



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#

February 8, 2024

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. Cynthia Hopkins & Geoffrey Hopkins v. City of College Station, Cause No. 23-002880-CV-85 in the 85th District Court, Brazos County Texas.
- g. CBL & Associates Management, Inc. v. City of College Station, Cause No. 23-003159-CV-85 In The 85th District Court, Brazos County Texas.
- h. City of College Station v. POM-College Station, LLC and Wells Fargo Bank, National

Association, Cause No. 628-CC, in the County Court at Law No. 1 of Brazos County, Texas.

i. City of College Station v. Clarke and Wyndham, Inc., Real Alchemy, L.P., Real Alchemy 1, L.P., JPJ Investments, a Texas General Partnership, Cause No. 629-CC, in the County Court at Law No. 1 of Brazos County, Texas.

j. Legal advice regarding enforcement of over four unrelated people.

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. City Manager
- b. 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.**

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. Comments should not personally attack other speakers, Council or staff. 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. **Presentation - Proclamations, Awards, and Recognitions.**

5.1. Presentation of a proclamation recognizing Black History Month.

Sponsors: Barbara Moore

Attachments: 1. 240208 -- Black History Month

6. **Hear Visitors.**

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

7. **Consent Agenda.**

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

- 7.1. Presentation, discussion, and possible action of minutes for:
- January 25, 2024 Council Meeting
- Sponsors: Tanya Smith
- Attachments: 1. CCM012524 DRAFT Minutes
- 7.2. Presentation, discussion, possible action on an interlocal agreement between BVWACS and the City of College Station and an interlocal agreement for BVCOG to continue serving as Managing Entity of BVWACS.
- Sponsors: Sam Rivera
- Attachments: 1. Contract 18300629_R3
2. Contract 17300603_R3
- 7.3. Presentation, discussion, and possible action on an amendment to the lease agreement with WireStar for the use of City Dark Fiber Optic Cable increasing amount due to City by \$3,568.99.
- Sponsors: Sam Rivera
- Attachments: 1. 16300022_AMD_3_ADc_(CC_02.08.24)
- 7.4. Presentation, discussion, and possible action on a construction contract with BH Harris Construction, LLC. in the amount of \$907,272.38 for construction services for the Carter Creek Wastewater Treatment Plant Equipment Building Project, plus the City's contingency in the amount of \$100,000 for a total appropriation of \$1,007,272.38. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.
- Sponsors: Jennifer Cain
- Attachments: 1. CCWWTP Equipment Building Construction Contract - Vendor Signed
- 7.5. Presentation, discussion, and possible action regarding an ordinance amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," of the Code of Ordinances of the City of College Station, Texas, by removing parking on the north side of Gilchrist Avenue between Texas Avenue and Foster Avenue.
- Sponsors: Randell Smith
- Attachments: 1. Ordinance - Gilchrist Avenue Parking Removal
2. Exhibit - Gilchrist Avenue Parking Removal
- 7.6. Presentation, discussion, and possible action on an annual price agreement with Brazos Paving, Inc. for Cement Treated Base and Type D Grade 1 Cement Treated (4%) Recycled Crushed Concrete Base, not to exceed \$835,000.
- Sponsors: Emily Fisher
- Attachments: 1. Tabulation
2. Supplier Response (Brazos Paving, Inc.)
- 7.7. Presentation, discussion, and possible action on a construction contract with C.F. McDonald Electric, Inc. for the Well #1, #2, and #3 motor control centers replacement project for \$1,329,469; plus the City's contingency amount of \$132,947; for a total appropriation of \$1,462,416. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.
- Sponsors: Gary Mechler
- Attachments: 1. Contract #24300243
- 7.8. Presentation, discussion, and possible action on a construction contract with Weisinger, Inc. for the Well #5 and Carrizo Well #1 Rehabilitation project for \$1,457,830; plus the City's contingency

amount of \$142,170; for a total appropriation of \$1,600,000. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

Sponsors: Gary Mechler

Attachments: 1. Contract #24300289

- 7.9. Presentation, discussion, and possible action on annual purchases of auto parts, shop equipment and services from NAPA Auto Parts in the annual not-to-exceed \$180,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. 20-201 2nd Amendment and Extension
2. Award_Letter_NAPA

- 7.10. Presentation, discussion, and possible action on an annual blanket purchase order for repair parts and repair labor for fire trucks from Siddons-Martin Emergency Group not to exceed \$250,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. BuyBoard 651-21 Siddons Martin Emergency Group

- 7.11. Presentation, discussion, and possible action on annual tire purchases and retread services from Southern Tire Mart, LLC not-to-exceed \$310,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. BuyBoard 636-21 Southern Tire Mart

- 7.12. Presentation, discussion, and possible action on the first reading of a franchise agreement ordinance with Container Source Storage & Roll-Off for the collection of recyclables from commercial businesses and multi-family locations.

Sponsors: Emily Fisher

Attachments: 1. Franchise Agreement _ Vendor Signed

8. Workshop Agenda.

- 8.1. Presentation, discussion, and possible action on Southside Historic District Street Signs.

Sponsors: Barbara Moore

Attachments: None

- 8.2. Presentation, discussion, and possible action on an update from the College Station Police Department.

Sponsors: Billy Couch

Attachments: None

- 8.3. Presentation, discussion, and possible action on an update from the College Station Fire Department.

Sponsors: Richard Mann

Attachments: None

9. Regular Agenda.

- 9.1. Public Hearing, presentation, discussion, and possible action regarding an ordinance vacating and abandoning a 0.126 acre portion of a 15-foot wide Public Utility Easement located in Lot 3, Block 1 of Waters Edge Subdivision, according to the plat recorded in Volume 18474, page 262 of the Official Public Records of Brazos County, Texas.

Sponsors: Lindsey Pressler

Attachments: 1. Abandonment Ordinance
2. Exhibit A

3. Vicinity Map
4. Location Map
5. Abandonment Application

9.2. Presentation, discussion, and possible action regarding an appointment to the Parks and Recreation Board.

Sponsors: Tanya Smith

Attachments: None

10. Council Calendar - Council May Discuss Upcoming Events.

11. Items of Community Interest.

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

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

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

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

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

14. Adjourn.

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

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on February 2, 2024 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."

February 8, 2024
Item No. 5.1.
Proclamation for Black History Month

Sponsor: Barbara Moore, Assistant to the City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation of a proclamation recognizing Black History Month.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): None.

Summary: The Black History Month 2022 theme, "Black Health and Wellness," explores "the legacy of not only Black scholars and medical practitioners in Western medicine, but also other ways of knowing (e.g., birthworkers, doulas, midwives, naturopaths, herbalists, etc.) throughout the African Diaspora. The 2022 theme considers activities, rituals and initiatives that Black communities have done to be well."

Budget & Financial Summary: None.

Attachments:

1. 240208 -- Black History Month



Proclamation

- WHEREAS,** African Americans have made significant cultural, historical, and economic contributions to the development of America and the American way of live; and
- WHEREAS,** Carter G. Woodson created Negro History in 1926 to rectify the omission of African American History from history books and to encourage the study of the history and lives of all Americans, including African Americans; and
- WHEREAS,** every U.S. president since 1976 has officially designated the month of February Black History Month and since then, the celebration of Black History Month has been important to appreciating and recognizing the crucial roles African Americans have played in the creation of America while increasing the visibility of African American life and history; and
- WHEREAS,** recognizing the Black History Month 2024 theme, “African Americans and the Arts”. It shines a light on visual and performing arts, literature, fashion, folklore, architecture, culinary and other forms of cultural expression in which African American influence has been paramount, and,
- WHEREAS,** we honor African American actors, musicians, poets, authors, designers, directors and other creatives whose work has greatly influenced all facets of the arts in America.
- WHEREAS,** the African American National Heritage Society, through the Brazos Valley African American Museum uses the month of February to educate and bring awareness to the contributions of African Americans in the Brazos Valley. They understand the importance of sharing this important history with our region and are committed to this cause beyond Black History Month.
- WHEREAS,** Brazos Valley African American Museum is a unique and vitally important resource and source of pride for our entire community; and
- WHEREAS,** we applaud their work to bring awareness, education and recognition to the contributions of African Americans in the Brazos Valley. We recognize their efforts to preserve African American history in our community; and
- WHEREAS,** we invite everyone to learn about the contributions of African Americans to the arts in our nation, as those contributions have been woven into the fabric of America.
- NOW, THEREFORE, I,** I John P. Nichols, Mayor of College Station proclaim and officially recognize February of 2024 as

Black History Month

and urge all citizens to observe this month with appropriate programs, activities, and reflections and to continue our efforts to create a world that is more just, equitable and prosperous for all.

IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of College Station to be affixed this 8th day of February, 2024.

John P. Nichols
Mayor
Attest:

Tanya Smith
City Secretary

February 8, 2024
Item No. 7.1.
Minutes

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action of minutes for:
• January 25, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM012524 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
JANUARY 25, 2024

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

John Nichols, Mayor

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 Nichols via In-Person and Teleconference at 4:01 p.m. on January 25, 2024, 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, and the College Station City Council convened into Executive Session at 4:01 p.m. on January 25, 2024, 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

- City of College Station v. 47 Oaks, LLC, Cause No. 626-CC, in the County Court at Law No. 2 of 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
- Cynthia Hopkins & Geoffrey Hopkins v. City of College Station, Cause No. 23-002880-CV-85 in the 85th District Court, Brazos County Texas.
- CBL & Associates Management, Inc. v. City of College Station, Cause No. 23-003159-CV-85 In The 85th District Court, Brazos County Texas.
- City of College Station v. POM-College Station, LLC and Wells Fargo Bank, National Association, Cause No. 628-CC, in the County Court at Law No. 1 of Brazos County, Texas.
- City of College Station v. Clarke and Wyndham, Inc., Real Alchemy, L.P., Real Alchemy 1, L.P., JPJ Investments, a Texas General Partnership, Cause No. 629-CC, in the County Court at Law No. 1 of Brazos County, Texas.

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

- Construction Board of Adjustments
- Planning and Zoning Commission
- Zoning Board of Adjustments
- City Secretary
- City Manager
- Council Self-Evaluation (Mayor Pro Tempore)

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.

5. Hear Visitors Comments.

Rev. Edward Udell, College Station, with the Senior Advisory Committee came before Council to thank Council for supporting the Parks Department and city staff all they do for the communities seniors.

Tre Watson, College Station, spoke on mandatory rental inspection and requesting Council to support warming and cooling centers in College Station.

Cameron Gallucci, College Station, came before Council regarding two free events in College Station with the League of Women Voters and the local veterans.

6. 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 6.2 and 6.5 were pulled from Consent for clarification.

(6.2 and 6.5) Mary Ellen Leonard, Director of Finance, explained Consent Item 6.5 is the ordinance approving the fees for Consent Item 6.2. Mrs. Leonard stated that all fees, rates and charges in the Code of Ordinances are adopted by resolution of the City Council as provided in Sec. 2-117 of the Code. On August 24, 2023, the Fiscal Year 2024 was adopted by Council. However, the state legislature required a change to the calculation related to certain planning and development fees. The fees are adjusted annually during the budget process based on the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics. Index adjustments cannot fall below zero.

User Fee up to 4 hours	\$2,000
User Fee up to 8 hours	\$3,000
Refundable Security Deposit	50% of applicable User Fee
Event Ticket Sales	10% of gross ticket sales
Use of City Staff for Set-Up, Take Down, Clean-up or Security	Applicable fully loaded direct costs for personnel utilized for actual time incurred.

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

- **January 11, 2024, Council Meeting**

6.2. Presentation, discussion, and possible action on Resolution No. 01-25-24-6.2 adopting fees, rates and charges as provided by Chapter 2 “Administration”, Article V “Finance” Division 2 “Fees, Rates and Charges” of the Code of Ordinances, City of College Station, Texas.

6.3. Presentation, discussion, and possible action on bid awards to KBS Electrical Distributors not to exceed \$300,065 and Techline, Inc. not to exceed \$1,557,218.06 for annual price agreements for electric warehouse inventory items not to exceed \$1,857,283.06.

6.4. Presentation, discussion, and possible action regarding Ordinance No. 2024-4492 amending Chapter 38 “Traffic and Vehicles,” Article VI “Traffic Schedules,” Section 38-1008 “Traffic Schedule VIII, No Right Turn and No Left Turn,” of the Code of Ordinances of the City of College Station, to prohibit commercial trucks from turning westbound onto Holleman Drive from Wellborn Road.

6.5. Presentation, discussion, and possible action on Ordinance No. 2024-4493 amending the Code of Ordinances, Chapter 2 “Administration”, Article V “Finance”, Division 2. “Fees, Rates and Charges”, by adding Section 2-123 “City Facility Use Fees” related to the establishment of fees for public use of the Visitor Center and other City facilities.

6.6. Presentation, discussion, and possible action regarding Ordinance No. 2024-4494 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,” of the Code of Ordinances of the City of College Station, Texas, by removing parking on the southwest side of Dakota Lane from Buena Vista to Alamosa Street and reinstating parking on the northeast side of Dakota Lane from Alamosa Street to Buena Vista.

6.7. Presentation, discussion, and possible action regarding Resolution No. 01-25-24-6.7 supporting the submission of a grant application to Texas Parks and Wildlife Department for the Spring Creek trail project to extend it from its current terminus behind the SoCo at Tower Point Apartments to Southern Oaks Park at Alexandria Avenue.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve the Consent Items. The motion carried unanimously.

7. WORKSHOP ITEMS

7.1. Presentation, discussion, and possible action on the election of Mayor Pro Tempore.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Smith, the City Council voted seven (7) for and none (0) opposed, to elect Councilmember Dennis Maloney as Mayor Pro Tempore for 2024. The motion carried unanimously.

8. REGULAR ITEMS

8.1. Public Hearing, presentation, discussion, and possible action on Ordinance No. 2024-4495 for Budget Amendment 1 amending Ordinance No. 2023-4457 that amends the 2023-2024 Fiscal Year Budget in the amount of \$13,570,548.

Mary Ellen Leonard, Director of Finance, stated that the proposed budget amendment is to increase the FY24 budget appropriations by \$13,570,548 primarily because of the annual encumbrance roll for goods budgeted and ordered in FY23 or prior and not yet received. Fleet purchases make up most of the encumbrance roll. The revised budget would be \$505,623,316 and there is one Interfund transfers included in this amendment. An alternate ordinance is on the agenda with the same budget increases as the regular budget amendment ordinance as described above. The alternate ordinance amends the City Manager's authority to approve and execute real estate contracts and related documents authorizing expenditure of public funds that are \$500,000 or less that are only for the purchasing real property for eligible Community Development activities, subject to and contingent upon the appropriation of sufficient budgeted CDBG or HOME funds.

FY24 PROPOSED BUDGET AMENDMENT ITEMS	
	Proposed Amount
Encumbrance Roll - Vehicles & equipment FY22 thru FY24 ordered not yet delivered	\$ 10,298,536
Encumbrance Roll – supplies and professional services FY23 items not yet delivered	1,763,415
Council - Recreation Center study	200,000
PDS - Heat Island Tree Planting Grant award	86,605
ED - Municipal Strategy Studies	200,000
IT - Replacement Servers *	380,000
Fire - AFG Grant for Monitor / Defibrillators	331,122
Police - Victim Liaison Grant	92,000
Police – Rifle Resistant body armor grant	218,870
Total Budget Increase:	\$ 13,570,548

BUDGET	AMOUNT
Approved Budget	\$ 492,052,768
Budget Amendment #1	13,570,548
Revised Budget	\$ 505,623,316

At approximately 6:34 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 6:35 p.m.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4495, Budget Amendment 1 amending Ordinance No. 2023-4457 that amends the 2023-2024 Fiscal Year Budget in the amount of \$13,570,548, with Option 1 to leave authorization language unchanged and amending Budget Amount only. The motion carried unanimously.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Harvell, the City Council voted seven (7) for and none (0) opposed, to approve the interfund transfer – a transfer between IT Replacement Fund and General Fund to reconcile previously planned purchases. The motion carried unanimously.

8.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4496 amending Appendix A, Unified Development Ordinance, Article 2 "Development Review Bodies," Article 3 "Development Review Procedures," and Article 8 "Subdivision Design and Improvements" of the Code of Ordinances of the City of College Station, Texas, regarding the delegation of non-discretionary plat approval to the Administrator.

Molly Hitchcock, Planning and Development, stated that in its regular session this past summer, the 88th Texas Legislature passed HB 3699 relating to municipal regulation of subdivisions and approval of subdivision plans or plats. One of the elements of the bill expanded the ability to delegate platting authority to the staff level. Currently, the Planning and Zoning Commission has the authority to approve subdivision waivers and final plats. Staff has the authority to approve preliminary plans and minor and amending final plats. State statute now allows for the ability to approve, approve with conditions, or disapprove a plat to be delegated to City staff.

This item was discussed at the December 4, 2023 Planning and Zoning Commission meeting, where the Commission recommended an ordinance amendment to delegate platting authority to staff for any plat approvals that do not require a public hearing, waivers, or discretion. Essentially, if a plat meets the requirements outlined in the ordinance, staff will have the authority to approve it. This type of delegation is like other types of permits that the City issues, including site plans, building permits, and other actions as authorized by law. If they meet the code requirements, staff has the authority to approve them, and there is no further action needed by a board, commission, or the City Council. Per state law, if a plat meets all the requirements, the city must approve it. Therefore, taking a plat that must be approved to the Planning and Zoning Commission creates a longer process and increases the number of resources that are needed. Again, if there is a public hearing that is needed, a waiver that is requested, or a discretionary item, the plat would still go to the Planning and Zoning Commission for consideration.

By delegating certain platting authority to staff, it will have the following advantages:

- Time efficiency: Delegating platting authority reduces the time required for plat approvals, which enhances customer service.
- Administrative relief: Staff will no longer need to prepare detailed reports and maps for each plat, as typically done for Commission approval.
- Reduction in the number of meetings needed: Eliminating the need for separate Commission meetings solely for plat approvals saves resources. There have been several meetings over the recent years where the only thing on the agenda was to approve a plat on the consent agenda.

Holding a public meeting requires generating item materials, preparing an agenda, assembling a quorum of the Commission, as well as attendance by several staff members.

The Planning and Zoning Commission heard this item at their January 5, 2024 meeting and unanimously recommended approval (6-0).

At approximately 6:49 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 6:49 p.m.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4496, amending Appendix A, Unified Development Ordinance, Article 2 "Development Review Bodies," Article 3 "Development Review Procedures," and Article 8 "Subdivision Design and Improvements" of the Code of Ordinances of the City of College Station, Texas, regarding the delegation of non-discretionary plat approval to the Administrator. The motion carried unanimously.

8.3. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4497 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 RS Restricted Suburban to PDD Planned Development District on approximately 249 acres of land located between Diamondback Drive and Greens Prairie Road.

Jesse Dimeolo, Planning and Development, stated that the applicant has proposed a PDD Planned Development District zoning for approximately 249 acres located in South College Station, between Greens Prairie Road and Arrington Road. The PDD is intended to cover the remaining land yet to be developed in the Greens Prairie Reserve Subdivision. The area that is already built will remain as RS Restricted Suburban. The main purpose of this request is to provide a residential development with smaller lot sizes and home sizes that would be appealing to young professionals up to seniors desiring to reduce their maintenance and upkeep burden. Over time, the single-family lot density of the development has fluctuated. The first approved Preliminary Plan in 2018 proposed a total of 906 lots and since then has slightly decreased as lots were platted larger. With this proposed rezoning, an increase from the original Preliminary Plan is being projected to an estimated total count of 910-925 lots.

Review Criteria

- The proposal will constitute an environment of sustained stability and will be in harmony with the character of the surrounding area;
- The proposal is in conformity with the policies, goals, and objectives of the Comprehensive Plan, and any subsequently adopted Plans, and will be consistent with the intent and purpose of this Section;
- The proposal is compatible with existing or permitted uses on abutting sites and will not adversely affect adjacent development;
- Every dwelling unit need not front on a public street but shall have access to a public street directly or via a court, walkway, public area, or area owned by a homeowner association;
- The development includes provision of adequate public improvements, including, but not limited to, parks, schools, and other public facilities;
- The development will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity; and

- The development will not adversely affect the safety and convenience of vehicular, bicycle, or pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area.

Staff recommends approval of the rezoning request and associated concept plan. The Planning and Zoning Commission heard this item on December 21, 2023 and voted unanimously to recommend approval of the request (5-0).

At approximately 7:21 p.m., Mayor Nichols opened the Public Hearing.

Dolores Kmiecik-Graham, College Station, came before Council in opposition of the proposed rezoning from RS to PDD due to the negative impact it will have on her and her neighbor's property value. She explained that beyond the negative impact on the home value of over 100 households currently in GPR, the rezoning does not support the anticipated growth of Texas A&M and the broader vision of College Station.

Katie Bridge, College Station, came before Council in opposition of the proposed rezoning from RS to PDD. Ms. Bridge felt the meetings held to voice their concerns were not properly advertised and planned at a times during holidays when citizens had other obligations. She spoke on other traffic concerns and the negative impacts to the property.

