College Station Down Payment Assistance Program (DAP) guidelines dated September 27, 2018, or as may be amended.

ARTICLE IV PAYMENT AND CITY OBLIGATIONS

4.01 Measure of Liability. In consideration of full and satisfactory performance of the activities referred to in Article V of this Agreement, City may pay for actual and reasonable costs up to the amount of One Hundred Eighty Nine Thousand Six Hundred Fifty and NO /100 DOLLARS (\$189,650.00) that will be paid from the Fiscal Year 2020-22 & 24 Community Development Budget (HUD Grant Year 2019-21 & 23). These costs incurred by Recipient during the agreement period for performances rendered under this Agreement by Recipient are subject to the limitations set forth in this Article IV.

- (a) The Parties agree that City's obligations to meet City's liabilities under Article IV of this Agreement are contingent upon the actual receipt of adequate local or federal funds. If adequate funds are not available to make payments under this Agreement, the City shall notify Recipient in writing within a reasonable time after it is determined funds are not available. The City shall then terminate this Agreement and will not be liable for failure to make payments to Recipient under this Agreement.
- (b) City shall not be liable to Recipient for any costs incurred by Recipient, or any portion thereof, which have been paid to Recipient or which are subject to payment to Recipient, or which have been reimbursed to Recipient, or are subject to reimbursement to Recipient, by any source other than City or Recipient.
- (c) City shall not be liable to Recipient for any costs incurred by Recipient which are not eligible project costs, as set forth in 24 C.F.R. § 92.206(A) and Article VI of this Agreement. Funds provided under this Agreement shall not be used nor shall City be liable for payment of costs associated directly or indirectly incurred because of prohibited activities as defined in 24 C.F.R. § 92.214.
- (d) City shall not be liable to Recipient for any costs incurred by Recipient or for any performances rendered by Recipient which are not strictly in accordance with the terms of this Agreement, including the terms of the Exhibits of this Agreement.
- (e) City shall not be liable for costs incurred or performance rendered by Recipient before commencement or after termination of this Agreement.

4.02 Limit of Liability

- (a) **Notwithstanding any other provision of this Agreement, the total of all payments and other obligations incurred by City under this Agreement shall under no circumstances exceed**
One Hundred Eighty-Nine Thousand Six Hundred and Fifty
and NO /100 Dollars, (\$189,650.00), from the HUD Grant Year
19-21 & 23 Budget.

Article V DISBURSEMENT OF FUNDS

5.01 City shall pay costs incurred which it determines are eligible and which are properly submitted under this Agreement in accordance with the requirements of 24 C.F.R. § 92.502. Recipient may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount of money needed to pay eligible costs actually incurred, and may not include amounts for prospective or future needs.

5.02 Any and all Program Income as defined by 24 C.F.R. § 84.2 must be disbursed by Recipient prior to requesting a disbursement of funds from the City.

5.03 The Parties agree that City's obligations to make payments under this Agreement are contingent upon Recipient's full and satisfactory performance of its obligations under this Agreement. City reserves the right to recover, recapture or offset funds paid under this Agreement in the event City determines Recipient will be unable to commit or expend funds within the prescribed time, as determined by the City. Recipient agrees to refund to the City all funds that the City in its sole discretion determines to have been used for ineligible or unapproved purposes. Such refunds will be made within thirty (30) days of notification by the City of the ineligible expenditure.

ARTICLE VI UNIFORM ADMINISTRATIVE REQUIREMENTS

6.01 Recipient shall comply with the requirements of 2 C.F.R. 200, including utilization of adequate internal controls, as modified by 24 C.F.R. §92.505.

ARTILCE VII RETENTION AND ACCESSIBILITY OF RECORDS

7.01 Recipient must establish and maintain sufficient records, including those listed under 24 C.F.R. § 92.508. The sufficiency of the records will be determined by City.

7.02 All records pertinent to this Agreement shall be retained by Recipient for five calendar years after the Period of Affordability, specified in Section 22.02, has expired with the following are exceptions:

- (a)** If any litigation, claim or audit is started before the expiration of the five-year period and extends beyond the five-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been finally resolved, including all legal and administrative appeals.
- (b)** Records covering displacement and acquisitions must be retained for at least five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which

they are entitled in accordance with 24 C.F.R. § 92.353.

7.03 Recipient shall give HUD, the Comptroller General of the United States, the City of College Station, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by Recipient pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by Recipient. Recipient agrees to maintain such records in a location accessible to the above-named persons and entities.

7.04 Recipient shall require the substance of this Article VII to be included in all subcontracts for the use of funds under this Agreement.

7.05 Recipient must provide citizens, public agencies, and other interested parties with reasonable access to records consistent with the TEXAS PUBLIC INFORMATION ACT.

ARTICLE VIII REPORTING REQUIREMENTS

8.01 Recipient shall submit to City such reports on the operation and performance of this Agreement as may be required by City including, but not limited to the reports specified in this Article VIII.

8.02 Recipient shall provide City with all reports necessary for City's compliance with 24 C.F.R. §§ 92.508, 92.509 and 24 C.F.R. SUBPART K or any other applicable statute, law or regulation. Recipient agrees to furnish the City with information on program participants, including: income verifications, race, ethnicity, age, sex, family status, disability status and head-of-household status.

8.03 Recipient will report any project or program delays or modifications and await City approval before proceeding.

8.04 Recipient will also report any instances of client fraud or program abuse to the City. Recipient agrees to meet with the City to discuss progress or concerns as the need arises and at the City's request.

8.05 Recipient agrees to report on a semi-annual basis to the City on program or project status. This must be a written report of the status on recently completed, ongoing, and pre-approved programs or projects and must include information for the reporting period to include the status on: applicant approvals/denials; projects/programs approved; fund disbursements; project bidding information; property sales; contractor/subcontractors utilization to include: race, sex, ethnicity, addresses, social security numbers and amounts billed and paid; use of program income, repayments, and recaptured funds; and other information as specified by the City.

8.06 In addition to the limitations on liability otherwise specified in this Agreement, it is expressly understood and agreed by the Parties hereto that if Recipient fails to submit to City in a timely and satisfactory manner any report required by this Agreement, City may, at its sole option

and in its sole discretion, withhold any or all payments otherwise due or requested by Recipient hereunder. If City withholds such payments, it shall notify Recipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by City until such time as Recipient fully cures or performs any and all delinquent obligations identified as the reason funds are withheld.

ARTICLE IX MONITORING

9.01 The City reserves the right to carry out regular and periodic field inspections to ensure compliance with the requirements of this Agreement. After each monitoring visit, City shall provide Recipient with a written report of the monitor's findings. If the monitoring reports note deficiencies in Recipient's performances under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by Recipient. Failure by Recipient to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Article XVIII and XIX of this Agreement.

ARTICLE X INDEPENDENT CONTRACTOR

10.01 In all activities or services performed hereunder, the Recipient is an independent contractor and not an agent or employee of the City. The Recipient, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. The Recipient shall supply all materials, equipment and labor required for the execution of the work on the Project. The Recipient shall have ultimate control over the execution of the work under this Agreement. The Recipient shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees, volunteers and subcontractors, and the City shall have no control of or supervision over the employees or volunteers of the Recipient or any of the Recipient's subcontractors except to the limited extent provided for in this Agreement.

10.02 The Recipient shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the work and fulfillment of this Agreement. The subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Recipient from its obligations to the City under this Agreement. The Recipient shall appoint and keep on the Project during the progress of the work a competent Project Manager and any necessary assistants, all satisfactory to the City, to act as the Recipient's representative and to supervise its employees and subcontractors. Adequate supervision by competent and reasonable representatives of the Recipient is essential to the proper performance of the work, and lack of such supervision shall be grounds for suspending the operations of the Recipient and is a breach of this Agreement.

10.03 Unless otherwise stipulated, the Recipient shall provide and pay for all labor, materials, tools, equipment, transportation, facilities, and drawings, including engineering, and any other services necessary or reasonably incidental to the performance of the work by the Recipient. It shall be the responsibility of the Recipient to furnish a completed work product that meets the requirements of the City.

10.04 Any injury or damage to the Recipient or the Project caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the Recipient.

10.05 By entering into this Agreement, City and Recipient do not intend to create a joint enterprise.

ARTICLE XI INDEMNIFICATION AND RELEASE

11.01 RECIPIENT SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.

11.02 The indemnifications contained in section 11.01 shall include, but not be limited to the following specific instances:

- (a) In the event the City is damaged due to the act, omission, mistake, fault or default of the Recipient, then the Recipient shall indemnify and hold harmless and defend the City for such damage.**
- (b) The Recipient shall indemnify and hold harmless and defend the City from any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.**
- (c) The Recipient shall indemnify and hold harmless and defend the City from any and all injuries to or claims of adjacent property owners caused by the Recipient, its agents, employees, and representatives.**
- (d) The Recipient shall be responsible for any damage to the building caused by the Recipient's personnel or equipment during installation.**
- (e) The Recipient shall be responsible for the removal of all related debris.**
- (f) The Recipient shall be responsible for subcontractors hired by it.**
- (g) The Recipient shall indemnify, hold harmless, and defend the City from any liability caused by the Recipient's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of**

machinery and equipment in that working environment, no matter where fault or responsibility lies.

11.03 The indemnification obligations of the Recipient under this section shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

11.04 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 Section 11.01, 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.

11.05 RELEASE. The Recipient assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its 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 or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Recipient'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 in the event of injury, death, property damage, or loss suffered by the Recipient, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City. 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.

11.06 BY ENTERING INTO THIS AGREEMENT THE CITY DOES NOT WAIVE ITS GOVERNMENTAL IMMUNITY OR THE LIMITATIONS AS TO DAMAGES CONTAINED IN THE TEXAS TORT CLAIMS ACT OR CONSENT TO SUIT.

ARTICLE XII INSURANCE

12.01 INSURANCE The Recipient shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the

Recipient, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth below. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached as **Exhibit F**.

During the term of this Agreement Contractor's (Recipient) insurance policies shall meet the minimum requirements of this section:

12.02 Types. Recipient shall have the following types of insurance:

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

12.03 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 F**; 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 named on the Certificate of Insurance and are acceptable on a per-occurrence basis only.
- (d) The City will accept only Insurance Carriers licensed and 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.

12.04 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 naming the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain
- (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 \$1,000,000.00. 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 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.

12.05 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 rating under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement naming the City as Additional Insured and further providing “primary and non-contributory” language with regard to self-insurance or any insurance the City may have or obtain.
- (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.

12.06 Workers’ Compensation/Employer’s Liability Insurance. Workers Compensation/Employer’s Liability insurance shall include the following terms:

- (a) Employer’s Liability minimum limits of liability not less than \$500,000 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.
- (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 XIII SUBCONTRACTS

13.01 Except for subcontracts to which the federal labor standards requirements apply, Recipient may not subcontract for performances of any obligation required or described in this Agreement without obtaining City’s prior written approval. Recipient shall only subcontract for performance obligations required or described in this Agreement to which the federal labor standards requirements apply after Recipient has submitted a Subcontractor utilization form, as specified by City, for each such proposed subcontract and Recipient has obtained City’s prior written approval, based on the information submitted, of Recipient’s intent to enter into such proposed subcontract. Recipient, in subcontracting for the performance of any obligation required as described in this Agreement, expressly understands that in entering into such subcontracts, City is in no way liable

to Recipient's subcontractor(s).

13.02 In no event shall any provision of this Article XII, specifically the requirement that Recipient obtain City's prior written approval of a subcontractor's eligibility, be construed as relieving Recipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all of the terms of this Agreement, as if such performances rendered were rendered by Recipient. City's approval under Article XII does not constitute adoption, ratification, or acceptance of Recipient's or subcontractor's performance hereunder. City maintains the right to insist upon Recipient's full compliance with the terms of this Agreement, and by the act of approval under Article XII, City does not waive any rights or remedies which, may exist or which may subsequently accrue to City under this Agreement.

13.03 Recipient shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

13.04 Recipient shall submit a subcontractor utilization report prior to beginning work and prior to hiring any additional subcontractors.

ARTICLE XIV CONFLICT OF INTEREST

14.01 No person who (a) is an employee, agent, consultant, officer or elected or appointed official of City or of any applicant that receives funds and who exercises or has exercised any functions or responsibilities with respect to activities assisted with funds provided under this Agreement or (b) who is in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a personal or financial interest or benefit from a HOME assisted activity, or have an interest in any Agreement, subcontract or Agreement (or the proceeds thereof) with respect to a HOME assisted activity either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. Recipient shall ensure compliance with applicable provisions under 24 C.F.R. §§ 84.40 - 84.48 and OMB Circular A-110 in the procurement of property and services.

ARTICLE XV NONDISCRIMINATION AND SECTARIAN ACTIVITY

15.01 Equal Opportunity. Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, family status, age, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement. In addition, funds provided under this Agreement must be made available in accordance with the requirements of Section 3 of the HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (12 USC 1701(u)) that:

- (a)** To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with HOME funds provided under this Agreement be given to low-income persons residing within the general local government area in which the project is located;

and

- (b) To the greatest extent feasible, Agreements for work to be performed in connection with any such project be awarded to business concerns, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area or non-metropolitan area as the project.

15.02 Faith-based activities. Organization that are religious or faith-based are eligible, on the same basis as any other organization, to participate in HOME program in accordance with the requirement of 24 C.F.R. § 92.257.

ARTICLE XVI LEGAL AUTHORITY

16.01 Recipient assures and guarantees that Recipient possesses the legal authority to enter into this Agreement, to receive funds authorized by this Agreement, and to perform the services Recipient has obligated itself to perform hereunder.

16.02 The person or persons signing and executing this Agreement on behalf of Recipient, or representing themselves as signing and executing this Agreement on behalf of Recipient, do hereby warrant and guarantee that he, she or they have been duly authorized by Recipient to execute this Agreement on behalf of Recipient and to validly and legally bind Recipient to all terms, performances, and provisions herein set forth.

16.03 Recipient shall not employ, award Agreement to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by U.S. Department of Housing and Urban Development. In addition, City shall have the right to suspend or terminate this Agreement if Recipient is debarred, suspended, proposed for debarment, or ineligible to participate in the HOME Program.

ARTICLE XVII LITIGATION AND CLAIMS

17.01 Recipient shall give City immediate notice in writing of a) any action, including any proceeding before an administrative agency, brought or filed against Recipient in connection with this Agreement; and b) any claim against Recipient. Except as otherwise directed by City, Recipient shall furnish immediately to City copies of all documents received by Recipient with respect to such action, proceeding, or claim.

ARTICLE XVIII CHANGES AND AMENDMENTS

18.01 Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by

both the Parties to this Agreement.

18.02 It is understood and agreed by the Parties hereto that any performance under this Agreement must be rendered in accordance with the Act, the regulations promulgated under the Act, the assurances and certifications made to City by Recipient, and the assurances and certifications made to the United States Department of Housing and Urban Development by the City with regard to the operation of the HOME Program.

18.03 Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal or state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulations. All other amendments to the Agreement must be in writing and signed by both Parties, except as provided in paragraphs 17.02 and 17.03.

ARTICLE XIX SUSPENSION

19.01 In the event Recipient fails to comply with any term of this Agreement, City may, upon written notification to Recipient, suspend this Agreement in whole or in part and withhold further payments to Recipient, and prohibit Recipient from incurring additional obligations of funds under this Agreement.

ARTILCE XX TERMINATION

20.01 The City may terminate this Agreement in whole or in part, in accordance with 24 C.F.R. § 85.43 and this Article or as provided in this Agreement. In the event Recipient materially fails as determined by City, to comply with any term of this Agreement, whether stated in a Federal statute or regulation, an assurance, in a City plan or application, a notice of award, or elsewhere, City may take one or more of the following actions:

- (a) Temporarily withhold cash payments pending correction of the deficiency or default by the Recipient.
- (b) Disallow all or part of the cost of the activity or action not in compliance; and require immediate repayment of such disallowed costs.
- (c) Withhold further HOME awards from Recipient.
- (d) Exercise other rights and remedies that may be legally available as determined by the City to comply with the terms of this Agreement.
- (e) City may terminate this Agreement for convenience in accordance with 24 C.F.R. §85.44.

ARTICLE XXI AUDIT

21.01 Unless otherwise directed by City, Recipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Recipient shall have an audit made in accordance with 24 C.F.R. § 92.506, THE SINGLE AUDIT ACT OF 1984, 31 U.S.C. 7501, and Subpart F of 2 C.F.R. 200., for any of its fiscal years included within the agreement Period, in which Recipient receives more than \$300,000.00 in federal financial assistance provided by a federal agency in the form of grants, agreements, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, but does not include direct federal cash assistance to individuals. The term includes awards of federal financial assistance received directly from federal agencies, or indirectly through other units of State and local government;
- (b) At the option of Recipient, each audit required by this Article may cover either Recipient's entire operations or each department, agency, or establishment of Recipient which received, expended, or otherwise administered federal funds;
- (c) Notwithstanding paragraphs 4.01(c) and (d), Recipient shall utilize operating expense funds budgeted under this Agreement to pay for that portion of the cost of such audit services properly allocable to the activities funded by City under this Agreement, provided however that City shall not make payment for the cost of such audit services until City has received the complete and final audit report from Recipient;
- (d) Unless otherwise specifically authorized by City in writing, Recipient shall submit the complete and final report of such audit to City within thirty (30) days after completion of the audit, but no later than one (1) year after the end of each fiscal period included within the period of this Agreement. Audits performed under Subsection A of this Article XXI are subject to review and resolution by City or its authorized representative.
- (e) As part of its audit, Recipient shall verify expenditures according to the Budget attached as **Exhibit B**.

21.02 Notwithstanding 20.01 City reserves the right to conduct an annual financial and compliance audit of funds received and performances rendered under this Agreement. Recipient agrees to permit City or its authorized representative to audit Recipient's records and to obtain any documents, materials, or information necessary to facilitate such audit.

21.03 Recipient understands and agrees that it shall be liable to City for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement. Recipient further understands and agrees that reimbursement to City of such disallowed costs shall be paid by Recipient from funds which were not provided or otherwise made available to Recipient under this Agreement.

21.04 Recipient shall take all necessary actions to facilitate the performance of such audit or audits conducted pursuant to this Article XXI as City may require of Recipient

21.05 All approved HOME audit reports shall be made available for public inspection within 30 days after completion of the audit.

ARTICLE XXII ENVIRONMENTAL CLEARANCE REQUIREMENTS

22.01 Recipient understands and agrees that by the execution of this Agreement, City shall assume the responsibilities for environmental review, decision making, and other action which would otherwise apply to City in accordance with and to the extent specified in 24 C.F.R., PARTS 50 AND 58. In accordance with 24 C.F.R. § 58.77(b), Recipient further understands and agrees that City shall handle inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

22.02 Funds provided under this Agreement may not be obligated and expended before the actions specified in this Article occur. Any Real Estate Purchase Option Agreement must include the following language: "This option is contingent upon satisfactory completion of an environmental review under 24 C.F.R. Part 58. The parties agree that the provision of any funds to the project is conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review."

22.03 City shall prepare and maintain a written Environmental Review Record for this project in accordance with 24 C.F.R. PART 58 to ensure compliance with the NATIONAL ENVIRONMENTAL POLICY ACT (NEPA). Recipient must also maintain a copy of the Environmental Review Record in Recipient's project file. City must comply with all other applicable environmental requirements as specified in **Exhibit D** of this Agreement. City shall document its compliance with such other requirements in its environmental review file.

ARTICLE XXIII SPECIAL CONDITIONS

23.01 Certification. City shall not release any funds for any costs incurred by Recipient under this Agreement until City has received certification from Recipient that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of and accounting for funds provided under this Agreement. City shall specify the content and form of such certification.

23.02 Affordability. Funds provided under this Agreement must meet the affordability requirement of 24 C.F.R. § 92.254 and the HOME rules as applicable. The period of affordability is based upon the total amount of HOME funds subject to recapture described in 24 C.F.R. § 92.254 (a) (5) (ii) (A) (5). The City shall reduce HOME investment amount to be recaptured by Recipient on a pro-rata basis for the time the unit is in compliance with 24 C.F.R. § 92.254 and the HOME rules as applicable.

Home Funds Subject to Recapture	Affordability Period
< \$15,000	5 years
\$15,000 - \$40,000	10 years
> \$40,000	15 years

23.03 Recapture. The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price. The cost of construction is not considered in this calculation. Recaptured funds will include the amount provided through the City's Down Payment Assistance Program and the Recipient's subsidy to the homebuyer equaling the difference between the fair market value and the sales price of the home. Recipient agrees that Recipient's recaptured funds, including all interest and any other return on the investment of HOME funds, will be made to City pro-rata. The formula for Recipient's recaptured funds is the funds received which are subject to recapture divided by the number of months in the period of affordability multiplied by the number of months that a home is not operated in accordance with the affordability requirement.

23.04 Property Standards. Recipient shall ensure that all housing assisted with funds provided under this Agreement shall meet the requirements of 24 C.F.R. § 92.251 for the duration of this Agreement.

23.05 Affirmative Marketing. Should funds from this Agreement be used in the construction of five (5) or more dwelling units, Recipient shall adopt Affirmative Marketing procedures and requirements. The Affirmative Marketing procedures and requirements shall include, but need not be limited to, those specified in 24 C.F.R. § 92.351. City will assess the efforts of the Recipient during the marketing of the units by use of compliance certification. Where a Recipient fails to follow the Affirmative Marketing procedures and requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions the City may deem necessary. Recipient must provide City with an annual assessment of the Affirmative Marketing program of the development, if an Affirmative Marketing program is required under this section. The assessment must include:

- (a) Method used to inform the public and potential residents about Federal Fair Housing laws and Affirmative Marketing policy. Recipient's advertising of housing must include the Equal Housing Opportunity logo or statement. Advertising media may include newspaper, radio, television, brochures, leaflets, or signage. Recipient may wish to use community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service centers or medical service centers as resources for this outreach.

- (b) Records describing actions taken by the Recipient to affirmatively market housing and records to assess the results of these actions. Recipient must maintain a file containing all marketing efforts (i.e. copies of newspapers ad, memos of phone calls, copies of letters) to be available for inspection at least annually by City.
- (c) Recipient shall solicit applications for housing from persons in the housing market who are least likely to apply for housing without benefit of special outreach efforts. In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the housing is located shall be considered those least likely to apply.
- (d) Recipient shall maintain a listing of all residents residing in each home through the end of the compliance period.
- (e) The Recipient will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include: Placing qualified small and minority businesses and women's business enterprises on solicitation lists; Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in the preceding paragraph.

23.06 Enforcement of Affordability. Recipient and City shall provide legally enforceable agreements consisting of a Real Estate Lien Note and Deed of Trust, containing remedies adequate to enforce the affordability requirements of 24 C.F.R. § 92.254, as applicable, for each activity assisted under this Agreement, to be recorded in the real property records of Brazos County. Funds recaptured because housing no longer meets the affordability requirements under 24 C.F.R. § 92.254(a)(5) are subject to the requirements of 24 C.F.R. § 92.503. Recipient must provide along with the other legal instruments an Agreement of Affordability.

23.07 Reversion of Assets. Upon termination of this Agreement, all funds remaining on hand on the date of termination and all accounts receivable attributable to the use of funds received under this Agreement shall revert to City. Recipient shall return these assets to City within seven (7) days after the date of termination.

23.08 Flood Hazards. Funds provided under this Agreement may not be used in connection with acquisition, rehabilitation, or construction of a development located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards.

23.09 Fair Housing. Recipient participating in the HOME program shall use affirmative fair

housing marketing practices in determining eligibility and concluding all transactions. These requirements apply to all projects of five (5) or more units. Each participating entity must affirmatively further fair housing in accordance with 24 C.F.R. § Part 100.

23.10 Displacement, Relocation, and Acquisition. Recipient must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, business and nonprofit organizations) as a result of a project assisted with funds provided under this Agreement. Recipient must comply with the applicable provisions of 24 C.F.R. 92.353, 49 C.F.R. Part 24, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655).

23.11 Property Standards. Recipient shall ensure that all housing assisted with funds provided under this Agreement (1) shall meet the lead-based paint requirements in 24 C.F.R. § 92.355 upon project completion and (2) shall meet the requirements of 24 C.F.R. § 92.355 for the duration of this Agreement.

23.12 All documents necessary for the conveyance of real property, pursuant to the agreement, must be approved, prior to execution, by the City. (i.e. deeds, notes, Deed of Trust, etc.)

23.13 Funding under this Agreement is contingent upon Recipient meeting all terms, conditions of this Agreement.

23.14 This Agreement and the performance hereunder may not be assigned without the express written consent of City.

23.15 This Agreement is binding on Recipient's assigns and successors-in-interest.

ARTICLE XXIV ORAL AND WRITTEN AGREEMENTS

24.01 All oral and written agreements between the Parties relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

24.02 The attachments enumerated and denominated below are hereby made a part of this Agreement, and constitute promised performances by Recipient in accordance with Article III of this Agreement.

ARTICLE XXV VENUE

25.01 For purposes of litigation pursuant to this Agreement, venue shall lie in Brazos County, Texas

ARTICLE XXVI
COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

26.01 Recipient shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances of Recipient under this Agreement. Upon request by City, Recipient shall furnish satisfactory proof of its compliance herein.

26.02 Verification No Boycott. To the extent applicable, this Agreement is subject to the following:

- (a) Boycott Israel. If this Agreement is for goods and services subject to § 2270.002 Texas Government Code, Recipient verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Agreement;
- (b) Boycott Firearms. If this Agreement is for goods and services subject to § 2274.002 Texas Government Code, Recipient 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, Recipient herein verifies that it i) does not boycott energy companies; and ii) will not boycott energy companies during the term of this Agreement.

List of Exhibits

- A. Performance Statement
- B. Budget
- C. Project Implementation Schedule
- D. Applicable Laws and Regulations
- E. Certifications
- F. Insurance Certificates

ELDER-AID, INC

By: Carol Jones

Printed Name: Carol Jones

Title: Executive Director

Date: 7/13/2023

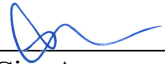
CITY OF COLLEGE STATION

By: _____

City Manager

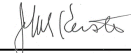
Date: _____

APPROVED:

 _____

City Attorney

Date: 7/17/2023

 _____

Assistant City Manager/CFO

Date: 7/14/2023

EXHIBIT A
PERFORMANCE STATEMENT

1. Recipient is awarded up to \$189,650.00 from the City of College Station FY 20-22 & 24 (HUD Grant Year 19-21 & 23) HOME Investment Partnerships Program. These funds must be used for the construction of at least one affordable, single family residence in the City of College Station. Homes must be rented to low-and moderate-income families.
2. **All construction shall be of a design approved by the City. The exterior of the homes must be a minimum of 25% brick and must have a garage or accessory storage structure of at least sixty four (64) square feet if lot size permits. All homes must meet deed restriction requirements and meet the characteristics of the neighborhood. All homes must be inspected and approved by City staff.**
3. A detailed Project Budget and cost breakdown shall be submitted by the Recipient to the City for review of each project for a cost or price analysis prior to the start of the project.
4. A final budget shall be submitted with HOME close-out information at the end of each project showing total costs and funding sources.
5. All work must be in compliance with current City of College Station Building Codes. Recipient shall dedicate all easements required by City including blanket easements which shall be substituted with as-built easements for all City utilities. All Projects must be substantially completed within one (1) year of the date of this Agreement.
6. All required permits must be obtained prior to any work commencing. All required inspections must be performed by the City of College Station Building Inspectors.
7. Recipient must provide written notification of all subcontractors to City.
8. Upon completion of such construction Recipient must submit a copy of all receipts paid. At that point, the City will have 30 days to make payment on said receipts, not to exceed maximums established in **Exhibit B**, Budgets.
9. Within six (6) months from issuance of the Certificate of Occupancy, said HOME unit must be occupied by an eligible resident. Recipient is not prohibited from conducting a background check on credit history or criminal history.
10. Any program income, recaptured funds, or repayment of any funds must be immediately returned to the City of College Station. In the event that there is program income, repayments, and/or recaptured funds, the funds must be used in accordance with the requirements of 24 C.F.R. § 92.503. Recaptured funds will be subject to 24 C.F.R. § 92.254 (a)(5)(ii)(A)(2) reduced during affordability period, prorated monthly.

**EXHIBIT B
BUDGET**

SOURCES OF FUNDS:

Maximum Proceeds of grant under the agreement	<u>\$189,650.00</u>
---	---------------------

USES OF FUNDS:

Site Preparation.....	\$ 2,000.00
Infrastructure Costs.....	\$ 0.00
Construction/Rehabilitation Costs.....	\$ 146,000.00
Financing Costs.....	\$ 1,500.00
Professional Fees (Architect, Engineering, Legal, etc.).....	\$ 1,500.00
Developer Fees.....	\$ 35,650.00
Other Soft Costs (Title Appraisal, Taxes, Insurance).....	\$ 3,000.00
Total.....	\$ 189,650.00

EXHIBIT C
PROJECT IMPLEMENTATION SCHEDULE

AGREEMENT START DATE: July 27, 2023

AGREEMENT END DATE: September 30, 2024

Construction Phase – Construction for this project is scheduled to begin within one year of property acquisition with completion and certificate of occupancy date for all projects no later than July 27, 2024. The issuance of a building permit will constitute start of construction.

EXHIBIT D
THE APPLICABLE LAWS AND REGULATIONS

Recipient shall comply with all federal, state, and local laws and regulations applicable to the activities and performances rendered by Recipient under this Agreement including but not limited to the laws, and the regulations specified in Section I through VI of this Exhibit D.

I. CIVIL RIGHTS

- THE FAIR HOUSING ACT (42 U.S.C. 3601-20) AND IMPLEMENTING REGULATIONS AT 24 C.F.R. PART 100; EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259 (3 C.F.R., 1958-1963 COMP., P. 652 AND 3 C.F.R., 1980 COMP., P. 307) (EQUAL OPPORTUNITY IN HOUSING) AND IMPLEMENTING REGULATIONS AT 24 C.F.R., PART 107; AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (42 U.S.C. 2000D) (NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS) AND IMPLEMENTING REGULATIONS ISSUED AT 24 C.F.R., PART 1;
- EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259, AND 24 C.F.R. PART 107, "NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063". THE FAILURE OR REFUSAL OF RECIPIENT TO COMPLY WITH THE REQUIREMENTS OF EXECUTIVE ORDER 11063 OR 24 C.F.R., PART 107 SHALL BE A PROPER BASIS FOR THE IMPOSITION OF SANCTIONS SPECIFIED IN 24 C.F.R. 107.60;
- THE PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF AGE UNDER THE AGE DISCRIMINATION ACT OF 1975 (42 U.S.C. 6101-07) AND IMPLEMENTING REGULATIONS AT 24 C.F.R., PART 146, AND THE PROHIBITIONS AGAINST DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. 794) AND IMPLEMENTING REGULATIONS AT 24 C.F.R., PART 8;
- THE REQUIREMENTS OF EXECUTIVE ORDER 11246 (3 C.F.R. 1964-65, COMP., P. 339) (EQUAL EMPLOYMENT OPPORTUNITY) AND THE IMPLEMENTING REGULATIONS ISSUED AT 41 C.F.R., CHAPTER 60.
- THE REQUIREMENTS OF 24 C.F.R. 92.351 (MINORITY OUTREACH), EXECUTIVE ORDERS 11625 AND 12432 (CONCERNING MINORITY BUSINESS ENTERPRISE), AND 12138 (CONCERNING WOMEN'S BUSINESS ENTERPRISE). CONSISTENT WITH HUD'S RESPONSIBILITIES UNDER THESE ORDERS, RECIPIENT MUST MAKE EFFORTS TO ENCOURAGE THE USE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES IN CONNECTION WITH HOME FUNDED ACTIVITIES. RECIPIENT MUST PRESCRIBE PROCEDURES ACCEPTABLE TO THE CITY TO ESTABLISH ACTIVITIES TO ENSURE THE INCLUSION, TO THE MAXIMUM EXTENT POSSIBLE, OF MINORITIES AND WOMEN, AND ENTITIES OWNED BY MINORITIES AND WOMEN. THE AGREEMENTOR / SUBCONTRACTOR WILL BE REQUIRED TO IDENTIFY AGREEMENTS WHICH HAVE BEEN BID BY MINORITY OWNED, WOMEN OWNED, AND/OR SMALL DISADVANTAGED BUSINESSES.
- THE AGE DISCRIMINATION ACT OF 1975 (42 U.S.C., SECTION 6101 ET SEQ.);
- SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C., SECTION 794) AND "NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT", 24 C.F.R., PART 8. BY SIGNING THIS

AGREEMENT, RECIPIENT UNDERSTANDS AND AGREES THAT THE ACTIVITIES FUNDED HEREIN SHALL BE OPERATED IN ACCORDANCE WITH 24 C.F.R., PART 8; AND THE ARCHITECTURAL BARRIERS ACT OF 1968 (42 U.S.C., SECTION 4151 ET. SEQ.) INCLUDING THE USE OF A TELECOMMUNICATIONS DEVICE FOR DEAF PERSONS (TDDs) OR EQUALLY EFFECTIVE COMMUNICATION SYSTEM.

II. LEAD-BASED PAINT

- TITLE IV OF THE LEAD-BASED PAINT POISONING PREVENTION ACT (42 U.S.C. SEC. 4831).

III. ENVIRONMENTAL STANDARDS

- NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (42 U.S.C. SEC. 4321 ET. SEQ.) AND 40 C.F.R. PARTS 1500-1508;
- THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (16 U.S.C. SEC. 470 ET. SEQ.) AS AMENDED; PARTICULARLY SECTION 106 (16 U.S.C. SEC. 470F);
- EXECUTIVE ORDER 11593, PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT, MAY 13, 1971 (36 FED. REG. 8921), PARTICULARLY SECTION 2(C);
- THE RESERVOIR SALVAGE ACT OF 1960 (16 U.S.C. SEC. 469 ET SEQ.). PARTICULARLY SECTION 3 (16 U.S.C. SEC. 469A-1), AS AMENDED BY THE ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974; FLOOD DISASTER PROTECTION ACT OF 1973, (42 U.S.C. SEC. 4001 ET. SEQ.) AS AMENDED, PARTICULARLY SECTIONS 102(A) AND 202(A) (42 U.S.C. SEC. 4012A (A) AND SEC. 4106(A);
- EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT, MAY 24, 1977 (42 FED. REG. 26951), PARTICULARLY SECTION 2(A).
- EXECUTIVE ORDER 11990 PROTECTION OF WETLANDS, MAY 24, 1977 (42 FED. REG. 26961), PARTICULARLY SECTIONS 2 AND 5.
- THE SAFE DRINKING WATER ACT OF 1974, (42 U.S.C. SEC. 201, 300(F) ET SEQ.) AND (21 U.S.C. SEC. 349) AS AMENDED, PARTICULARLY SECTION 1424(E) (42 U.S.C. SEC. 300H-303(E);
- THE ENDANGERED SPECIES ACT OF 1973, (16 U.S.C. SEC. 1531 ET. SQ.) AS AMENDED, PARTICULARLY SECTION 7 (16 U.S.C. SEC. 1536);
- THE WILD AND SCENIC RIVERS ACT OF 1968, (16 U.S.C. SEC. 1271 ET SEQ.) AS AMENDED, PARTICULARLY SECTION 7(B) AND (C)(16 U.S.C. SEC. 1278(B) AND (C);
- THE CLEAN AIR ACT (41 U.S.C. SEC. 7401 ET SEQ.) AS AMENDED, PARTICULARLY SECTION 176(C) AND (D) (42 U.S.C. SEC. 7506(C) AND (D);
- FARMLANDS PROTECTION AND POLICY ACT OF 1981, (7 U.S.C. SEC. 4201 ET SEQ.)
- 24 C.F.R. PART 51, ENVIRONMENTAL CRITERIA AND STANDARDS.

IV. ACQUISITION/RELOCATION

- THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (42 U.S.C., SEC. 4601 ET. SEQ.), 49 C.F.R. PART 24, AND 24 C.F.R. SECTION 570.496A (55 FED. REG. 29309 (JULY 18, 1990))

V. LABOR REQUIREMENTS

- AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT, AS AMENDED (40 USC 327-333)
- COPELAND (ANTI-KICKBACK) ACT (40 USC 276c)
- FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED (29 USC 201, ET. SEQ.)

EXHIBIT E
CERTIFICATION REGARDING LOBBYING FOR
AGREEMENTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement or modification of any federal agreement, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and agreements under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C.A. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT F
CERTIFICATES OF INSURANCE



ELDEINC-01

HLAPP

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/11/2023

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 Jones & Associates Inc. 1580 Copperfield Pkwy College Station, TX 77845	CONTACT NAME:	
	PHONE (A/C, No, Ext): (979) 776-4740	FAX (A/C, No): (979) 776-4745
INSURED Elder-Aid, Inc. 307 S Main St, Suite 202 Bryan, TX 77803-6949	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Nautilus Insurance Company	NAIC # 17370
	INSURER B : Hochheim Prairie Farm Mutual Ins.	31054
	INSURER C : Texas Mutual Workers' Compensation Ins	22945
	INSURER D : United States Fire Insurance Co	21113
	INSURER E : Travelers Casualty & Surety Co	19038
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	☒	☒	NN1475001	11/2/2022	11/2/2023	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COM/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	☒ POLICY ☐ PROJECT ☐ LOC						\$
	OTHER:						
B	AUTOMOBILE LIABILITY			BO-5678342	1/13/2023	1/13/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☐ ANY AUTO OWNED AUTOS ONLY ☒ SCHEDULED AUTOS						BODILY INJURY (Per person) \$
	☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED						\$
	RETENTION \$						\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			0001220341	3/10/2023	3/10/2024	☒ PER STATUTE ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☒ Y ☐ N	☐ A				E L EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E L DISEASE - EA EMPLOYEE \$ 1,000,000
							E L DISEASE - POLICY LIMIT \$ 1,000,000
D	Accident			US1674586	1/13/2023	1/13/2024	Benefit Amt 15,000
E	Surety			106406989	11/5/2022	11/5/2025	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of College Station
1101 Texas Avenue
College Station, TX 77840

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

AUTHORIZED REPRESENTATIVE

B. a. J.

700 Pasler Street Acquisition and New Construction Site Map



July 27, 2023

Item No. 8.5.

Rezoning - MH Middle Housing (Privately-Initiated)

Sponsor: Matthew Ellis , Robin Macias, Gabriel Schrum

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action(s) 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 as follows:

Area #1

- a. Changing the zoning district boundary from R-4 Multi-Family to MH Middle Housing for approximately 0.28 of an acre being Block 1, Lot 11 of the Cooner Addition, generally located at 207 Cooner Street.
- b. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.21 of an acre being Block 5, Lot 2 of the Cooner Addition, generally located at 502 Cooner Street.
- c. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.66 of an acre being Block 5, Lots 6 - 8 of the Cooner Addition, generally located at 510-514 Cooner Street.
- d. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.27 of an acre being Block 1, Lot 28 of the Cooner Addition, generally located at 511 Cooner Street.

Area #2

- e. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 0.17 of an acre being Block E, Lot 6 (10' of) & 7 of the College Vista Subdivision, generally located at 400 Live Oak Street.

Area #3

- f. Changing the zoning district boundary from D Duplex to MH Middle Housing for approximately 5.41 acres being Lots 1-18 of the Little-Knight Addition, generally located at 400-513 Aurora Court.

Area #4

- g. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.18 of an acre being Block 1, Lot 3 and 10' of Lot 2 of the West Park Addition, generally located at 302 Park Place.

- h. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.36 of an acre being Block 1, Lot 1-R2 of the West Park Addition and Block D, Lot 1B & 35' of 2 of the WM Sparks Subdivision, generally located at 306 – 308 Park Place.
- i. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.35 of an acre being Block 2, Lots 8-R and 9-R of the West Park Addition, generally located at 611 – 613 Highlands Street.
- j. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.17 of an acre being Block 3, Lot 17 of the West Park Addition, generally located at 607 Maryem Street.
- k. Changing the zoning district boundary from GS General Suburban to MH Middle Housing for approximately 0.16 of an acre being Block 1, Lot 2-R1 of the West Park Addition, generally located at 301 Luther Street.

Relationship to Strategic Goals:

- Diverse & Growing Economy

Recommendation(s): The Planning & Zoning Commission heard this item at their July 6, 2023 meeting and voted 6-0 to recommend approval of each area. Staff recommends approval.

Summary: This item combines multiple requests from a single property owner who is applying to rezone multiple lots to MH Middle Housing. The requests are generally located in four areas across College Station:

- Area #1 includes the first four requests along Cooner Street.
- Area #2 includes the request to rezone 400 Live Oak Street.
- Area #3 includes the request to rezone 400-513 Aurora Court.
- Area #4 includes the rest of the requests, which are in the Southside Neighborhood on Park Place, Highlands Street, Maryem Street, and Luther Street.

Each of these requests, save for REZ2023-000011 (207 Cooner Street), is part of a larger area that is being considered for potential City-initiated rezonings to MH Middle Housing. REZ2023-000011 was not considered because the existing zoning on the property is R-4 Multi-Family, a retired multi-family zoning district. All of the requests in Area #1 (Cooner Street area) would have been in Area B of the City-initiated rezonings, the request in Area #2 (Live Oak) would have been in Area D, the request in Area #3 (Aurora Court) would have been its own Area J, and the requests in Area #4 (Southside) would have been part of Area Y.

As we have just finished the public engagement process for the City-initiated rezonings to MH Middle Housing, staff is preparing an upcoming presentation which will reflect the results of that public engagement and will recommend which areas should move forward and be rezoned. Proposed City-initiated areas B, D, J, and Y did not receive significant opposition from the community and each of them aligns with the broader vision in the Comprehensive Plan.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Area #1 Supporting Materials

3. Area #2 Supporting Materials
4. Area #3 Supporting Materials
5. Area #4 Supporting Materials

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 AS FOLLOWS FOR CERTAIN PROPERTIES AS DESCRIBED BELOW:

+

- A. FROM R-4 MULTI-FAMILY TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.28 OF AN ACRE BEING BLOCK 1, LOT 11 OF THE COONER ADDITION, GENERALLY LOCATED AT 207 COONER STREET;**
- B. FROM D DUPLEX TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.21 OF AN ACRE BEING BLOCK 5, LOT 2 OF THE COONER ADDITION, GENERALLY LOCATED AT 502 COONER STREET;**
- C. FROM D DUPLEX TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.66 OF AN ACRE BEING BLOCK 5, LOTS 6 - 8 OF THE COONER ADDITION, GENERALLY LOCATED AT 510-514 COONER STREET;**
- D. FROM D DUPLEX TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.27 OF AN ACRE BEING BLOCK 1, LOT 28 OF THE COONER ADDITION, GENERALLY LOCATED AT 511 COONER STREET;**
- E. FROM D DUPLEX TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.17 OF AN ACRE BEING BLOCK E, LOT 6 (10' OF) & 7 OF THE COLLEGE VISTA SUBDIVISION, GENERALLY LOCATED AT 400 LIVE OAK STREET;**
- F. FROM D DUPLEX TO MH MIDDLE HOUSING FOR APPROXIMATELY 5.41 ACRES BEING LOTS 1-18 OF THE LITTLE KNIGHT ADDITION, GENERALLY LOCATED AT 400-513 AURORA COURT;**
- G. FROM GS GENERAL SUBURBAN TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.18 OF AN ACRE BEING BLOCK 1, LOT 3 AND 10' OF LOT 2 OF THE WEST PARK ADDITION, GENERALLY LOCATED AT 302 PARK PLACE;**
- H. FROM GS GENERAL SUBURBAN TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.36 OF AN ACRE BEING BLOCK 1, LOT 1-R2 OF THE WEST PARK ADDITION AND BLOCK D, LOT 1B & 35' OF 2 OF THE WM SPARKS SUBDIVISION, GENERALLY LOCATED AT 306 – 308 PARK PLACE;**
- I. FROM GS GENERAL SUBURBAN TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.35 OF AN ACRE BEING BLOCK 2, LOTS 8-R AND 9-R OF THE WEST PARK ADDITION, GENERALLY LOCATED AT 611 – 613 HIGHLANDS STREET;**

J. FROM GS GENERAL SUBURBAN TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.17 OF AN ACRE BEING BLOCK 3, LOT 17 OF THE WEST PARK ADDITION, GENERALLY LOCATED AT 607 MARYEM STREET, AND

K. FROM GS GENERAL SUBURBAN TO MH MIDDLE HOUSING FOR APPROXIMATELY 0.16 OF AN ACRE BEING BLOCK 1, LOT 2-R1 OF THE WEST PARK ADDITION, GENERALLY LOCATED AT 301 LUTHER STREET;

BY 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 **Exhibits “A” through “K”** 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 27th day of July, 2023.