Rev. Edward Udell, College Station, asked three questions regarding the target population (demographics) of the residents, the impact on area schools, and fire response time.

There being no further comments, the Public Hearing was closed at 7:35 p.m.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4497, 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 RS Restricted Suburban to PDD Planned Development District on approximately 249 acres of land located between Diamondback Drive and Greens Prairie Road. The motion carried unanimously.

8.4. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4498 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 PDD Planned Development District to PDD Planned Development District to amend the Concept Plan for approximately 19.74 acres located at 525 William D Fitch Parkway, generally located along William D Fitch Parkway, east of Victoria Avenue.

Robin Macias, Planning and Development, stated that this request is to amend the Concept Plan for the existing PDD Planned Development District zoning located at 525 William D Fitch Parkway. The existing PDD Planned Development District adopted in October 2010, allows for commercial, office and multi-family uses. The existing concept plan shows which areas of the property shall be designated as commercial, office, or multi-family uses while also providing a detail of the street, building, and parking layout for each land use. This amendment to the current concept plan will remove the building and parking layout, while keeping the previously approved uses the same. At the time of development,

each phase will need to amend the concept plan to provide a building and parking layout suitable for that specific development. Each phase will need to meet all standards set forth in the Unified Development Ordinance except for the previously approved modifications.

Staff recommends approval of the concept plan amendment. The Planning and Zoning Commission heard this item on January 4, 2024 and unanimously recommended approval (6-0).

At approximately 7:54 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 7:54 p.m.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4498, 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 PDD Planned Development District to PDD Planned Development District to amend the Concept Plan for approximately 19.74 acres located at 525 William D Fitch Parkway, generally located along William D Fitch Parkway, east of Victoria Avenue. The motion carried unanimously.

8.5. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4499 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 and HOO High Occupancy Overlay for approximately 1.05 acres being Lots 5-1R to 5-5R of the D.A. Smith Subdivision and generally located along Avenue A.

Matthew Ellis, Planning and Development, stated that 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 and HOO High Occupancy Overlay. 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. The Planning and Zoning Commission and City Council previously heard a request to MH Middle Housing on this property from the applicant in July of this year and voted to approve the rezoning with the conditions recommended above, which have not yet been met. Because of the changes to the MH Middle Housing zoning district in September, the applicant will not be able to create their intended shared housing units without this updated rezoning request to include a HOO High Occupancy Overlay. This request is being brought as a city-initiated rezoning request. If the Commission and City Council deny this request, the conditional rezoning to MH Middle Housing will stay in effect.

Staff recommends approval of this request conditioned on the construction of an approved secondary access drive meeting Fire Department standard 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 dedications are necessary to ensure that this development and others along Avenue A continue to be marketable and safe to occupy. The Planning and Zoning Commission heard this item on January 4, 2024 and voted (5-1) to recommend approval of this item.

At approximately 8:01 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 8:01 p.m.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4499, 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 and HOO High Occupancy Overlay for approximately 1.05 acres being Lots 5-1R to 5-5R of the D.A. Smith Subdivision and generally located along Avenue A. The motion carried unanimously.

8.6. Presentation, discussion, and possible action regarding a Community Development Block Grant funding agreement in the amount not to exceed \$406,400 with Elder Aid for the acquisition and rehabilitation of a duplex located at 1032 Navarro.

Debbie Eller, Community Services, stated that the 2020 - 2024 adopted Community Development Consolidated Plan and the 2024 Annual Action Plan identified the need to work with partners for the development of affordable housing for both homeowners and renters. A Request for Proposal for the Development of Affordable Housing was released on December 15th and one response was received. Elder Aid's proposal included the acquisition and rehabilitation of a duplex located at 1032 Navarro to be used as two units of low-income elderly rental housing. The property will be maintained by Elder Aid for 20 years as an affordable rental unit and a Land Use Restriction Agreement will be utilized as the legal mechanism to ensure the affordability period.

The Community Development Block Grant funding agreement for consideration totals \$406,400, which includes \$40,000 for relocation expenses that may or may not be needed. Elder Aid works to minimize the stress of 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 \$2,759,993 to purchase 11 duplexes and construct one house in College Station that created 25 affordable rental units for low-income elderly households.

Rental Housing Acquisition & Rehabilitation

- CDBG Contract with Elder Aid totaling \$406,400
 - ✓ Acquisition: \$280,000
 - ✓ Rehabilitation: \$50,000
 - ✓ Developer Fees: \$33,400
 - ✓ Soft Costs, Financing, Professional Fees: \$3,000
 - ✓ Relocation Expense: \$40,000 (if necessary)

1032 Navarro Drive Site Map

- Duplex
- Rehabilitation to include handicap accessibility
- Rented to low-income elderly household 60% AMI (\$33,780)
- 20 Year Affordability Period

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to approve a Community Development Block Grant funding agreement in the amount not to exceed \$406,400 with Elder Aid for the acquisition and rehabilitation of a duplex located at 1032 Navarro. The motion carried unanimously.

8.7. Presentation, discussion, and possible action on a design contract with Martinez Architects, LP. in the amount of \$925,000 for design services for the Fire Station 7 Project.

Jennifer Cain, Director of Capital Projects, stated that the project involves the land acquisition, design, and construction of a new Fire Station located at 2981 Greens Prairie Road. Fire Station 7 will be designed as a four-bay fire station that is equipped with a fire engine and an ambulance. The station will have a community room available for use by the public. The station will be approximately 18,000 square feet on 4 acres of land which is strategically located to improve response capabilities in the Wellborn area and southern portions of the city limits. The City of College Station Fire Department visited multiple stations and found a layout that met the needs of Station 7. The firm was selected based on the desired floor plan, which this option offered cost, time savings and lessons learned during construction.

Mrs. Cain explained that the Budget in the amount of \$18,000,000 is currently budgeted for this project in the Facilities and IT Capital Improvement Projects Fund. A total of \$836,889.28 has been expended or committed to date, leaving a balance of \$17,163,110.72 for this design contract and remaining project expenses. Funding for this project was approved via the City of College Station's November 2022 General Obligation Bond Election.

MOTION: Upon a motion made by Councilmember Smith and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve a design contract with Martinez Architects, LP. in the amount of \$925,000 for design services for the Fire Station 7 Project. The motion carried unanimously.

8.8. Presentation, discussion, and possible action regarding appointments to the following boards, committees, and commissions:

- **Planning and Zoning Commission**
- **Construction Board of Adjustments**
- **Zoning Board of Adjustments**
- **Bicycle, Pedestrian & Greenway Advisory Board**
- **Historic Preservation Committee**
- **Parks and Recreation Board**

Planning and Zoning Commission (3-yr terms)

- Position 5 – Warren L. Finch
- Position 6 – Scott Shafer
- Position 7 – Melissa McIlhaney - Chair

MOTION: Upon a motion made by Councilmember Smith and a second by Councilmember Harvell, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Planning and Zoning Commission as stated above with Melissa McIlhaney as Chair. The motion carried unanimously.

Construction Board of Adjustments ((2)3-yr terms and (2) 1-year unexpired term)

- Position 1 – Joe Fix
- Position 2 – Tiona Broussard
- Position 3 – Trevor Dillon Young (1-yr unexpired)
- Alternate 1 – Michael Martinez (1-yr unexpired)

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Construction Board of Adjustments as stated above. The motion carried unanimously.

Zoning Board of Adjustments (2-year terms and (1) 1-year unexpired term)

- Position 1 – Justin Collins
- Position 2 – Bill Lartigue - Chair
- Position 3 – James Hutchins (1-yr unexpired term)
- Position 4 – Michael Martinez
- Position 5 – George Allen Sassano
- Alternate 1 – Jaymeson Faith Hacker (1-yr unexpired term)

MOTION: Upon a motion made by Mayor Nichols and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Zoning Board of Adjustments as stated above with Bill Lartigue as Chair. The motion carried unanimously.

Bicycle, Pedestrian & Greenway Advisory Board (3-year terms)

- Position C – Nancy “Joy” Chmelar
- Position D – Neo Jang
- Position G – Councilmember Cunha (Chair)

MOTION: Upon a motion made by Councilmember Cunha and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Bicycle, Pedestrian & Greenway Advisory Board as stated above. The motion carried unanimously.

Historic Preservation Committee (3-year terms)

- Position 7 – Carla Elliott
- Position 8 – TreVion Watson
- Position 9 – Comer (Pat) Patterson

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Historic Preservation Committee as stated above. The motion carried unanimously.

Parks and Recreation Board (3-year terms)

- Position 7 – Amy L. Arredondo
- Position 8 – Thomas Marty
- Position 9 – Anthony W. Branch

MOTION: Upon a motion made by Councilmember Smith and a second by Councilmember Cunha, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Parks and Recreation Board as stated above. The motion carried unanimously.

9. Council Calendar

Council reviewed the calendar.

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

Councilmember Cunha thanked all of the citizen volunteers who have applied and served on our Committees, Boards, and Commissions.

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

Nothing to report at this time.

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.

No future items at this time.

13. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 8:47 p.m. on Thursday, January 25, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

February 8, 2024

Item No. 7.2.

Approval of ILAs between the BVWACS and the City of College Station

Sponsor: Sam Rivera

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, possible action on an interlocal agreement between BVWACS and the City of College Station and an interlocal agreement for BVCOG to continue serving as Managing Entity of BVWACS.

Relationship to Strategic Goals:

- Good Governance
- Financially Sustainable City
- Core Services and Infrastructure

Recommendation(s): CIO recommends approval of the contract.

Summary: The Brazos Valley Wide Area Communications System (BVWACS) is an interoperable radio system that allows public safety (and supporting) agencies to communicate throughout the Brazos Valley. The City of College Station is one of the nine participating members of the BVWACS. The Brazos Valley Council of Governments (BVCOG) currently serves as the managing entity for the BVWACS.

Budget & Financial Summary: Funds are budgeted and available through the IT Communications Professional Services account.

Attachments:

1. Contract 18300629_R3
2. Contract 17300603_R3



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 18300629R3 PROJECT#: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: Renewal of the Brazos Valley Area Wide Communications System ILA

Name of Contractor: Brazos Valley Council of Governments

CONTRACT TOTAL VALUE: \$ 181,858.92 **Grant Funded** Yes ☐ No ☒
If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☐ N/A **Davis Bacon Wages Used** ☐ Yes ☐ No ☒ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A **Buy America Required** ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

☐ **NEW CONTRACT** ☒ **RENEWAL #** 3 ☐ **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)

Inter Local Agreement for the construction, acquisition, implementation operation and maintenance of the Brazos Valley Area Wide Communications System.

Capitol contribution of \$23,170.72 and four quarterly payments of \$39,672.05

CRC Approval Date*: N/A *(If required)** **Council Approval Date*:** 02/08/2024 **Agenda Item No*:** TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

N/A

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on

Scanned into Laserfiche on

Original(s) sent to Fiscal on



**Interlocal Agreement
For Managing Entity by the BVCOG
for the Brazos Valley Wide Area Communications System**

THIS INTERLOCAL AGREEMENT (“ILA”), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the “Act”), by and among the Brazos Valley Council of Governments, hereinafter referred to as “BVCOG,” and the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, Grimes County, Madison County, Burleson County, and Texas A & M University, all political subdivisions or agencies of the state of Texas.

WHEREAS, the Brazos Valley Council of Governments (the “BVCOG”) is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Interlocal Cooperation Act codified in Chapter 791 Texas Government Code, the BVCOG is authorized to contract with eligible entities to perform governmental functions and services; and

WHEREAS, the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, Grimes County, Madison County, Burleson County, and Texas A & M University, collectively hereinafter sometimes referred to as the “BVWACS Parties” have entered into the Second Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System to create and maintain an interoperable radio and data communications system (the “BVWACS Agreement”); and

WHEREAS, the BVWACS Parties desire the BVCOG to supervise the performance of the BVWACS Agreement; and

WHEREAS, the BVCOG desires to undertake the supervision of the performance of the BVWACS Agreement as set forth in this Agreement;

NOW, THEREFORE, BVCOG and the BVWACS Parties do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The BVCOG represents that it is eligible to contract with the BVWACS Parties under the Interlocal Cooperation Act for the purposes recited herein because it is a local government and it possesses adequate legal authority to enter into this Agreement. Likewise, the BVWACS Parties represent that they, too, are each local governments or political subdivisions eligible to enter into this Agreement for the purposes recited herein.

ARTICLE 2: APPLICABLE LAWS

The BVCOG and the BVWACS Parties agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement. This includes applicable laws relating to purchasing and bidding of products and services, maintenance of open records and use of the Brazos Valley Wide Area Communications System in accordance with Federal Communications Commission rules. A party to this Agreement is financially responsible for any FCC penalties, fines or other financial encumbrances or penalties caused by the actions of its agents, employees or representatives.

ARTICLE 3: WHOLE AGREEMENT

This Agreement and any attachments, as provided herein, constitute the complete agreement among the parties hereto, and supersede any and all oral and written agreements among the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

This Agreement shall be effective when approved by the governing body of the last party which approval makes the Agreement go into effect on October 1, 2023, whichever occurs latest. It shall remain effective until September 30, 2028, subject to the rights of termination set forth herein. The conditions set forth below shall apply unless modified or terminated in accordance with the provisions hereof.

ARTICLE 5: SCOPE OF SERVICES

The BVCOG agrees to perform as the BVWACS Managing Entity certain services for the BVWACS Parties as set forth in Exhibit “A-1” at specified rates and costs as set forth in Exhibit “A-2”. (A sample form Exhibit “A-2” is attached hereto.) Exhibit “A-2” shall be reviewed annually and may be amended in conjunction with the BVWACS fiscal year budget adoption process, to be adopted effective on the 1st day of October of each year during the Term of this Agreement.

The BVCOG will assist the BVWACS Parties in managing grant funds as set forth in Exhibit “A-1”. Nothing herein shall make the BVCOG responsible for providing funding for various projects associated with such grant or programs in the event of a shortfall.

ARTICLE 6: PAYMENTS

Pursuant to the BVWACS Agreement, upon delivery of goods or services provided and upon presentation of properly documented statements on a quarterly basis to each of the BVWACS Parties for their proportionate share of same, each BVWACS Party shall promptly in accordance with the BVWACS Agreement pay the BVCOG the full amount of its respective share. All payments for goods or services will be made from current revenues available to the BVWACS Parties.

ARTICLE 7: CHANGES AND AMENDMENTS

This Agreement may be amended only by a written amendment executed by all the parties, except that any alternations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and 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 regulation.

ARTICLE 8: TERMINATION PROCEDURES

The BVCOG or the BVWACS Parties may cancel this Agreement at any time upon ninety (90) days written notice by certified mail to the other parties to this Agreement. The obligations of the BVWACS Parties and of the BVCOG, including obligations to pay any invoices outstanding for goods and/or services purchased under this Agreement, shall survive such cancellation, as well as any other obligation incurred under this Agreement, until performed or discharged by the responsible party.

ARTICLE 9: SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 10: FORCE MAJEURE

To the extent that any party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.

ARTICLE 11: CONSENT TO SUIT

Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges and immunities as may be provided by law.

ARTICLE 12: NOTICES

Notices required under this Agreement must be in writing and delivered personally or sent by certified US Mail, postage prepaid, addressed to such party at the following respective addresses:

Brazos Valley Council of Governments:

Attention: Executive Director
P.O. Box 4128
Offices: 3991 East 29th St.
Bryan, Texas 77805-4128

City:

City of Bryan
Attention: City Manager, with a copy to the City Attorney
P. O. Box 1000
Bryan, TX 77805

City:

City of College Station
Attention: City Manager, with a copy to the City Attorney
P. O. Box 9960
College Station, TX 77842

City:

City of Brenham
Attention: City Manager, with a copy to the City Attorney
200 West Vulcan Street
PO Box 1059
Brenham, TX 77834

County:
Brazos County
Attention: County Judge, with a copy to County Attorney
200 S. Texas Avenue
Suite 332
Bryan, TX 77803

County:
Washington County
Attention: County Judge, with a copy to County Attorney
100 East Main Street
Suite 104
Brenham, TX 77833

County:
Burleson County
Attention: County Judge, with a copy to County Attorney
100 W. Buck #306
Caldwell, TX 77836

County:
Madison County
Attention: County Judge, with a copy to County Attorney
103 West Trinity, Suite 113
Madisonville TX 77864

Texas A & M University:
Texas A & M University
Attention: Vice President and Associate Provost
For Information Technology and Chief Information Officer
1365 TAMU
College Station, TX 77843-1365

County:
Grimes County
Attention: County Judge, with a copy to County Attorney
100 Main Street
Anderson, TX 77830

ARTICLE 13: MISCELLANEOUS

a. This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Brazos County, Texas.

b. 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.

c. 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 all the parties.

d. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

e. 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.

f. This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of all the other parties to this Agreement.

g. This Agreement is effective as of the effective date set forth above. This Agreement may be executed simultaneously in one or several counterparts, each of which is deemed to be an original and all of which together constitute one and the same instrument. The counterparts may be signed in multiple originals to allow each party to have an originally signed counterpart for each party. The Agreement has been executed in multiple originals, each having equal force and effect, on behalf of the parties.

BRAZOS VALLEY COUNCIL OF GOVERNMENTS

Executive Director

Date: _____

GRIMES COUNTY

County Judge

Date: _____

CITY OF BRYAN

Mayor

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

CITY OF COLLEGE STATION

Mayor

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager / CFO

Date: _____

CITY OF BRENHAM

Mayor Date: _____

ATTEST:

City Secretary Date: _____

APPROVED AS TO FORM:

City Attorney Date: _____

BRAZOS COUNTY COMMISSIONERS COURT

County Judge

Date: _____

ATTEST

County Clerk

Date: _____

APPROVED AS TO FORM

Assistant County Attorney

Date: _____

WASHINGTON COUNTY

County Judge

Date: _____

MADISON COUNTY

County Judge

Date: _____

BURLESON COUNTY

County Judge

Date: _____

TEXAS A&M UNIVERSITY

Executive Vice President and
Chief Financial Officer

Date: _____

Exhibit A-1

SCOPE OF SERVICES

The BVCOG shall perform the following services at the following rates for the BVWACS Parties as the Managing Entity pursuant to the BVWACS Agreement:

1. Perform as Managing Entity as set forth in the BVWACS Agreement. This includes the following:
 - a. Overall management. To manage the BVWACS on a day to day basis. Responsibilities include specific duties outlined in the BVWACS Agreement plus any other duties as determined by the Governing Board created under such Agreement.
 - b. Management. Perform ongoing management of the construction, acquisition, implementation, operation and maintenance of the BVWACS;
 - c. Coordination with other radio systems. Serve as principle coordinator with other radio systems as determined by the Governing Board;
 - d. Minutes. Maintain minutes of the Governing Board and Operating Board meetings;
 - e. Recommendations. Make recommendations to the Operating Board regarding proper performance of the BVWACS under the terms of this Agreement;
 - f. Supervision. Supervise additional Employees as applicable;
 - g. Dispute Resolution. Assist in the administrative dispute process as set out elsewhere in this Agreement.
 - h. Agreement copy. Maintain and make available at all reasonable times to the Operating Board and to the Governing Board a current copy of this Agreement, including any amendments and the most current version of all Exhibits together with copies of the most current versions of any subsequently developed operating procedures or standards;
 - i. Financial Responsibilities. Reconcile the budget on a quarterly basis or as requested by the Governing Board. Prepare draft budget, coordinate purchasing, conduct inventories, assist with any audits and handle such other fiscal matters as may be directed by the Governing Board;
 - j. Reports. Provide such performance reports, projection reports and other reports regarding the technical, operational, fiscal and other aspects of the BVWACS as required by the Governing Board or Operating Board;
 - k. Record Keeping. Maintain and keep current all records, legal documents, contracts, manuals, warranties, etc. relating to the BVWACS and make same available for review by any of the Parties upon request;
 - l. Contract Administration. Administer all contracts for the construction, acquisition, implementation, operation and maintenance of the BVWACS;
 - m. Project Management. Oversee the management of all projects relating to the construction, acquisition and implementation of Infrastructure and Improvements to the BVWACS;
 - n. Standard Operating Procedures. Develop, distribute and keep current standard operating procedures for the BVWACS as directed by the Operating Board;
 - o. BVWACS Availability. Ensure operational and technical availability of the BVWACS features to the Parties and Associates in accordance with the goals and objectives set forth herein and that support interaction and communications with other public safety radio systems;

p. Grant Administration. Oversee the application, administration and financial management of grant funding programs available for the construction, acquisition, implementation, operation and maintenance of the BVWACS. This includes performing as a recipient or sub-recipient for the BVWACS Parties in relation to such grant programs, and such other duties as set out below.

2. Perform Grant Administration, including the following:

- a. Procurement and evaluation responses resulting in specific recommendations to the BVWACS Governing Board for the execution of grants and contracts, including receipt of funds;
- b. Recommendation to the BVWACS Governing Board for the award of subcontracts for the provision of the services set forth for covered programs that have been approved in accordance with the BVWACS Agreement;
- c. Management, administration, and oversight of subcontracts and subcontractors' performance, including for contracts for planning, evaluation, and monitoring;
- d. Payment of all authorized grant program expenses, whether for staff or administrative services, participant support costs, authorized subcontracted services, participant wages or stipends, or other costs incurred in the implementation of programs;
- e. Reimbursement of any questioned or disallowed costs will first be demanded from the subcontractor where the costs occurred, and making recommendations regarding possible solutions;
- f. Maintenance of financial and grant participant information records;
- g. Preparation and delivery of such reports and invoices for funds as are required by the state and federal rules, regulations, and administrative policies applicable to the program covered under the statutes;
- h. Preparation of a budget for Grant Recipient/Fiscal Agent;
- i. Authority to procure service providers for services authorized in the adopted and approved annual plans for the covered grant programs;; and
- j. Provision of other duties that may be required by changes in state and/or federal rules, regulations, and/or policies that are applicable to the covered grant program.

3. Exclusion from scope of services:

- a. Conveyance of interests in real property. This does not prohibit the provision of services relating to property acquisition, such as oversight of surveys, title work, appraisals, etc.

EXHIBIT A-2 SAMPLE BUDGET DOCUMENT

BVWACS FY2024 APPROVED Budget			
Description		FY2023	FY2024
Capital Fund Contributions		\$ 103,377.05	\$ 103,377.05
Expenses			
Salary - System Manager		\$ 106,063.10	\$ 109,781.52
Salary - BVCOG Misc		\$ 7,519.09	\$ 7,819.85
Salary Total		\$ 113,588.18	\$ 117,601.37
Benefits Total		\$ 32,581.73	\$ 33,885.00
General, Administrative, & Maintenance Expense			
Consulting Fees	*Other Admin*	\$ -	\$ -
Professional Fees	*Other Admin*	\$ 3,500.00	\$ 4,500.00
Audit Expense	*Other Admin*	\$ 2,684.51	\$ 2,791.89
Travel Expense		\$ 8,000.00	\$ 8,500.00
Maintenance, Motorola		\$ 228,062.07	\$ 245,055.55
Maintenance, Harris County		\$ 64,022.94	\$ 77,395.64
Maintenance, General	*Contingency*	\$ 35,000.00	\$ 45,000.00
Supply Expense	*Other Admin*	\$ -	\$ -
Copier Expense	*Postage & Printing*	\$ 400.00	\$ 400.00
Maintenance, Data Connectivity		\$ 50,000.00	\$ 70,000.00
Telephone Expense	*Includes mobile data devices & phone*	\$ 1,800.00	\$ 3,500.00
Postage Expense	*Postage & Printing*	\$ 75.00	\$ 75.00
Insurance, General		\$ 15,000.00	\$ 15,000.00
Training and Meeting Expense	*Other Admin*	\$ 3,000.00	\$ 4,500.00
General, Admin, & Maintenance Expense Total		\$ 411,544.52	\$ 476,718.08
Indirect			
Indirect Cost Expense		\$ 28,418.00	\$ 29,554.72
ISF			
Accounting Service ISF		\$ 10,342.31	\$ 10,756.00
System Administration ISF		\$ 11,642.85	\$ 12,108.57
Copy/Fax Service ISF		\$ 532.60	\$ 553.91
Human Resource Management ISF		\$ 8,794.19	\$ 9,145.96
Office Space ISF		\$ 8,670.21	\$ 9,017.02
Receptionist/Internet/Local Phone ISF		\$ 8,320.00	\$ 8,652.80
ISF Total		\$ 48,302.17	\$ 50,234.25
Annual Operating & Maintenance Total		\$ 634,434.60	\$ 707,993.42
Annual Operating, Maintenance, & Capital Total		\$ 737,811.65	\$ 811,370.47

FY24 APPROVED															
Capital Equipment Replacement Reserve (CERRF)															
Current Balance	\$ 1,839,799.44														
<table> <tr> <th colspan="2">Contributions</th></tr> <tr> <td>FY19</td><td>\$ 206,754.09</td></tr> <tr> <td>FY20</td><td>\$ 206,754.09</td></tr> <tr> <td>FY21</td><td>\$ 103,377.05</td></tr> <tr> <td>FY22</td><td>\$ 103,377.05</td></tr> <tr> <td>FY23</td><td>\$ 103,377.05</td></tr> <tr> <td>FY24</td><td>\$ 103,377.05</td></tr> </table>		Contributions		FY19	\$ 206,754.09	FY20	\$ 206,754.09	FY21	\$ 103,377.05	FY22	\$ 103,377.05	FY23	\$ 103,377.05	FY24	\$ 103,377.05
Contributions															
FY19	\$ 206,754.09														
FY20	\$ 206,754.09														
FY21	\$ 103,377.05														
FY22	\$ 103,377.05														
FY23	\$ 103,377.05														
FY24	\$ 103,377.05														
FY2024 Projected Balance After 10/1/2023	\$ 1,943,176.49														

FY2024 APPROVED							
	Count	%	O&M	Capital	Total	Change	
College Station	1027	22.41%	\$ 158,688.18	\$ 23,170.72	\$ 181,858.90	\$ 8,742.06	
Bryan	560	12.22%	\$ 86,529.10	\$ 12,634.47	\$ 99,163.57	\$ 13,220.28	Annual (Includes Capital) Per Radio
Brazos	603	13.16%	\$ 93,173.29	\$ 13,604.62	\$ 106,777.91	\$ 8,883.42	Per Radio/Year \$ 177.08
TAMU	336	7.33%	\$ 51,917.46	\$ 7,580.68	\$ 59,498.14	\$ 2,026.87	Per Radio/Month \$ 14.76
Washington County	814	17.77%	\$ 125,776.22	\$ 18,365.11	\$ 144,141.33	\$ 14,611.27	
Brenham	288	6.29%	\$ 44,500.68	\$ 6,497.73	\$ 50,998.41	\$ 1,787.53	
Grimes	394	8.60%	\$ 60,879.40	\$ 8,889.25	\$ 69,768.65	\$ 4,036.98	
Madison	257	5.61%	\$ 39,710.67	\$ 5,798.32	\$ 45,508.99	\$ 4,558.51	
Burleson	303	6.61%	\$ 46,818.42	\$ 6,836.15	\$ 53,654.57	\$ 15,691.90	
Total	4582	100.00%	\$ 707,993.42	\$ 103,377.05	\$ 811,370.47	\$ 73,558.82	

BVWACS FY2024 APPROVED Budget

Description	FY2023	FY2024	FY22/23 Change
Capital Fund Contributions	\$ 103,377.05	\$ 103,377.05	\$0.00
Expenses			
Salary - System Manager	\$ 106,069.10	\$ 109,781.52	\$3,712.42
Salary - BVCOG Misc	\$ 7,519.09	\$ 7,819.85	\$300.76
Salary Total	\$ 113,588.18	\$ 117,601.37	\$4,013.18
Benefits Total	\$ 32,581.73	\$ 33,885.00	\$1,303.27
General, Administrative, & Maintenance Expense			
Consulting Fees *Other Admin*	\$ -	\$ -	\$0.00
Professional Fees *Other Admin*	\$ 3,500.00	\$ 4,500.00	\$ 1,000.00
Audit Expense *Other Admin*	\$ 2,684.51	\$ 2,791.89	\$107.38
Travel Expense	\$ 8,000.00	\$ 8,500.00	\$500.00
Maintenance, Motorola	\$ 228,062.07	\$ 245,055.55	\$16,993.48
Maintenance, Harris County	\$ 64,022.94	\$ 77,395.64	\$13,372.70
Maintenance, General *Contingency*	\$ 35,000.00	\$ 45,000.00	\$10,000.00
Supply Expense *Other Admin*	\$ -	\$ -	\$0.00
Copier Expense *Postage & Printing*	\$ 400.00	\$ 400.00	\$0.00
Maintenance, Data Connectivity	\$ 50,000.00	\$ 70,000.00	\$20,000.00
Telephone Expense *Includes mobile data devices & phone*	\$ 1,800.00	\$ 3,500.00	\$1,700.00
Postage Expense *Postage & Printing*	\$ 75.00	\$ 75.00	\$0.00
Insurance, General	\$ 15,000.00	\$ 15,000.00	\$0.00
Training and Meeting Expense *Other Admin*	\$ 3,000.00	\$ 4,500.00	\$1,500.00
General, Admin, & Maintenance Expense Total	\$ 411,544.52	\$ 476,718.08	\$65,173.56
Indirect			
Indirect Cost Expense	\$ 28,418.00	\$ 29,554.72	\$1,136.72
ISF			
Accounting Service ISF	\$ 10,342.31	\$ 10,756.00	\$413.69
System Administration ISF	\$ 11,642.85	\$ 12,108.57	\$465.71
Copy/Fax Service ISF	\$ 532.60	\$ 553.91	\$21.30
Human Resource Management ISF	\$ 8,794.19	\$ 9,145.96	\$351.77
Office Space ISF	\$ 8,670.21	\$ 9,017.02	\$346.81
Receptionist/Internet/Local Phone ISF	\$ 8,320.00	\$ 8,652.80	\$332.80
ISF Total	\$ 48,302.17	\$ 50,234.25	\$1,932.09
Annual Operating & Maintenance Total	\$ 634,434.60	\$ 707,993.42	\$73,558.82
Annual Operating, Maintenance, & Capital Total	\$ 737,811.65	\$ 811,370.47	\$73,558.82



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 17300603R3 PROJECT#: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: Renewal of the Brazos Valley Area Wide Communications System ILA

Name of Contractor: Brazos Valley Council of Governments

CONTRACT TOTAL VALUE: \$ 00.00 **Grant Funded** Yes ☐ No ☒
If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☒ N/A **Davis Bacon Wages Used** ☐ Yes ☐ No ☒ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A **Buy America Required** ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

☐ **NEW CONTRACT** ☒ **RENEWAL #** 3 ☐ **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)

No cost Inter Local Agreement for the construction, acquisition, implementation operation and maintenance of the Brazos Valley Area Wide Communications System for the counties of Brazos, Washington, Madison, Burleson and Grimes.

CRC Approval Date*: N/A *(If required)** **Council Approval Date*:** 02/08/2024 **Agenda Item No*:** TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

N/A

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on

Scanned into Laserfiche on

Original(s) sent to Fiscal on

**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE BRAZOS VALLEY WIDE AREA COMMUNICATIONS SYSTEM (BVWACS)**

STATE OF TEXAS §
COUNTIES OF BRAZOS, WASHINGTON, MADISON, BURLESON, AND GRIMES §

This Agreement is by and among the City of Bryan, City of College Station, City of Brenham, Brazos County, Washington County, Burleson County, Madison County, Grimes County, and Texas A & M University.

RECITALS

- A. The BVWACS Parties are combining their resources and desire to jointly operate and maintain the Brazos Valley Wide Area Communications System to improve the ability of public safety and public service radio communications internally and among themselves, and to allow direct access to, and exchange of data.
- B. The BVWACS Parties desire to continue to join their Wide Area Communications System with the regional communications system of Harris County, Texas, and to create a mechanism to effectively administrate this endeavor pursuant to a separate agreement with Harris County in a manner consistent with this Agreement.
- C. The BVWACS Parties desire to provide for the organizational structure and funding support for the construction, acquisition, implementation, operation and maintenance of the Wide Area Communications System.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants herein, the BVWACS Parties agree as follows:

1. Definitions.

- A. Annual Assessment means a BVWACS Party's proportionate share of the annual Capital Costs and Operating Costs for the upcoming fiscal year based on the approved BVWACS budget and determined by that BVWACS Party's participation percentage as described in Sections 9.B and 9.C of this Agreement.
- B. Brazos County means the corporate and political body of the state of Texas known as Brazos County.
- C. Brenham means the City of Brenham.
- D. Bryan means the City of Bryan.
- E. Burleson County means the corporate and political body of the state of Texas known as Burleson County.
- F. BVWACS Associates means those entities that are sponsored by a BVWACS Party that are eligible to use the licensed frequencies under FCC rules and regulations, that are using the BVWACS and that are not BVWACS Parties pursuant to the terms of this Agreement.
- G. BVWACS Managing Entity means the Brazos Valley Council of Governments contracted to supervise the performance of this Agreement or any other BVWACS Party or third party entity designated to perform this function pursuant to the terms of this Agreement and pursuant to Section 791.013 Texas Government Code.
- H. BVWACS Parties means the state political subdivisions that have entered into this Agreement for the construction, acquisition, implementation, operation and maintenance of the BVWACS, including Bryan, College Station, Brenham, Brazos County, Washington County, Burleson County, Madison County, Grimes County,

and Texas A & M University. Additional parties may be added from time to time pursuant to the terms of this Agreement.

- I. BVWACS Manager means the Employee of the Managing Entity unless designated by the Governing Board otherwise tasked to perform services for BVWACS as set forth in this Agreement.
- J. BVWACS Support Vendor means any of the one or more vendors selected to provide maintenance, repair, troubleshooting, and related services for the Brazos Valley Wide Area Communications System.
- K. BVWACS Value means the undivided interest of a BVWACS Party in the BVWACS Infrastructure, Improvements and real property.
- L. College Station means the City of College Station.
- M. Commencement Date means the date on which this Agreement has been duly approved by all BVWACS parties.
- N. Costs include Capital Costs and Operating Costs as defined below:
 - 1) Capital Costs means all costs incurred for the construction, acquisition and implementation of the BVWACS in accordance with the terms of this Agreement. Capital Costs includes expenditures for the construction, acquisition and implementation of any and all Improvements, Infrastructure, additions, replacements, upgrades and enhancements to the BVWACS; land acquisition costs, including appraisals, legal fees, surveys, and other costs associated thereto; the procurement of any hardware or software relating to the construction and implementation of any and all Improvements, Infrastructure, additions, replacements, upgrades and enhancements to the BVWACS; engineering studies, consulting reports, analysis, design and planning; auditing and compliance with accounting principles and the fiscal and legal expenses relating thereto, and any and all other costs and expenses relating to the foregoing. The BVWACS System Architecture is attached hereto and made a part hereof labeled Exhibit A. Notwithstanding any of the above, Capital Costs shall be processed in accordance with GASB 34 and GAAP Accounting Principles.

- 2) Operating Costs means all costs not specifically identified as Capital Costs and includes all fixed and variable costs and expenses incurred, directly or indirectly, in the operation and maintenance of the BVWACS consisting of, without limit, the direct purchase of goods and services, such as photographic supplies, developing and printing, educational materials, books, office supplies, postage, computer supplies, computer software, small tools and minor equipment, and minor computer hardware, office space or the value thereof; costs associated with contracts to supply goods and services, such as support contracts, rental of copy machines, vehicle maintenance and fuel costs, tower site and infrastructure insurance, building maintenance, computer hardware and software maintenance, printing and binding; personnel costs incurred by all entities for Employees approved in the Budget to support the BVWACS including, without limitation, wages, benefits, insurance, employment related taxes, employers' retirement contributions, phone allowances, pagers, education and seminar fees, travel for training, mileage reimbursement, and parking costs; and further including ongoing utility costs, security, and the normal, periodic maintenance, tuning, servicing, inspecting, parts replacement and repair and other similar activities that are intended to keep the BVWACS functioning efficiently and to maintain the useful life of the assets and reduce the probability of failures. The term includes all other items or expenses of a like or different nature reasonably required or desirable for the efficient maintenance and operation of the BVWACS in full compliance with all current and future regulatory requirements and the performance of the provisions of this Agreement; the provision of liability and other insurance in amounts and types determined necessary for the proper operation of BVWACS; assumption of legal liability of the BVWACS Parties to pay money to satisfy an arbitration award, administrative decision, settlement agreement, or court decision creating a judgment against one or more of the BVWACS Parties as a result of a third party claim arising out of or incident to the terms of this Agreement, including reasonable attorneys' fees and costs incurred in defending against same; and costs incurred in enforcing or defending the provisions of this Agreement,

including reasonable attorneys' fees. Notwithstanding any of the above, Operating Costs shall be processed in accordance with GASB 34 and GAAP Accounting Principles.

- O. Day unless otherwise described, means calendar day.
- P. Employees means the person(s) employed by one or more of the Parties or by the Managing Entity, devoted exclusively to the construction, acquisition, implementation, operation and maintenance of the BVWACS as set forth in this Agreement.
- Q. FCC means the Federal Communications Commission.
- R. Fiscal Year means the fiscal year agreed upon by the entities signing this Agreement. The Fiscal Year in effect as of the execution of this Agreement commences on October 1st of each year and ends the following September 30th.
- S. Grimes County means the corporate and political body of the State of Texas known as Grimes County.
- T. Madison County means the corporate and political body of the State of Texas known as Madison County.
- U. Improvements means any structure, facility, addition, replacement, upgrades and enhancements to the BVWACS including, without limitation, hardware, software, equipment and real property acquired for increasing functionality, range or capacity of the Wide Area Communications System.
- V. Infrastructure means collectively all Improvements, additions, replacements, upgrades and enhancements to real property or personalty, real property acquisition, and all system hardware and software procurement necessary for the normal operation of the BVWACS and excluding Subscriber Equipment. The twenty-one radio consoles implemented in the system initial phase are included as system infrastructure.
- W. Initial Phase means that first phase of Infrastructure and Improvements, including the Capital Costs relating thereto, for the Parties to utilize the BVWACS within the designated portions of the Service Area all as shown on Exhibit B. As proposed herein, the Initial Phase shall include radio voice communications but not data transmission.

- X. Quarterly Assessment means a BVWACS Party's proportionate share of the Capital Costs and Operating Costs that are projected to be incurred and the amount of money projected to be expended during the next fiscal quarter as presented in an itemized schedule prepared by the Managing Entity, with the proportionate share determined in accordance with the participation percentages of the BVWACS Party, in accordance with Sections 9.B. and 9.C.
- Y. Remaining Parties means those BVWACS Parties to this Agreement who remain committed to this Agreement if one or more BVWACS Parties withdraw from this Agreement or is terminated pursuant to the terms of this Agreement.
- Z. Service Area means that geographical area designed to serve the Parties for the BVWACS as same may, from time to time, be amended through approval by the Governing Board. A map of the Service Area is attached hereto as Exhibit B.
- AA. Standard Terms and Conditions means the terms and conditions listed in Exhibit C that must be included in all BVWACS Associate Interlocal Cooperation Agreements.
- BB. Subscriber Equipment means the portable radios, mobile radios, control station radios, radio consoles, excluding the original 21 radio consoles installed or made operational as part of the Initial Phase, and other equipment operated by BVWACS Parties and BVWACS Associates accessing BVWACS.
- CC. Terminated Party means a BVWACS Party who has received a notice of termination and whose participation in the BVWACS Agreement has been terminated for default, after it failed to cure the default in a timely manner.
- DD. Termination Date means twelve (12) months from the date of the notice of withdrawal when a BVWACS Party gives notice of its intention to withdraw from this Agreement and terminate its participation in BVWACS.
- EE. Washington County means the corporate and political body of the state of Texas known as Washington County.
- FF. Wide Area Communications System or BVWACS means the Regional Voice and Data Radio System serving the Brazos County, Grimes County and Washington County, Texas areas as shown on a Service Area map attached as Exhibit B as same may from time to time be amended as provided in this Agreement, implemented by

Parties for public safety and public service purposes in accordance with the terms herein and pursuant to applicable law for such type of public communications system.

GG. Withdrawing Party means a BVWACS Party who gives notice of its intention to withdraw from this Agreement and terminate its participation in BVWACS.

HH. RF Site means the equipment located within the equipment shelter at a given location, the radio tower or structure upon which antennas are mounted at a given location, and any miscellaneous hardware, equipment racks, or utilities necessary for the equipment at a given location to function in support of radio subscriber equipment users in the field.

II. Console site means the equipment located within a dispatch facility at a given location, including computer equipment, servers and server racks, console furniture, and any miscellaneous hardware or utilities necessary for that equipment to function in support of dispatch operations between telecommunicators and radio subscriber equipment users in the field.

JJ. RNI means Radio Network Infrastructure, or the data network which connects all RF and Console sites to the Master Sites in Conroe, TX and Tomball, TX.

2. Term of Agreement.

The term of this Agreement shall be effective when this Agreement has been duly approved by all BVWACS Parties (termed the Effective Date), subject to the BVWACS Parties' rights of termination in this Agreement. The term of this Agreement is from the Effective Date to September 30, 2028. Nothing in this Agreement will prevent the BVWACS Parties from entering into a separate Agreement with another group or entity providing similar radio services provided such Party continues to adhere to the terms and conditions of this Agreement.

3. Purpose.

The purpose of this Agreement is to establish an organizational and management structure for the construction, acquisition, implementation, ongoing administration, operation, and maintenance of the BVWACS by the Parties, including establishing a budget proposal process, a funding process, and the allocation of Costs associated with the construction,

acquisition, implementation, operation, maintenance, and Improvements to the Wide Area Communications System.

The BVWACS Parties have developed initial objectives, attached as Exhibit D, and evaluation factors, attached as Exhibit E.