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-4 Multi-Family to MH Middle Housing:

Block 1, Lot 11 of The Cooner Addition

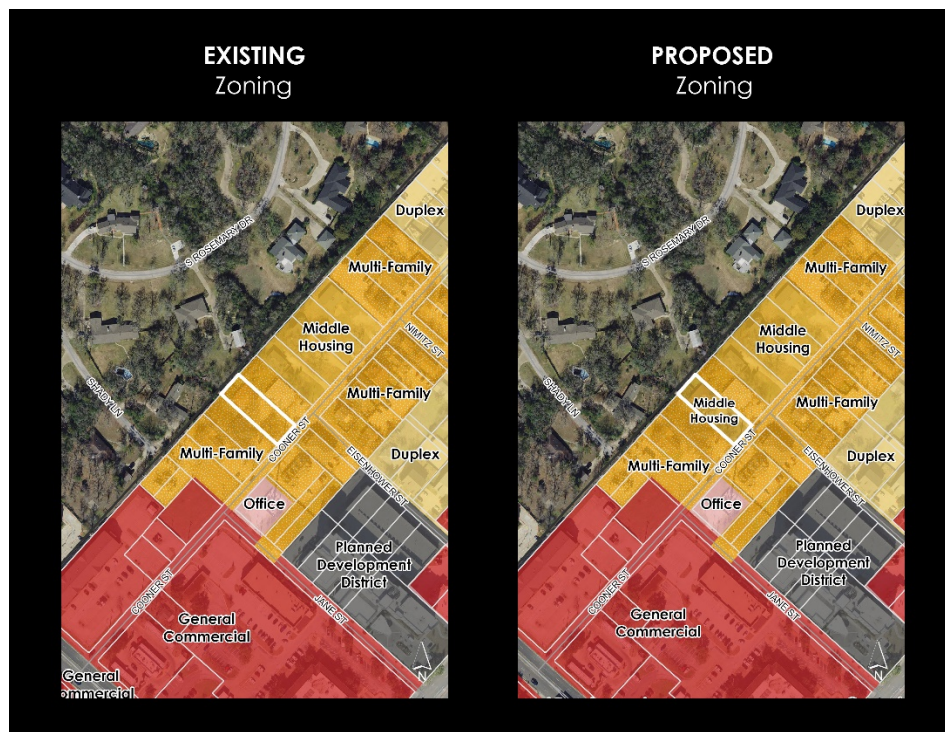
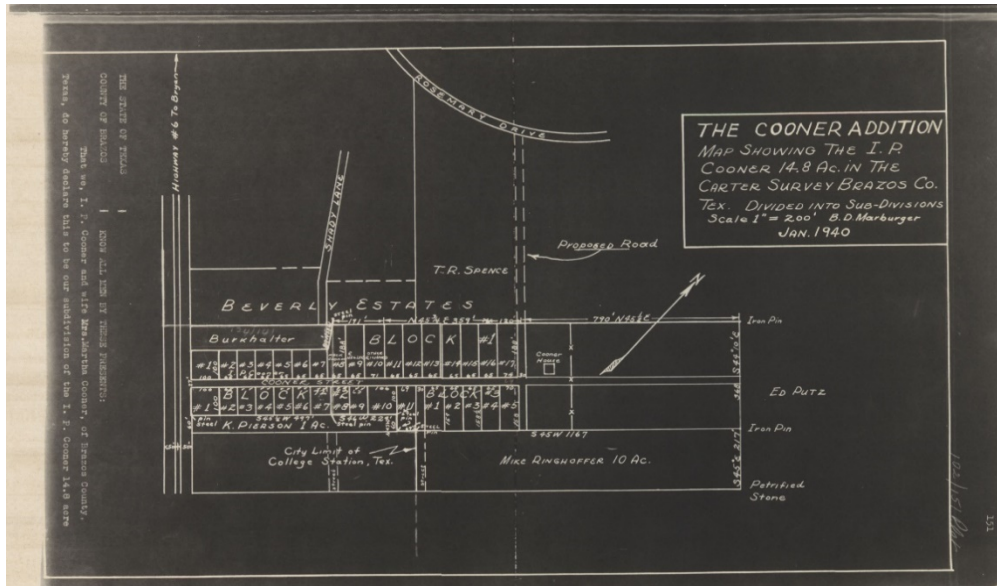


Exhibit B

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 D Duplex to MH Middle Housing:

Block 5, Lot 2 of The Cooner Addition

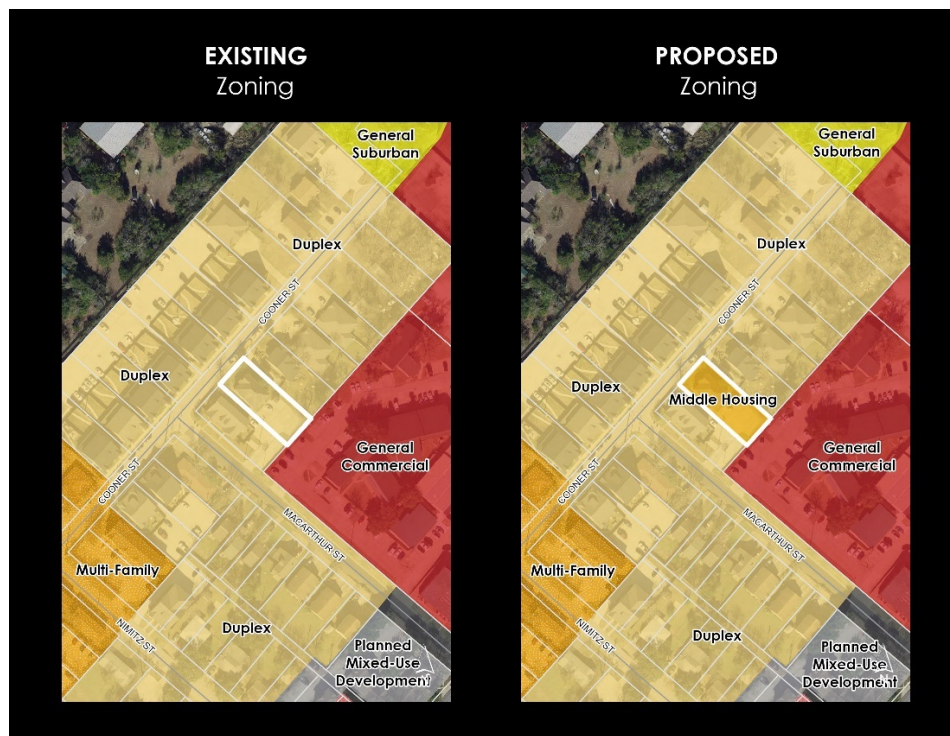
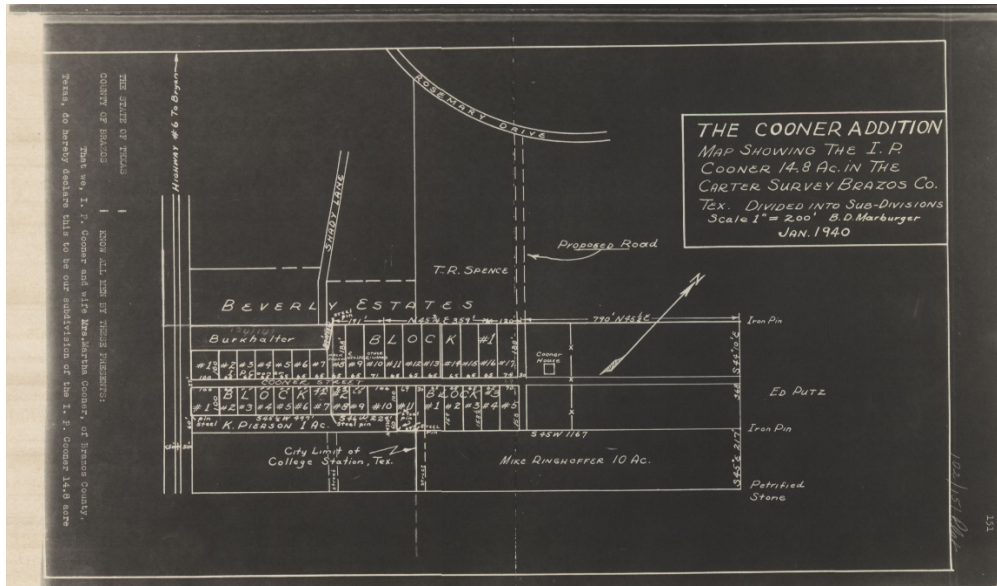


Exhibit C

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 properties are rezoned from D Duplex to MH Middle Housing:

Block 5, Lots 6 - 8 of The Cooner Addition

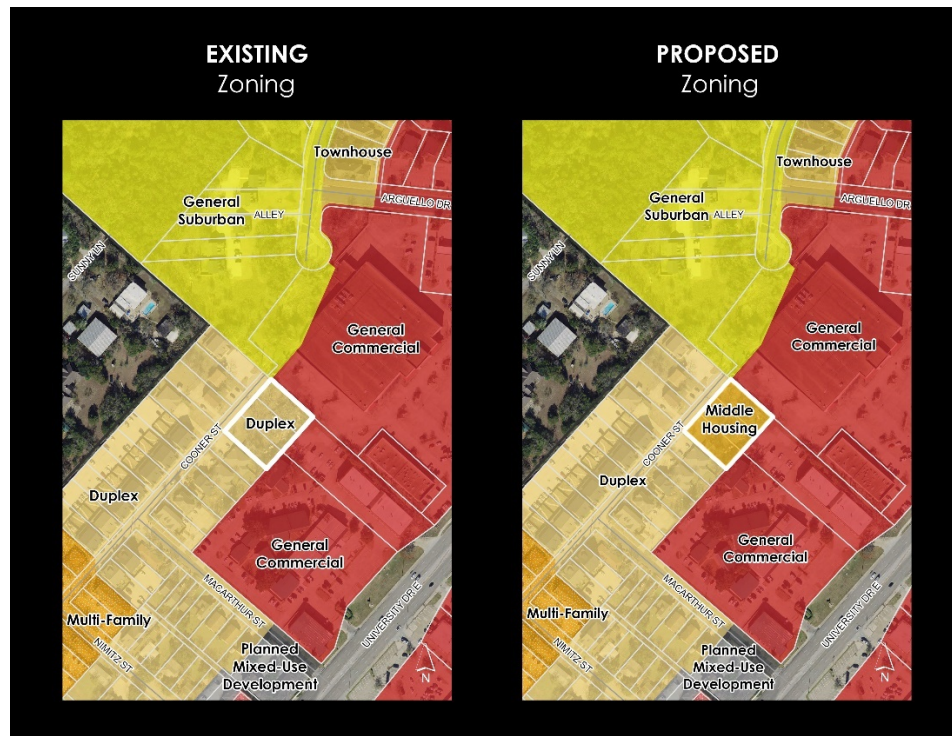
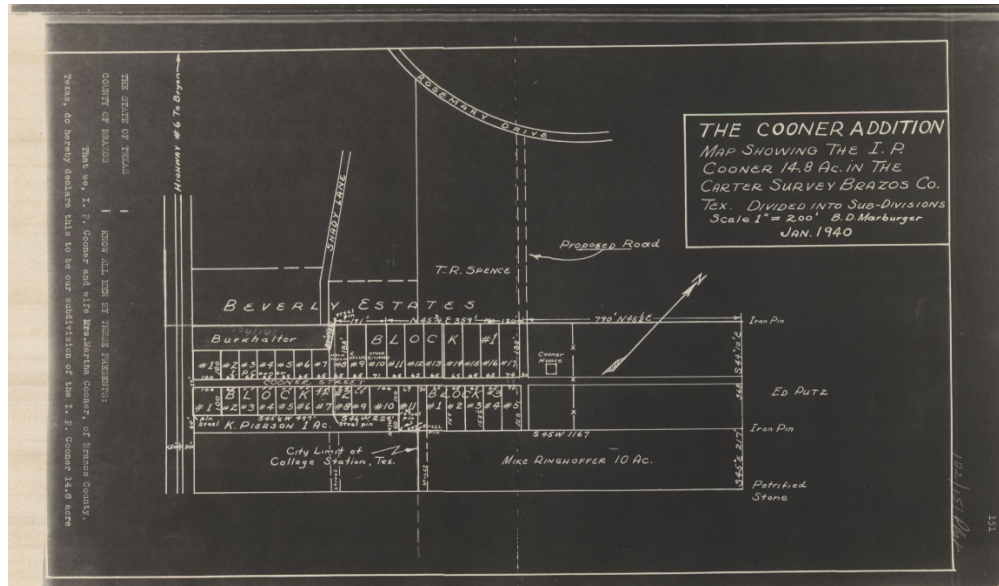


Exhibit D

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 D Duplex to MH Middle Housing:

Block 1, Lot 28 of The Cooner Addition

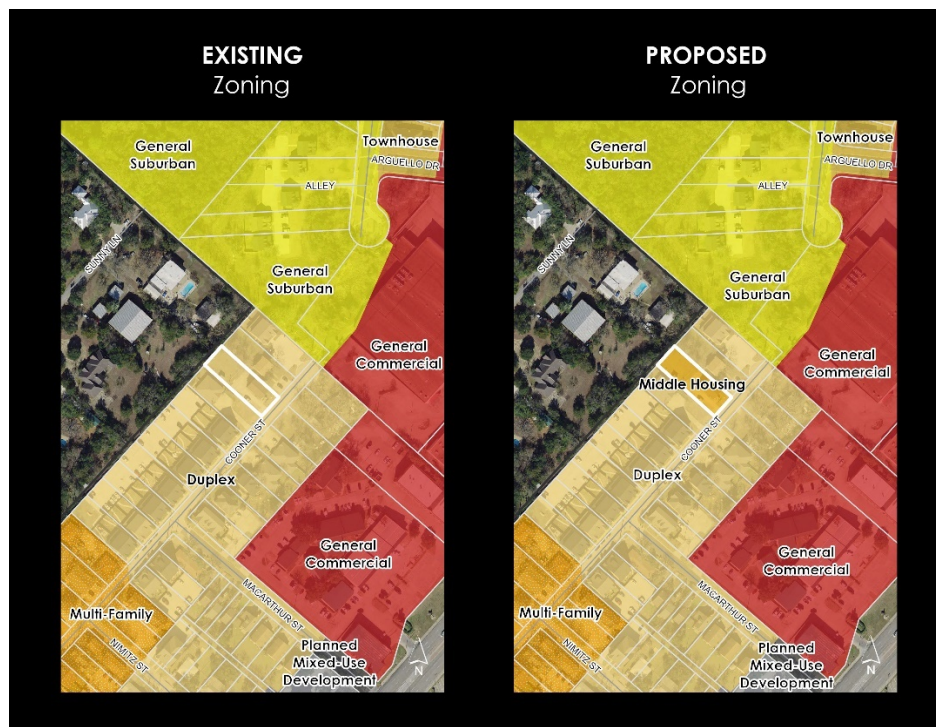
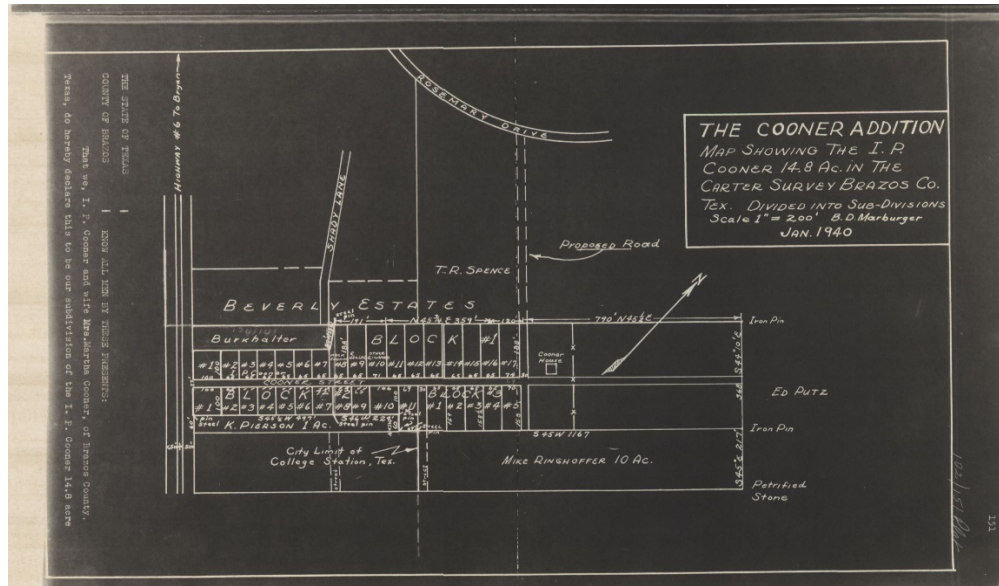


Exhibit E

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 D Duplex to MH Middle Housing:

Block E, Lot 6 (10' of) & Lot 7 of The College Vista Subdivision

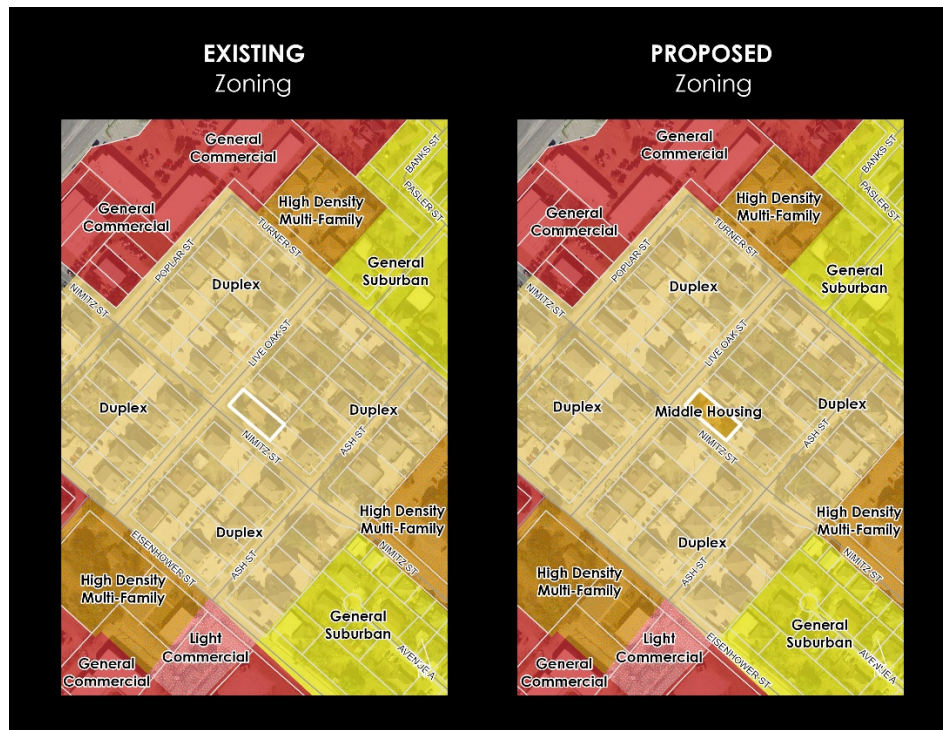
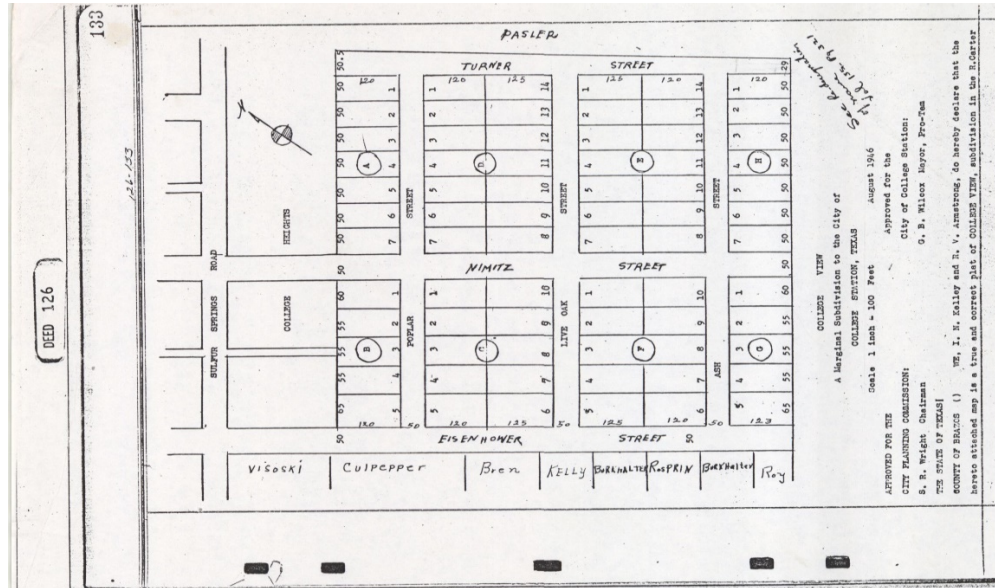


Exhibit F

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 properties are rezoned from D Duplex to MH Middle Housing:

Lots 1-18 of Little-Knight Addition

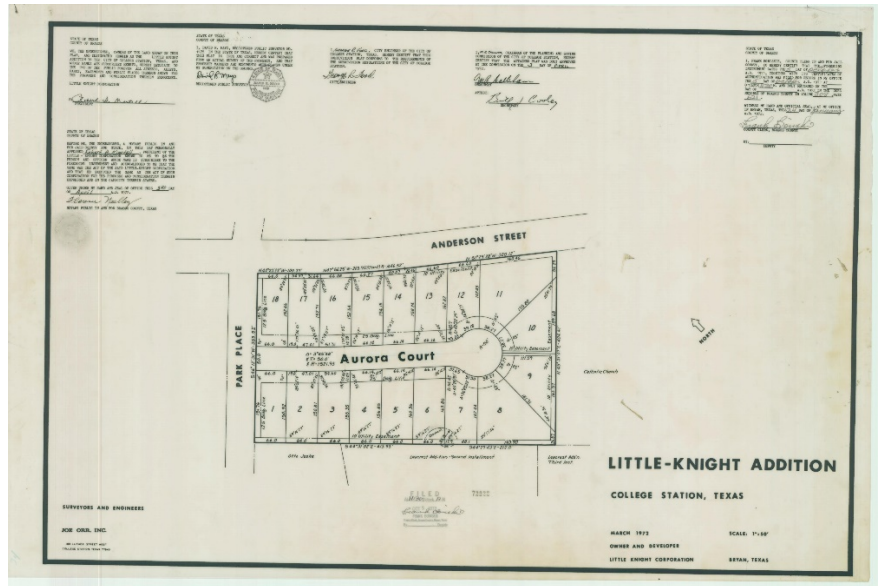


Exhibit G

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 GS General Suburban to MH Middle Housing:

Block 1, Lot 3 And 10’ of Lot 2 of West Park Addition



Exhibit H

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 properties are rezoned from GS General Suburban to MH Middle Housing:

Block 1, Lot 1-R2 of West Park Addition and Block D, Lot 1B & 35’ of 2 of the WM Sparks Subdivision



Exhibit I

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 properties are rezoned from GS General Suburban to MH Middle Housing:

Block 2, Lots 8-R and 9-R of West Park Addition



Exhibit J

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 GS General Suburban to MH Middle Housing:

Block 3, Lot 17 of West Park Addition



Exhibit K

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 GS General Suburban to MH Middle Housing:

Block 1, Lot 2-R1 of West Park Addition



Areas for Privately-Initiated Rezoning
to MH Middle Housing

1

SUNNY LN

REZ2023-000014

REZ2023-000013

S ROSEMARY DR

COONER ST

REZ2023-000012

MACARTHUR ST

REZ2023-000011

NIMITZ ST

UNIVERSITY DR E

COONER ST

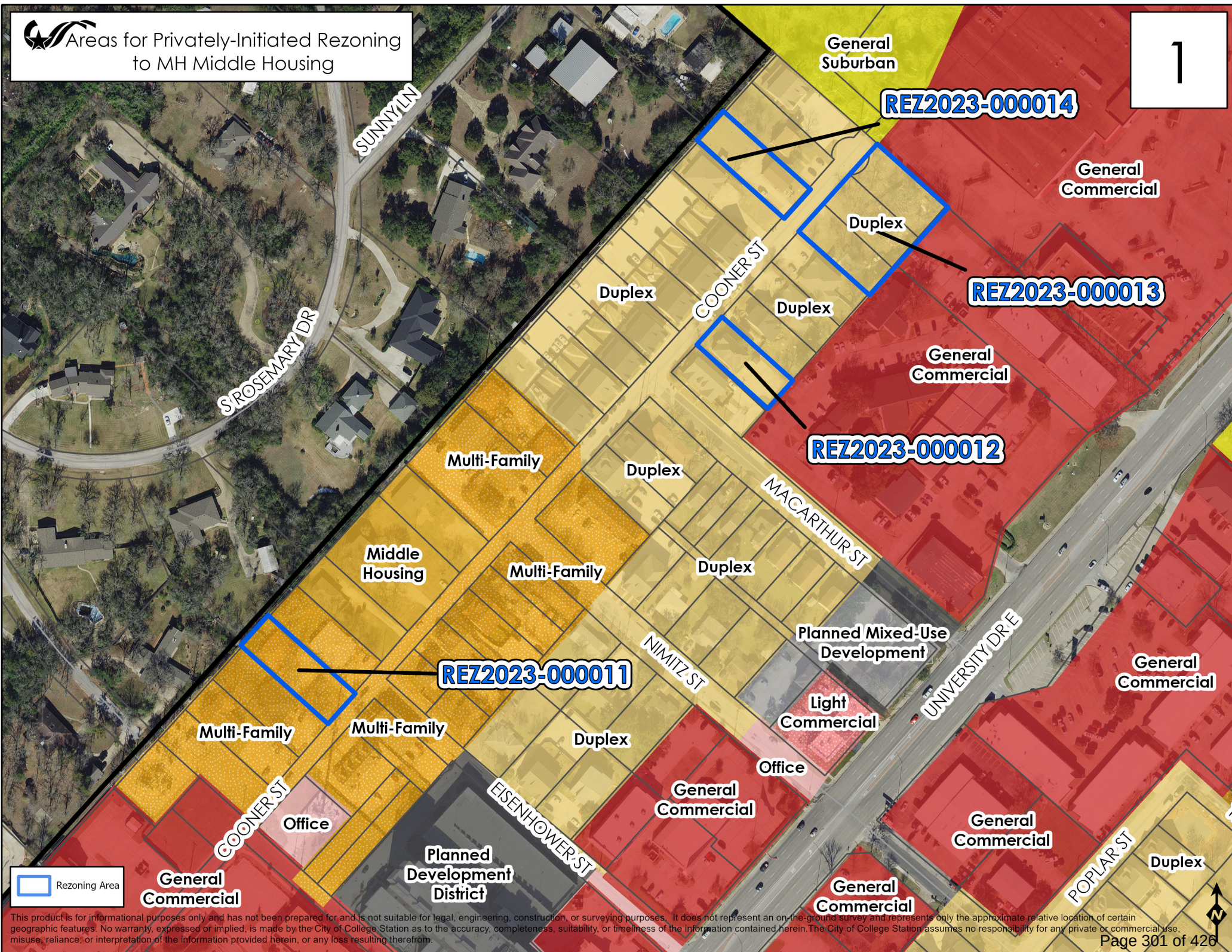
EISENHOWER ST

POPLAR ST

Rezoning Area

Areas for Privately-Initiated Rezoning
to MH Middle Housing

1



REZONING REVIEW CRITERIA FOR AREA #1

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject properties are designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential and are within the Texas Avenue and University Drive Redevelopment Area, which is currently undergoing a small area planning process. For the Mixed Residential land use, the Comprehensive Plan provides the following:

Areas appropriate for a mix of moderate density residential development including, townhomes, duplexes, small multifamily buildings (3-12 units), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows the original character to evolve. These areas may serve as buffers between more intense multifamily residential or mixed-use development and suburban residential or neighborhood conservation areas.

The intent of the Mixed Residential land use is to accommodate a walkable pattern of small lots, small blocks, and well-connected street patterns and support neighborhoods with a mix of housing types and where larger or more dense housing is located near community facilities or adjacent to commercial or neighborhood centers. This rezoning request aligns with that vision.

Being located between the more intense Urban Center future land use designation and a single-family neighborhood located in the City of Bryan, these lots will provide a buffer between the commercial buildings along University Drive and the single family neighborhood to the north.

The zoning districts that are generally appropriate within this land use include middle housing, duplex, townhouse, and limited-scale single-family zoning.

The Comprehensive Plan discusses residential infill and redevelopment in both *Chapter 3, Strong Neighborhoods* and *Chapter 8, Managed Growth*. The plan states, “infill development offers the opportunity to mediate and enhance the identity of neighborhoods.” The plan goes on to mention that infill and redevelopment can create more viable and vibrant places throughout the city. Residential infill, especially in areas of the city designated for redevelopment, improves the efficiency of land use while enhancing the character of surrounding neighborhoods. As a tool for redevelopment, the request allows a mix of housing types with smaller lot sizes and is aligned with the Comprehensive Plan. The MH Middle Housing zoning district allows a variety of housing options by right—detached single-family homes, duplexes, townhomes, Courtyard houses, small and medium multiplexes, and live-work units.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

207 and 511 Cooner St. are surrounded by single family homes in the City of Bryan to the north, and duplexes to the east, south and west. 502 Cooner St. is surrounded by duplex properties to the north, east and west and commercial property to the south. 510 – 514 Cooner St. is surrounded by duplex properties to the north and west and commercial properties to the east and

south. The residential uses permitted in MH Middle Housing zoning district are appropriate in the context of the area as it would allow for additional, medium-density residential development in the area.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject properties makes them suitable for many of the permitted uses within the MH Middle Housing Zoning district, including single-family houses, duplexes, and townhomes, although some uses would require replatting of the lots to fit the dimensional standards of the MH Middle Housing zoning district.

4. Whether there are available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure are adequate to support the needs of this development. Drainage and any other infrastructure required with the site development will be designed and constructed following the B/CS Unified Design Guidelines. The subject properties will take access from Cooner Street which is a local street. A change in parking configuration could be needed depending on the development standards at the time of redevelopment. The proposed rezoning is expected to generate less than 150 trips in any peak hour; therefore, a TIA was not required.

5. The marketability of the property:

The uses allowed by the proposed zoning district are generally marketable for the area. The applicant states that the properties are not as marketable under the current zoning district as the current developments are considered shared housing which is more marketable and appropriate under the MH Middle Housing zoning district. Shared housing uses are not permitted under the current zoning of R-4 Multi-Family or D Duplex. Allowing the rezoning will allow them to legally establish the shared housing uses and come into compliance if they are able to meet the standards set forth in the Unified Development Ordinance.

STAFF RECOMMENDATION

Staff recommends approval of this request.

BACKGROUND INFORMATION – REZ2023-000011

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 19

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	N/A (City of Bryan)	N/A (City of Bryan)	Single-family Residential
South	Urban Center	R-4 Multi-Family	Cooner Street (local street)
East	Mixed Residential	R-4 Multi-Family	Duplex
West	Mixed Residential	R-4 Multi-Family	Duplex

DEVELOPMENT HISTORY

Annexed: April 1951
Zoning: R-1 Single Family Residential (upon annexation 1951)
R-4 Multi-Family (1978)
Final Plat: Cooner Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 207 COONER STREET REZONING

Address: 207 COONER ST

Legal Description: COONER, BLOCK 1, LOT 11

Total Acreage: 0.28

Applicant:: MITCHELL & MORGAN

Property Owner: MADISON HILLS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The duplex at 207 Cooner Street falls under this definition. We are requesting a rezoning to MH Middle Housing so that the property and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing duplexes contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

Uses permitted under R-4 Multi-Family are suitable for the property and for what is developed in the vicinity. MH Middle Housing would more accurately reflect what is on the ground and will be more consistent with the areas recommended for MH Middle Housing zoning.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

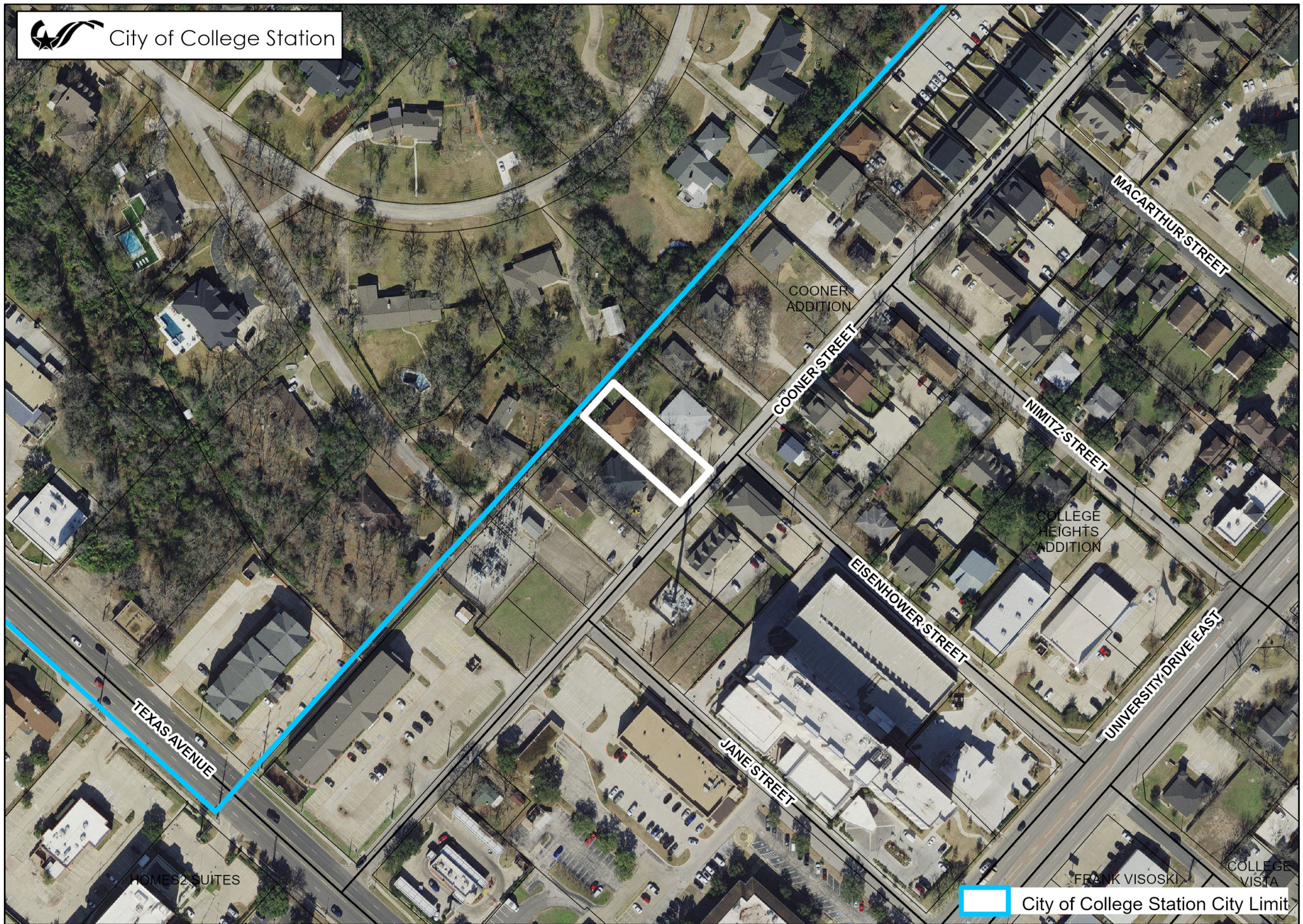
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

R-4 Multi-Family uses are marketable for the property; however development of multi-family uses on a lot by lot basis are not as fiscally successful without the consolidation of multiple properties. Because most of the lots are developed individually, R-4 Multi-family on this one single lot is not financially feasible. Uses permitted under the MH Middle Housing zoning district are more appropriate on individual lots.

List any other reasons to support this zone change.

N/A



City of College Station City Limit

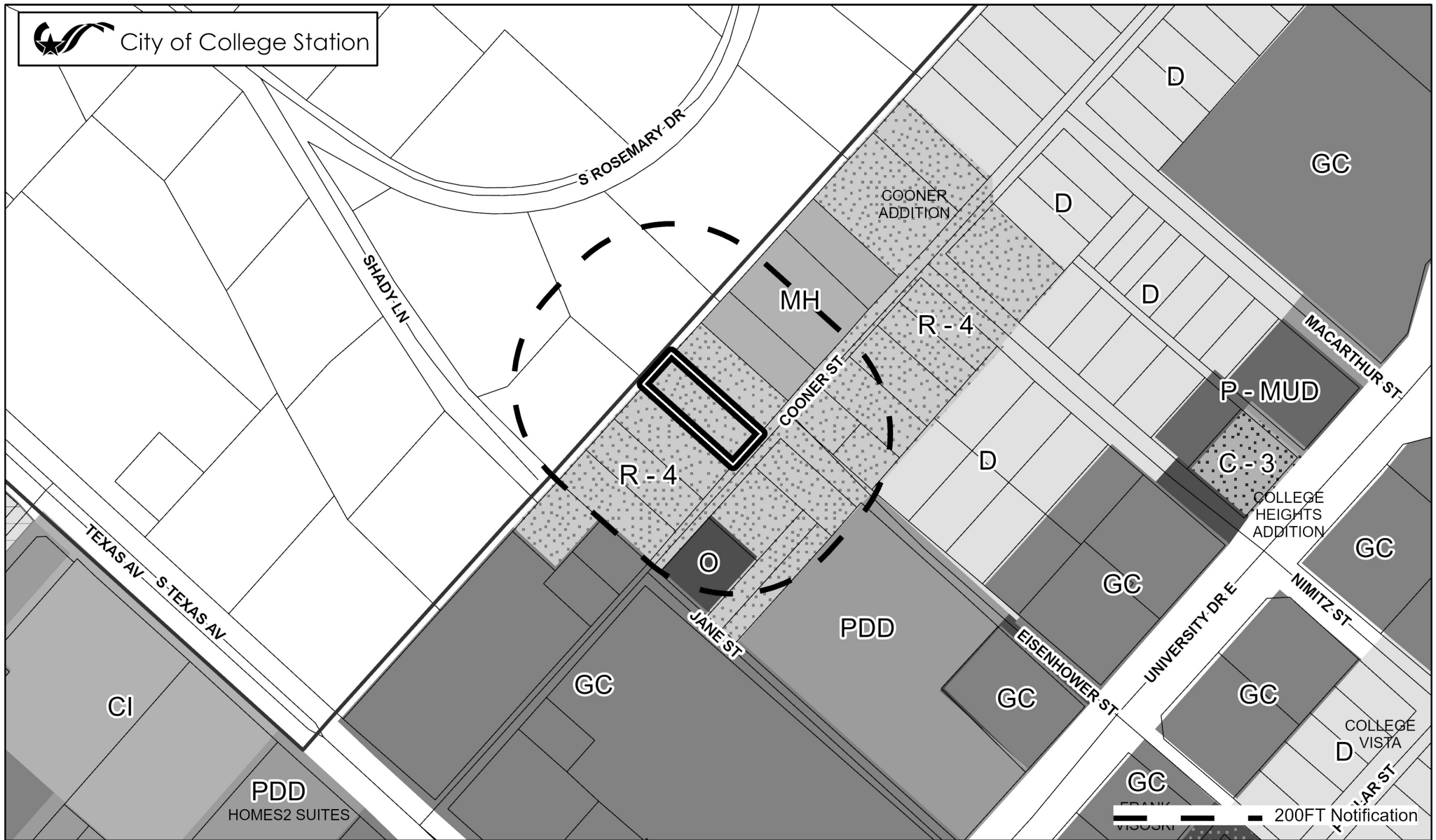


0 175 350 Feet

207 COONER STREET REZONING

Case:
REZ2023-000011

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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



0 210 420 Feet

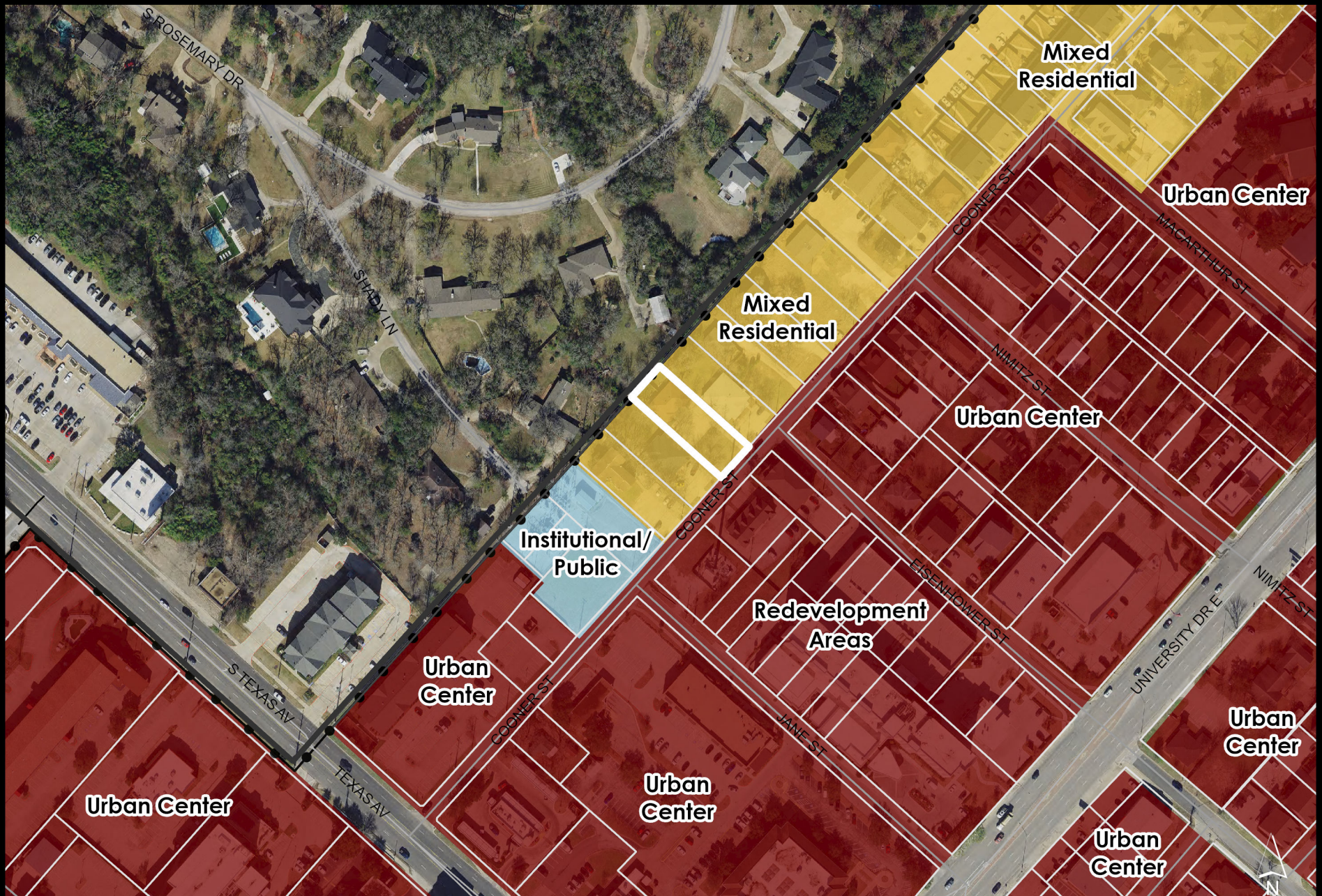
207 COONER STREET REZONING

Case:
REZ2023-000011

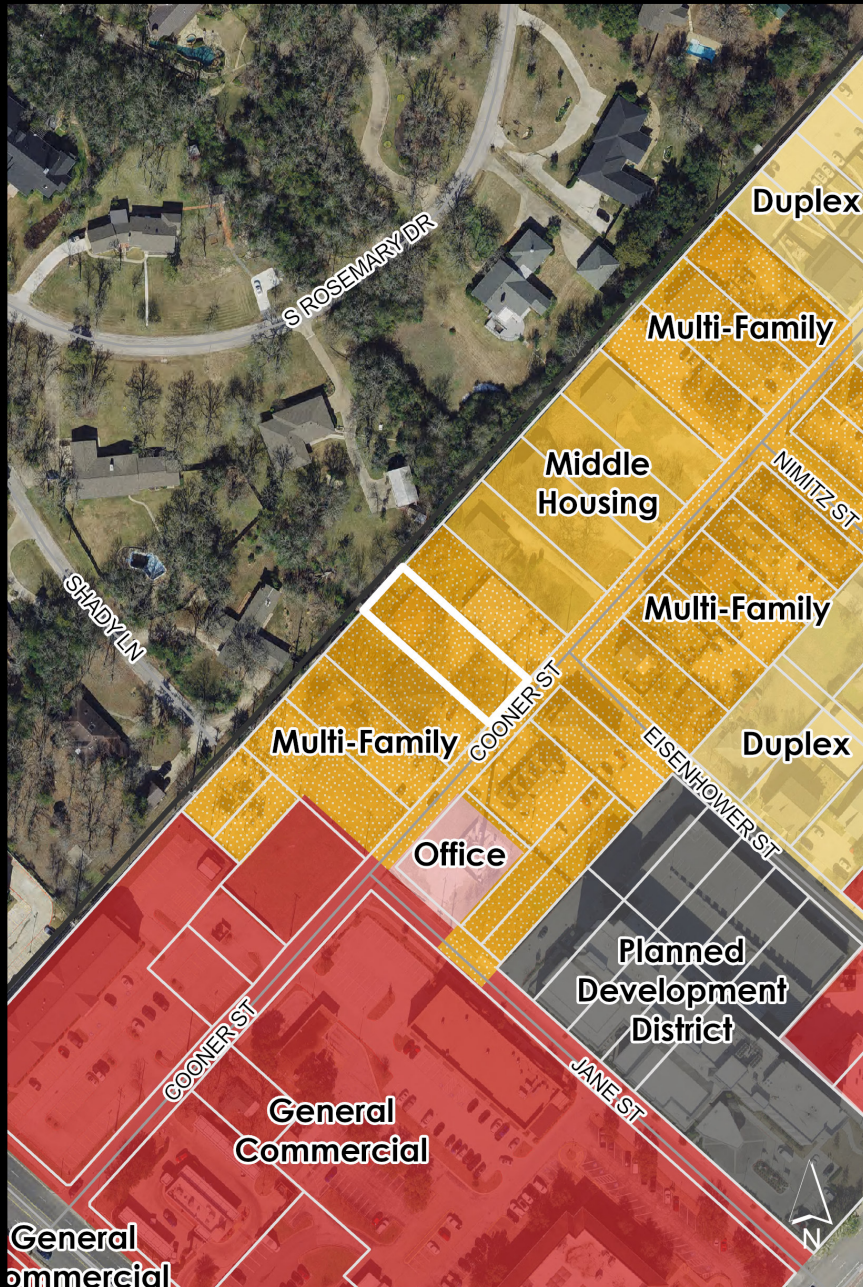
REZONING

EXISTING

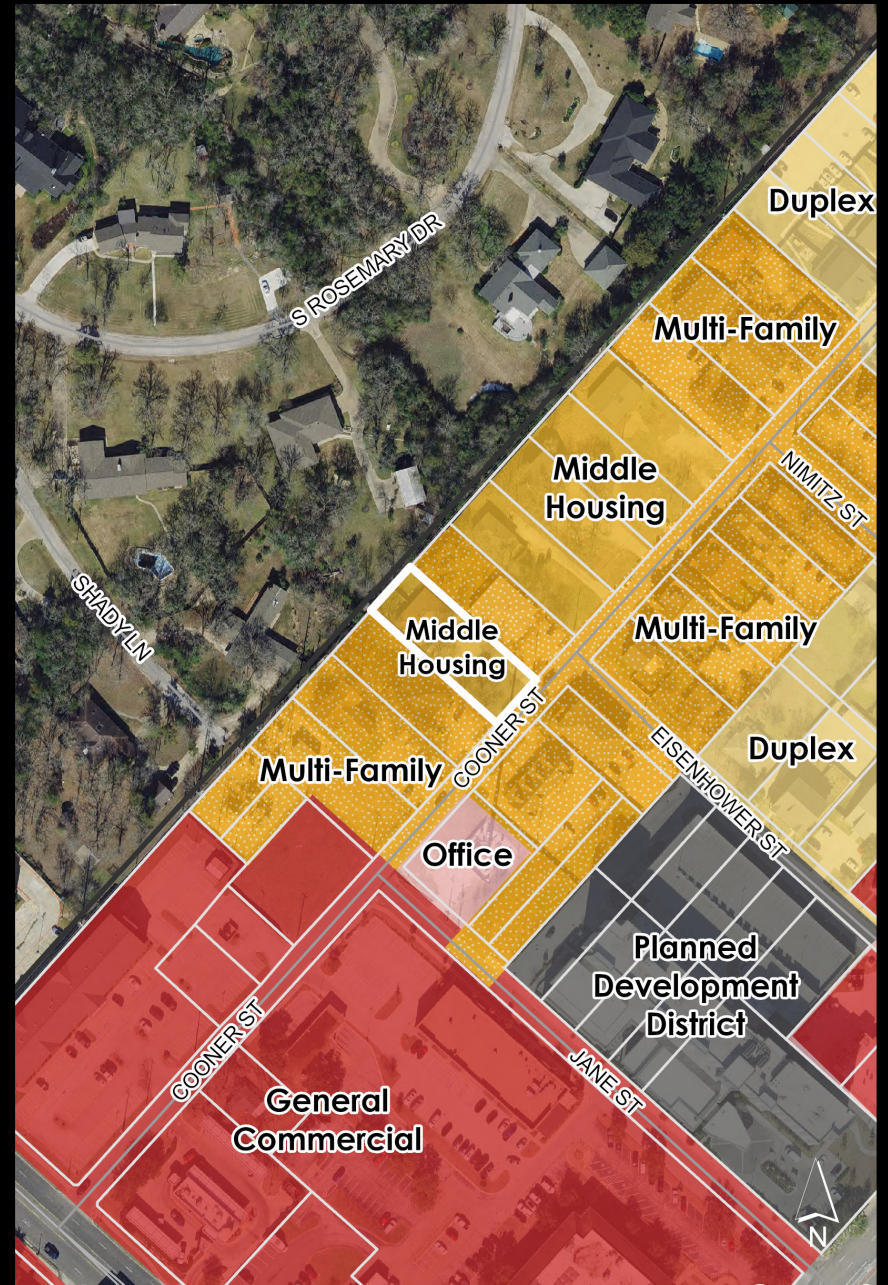
Future Land Use



EXISTING Zoning



PROPOSED Zoning



BACKGROUND INFORMATION – REZ2023-000012

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 22

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	D Duplex	Cooner Street (local street)
South	Urban Center	GC General Commercial	Shopping Center
East	Mixed Residential	D Duplex	Single Family Residential
West	Mixed Residential	D Duplex	Duplex

DEVELOPMENT HISTORY

Annexed: April 1951
Zoning: R-2 Duplex Residential (1953)
D Duplex (renamed in 2013)
Final Plat: Cooner Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 502 COONER ST REZONING

Address: 502 COONER ST

Legal Description: COONER, BLOCK 5, LOT 2

Total Acreage: 0.21

Applicant:: MITCHELL & MORGAN

Property Owner: VICTORIA HILLS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The duplex at 502 Cooner Street falls under this definition. We are requesting a rezoning to MH Middle Housing so that the property and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing duplex contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

D Duplex is suitable by use, but the duplex in this request was recently classified as Shared Housing and is no longer permitted in the D Duplex zoning district. D Duplex is no longer suitable on this property.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