4. Governing Board.

- A. Purpose. The Governing Board shall set policy for the BVWACS, direct and approve the operating policies and procedures of the Operating Board, adopt a draft budget annually, and carry out any and all other appropriate tasks necessary for the proper functioning of the BVWACS. The Governing Board may exercise such powers and duties as authorized under this Agreement.
- B. Composition. The Governing Board shall consist of one member from each of the BVWACS Parties. Governing Board Members should be public officials or senior executive level employees of their respective BVWACS Party. Governing Board Members may designate in writing an individual within their entity to act in their place. The governing body of a BVWACS Party may designate in writing a change in that BVWACS Party's Governing Board Member.
- C. Officers. The Governing Board shall elect a chair, vice-chair, and other officers annually. The BVWACS Managing Entity shall provide secretarial services and other administrative support services to the Governing Board.
- D. Meeting Requirements. The Governing Board shall meet annually or as-needed, but special meetings may be called by the request of one (1) or more Governing Board Members. These meetings shall be held in compliance with the Texas Open Meetings Act. These meetings shall be publicly posted 72 hours before the meeting by the Chair of the Governing Board. Meeting notices and meeting agenda shall be sent to members of the Governing Board at least 72 hours before the meeting.
- E. BVWACS Improvements. The Governing Board may develop agreements defining the roles and responsibilities of the BVWACS Parties for BVWACS Improvements at the time the BVWACS Improvements are approved by the BVWACS Parties. The funding for these BVWACS Improvements shall be included in these agreements. Unless otherwise

agreed by the BVWACS Parties in writing, funding for the cost of BVWACS Improvements that are constructed or acquired to benefit one (1) or more individual BVWACS Parties shall be paid only by the BVWACS Parties benefiting from such BVWACS Improvements.

- F. Quorum and Voting. No action may be taken by the Governing Board unless a quorum is present. A quorum shall consist of a majority of members. Unless expressly stipulated otherwise in this Agreement or unless required differently pursuant to applicable law, the affirmative vote of a majority of members is required for the Governing Board to adopt any resolution or take any action. Each member of the Governing Board shall have one vote.

5. Operating Board.

- A. Purpose. The management and technical operation of the BVWACS is overseen by an Operating Board which ensures that the policies set by the BVWACS Governing Board are carried out and which provides overall BVWACS advice as to the construction, acquisition, implementation, operation and maintenance of the BVWACS and provides advice to the BVWACS Managing Entity.
- B. Composition. The Operating Board consists of one member appointed by each of the BVWACS Parties. In addition, each BVWACS Party may designate in writing an alternate (“Alternate”) to act in place of its appointed Operating Board member. Notice of a change in designated Board Members or Alternate by a BVWACS Party may be made by sending written notice of the newly designated Board Member(s) or Alternate to the Chair of the Operating Board, with a copy to the BVWACS Managing Entity. The composition of the Operating Board is shown in Exhibit F.
- C. Duties. The Operating Board shall meet quarterly or as-needed. The Operating Board shall examine the apportionment of BVWACS Capital Costs and Operating Costs among the BVWACS Parties and recommend any adjustments needed to the Governing Board. The Operating Board shall annually submit a draft Operating and Capital Program budget for presentation to the Governing Board by March 1 of each year unless directed otherwise by the Governing Board regarding funds needed to improve, operate, maintain, and use the BVWACS. The Operating Board shall review and recommend the operating policies and

procedures for the BVWACS, including policies related but not limited to system security, fleetmap management, capacity management, and interoperability with other radio systems and equipment. The Operating Board shall regularly review the evaluation factors for the BVWACS as described in Exhibit E of this Agreement and take needed actions to ensure reliable BVWACS performance. The BVWACS Managing Entity, together with the Operating Board, shall develop and recommend to the Governing Board BVWACS Improvements as needed to ensure optimal BVWACS functionality and performance. The Operating Board shall consider the impact of proposed BVWACS Associates and proposed new Parties to this Agreement on the capacity of the BVWACS and recommend approval or denial of requests to sponsor an entity as an Associate or to add an additional party to this Agreement. In addition, the Operating Board annually provides input to the Governing Board and to the BVWACS Managing Entity on the performance of the BVWACS Systems Manager.

- D. Terms. The term of each Board Member shall be determined by the appointing BVWACS Party. All Board Members serve at the pleasure of their appointing BVWACS Party.
- E. Attendance Requirements. Either a Board Member or Alternate shall attend all meetings. If a BVWACS Party has no representation at more than 25% of the meetings during any calendar year, the BVWACS Party shall appoint new Board Member(s) and new Alternate(s). Operating Board meetings are scheduled by the Operating Board Chair.
- F. Chair, Vice-Chair, and Secretary. The Operating Board Members elect the Chair, Vice-Chair, and Secretary in the first month of each Fiscal Year. The Chair is responsible for scheduling meetings and providing Operating Board members with meeting notices. One of the duties of the Secretary shall be to record and track attendance of Board Members and Alternates. The BVWACS Managing Entity provides or arranges staff support to make written minutes of each Operating Board meeting and provides other needed logistical support for the Operating Board.
- G. Procedures at Meeting. The Chair presides at the meetings and the Vice-Chair acts in the absence of the Chair. No action may be taken by the Operating Board unless a quorum of Board Members is present. A quorum shall consist of a majority of Board Members. The Chair shall provide the Board Members with at least 20 days' notice of proposed dates for regular meetings. Any Board Member may place items on the Operating Board's meeting

agenda by submitting the item to the Chair at least ten days before the next meeting. The Chair shall submit the agenda to the Board Members no later than seven days before the meeting. Each Board Member shall have one vote. The affirmative vote of more than 50 percent of all the members of the Operating Board is required to adopt any resolution or take any action. Voting by proxy or delegate is permitted.

- H. Actions of Operating Board. The Operating Board may not take any action that would violate any applicable statute, law, regulation, court order, ordinance, commissioners' court order, city charter provision, articles of incorporation or other governing document. If any such action is taken, it is null and void.
- I. Special Meetings. The BVWACS Managing Entity may call meetings upon 72 hours written notice to the Board Members to conduct regular business matters or to address budget related items, which may require action by the Parties' governing bodies to increase or decrease currently budgeted expenditures. The Chair or a majority of the Board Members may also call special meetings of the Operating Board. In the event of an emergency, the notice provision herein shall be suspended.

6. Amendments to Agreement.

Any BVWACS Party may propose an amendment to this Agreement to the Operating Board. The Operating Board considers the amendment and makes a recommendation to the Governing Board for consideration. The Governing Board shall review amendments to this Agreement and may recommend approval of the amendment to the governing bodies of the BVWACS Parties. An amendment to this Agreement shall be effective when approved by three fourths of the governing bodies of the BVWACS Parties. A BVWACS Party whose governing body does not approve an amendment to this Agreement adopted as provided above, may withdraw from participation in the BVWACS as described in Section 17 A. of this Agreement.

7. Construction, Acquisition and Implementation of BVWACS.

- A. Initial Phase. The Initial Phase of the BVWACS shall be comprised of current Infrastructure and Improvements owned by one or more of the Parties hereto plus additional Infrastructure and Improvements to be constructed or acquired. Exhibit A sets

out the Infrastructure, Improvements and real property currently owned by one or more of the Parties as well as the additional proposed BVWACS Infrastructure and BVWACS Improvements that will comprise the Initial Phase. The Parties agree that the Initial Phase of the BVWACS shall be as set forth in Exhibit A.

- B. Ownership and Permission. Ownership of Infrastructure and Improvements currently owned by the Parties shall remain the property of such Party. Permission for all BVWACS Parties, BVWACS Associates, the BVWACS Managing Entity and its respective agents and representatives to access and use such Infrastructure and Improvements as part of the BVWACS in accordance with this Agreement is herein granted. New BVWACS Improvements and BVWACS Infrastructure shall be owned as tenants in common among the Parties then in existence at the time funding was provided for such BVWACS Improvements or BVWACS Infrastructure.

8. Staffing and Operations.

- A. Designation of Managing Entity. The Governing Board shall designate one of the BVWACS Parties or a mutually agreed upon third party as the Managing Entity for the BVWACS.
- B. BVWACS Systems Manager. The Managing Entity is responsible for providing the BVWACS Systems Manager. This may be a full time Employee or, with the approval of the Governing Board, contracted third party devoted to managing the construction, acquisition, implementation, operation and maintenance of the BVWACS under the direction of the Managing Entity. The Operating Board will serve in an advisory capacity to the BVWACS Systems Manager on behalf of the Governing Board. The BVWACS Systems Manager shall be an Employee of the Managing Entity unless the Governing Board designates otherwise. As its Employee, the Managing Entity shall be responsible for the hiring, firing, performance review, training and education, provision of health and retirement benefits and all other costs associated with this position as well as costs associated with being an Employee of the Managing Entity, subject to reimbursement by the Parties through adoption of the annual BVWACS Budget which shall include the costs of all Employees. The Managing Entity shall obtain input from the Governing Board before

taking any formal action regarding performance, including annual reviews, with respect to such Employee.

C. Management Duties of the BVWACS Managing Entity. The BVWACS Managing Entity will manage the BVWACS on a day-to-day basis. Responsibilities include the following plus any other duties as determined by the Governing Board:

- 1) Management. Perform ongoing management of the construction, acquisition, implementation, operation and maintenance of the BVWACS;
- 2) Coordination with other radio systems. Serve as principal coordinator with other radio systems as determined by the Governing Board;
- 3) Minutes. Maintain minutes of the Governing Board and Operating Board meetings;
- 4) Recommendations. Make recommendations to the Operating Board regarding proper performance of the BVWACS under the terms of this Agreement;
- 5) Supervision. Supervise additional Employees as applicable;
- 6) Dispute Resolution. Assist in the administrative dispute process as set out elsewhere in this Agreement;
- 7) Agreement Copy. Maintain and make available at all reasonable times to the Operating Board and to the Governing Board a current copy of this Agreement, including any amendments and the most current version of all Exhibits together with copies of the most current versions of any subsequently developed operating procedures, policies or standards;
- 8) Financial Responsibilities. Reconcile the budget on a quarterly basis or as requested by the Governing Board. Prepare draft budget, coordinate purchasing, conduct inventories, assist with any audits and handle such other fiscal matters as may be directed by the Governing Board;
- 9) Reports. Provide such performance reports, projection reports and other reports regarding the technical, operational, fiscal and other aspects of the BVWACS as required by the Governing Board or Operating Board;

- 10) Record Keeping. Maintain and keep current all records, legal documents, contracts, manuals, warranties, etc. relating to the BVWACS and make same available for review by any of the Parties upon request;
- 11) Contract Administration. Administer all contracts for the construction, acquisition, implementation, operation and maintenance of the BVWACS;
- 12) Project Management. Oversee the management of all projects relating to the construction, acquisition and implementation of Infrastructure and Improvements to the BVWACS;
- 13) Standard Operating Procedures. Develop, distribute and keep current standard operating procedures for the BVWACS as directed by the Operating Board;
- 14) BVWACS Availability. Ensure operational and technical availability of the BVWACS features to the Parties and Associates in accordance with the goals and objectives set forth herein and that support interaction and communications with other public safety radio systems;
- 15) Grant Administration. Oversee the application, administration and financial management of grant funding programs available for the construction, acquisition, implementation, operation and maintenance of the BVWACS. This includes performing as a recipient or sub-recipient for the BVWACS Parties in relation to such grant programs.

D. Staffing. There may be such other Employees as may, from time to time, be budgeted and approved by the Governing Board. The BVWACS Parties through action of the Governing Board may elect to contract out some or all services relating to the construction, acquisition, implementation, operation and maintenance of the BVWACS. The initial number and types of Employees to be provided or funded by the BVWACS Parties are shown in Exhibit G. Notwithstanding anything herein to the contrary, personnel provided by one or more of the Parties to support the BVWACS are, and shall exclusively remain, employees of their respective entity, subject to all of the employment rules and personnel policies of that entity. The personnel costs necessary to support the BVWACS are included in each year's draft budget submitted to the Parties, subject to the provisions in Section 9. Budget and Section 18. Effect of Breach and Default.

- E. Operating Procedures. The BVWACS Managing Entity shall ensure that standard operating procedures are prepared to govern the day-to-day management and operation of the BVWACS and BVWACS staff (“Standard Operating Procedures”) as may be directed by the Governing Board, and shall submit such Standard Operating Procedures to the Operating Board for review and approval. Standard Operating Procedures shall be annually reviewed by the Operating Board and updated as needed. The BVWACS Managing Entity also monitors the implementation of and compliance with the Standard Operating Procedures. If there is any conflict between the Standard Operating Procedures and the employment rules and personnel policies of the entities, then the employment rules and personnel policies of the entities control as they impact that entities’ staff supporting the BVWACS. The Operating Board shall also oversee the development and implementation of corrective measures policies.
- F. Roles and Responsibilities. The BVWACS Parties shall use the BVWACS in a manner consistent with the Standard Operating Procedures, directives of the Governing Board and in compliance with applicable FCC rules and regulations. The BVWACS Parties shall follow the established Standard Operating Procedures and Governing Board directives regarding the programming and addition of Subscriber Equipment to the BVWACS. The BVWACS Parties are encouraged to utilize and improve the interoperation capabilities of the BVWACS. BVWACS Parties shall utilize the BVWACS Managing Entity as their primary point of contact for requests for BVWACS Improvements when dealing with problems, or to answer questions. BVWACS Parties shall work in good faith with the BVWACS Managing Entity to help resolve problems. Using Standard Operating Procedures or other directives from the Governing Board, BVWACS Parties shall have access to system reports including, but not limited to, system usage, utilization and performance. A BVWACS Party is financially responsible for any FCC penalties, fines or other financial encumbrance caused by the actions of that BVWACS Party and any BVWACS Associate sponsored by it.
- G. Capacity Management. The BVWACS Managing Entity may develop a policy for capacity management and submit the policy to the Operating Board for review and approval. This policy shall be reviewed annually by the Operating Board, and updated as needed to ensure

appropriateness and applicability with current BVWACS needs and industry standards and practices.

H. Withdrawal of Managing Entity. In the event the current entity ceases to be the BVWACS Managing Entity and the BVWACS Managing Entity is not a BVWACS Party subject to the provisions of Section 17.B herein, the Governing Board Members representing three-fourths of the BVWACS Parties shall appoint a replacement BVWACS Managing Entity. Within ten (10) days after receipt of notice of the identity of the replacement BVWACS Managing Entity, the current BVWACS Managing Entity shall:

- 1) Possession. Transfer control and possession of all BVWACS Infrastructure, BVWACS Improvements including BVWACS real property owned as tenants in common pursuant to this Agreement to the replacement BVWACS Managing Entity;
- 2) Conveyance of Real Property. Transfer any and all ownership rights it may have to real property acquired pursuant to the terms of this Agreement to the BVWACS Parties;
- 3) Evidence of Ownership. Provide evidence and documentation adequate to prove ownership of the BVWACS Infrastructure, BVWACS Improvements or real property, including, wherever applicable, transferring all rights, title and interests, including proprietary and intellectual property rights, to enable the replacement BVWACS Managing Entity to manage, upgrade, update, maintain, and operate or to sell, convey or otherwise dispose of the BVWACS Infrastructure, BVWACS Improvements or real property if or when the BVWACS Parties determine that this is appropriate; and
- 4) Operations and Legal Documents. Transfer the originals of all deeds, operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to BVWACS Infrastructure, BVWACS Improvements or BVWACS real property to the replacement BVWACS Managing Entity.

9. Budget.

- A. Budget Adoption. The Governing Board shall annually approve a draft BVWACS Budget upon the approval of three-fourths of its members in accordance with the timeframes set forth herein and recommend approval of the Budget to the governing bodies of the BVWACS Parties, including approval to appropriate their proportionate share of the BVWACS Budget. All Operating Costs must be included in each annual BVWACS Budget as well as any Capital Costs. The Budget shall include any and all costs relating to employees in implementing and maintaining the BVWACS. If any BVWACS Party does not agree with the draft BVWACS Budget as presented, it must provide the Governing Board with a detailed explanation of its issues with the draft Budget within 30 days after receipt of it. Each member of the Governing Board shall consult with its governing body or appropriate budget review personnel before voting to approve any Budget.
- B. Annual Operating Costs Budget. The annual Operating Costs shall be allocated among the BVWACS Parties. Participation percentages for contribution to the Operating Costs will be calculated on an annual basis according to the number of registered radio counts each BVWACS Party has on the BVWACS as a percentage of all units on the BVWACS. By January 31st of each calendar year, the BVWACS Manager shall provide a full detailed list of all radios registered in the BVWACS and its associated BVWACS Party. Allocation percentages shall be calculated based solely on each Party's total BVWACS registered radio counts, as maintained by the BVWACS Manager. The BVWACS Manager shall provide preliminary counts of all radios registered in the BVWACS and its associated BVWACS Party to each Party by December 31st of each calendar year. Parties can use the preliminary BVWACS system counts as an opportunity to reconcile and true-up BVWACS registered radio counts prior to the January 31st unit final count. Each year the BVWACS Managing Entity, following and abiding by its budgeting and accounting practices, shall prepare an annual Operating Costs budget ("Operating Budget") on a fiscal year basis and submit this budget to the Operating Board. The Operating Budget must provide for all Operating Costs. The Operating Board shall review and adjust, as needed, the Operating Budget and then submit its recommendation to the Governing Board. The Governing Board shall, no later than May 1st of each year, approve a draft budget and recommend approval of the

Operating Budget by each BVWACS Party and appropriation of their proportionate share of the Operating Budget in their next Fiscal Year's budget. If budgeted amounts exceed actual expenditures, the Governing Board by majority vote may move the unexpended balances into the BVWACS Capital Fund, or credit the unexpended balances against the budgeted expenditure amounts in the Operating Budget for the next Fiscal Year at each Parties then-current participation level, unless refunded to the Party at such Party's request. From time to time, participation percentages shall be re-evaluated upon request of a Party using the same procedure set forth herein of recommendation by the Operating Board and determination by the Governing Board as Infrastructure or Improvements are made to BVWACS, as use of the BVWACS changes, or when new information affecting BVWACS becomes available. A BVWACS Party may use its share of BVWACS capacity for its own purposes or may allocate a portion of that share through a BVWACS Associate Interlocal Cooperation Agreement.

- C. Annual Capital Costs Budget. A Capital Costs budget shall be prepared annually using the same process for adoption as the Annual Operating Costs Budget except that while the Capital Costs budget is prepared annually, the planning period for Capital Costs is five (5) years. Unless otherwise agreed by the BVWACS Parties, Capital Costs shall be shared according to the participation percentages described in Section 9.B.; provided, however, that the Capital Costs that are incurred to benefit only one or more individual BVWACS Parties shall be paid by the BVWACS Parties benefiting from such BVWACS Improvements and Infrastructure.
- D. Budgeted Expenditures. After the Budget has been approved and funded by the BVWACS Parties, the BVWACS Managing Entity is authorized to incur costs in accordance with the Budget. Any costs to be incurred in excess of the approved and funded Operating Costs or Capital Costs Budget amounts require additional budget approval and funding, or re-allocation of existing funds, by the BVWACS Governing Board. The BVWACS Governing Board may approve transfer of funds from the BVWACS Capital Fund to the Capital Budget to meet an urgent need that was not addressed during the Budget process. Such approval requires the vote of three-fourths of the members of the Governing Board.

- E. Other BVWACS Fees. Fees payable by BVWACS Associates are determined by the terms of their BVWACS Associate Interlocal Cooperation Agreement. Funds received by new Parties are determined in accordance with this Agreement.
- F. Funding Transfers to the Managing Entity. Once each BVWACS Party appropriates its portion of the BVWACS Budget in its annual budgetary process, the Managing Entity shall provide timely and accurate invoices to facilitate the transfer of funds by each BVWACS Party to the Managing Entity, and the Parties shall each comply with the following procedures to facilitate payment by the Managing Entity to the BVWACS vendors and contractors:
- 1) Quarterly Assessment. At least 60 days prior to the beginning of each Quarter of the Fiscal Year, the BVWACS Managing Entity shall give the Operating Board, for its review, an itemized schedule of the Capital Costs and Operating Costs that are projected to be incurred, and the amount of money projected to be expended, during the next quarter. At least 30 days prior to the beginning of each Quarter, the Managing Entity shall send each BVWACS Party an invoice for its Quarterly Assessment.
 - 2) Approval. Each BVWACS Party must approve or dispute its Quarterly Assessment and provide written notice of any dispute to the BVWACS Managing Entity within 15 business days after receipt of the invoice for the Quarterly Assessment. If a dispute concerning the Quarterly Assessment is not resolved by the time the BVWACS Party is required to remit payment, the matter shall be resolved in accordance with the procedures set forth in Section 21, Dispute Resolution.
 - 3) Payment Instructions. The Managing Entity must provide payment instructions to each BVWACS Party for the transfer of BVWACS Party funds to the Managing Entity.
 - 4) BVWACS Party Funds. Each BVWACS Party must pay its Quarterly Assessment to the Managing Entity no later than 60 calendar days after receipt of an invoice in accordance with the resolution of any dispute about the Quarterly Assessment.

- 5) BVWACS Fund. The Managing Entity shall establish a separate fund for BVWACS in its accounting records (“BVWACS Fund”) that is dedicated to the administration of the BVWACS. All funds received from BVWACS Parties and other BVWACS revenues, including the capital fund and any interest earned, shall be credited to the BVWACS Fund. All BVWACS obligations shall be debited from the BVWACS Fund. The records for the BVWACS Fund shall be maintained in compliance with generally accepted accounting principles.
- 6) Accounting. The BVWACS Fund is managed by the Managing Entity in the same manner as the Managing Entity manages funds held in its depository accounts. Funds associated with the BVWACS, including accrued interest, shall be accounted for separately by the Managing Entity for the benefit of the BVWACS Parties, unless otherwise required by law or this Agreement.
- 7) Statements. The BVWACS Managing Entity is responsible for providing quarterly statements showing the credits to and debits from the BVWACS Fund, including any income earned, to each Party on or before the 20th day of the first month following the end of such quarter.
- 8) Payments. Subject to the availability of sufficient funds in the BVWACS Fund, the Managing Entity shall pay BVWACS contractors and vendors in compliance with the Texas Prompt Payment Act.
- 9) Reports. The BVWACS Managing Entity is responsible for providing each BVWACS Party with a quarterly written financial report on the Budget, including current BVWACS Cost projections for the succeeding quarter.

G. Funding. The BVWACS Parties specifically acknowledge that funding for each BVWACS Party’s share of the BVWACS Operating Budget and Capital Costs Budget goes through that BVWACS Party’s normal budgeting process; and upon approval by its governing body, is payable from current revenue available to each funding BVWACS Party. Purchase, operation and maintenance costs of Subscriber Equipment are the responsibility of each BVWACS Party.

- H. Failure to Appropriate. The failure of a BVWACS Party to appropriate its proportionate share of the BVWACS Budget by the first day of the Fiscal Year for which the Operating Budget and Capital Costs Budget is applicable shall be a material default of such BVWACS Party under this Agreement, and the BVWACS Parties shall follow the procedures for termination of a BVWACS Party set out in this Agreement addressing the effect of breach and default.
- I. Partial Funding. If any BVWACS Party appropriates less than its proportionate share of Operating Budget and Capital Costs budget for any year, or if any BVWACS Party fails to pay its Quarterly Assessment, (herein called the “Underfunding Party”) the other BVWACS Parties, acting through the Governing Board may take one or more of the following actions:
- 1) Suspension of Representation. Remove the Governing Board representation and voting rights for the Underfunding Party.
 - 2) Service Reduction. Reduce the BVWACS services being provided to the Underfunding Party.
 - 3) Notice of Underfunding. Send the Underfunding Party a notice stating the amount of underpayment, which is the difference in the Underfunding Party’s Quarterly Assessment and the amount of funding provided by the Underfunding Party (“Deficiency”). Said Deficiency is an obligation of such Underfunding Party subject to the Prompt Payment Act. Each Underfunding Party agrees that its future right to participate in the BVWACS is dependent upon fully paying its Quarterly Assessments. The Underfunding Party must appropriate and pay the Deficiency and its entire Quarterly Assessment for the remainder of that Fiscal Year.
 - 4) Budget Revision. Amend the BVWACS Operating Budget and Capital Costs budget by reducing costs and/or increasing the amounts paid by the other BVWACS Parties.
 - 5) Termination of Participation. Terminate the Underfunding Party’s participation in this Agreement by following the procedure for termination of a BVWACS Party, if the level of funding is deemed by the other BVWACS Parties to be substantially a failure to fund.

- 6) Asset Management. BVWACS Infrastructure shall be tracked in accordance with standard operating procedures approved by the Operating Board. These procedures must be consistent with generally accepted accounting principles for property held as tenants in common for one or more of the BVWACS Parties. If any BVWACS Infrastructure needs to be retired, the BVWACS Managing Entity will provide this information to the Operating Board for approval prior to removal. At a minimum, the BVWACS Managing Entity shall provide the asset serial number, asset ID tag (if any), location from which it is to be removed and description of the asset. The asset to be retired shall be disposed as directed by the Governing Board upon receiving the recommendation of the Operating Board. Any funds received from the disposal of the asset shall be credited as revenue in the BVWACS Fund and shown in the next BVWACS Capital budget. These funds are managed in accordance with the provisions of this Agreement.

With respect to Infrastructure, Improvements and real property owned by only one or some of the Parties and that is not listed as BVWACS Infrastructure, BVWACS Improvements, or BVWACS real property, right of access, license and use is herein granted by such Parties to all Parties and to the BVWACS Managing Entity as necessary for BVWACS purposes as determined by the Governing Board. With respect to future Infrastructure, Improvements and real property owned by only one or some of the Parties, such Parties agree that all rights of access, use or licenses required to make same a part of the BVWACS shall be granted. No Infrastructure, Improvement or real property owned by only one or some of the Parties may be conveyed to a third party, destroyed or otherwise removed from the BVWACS without giving at least 12 months advance notice. Failure to do so shall be considered a failure to perform substantially such Party or Parties' material obligations under this Agreement, and the provisions of Section 18. (Effect of Breach and Default) shall apply. The Governing Board may determine to file Certificates of Memorandums in the deed records of the county where an asset owned by one or more Parties is located notifying the public regarding BVWACS rights associated with such asset.

10. **BVWACS Associates.**

- A. Procedure for Becoming BVWACS Associate. To use the BVWACS, an entity must be either a BVWACS Party or BVWACS Associate unless special access is granted by three-fourths vote of the members of the Governing Board. Additionally, the Texas Department of Public Safety is hereby granted special access. To become a BVWACS Associate, a BVWACS Party must sponsor the entity. A BVWACS Party may only sponsor BVWACS Associates to the extent that it has a portion of its share of BVWACS capacity that is unused and therefore available to assign. A BVWACS Party may not sponsor any entity unless the entity is eligible to use the BVWACS licensed radio frequencies under FCC rules, regulations and practices. A BVWACS Party may sponsor one or more entities as BVWACS Associates. BVWACS Parties shall use the following procedure for sponsoring an entity:
- 1) Share of Capacity. Determine the extent of the BVWACS Party's share of the BVWACS capacity that is available for assignment to the entity based upon most recent participation level determined using the true-up provisions set forth in Section 9.B
 - 2) Anticipated Usage. Determine the anticipated usage of the entity to be sponsored based on talk time if available, the number of radios used by the entity and other relevant information as determined by the Governing Board.
 - 3) Compatibility. Determine the compatibility of the Subscriber Equipment used by the entity with the system and the impact of their inclusion in the system based on voice traffic, talk-group needs, and functionality.
 - 4) Associate Agreement. Negotiate a BVWACS Associate Interlocal Cooperation Agreement with the prospective BVWACS Associate that includes the Standard Terms and Conditions as well as any other terms and conditions related to payment, term of agreement, nature of the services to be provided, curtailment of services or termination of the authority to continue use of the BVWACS for breach, withdrawal by the entity, and other matters that they desire as long as they are not contrary to or more

expansive than the Standard Terms and Conditions or the terms and conditions of this Agreement.

- 5) Report to Board. Present a report to the Operating Board that includes the anticipated usage of the entity, the number of radios or equipment used by the entity, the compatibility of the radios or equipment used by the entity with the system, the number of talkgroups needed and any other information relevant to whether the addition of the entity is likely to cause the BVWACS Party to exceed its share of the BVWACS capacity.
- 6) Board Approval of Draft Agreement. Present a draft copy of the proposed BVWACS Associate Interlocal Cooperation Agreement to the Operating Board so that it can verify that the agreement contains the Standard Terms and Conditions and is consistent with the terms and conditions of this Agreement.
- 7) Parties Approval of Associate Agreement. Obtain approval of the BVWACS Associate Interlocal Cooperation Agreement by the governing bodies of the sponsoring Party and the prospective BVWACS Associate to the agreement.

B. Operating Board Duties. The Operating Board shall review the report of the BVWACS Party asking to sponsor an entity as a BVWACS Associate and evaluate the following:

- 1) Impact on current and future BVWACS voice traffic capacity.
- 2) Impact on current and future BVWACS talkgroup capacity.
- 3) Impact on overall current and future BVWACS functionality.

The Operating Board shall review the proposed BVWACS Associate Interlocal Cooperation Agreement to be entered into by the BVWACS Party asking to sponsor an entity as a BVWACS Associate and determine whether it includes the Standard Terms and Conditions.

If the impact on these three aspects of the BVWACS capacity is not likely to result in that BVWACS Party's exceeding its share of the BVWACS capacity or to detrimentally affect the overall current and future functionality of the BVWACS, and the proposed BVWACS Associate Interlocal Cooperation Agreement includes the Standard Terms and Conditions,

the Operating Board may recommend approval of the request to sponsor the entity to the Governing Board.

- C. Association Interlocal Cooperation Agreements Approval. The Governing Board must approve all BVWACS Association Interlocal Cooperation Agreements before such prospective BVWACS Associate may access or use the BVWACS.
- D. Capacity for Sponsoring BVWACS Associates. Initially, a BVWACS Party's share of the capacity of the BVWACS is based on the participation percentages calculated as described in Section 9.B. Two years after system acceptance of the BVWACS or when adequate information is available, whichever occurs first, BVWACS capacity is based on the capacity management process recommended by the Operating Board and approved by the Governing Board. The share of capacity used may be adjusted as Infrastructure or Improvements are made to BVWACS. A BVWACS Party may use its share of BVWACS capacity for its own purposes or may allocate a portion of that share through a BVWACS Associate Interlocal Cooperation Agreement. In no event shall sponsoring a BVWACS Associate cause alteration to the Participation Table set forth in Exhibit A, if and as amended as described in Section 9.B.
- E. Financial Effect of Sponsoring BVWACS Associate. When a BVWACS Party authorizes another entity to use a portion of its share of BVWACS capacity, that BVWACS Party remains responsible for full payment of its entire cost share of the BVWACS.
- F. Sponsor's Control of BVWACS Associate's Access to BVWACS. If a BVWACS Party requests that the BVWACS System Manager disable all or part of the services available to a BVWACS Associate sponsored by that BVWACS Party, the BVWACS System Manager shall comply with these requests and disable the portion of the services available to a BVWACS Associate requested by the BVWACS Party as soon as practicable.
- G. Responsibility for Subscriber Equipment. BVWACS Associates are responsible for purchasing and providing their own Subscriber Equipment to be used on the BVWACS. The purchase of Subscriber Equipment shall be coordinated with the BVWACS Managing Entity.
- H. Additional Units. BVWACS Associates are not allowed to add units to the BVWACS without approval from their sponsoring BVWACS Party.

- I. Changes to Operations. Each BVWACS Party that has sponsored BVWACS Associates is responsible for informing the BVWACS Associates of changes in BVWACS Standard Operating Procedures.

11. New BVWACS Parties.

- A. New Parties to BVWACS. From time to time, entities may join the BVWACS as full Parties. Entities desiring to join the BVWACS as full Parties shall petition the current Parties for membership in accordance with the terms herein.
- B. Contents of Petition. An entity desiring to join BVWACS shall submit a petition. At a minimum, a petition to join BVWACS as a Party shall include the following:
- 1) Area to be Served. A description of the area to be covered and a description of how the Service Area will be affected;
 - 2) Proposed Subscriber Equipment. The type of Subscriber Equipment proposed to use the BVWACS, including the approximate number of units to be added, talk groups and talk time;
 - 3) Infrastructure, Improvements, Funds and Real Property. A description of any Infrastructure, Improvements, funds or real property that will be made available to the BVWACS to offset costs associated with system expansion, and a description of how this will affect the BVWACS and the current Service Area; and
 - 4) Share of Capacity. Provide an estimate of the requested capacity desired, including the anticipated type and amount of usage based on talk time, talk group needs and other relevant factors as determined by the Governing Board.
- C. Procedure. The following procedure shall be followed when petitioning to become a Party.
- 1) Submit Petition. An entity desiring to become a Party to the BVWACS shall petition the Governing Board through the BVWACS Managing Entity who will then review such petition for completeness as well as content. The BVWACS Managing Entity shall forward the petition to the Operating Board for recommendation by the Operating Board within 30 days from submission of such petition.

- 2) Operating Board. The Operating Board shall review the petition of the submitting entity and make its recommendation to the Governing Board within 60 days from the date of submission of such petition. The Operating Board shall evaluate the petition based upon the following:
- a. Whether the addition of petitioner as a Party will have an adverse impact on the current and future needs of the existing Parties, on the Service Area and on BVWACS as a whole; and
 - b. Whether the addition of petitioner as a Party is consistent with the goals and objectives of BVWACS as set forth in this Agreement.
- 3) Governing Board. The petitioner may negotiate an amendment to this Agreement relating to its inclusion as a Party. The Governing Board will consider the request and the recommendation of the Operating Board within ninety (90) days from the date of submission of the petition and approve, deny or request additional information needed to consider the request. Adding a new Party to this Agreement shall be considered an amendment subject to the terms and conditions for approval of amendments set forth in Section 6 above. The Governing Board will also determine if the petitioner will be required to make a capital contribution towards construction or improvement to the system. Such contribution may be in the form of a reimbursement for prospective construction or improvements to the system.

D. Participation Level. A BVWACS Party's share of the capacity of the BVWACS is based on the participation percentages calculated as described in Section 9.B.. Addition of new Parties will require reevaluation and possible alteration of the participation percentages. The Operating Board will provide preliminary recommended participation percentages based on the new Party joining BVWACS at the time it reviews the petition. The Governing Board shall then review such recommendation and determine whether such participation percentages should be modified. Such determination must be approved by three-fourth of the members of the Governing Board.

E. Obligations of New BVWACS Parties. When a new BVWACS Party is authorized by the Governing Board, the participation percentages determined above will establish the Annual

Assessment for the new Party. Once the new Party is approved for membership, that Party assumes responsibility for its Annual Assessment and all other obligations as a Party to this Agreement. New BVWACS Parties are responsible for purchasing and providing their own Subscriber Equipment to be used on the BVWACS. The purchase of Subscriber Equipment shall be coordinated with the BVWACS Managing Entity.

12. Accounting Records.

The BVWACS Managing Entity maintains accounting records in accordance with generally accepted accounting standards applicable to governmental entities, including compliance with federal guidelines for spending federal funds or bond proceeds.

The BVWACS Managing Entity shall ensure that records pertaining to the BVWACS shall be kept in accordance with the records retention policy of the Managing Entity and in accordance with the Open Records Act. At any reasonable time, upon three (3) business days prior written notice, any BVWACS Party may inspect, copy, examine, and/or audit the BVWACS records, at that BVWACS Party's expense, at the office of the BVWACS Managing Entity, or any other mutually acceptable location.

13. Contracting Authority.

Except for real estate transactions, the BVWACS Parties hereby grant such BVWACS Managing Entity the authority to contract on behalf of the BVWACS Parties for acquisitions and services that have been approved in the annual BVWACS Budget or as otherwise approved by the Governing Board, so long as the contracted amount is within the budgeted amount and the payments are made from available funds, using the BVWACS Managing Entity's standard purchasing processes, unless expenditure of federal funds or bond proceeds requires use of additional procedures or guidelines. Procurements shall be made in accordance with the laws applicable to such entity. These contracts shall be administered by the BVWACS Managing Entity.

14. Federal Funds and Bond Funds.

If a BVWACS Party utilizes federal funds, grant funds, or bond funds to meet a portion of their financial commitment under this Agreement, the BVWACS Parties agree to conduct all procurements, maintain all records and otherwise conduct their activities in furtherance of this Agreement so as to comply with all applicable statutes, regulations, policies and grant contract provisions necessary to qualify the BVWACS expenditures contemplated for federal or grant program reimbursement and to avoid arbitrage penalties. Further, the BVWACS Parties agree to cooperate with each other in the application for and administration of federal funds, grant funds, or bond funds to maximize funding participation in the operation and maintenance of the BVWACS. By October 1 of each year each BVWACS Party using federal funds, grant funds, or bond funds to meet a portion of its annual financial commitment shall notify the BVWACS Managing Entity.

15. BVWACS Performance.

The Operating Board shall take such action as may be necessary for assuring that Subscriber Equipment configuration changes or additions do not adversely affect the performance of the BVWACS. The Operating Board may utilize the system assessment services of the BVWACS Support Vendor or other qualified contractor to determine the impact of adding Subscriber Equipment to the BVWACS. The Operating Board may develop policies involving the BVWACS Support Vendor that provide a review process prior to implementing any Subscriber Equipment system configuration changes requested or made by BVWACS Parties. BVWACS Parties shall not take any action that is known or ought to be known to affect the operation of the BVWACS adversely and shall reverse any action taken that affects the operation of the BVWACS adversely. BVWACS Parties shall not change the configuration of their program or template in a way that is known or ought to be known to affect the operation of the BVWACS adversely and shall reverse any change in the configuration of their program or template that affects the operation of the BVWACS adversely.

16. Dissolution of BVWACS.

- A. Dissolution of BVWACS. This Agreement may be voluntarily dissolved before the end of the term if three-fourths of the governing bodies of the BVWACS Parties agree in writing to provide for a dissolution date. The dissolution date shall not be less than twelve (12)

months after these BVWACS Parties have executed the agreement to dissolve the BVWACS unless all BVWACS Parties agree to an earlier dissolution date.

B. Distribution of Assets. If the BVWACS is dissolved either by agreement or at the end of the final term, the assets of the BVWACS shall be equitably distributed among the BVWACS Parties. The BVWACS Parties shall agree on which BVWACS Party receives which assets in the distribution. An agreement for distribution of assets of the BVWACS shall be effective after approval by three-fourths of the governing bodies of the BVWACS Parties. The manner of distribution shall consider and be consistent with the following factors:

- 1) Participation Level. The BVWACS Party's share of the Capital Costs for Infrastructure and Improvements to the BVWACS and the BVWACS Party's participation level as stated in Exhibit A, if and as amended as described in Section 9.B.;
- 2) Asset Value. The value of the assets on the dissolution date;
- 3) Manner of Acquisition. The basis on which the asset was acquired, whether the asset
 - a. Was already owned by a Party;
 - b. Was acquired jointly by all BVWACS Parties or
 - c. Was acquired by only one or some of the BVWACS Parties;
- 4) Early Termination. Whether and, if so, when the BVWACS Party terminated its participation in BVWACS before the dissolution of the BVWACS; and
- 5) Utility of Asset. The usefulness of the asset to the BVWACS Party receiving it.

C. The BVWACS Party to which an asset is distributed shall also be provided evidence and documentation adequate to prove ownership of that asset, including, wherever applicable, transfer of all rights, title and interests, including proprietary and intellectual property rights, to enable that BVWACS Party to upgrade, update, operate, and maintain it or to sell, convey or otherwise dispose of it and the originals of all operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to that asset.

17. Withdrawal of a BVWACS Party.

- A. Notice of Withdrawal. A BVWACS Party may withdraw from this Agreement and terminate its participation in BVWACS at any time by giving at least twelve (12) months prior written notice to the Remaining Parties. The Termination Date shall not be earlier than twelve months after notice is given unless three-fourths of the members of the Remaining Parties agree otherwise. The Withdrawing Party must continue to fund its Annual Assessment through the Termination Date, and if it does so, the Withdrawing Party may continue to participate in the BVWACS until its Termination Date. The portion of the Budget allocated to a Withdrawing Party after receipt of the notice of withdrawal may be reduced by the agreement of three-fourths of the members of the Remaining Parties.
- B. Withdrawal of Managing Entity. In the event the BVWACS Managing Entity is a party to this Agreement and such Party withdraws from the BVWACS, the Governing Board Members representing three-fourths of the members of the Remaining Parties shall appoint a replacement BVWACS Managing Entity. Within ten (10) days after receipt of notice of the identity of the replacement BVWACS Managing Entity, the Withdrawing BVWACS Party that is the BVWACS Managing Entity shall:
- 1) Possession. Transfer control and possession of all BVWACS Infrastructure, BVWACS Improvements including BVWACS real property owned as tenants in common pursuant to this Agreement to the replacement BVWACS Managing Entity.
 - 2) Conveyance of Real Property. Transfer any and all ownership rights it may have to real property acquired pursuant to the terms of this Agreement to the Remaining Parties.
 - 3) Evidence of Ownership. Provide evidence and documentation adequate to prove ownership of the BVWACS Infrastructure, BVWACS Improvements or real property, including, wherever applicable, transferring all rights, title and interests, including proprietary and intellectual property rights, to enable the replacement BVWACS Managing Entity to manage, upgrade, update, maintain, and operate or to sell, convey or otherwise dispose of the BVWACS Infrastructure, BVWACS Improvements or real property if or when the Remaining Parties determine that this is appropriate, and

- 4) Operations and Legal Documents. Transfer the originals of all deeds, operations manuals, warranties, bills of sale, licenses, leases, titles and other legal documents related to BVWACS Infrastructure, BVWACS Improvements or BVWACS real property to the replacement BVWACS Managing Entity.
- C. Disposition of BVWACS Value of Withdrawing Party. All right, title, and interest in and to the Withdrawing Party's BVWACS Value may be dealt with in one of two ways: 1) sale and assignment by Withdrawing Party; or 2) determination of valuation and disposition of Withdrawing Party's BVWACS Value by Remaining Parties. In either event, all rights of access, licenses and use to such Withdrawing Party's assets comprising a part of the BVWACS remain in place during the withdrawal process.
- 1) Sale and Assignment by Withdrawing Party. The Withdrawing Party shall offer its BVWACS Value to the Remaining Parties. If none of the Remaining Parties accept the offer within sixty (60) days after receipt of the offer, the Withdrawing Party may sell its BVWACS Value to one or more entities approved by all of the Remaining Parties if the entity or entities enter into an assignment of this Agreement from the Withdrawing Party and accept the duties and obligations of the Withdrawing Party under this Agreement as its or their own duties and obligations. The assignee, if other than a Remaining Party, shall also obtain the rights of the Withdrawing Party under the BVWACS Agreement, including one representative on the Governing Board and one representative on the Operating Board. After the assignment, the BVWACS Agreement shall be construed as if the assignee were listed in the definition of BVWACS Parties. If the Withdrawing Party has an offer to purchase its BVWACS Value from an entity but all of the Remaining Parties do not approve that entity as a reasonable replacement for the Withdrawing Party, the Remaining Parties shall compensate the Withdrawing Party for its BVWACS Value in proportion to their Annual Assessment of BVWACS and obtain a proportionate share of the Withdrawing Party's BVWACS Value.