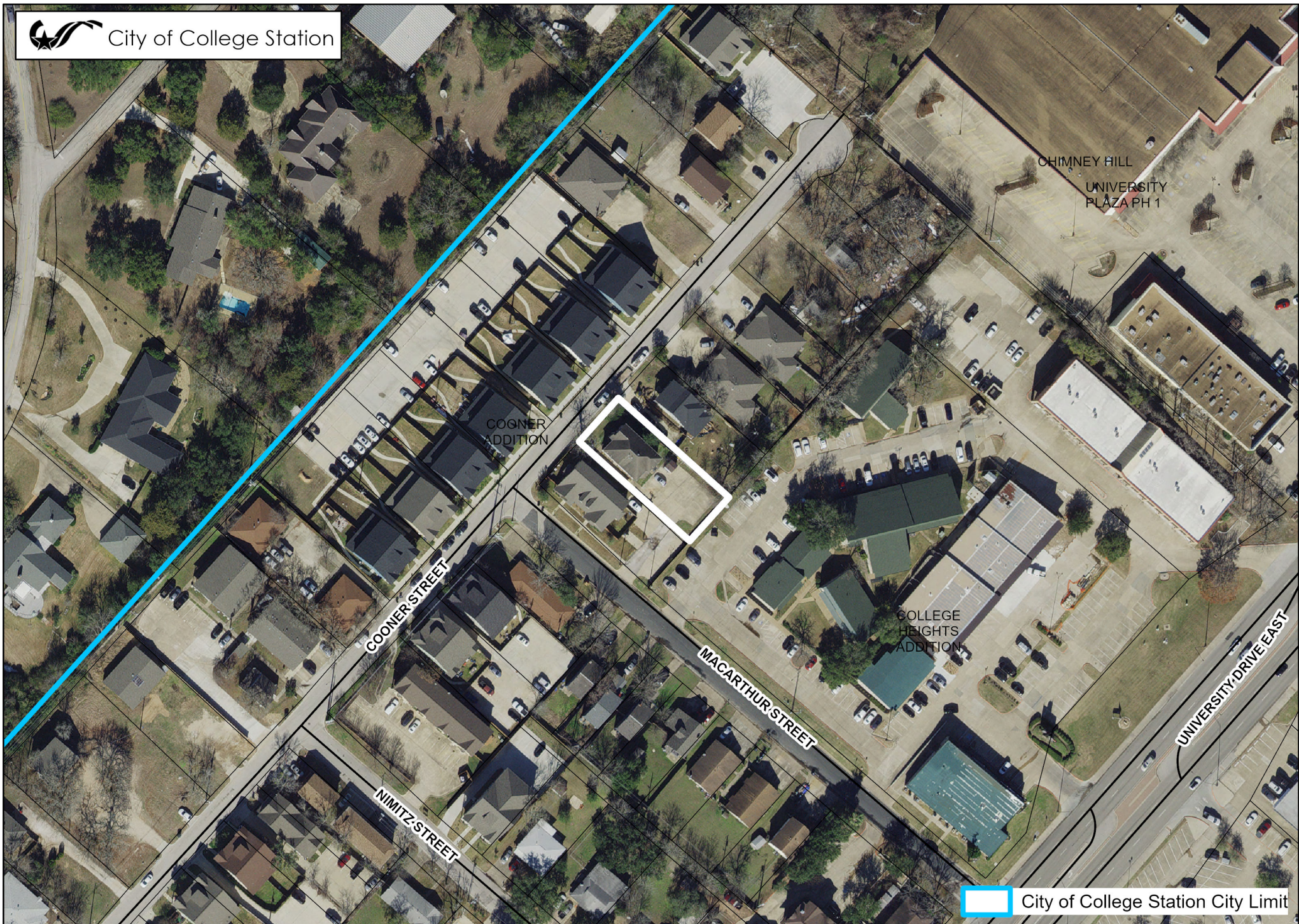
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

D Duplex is marketable for the property. However, the residential units on this property are now considered Shared Housing units, which are more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A



0 125 250 Feet

502 COONER ST REZONING

Case:
REZ2023-000012

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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



0 210 420 Feet

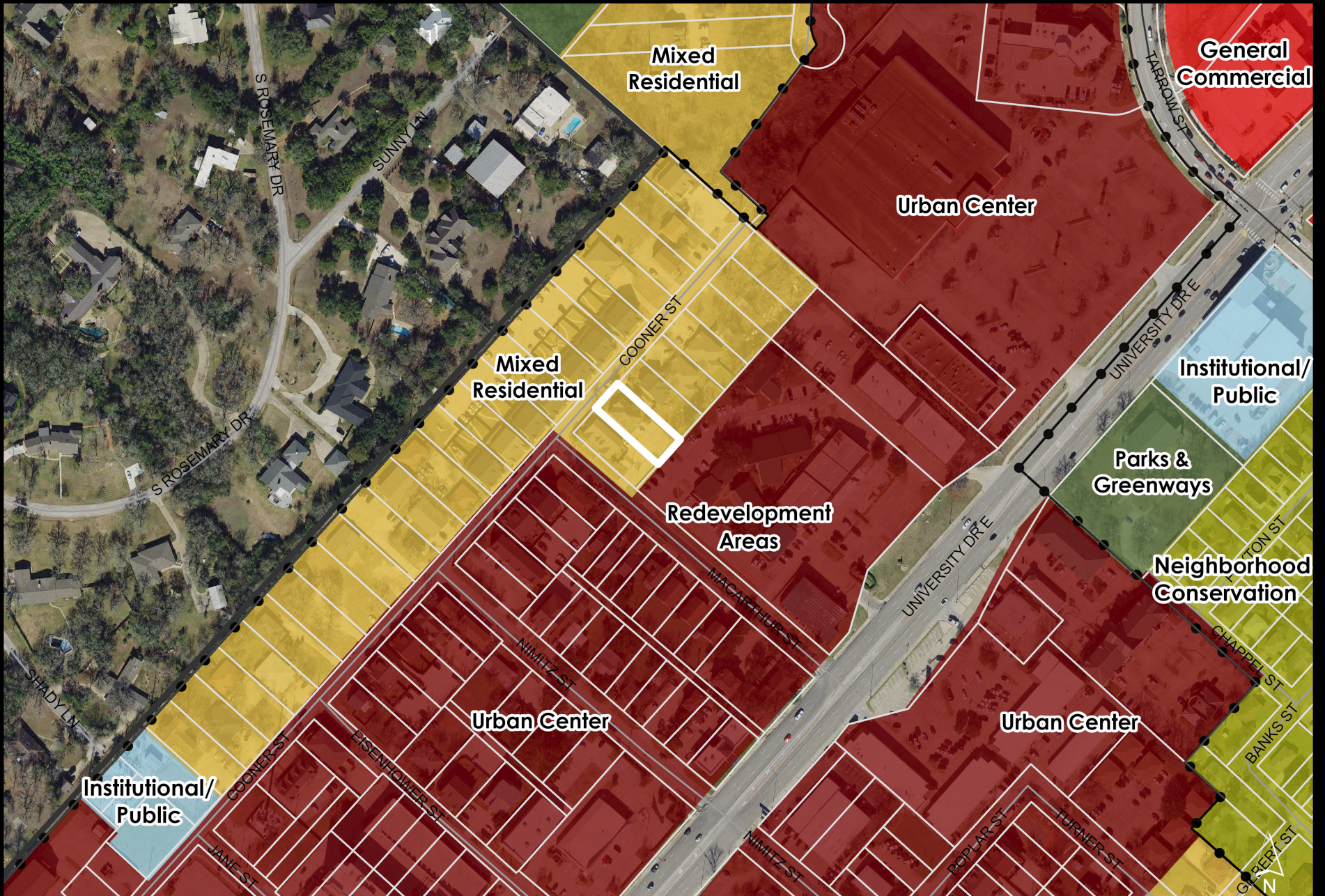
502 COONER ST REZONING

Case:
REZ2023-000012

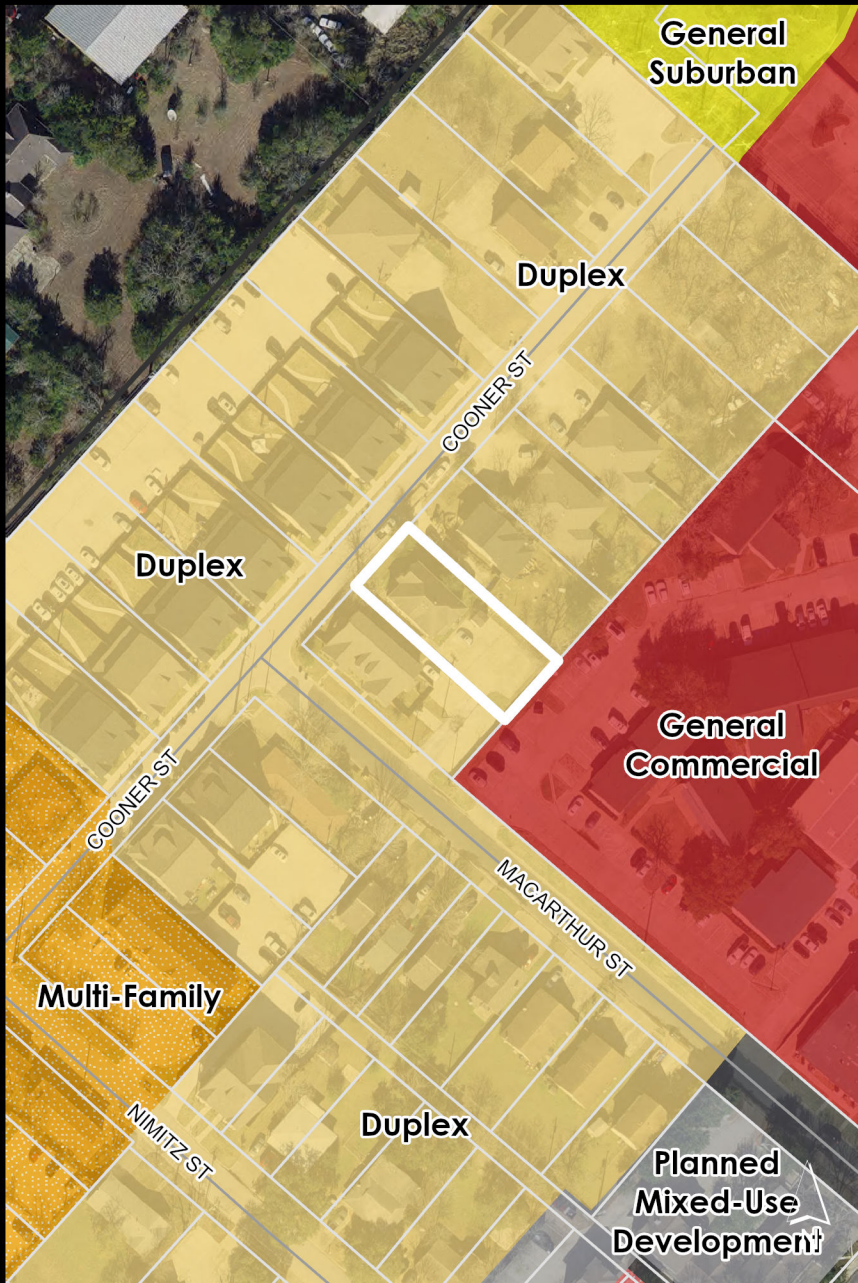
REZONING

EXISTING

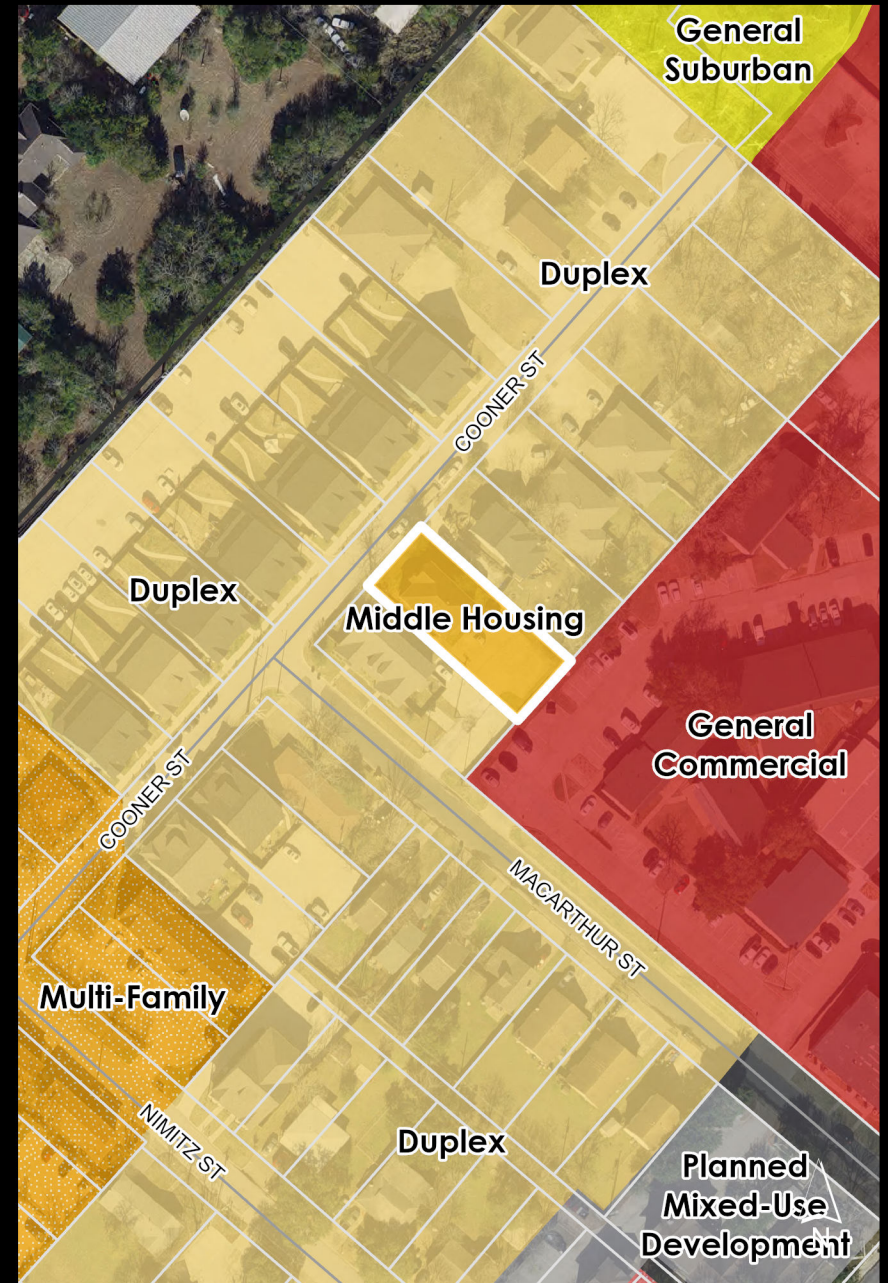
Future Land Use



EXISTING Zoning



PROPOSED Zoning



BACKGROUND INFORMATION – REZ2023-000013

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 18

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	D Duplex	Cooner Street (local street)
South	Urban Center	GC General Commercial	Shopping Center
East	Urban Center	GC General Commercial	Shopping Center
West	Mixed Residential	D Duplex	Duplex

DEVELOPMENT HISTORY

Annexed: April 1951
Zoning: R-2 Duplex Residential (1953)
D Duplex (renamed in 2013)
Final Plat: Cooner Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 510-514 COONER STREET REZONING

Address: 510 COONER ST

Legal Description: COONER, BLOCK 5, LOT 6

Total Acreage: 0.66

Applicant:: MITCHELL & MORGAN

Property Owner: FUJI HILLS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The duplexes at 510, 512, and 514 Cooner Street fall under this definition. We are requesting a rezoning to MH Middle Housing so that the properties and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates these properties are designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing duplexes contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

D Duplex is suitable by use, but the duplexes in this request were recently classified as Shared Housing and are no longer permitted in the D Duplex zoning district. D Duplex is no longer suitable on the properties.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

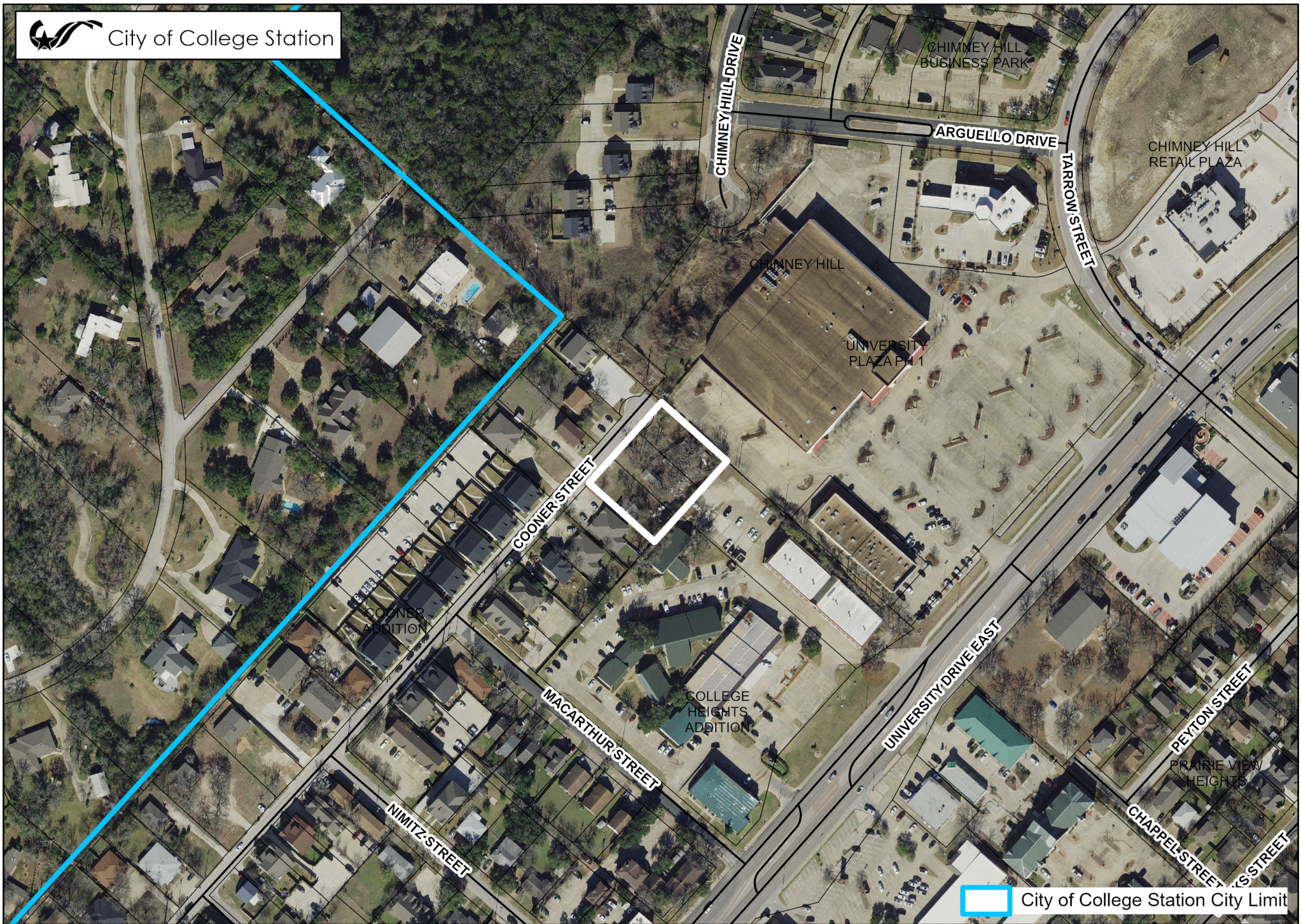
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

D Duplex are marketable for the properties. However, the residential units on the properties are now considered Shared Housing units, which are more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A



City of College Station City Limit



0

212.5

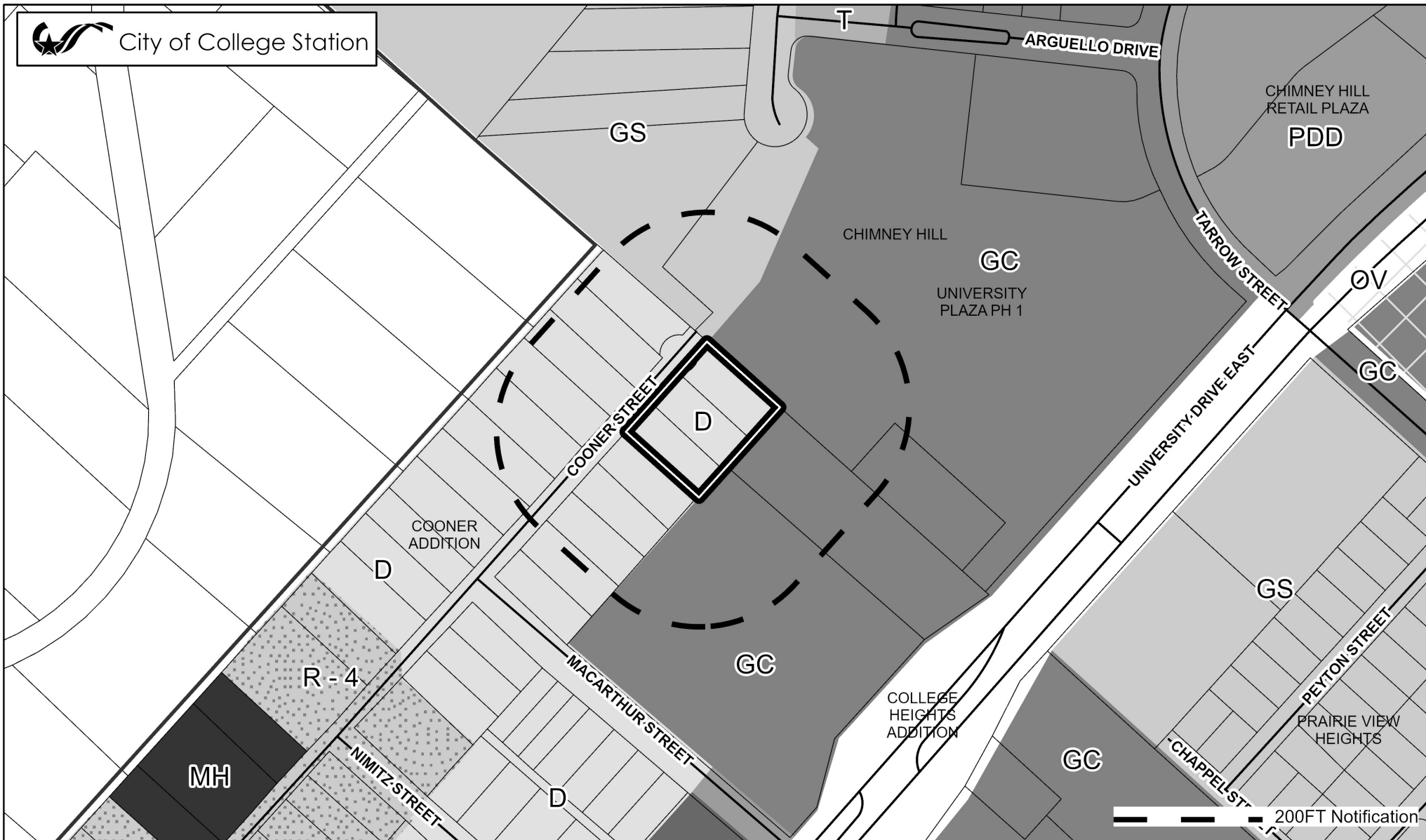
425

Feet

510-514 COONER STREET REZONING

Case:
REZ2023-000013

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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



0 210 420 Feet

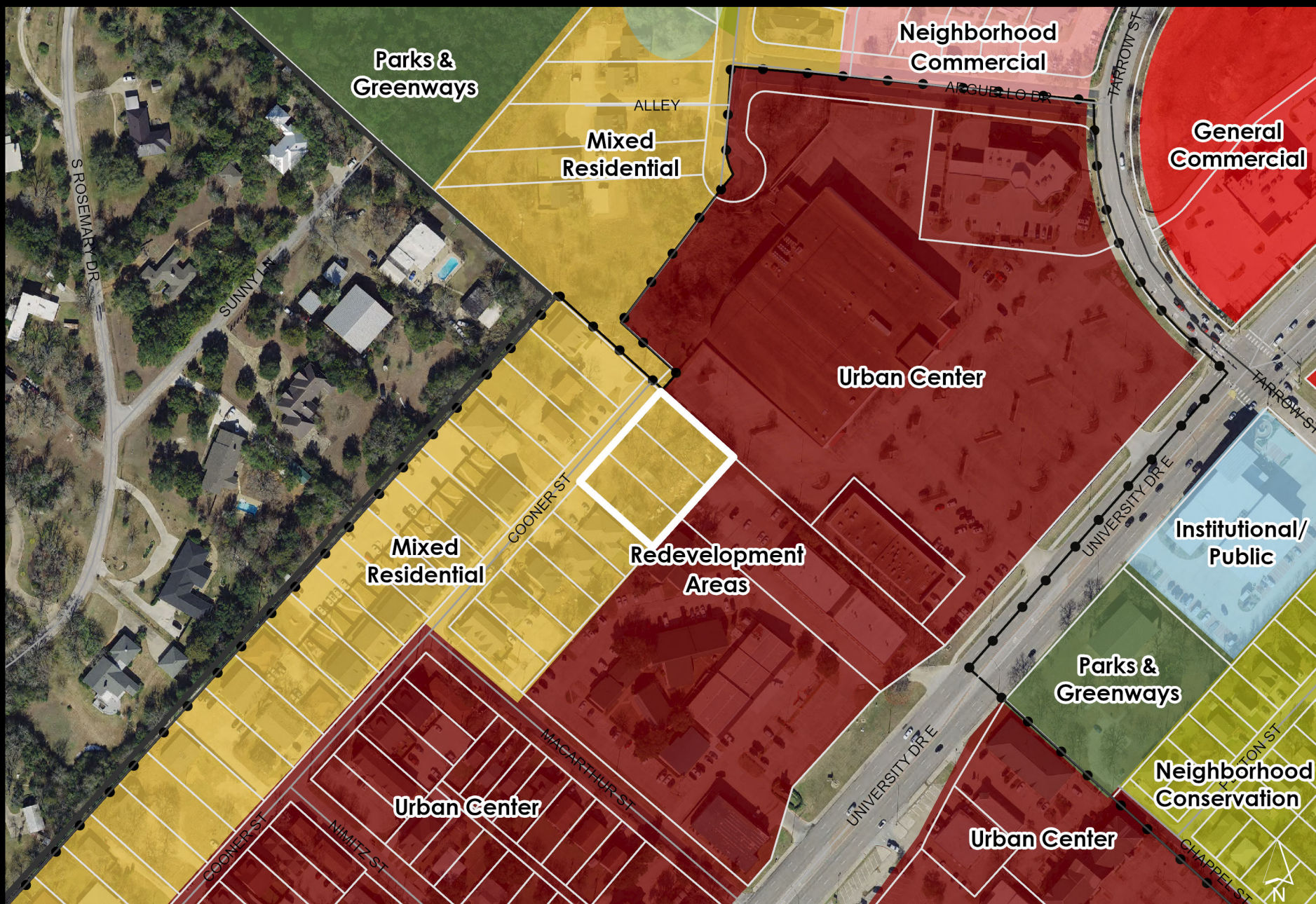
510-514 COONER STREET REZONING

Case:
REZ2023-000013

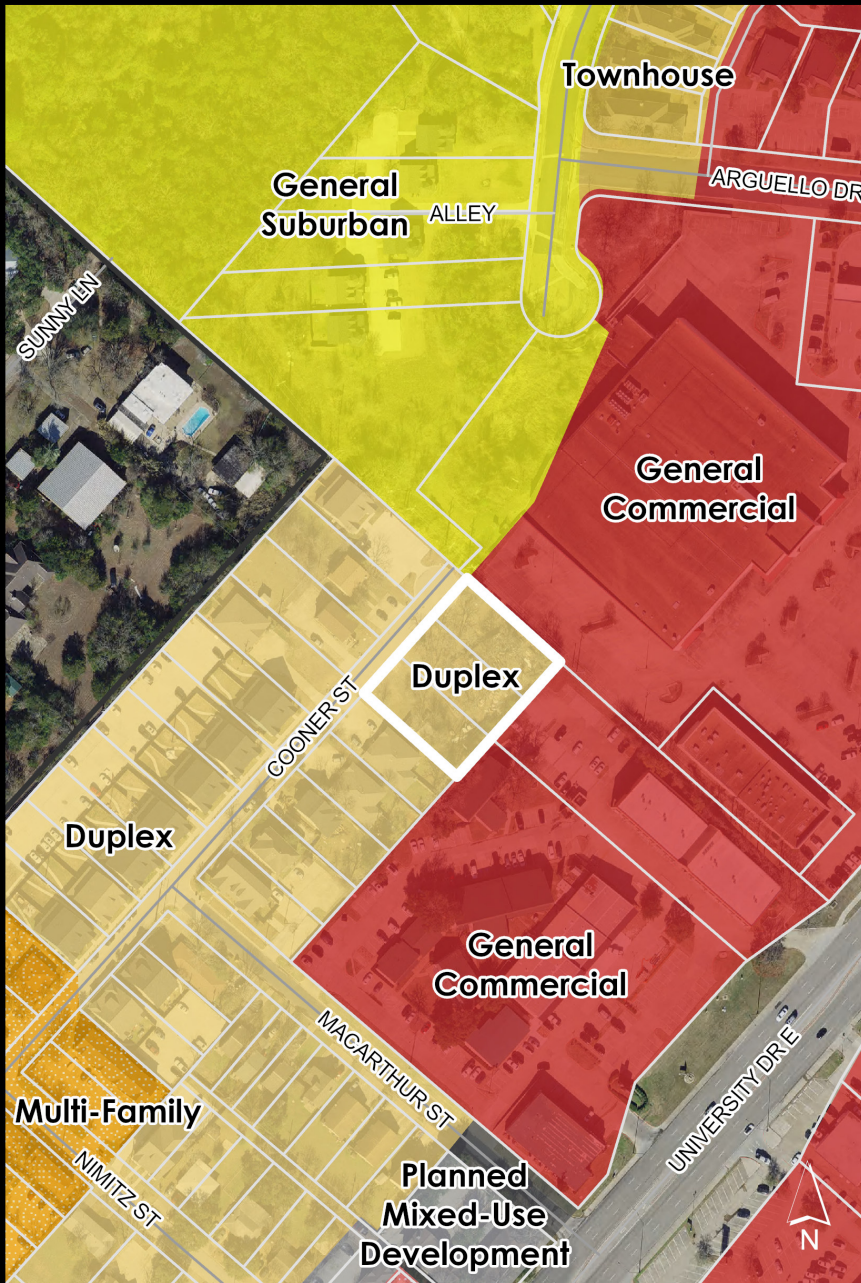
REZONING

EXISTING

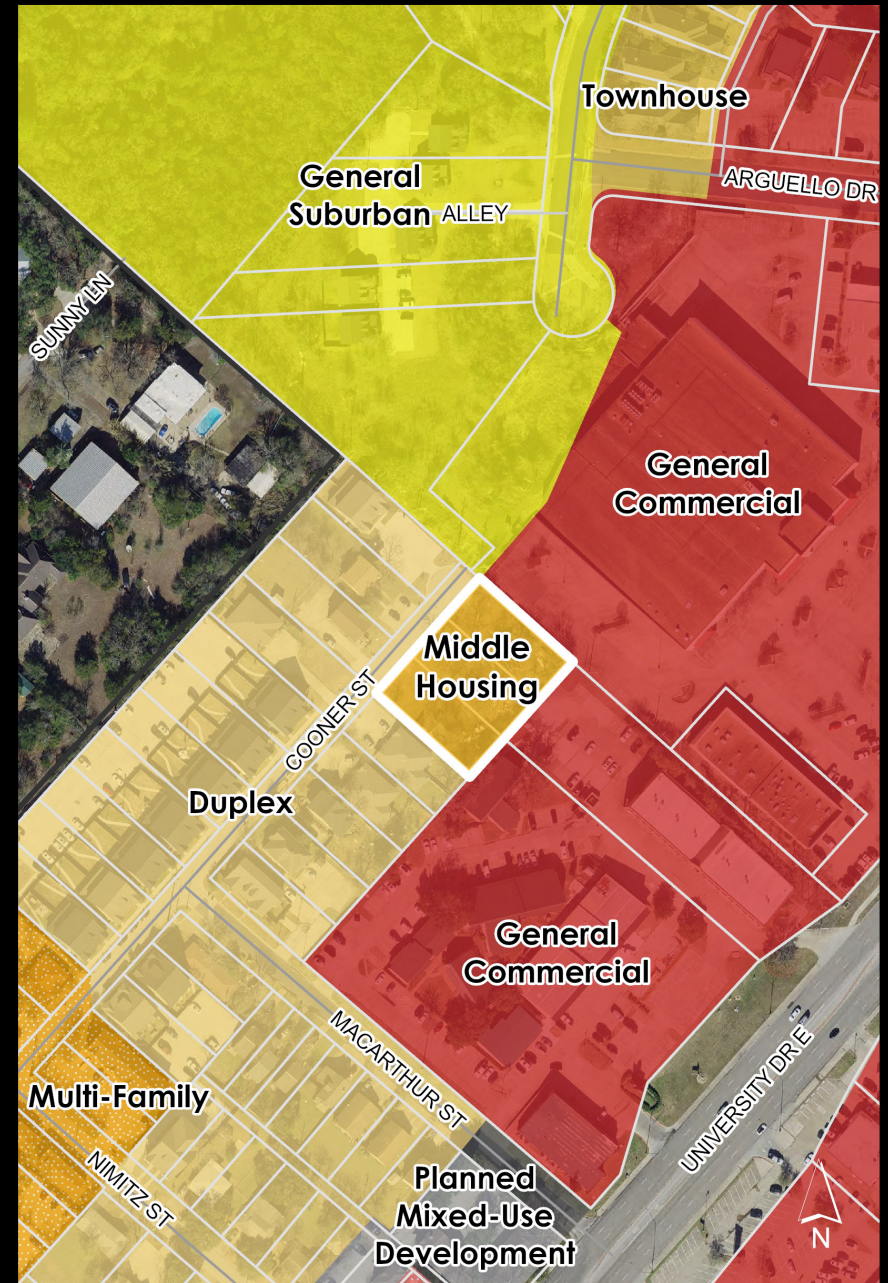
Future Land Use



EXISTING Zoning



PROPOSED Zoning



BACKGROUND INFORMATION – REZ2023-000014

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 18

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	N/A (City of Bryan)	N/A (City of Bryan)	Single-family Residential
South	Mixed Residential	D Duplex	Cooner Street (local street)
East	Mixed Residential	D Duplex	Duplex
West	Mixed Residential	D Duplex	Duplex

DEVELOPMENT HISTORY

Annexed: April 1951
Zoning: R-2 Duplex Residential (1953)
D Duplex (renamed in 2013)
Final Plat: Cooner Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 511 COONER REZONING

Address: 511 COONER ST

Legal Description: COONER, BLOCK 1, LOT 28

Total Acreage: 0.27

Applicant:: MITCHELL & MORGAN

Property Owner: VICTORIA HILLS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The duplex at 511 Cooner Street falls under this definition. We are requesting a rezoning to MH Middle Housing so that the property and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing duplexes contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

D Duplex is suitable by use, but the duplex in this request was recently classified as Shared Housing and is no longer permitted in the D Duplex zoning district. D Duplex is no longer suitable on the property.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

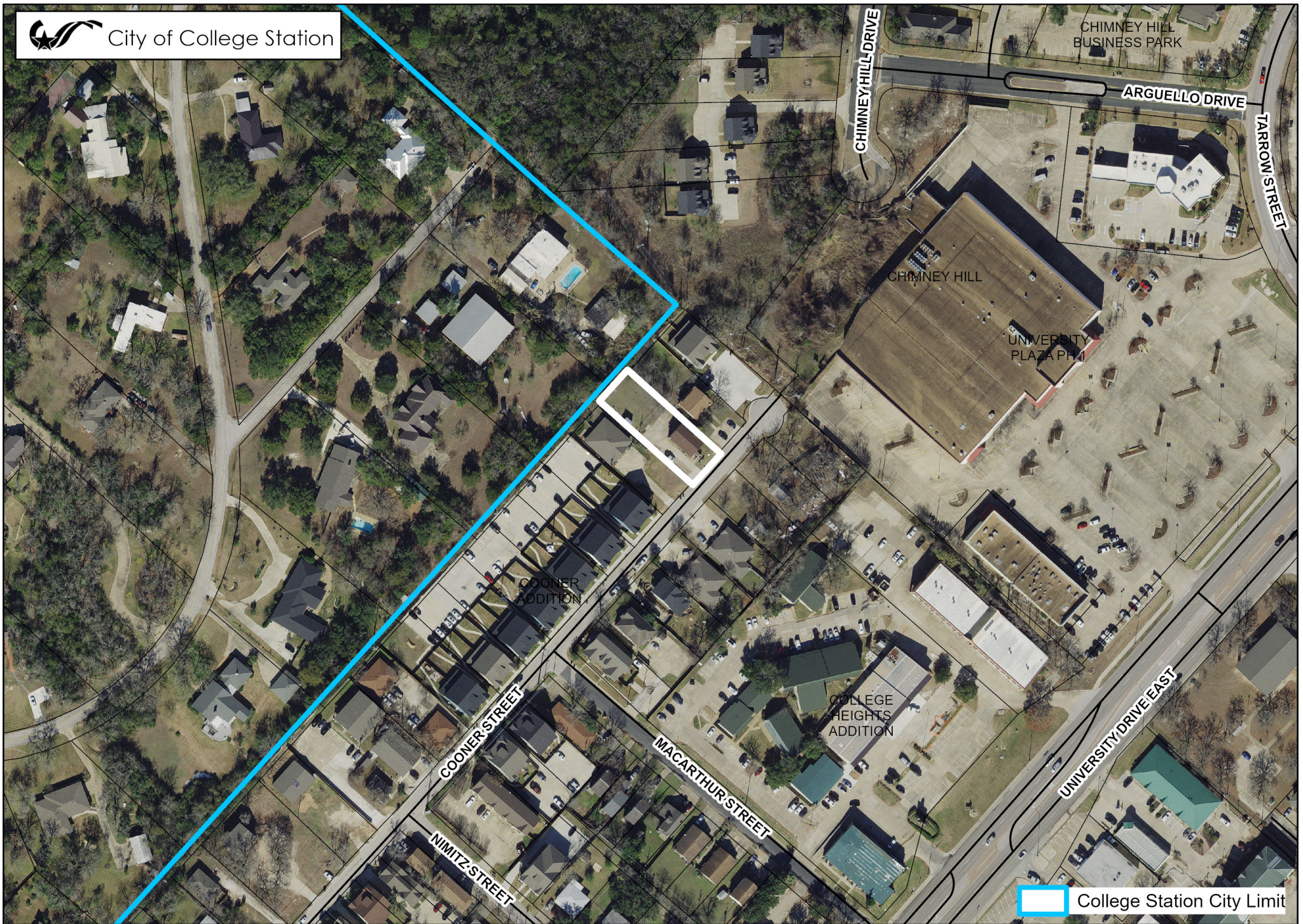
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

D Duplex is marketable for the property. However, the residential units on the property are now considered Shared Housing units, which are more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A



College Station City Limit

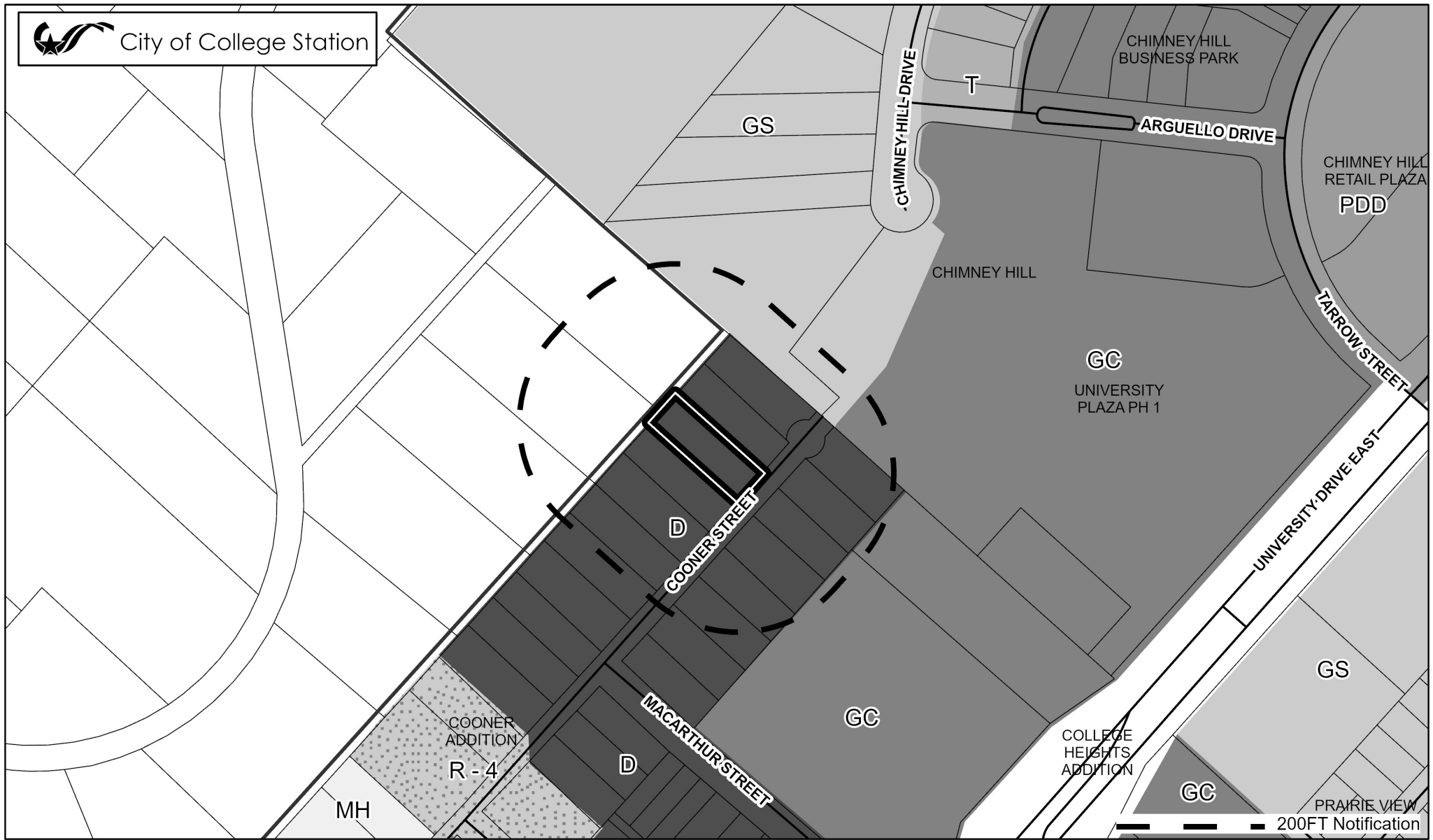


0 180 360 Feet

511 COONER REZONING

Case:
REZ2023-000014

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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