- 2) Determination of Value by Remaining Parties. If the Withdrawing Party does not give the Remaining Parties notice that, it is exercising its rights under 17.C.1. at least six (6) months before the Termination Date, no later than the Termination Date the Remaining Parties must fairly determine what the Withdrawing Party's BVWACS Value is at the Termination Date. If the Withdrawing Party and the Remaining Parties are unable to agree on the BVWACS Value, an accounting shall be performed by a panel of three persons. The Remaining Parties shall select one person to represent them on the panel. The Withdrawing Party shall select another person to represent it on the panel. The two persons selected shall select a third person to complete the panel and the accounting. If an accounting is performed, it shall be the basis for determining BVWACS Value for the Withdrawing Party. One-half of the cost of this panel shall be borne by the Withdrawing Party and one-half of the cost of this panel shall be borne by the Remaining Parties.
- 3) Disposition by Remaining Parties. When the BVWACS Value is determined, the Remaining Parties shall determine how to disburse the ownership of the BVWACS Value of the Withdrawing Party. The Remaining Parties shall consider at least the following options:
- a. New Party. Find another entity to compensate the Withdrawing Party for its BVWACS Value, assume ownership of the Withdrawing Party's BVWACS Value and assume its obligations and rights under the BVWACS Agreement;
 - b. Share Value. Divide the Withdrawing Party's BVWACS Value proportionally among the Remaining Parties, compensate the Withdrawing Party for its BVWACS Value, and provide for a proportional increase in Annual Assessment;
 - c. Single or some of BVWACS Parties. Allow one or only some of the Remaining Parties to compensate the Withdrawing Party for its BVWACS Value, assume ownership of the Withdrawing Party's

BVWACS Value with a corresponding increase in Annual Assessment;
or

- d. Ownership without Use. Require the Withdrawing Party to retain ownership of its BVWACS Value but forfeit its use of the BVWACS and representation on the Governing Board and Operating Board unless and until the Withdrawing Party pays what its accrued share of the systems operations costs from the Termination Date to the end of the then current Budget Year would have been if it had not withdrawn.
- D. Exclusion of Withdrawing Party's Votes. The Withdrawing Party and its vote on the Governing Board shall be excluded in determining the votes needed for the Remaining Parties to make a decision about the disposition of the Withdrawing Party's BVWACS Value after the Termination Date.
- E. Disposition of BVWACS Value by Remaining Parties. If the Remaining Parties select the ownership alternative in 17.C.3.b, or 17.C.3.c the Remaining Parties shall provide for payment of the Withdrawing Party's BVWACS Value in the fiscal year following the fiscal year of the Termination Date.
- F. Effect of Disposition on Membership in Governing Board. If the Remaining Parties select the option in 17.C.2 or 17.C.3.3 and Withdrawing Party's BVWACS Value is divided among the Remaining Parties or assumed by one or only some of the Remaining Parties, the representation of these BVWACS Parties on the Governing Board shall not be increased.
- G. Depreciation of BVWACS Value. If the Withdrawing Party retains its BVWACS Value, the portion of the value that relates to depreciable assets shall be reduced annually on a declining balance method over the useable life of the asset as long as the depreciable assets that form part of the BVWACS Value are owned by one or more of the Remaining Parties. The portion of the BVWACS Value that relates to non-depreciable assets shall remain unchanged.

18. Effect of Breach and Default.

- A. Events of Breach. Breach results from any of the following:

- 1) Payment. A BVWACS Party's failure to appropriate or pay its Annual Assessment timely;
- 2) FCC Rules. Violation of FCC rules and regulations by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;
- 3) Policies and Procedures. Individual or repeated violations of approved written policies and procedures by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;
- 4) Inappropriate Use. Inappropriate use of the BVWACS by a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;
- 5) Penalty Payment. Failure to pay FCC penalties or fines resulting from the actions of a BVWACS Party or any BVWACS Associate with which it has entered into a BVWACS Associate Interlocal Cooperation Agreement;
- 6) Improper Disposition of Assets or Interest. Disposing of assets owned by only one or some of the Parties in contravention of the provisions of this Agreement, or failure to follow the required process set forth in this Agreement of divesting a Party's interest in a BVWACS Improvement, BVWACS Infrastructure or BVWACS real property;
- 7) Adverse Impact. Any other action or omission that has a material adverse impact on the operation and maintenance of BVWACS; or
- 8) Substantial Performance. Failure to perform substantially its material obligations other than failure to appropriate or timely pay its Annual Assessment.

B. Breach for Non-Payment. The decision to exercise rights granted by this subsection 18.B. shall be made by the Governing Board. If any BVWACS Party commits the breach described in 18.A.1, the Governing Board may determine to deliver a written notice of breach to the BVWACS Party that specifies the nature of the breach and indicates that unless the breach is cured within thirty (30) days, additional steps shall be taken. A breach described in 18.A.1 can only be cured by paying that Annual Assessment. If the breaching

BVWACS Party does not cure that breach within thirty (30) days of receiving the written notice of breach, the breaching BVWACS Party is in default and the Governing Board shall deliver a written notice of default to the BVWACS Party that specifies the following:

- 1) The nature of the default;
- 2) The date of the notice of breach;
- 3) The failure of the breaching BVWACS Party to cure timely; and
- 4) The BVWACS Party's interest in the BVWACS is terminated no later than 60 days from the date of the written notice of breach if the termination is approved by all of the BVWACS Remaining Parties unless the default is cured by the defaulting BVWACS Party paying that Annual Assessment within an additional thirty (30) days from the date of default as referenced in 18.A.1 above for a total of sixty (60) days from the date of default unless the Governing Board approves a longer timeframe.

- C. Suspension for Other Breaches. If any BVWACS Party commits a breach described in 18.A.2 through 18.A.8 or a breach described in 18.A.2 through 18.A.8 involving use of any radio or other equipment accessing the BVWACS under the authority of a BVWACS Party, the Governing Board may suspend the right of that BVWACS Party to use the BVWACS for that radio or equipment or for any other radio or equipment for a period of time adequate to cure the breach and determine whether additional remedies are needed.
- D. Notice of Breach, Default, and Termination For Other Breaches. The decision to exercise rights granted by this subsection 18.D. shall be made by the Governing Board. If any BVWACS Party commits a breach described in 18.A.2 through 18.A.8, the Governing Board may deliver a written notice of breach to the BVWACS Party that specifies the nature of the breach and indicates that unless the breach is cured within thirty (30) days, additional steps shall be taken. If the breaching BVWACS Party begins to cure the breach within the thirty (30) day period, the thirty (30) day cure period is extended as long as the breaching BVWACS Party continues to prosecute a cure diligently to completion and is making a good faith effort to cure the breach. If the breaching BVWACS Party does not cure the breach within thirty (30) days of receiving the written notice of breach or additional period as extended by diligent prosecution of a good faith effort to cure the

breach, the breaching BVWACS Party is in default and the Governing Board shall deliver a written notice of default to the BVWACS Party which specifies the following:

- 1) The nature of the default;
- 2) The date of the notice of breach;
- 3) The failure of the breaching BVWACS Party to cure timely; and
- 4) The BVWACS Party's interest in the BVWACS is terminated on the effective date stated in the notice if the termination is approved by all of the BVWACS Remaining Parties unless the default is cured within thirty (30) days of the notice of default.

E. Disposition of BVWACS Value. The Remaining Parties shall determine as to how the Terminated Party's BVWACS Value shall be disposed. The Remaining Parties have ninety (90) days after the date that termination is effective to determine the value and disposition of the Terminated Party's BVWACS Value. The Remaining Parties may seek an agreement with the Terminated Party about its BVWACS Value. If the Terminated Party and the Remaining Parties are unable to agree on the Terminated Party's BVWACS Value, they shall use the method for determination of value in section 17.C. as if the Terminated Party were a Withdrawing Party. When the BVWACS Value is determined, the Remaining Parties shall determine how the ownership of the BVWACS Values is to be disposed. The Remaining Parties shall consider at least the following ownership alternatives for the BVWACS Value of the Terminated Party:

- 1) New Party. Find another entity to compensate the Terminated Party for its BVWACS Value, assume the ownership of the Terminated Party's BVWACS Value, and assume its obligations and rights under the BVWACS Agreement;
- 2) Share Value. Divide the Terminated Party's BVWACS Value proportionally among the Remaining Parties so that the Remaining Parties can each compensate the Terminated Party for their share of the BVWACS Value and pay a proportional increase in Annual Assessment in the fiscal year following the fiscal year in which the default last occurred;
- 3) One or More BVWACS Parties. Allow one or more Remaining Parties to compensate the Terminated Party for its BVWACS Value and assume

ownership of the Terminated Party's BVWACS Value with a corresponding increase in Annual Assessment; or

- 4) Ownership without Use. Require the Terminated Party to retain the ownership of its BVWACS Value but forfeit its use of the BVWACS and representation on the Governing Board and Operating Board and annually reduce its BVWACS Value by twenty per cent (20%) of the original BVWACS Value so that the Terminated Party has no BVWACS Value remaining after five (5) years. The Terminated Party would transfer the reduction in value among the Remaining Parties each of such five (5) years proportionally based on the Remaining Parties' respective participation level during the year such distribution is made.

- F. Exclusion of Terminated Party's Votes. The Terminated Party and its vote on the Governing Board shall be excluded in determining the votes needed for the BVWACS Remaining Parties to make a decision about the disposition of the Terminated Party's BVWACS Value after the date that termination is effective.
- G. Effect of Termination on Representation on Governing Board. If the Terminated Party's BVWACS Value is divided among the Remaining Parties or assumed by only one or some of the Remaining Parties, the representation of these BVWACS Parties on the Governing Board shall not be increased.

19. Effect of Withdrawal or Termination on Remaining Parties.

Termination or withdrawal of a BVWACS Party has no effect on a Remaining Party's rights to participate in the BVWACS other than the specific rights and duties set out in this Agreement, and the continuing duty of all Remaining Parties to pay their Annual Assessment.

20. FCC Licenses.

Termination or withdrawal of any Party from the BVWACS shall include the surrender to the Remaining Parties any and all of that BVWACS Party's radio frequency licenses that were licensed for the purpose of implementing the BVWACS. The Remaining Parties shall determine whether to request reassignment of the license to another BVWACS Party or surrender these licenses to the Federal Communications Commission (FCC). The Remaining Parties are

responsible for complying with all rules and regulations of the FCC related to reassignment and surrender of these licenses. Notwithstanding the above, licenses held, managed and owned by only one or some of the Parties as the exclusive license of such Party or Parties at the time of termination or withdrawal are not subject to the provisions of this section.

21. Dispute Resolution Process.

- A. Cooperation. All BVWACS Parties are encouraged to work together to resolve all disputes prior to invoking the dispute resolution process set forth herein.
- B. Hearing by Operating Board. Any BVWACS Party that has an issue or dispute relating to the BVWACS may request a hearing before the Operating Board. The Operating Board shall hear such matter after requesting information regarding such dispute or issue from such BVWACS Party and from the BVWACS Managing Entity. The Operating Board shall then hold a hearing and render its decision in writing.
- C. Appeal to Governing Board. A BVWACS Party that is adversely affected by the Operating Board's decision may appeal such decision to the Governing Board, which may elect to hear the appeal or refer the matter to mediation.
- D. Withdrawal of Dispute. A dispute may be withdrawn at any time during the Dispute Resolution process.
- E. Timeframes:
 - 1) Initial Dispute Hearing. Any BVWACS Party may bring an issue or dispute to the Chair of the Operating Board. The Chair must schedule a meeting of the Operating Board within (15) fifteen business days of receipt of the notice and provide a written determination to the appropriate BVWACS Parties and to the BVWACS Managing Entity within (5) five business days after the hearing. Any appeal of the decision or recommendation of the Operating Board is to the Governing Board.
 - 2) Appeal to Governing Board. Any appeal from the decision of the Operating Board must be made by delivery of written notice of appeal to the BVWACS Managing Entity and Governing Board within (15) fifteen business days after receipt of the Operating Board's decision or recommendation. The Governing Board may meet to hear the appeal or

may elect to send the appeal to mediation. The Governing Board, assisted by the BVWACS Managing Entity, either schedules a hearing or sends the appeal to mediation within (25) twenty-five business days of receipt of the notice of the appeal. Any appeal from the Governing Board's recommendation is to a mediator as described below.

- 3) Mediation. If the Governing Board refers a dispute to mediation, the parties to the dispute shall select, within thirty (30) days, a mediator trained in mediation skills to assist with resolution of the dispute. The parties to the dispute agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) days after the Governing Board refers the dispute to mediation, the mediator shall be selected by mutual agreement. If that is not possible, by the Dispute Resolution Center of the Brazos Valley or a mutually agreeable mediation center. The parties agree to participate in mediation sessions in good faith for a period of up to thirty (30) days from the date of the first mediation session. Notice of the date, time, and location of the mediation shall be given to the BVWACS Managing Entity, which may attend. The parties to the dispute shall share the costs of mediation equally. If efforts to mediate the dispute are unsuccessful, the parties to the dispute shall then be free to exercise all available rights and remedies under this Agreement, or at law or in equity.
- 4) Application of Government Code, chapter 2260. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement, is not inconsistent with the process set forth above, and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used in disputes involving Texas A & M University that cannot be resolved in the ordinary course of business. The designated

officers of Texas A & M University, as applicable, shall examine the claim and any counterclaim and negotiate with the claimant in an effort to resolve such claims. The BVWACS Parties specifically agree that

- a. Neither the execution of this Agreement by Texas A & M University nor any other conduct, action or inaction of any representative of Texas A & M University relating to this Agreement constitutes or is intended to constitute a waiver of Texas A & M University's or the state's sovereign immunity to suit; and
- b. Texas A & M University has not waived its right to seek redress in the courts.

22. Miscellaneous.

- A. Interlocal Agreement. This Agreement is an Interlocal Agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each BVWACS Party agrees that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each BVWACS Party agrees that the compensation to be made to the other BVWACS Parties as set forth in this Agreement is in an amount intended to fairly compensate each performing BVWACS Party for the services or functions it provides hereunder, and is made from current revenues available to the paying BVWACS Party. Where applicable, this Interlocal Agreement shall be administered in accordance with the laws applicable to a home-rule municipality.
- B. Immunity as a Defense. No BVWACS Party has agreed to waive any defense, right, immunity, or other protection under law including any statutory provision, by entering into this Agreement or otherwise participating in the BVWACS.
- C. Retention of Defenses. The Parties agree that neither this Agreement nor the operation or use of the BVWACS by the BVWACS Parties affect, impair, or limit their respective

immunities and limitations of liability to the claims of third parties, including claims predicated on premises defects.

- D. Notices. Notices required under this Agreement must be in writing and delivered personally or sent by certified US Mail, postage prepaid, addressed to such BVWACS Party at the following respective addresses:

City:

City of Bryan

Attention: City Manager, with a copy to the City Attorney

P. O. Box 1000

Bryan, TX 77805

City:

City of College Station

Attention: City Manager, with a copy to the City Attorney

PO Box 9960

College Station, TX 77842

City:

City of Brenham

Attention: City Manager, with a copy to the City Attorney

200 West Vulcan Street

PO Box 1059

Brenham, TX 77834

County:

Brazos County

Attention: County Judge, with a copy to County Attorney

200 S. Texas Avenue

Suite 332

Bryan, TX 77803

County:

Burleson County

Attention: County Judge, with a copy to County Attorney

100 W. Buck #306

Caldwell TX 77836

County:

Madison County

Attention: County Judge, with a copy to County Attorney

103 West Trinity, Suite 113
Madisonville TX 77864

County:

Washington County
Attention: County Judge, with a copy to County Attorney
100 East Main Street
Suite 104
Brenham, TX 77833

County:

Grimes County
Attention: County Judge, with a copy to County Attorney
100 Main Street
Anderson, TX 77830

Texas A & M University:

Texas A & M University
Attention: Vice President and Associate Provost
For Information Technology and Chief Information Officer
1365 TAMU
College Station, TX 77843-1365

All notices so given are deemed given on the date so delivered or so deposited in the US Mail. All BVWACS Parties may change their address by sending written notice of such change to the other Parties in the manner provided for above.

- E. Assignment. This Agreement being based upon the special qualifications of each BVWACS Party, any assignment or other transfer of this Agreement or any part hereof without the express consent in writing of the other Parties is void and has no effect, which consent shall not be unreasonably withheld.
- F. Entire Agreement. The entire agreement among the BVWACS Parties is contained herein and no change in or modification, termination, or discharge of this Agreement in any form whatsoever is valid or enforceable unless it is in writing and signed by duly authorized representatives of all Parties.
- G. Prior Agreements. This Agreement supersedes any and all prior agreements regarding this subject that may have previously been made. The subject of this Agreement is the construction, acquisition, implementation, operation and maintenance of the BVWACS.

- H. Severability. If any term or provision of this Agreement is, to any extent, rendered invalid or unenforceable, the remainder of this Agreement is not affected, and each other term and provision of this Agreement remains valid and enforceable to the fullest extent permitted by law.
- I. Non-waiver. Failure of a BVWACS Party to exercise any right or remedy for a breach or default of any other BVWACS Party does not waive such right or remedy for that breach or default or in the event of a subsequent breach or default.
- J. Authority of Signatories. Each BVWACS Party represents to all the other BVWACS Parties that the representative signing this Agreement on any BVWACS Party's behalf has been duly authorized by the governing body of that BVWACS Party in compliance with Texas law.
- K. Further Assurances. Each BVWACS Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.
- L. Exhibits. The Exhibits, which are attached hereto and described below, are incorporated herein and made a part hereof for all purposes.
- M. Counterparts and Multiple Originals. This Agreement is effective as of the Effective Date set forth in this Agreement. This Agreement may be executed simultaneously in one or several counterparts, each of which is deemed to be an original and all of which together constitute one and the same instrument. The terms of this Agreement become binding upon each BVWACS Party from and after the time that it is executed by all BVWACS Parties. The counterparts may be signed in multiple originals to allow each BVWACS Party to have an originally signed counterpart for each BVWACS Party. The Agreement has been executed in multiple originals, each having equal force and effect, on behalf of the Parties.

Exhibit List:

Exhibit A – BVWACS Architecture

Exhibit B – Service Area map

Exhibit C – BVWACS Associate Standard Terms and Conditions

Exhibit D – Goals and Objectives

Exhibit E – Monthly, Quarterly, and Annual Evaluation Factors

Exhibit F – Governance, Operation, and Maintenance Flow Chart and Distribution
of Board Membership

Exhibit G –Staffing for BVWACS Program

GRIMES COUNTY

County Judge

Date: _____

BURLESON COUNTY

County Judge

Date: _____

MADISON COUNTY

County Judge

Date: _____

CITY OF BRYAN

Mayor

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

CITY OF COLLEGE STATION

Mayor

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager / CFO

Date: _____

CITY OF BRENHAM

Mayor

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

BRAZOS COUNTY COMMISSIONERS COURT

County Judge

Date: _____

ATTEST

County Clerk

Date: _____

APPROVED AS TO FORM

Assistant County Attorney

Date: _____

WASHINGTON COUNTY

County Judge

Date: _____

TEXAS A & M UNIVERSITY

Date: _____

Executive Vice President and
Chief Financial Officer

**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, IMPLEMENTATION, OPERATION AND
MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM
BVWACS Architecture**

Exhibit A

Each of the BVWACS parties will continue to contribute existing infrastructure, and real property currently owned or leased by the parties for the purpose set forth in the Agreement. The infrastructure and real property contributed by each of the parties at the execution of the Agreement is as follows:

City of College Station

Access to RF Site at 2700 Switch Station Rd in College Station TX

Access to Console Site 800 Krenek Tap Rd in College Station TX

Access to Console Site at 1601 Graham Rd in College Station TX

Network connectivity for the following RF and Console Sites to the RNI

College Station RF Site

College Station Console Site

City of Bryan

Access to secure 3rd floor equipment space at 101 Regent Street for RF and Console Site

Network connectivity for the following RF and Console Sites to the RNI

Millican RF Site

Verizon RF Site

Bryan Console Site

City of Bryan Fire Station #4

Brazos County

Access to RF Site at 21550 Kathy Fleming Rd in Millican TX

Access to RF Site at 8538 Deep Well Road in Brazos County, including tower lease

Texas A&M University

Access to RF Site at 570 Floriculture Rd in College Station TX

Access to Console Site at 1111 Research Pkwy in College Station TX

Access to Console Site at 311 Houston Street in College Station TX

Network connectivity for the following RF and Console Sites to the RNI

Hensel Park RF Site

TAMU Console Site

City of Brenham

Access to RF Site at 1802 Longwood Dr in Brenham TX

Network connectivity for the following RF and Console Sites to the RNI

Brenham RF Site

Brenham (Washington County) Console Site (Via City Network)

Washington County

Access to RF Site at 3610 FM 1697 in Burton TX

Access to RF Site at 7275 Lone Star Rd in Washington TX

Access to Console Site at 301 N Baylor St in Brenham TX

Grimes County

Access to RF Site at 382 FM 149 West in Anderson TX

Access to RF Site at the Bédias Wastewater Facility in Bédias TX

Burleson County

Access to RF Site at 367 CR 103 in Caldwell TX

Madison County

Access to RF Site at 101 E. Collard St in Madisonville TX

Access to RF Site at 7442 Gin Rd in Midway TX

Texas Department of Public Safety (Information Only)

Under separate agreement, provide microwave link between the North Brazos RF site and the Texas DPS radio tower located in Bryan TX

Under separate agreement, provide microwave link between the Texas DPS radio tower located in Bryan TX and the City of Bryan Fire Station #4

BVWACS

Network connectivity for all BVWACS RF and Dispatch Sites to the RNI Master Sites

Burton RF Site microwave link to Brenham RF Site

Washington RF Site microwave link to Brenham RF Site

Anderson RF Site microwave link to Millican RF Site

Bedias RF Site microwave link to Walker West RF Site

Midway RF Site microwave link to Madisonville RF Site

Madisonville RF Site microwave link to Bedias RF Site

Caldwell RF Site microwave link to St Joseph Hospital Caldwell

BVCOG Fiber link from St Joseph Hospital Caldwell to BVCOG CRS

BVCOG Fiber link from Bedias RF Site to BVCOG CRS

BVCOG Fiber link from BVCOG CRS to Brenham TX

Public Safety Interoperability Communications (PSIC) grant

The PSIC Grant provided the necessary equipment and racks (consisting of base radios, site controller and radio frequency distribution system), antennas and associated wiring located at each of seven sites, as well as operator consoles replacement/upgrade for the parties as shown below:

Item/Site	Description
Network Connectivity	Leased connectivity to connect all the sites together
Bryan /Brazos County Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennas and coax
College Station Site	Includes 700/800 MHz Multicast Base equipment with racks (12 chls), Xmit & Rcv antennas and coax
College Station Console Sys	As shown in Table 2 below. - 6 operator positions
Bryan/Brazos county Console Sys	Convert existing system to P25
Millican	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennas and coax
Hensel Park Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennas and coax

TAMU Console Equip	Convert existing system to P25
LCRA - Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennas and coax
Brenham Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennas and coax
Burton Site	Includes 700/800 MHz Multicast Base equipment with racks (6 chls) , Xmit & Rcv antennas and coax
Brenham Emerg Comms Console Sys	As shown in Table 2 below. - 4 operator positions
Management Reserve	Includes structural analysis of all towers and project reserves.

PSIC-Provided Console equipment installed at College Station and the City of Brenham:

IP-based console system

Auxiliary I/O Server

Conventional Channel Gateway

Operator Position Equipment, PC, Mouse, Speakers, Microphone, Keyboard

Console Site Router

Site Controller

LAN Switch

IP Based logging system, archiving interface server, digital logging server, playback station

700/800MHz P25 Trunked backup stations

Multimode remote control

Antenna system

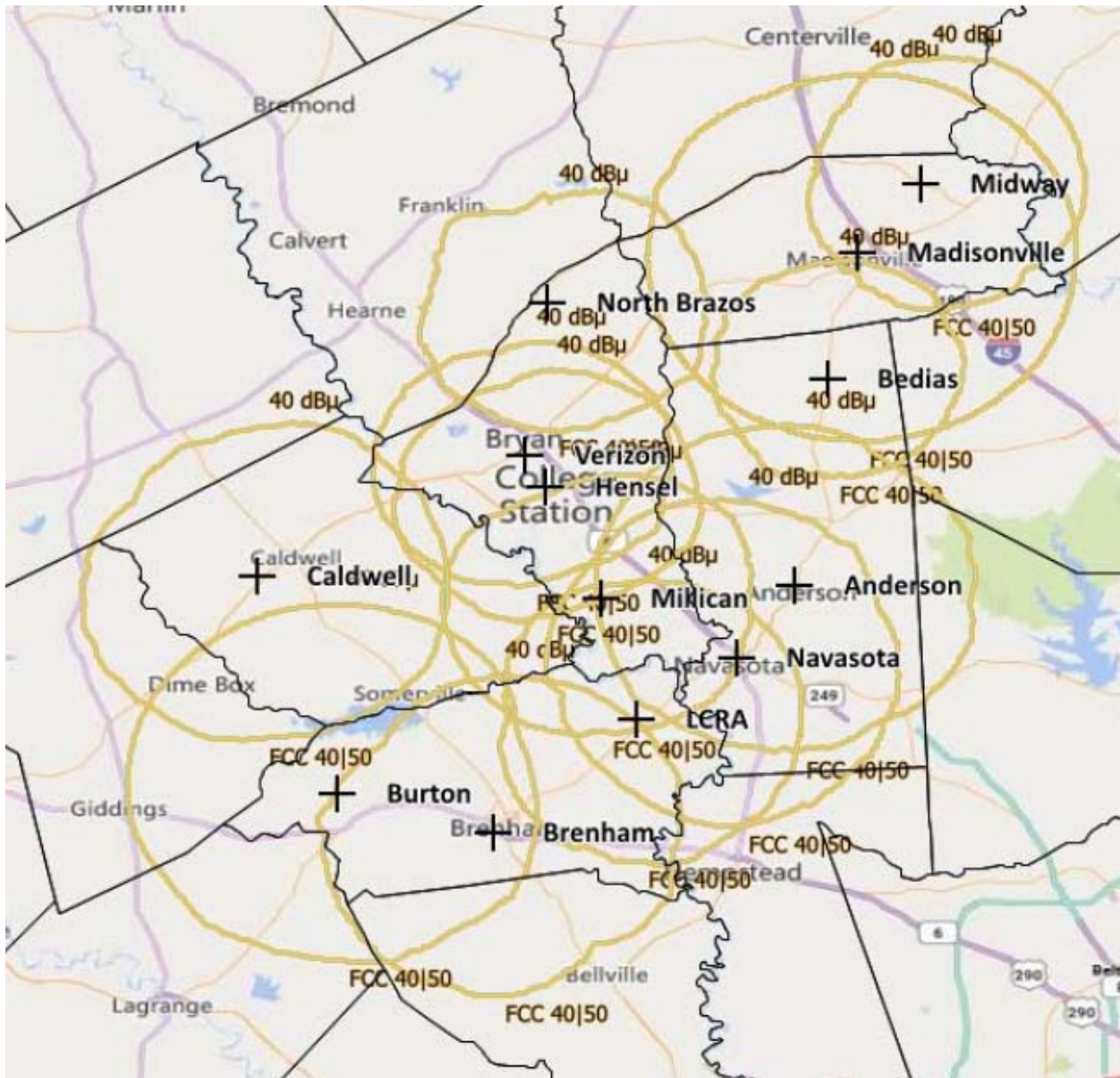
Lightning Protection

UPS backup power



**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, IMPLEMENTATION, OPERATION AND
MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit B - Service Area Map



**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit C - BVWACS Associate Standard Terms and Conditions

When using the Brazos Valley Wide Area Communications System (“BVWACS”), BVWACS Associate shall abide by all policies, procedures and guidelines established by the BVWACS Operating Board, the BVWACS Governing Board, and the terms and conditions of this BVWACS Associate Interlocal Cooperation Agreement

BVWACS Associate shall use the BVWACS in a manner consistent with the Standard Operating Procedures established by the BVWACS Operating Board and in compliance with applicable Federal Communications Commission (“FCC”) regulations and rules.

BVWACS Associate is encouraged to use and improve the interoperation capabilities of the BVWACS and to provide input to the BVWACS Managing Entity on the day-to-day operations of the BVWACS and development of BVWACS standard operating policies and procedures.

BVWACS Associate shall utilize its sponsoring BVWACS Party as its primary point of contact for requests for BVWACS Improvements.

BVWACS Associate shall utilize the BVWACS Managing Entity as its primary point of contact when dealing with problems, or to answer questions. BVWACS Associate shall work in good faith with the BVWACS Managing Entity to help resolve problems.

BVWACS Associate shall purchase and provide its own subscriber radios and equipment to be used on the BVWACS. The selection and specifications for these radios and equipment must be coordinated with the BVWACS Managing Entity so that all radios and equipment purchased are compatible with the BVWACS.

BVWACS Associate shall ensure that programming for its subscriber equipment that uses the BVWACS is consistent with the Standard Operating Procedures established by the BVWACS Operating Board.

BVWACS Associate has no right to use the BVWACS if the BVWACS Party entering into this BVWACS Associate Interlocal Cooperation Agreement with it is no longer eligible to use the BVWACS.

BVWACS Associate is subject to any limitations or restraints on its usage of BVWACS that apply to the BVWACS Party entering into this BVWACS Associate Interlocal Cooperation Agreement.

The current term of this BVWACS Associate Interlocal Cooperation Agreement shall not exceed the current term of the Interlocal Agreement for Construction, Acquisition, Implementation, Operations and Maintenance of a Wide Area Communications System.

BVWACS Associate may be subject to immediate suspension of this BVWACS Associate Interlocal Agreement for violation of FCC rules and regulations, individual or repeated violations of the BVWACS Standard Operating Procedures, or use of the BVWACS that is determined to be inappropriate by the Governing Board.

Upon thirty (30) days written notice that specifies the existence and nature of the default, the BVWACS Party sponsoring the BVWACS Associate may automatically terminate the participation of BVWACS Associate. Default results from failure to comply with the BVWACS Associate Interlocal Cooperation Agreement, including:

1. Violation of FCC rules and regulations;
2. Individual or repeated violations of the BVWACS Standard Operating Procedures; or
3. Use of the BVWACS that is determined to be inappropriate by the Governing Board.

BVWACS Associate may avoid termination if the default is cured within thirty (30) days. If the BVWACS Associate begins to cure the default within the thirty (30) day period, the time to cure

may be extended, at the sole discretion of the sponsoring BVWACS Party, for as long as the BVWACS Associate diligently continues to work toward completion of the cure.

BVWACS Associate shall ensure that the persons it authorizes to use its radios and equipment are trained in the proper use and etiquette for two-way radio communication.

BVWACS Associate shall reimburse the BVWACS Party that is the holder of an FCC license if there is any actual or alleged violation of any FCC rule or regulation as a result of any radios or equipment that is owned by BVWACS Associate or used by any person associated with BVWACS Associate for all costs arising from the actual or alleged violation, including costs and attorney's fees for defense against the allegation as well as fines and penalties incurred.

**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit D – Goals and Objectives

GOALS

The goal of the Brazos Valley Wide Area Communications System is to provide voice radio and ultimately data transmission coverage and radio communication interoperability throughout the Service Area utilizing Infrastructure and Improvements currently provided by the Parties as well as new Infrastructure and Improvements in accordance with this Agreement.

OBJECTIVES

1. The Brazos Valley Wide Area Communications System shall maintain an appropriate reserve capacity based on the determination of the Governing Board.
2. The Brazos Valley Wide Area Communications System shall strive to maintain coverage at or above 95% reliability for a portable radio worn on the hip with a speaker collar microphone inside a –10db loss building within the Service Area.
3. To the extent practicable, the Brazos Valley Wide Area Communications System shall maintain interoperability with other public safety and governmental radio systems within the Service Area, the Brazos Valley Council of Governments area, regionally, statewide, and nationally.
4. The Brazos Valley Wide Area Communications System shall maintain the performance and equipment of the BVWACS at a standard consistent with the developments in technology and the needs of the BVWACS Parties.
5. The Brazos Valley Wide Area Communications System shall research and pursue opportunities for assistance for funding the BVWACS through grants and other means.

**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit E – Monthly, Quarterly and Annual Evaluation Factors

Maintain system reserve capacity at or above the level approved by the Governing Board.

Maintain coverage at RFP's coverage specifications.

Report number of minutes of BVWACS non-normal operation.

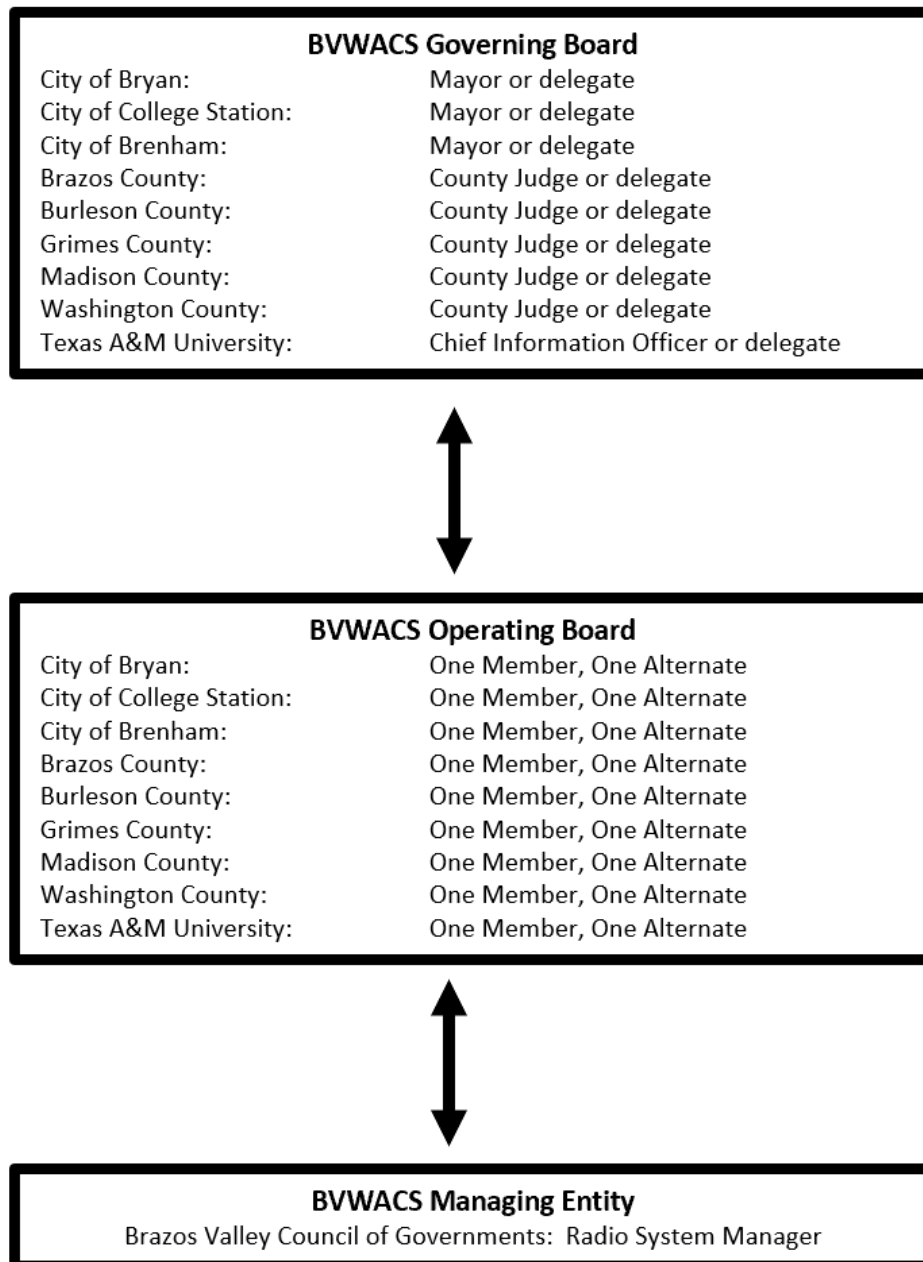
Report number of system busies.

Report BVWACS Support Vendor response time to system problems.

Develop shared staff performance measures.

**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, IMPLEMENTATION, OPERATION AND
MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

**Exhibit F- Governance, Operation, and Maintenance Flow Chart
and Distribution of Board Membership**



**THIRD RESTATEMENT OF THE INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION
AND MAINTENANCE OF
THE WIDE AREA COMMUNICATIONS SYSTEM**

Exhibit G – Staffing for BVWACS Program

Radio System Manager (100 %)

February 8, 2024

Item No. 7.3.

Lease agreement amendment with WireStar for the use of City Dark Fiber Optic Cable

Sponsor: Sam Rivera

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on an amendment to the lease agreement with WireStar for the use of City Dark Fiber Optic Cable increasing amount due to City by \$3,568.99.

Relationship to Strategic Goals:

- Core Services & Infrastructure
- Financially Sustainable City
- Diverse Growing Economy

Recommendation(s): CIO recommends approval of the contract.

Summary: On March 26, 2015, Council approved an Ordinance permitting the lease of City Fiber Optic Cable Facilities. As one of the companies currently leasing city spare (or dark) fiber, WireStar has requested an amendment to the lease agreement to add the use of additional fibers.

Budget & Financial Summary: This lease amendment will have a financial impact on the city. A positive revenue will be obtained from the additional fiber leases.

Attachments:

1. 16300022_AMD_3_ADc_(CC_02.08.24)



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 16300022AMD3 PROJECT#: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: Amendment #3 to Dark Fiber Lease Agreement

Name of Contractor: WiresStar, Inc.

CONTRACT TOTAL VALUE: \$ 43,907.75 Grant Funded Yes ☐ No ☒
If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☐ N/A Davis Bacon Wages Used ☐ Yes ☐ No ☒ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A Buy America Required ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

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

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)
Amendment #3 adding \$3,568.99 for an additional lease of 28.2 miles of fiber.

CRC Approval Date*: N/A (If required)* Council Approval Date*: 02/08/2024 Agenda Item No*: TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

Sam Rivera 1/29/2024
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

ASST CITY MGR – CFO DATE

LEGAL DEPARTMENT DATE

APPROVED & EXECUTED

CITY MANAGER DATE

MAYOR (if applicable) DATE

CITY SECRETARY (if applicable) DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

**THIRD AMENDMENT OF THE DARK FIBER LEASE AGREEMENT BETWEEN
COLLEGE STATION, TEXAS AND WIRESTAR, INC.**

This Third Amendment (“Amendment”) is made and entered into by and between the **City of College Station**, a Texas Home-Rule Municipal Corporation (the “PROVIDER”), and **Wirestar, Inc.**, (the “USER”), hereinafter collectively referred to as the “Parties”. This Amendment is effective when signed by the last Party whose signing makes the Amendment fully executed.

RECITALS

WHEREAS, PROVIDER and USER entered into a Dark Fiber Lease Agreement (“Original Agreement”) with Contract No. 16300022 on October 12, 2015; and

WHEREAS, PROVIDER and USER entered into a First Amendment of the Dark Fiber Lease Agreement (“First Amendment”) with Contract No. 16300022 AM#1 on July 13, 2017; and

WHEREAS, PROVIDER and USER entered into a Second Amendment of the Dark Fiber Lease Agreement (“Second Amendment”) with Contract No. 1630022 AM#2 on July 27, 2018; and

WHEREAS, the Original Agreement provided for USER lease of 43.16 Fiber Strand Miles in the amount of (including maintenance) \$22,936.51; and

WHEREAS, the First Amendment provided for the USER lease of 30.62 Fiber Strand Miles in the amount of (including maintenance) \$12,900.74; and

WHEREAS, the Second Amendment provided for the USER lease of the additional 12.2 Fiber Strand Miles in the amount of (including maintenance) \$4,501.51; and

WHEREAS, USER has notified the PROVIDER of the desire to lease an additional 28.2 Fiber Strand Miles;

WHEREAS, the PROVIDER has agreed to lease the additional 28.2 Fiber Strand Miles; and

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Replacing Exhibit A, “Map of Routes Covered by this Lease” with the new Exhibit A attached to this Amendment.
2. Adding Exhibit A-2, “Route Segment Listing and Payment Amounts”, with new Exhibit A-2 attached to this Amendment to add new route segments and payment amounts covered by this Amendment.
3. All other terms, conditions, and pricing remain in full force and effect.

IN WITNESS WHEREOF the Parties have caused this Amendment to be executed by their duly authorized representatives.

WIRESTAR, INC.

CITY OF COLLEGE STATION

By: Kyle Leissner

By: _____

Printed Name: Kyle Leissner

City Manager

Date: _____

Title: President

APPROVED:

Date: 1/29/2024

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
MAP OF ROUTES COVERED BY THIS LEASE

The routes covered by this Lease Agreement, as Amended, are highlighted in green on the below map.