0 210 420 Feet

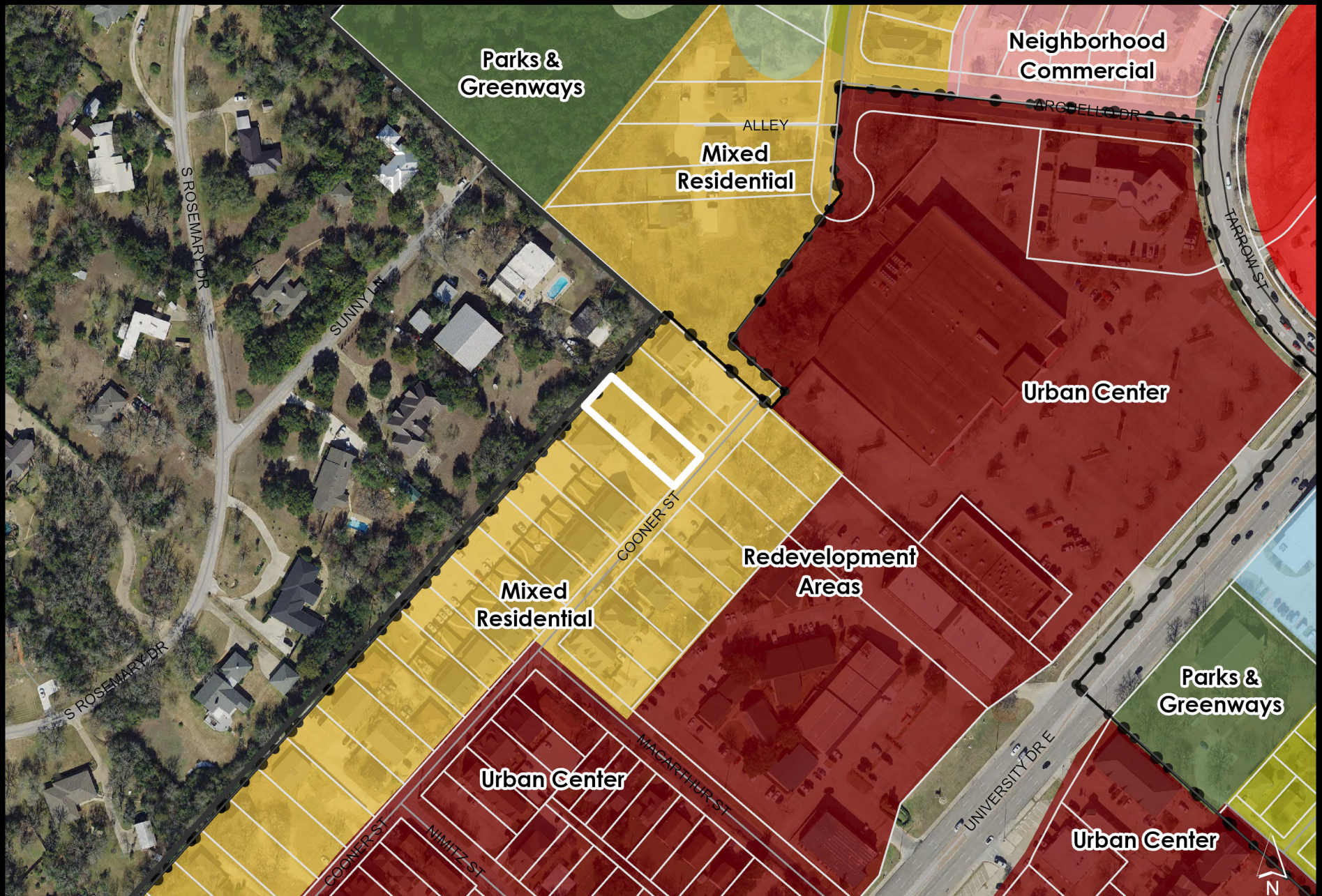
511 COONER REZONING

Case:
REZ2023-000014

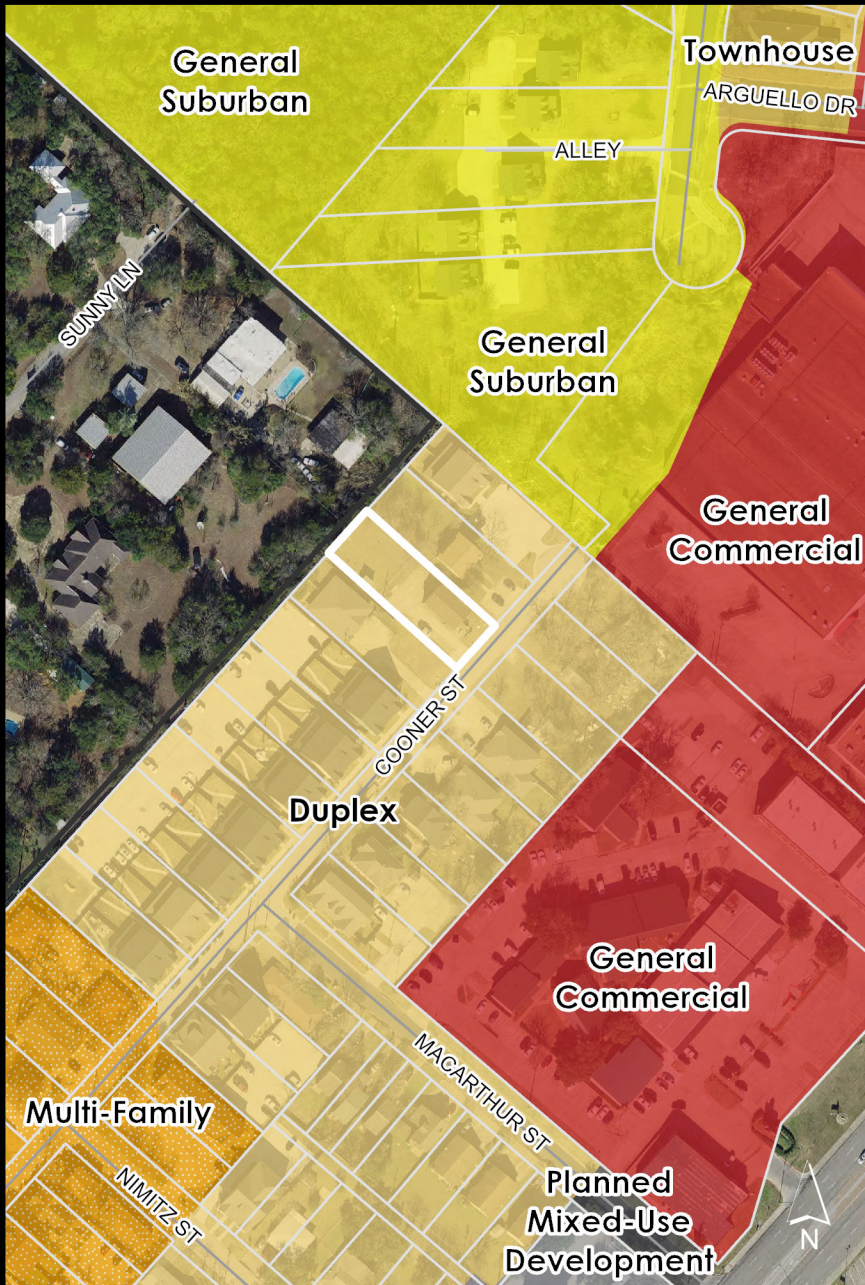
REZONING

EXISTING

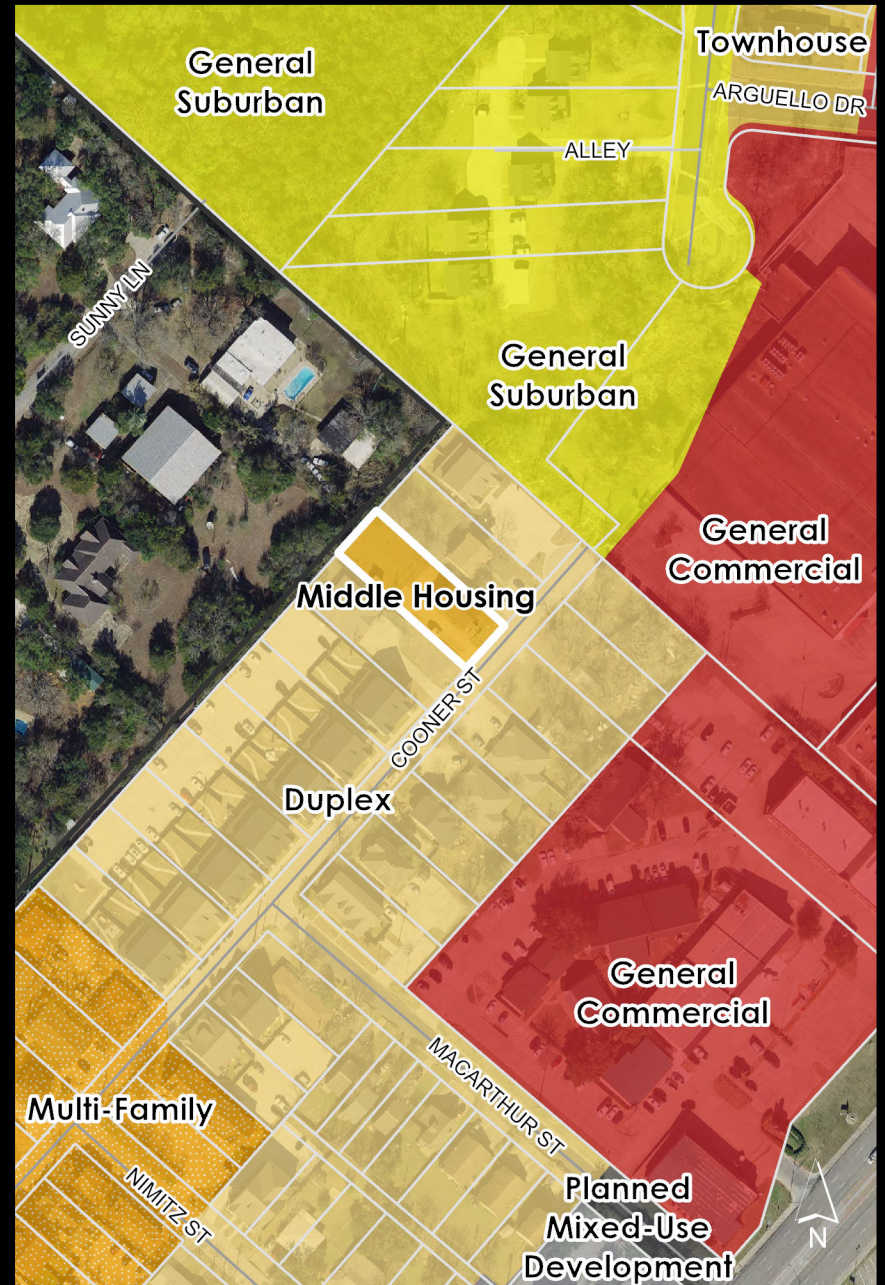
Future Land Use

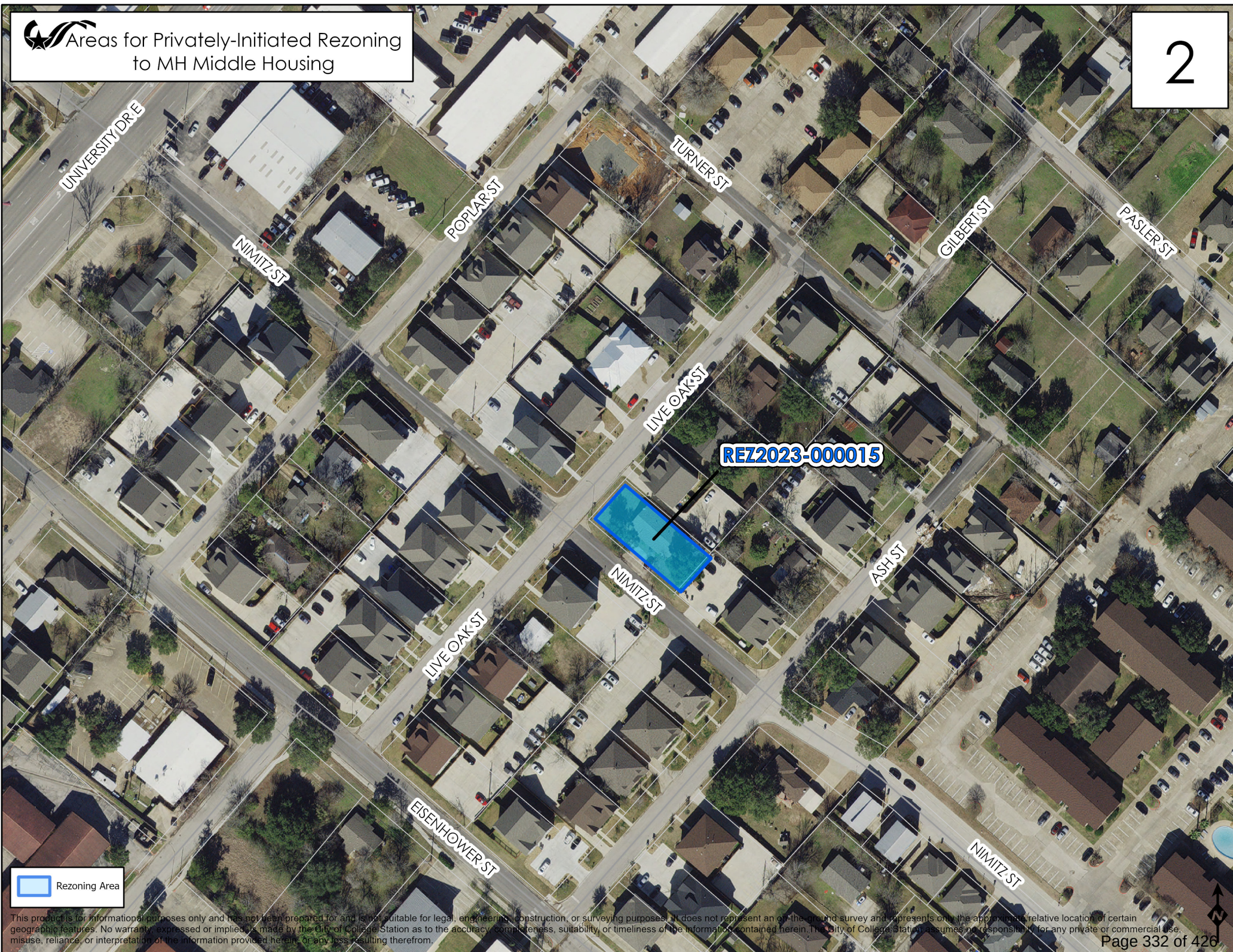


EXISTING Zoning



PROPOSED Zoning

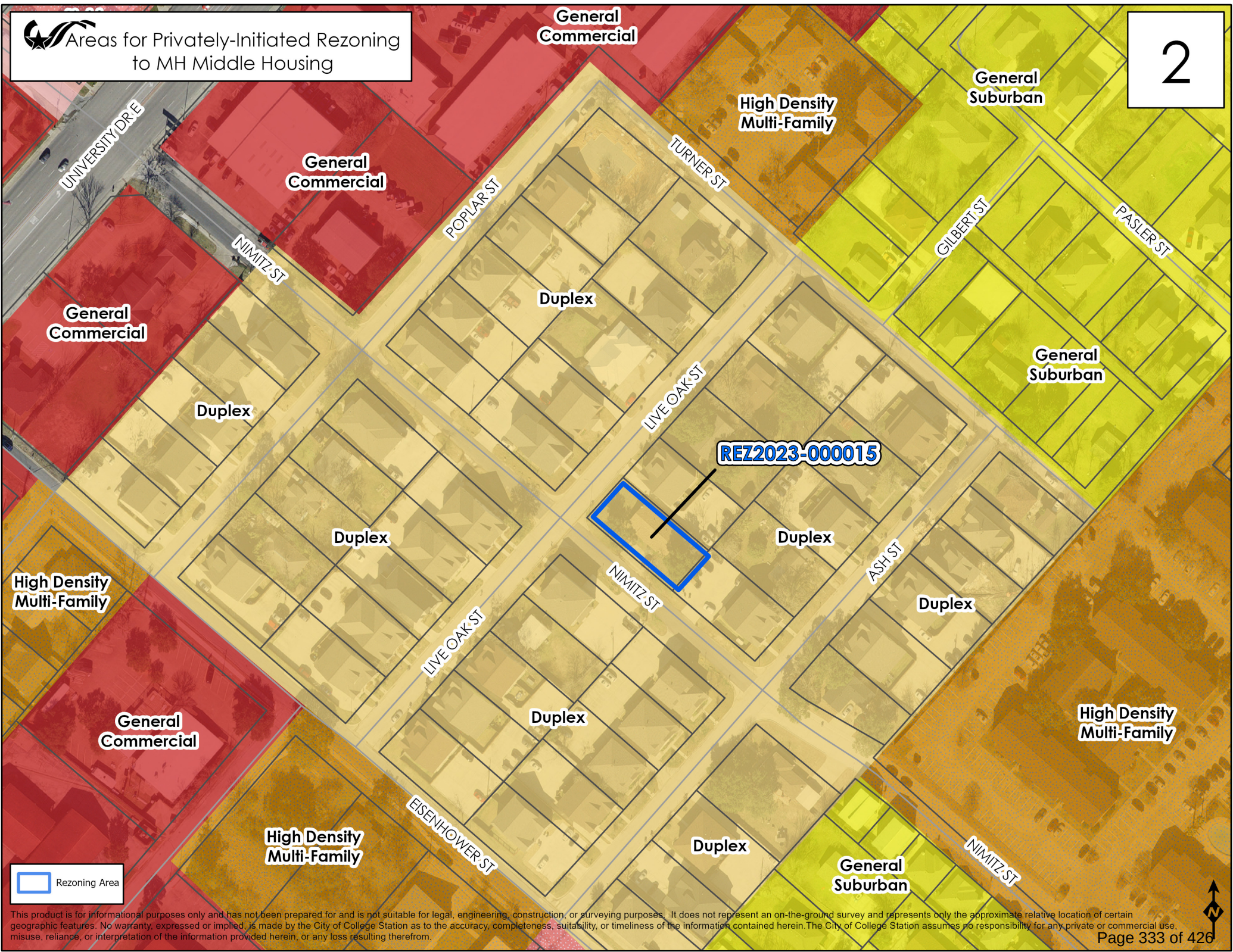






Areas for Privately-Initiated Rezoning
to MH Middle Housing

2



REZONING REVIEW CRITERIA FOR AREA #2

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject property is designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential and are within the Texas Avenue and University Drive Redevelopment Area, which is currently undergoing a small area planning process. For the Mixed Residential land use, the Comprehensive Plan provides the following:

Areas appropriate for a mix of moderate density residential development including, townhomes, duplexes, small multifamily buildings (3-12 units), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows the original character to evolve. These areas may serve as buffers between more intense multifamily residential or mixed-use development and suburban residential or neighborhood conservation areas.

The intent of the Mixed Residential land use is to accommodate a walkable pattern of small lots, small blocks, and well-connected street patterns and support neighborhoods with a mix of housing types and where larger or more dense housing is located near community facilities or adjacent to commercial or neighborhood centers. This rezoning request aligns with that vision.

This lot is set between the more intense Urban Center land use and the less intense Neighborhood Conservation land use. As the Urban Center land use area redevelops, the Mixed Residential area will serve as a buffer between the structures built along Texas Avenue and the single-family neighborhood in Neighborhood Conservation.

The zoning districts that are generally appropriate within this land use include middle housing, duplex, townhouse, and limited-scale single-family zoning.

The Comprehensive Plan discusses residential infill and redevelopment in both *Chapter 3, Strong Neighborhoods* and *Chapter 8, Managed Growth*. The plan states, “infill development offers the opportunity to mediate and enhance the identity of neighborhoods.” The plan goes on to mention that infill and redevelopment can create more viable and vibrant places throughout the city. Residential infill, especially in areas of the city designated for redevelopment, improves the efficiency of land use while enhancing the character of surrounding neighborhoods. As a tool for redevelopment, the request allows a mix of housing types with smaller lot sizes and is aligned with the Comprehensive Plan. The MH Middle Housing zoning district allows a variety of housing options by right—detached single-family homes, duplexes, townhomes, courtyard houses, small and medium multiplexes, and live-work units.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is surrounded by duplex homes to the north, east, south, and west. The residential uses permitted in the MH Middle Housing zoning district are appropriate in the context of the area as it would allow for additional, medium-density residential development in the area.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject properties makes them suitable for many of the permitted uses within the MH Middle Housing Zoning district, including single-family houses and duplexes, although some uses would require replatting of the lot to fit the dimensional standards of the MH Middle Housing zoning district.

4. Whether there are available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure are adequate to support the needs of this development. Drainage and any other infrastructure required with the site development will be designed and constructed following the B/CS Unified Design Guidelines. The subject property will take access from Live Oak Street which is a local street. A change in parking configuration could be needed depending on the development standards at the time of redevelopment. The proposed rezoning is expected to generate less than 150 trips in any peak hour; therefore, a TIA was not required.

5. The marketability of the property:

The uses allowed by the proposed zoning district are generally marketable for the area. The applicant has stated that while the current zoning district is marketable for the area, the current development is considered to be a shared housing use which is more marketable for the area. The shared housing use is not permitted within the current zoning district but would be allowed within the proposed MH Middle Housing zoning district. The rezoning would allow them to legally establish the shared housing use and come into compliance if they are able to meet the standards set forth in the Unified Development Ordinance.

STAFF RECOMMENDATION

Staff recommends approval of this request.

BACKGROUND INFORMATION – REZ2023-000015

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

College Hills HOA

Property owner notices mailed: 27

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Urban Center	D Duplex	Live Oak St (local street)
South	Mixed Residential	D Duplex	Duplex
East	Mixed Residential	D Duplex	Duplex
West	Mixed Residential and Minor Collector	D Duplex	Nimitz St

DEVELOPMENT HISTORY

Annexed: April 1951
Zoning: R-2 Duplex Residential (1953)
D Duplex (renamed in 2013)
Final Plat: College Vista
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 400 LIVE OAK STREET REZONING

Address: 400 LIVE OAK ST

Legal Description: COLLEGE VISTA, BLOCK E, LOT 6 (10' OF) & 7

Total Acreage: 0.17

Applicant:: MITCHELL & MORGAN

Property Owner: AVENUE HILLS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The duplex at 400 Live Oak Street falls under this definition. We are requesting a rezoning to MH Middle Housing so that the property and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing duplexes contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

D Duplex is suitable by use, but the duplex in this request was recently classified as Shared Housing and are no longer permitted in the D Duplex zoning district. D Duplex is no longer suitable for the uses on the property.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

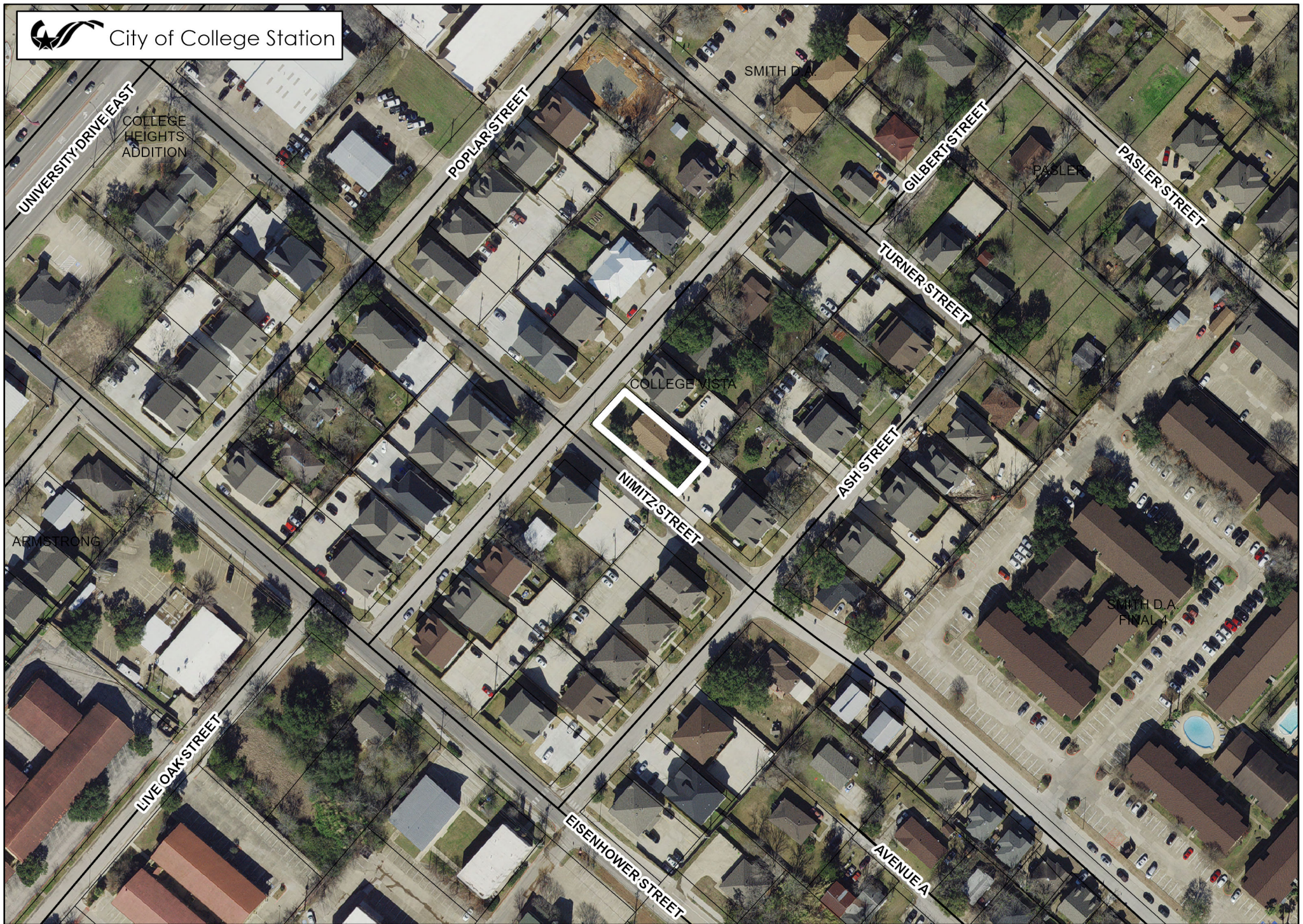
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

D Duplex are marketable for the property. However, the residential units on the properties are now considered Shared Housing units, which are more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A

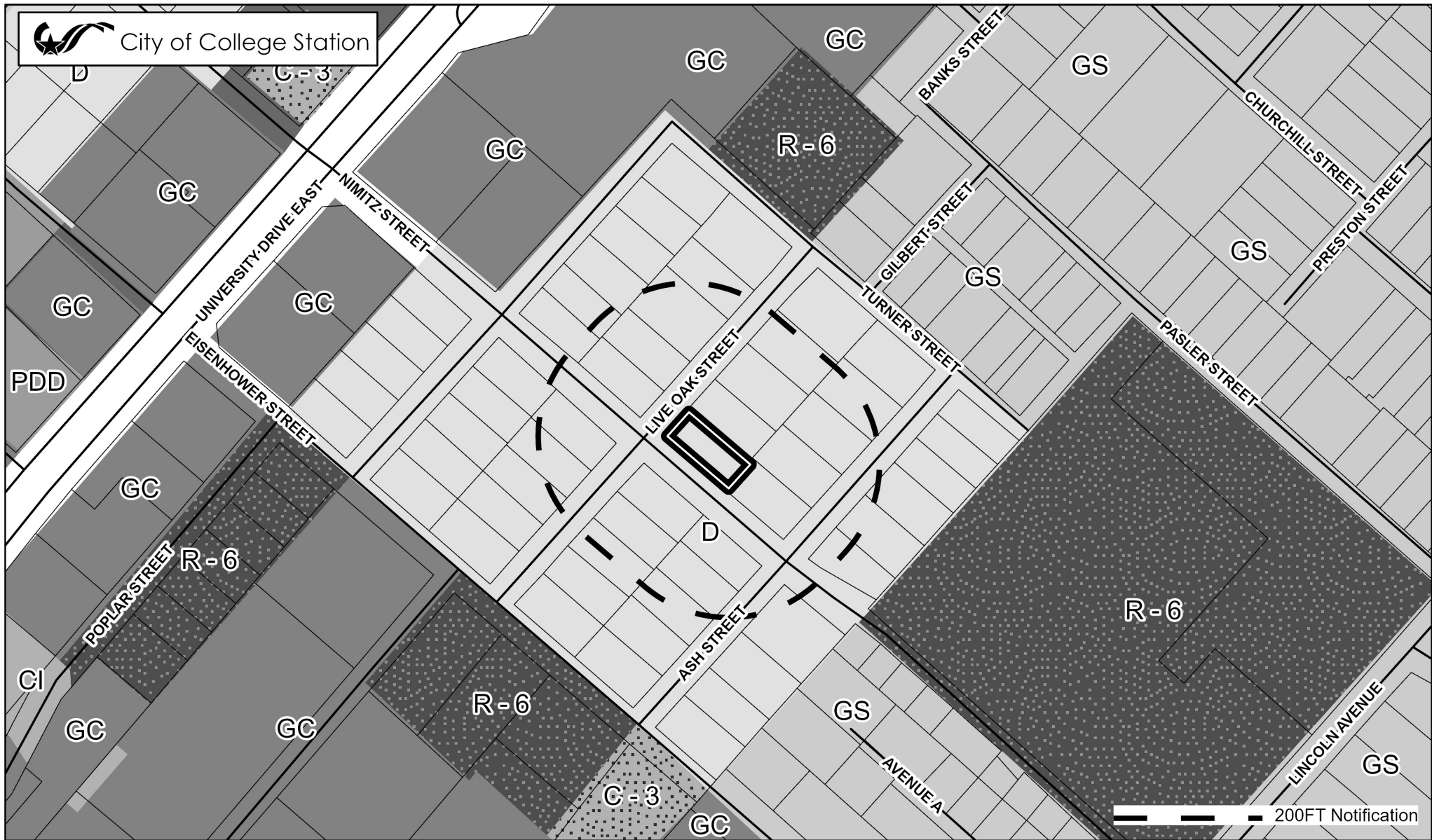


0 140 280 Feet

400 LIVE OAK STREET REZONING

Case:
REZ2023-000015

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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



0 210 420 Feet

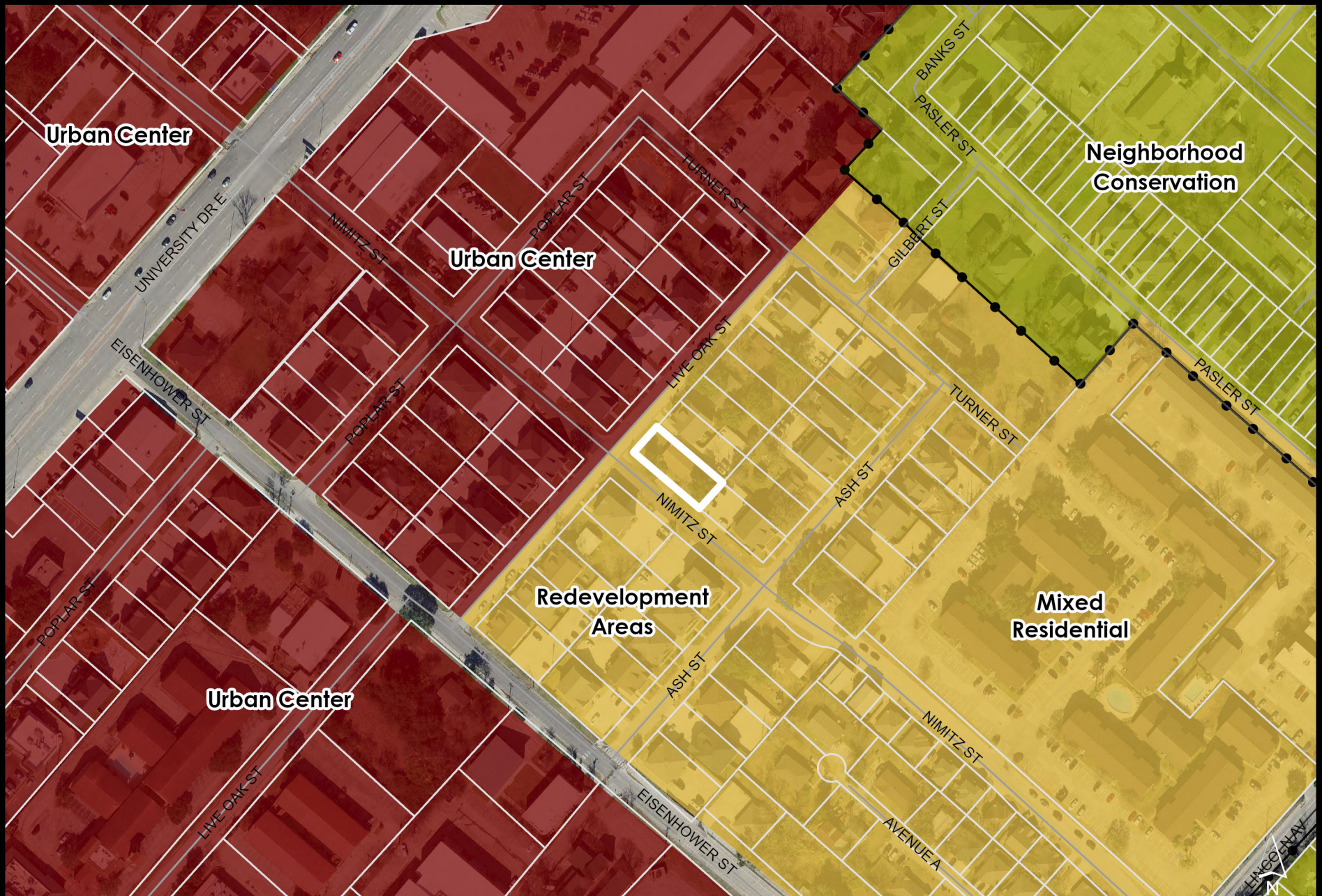
400 LIVE OAK STREET REZONING

Case:
REZ2023-000015

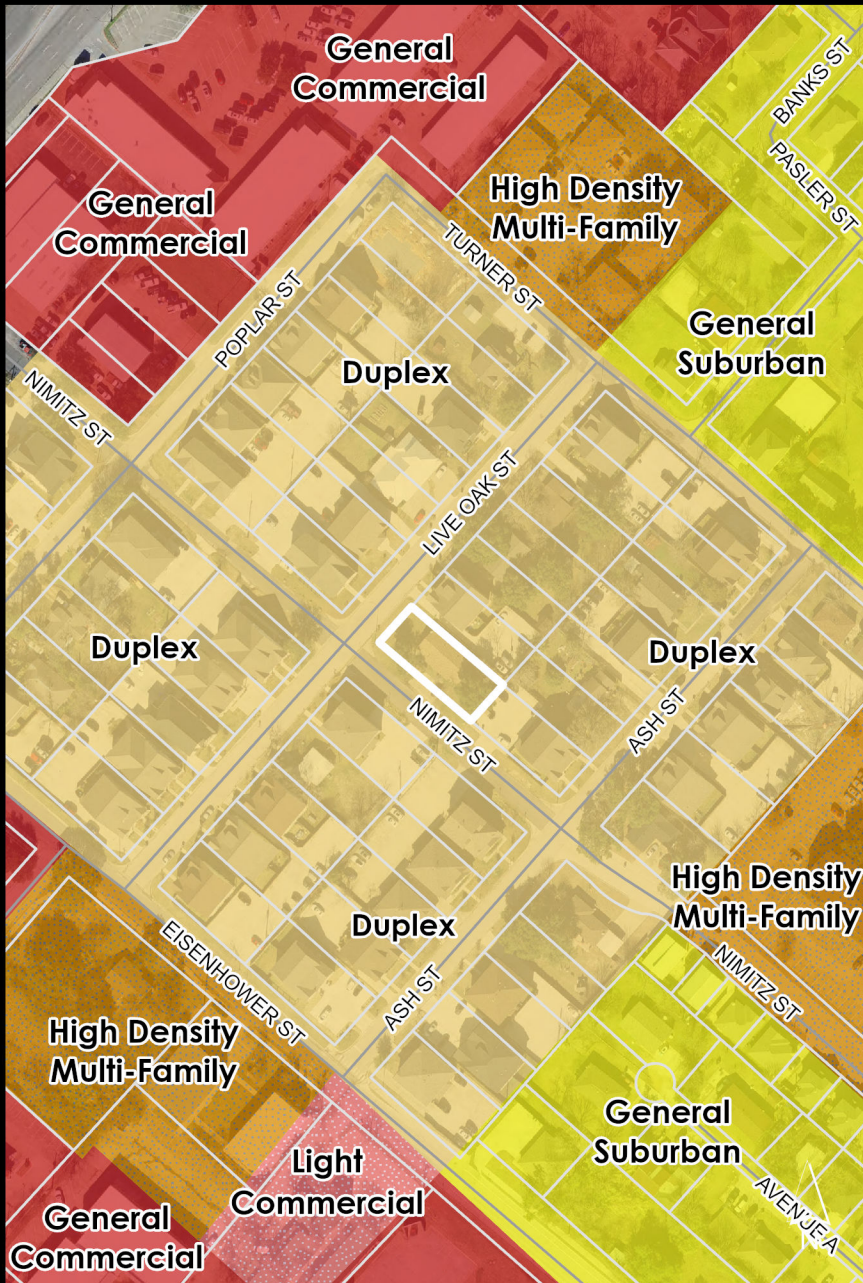
REZONING

EXISTING

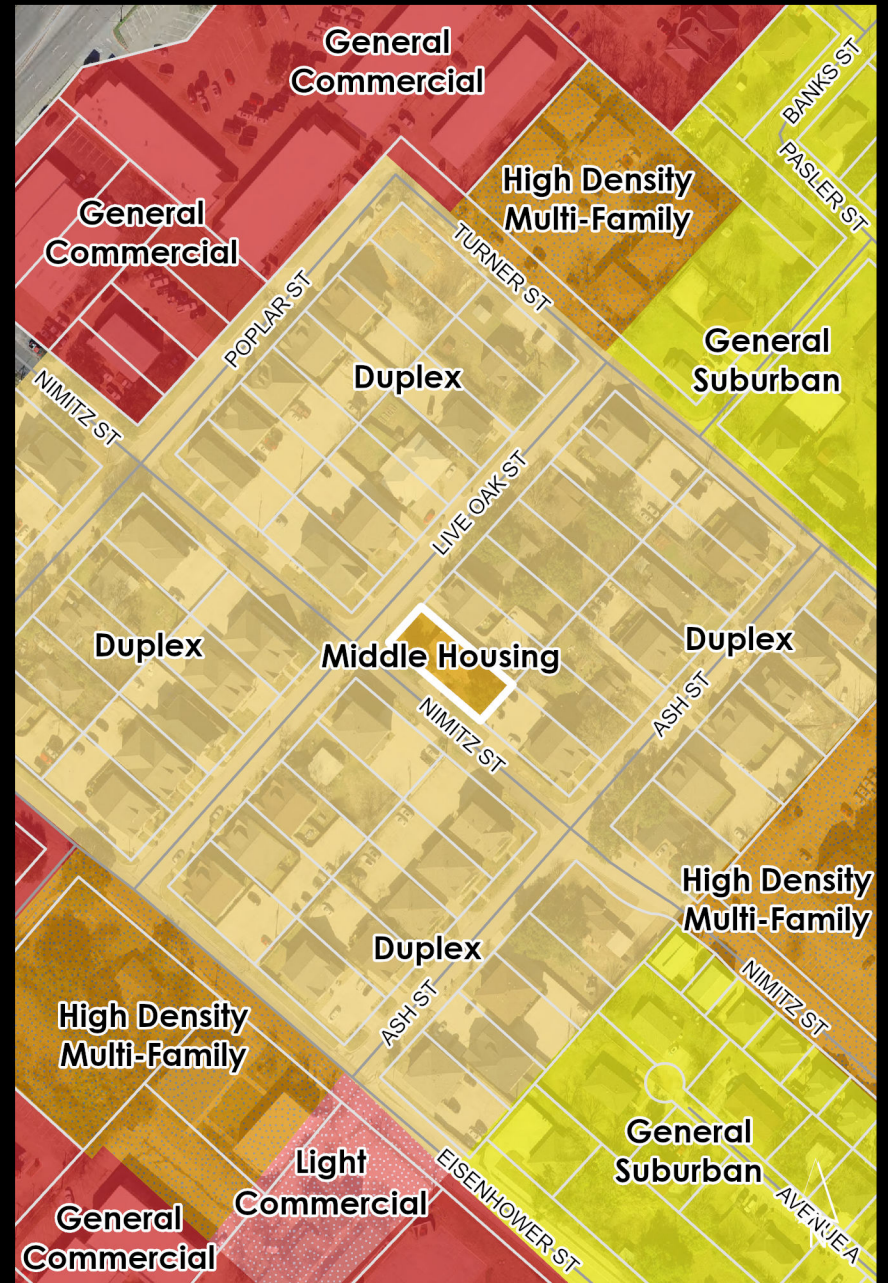
Future Land Use

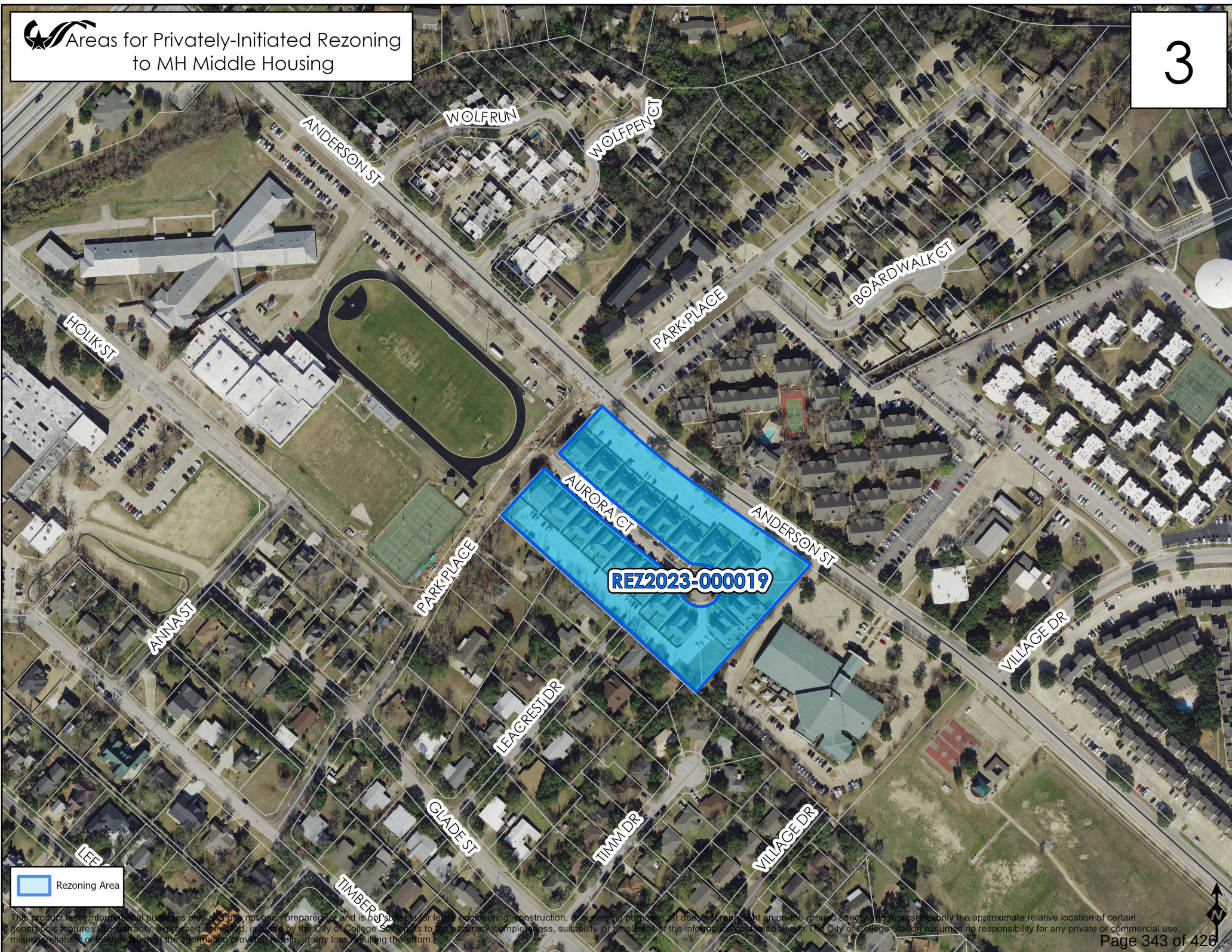


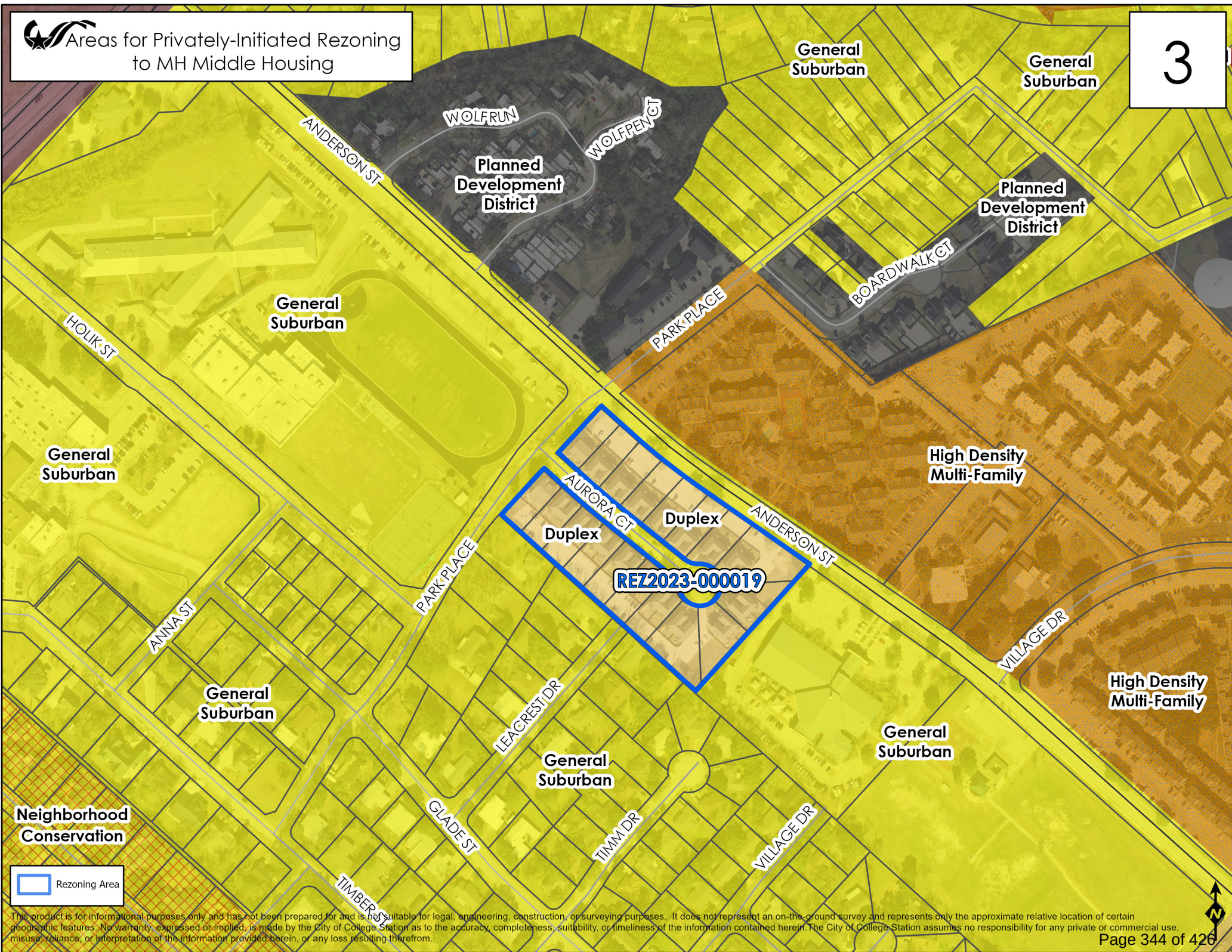
EXISTING Zoning



PROPOSED Zoning







Neighborhood
Conservation



REZONING REVIEW CRITERIA FOR AREA #3

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject properties are designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential. For the Mixed Residential land use, the Comprehensive Plan provides the following:

Areas appropriate for a mix of moderate density residential development including, townhomes, duplexes, small multifamily buildings (3-12 units), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows the original character to evolve. These areas may serve as buffers between more intense multi-family residential or mixed-use development and suburban residential or neighborhood conservation areas.

The intent of the Mixed Residential land use is to accommodate a walkable pattern of small lots, small blocks, and well-connected street pattern that supports surrounding neighborhoods. Developments in this district should prioritize a mix of housing types and scales located near community facilities or adjacent to commercial or neighborhood centers. This rezoning request is aligned with that vision.

The zoning districts that are generally appropriate within this land use include: middle housing, duplex, townhouse, and limited-scale single-family zoning.

The Comprehensive Plan discusses residential infill and redevelopment in both Chapter 3, Strong Neighborhoods and Chapter 8, Managed Growth. The plan states, “infill development offers the opportunity to mediate and enhance the identity of neighborhoods.” The plan goes on to mention that infill and redevelopment can create more viable and vibrant places throughout the city. Residential infill, especially in areas of the city designated for redevelopment, improves the efficiency of land use while enhancing the character of surrounding neighborhoods. As a tool for redevelopment, the MH Middle Housing zoning district allows a variety of housing options by right—detached single-family homes, duplexes, townhomes, Courtyard houses, small and medium multiplexes, and live-work units.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is surrounded by a school (A&M Consolidated Middle School) to the north, Multi Family Developments to the east, Grace Bible Church to the south, and Single-Family homes to west. The lots proposed for rezoning have been developed as shared housing uses prior to the adoption of the definition. The residential uses permitted in the MH Middle Housing zoning district are appropriate in the context of the area as it would allow for medium-density residential development in the area.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject properties makes them suitable for single-family, townhouse, duplex, and a small multiplex use although some uses would require replatting of the lots.

4. Whether there are available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure are adequate to support the needs of this development. Drainage and any other infrastructure required with any site redevelopment will be designed and constructed following the B/CS Unified Design Guidelines. The subject properties take access from Aurora Court, which is a local street. The proposed rezoning is expected to generate less than 150 trips in any peak hour; therefore, a TIA was not required.

5. The marketability of the property:

The uses allowed by the proposed zoning district are generally marketable for the area. The applicant states that duplexes are marketable for the properties; however, the residential units on the properties are now considered Shared Housing units. The shared housing use is not permitted within the current zoning district but would be allowed within the proposed MH Middle Housing zoning district. The rezoning would allow them to legally establish the shared housing use and come into compliance if they are able to meet the standards set forth in the Unified Development Ordinance.

STAFF RECOMMENDATION

Staff recommends approval of this request.

BACKGROUND INFORMATION – REZ2023-000019

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 27

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Institutional/Public and Minor Collector	GS General Suburban	Park Place
South	Mixed Residential	GS General Suburban	Grace Bible Church
East	Urban Residential and Major Collector	R-6 High Density Multi-Family	Anderson Street
West	Neighborhood Conservation	GS General Suburban	Single-Family Residential

DEVELOPMENT HISTORY

Annexed: May 1956
Zoning: R-1 Single Family Residential (1940)
R-1 to GS General Suburban (2013)
GS General Suburban to D Duplex (2018)
Final Plat: Little Knight Addition
Site Development: Duplex Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: AURORA COURT REZONING

Address: 400 AURORA CT

Legal Description: LITTLE KNIGHT, LOT 1

Total Acreage: 5.41

Applicant:: MITCHELL & MORGAN

Property Owner: JEREZ INVESTMENTS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The duplexes on Aurora Court fall under this definition. We are requesting a rezoning to MH Middle Housing so that the properties and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates these properties are designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing duplexes contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

D Duplex is suitable by use, but the duplexes in this request were recently classified as Shared Housing and are no longer permitted in the D Duplex zoning district. D Duplex is no longer suitable on the properties.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

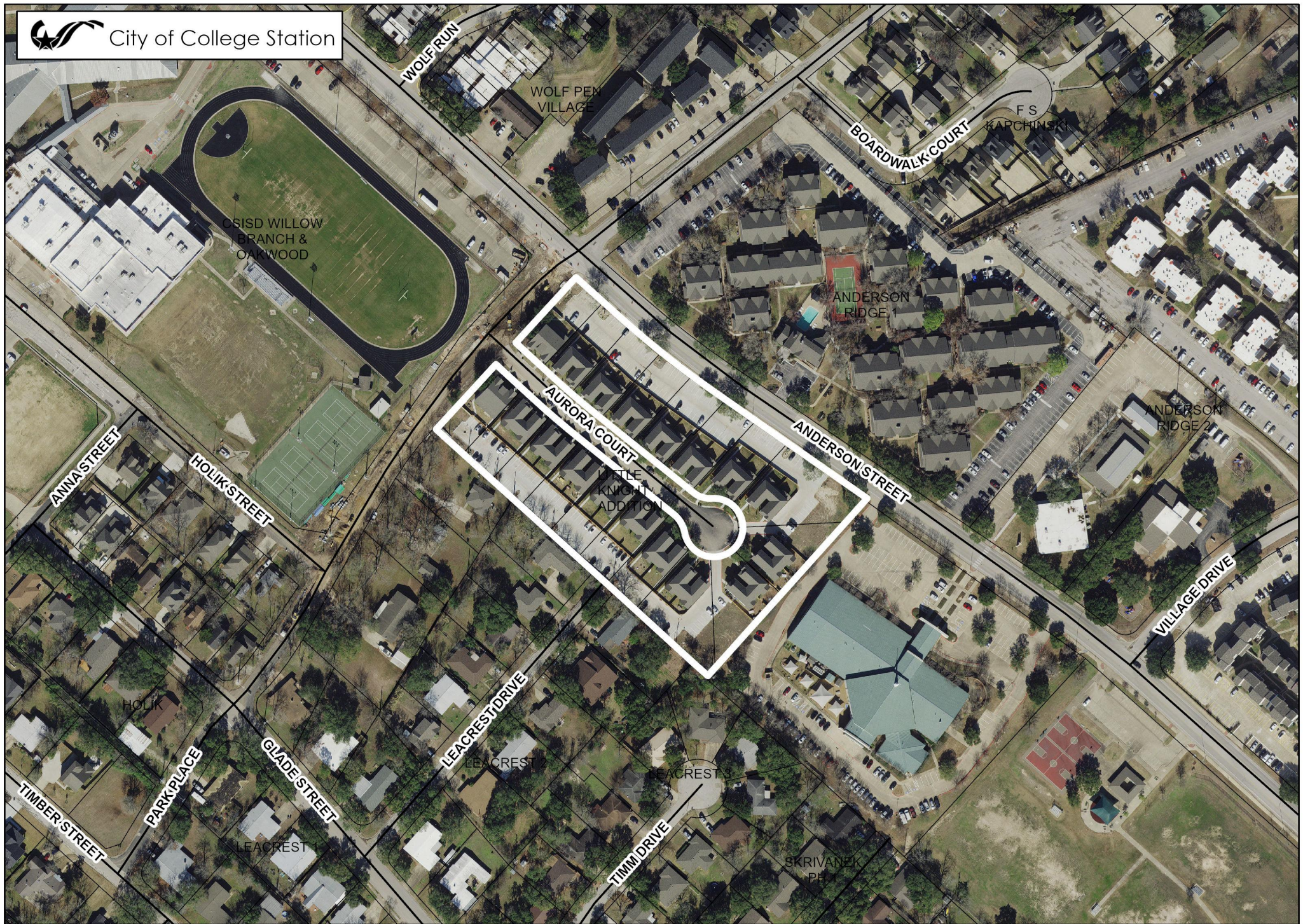
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

D Duplex are marketable for the properties. However, the residential units on the properties are now considered Shared Housing units, which are more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A

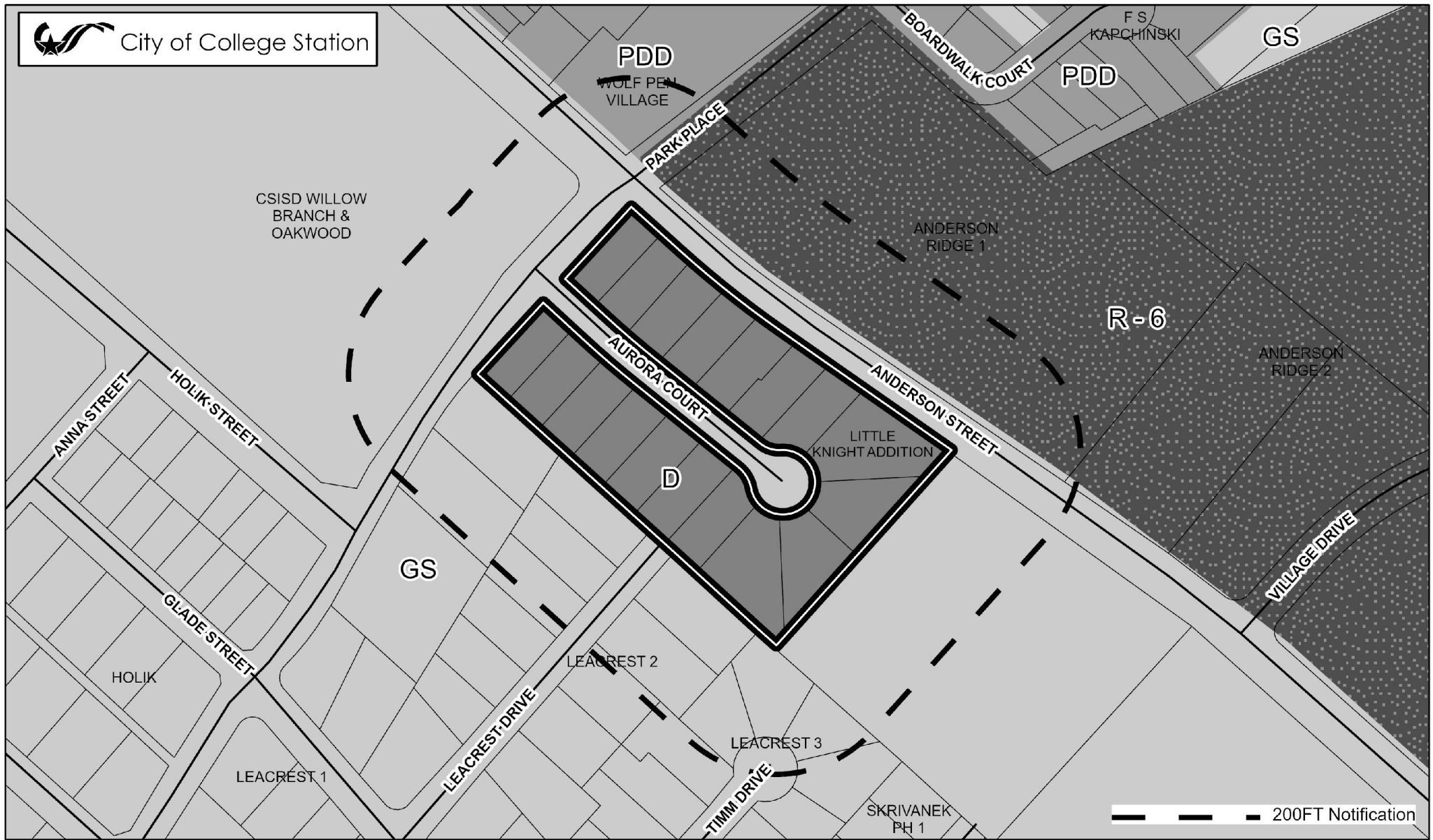


0 210 420 Feet

AURORA COURT REZONING

Case:
REZ2023-000019

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		
R	Rural	MH Middle Housing
WE	Wellborn Estate	MF Multi-Family
E	Estate	MU Mixed-Use
WRS	Wellborn Restricted Suburban	MHP Manufactured Home Pk.
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
ROO	Restricted Occupancy 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



0 210 420 Feet

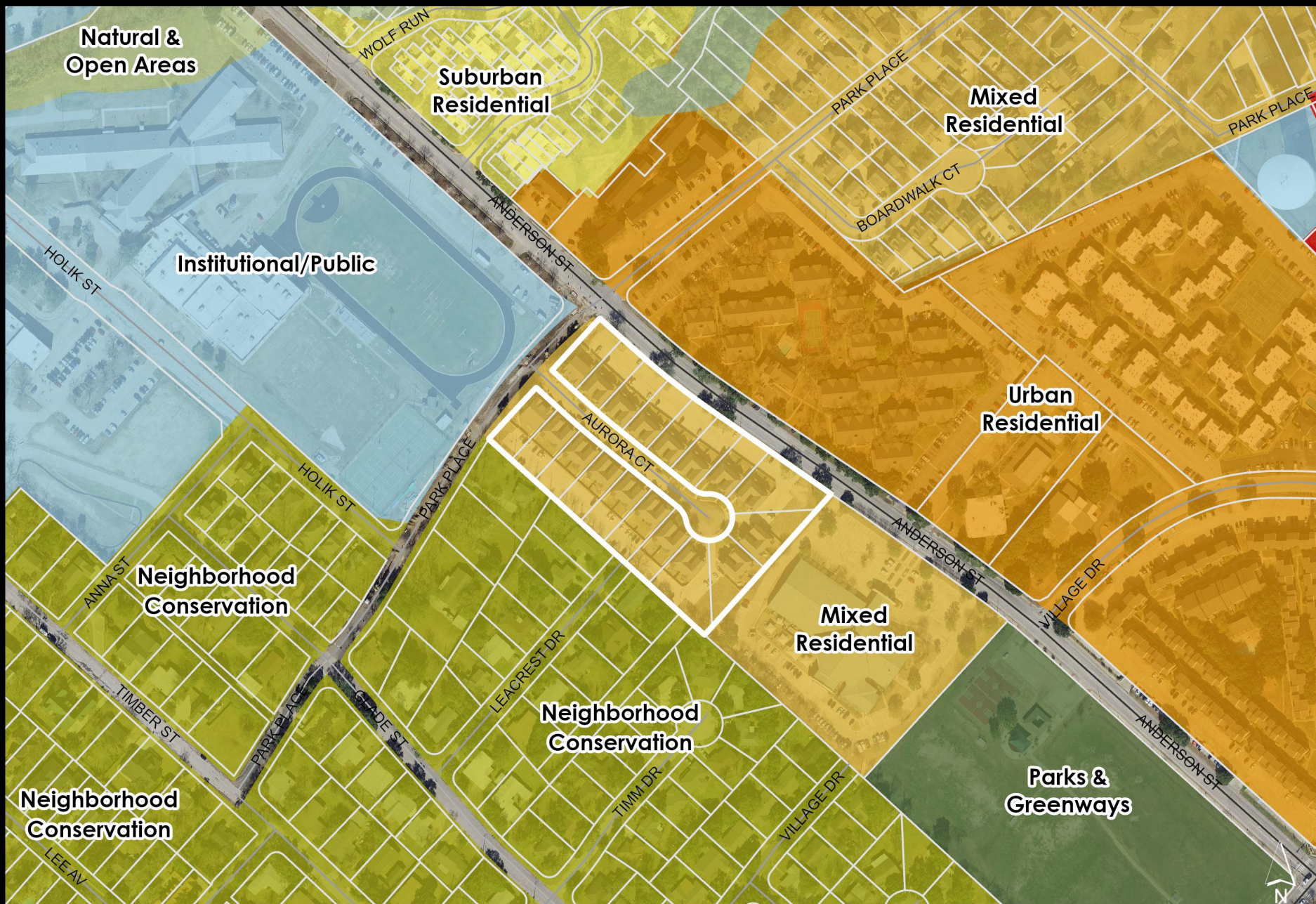
AURORA COURT REZONING

Case:
REZ2023-000019

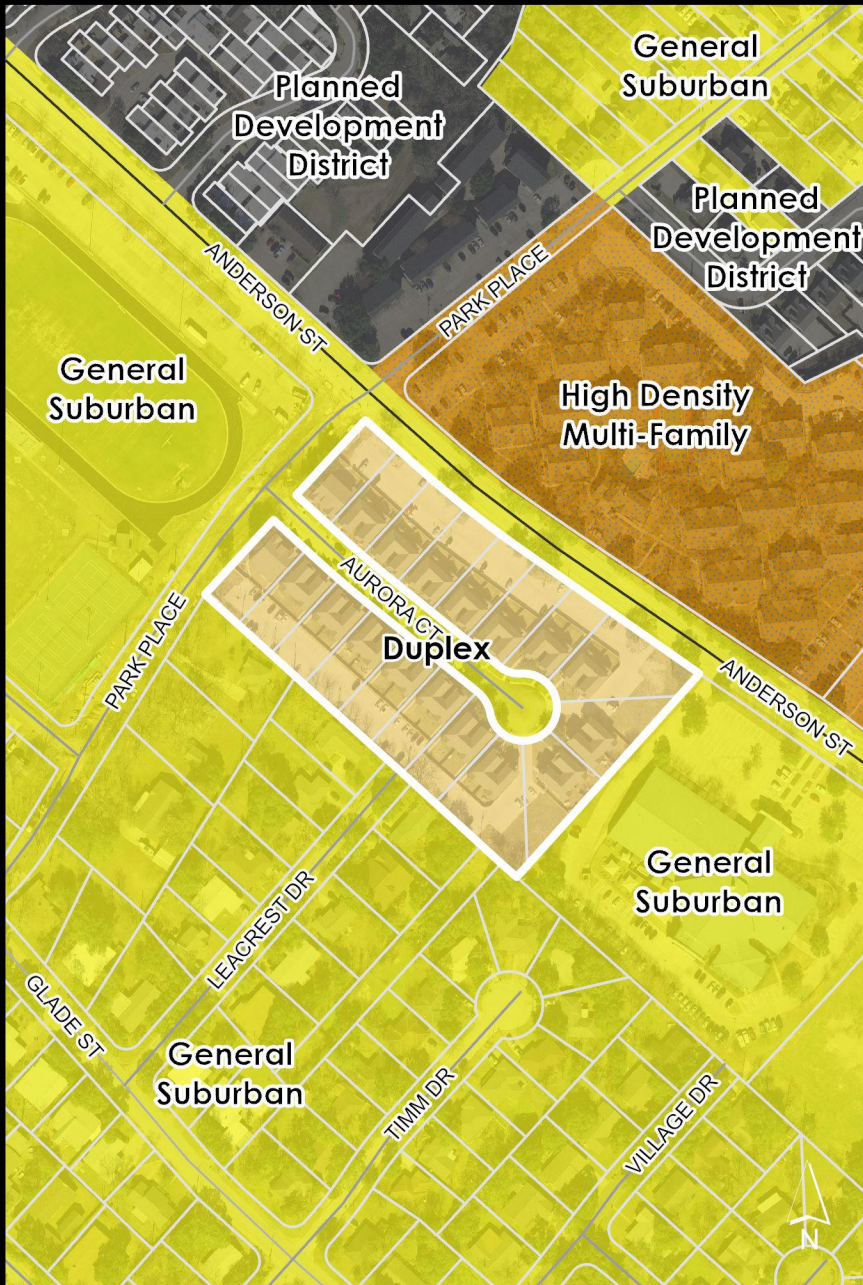
REZONING

EXISTING

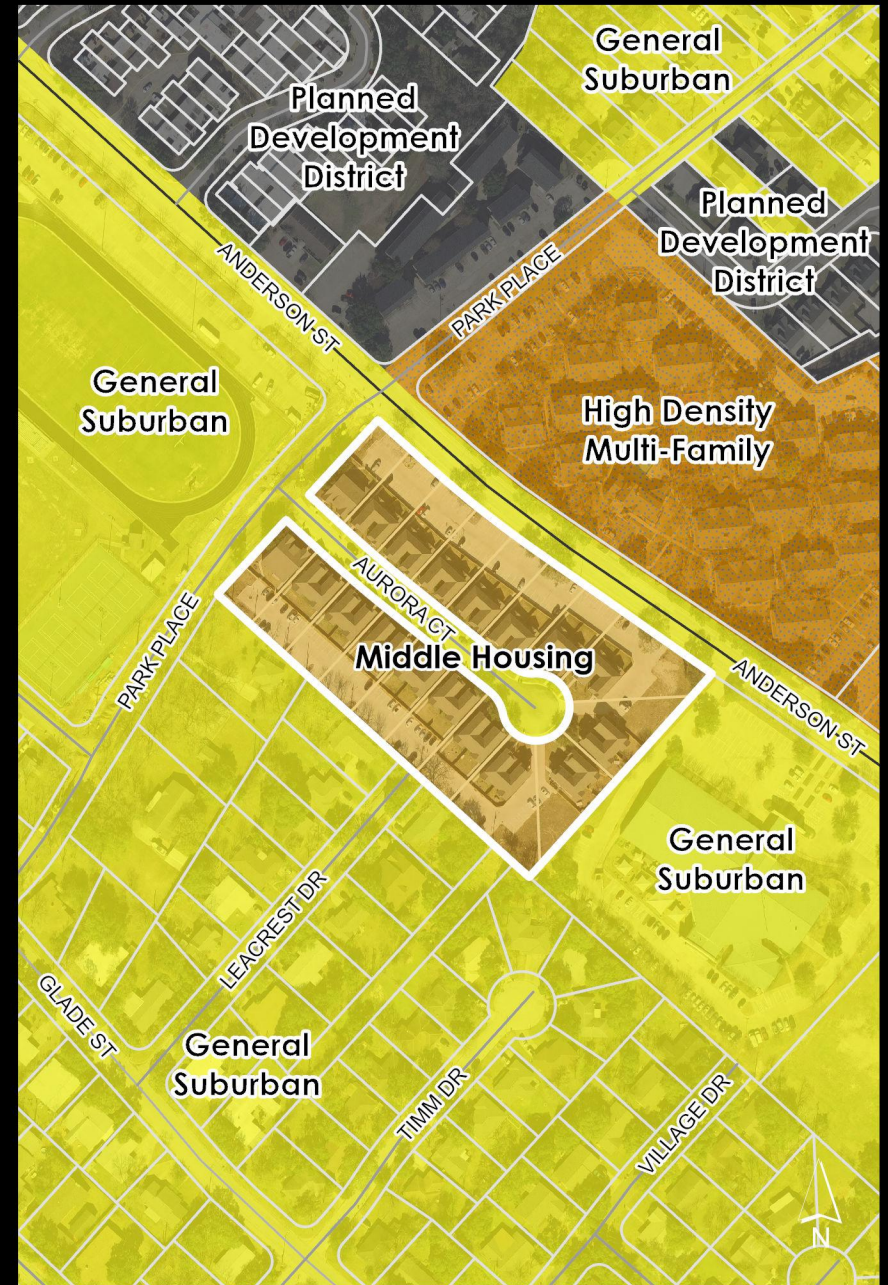
Future Land Use

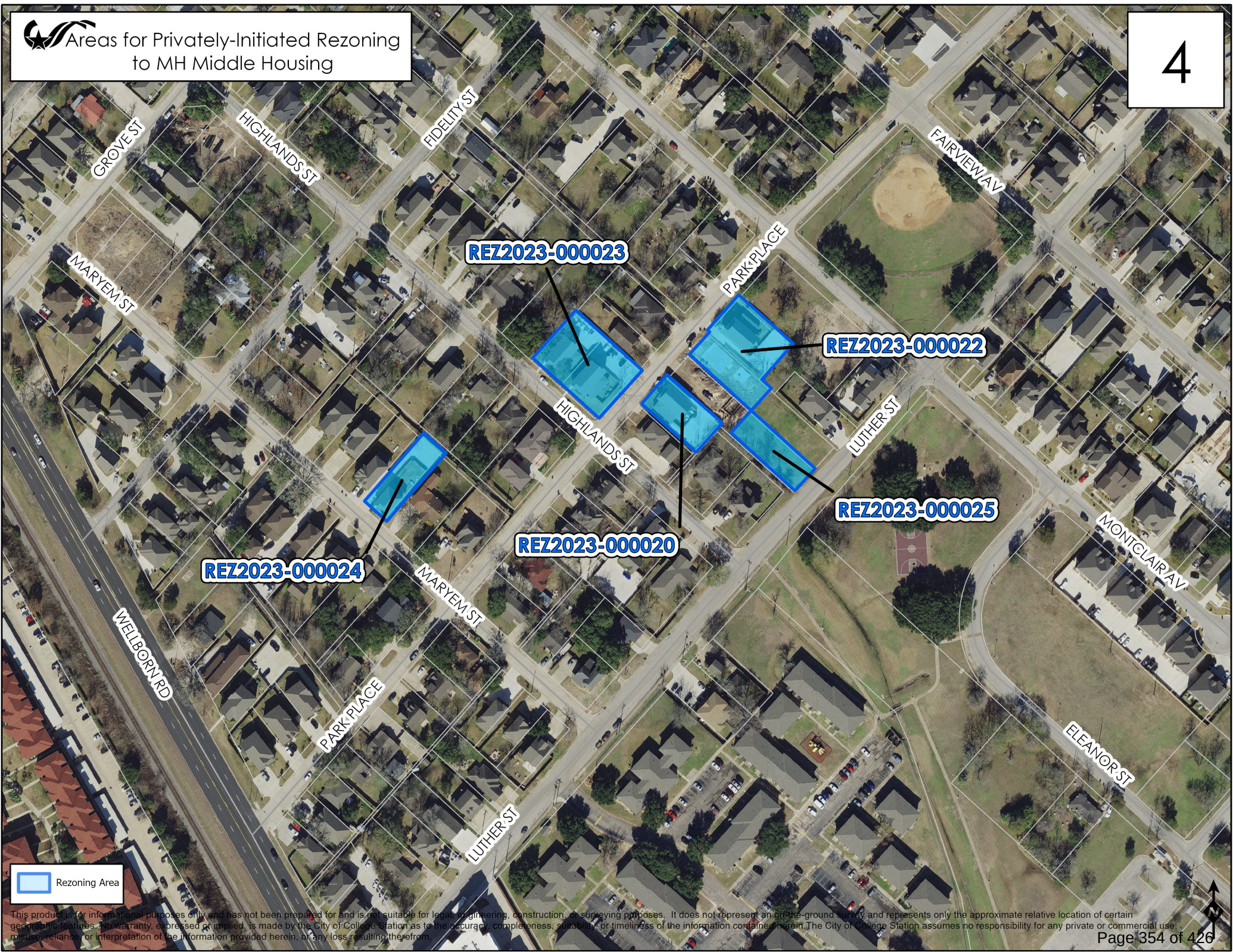


EXISTING Zoning

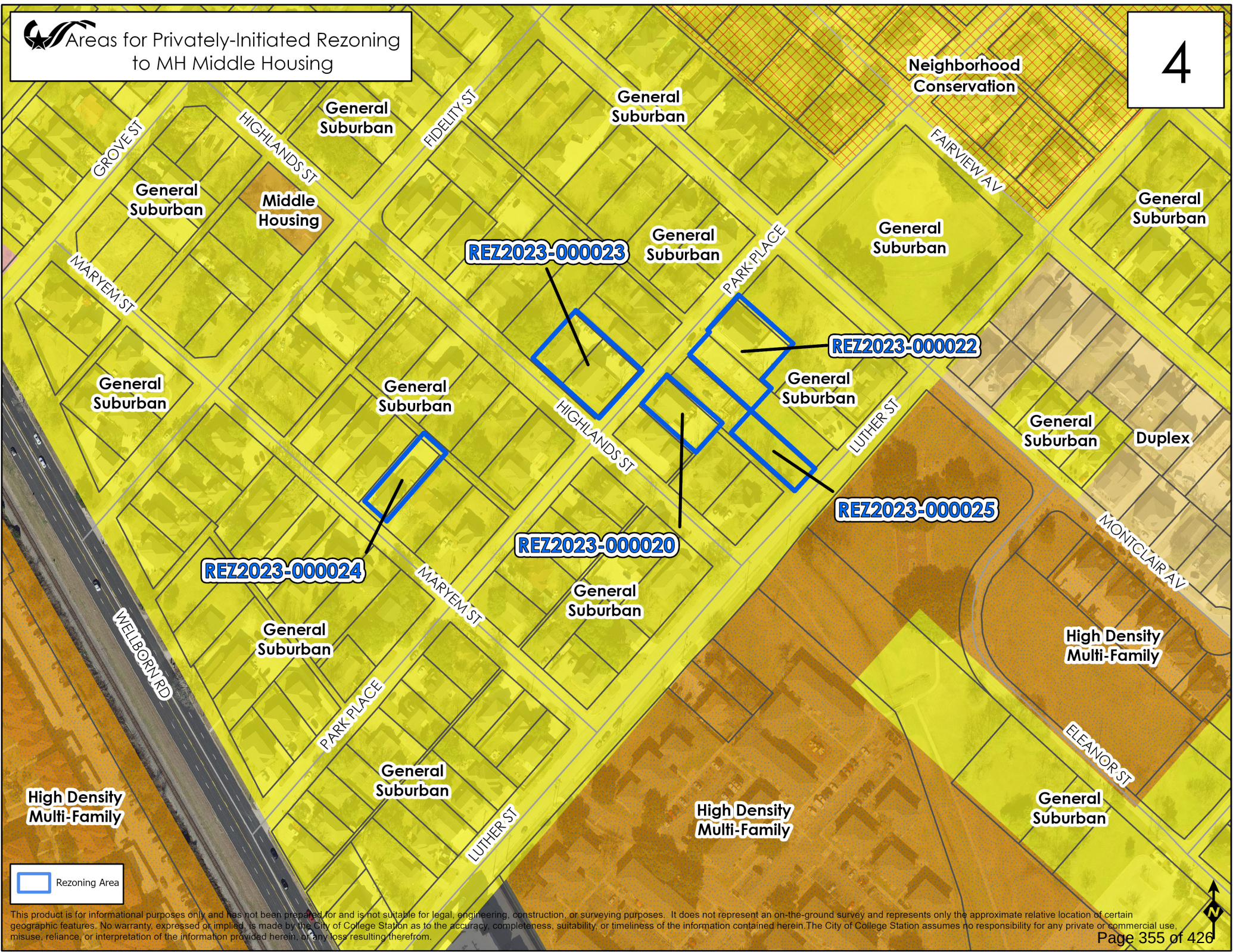


PROPOSED Zoning





 Rezoning Area



REZONING REVIEW CRITERIA FOR AREA #4

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject properties are designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential and are within the George Bush Drive & Wellborn Road (FM 2154) Redevelopment Area. For the Mixed Residential land use, the Comprehensive Plan provides the following:

Areas appropriate for a mix of moderate density residential development including, townhomes, duplexes, small multifamily buildings (3-12 units), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows the original character to evolve. These areas may serve as buffers between more intense multi-family residential or mixed-use development and suburban residential or neighborhood conservation areas.

The Mixed Residential land use intends to accommodate a walkable pattern of small lots, small blocks, and well-connected street pattern that supports surrounding neighborhoods. Developments in this district should prioritize a mix of housing types and scales located near community facilities or adjacent to commercial or neighborhood centers. The rezoning request is aligned with that vision.

These lots sit between the more intense Urban Center future land use and the less intense Neighborhood Conservation future land use. As the Urban Center land use area develops, the Mixed Residential area between the two will serve as a buffer between the mixed-use structures that are built along Wellborn Road and established single-family neighborhood in Neighborhood Conservation.

The zoning districts that are generally appropriate within this land use include middle housing, duplex, townhouse, and limited-scale single-family zoning.

The Comprehensive Plan discusses residential infill and redevelopment in both *Chapter 3, Strong Neighborhoods*, and *Chapter 8, Managed Growth*. The plan states, “infill development offers the opportunity to mediate and enhance the identity of neighborhoods.” The plan goes on to mention that infill and redevelopment can create more viable and vibrant places throughout the city. Residential infill improves the efficiency of land use while enhancing the character of surrounding neighborhoods. The request allows a mix of housing types with smaller lot sizes, enabling the future redevelopment and infill of the area.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject properties are surrounded by single-family homes to the north, east, south, and west. However, many of the lots in this area, including some that are proposed to be rezoned, have been developed as shared housing uses prior to the adoption of the definition. Thus, they do not fit within the existing GS General Suburban zoning. Development pressure continues to grow as new generations of students, young professionals, families, and seniors move to College Station. Allowing and encouraging redevelopment opportunities helps alleviate some of the pressure in

the market. The MH Middle Housing zoning district enables the future redevelopment of these lots at a more appropriate scale, enabling the increase in residential density on these sites. The residential uses permitted in the MH Middle Housing zoning district are appropriate in the context of the surrounding area.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject properties makes them suitable for many of the residential uses in the MH Middle Housing District, including single-family houses, duplexes, and townhouses, although some uses would require replatting of the lots to fit the dimensional standards of the MH Middle Housing zoning district. The applicant shared no immediate plans to redevelop the lots, but the MH Middle Housing district standards will provide a more flexible development pattern for future redevelopment.

4. Whether there are available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure are adequate to support the needs of this development. Drainage and any other infrastructure required with the site development will be designed and constructed following the B/CS Unified Design Guidelines. The subject properties are all developed and designed to access from local streets, so no reconfiguration is needed. A change in parking configuration could be needed depending on the development standards at the time of redevelopment. The proposed rezoning is expected to generate less than 150 trips in any peak hour; therefore, a TIA was not required.

5. The marketability of the property:

The uses allowed by the proposed zoning district are generally marketable for the area. The applicant states that GS General Suburban is not likely to be as marketable for lots in this area. They mention the residential units on the properties are considered shared housing and that the use is more marketable and more appropriate under the MH Middle Housing zoning district. The shared housing use is not permitted within the current zoning district but would be allowed within the proposed MH Middle Housing zoning district. Allowing the rezoning would allow them to legally establish the shared housing use and come into compliance if they are able to meet the standards set forth in the Unified Development Ordinance.

STAFF RECOMMENDATION

Staff recommends approval of these requests.

BACKGROUND INFORMATION – REZ2023-000020

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 28

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	GS General Suburban	Park Place (local street)
South	Mixed Residential	GS General Suburban	Residential
East	Mixed Residential	GS General Suburban	Residential
West	Mixed Residential	GS General Suburban	Residential

DEVELOPMENT HISTORY

Annexed: October 1938
Zoning: District No. 1 First Dwelling House District (1940)
District R1-A Single-Family Residential (1972)
R-1 Single-Family Residential (2003)
GS General Suburban (2013)
Final Plat: West Park Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 302 PARK PLACE REZONING

Address: 302 PARK PLACE

Legal Description: WEST PARK (CS), BLOCK 1, LOT 3 & 10' OF 2

Total Acreage: 0.18

Applicant:: MITCHELL & MORGAN

Property Owner: AL ANDALUS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The residence at 302 Park Place falls under this definition. We are requesting a rezoning to MH Middle Housing so that the properties and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing residence contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

GS General Suburban can be suitable for the property; however, the property is developed as shared housing residence, which is more suitable under the MH Middle Housing zoning classification

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

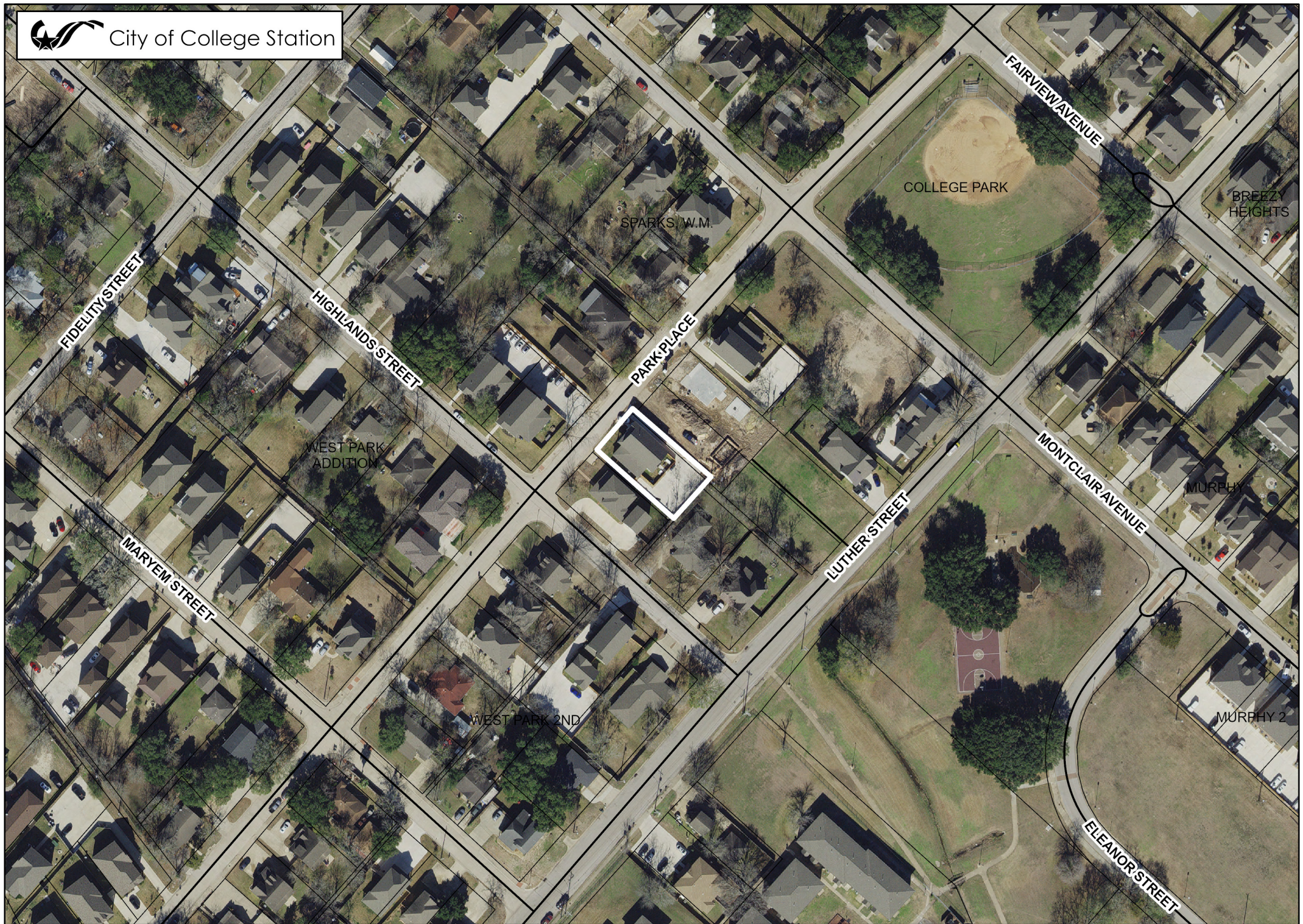
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

GS General Suburban is not likely to be as marketable for lots in this area. The land use plan designates the property for Mixed Residential, meaning medium density residences that can't be achieved under the GS General Suburban zoning district. The residential unit on the property is considered Shared Housing and is a use that is more marketable and more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A



0 140 280 Feet

302 PARK PLACE REZONING

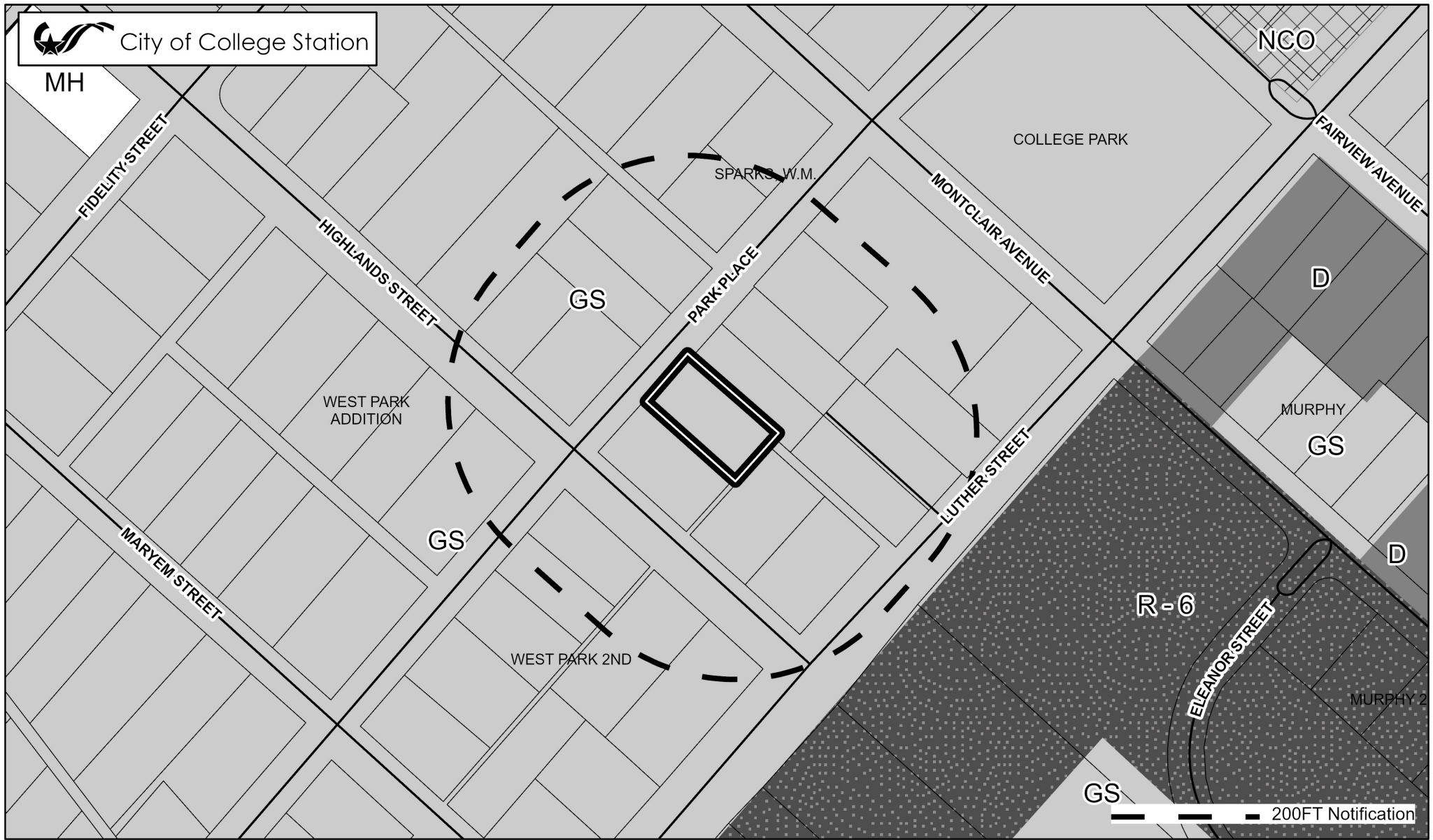
Case:
REZ2023-000020

REZONING



City of College Station

MH



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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



0 135 270 Feet

302 PARK PLACE REZONING

Case:
REZ2023-000020

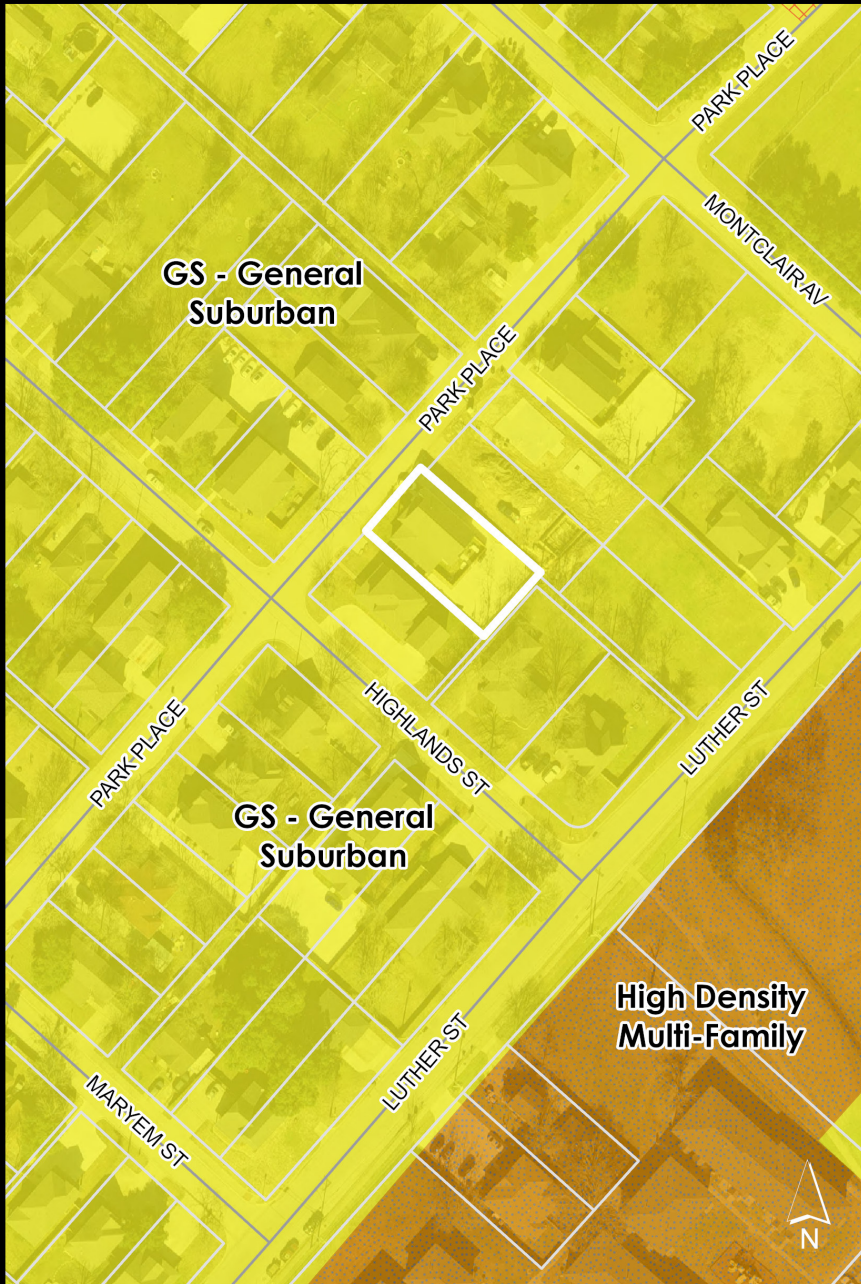
REZONING

EXISTING

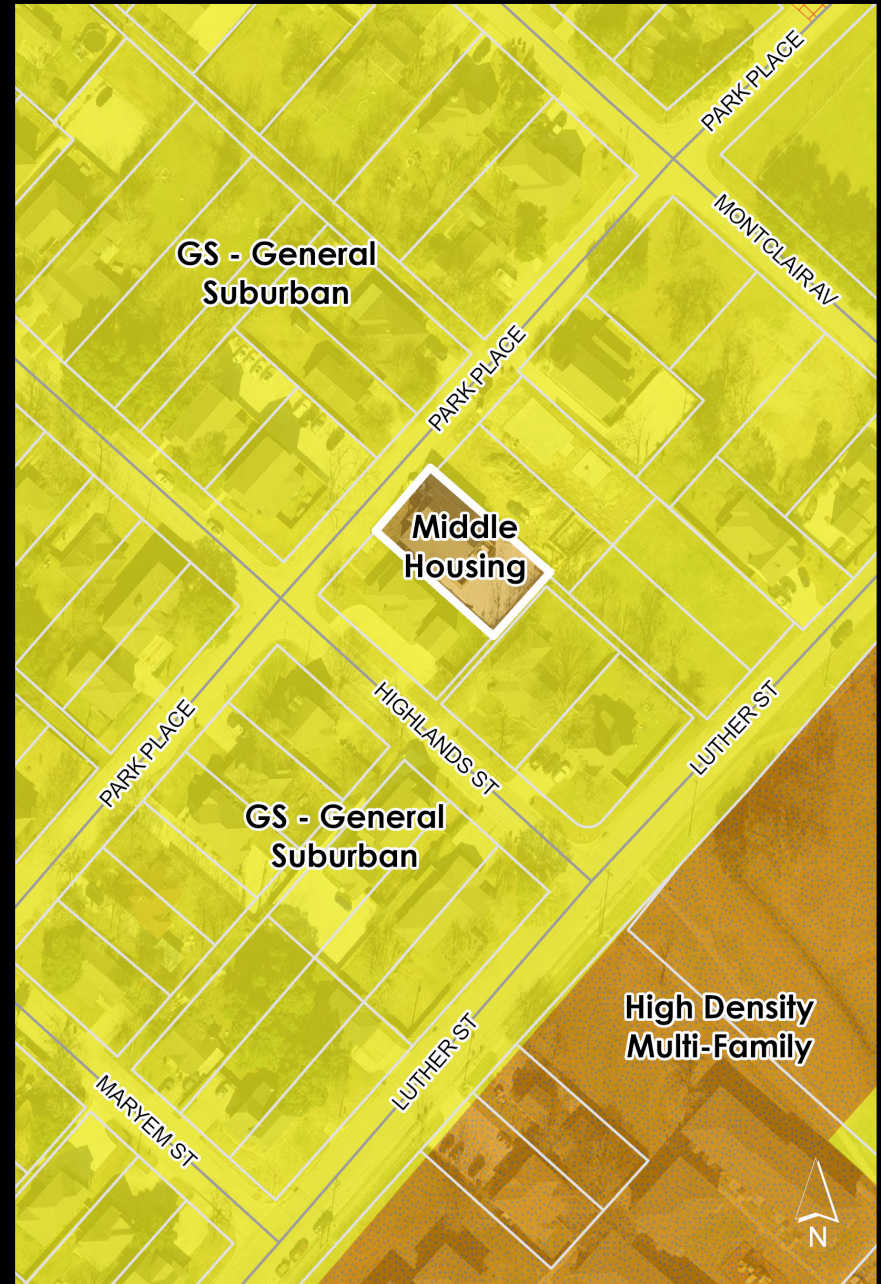
Future Land Use



EXISTING Zoning



PROPOSED Zoning



BACKGROUND INFORMATION – REZ2023-000022

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 25

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	GS General Suburban	Park Place (local street)
South	Mixed Residential	GS General Suburban	Residential
East	Mixed Residential	GS General Suburban	Residential
West	Mixed Residential	GS General Suburban	Residential

DEVELOPMENT HISTORY

Annexed: October 1938
Zoning: District No. 1 First Dwelling House District (1940)
District R1-A Single-Family Residential (1972)
R-1 Single-Family Residential (2003)
GS General Suburban (2013)
Final Plat: West Park Addition and W.M. Sparks
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 306-308 PARK PLACE REZONING

Address: 306 PARK PLACE

Legal Description: WEST PARK (CS), BLOCK 1, LOT 1-R2

Total Acreage: 0.36

Applicant:: MITCHELL & MORGAN

Property Owner: BCS BOARDWALK HOMES LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The residences at 306 and 308 Park Place fall under this definition. We are requesting a rezoning to MH Middle Housing so that the properties and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing residences contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

GS General Suburban can be suitable for the properties; however, the properties are developed as shared housing residences, which is more suitable under the MH Middle Housing zoning classification.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

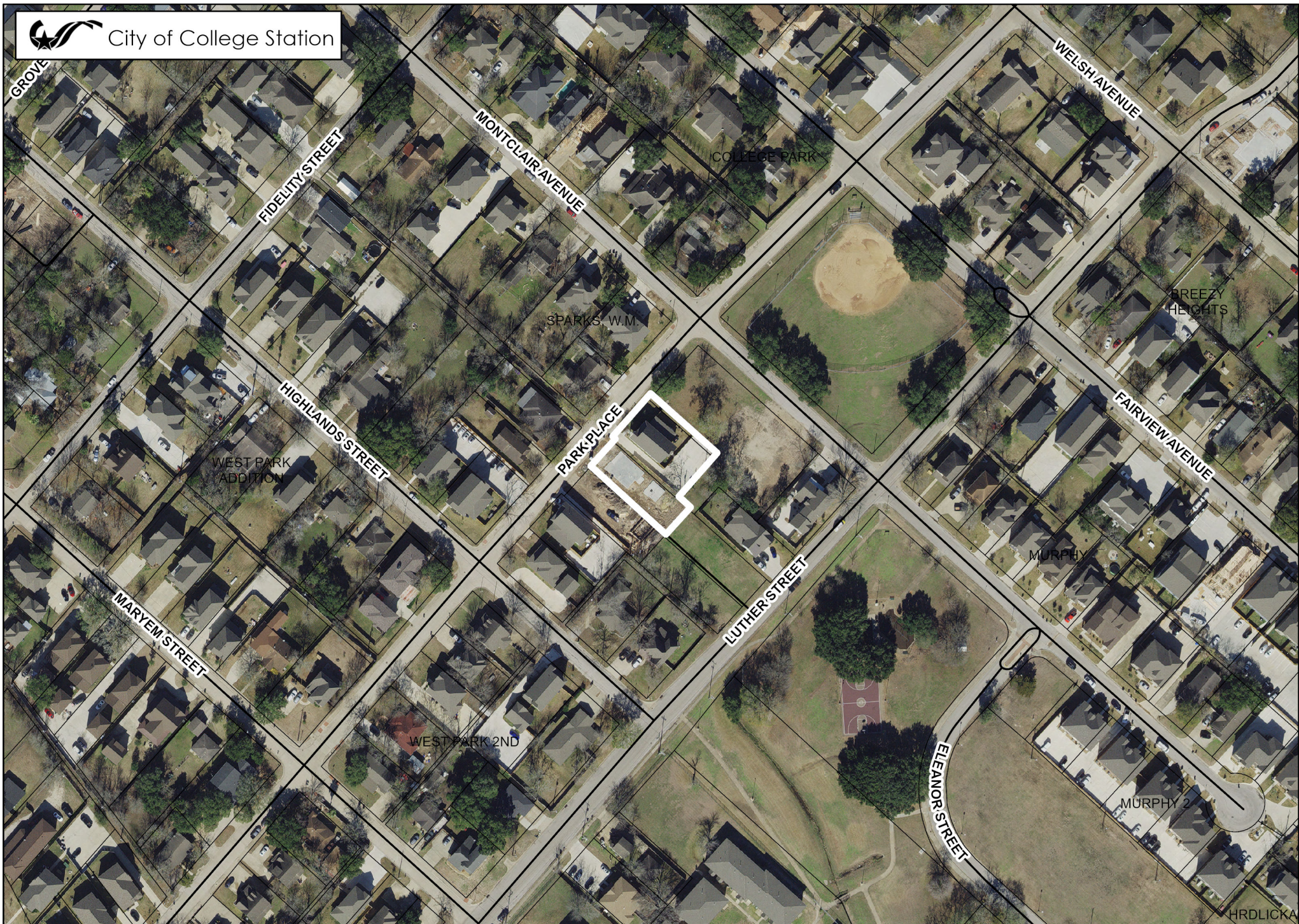
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

GS General Suburban is not likely to be as marketable for lots in this area. The land use plan designates the properties for Mixed Residential, meaning medium density residences that can't be achieved under the GS General Suburban zoning district. The residential units on the property are considered Shared Housing and is a use that is more marketable and more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A

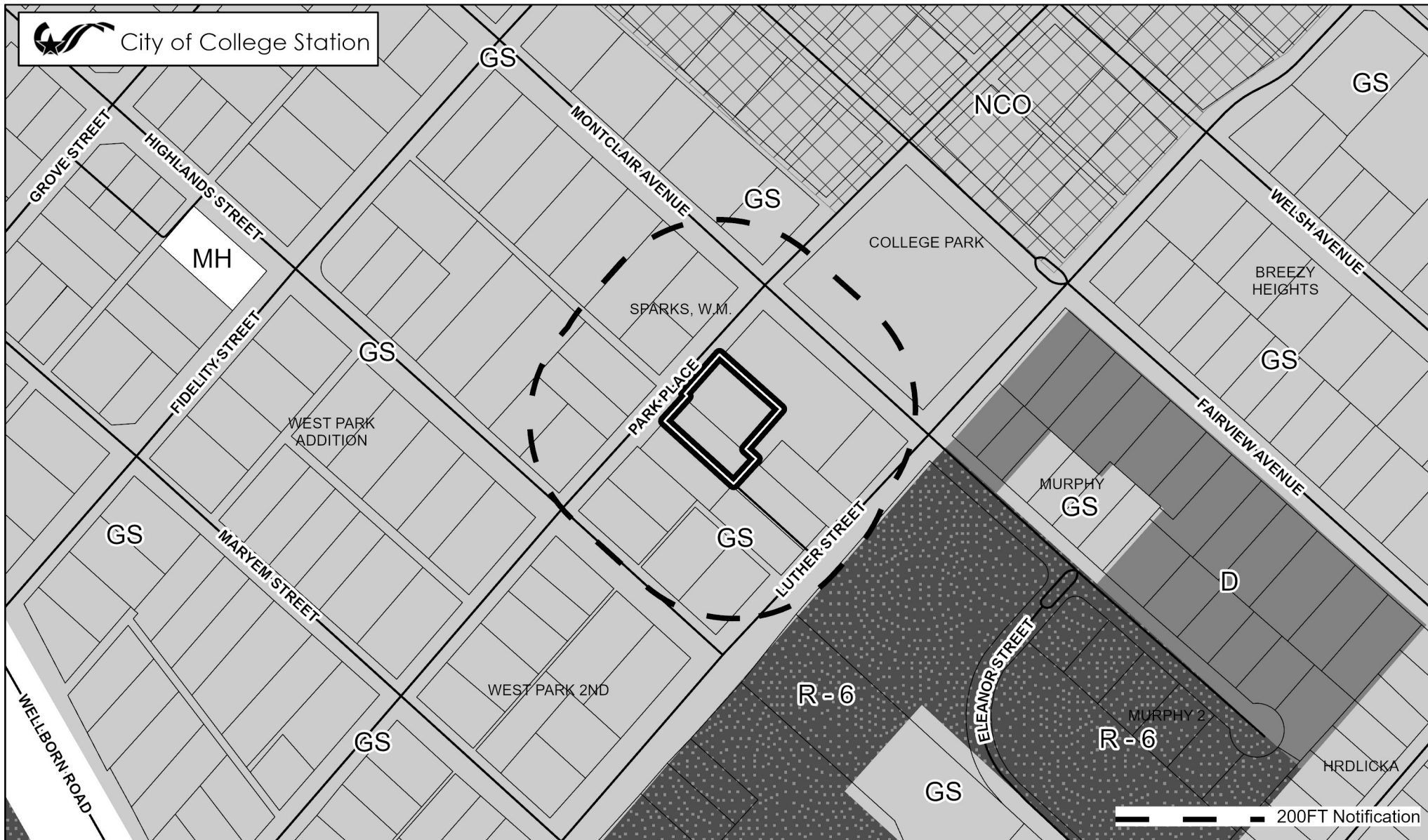


0 165 330 Feet

306-308 PARK PLACE REZONING

Case:
REZ2023-000022

REZONING



ZONING DISTRICTS (In Grayscale)

Residential			
R	Rural	MH	Middle Housing
WE	Wellborn Estate	MF	Multi-Family
E	Estate	MU	Mixed-Use
WRS	Wellborn Restricted Suburban	MHP	Manufactured Home Pk.
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
ROO	Restricted Occupancy 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



0 200 400 Feet

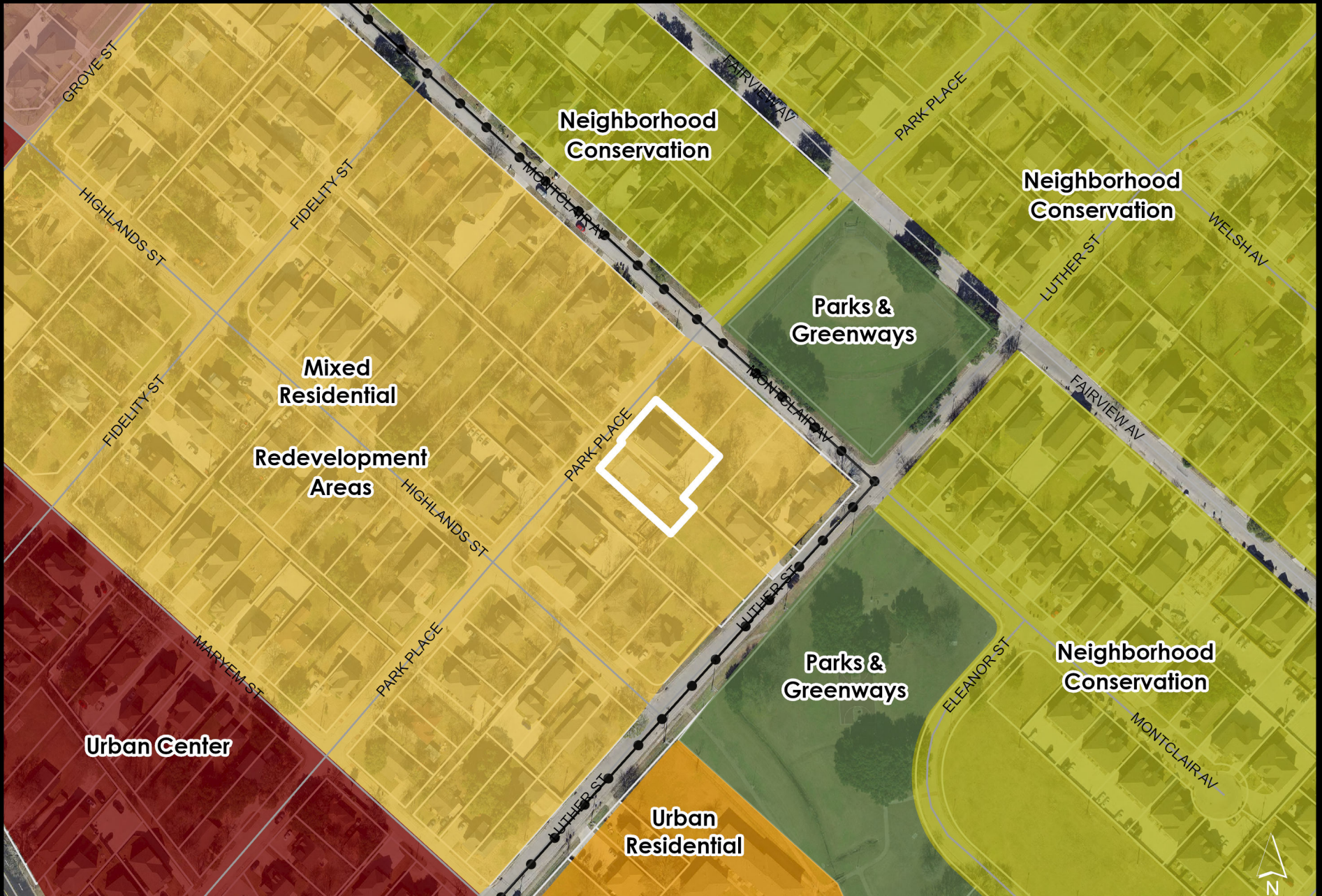
306-308 PARK PLACE REZONING

Case:
REZ2023-000022

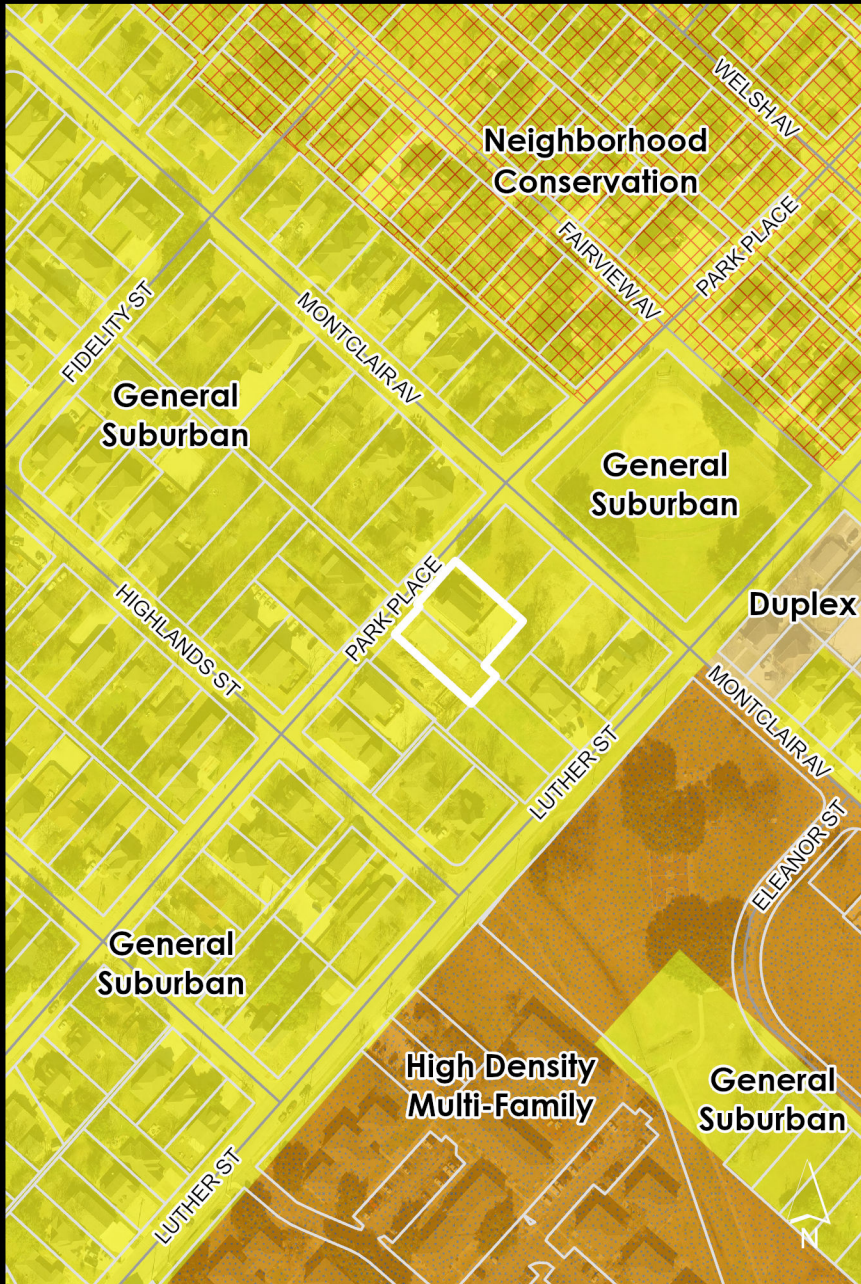
REZONING

EXISTING

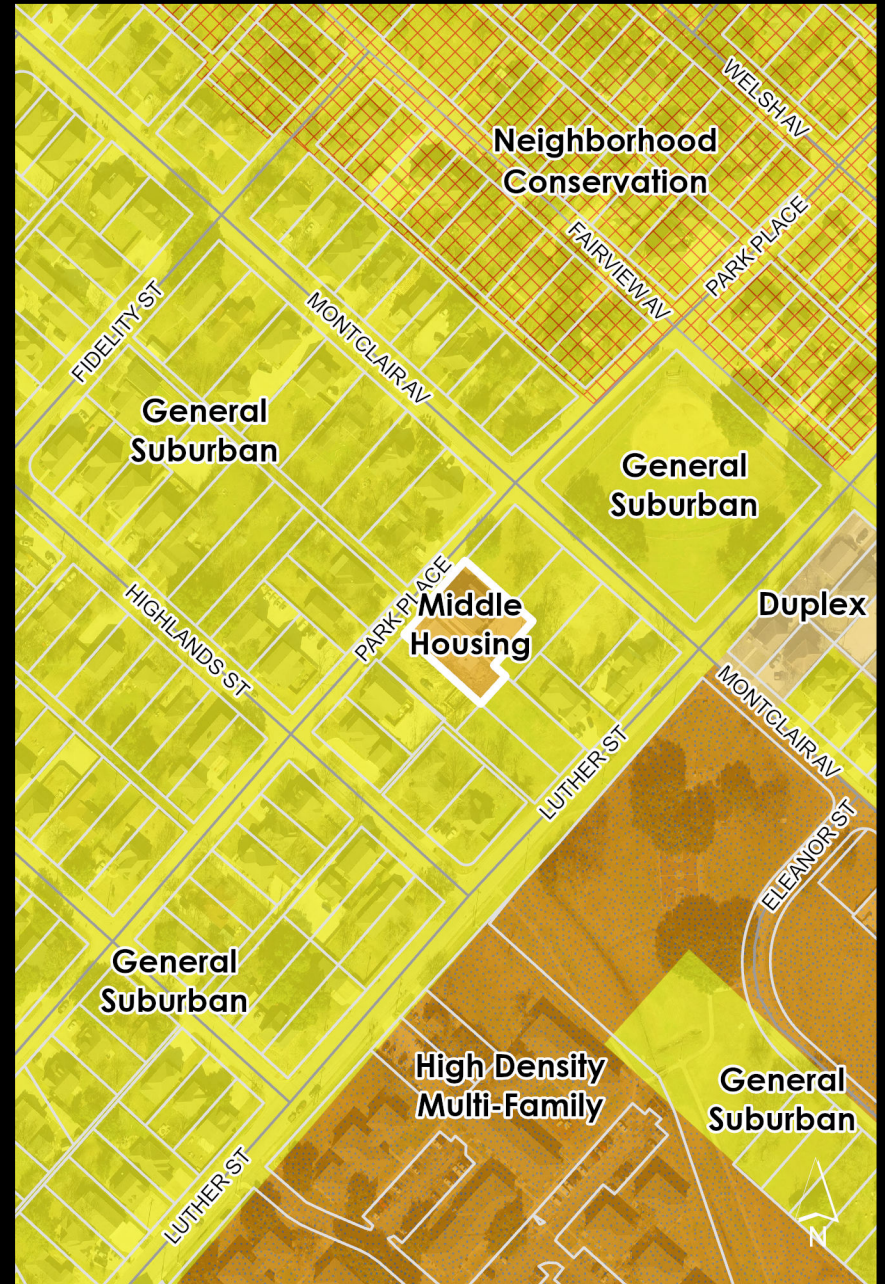
Future Land Use



EXISTING Zoning



PROPOSED Zoning



BACKGROUND INFORMATION – REZ2023-000023

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 32

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	GS General Suburban	Residential
South	Mixed Residential	GS General Suburban	Park Place (local street)
East	Mixed Residential	GS General Suburban	Residential
West	Mixed Residential	GS General Suburban	Highlands Street (local street)

DEVELOPMENT HISTORY

Annexed: October 1938
Zoning: District No. 1 First Dwelling House District (1940)
District R1-A Single-Family Residential (1972)
R-1 Single-Family Residential (2003)
GS General Suburban (2013)
Final Plat: West Park Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 611-613 HIGHLANDS STREET REZONING

Address: 611 HIGHLANDS ST

Legal Description: WEST PARK (CS), BLOCK 2, LOT 8-R

Total Acreage: 0.35

Applicant:: MITCHELL & MORGAN

Property Owner: AMARES LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The residences at 611 and 613 Highlands Street fall under this definition. We are requesting a rezoning to MH Middle Housing so that the properties and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing residences contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

GS General Suburban can be suitable for the properties; however, the properties are developed as shared housing residences, which is more suitable under the MH Middle Housing zoning classification.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

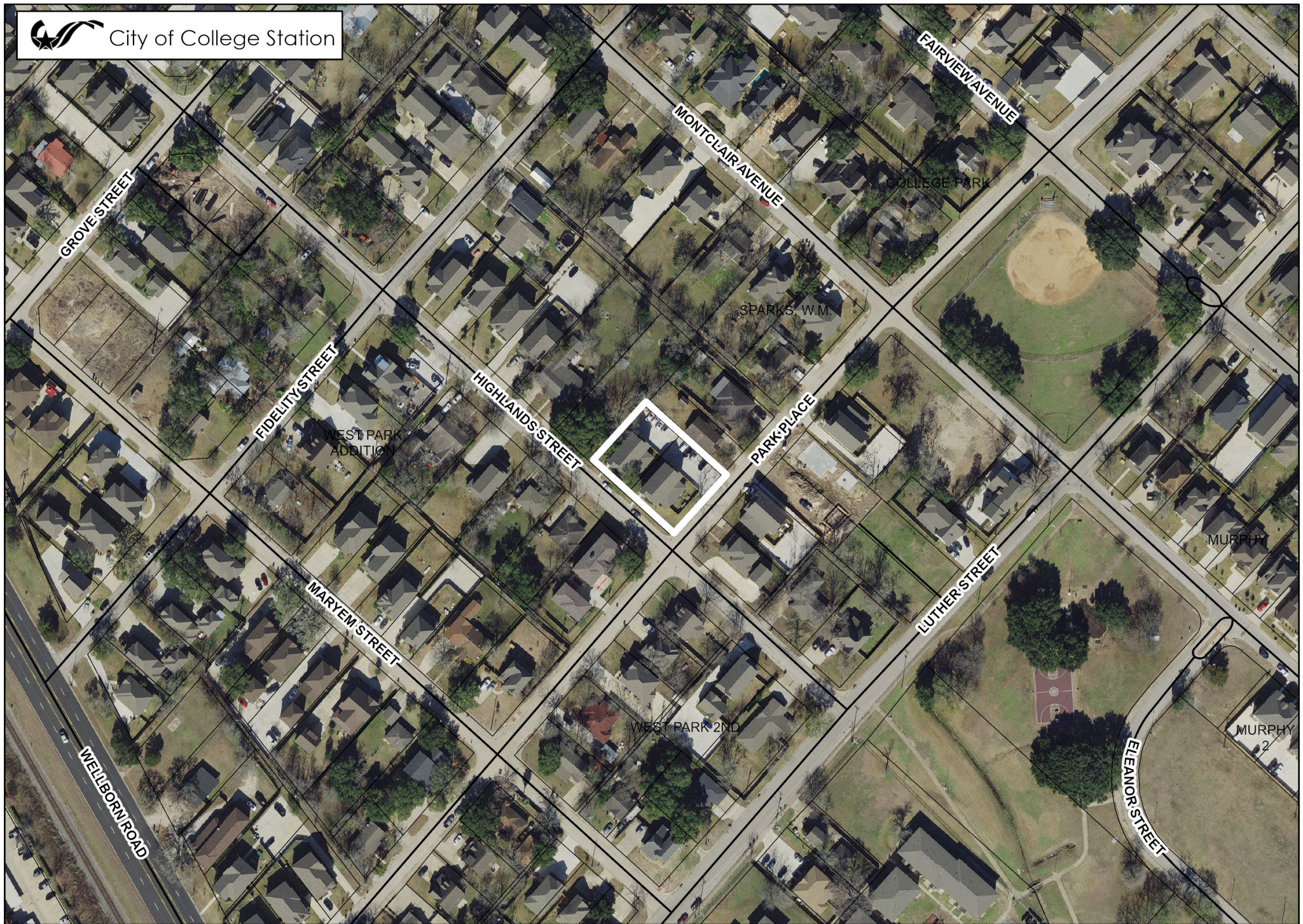
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

GS General Suburban is not likely to be as marketable for lots in this area. The land use plan designates the properties for Mixed Residential, meaning medium density residences that can't be achieved under the GS General Suburban zoning district. The residential units on the property are considered Shared Housing and is a use that is more marketable and more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A

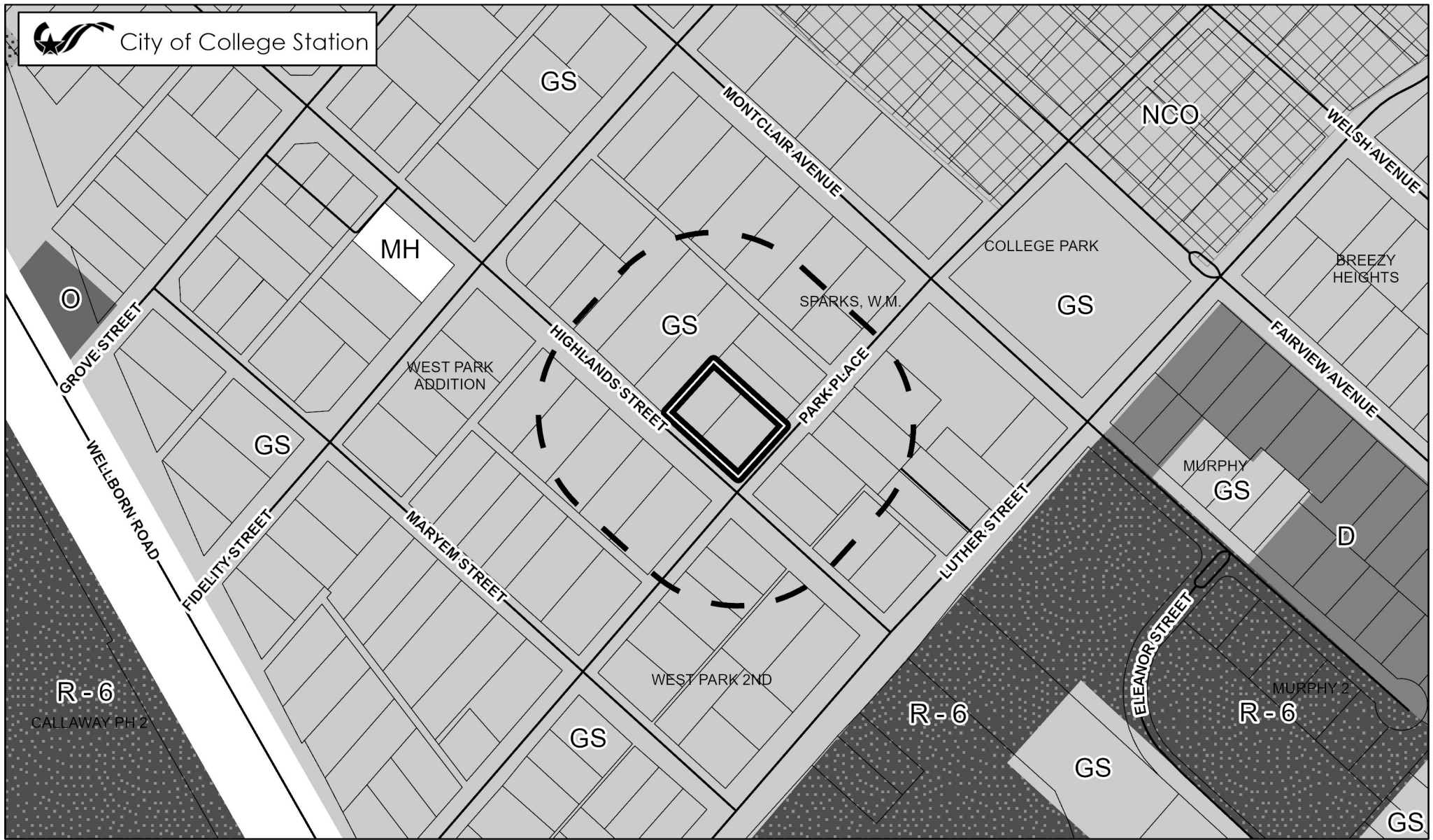


0 165 330 Feet

611-613 HIGHLANDS STREET REZONING

Case:
REZ2023-000023

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		
R	Rural	MH Middle Housing
WE	Wellborn Estate	MF Multi-Family
E	Estate	MU Mixed-Use
WRS	Wellborn Restricted Suburban	MHP Manufactured Home Pk.
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

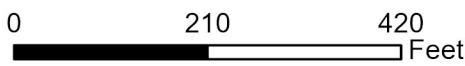
WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts

OV	Corridor Ovr.
RDD	Redevelopment District
ROO	Restricted Occupancy 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



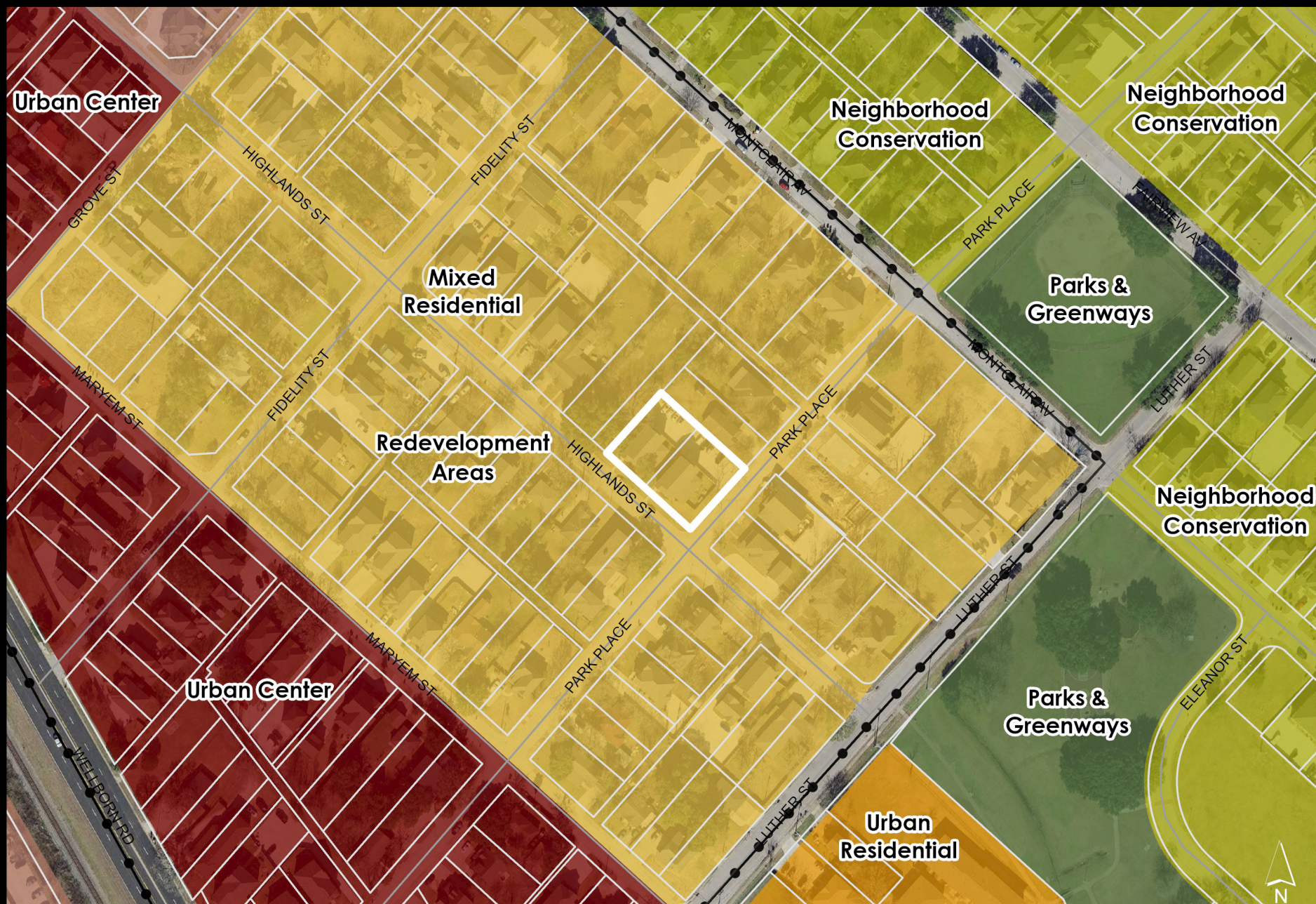
611-613 HIGHLANDS STREET REZONING

Case:
REZ2023-000023

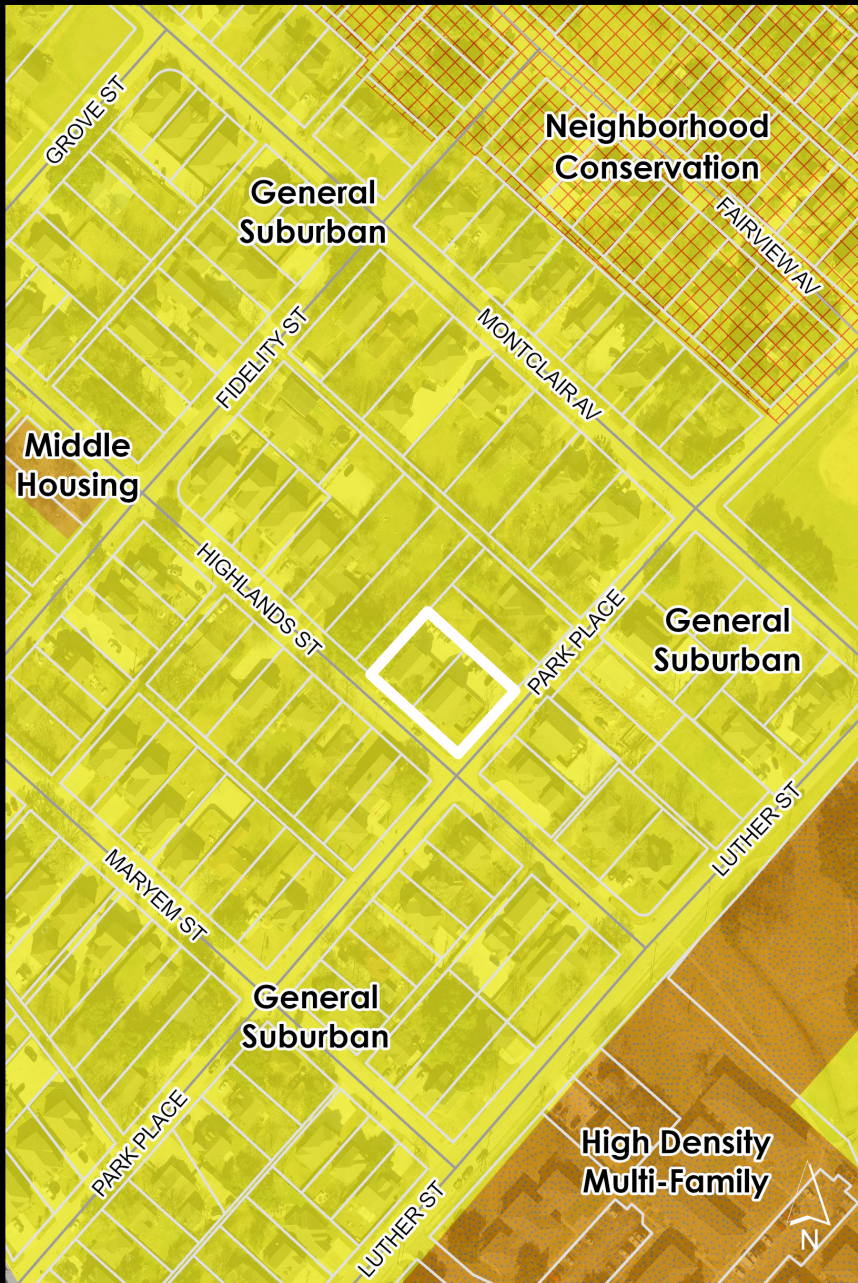
REZONING

EXISTING

Future Land Use



EXISTING Zoning



PROPOSED Zoning



BACKGROUND INFORMATION – REZ2023-000024

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 29

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	GS General Suburban	Residential
South	Mixed Residential	GS General Suburban	Residential
East	Mixed Residential	GS General Suburban	Residential
West	Mixed Residential	GS General Suburban	Maryem Street (local street)

DEVELOPMENT HISTORY

Annexed: October 1938
Zoning: District No. 1 First Dwelling House District (1940)
District R1-A Single-Family Residential (1972)
R-1 Single-Family Residential (2003)
GS General Suburban (2013)
Final Plat: West Park Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 607 MARYEM STREET

Address: 607 MARYEM ST

Legal Description: WEST PARK (CS), BLOCK 3, LOT 17

Total Acreage: 0.17

Applicant:: MITCHELL & MORGAN

Property Owner: PALAMOS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The residence at 607 Maryem Street falls under this definition. We are requesting a rezoning to MH Middle Housing so that the properties and property owner may be in compliance with zoning and development codes

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing residence contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

GS General Suburban can be suitable for the property; however, the property is developed as shared housing residence, which is more suitable under the MH Middle Housing zoning classification.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

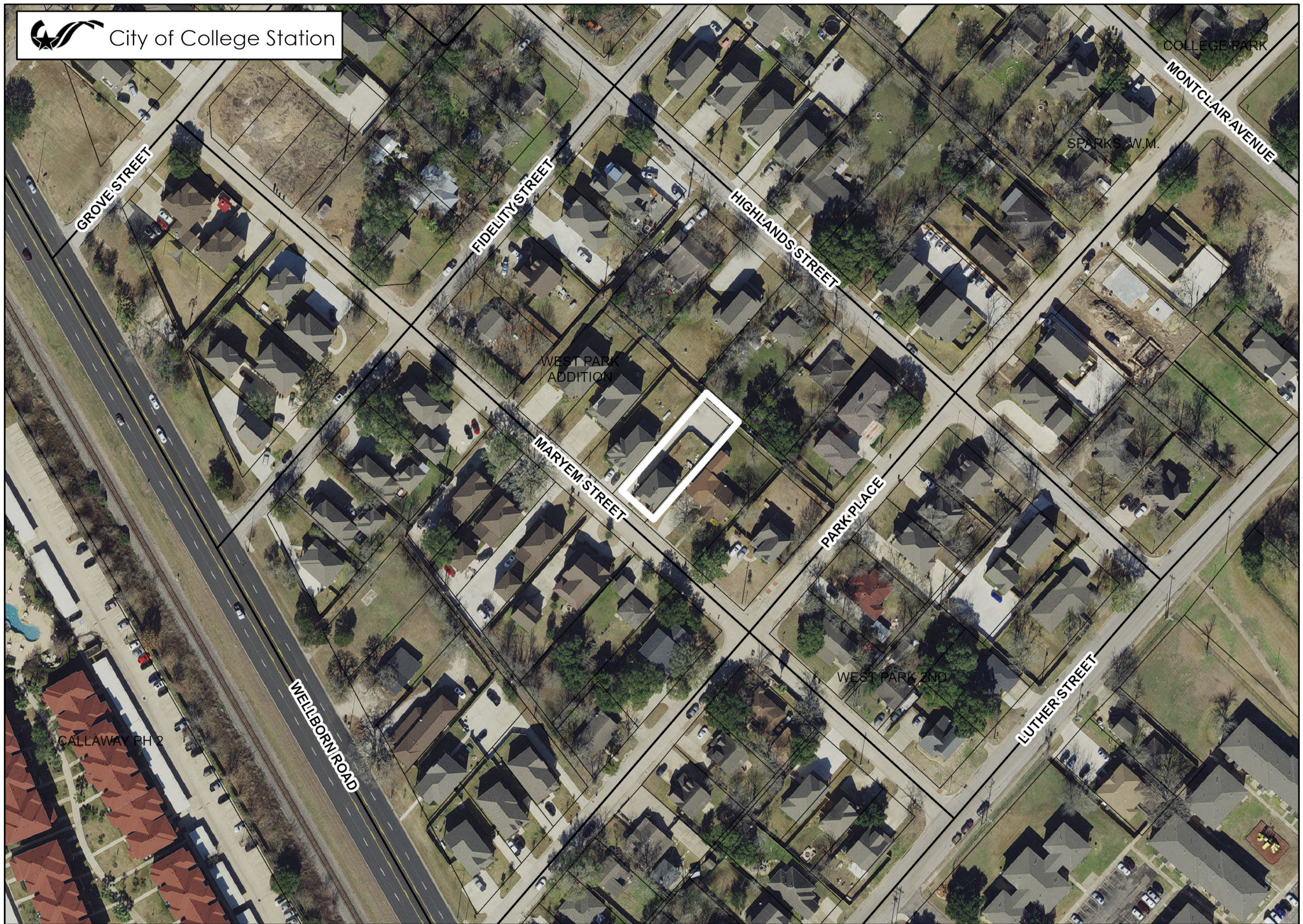
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University.

Explain the marketability of the property for uses permitted by the current zoning district.

GS General Suburban is not likely to be as marketable for lots in this area. The land use plan designates the property for Mixed Residential, meaning medium density residences that can't be achieved under the GS General Suburban zoning district. The residential unit on the property is considered Shared Housing and is a use that is more marketable and more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A

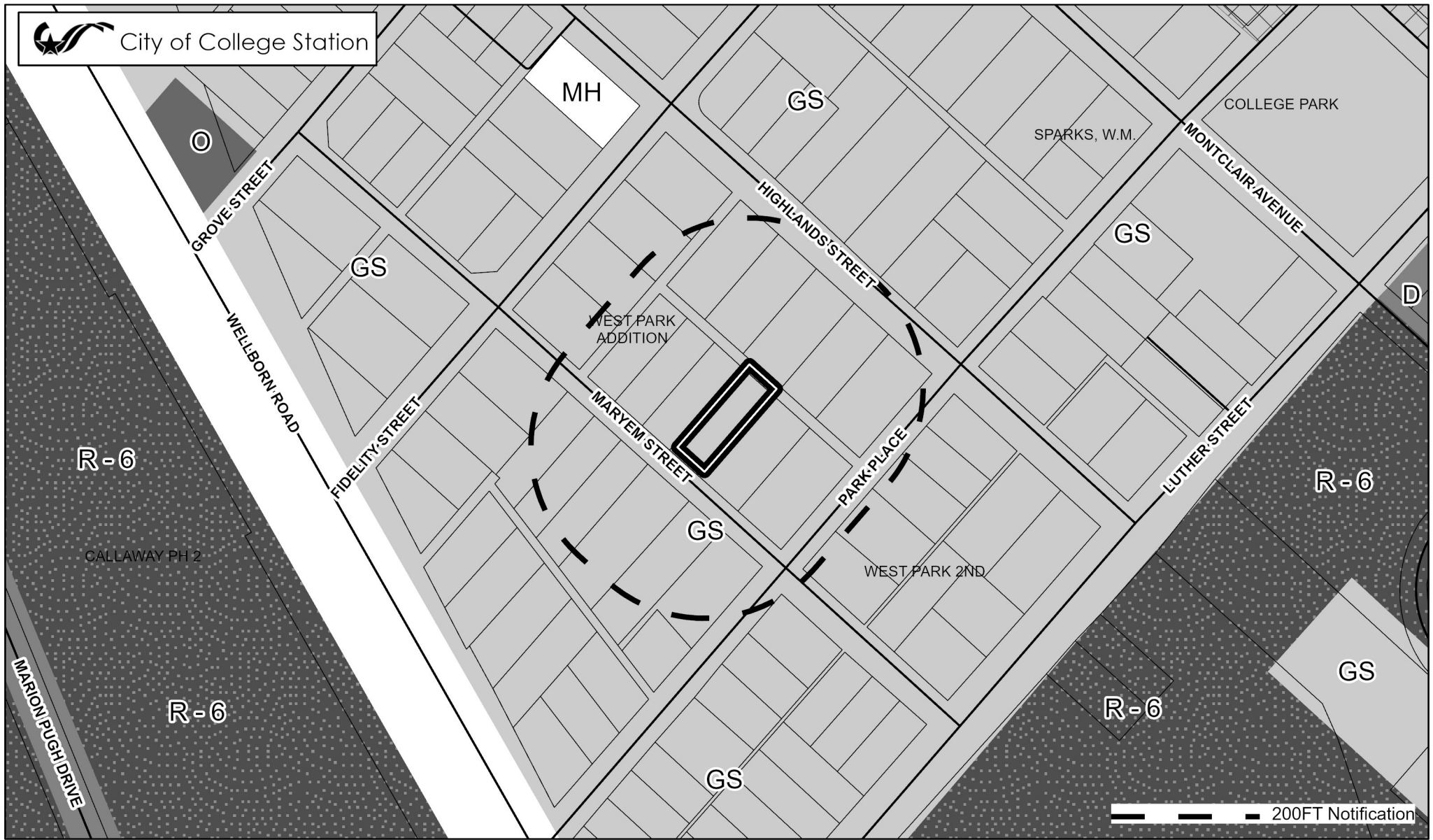


0 140 280 Feet

607 MARYEM STREET

Case:
REZ2023-000024

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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



0 185 370 Feet

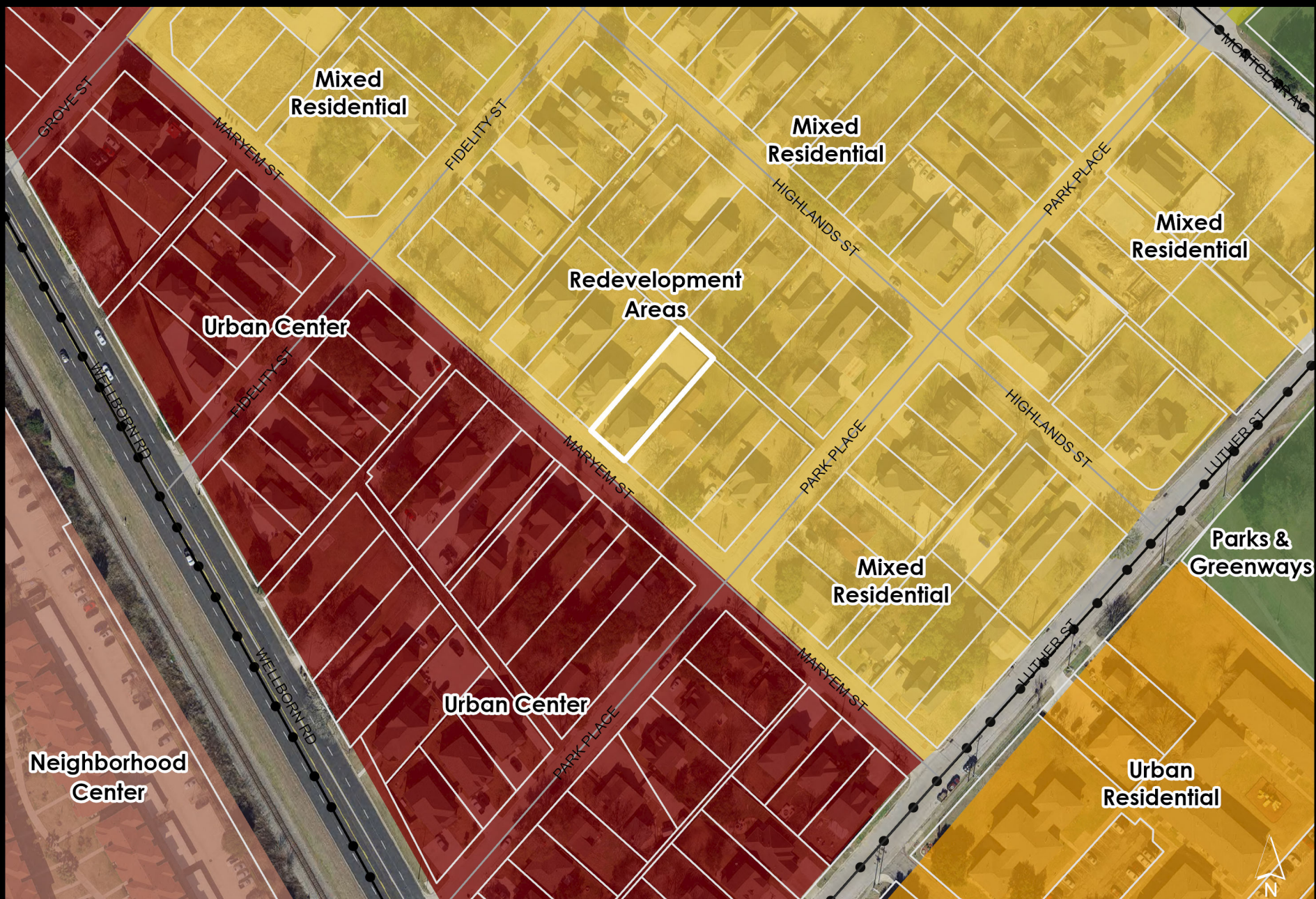
607 MARYEM STREET

Case:
REZ2023-000024

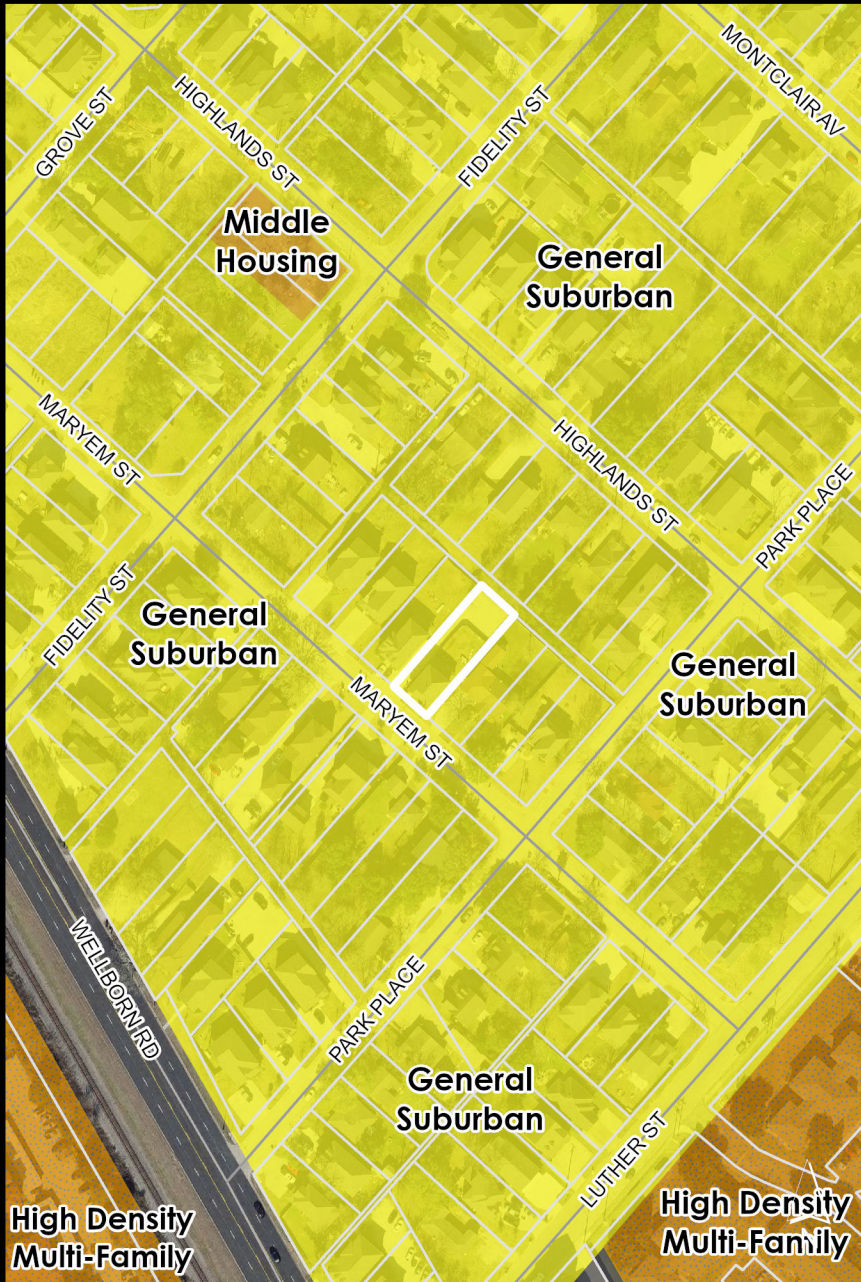
REZONING

EXISTING

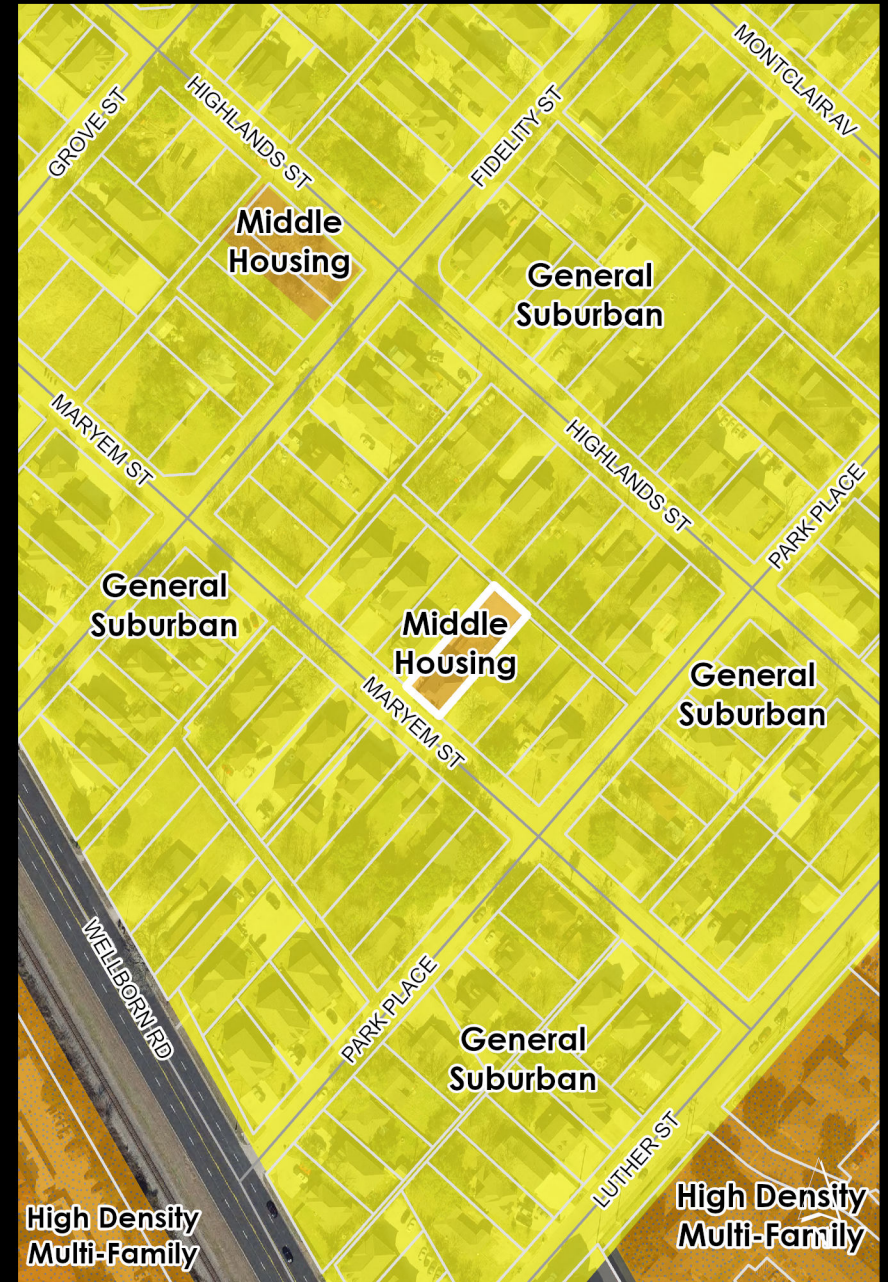
Future Land Use



EXISTING Zoning



PROPOSED Zoning



BACKGROUND INFORMATION – REZ2023-000025

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

None

Property owner notices mailed: 23

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	GS General Suburban	Residential
South	Parks & Greenways and Minor Collector	GS General Suburban	Luther Street
East	Mixed Residential	GS General Suburban	Residential
West	Mixed Residential	GS General Suburban	Residential

DEVELOPMENT HISTORY

Annexed: October 1938
Zoning: District No. 1 First Dwelling House District (1940)
District R1-A Single-Family Residential (1972)
R-1 Single-Family Residential (2003)
GS General Suburban (2013)
Final Plat: West Park Addition
Site Development: Single Family Residential



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: 301 LUTHER STREET

Address: 301 LUTHER ST

Legal Description: WEST PARK (CS), BLOCK 1, LOT 2-R1

Total Acreage: 0.16

Applicant:: MITCHELL & MORGAN

Property Owner: ALI JAAFFAR BCS LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for high occupancy residential structures that are permitted under the MH Middle Housing zoning district. The residence at 301 Luther Street falls under this definition. We are requesting a rezoning to MH Middle Housing so that the properties and property owner may be in compliance with zoning and development codes.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential uses. Mixed Residential is intended for a mix of medium density uses. There is a variety of housing densities in in this area of the city that the existing shared housing residence contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

GS General Suburban can be suitable for the property; however, the property is developed as shared housing residence, which is more suitable under the MH Middle Housing zoning classification.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University

Explain the suitability of the property for uses permitted by the current zoning district.

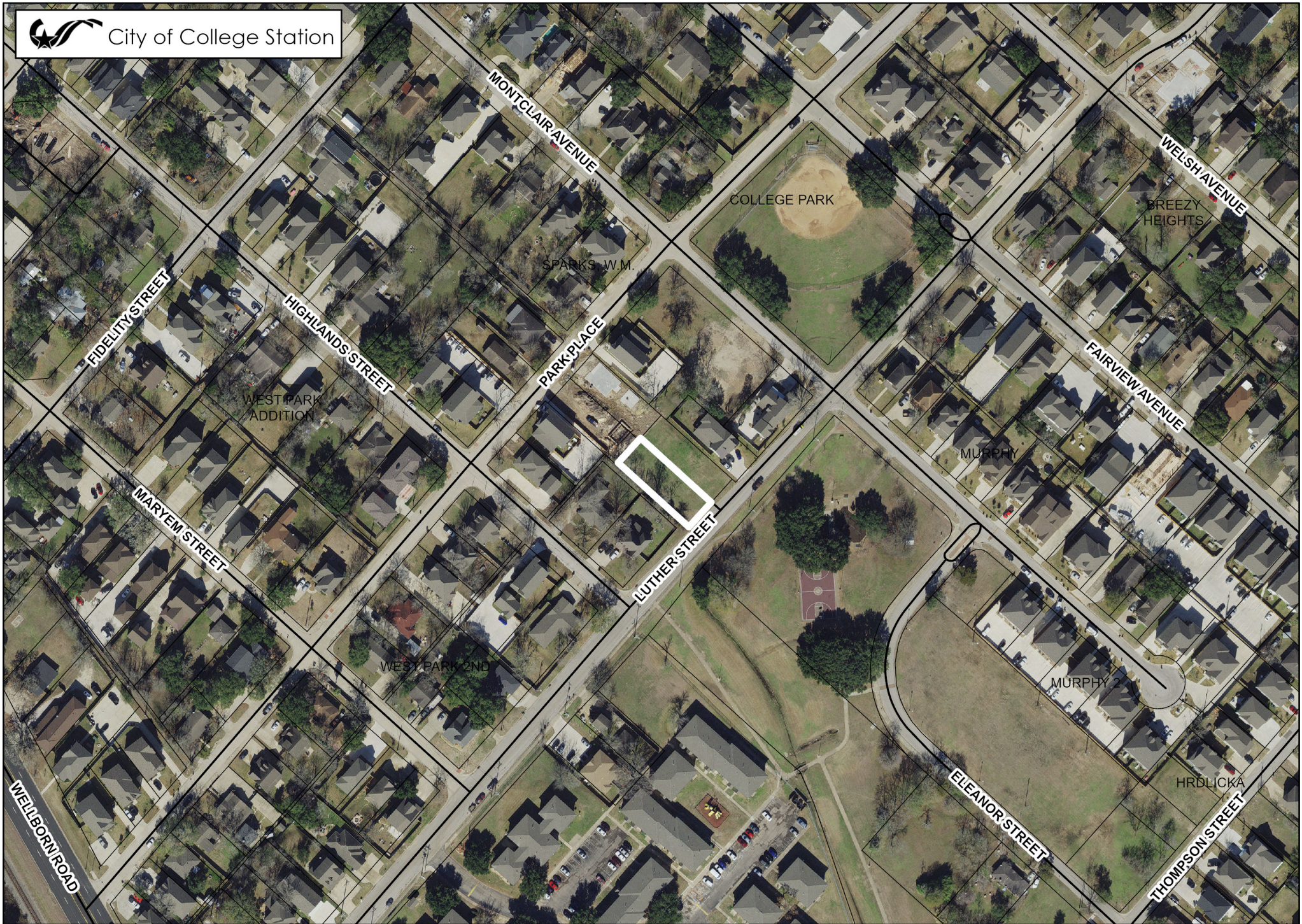
Middle Housing uses contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Shared housing residences are especially suitable due to the proximity to Texas A&M University

Explain the marketability of the property for uses permitted by the current zoning district.

GS General Suburban is not likely to be as marketable for lots in this area. The land use plan designates the property for Mixed Residential, meaning medium density residences that can't be achieved under the GS General Suburban zoning district. The residential unit on the property is considered Shared Housing and is a use that is more marketable and more appropriate under the MH Middle Housing zoning district.

List any other reasons to support this zone change.

N/A

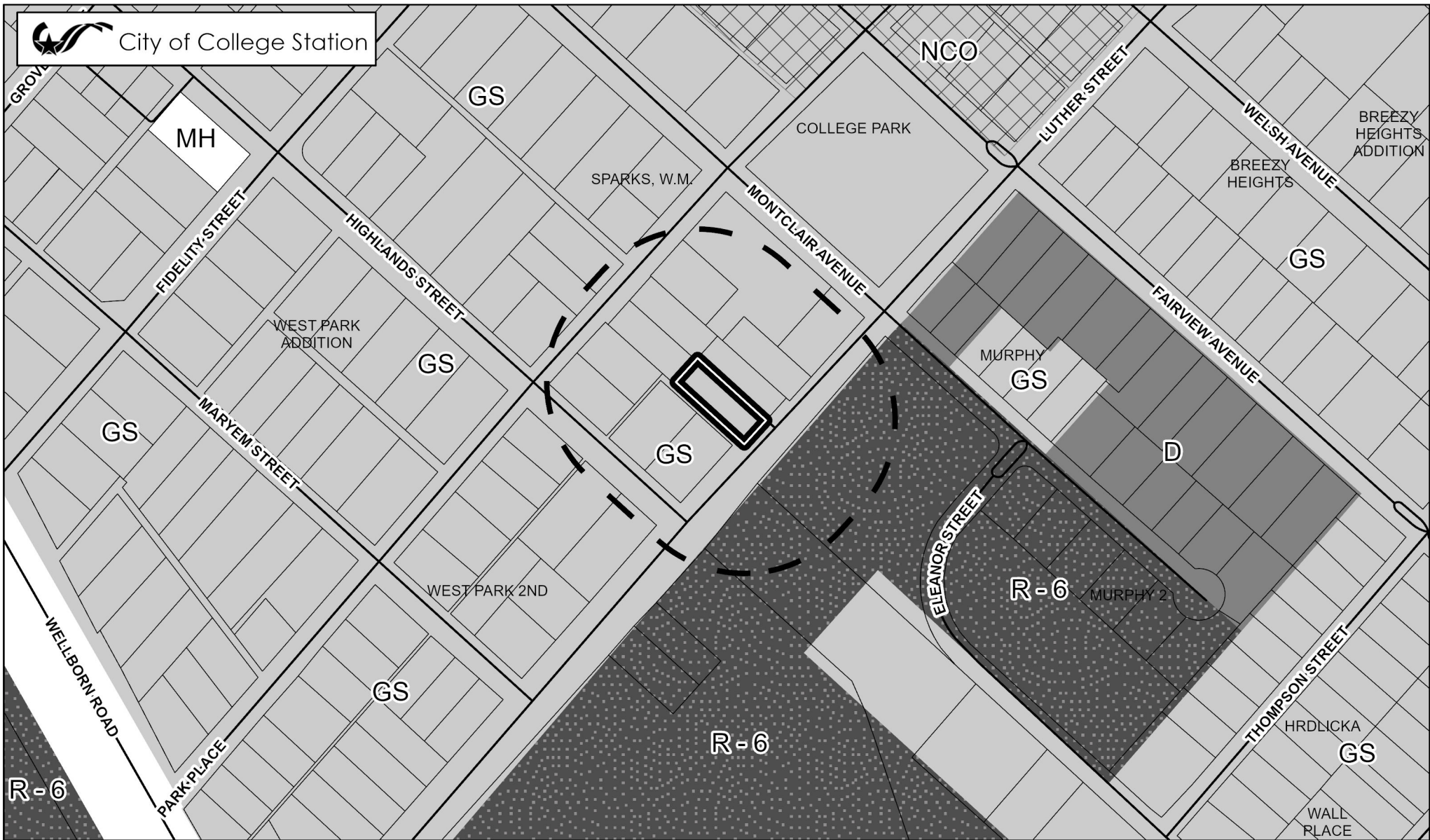


0 185 370 Feet

301 LUTHER STREET

Case:
REZ2023-000025

REZONING



ZONING DISTRICTS (In Grayscale)

Residential			
R	Rural	MH	Middle Housing
WE	Wellborn Estate	MF	Multi-Family
E	Estate	MU	Mixed-Use
WRS	Wellborn Restricted Suburban	MHP	Manufactured Home Pk.
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
ROO	Restricted Occupancy 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



0 210 420 Feet

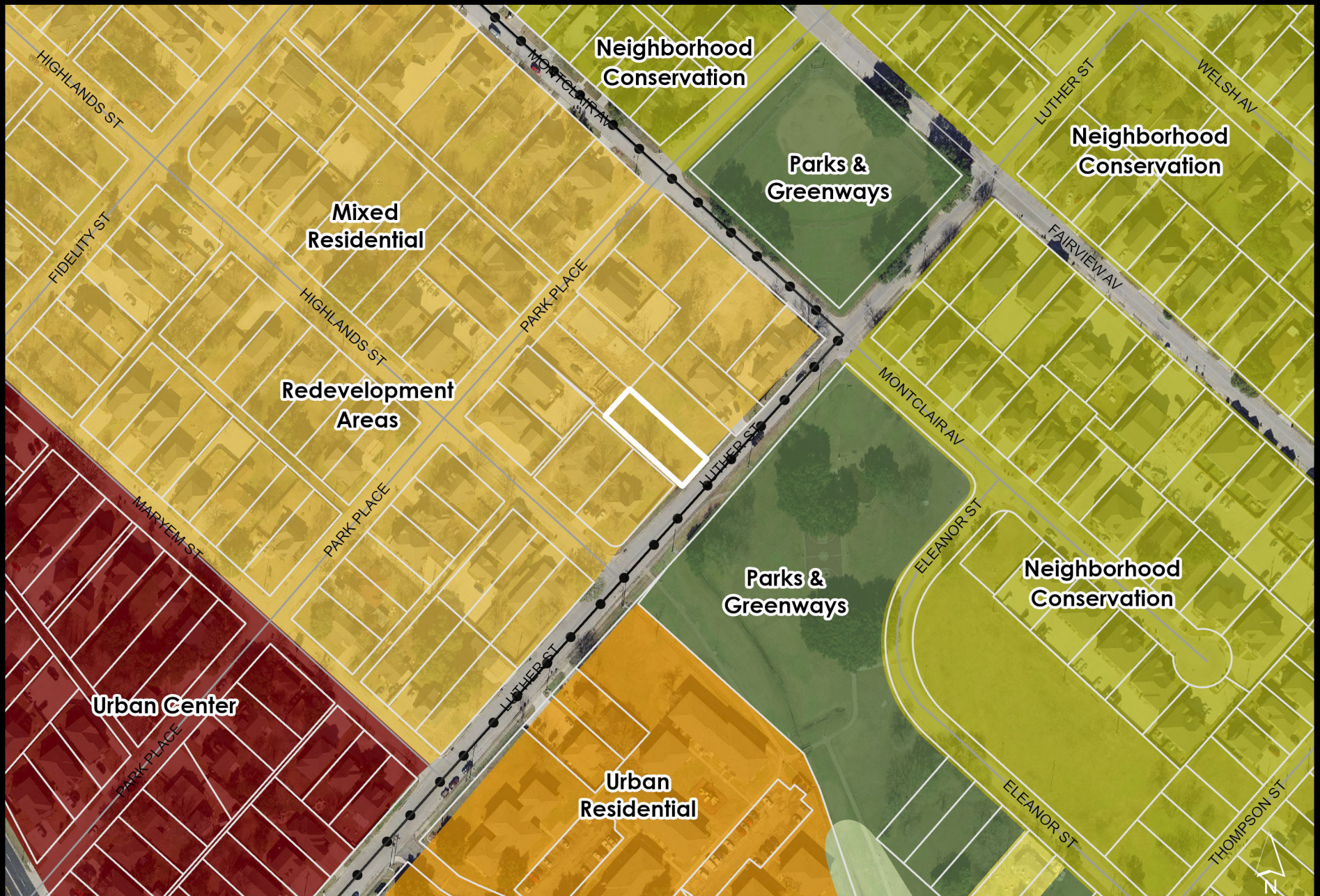
301 LUTHER STREET

Case:
REZ2023-000025

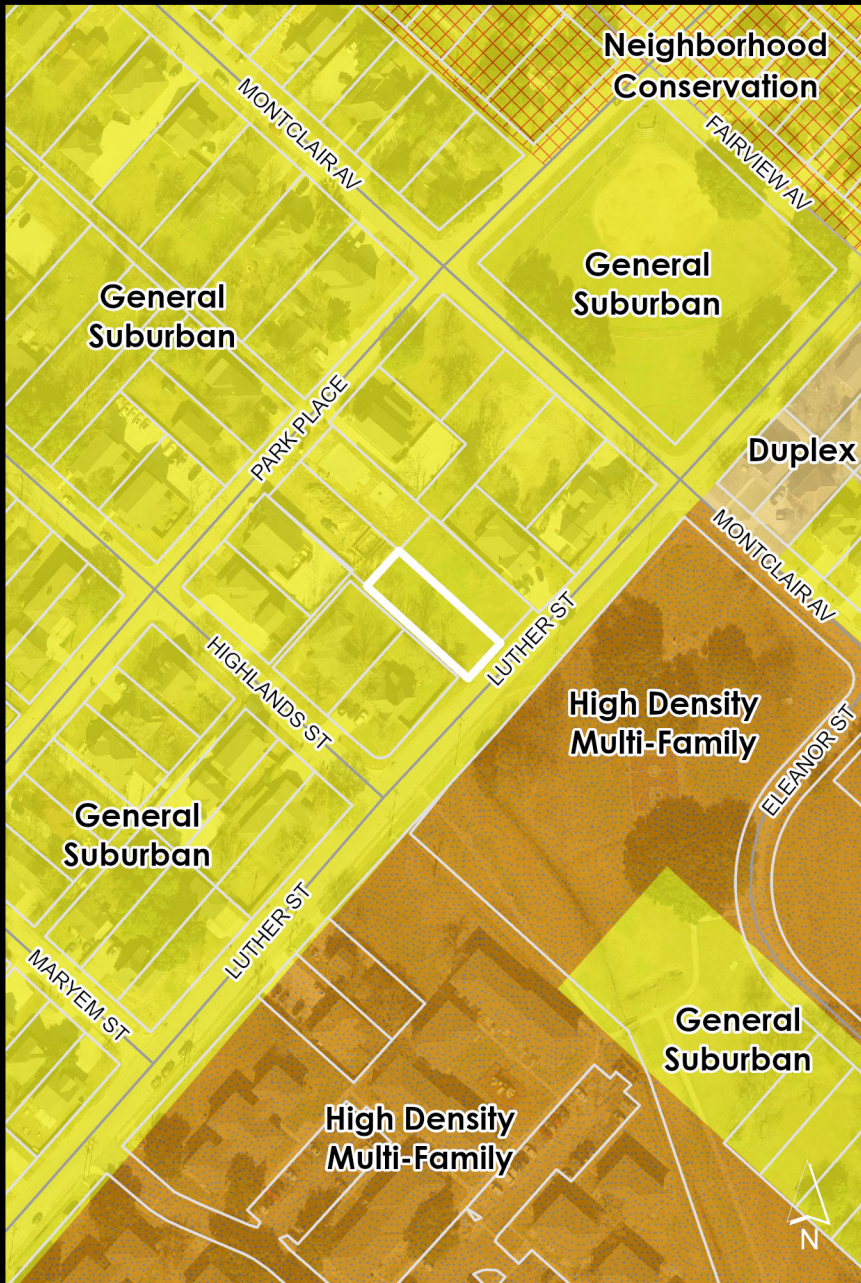
REZONING

EXISTING

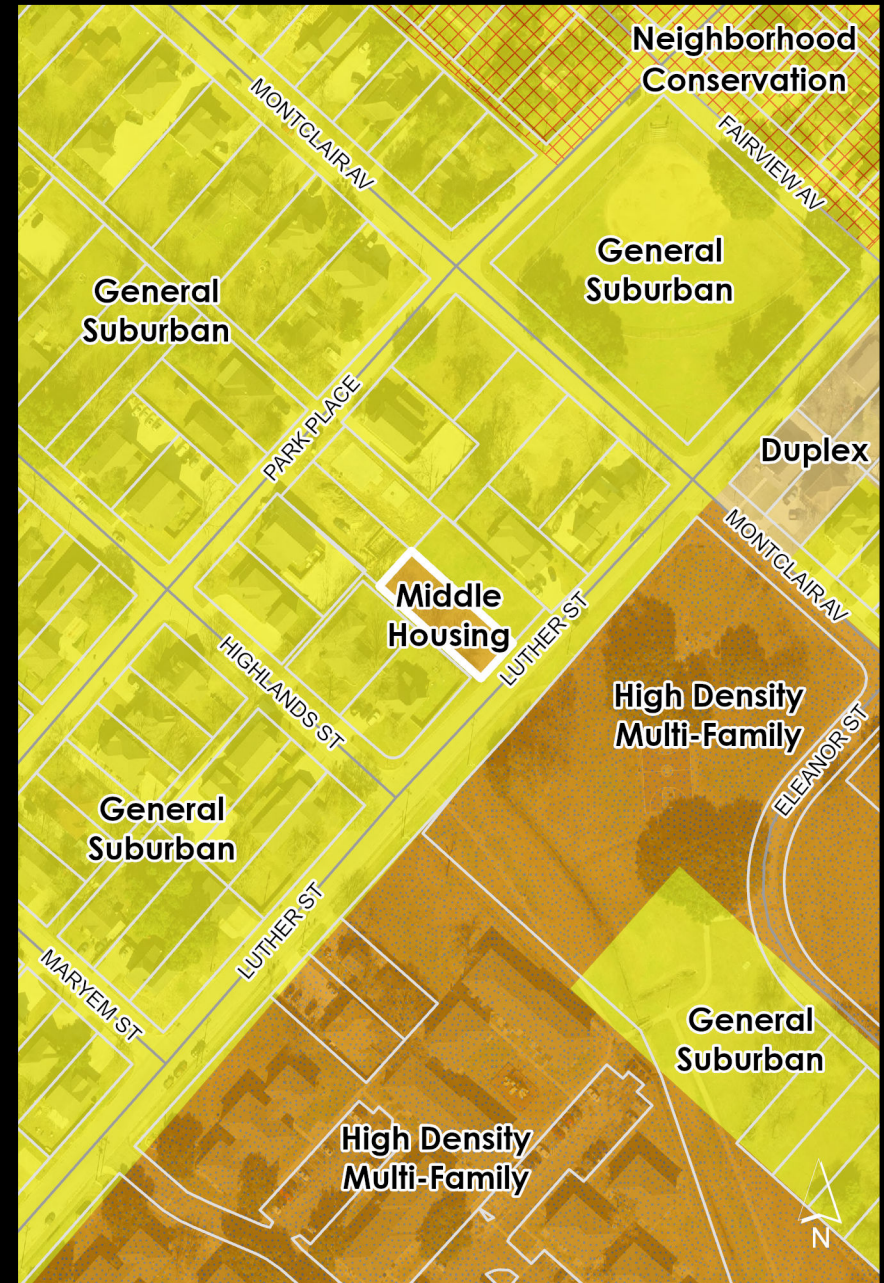
Future Land Use



EXISTING Zoning



PROPOSED Zoning



July 27, 2023
Item No. 8.6.
Rezoning - Avenue A GS to MH

Sponsor: Matthew Ellis

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 boundary from GS General Suburban to MH Middle Housing for approximately 1.05 acres being Lots 5-1 to 5-5 of the D.A. Smith Subdivision and generally located along Avenue A.

Relationship to Strategic Goals:

- Core Services & Infrastructure
- Diverse & Growing Economy

Recommendation(s): The Planning & Zoning Commission heard this item at their July 6, 2023 meeting and recommended approval, with the conditions outlined by staff. Staff recommends approval of this request conditioned on the construction of an approved secondary access drive meeting Fire Department standards no less than 175 feet away from Lincoln Avenue, a 10’ right-of-way dedication from each lot along Avenue A, and right-of-way chamfers along the lot that abuts Lincoln Avenue. These conditions are necessary to ensure the safe and effective delivery of services with the increase in potential density.

Summary: This request is to rezone approximately 1.05 acres of land being five platted lots generally located at 818-826 Avenue A from GS General Suburban to MH Middle Housing. The subject properties were platted in 2001 and are currently developed as single-family houses, constructed in 2002. The applicant intends to redevelop the lots to build duplexes. Nearby properties include single-family homes, two multi-family complexes, and a large-scale shopping center.

REZONING REVIEW CRITERIA

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject properties are designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential and are within the Texas Avenue and University Drive Redevelopment Area, which is currently undergoing a small area planning process. For the Mixed Residential land use, the Comprehensive Plan provides the following:

Areas appropriate for a mix of moderate density residential development including townhomes, duplexes, small multifamily buildings (3-12 units), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows the original character to evolve. These areas may serve as buffers between more intense multi-family residential or mixed-use development and suburban residential or neighborhood conservation areas.

The Mixed Residential land use intends to accommodate a walkable pattern of small lots, small

blocks, and well-connected street pattern that supports surrounding neighborhoods. Developments in this district should prioritize a mix of housing types and scales located near community facilities or adjacent to commercial or neighborhood centers. The proposed redevelopment of these sites is aligned with that vision.

The zoning districts that are generally appropriate within this land use include middle housing, duplex, townhouse, and limited-scale single-family zoning.

The Comprehensive Plan discusses residential infill and redevelopment in both *Chapter 3, Strong Neighborhoods* and *Chapter 8, Managed Growth*. The plan states, “infill development offers the opportunity to mediate and enhance the identity of neighborhoods.” The plan goes on to mention that infill and redevelopment can create more viable and vibrant places throughout the city. Residential infill, especially in areas of the city designated for redevelopment, improves the efficiency of land use while enhancing the character of surrounding neighborhoods. As a tool for redevelopment, the request allows a mix of housing types with smaller lot sizes.

However, there is a concern when it comes to Fire and Solid Waste access on Avenue A. Fire and Solid Waste personnel already face challenges in trying to serve the current residents. Currently, there is not a sufficient turn around for either department’s larger vehicles, forcing both to do a backing maneuver onto Lincoln Avenue, a major collector. The addition of more dwelling units without the creation of a second access point would undermine the above benefits of infill development, causing this rezoning request to not be consistent with the Comprehensive Plan. Additionally, the right-of way for most of the block on Avenue A is deficient for the construction of a typical residential street. These lots will need to dedicate right-of-way to help establish the proper roadway system for this block.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is surrounded by single-family homes to the north, east, and south and commercial development to the west. Development pressure continues to grow as new generations of students, young professionals, families, and seniors move to College Station; allowing and encouraging redevelopment opportunities helps alleviate some of the pressure in the market. The Middle Housing zoning district enables the redevelopment of these lots at an appropriate scale, enabling the increase in residential density on these sites. The residential uses permitted in the MH Middle Housing zoning district are appropriate for the surrounding areas, but access concerns would be worsened with infill density without a secondary access point.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject properties makes them suitable for single-family houses, townhouses, duplexes, and multiplex uses, although some uses would require replatting of the lots to fit the dimensional standards of the MH Middle Housing zoning district. The proposed use of duplexes would not require replatting, although, the dedication of the right-of-way and access drive will change the lot dimensions.

4. Whether there are available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure are adequate to support the needs of this development. Drainage and any other infrastructure required with the site development shall be designed and constructed following the BCS Unified Design Guidelines. The subject property fronts Avenue A but could be reoriented to face Eisenhower Street to allow for rear parking off Avenue A. Each residential lot will take access off Avenue A as it is a local street and would not be allowed access from Eisenhower Street as it is a major collector. Avenue A is a road that does not conform to Fire access requirements, which creates issues for Fire and Solid Waste personnel. The proposed use is expected to generate less than 150 trips in any peak hour; therefore, a TIA was not required.

5. The marketability of the property:

The uses allowed by the proposed zoning district are generally marketable for the area. The applicant states that the currently allowed uses are marketable, but not the best use of the property. They mention the properties are close to Texas A&M University and will serve the student population, and duplexes are more appropriate and marketable for these lots.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Vicinity, Aerial, and Small Area Map
3. Rezoning Exhibit
4. Background Information
5. Applicant's Supporting Information
6. Rezoning Map
7. Existing Future Land Use
8. Ordinance

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 FROM GS GENERAL SUBURBAN TO MH MIDDLE HOUSING FOR APPROXIMATELY 1.05 ACRES BEING LOTS 5-1 TO 5-5 OF THE D.A. SMITH SUBDIVISION AND GENERALLY LOCATED ALONG AVENUE A CERTAIN PROPERTIES AS DESCRIBED BELOW; 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” 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, and after satisfying all of the conditions described in **Exhibit “B”**.

PASSED, ADOPTED, and APPROVED this 27th day of July, 2023.

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 GS General Suburban to MH Middle Housing:

Lots 5-1 through 5-5 of the D.A. Smith Subdivision

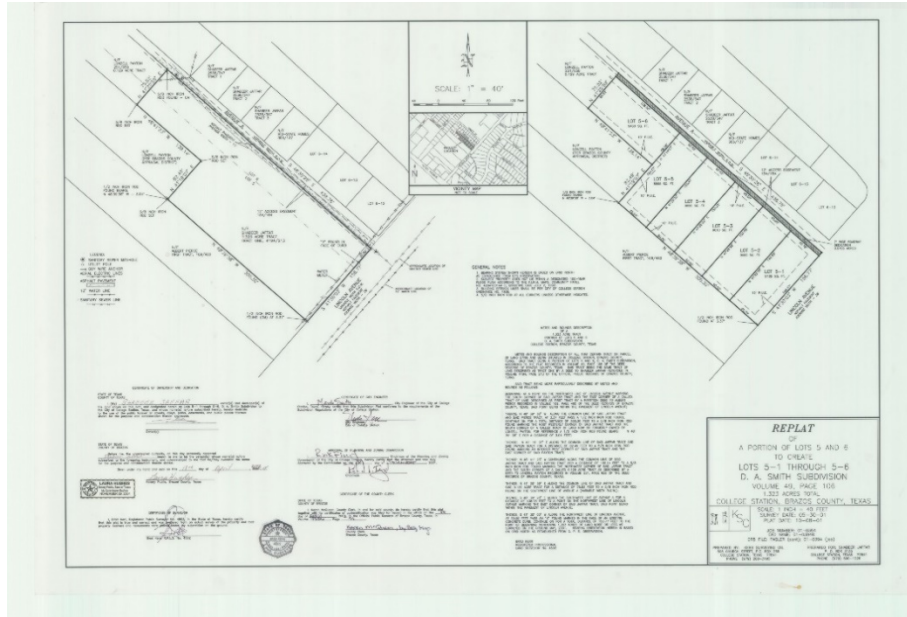


Exhibit B

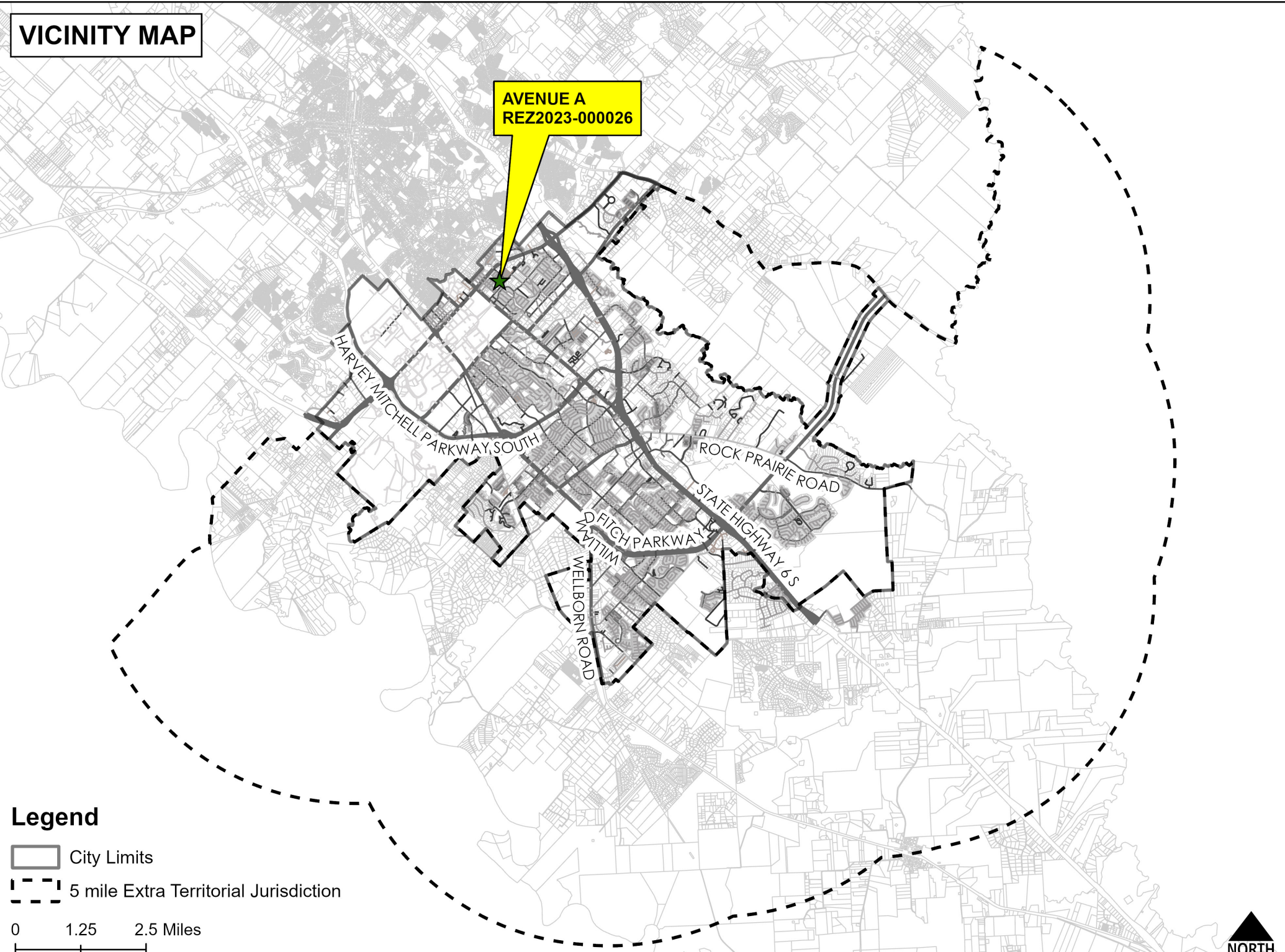
That the following conditions must be satisfied before the rezoning becomes effective:

1. Construction of an approved secondary access drive meeting Fire Department standards no less than 175 feet away from Lincoln Avenue; and
2. Dedication of a 10' right-of-way from each lot along Avenue A and dedication of right-of-way chamfers along the lot that abuts Lincoln Avenue.



VICINITY MAP

AVENUE A
REZ2023-000026

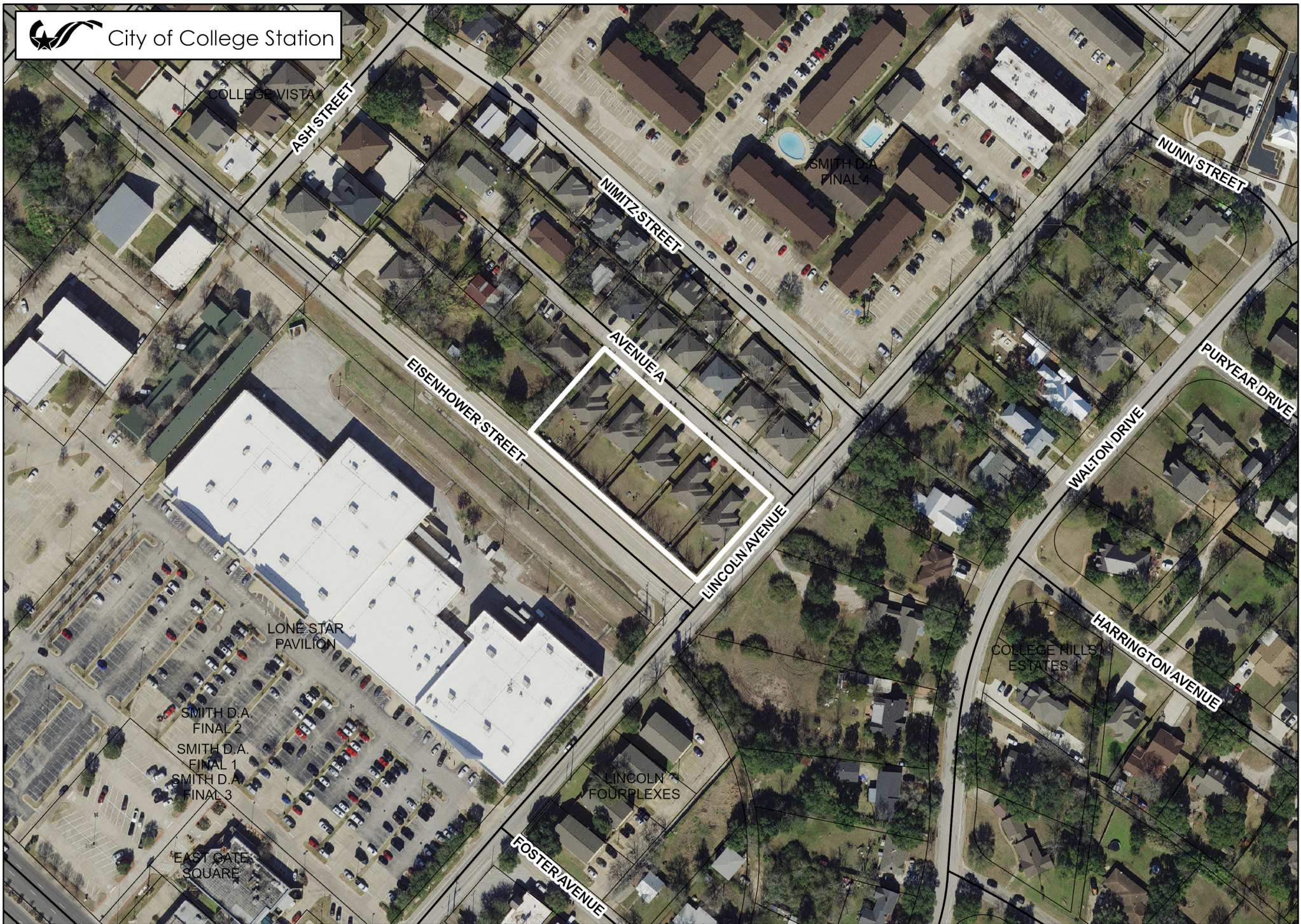


Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction

0 1.25 2.5 Miles





0

165

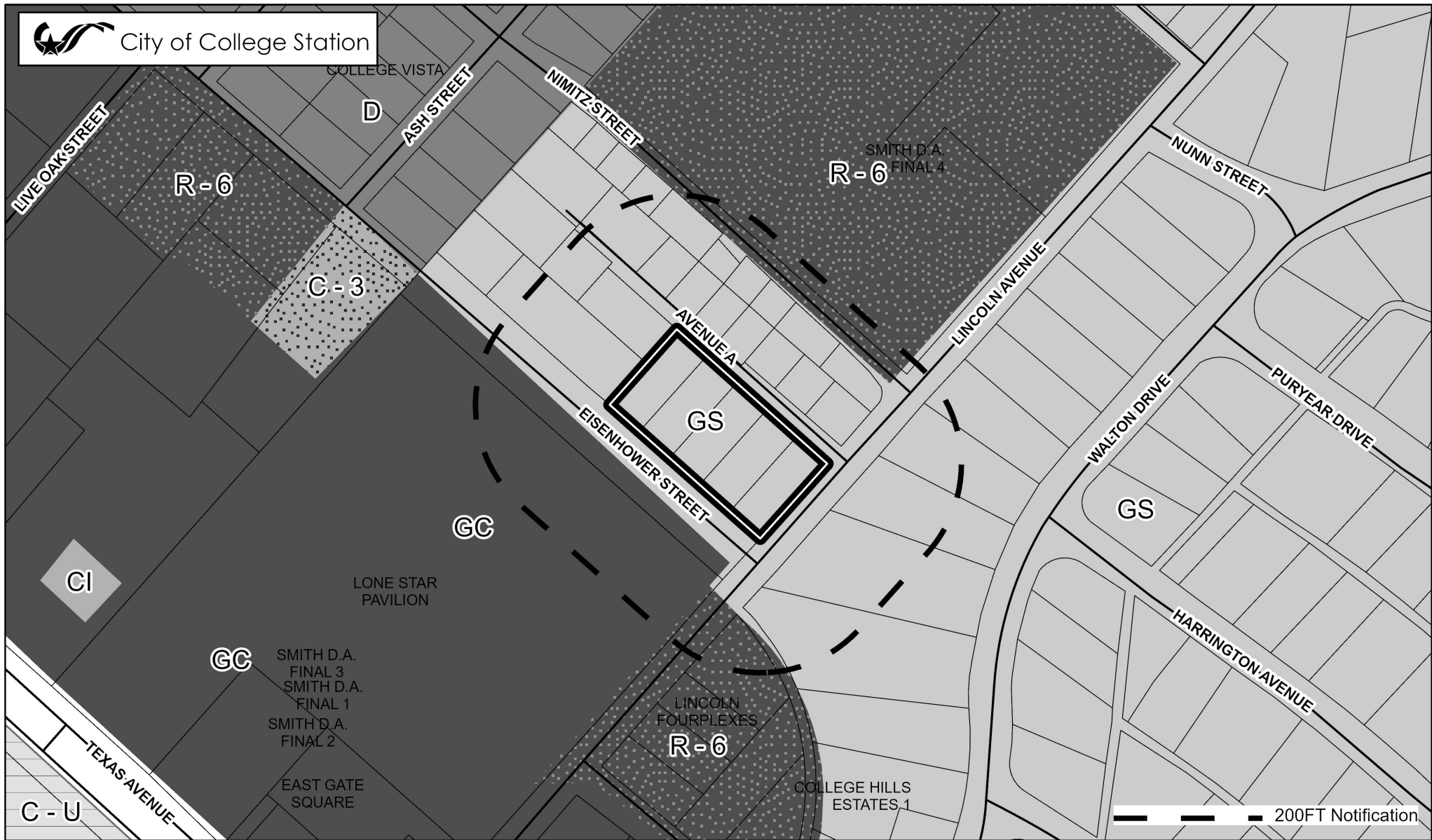
330

Feet

AVENUE A

Case:
REZ2023-000026

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
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
ROO	Restricted Occupancy 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

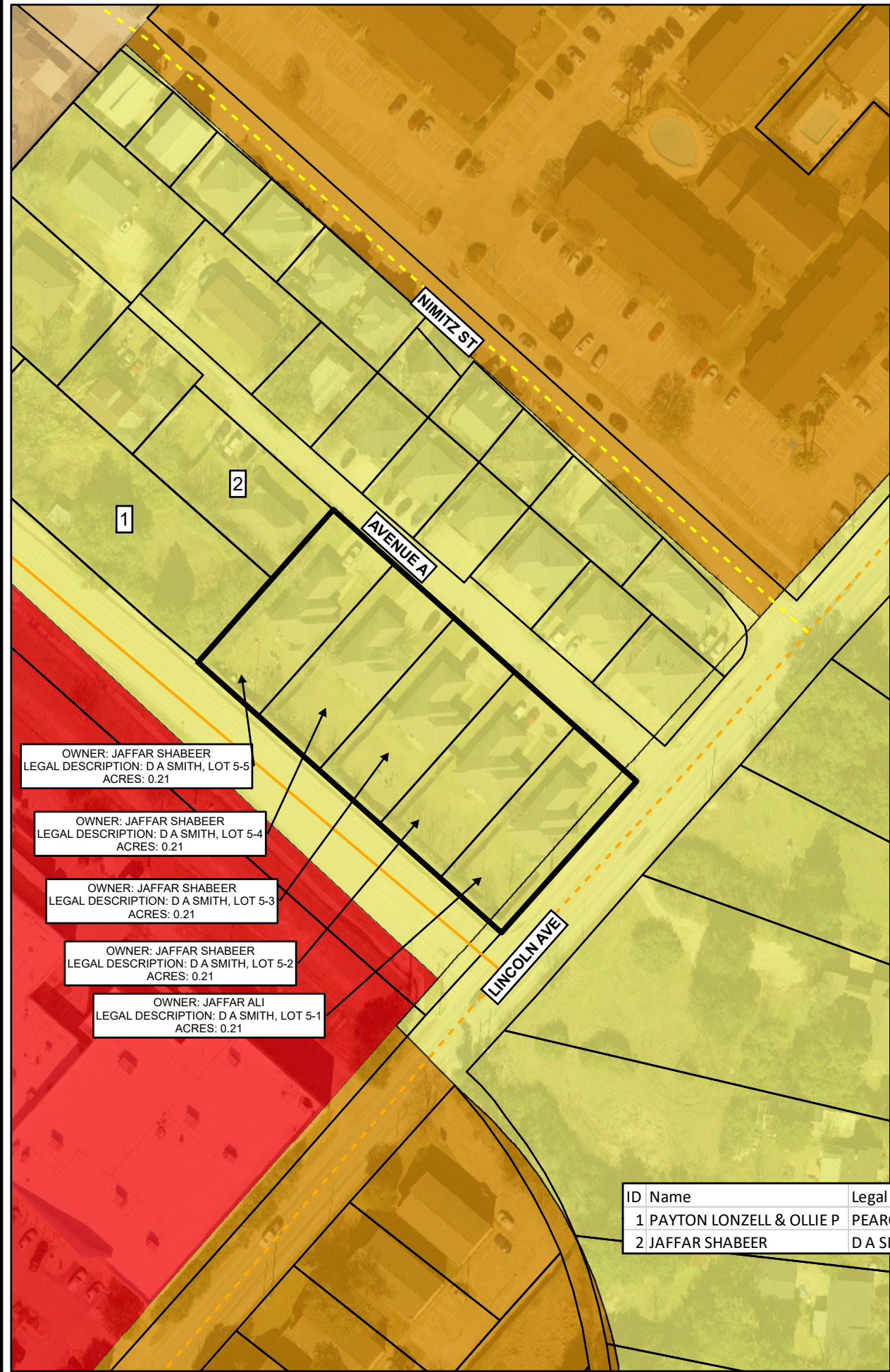


0 200 400 Feet

AVENUE A

Case:
REZ2023-000026

REZONING



ID	Name	Legal Description	Current Zoning	Current Land Use
1	PAYTON LONZELL & OLLIE P	PEARCE (AN UNRECORDED ADDITION), BLOCK 2, LOT 10 & 11	General Suburban	Mixed Residential
2	JAFFAR SHABEER	D A SMITH, LOT 5-6	General Suburban	Mixed Residential

Zoning

Description

D - Duplex

GC - General Commercial

GS - General Suburban

R-6 - High Density Multi-Family

MH - Middle Housing

Thoroughfare Plan

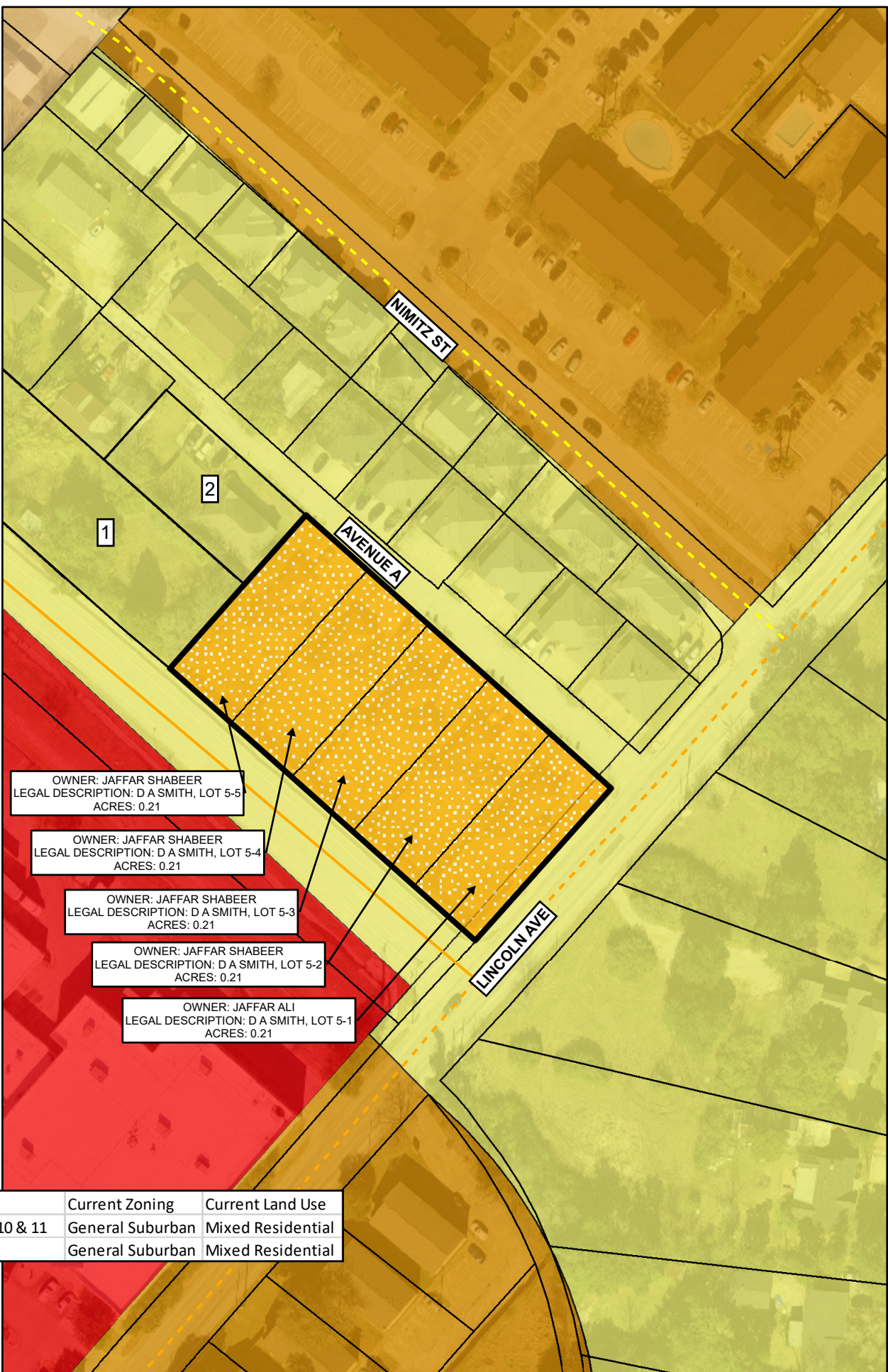
Classification

Existing, 2 Lane Major Collector

Future, 2 Lane Major Collector

Future, 2 Lane Minor Collector

NOTE: This site does not lie within the 100-year floodplain boundary per FEMA's Flood Insurance Rate Map panel 48041C0215F, Effective Date: April 2, 2014



N

1 inch = 100 feet

MITCHELL

M&M

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

818-826 Avenue A

May 2023

Ex. A

Page 403 of 426

BACKGROUND INFORMATION – REZ2023-000026

NOTIFICATIONS

Advertised Commission Hearing Date: July 6, 2023
Advertised Council Hearing Date: July 27, 2023

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:

College Hills HOA

Property owner notices mailed: 25

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Mixed Residential	GS General Suburban	Detached single family
South	Neighborhood Conservation	GS General Suburban	Detached single family
East	Neighborhood Conservation	GS General Suburban	Detached single family
West	Urban Center	GC General Commercial	Shopping center

DEVELOPMENT HISTORY

Annexed: April 1951
Zoning: A-O Agricultural Open (1951 upon annexation)
R-3 Apartment Building (year undetermined)
R-1 Single Family Residential (1976)
R-1 Single Family Residential renamed to GS General Suburban (2013)
Final Plat: D.A. Smith Subdivision
Site Development: Single-family Houses



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: AVENUE A

Address: 818 AVENUE A

Legal Description: D A SMITH, LOT 5-5

Total Acreage: 1.02

Applicant:: MITCHELL & MORGAN

Property Owner: JAFFAR SHABEER

List the changed or changing conditions in the area or in the City which make this zone change necessary.

As the student population at Texas A&M University continues to grow, the need for housing close to the University becomes more important. The Comprehensive Plan recognizes this need and includes a new land use designation ideal for infill redevelopment that will accommodate a variety of moderate density residential land uses. These properties are ideal for redevelopment and this rezoning to allow duplexes will further implement the Plan

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates these properties are designated for Mixed Residential uses. Mixed residential is intended for a mix of medium density uses. There is a variety of housing in the area of Avenue A. Duplexes will further support the mix of housing types and is in accordance with the Comprehensive Plan. These properties are also located within a Redevelopment area on the Comprehensive Plan. Redeveloping these properties will enhance the character and value of the neighborhood.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

General Suburban is not suitable as this area is planned for Mixed Residential to encourage denser residential development.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Duplexes contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Duplexes are especially suitable due to the proximity to Texas A&M University.

Explain the suitability of the property for uses permitted by the current zoning district.

Duplexes contribute to the desired mix of densities and housing types specified in the Mixed Residential land use designation making this development very suitable for the property. Duplexes are especially suitable due to the proximity to Texas A&M University.

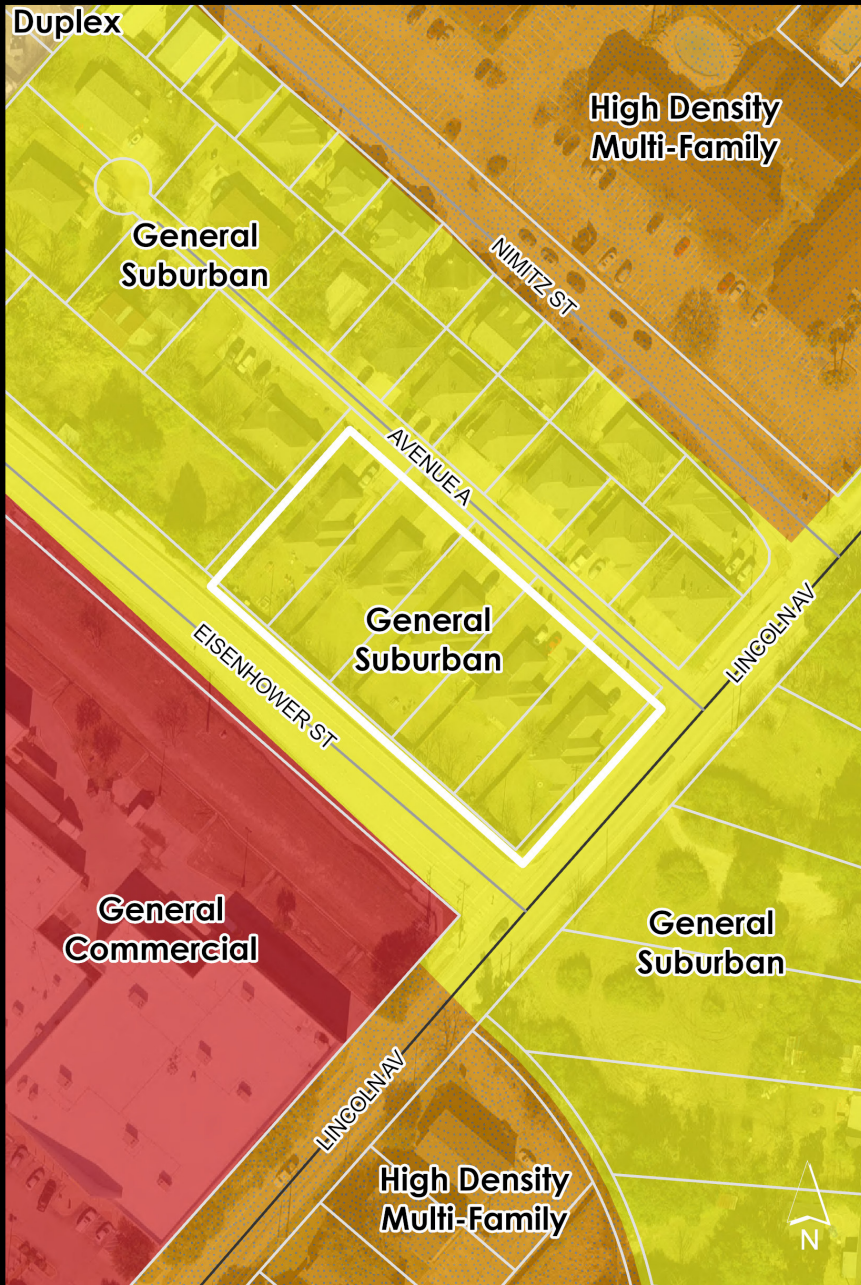
Explain the marketability of the property for uses permitted by the current zoning district.

General suburban uses as permitted by the existing zoning district are probably marketable, but are not the highest and best use for the property. These properties are close in proximity to Texas A&M University and will serve the student population. Duplexes are more appropriate and marketable for these lots and will better serve the student housing needs.

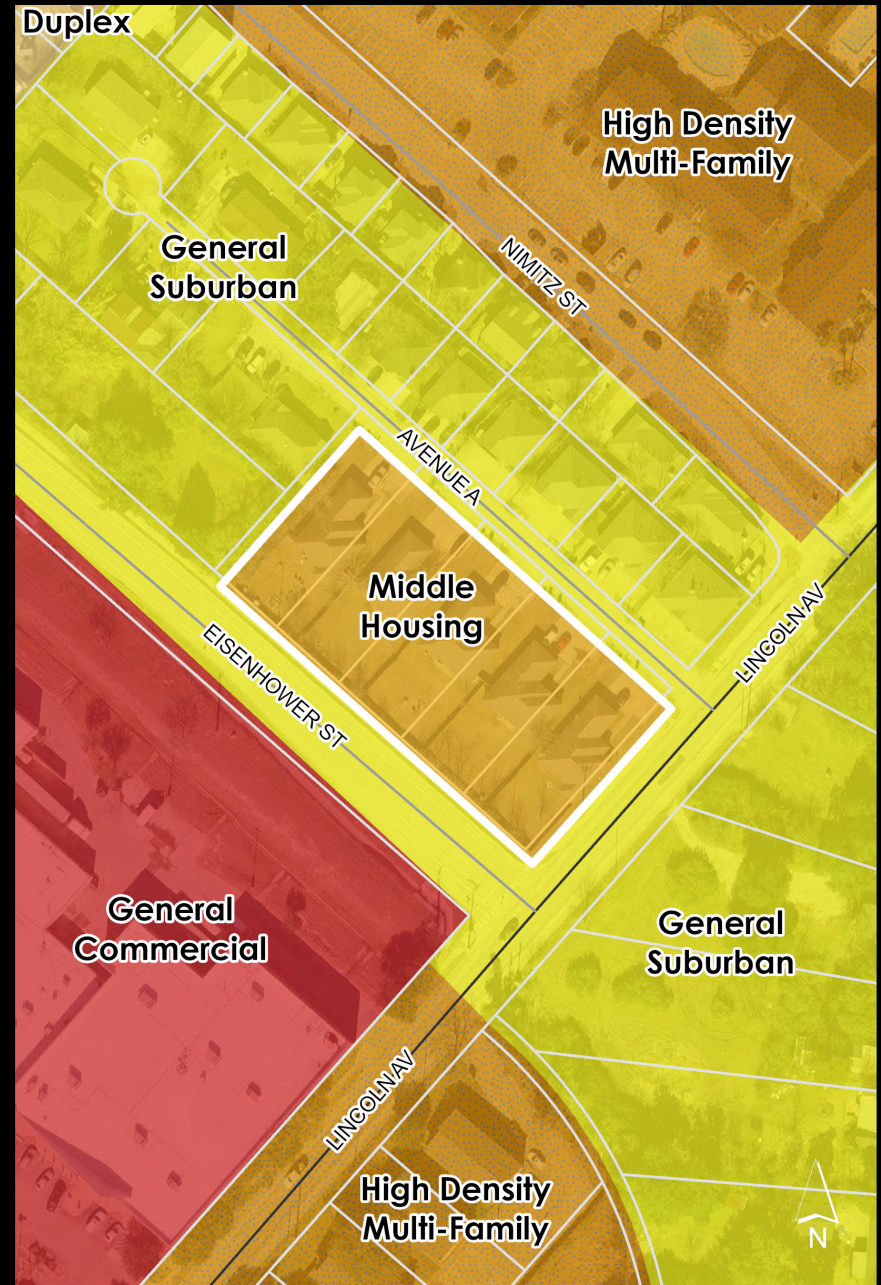
List any other reasons to support this zone change.

N/A

EXISTING Zoning

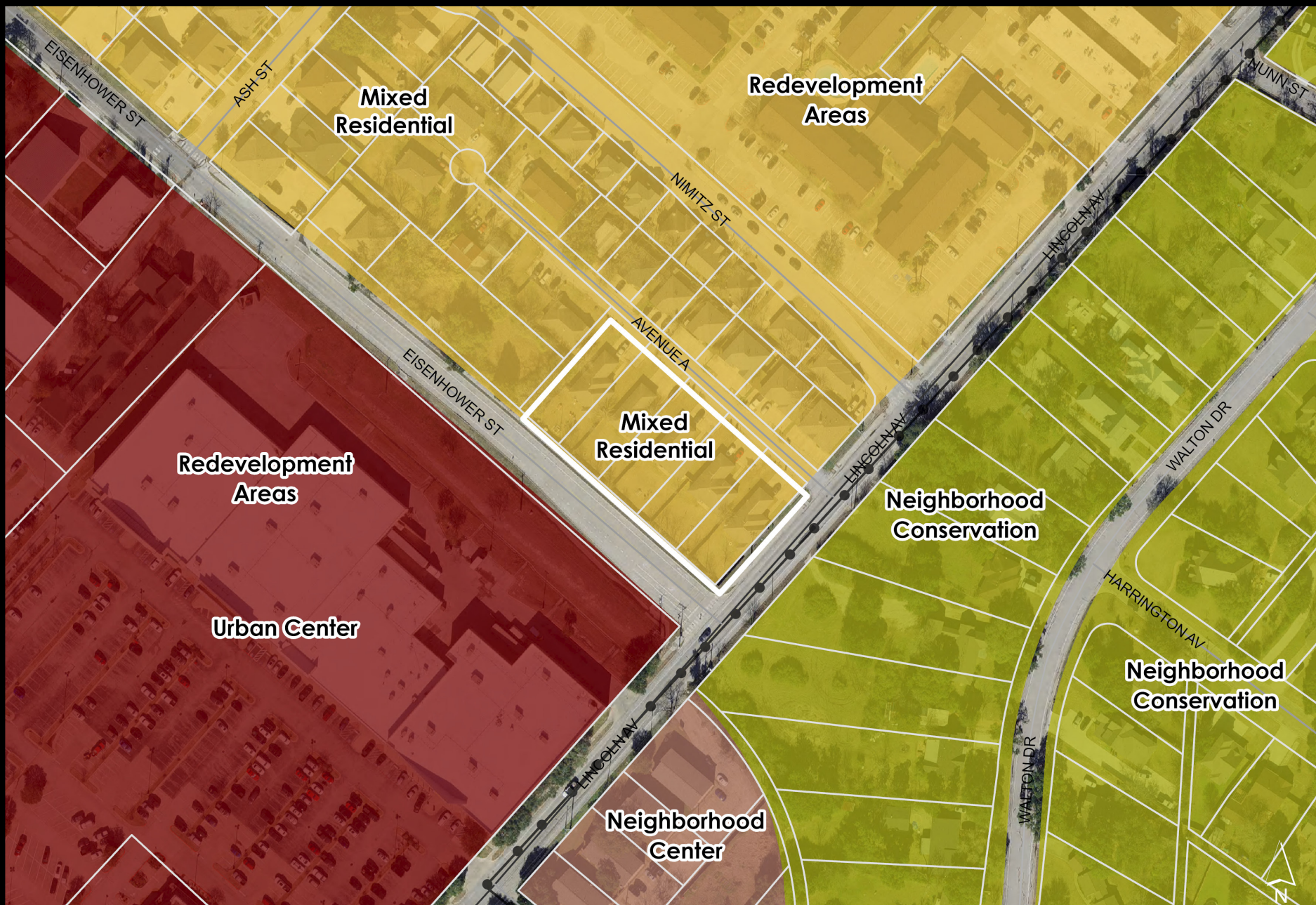


PROPOSED Zoning



EXISTING

Future Land Use



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 FROM GS GENERAL SUBURBAN TO MH MIDDLE HOUSING FOR APPROXIMATELY 1.05 ACRES BEING LOTS 5-1 TO 5-5 OF THE D.A. SMITH SUBDIVISION AND GENERALLY LOCATED ALONG AVENUE A CERTAIN PROPERTIES AS DESCRIBED BELOW; 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,” and Exhibit “C”** 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, and after satisfying all of the conditions described in **Exhibit “C”**.

PASSED, ADOPTED, and APPROVED this 27th day of July, 2023.

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 GS General Suburban to MH Middle Housing:

Lots 5-1 through 5-5 of the D.A. Smith Subdivision

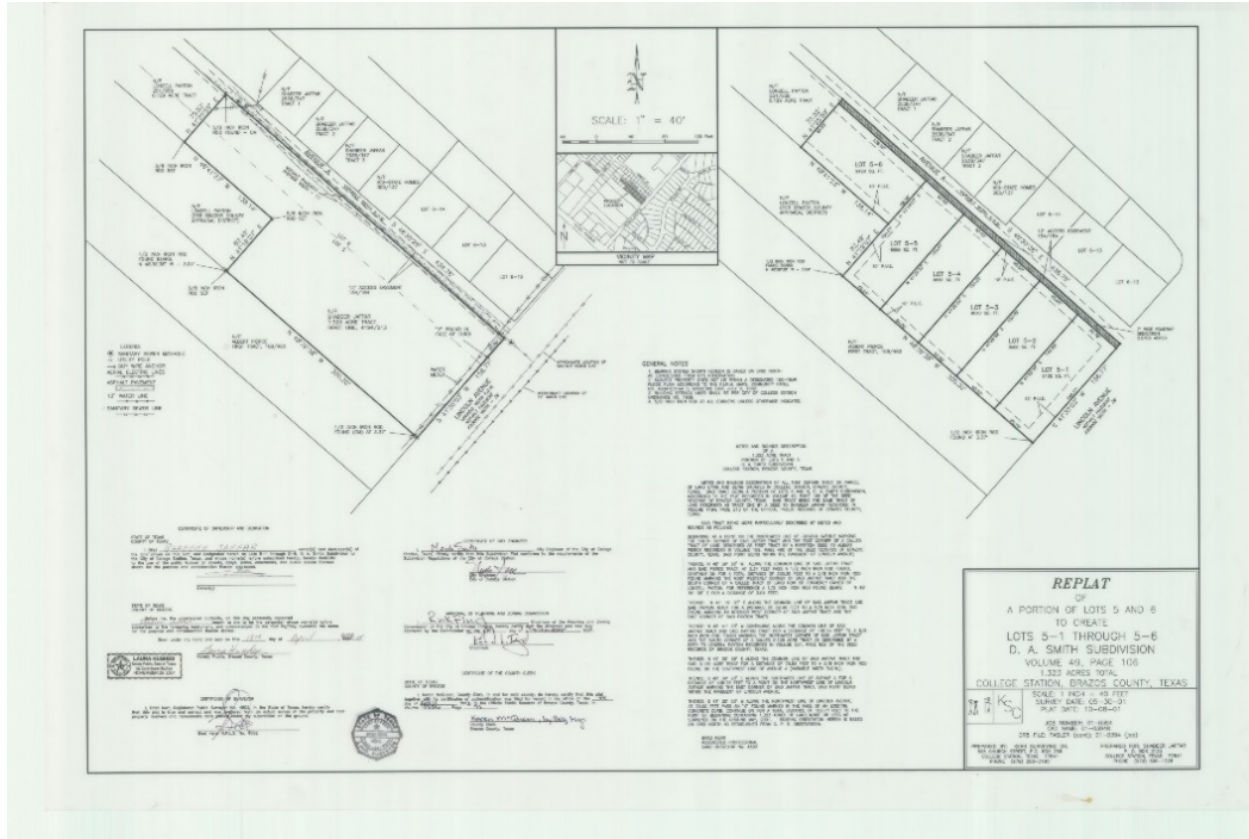


Exhibit B

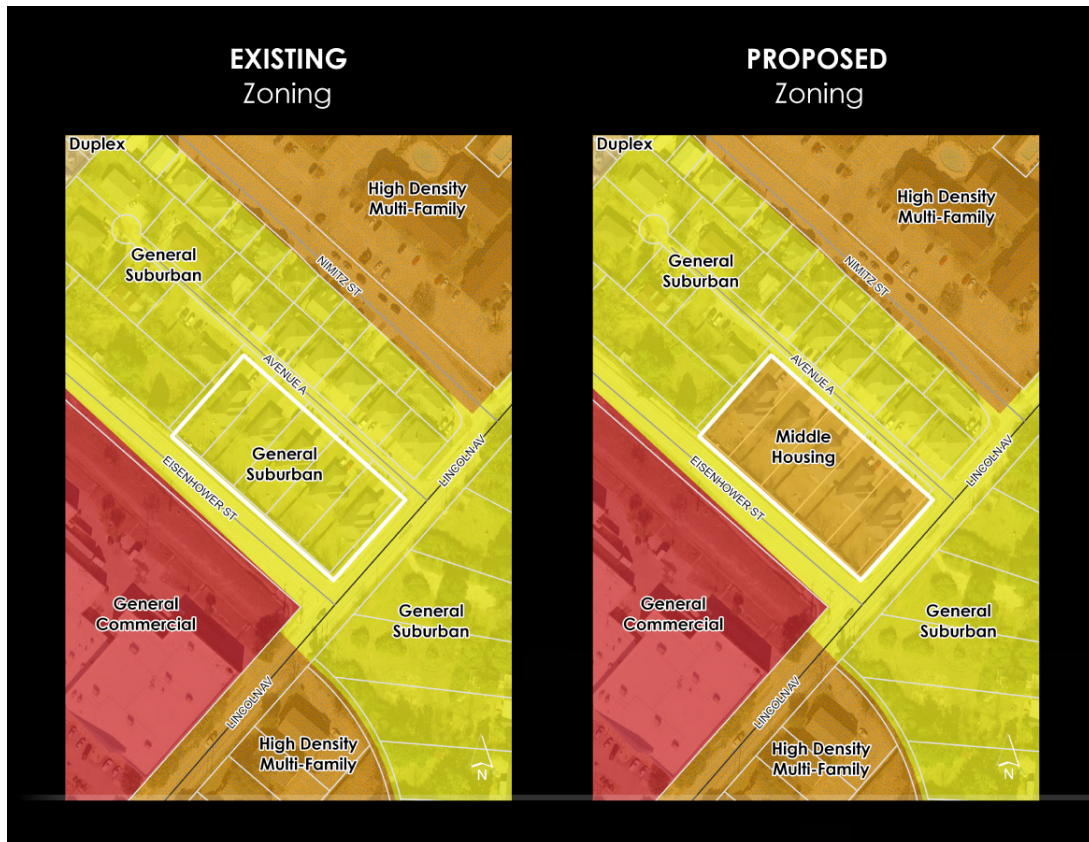


Exhibit C

That the following conditions must be satisfied before the rezoning becomes effective:

1. Construction of an approved secondary access drive meeting Fire Department standards no less than 175 feet away from Lincoln Avenue; and
2. Dedication of a 10' right-of-way from each lot along Avenue A and dedication of right-of-way chamfers along the lot that abuts Lincoln Avenue.



July 27, 2023
Item No. 8.7.
Impact Fee Collection Rates

Sponsor: Carol Cotter

Reviewed By CBC: N/A

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Chapter 107, "Impact Fees," Article II, "System-Wide Impact Fees," Sections 107-71 "System-Wide Impact Fees For Water Services," 107-72 "System-Wide Impact Fees For Wastewater Services," and 107-73 "System-Wide Roadway Impact Fees" of the Code of Ordinances of the City of College Station, Texas, by amending certain sections relating to water, wastewater, and roadway impact fee collection rates.

Relationship to Strategic Goals:

- Financial Sustainability
- Core Services & Infrastructure
- Diverse & Growing Economy
- Improving Mobility

Recommendation(s): Staff recommends the Council consider the Ordinance amending the impact fee collection rates.

Summary: At the May 15, 2023 City Council Workshop, staff presented potential rate and implementation adjustment alternatives relating to impact fees. City Council provided direction to look at increasing the residential water and roadway collection rates as provided below, but to leave residential wastewater and non-residential land uses for both utilities and roadway at the existing collection rates.

As directed, the impact fee residential collection rate for water will be increased to 50% of the maximum assessable rate beginning January 1, 2024, with additional five percentage point increases on January 1, 2025 and 2026. The roadway impact fee for residential uses will be increased to 20% of the maximum recoverable revenue on January 1, 2024, with additional five percentage point increases on January 1, 2025 and 2026.

Tables of the current and proposed collection rates, resultant impact fees for new single family homes, projected revenues, and benchmark comparisons are provided.

Budget & Financial Summary: Adjustments to the collection rate will affect impact fee revenues.

Attachments:

1. Impact Fee Ord 7-21-23
2. Impact Fee Supporting Information
3. Roadway Impact Fee Service Area Map
4. Benchmark Comparisons

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 107, "IMPACT FEES," ARTICLE II, "SYSTEM-WIDE IMPACT FEES," SECTION 107-71, "SYSTEM-WIDE IMPACT FEES FOR WATER SERVICES", SECTION 107-72, "SYSTEM-WIDE IMPACT FEES FOR WASTEWATER SERVICES", AND SECTION 107-73, "SYSTEM-WIDE ROADWAY IMPACT FEES" OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO WATER, WASTEWATER, AND ROADWAY IMPACT FEE COLLECTION RATES; 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 107, "Impact Fees," Article II, "System-Wide Impact Fees," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit "A", Exhibit "B", and Exhibit "C"** 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 27th day of July, 2023.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 107, “Impact Fees,” Article II, “System-Wide Impact Fees,” Section 107-71, “System-Wide Impact Fees for Water Services Exhibit I, “Collection Rate Imposed Per Service Unit for System-Wide Water Services” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

Exhibit I: Collection Rate Imposed Per Service Unit for System-Wide Water Services

Water Meter Size	Building Permit Application Date				
	Residential				Non-Residential
	03/01/2022 – 12/31/2023	01/01/2024 - 12/31/2024	01/01/2025 - 12/31/2025	On or After 01/01/2026	As of 12/1/2017
5/8" x 3/4"	\$550	\$1,950	\$2,150	\$2,325	\$500
1"	\$935	\$3,218	\$3,548	\$3,836	\$850
1-1/2"	\$5,885	\$20,865	\$23,005	\$24,878	\$5,350
2"	\$5,885	\$20,865	\$23,005	\$24,878	\$5,350
3"	\$14,685	\$52,065	\$57,405	\$62,078	\$13,350
4"	\$29,315	\$103,935	\$114,595	\$123,923	\$26,650
6"	\$58,685	\$208,065	\$229,405	\$248,078	\$53,350
8"	\$99,000	\$351,000	\$387,000	\$418,500	\$90,000
10"	\$146,685	\$520,065	\$573,405	\$620,078	\$133,350

EXHIBIT B

That Chapter 107, “Impact Fees,” Article II, “System-Wide Impact Fees,” Section 107-72, “System-Wide Impact Fees for Wastewater Services,” Exhibit N, “Collection Rate Per Service Unit for System-Wide Wastewater Collection and Treatment Services,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

Exhibit N: Collection Rate Imposed Per Service Unit for System-Wide Wastewater Collection and Treatment Services

Water Meter Size	Building Permit Application Date		
	Residential		Non-Residential
	12/01/2017 - 02/28/2022	On or After 03/01/2022	As of 12/1/2017
5/8" x 3/4"	\$3,000	\$3,300	\$3,000
1"	\$5,100	\$5,610	\$5,100
1-1/2"	\$16,050	\$17,655	\$16,050
2"	\$16,050	\$17,655	\$16,050
3"	\$40,050	\$44,055	\$40,050
4"	\$79,950	\$87,945	\$79,950
6"	\$160,050	\$176,055	\$160,050
8"	\$270,000	\$297,000	\$270,000
10"	\$400,050	\$440,055	\$400,050

EXHIBIT C

That Chapter 107, “Impact Fees,” Article II, “System-wide Impact Fees,” Section 107-73, “System-Wide Roadway Impact Fees,” Exhibit S, “Collection Rate Per Service Unit for Roadway Impact Fees” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

Exhibit S: Collection Rate Per Service Unit for Roadway Impact Fees

Service Areas	Building Permit Application Date									
	03/01/2022 - 12/31/2023		01/01/2024 - 12/31/2024		01/1/2025 – 12/31/2025			On or After 01/01/2026		
	Land Use Type		Land Use Type		Land Use Type			Land Use Type		
	Residential	Non-Residential	Residential	Non-Residential	Residential		Non-Residential	Residential		Non-Residential
					Platted Before 01/01/2022	Platted On or After 01/01/2022		Platted Before 01/01/2022	Platted On or After 01/01/2022	
Zone A	\$438.83	\$80	\$499	\$80	\$499	\$499	\$80	\$499	\$499	\$80
Zone B	\$438.83	\$80	\$897	\$80	\$1,072	\$1,163	\$80	\$1,072	\$1,261	\$80
Zone C	\$438.83	\$80	\$897	\$80	\$1,163	\$1,163	\$80	\$1,514	\$1,514	\$80
Zone D	\$438.83	\$80	\$897	\$80	\$1,163	\$1,163	\$80	\$1,514	\$1,514	\$80

Impact Fee Collection Rate Supporting Information

The current maximum assessable impact fees per service unit and the associated collection rates are as follows:

Current Maximum Assessable Impact Fees and Collection Rates

Impact Fee Type	2021 Max Fee Per Service Unit	Collection Rate Per Service Unit	
		Res	Non-Res
Water	\$3,877	\$550	\$500
Wastewater	\$5,572	\$3,300	\$3,000
Roadway Service Area A	\$499	\$438.83	\$80
Roadway Service Area B	\$1,261	\$438.83	\$80
Roadway Service Area C	\$2,127	\$438.83	\$80
Roadway Service Area D	\$3,452	\$438.83	\$80

The proposed collection rates per service unit are as follows:

Proposed Collection Rates

Impact Fee Type	2024 Collection Rate Per Service Unit		2025 Collection Rate Per Service Unit		2026 Collection Rate Per Service Unit	
	Res	Non-Res	Res	Non-Res	Res	Non-Res
Water	\$1,950	\$500	\$2,150	\$500	\$2,325	\$500
Wastewater	\$3,300	\$3,000	\$3,300	\$3,000	\$3,300	\$3,000
Roadway Service Area A	\$499	\$80	\$499	\$80	\$499	\$80
Roadway Service Area B	\$897	\$80	\$1,163*	\$80	\$1,261*	\$80
Roadway Service Area C	\$897	\$80	\$1,163	\$80	\$1,514	\$80
Roadway Service Area D	\$897	\$80	\$1,163	\$80	\$1,514	\$80

* For properties platted prior to January 1, 2022, the collection rate is limited to the 2016 maximum assessable rate of \$1,072.

Water and Wastewater Collection Rate

Impact fee rates are a calculation of cost per service unit. Water and wastewater service units are defined as living unit equivalents (LUEs), representing a typical connection for one single-family residence (based on a 5/8" water meter). There is a conversion factor for larger water meters that determines their number of LUE equivalents.

Water Impact Fees Per Meter Size

Meter Size	Equiv. LUE	Residential				Non-Residential As of 12/01/2017
		Current Collection Rate	Effective 01/01/2024	Effective 01/01/2025	Effective 01/01/2026	
5/8"	1	\$550	\$1,950	\$2,150	\$2,325	\$500
1"	3.3	\$935*	\$3,218*	\$3,548*	\$3,836*	\$850*
1.5"	10.7	\$5,855	\$20,865	\$23,005	\$24,878	\$5,350
2"	10.7	\$5,855	\$20,865	\$23,005	\$24,878	\$5,350
3"	26.7	\$14,685	\$52,065	\$57,405	\$62,078	\$13,350
4"	53.3	\$29,315	\$103,935	\$114,595	\$123,923	\$26,650
6"	106.7	\$58,685	\$208,065	\$229,405	\$248,078	\$53,350
8"	180	\$99,000	\$351,000	\$387,000	\$418,500	\$90,000
10"	266.7	\$146,685	\$520,065	\$573,405	\$620,078	\$133,350

*Reduced an additional 50%

Wastewater Impact Fee Per Meter Size

Meter Size	Equiv. LUE	Current Collection Rate	
		Residential	Non-Residential As of 12/01/2017
5/8"	1	\$3,300	\$3,000
1"	3.3	\$5,610*	\$5,100*
1.5"	10.7	\$17,655*	\$16,050*
2"	10.7	\$17,655*	\$16,050*
3"	26.7	\$44,055*	\$40,050*
4"	53.3	\$87,945*	\$79,950*
6"	106.7	\$176,055*	\$160,050*
8"	180	\$297,000*	\$270,000*
10"	266.7	\$440,055*	\$400,050*

*Reduced an additional 50%

Roadway Collection Rate

The roadway service unit is vehicle-miles, which is a measurement of the number of trips a site generates and its trip length. Trip generation and trip length vary for each of the 66 different types of land uses. The current collection rate is a flat rate across the four service areas (see attached Roadway Impact Fee Service Area Map). The proposed collection rate increase will result in a variation of rates across the zones due to maximum assessable rate constraints.

Roadway Impact Fee Collection Rates

Impact Fee Type	2024 Collection Rate Per Service Unit		2025 Collection Rate Per Service Unit		2026 Collection Rate Per Service Unit	
	Res	Non-Res	Res	Non-Res	Res	Non-Res
Roadway Service Area A	\$499	\$80	\$499	\$80	\$499	\$80
Roadway Service Area B	\$897	\$80	\$1,163*	\$80	\$1,261*	\$80
Roadway Service Area C	\$897	\$80	\$1,163	\$80	\$1,514	\$80
Roadway Service Area D	\$897	\$80	\$1,163	\$80	\$1,514	\$80

* For properties platted prior to January 1, 2022, the collection rate is limited to the 2016 maximum assessable rate of \$1,072.

Resulting Single Family Impact Fee Calculations

The water and wastewater impact fees for a single-family home correspond to the 5/8" meter which is used to serve a typical residence. Roadway impact fees are calculated from the cost per service unit (vehicle-miles) multiplied by the number of vehicle-miles attributable to the land use type. For a single-family home, this is 3.76 vehicle-miles. The following table presents the corresponding impact fees for a single-family home based on the existing and proposed rates.

Single Family Impact Fees

Impact Fee Type	2023	2024	2025	2026
Water	\$550	\$1,950	\$2,150	\$2,325
Wastewater	\$3,300	\$3,300	\$3,300	\$3,300
Roadway Zone A	\$1,650	\$1,876	\$1,876	\$1,876
Roadway Zone B	\$1,650	\$3,375	\$4,375*	\$4,741*
Roadway Zone C	\$1,650	\$3,375	\$4,375	\$5,691
Roadway Zone D	\$1,650	\$3,375	\$4,375	\$5,691

* For properties platted prior to January 1, 2022, the impact fee is \$4,030 due to the 2016 maximum assessable rate of \$1,072.

Single Family Combined Impact Fees for Water, Wastewater, and Roadway

Combined Impact Fees	2023	2024	2025	2026
Roadway Zone A	\$5,500	\$7,126	\$7,326	\$7,501
Roadway Zone B	\$5,500	\$8,625	\$9,825*	\$10,366*
Roadway Zone C	\$5,500	\$8,625	\$9,825	\$11,316
Roadway Zone D	\$5,500	\$8,625	\$9,825	\$11,316

* For properties platted prior to January 1, 2022, the roadway impact fee is \$4,030 due to the 2016 maximum assessable rate of \$1,072 so the fee is \$9,480 in 2025 and \$9,655 in 2026.

Impact Fee Revenues

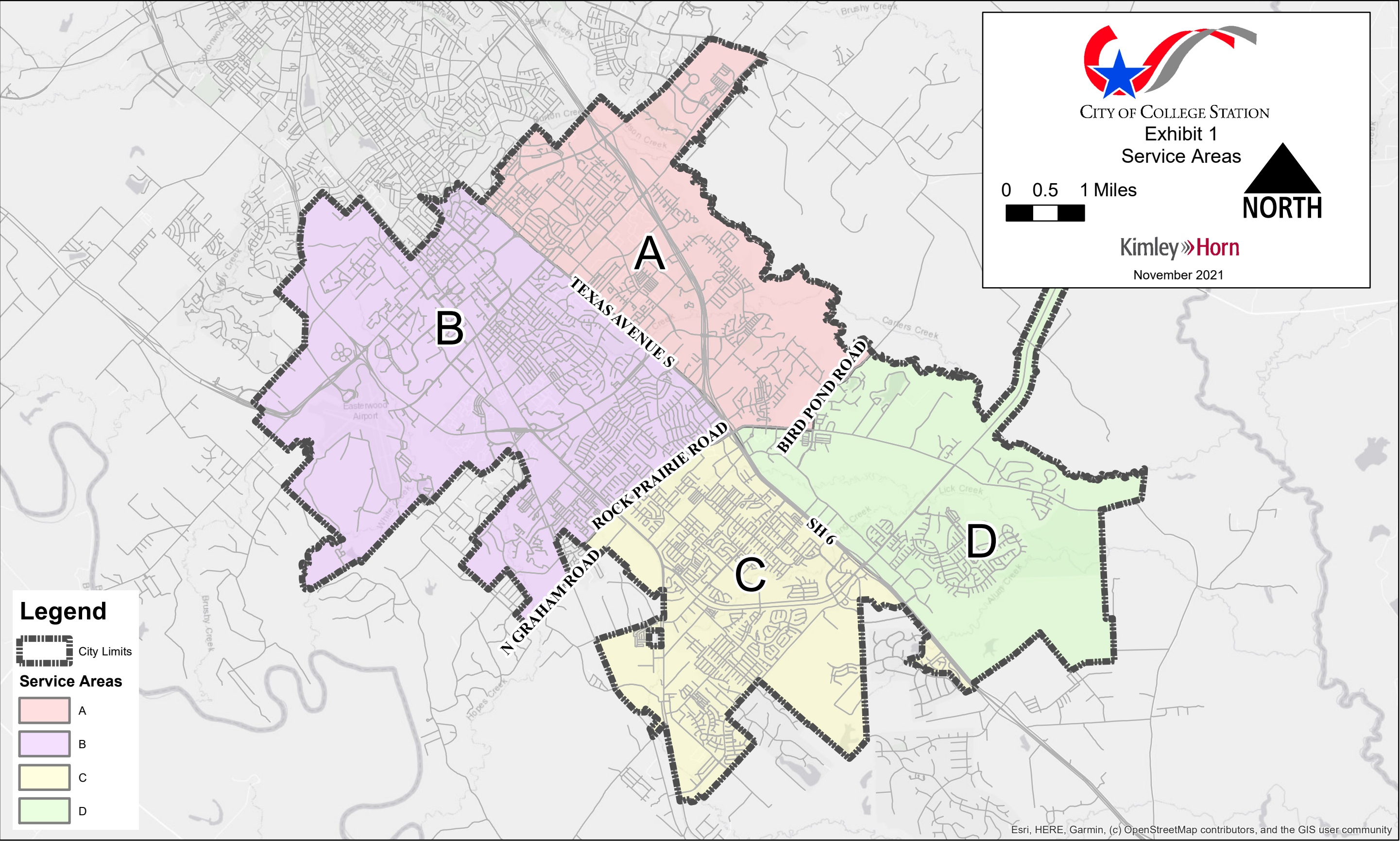
Impact fee revenues at the existing rates and the proposed phased-in increases, were projected for the 10-year study horizon (2021-2031) and are provided in the table below.

Impact Fee Revenue Projections (millions)

Impact Fee Type	Existing Collection Rate	Proposed Collection Rates	Recoverable CIP Costs (at Max Rates)
Water	\$4.5M	\$11.8M	\$54.5M
Wastewater	\$24.2M	\$24.2M	\$71.9M
Roadway Zone A	\$3.1M	\$3.4M	\$9.1M
Roadway Zone B	\$2.9M	\$5.9M	\$20.1M
Roadway Zone C	\$3.5M	\$8.9M	\$25.7M
Roadway Zone D	\$2.7M	\$5.7M	\$57.4M
Roadway Total	\$12.2M	\$23.7M	\$112.3M

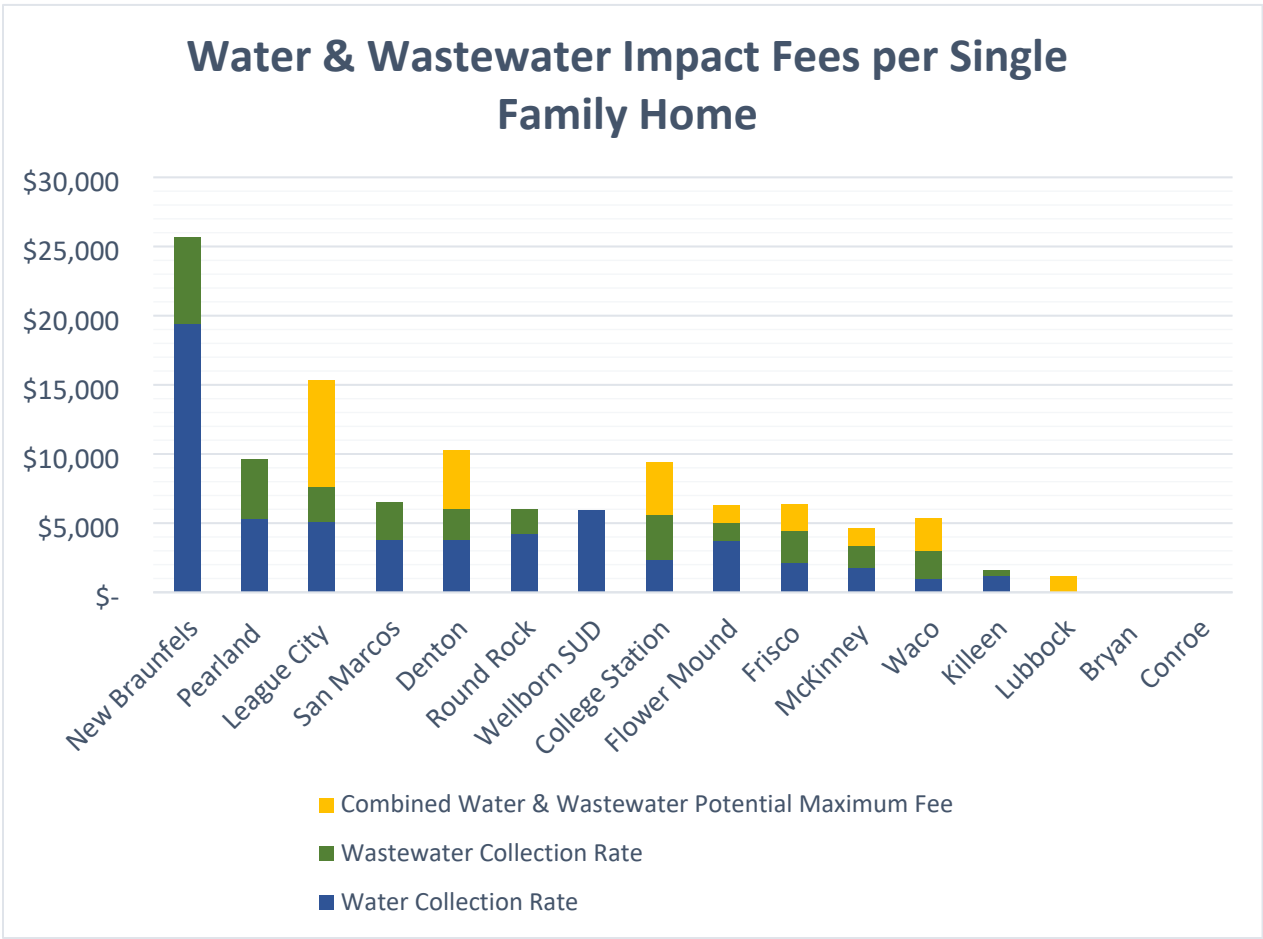
Attachments:

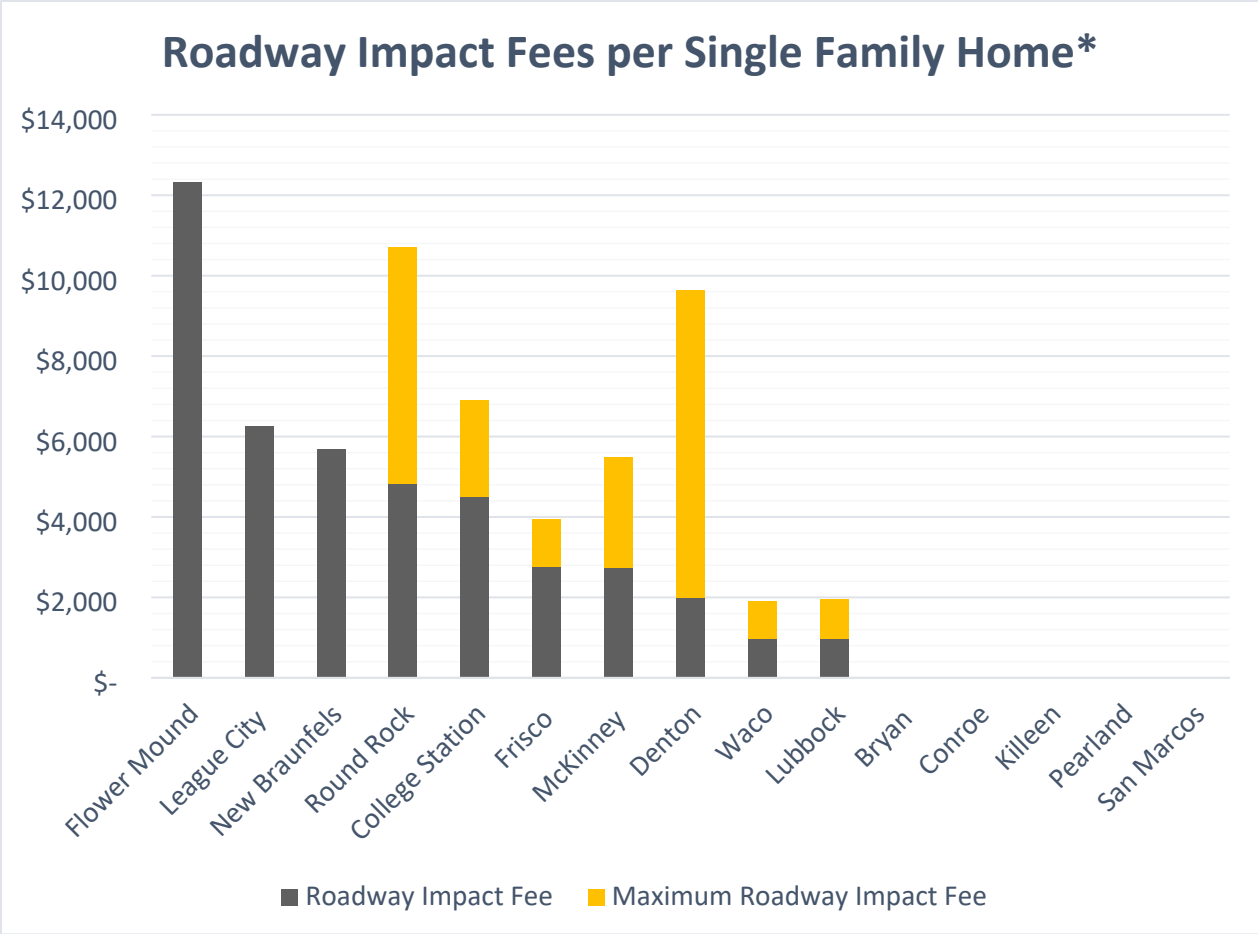
1. Roadway Impact Fee Service Area Map
2. Benchmark Comparisons
3. Ordinance



Benchmarks

Cities within Texas have adopted impact fees to various degrees. Some have adopted utility related impact fees and others have adopted roadway impact fees. The charts provided below compare the adopted collection rate of various cities and depict the maximum impact fee amount that was calculated, if it exceeds the amount that was adopted. Impact fees for College Station reflect the proposed increased rate for water, and average of the increased rates for roadway.





* Amounts represent average of Service Areas.