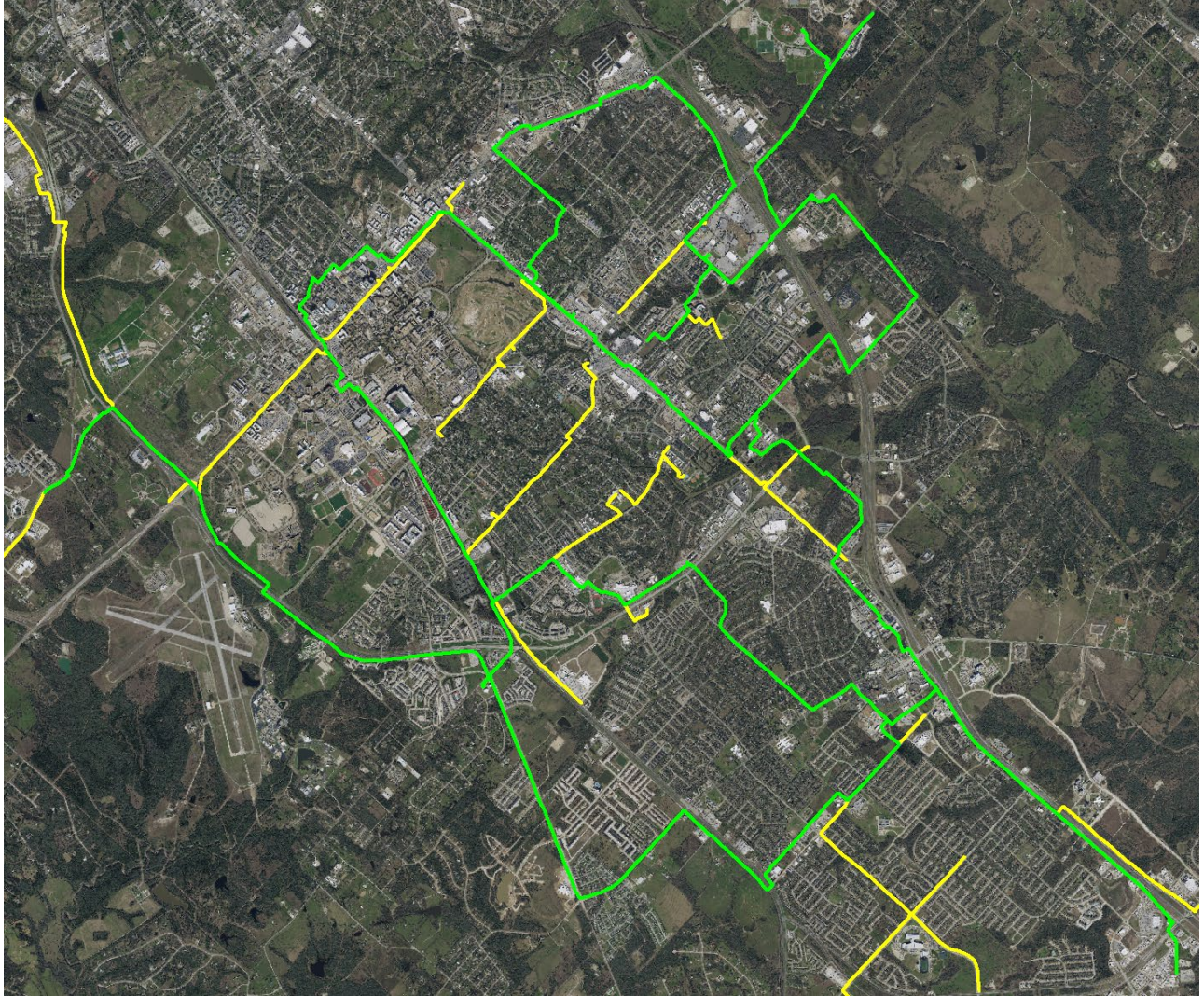


EXHIBIT A-2
ROUTE SEGMENT LISTING AND PAYMENT AMOUNTS

Additional Route Segments Added by Third Amendment

- Four (4) fiber strands from the intersection of Rock Prairie Rd West & Oak Creek (RPW/OC) to Dowling Pump Station (DOWP)
- Two (2) fiber strands from City Hall (CH) to Wirestar HQ (WSHQ) splice point via Texas Ave/Utility Customer Service (UCS).
- Two (2) fiber strands from Wirestar HQ (WSHQ) splice point to Greens Prairie Elevated Storage Tank (GPEST) via Utility Service (USCE)
- Two (2) fibers strands from Greens Prairie Elevated Storage Tank (GPEST) to splice point near Greens Prairie Substation (GPSub) on old Arrington Road.

Calculation of Third Amendment License Payment Amount

The USER License Payment for the USER Fibers is an imputed rate of \$500.00 per Fiber Strand Mile. This amount is prorated for the remainder of the lease at \$87.50 per Fiber Strand Mile (21 of 120 months remaining).

Rock Prairie West & Oak Creek (RPW/OC) to Dowling Pump Station (DOWP)	2.2 miles
City Hall (CH) to Wirestar HQ (WSHQ) via Texas Ave/UCS	5.7 miles
Wirestar HQ (WSHQ) to GPEST via Utility Service (USCE)	3.6 miles
GPEST to Greens Prairie Substation (GPSub)	<u>0.4 miles</u>

Total miles 11.9 miles

Four (4) fiber strands Rock Prairie West & Oak Creek (RPW/OC) to Dowling Pump Station (DOWP) – 8.8 fiber strand miles
Two (2) fibers strands City Hall (CH) to Wirestar HQ (WSHQ) – 11.4 fiber strand miles
Two (2) fibers strands Wirestar HQ (WSHQ) to GPEST – 7.2 fiber strand miles
Two (2) fibers strands GPEST to Greens Prairie Substation (GPSub) – 0.8 fiber strand miles

Total fiber strand miles: 28.2

28.2 Fiber Strand Miles x \$87.50/Fiber Strand Mile = **\$2,467.50 User License Payment for amount of fiber added by Third Amendment.**

Calculation of Maintenance Amount

Following the Effective Date for each USER Fiber on a Route Segment, USER will pay an annual maintenance fee per Fiber Mile per year. The annual maintenance will be calculated annually and is based on the personnel cost (payroll and benefits) times the estimated percent of city staff time spent conducting fiber operations and maintenance activities. This amount provides the total staff cost devoted to fiber operations and maintenance activities. This amount is then divided by the total number of fiber strand miles to determine the annual maintenance cost per fiber strand mile.

City staff cost devoted to fiber activities (2017- 2018)	\$116,649
Total city fiber optic strand miles	2,240

Maintenance cost per fiber optic strand mile: $\$116,649 / 2,240 = \52.08 per fiber strand mile

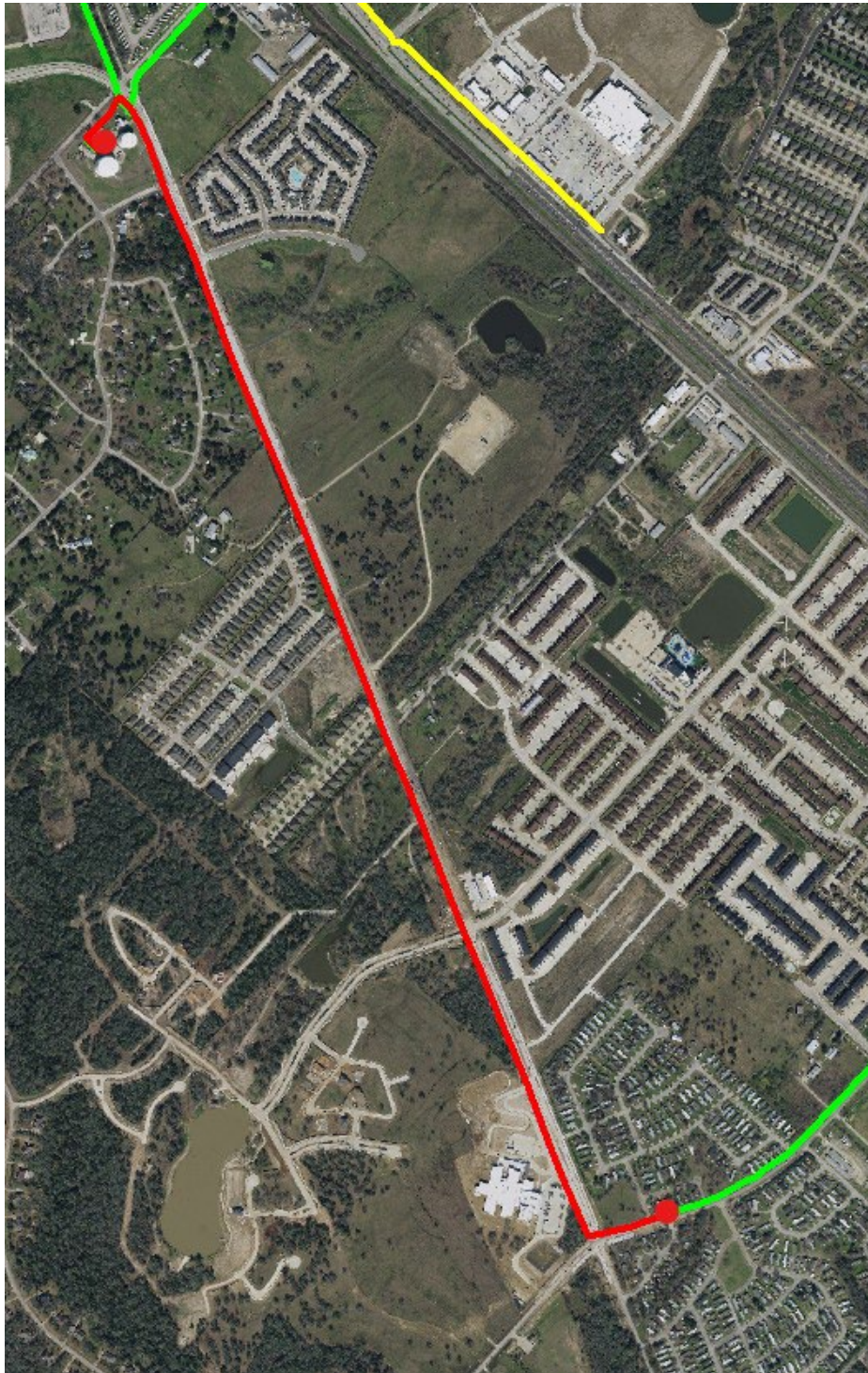
Annual maintenance cost (2023-2024): $\$52.08 / \text{fiber strand mile} \times 88.74 \text{ fiber strand miles leased} = \$4,621.58$

Prorated Maintenance cost for fiber added by Third Amendment (2023-2024):

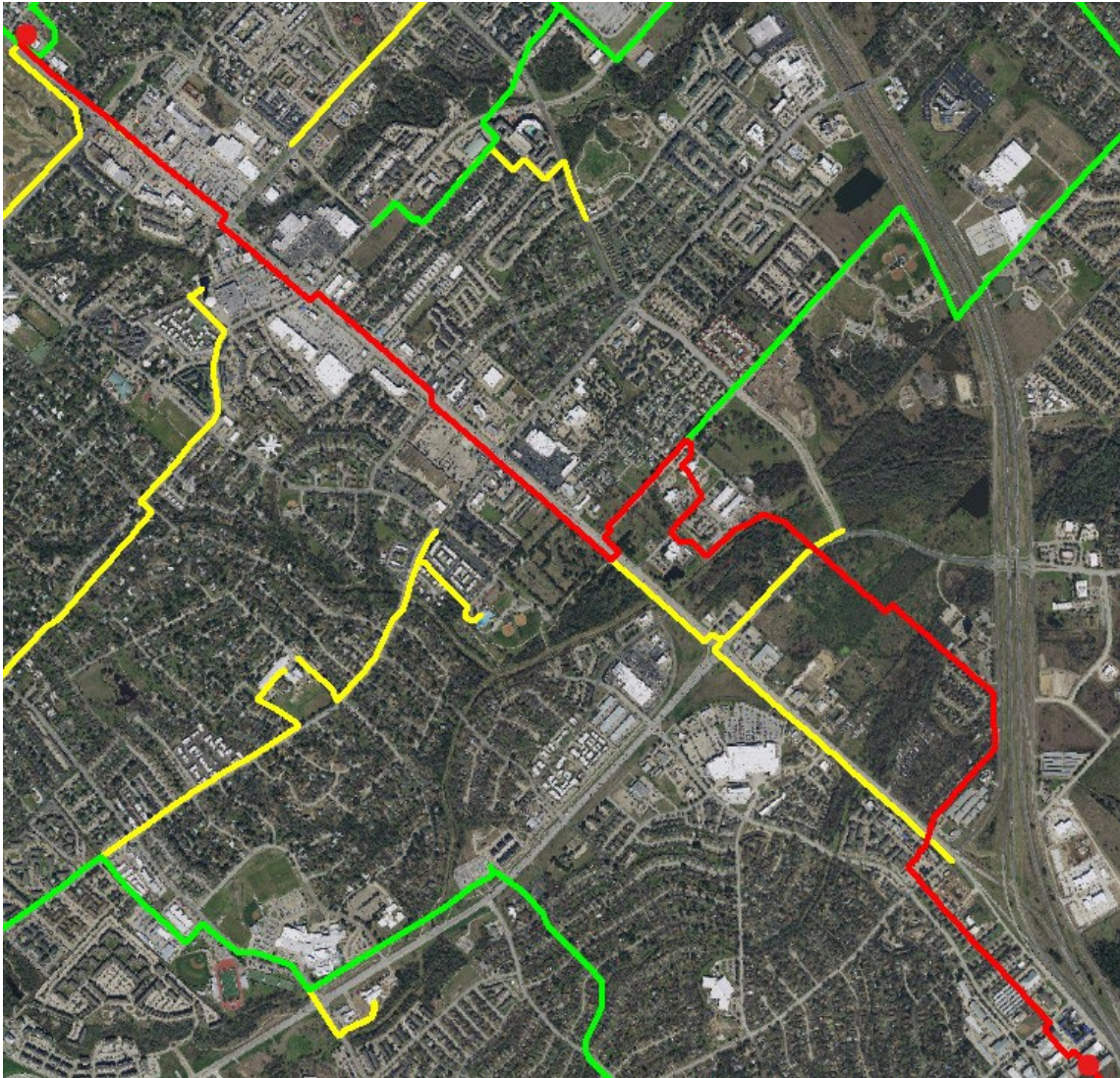
$28.2 \text{ fiber strand miles} \times \$52.08 \text{ per fiber strand mile} \times 9/12 \text{ (prorated maintenance)} = \mathbf{\$1101.49}$

The updated Maintenance Amount calculations will be performed for 2024-2025 using the combined total amount of all PROVIDER fiber leased by USER in the Original Agreement, First Amendment, Second Amendment and Third Amendment as modified, which currently adds up to a total of 116.94 fiber strand miles.

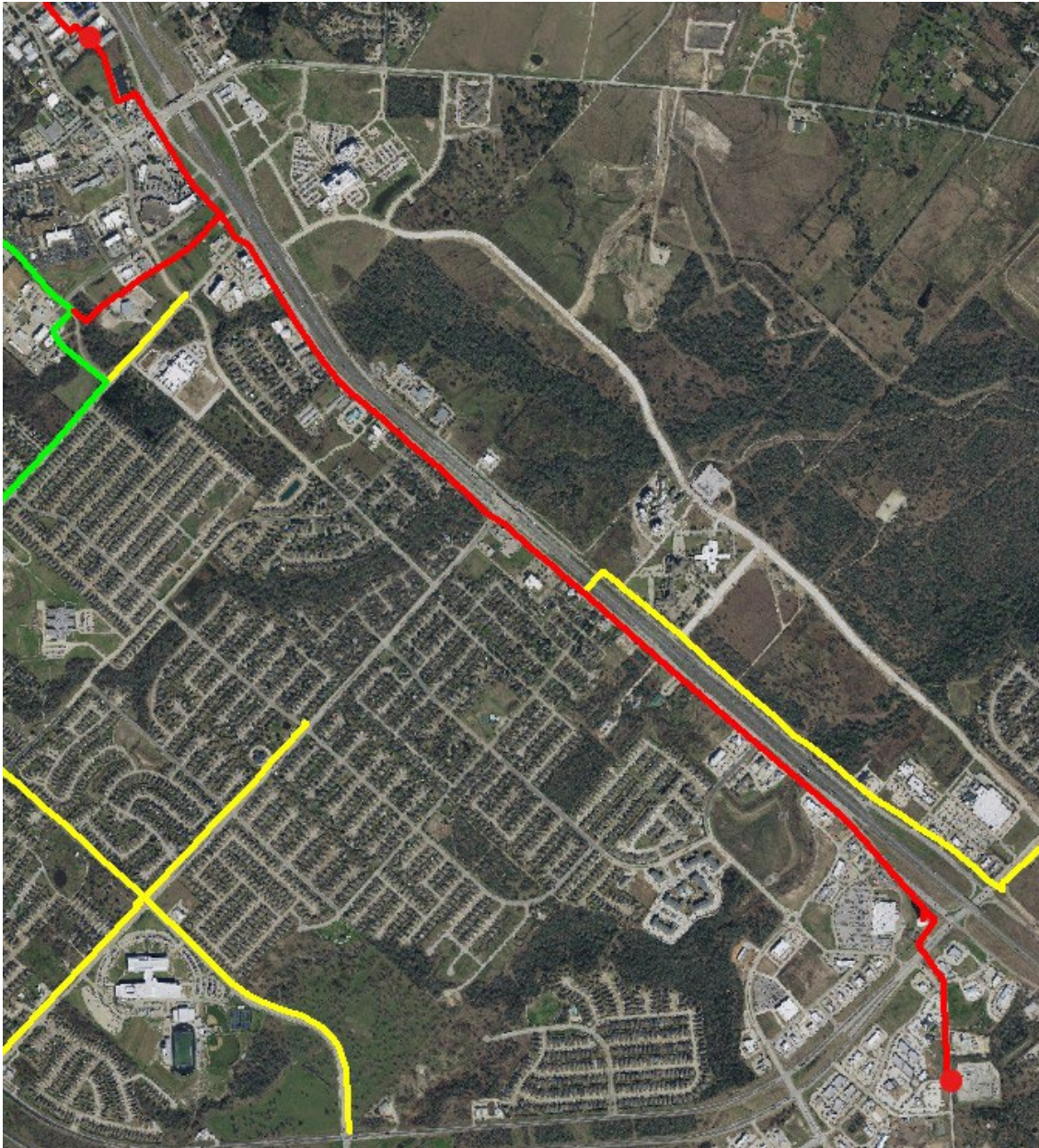
Maps of Routes Covered by This Lease Amendment, marked in red
Rock Prairie West & Oak Creek (RPW/OC) to Dowling Pump Station (DOWP)



City Hall (CH) to Wirestar HQ (WSHQ) via Texas Ave/UCS



Wirestar HQ (WSHQ) to GPEST to Greens Prairie Substation (GPSub)





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/21/2023

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 TechInsurance, Division of Specialty Program Group LLC 203 N. LaSalle St., 20th Floor, Chicago, IL 60601	CONTACT NAME: PHONE (A/C, No. Ext): (800) 688-1984 FAX (A/C, No): 312-690-4123 E-MAIL ADDRESS: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Sentinel Insurance Company, Limited</td> <td>11000</td> </tr> <tr> <td>INSURER B: Hartford Multi-State</td> <td>00914</td> </tr> <tr> <td>INSURER C: The Hartford</td> <td>30104</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Sentinel Insurance Company, Limited	11000	INSURER B: Hartford Multi-State	00914	INSURER C: The Hartford	30104	INSURER D:		INSURER E:		INSURER F:	
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INSURER A: Sentinel Insurance Company, Limited	11000														
INSURER B: Hartford Multi-State	00914														
INSURER C: The Hartford	30104														
INSURER D:															
INSURER E:															
INSURER F:															
INSURED Wirestar Inc Po Box 10966															

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	Yes	Yes	46SBAAE8461	9/14/2023	9/14/2024	EACH OCCURRENCE		
	☐ CLAIMS-MADE ☒ OCCUR						\$ 2,000,000		
	GEN'L AGGREGATE LIMIT APPLIES PER:						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	
	☒ POLICY ☐ PRO-JECT ☐ LOC						MED EXP (Any one person)	\$ 10,000	
	OTHER:						PERSONAL & ADV INJURY	\$ Excluded	
							GENERAL AGGREGATE	\$ 4,000,000	
							PRODUCTS - COMP/OP AGG	\$ Excluded	
								\$	
C	AUTOMOBILE LIABILITY	Yes	Yes	46UECEH6569	9/14/2023	9/14/2024	COMBINED SINGLE LIMIT (Ea accident)		
	☐ ANY AUTO						☒ SCHEDULED AUTOS	\$ 1,000,000	
	☐ ALL OWNED AUTOS						☒ NON-OWNED AUTOS	BODILY INJURY (Per person)	\$
	☒ HIRED AUTOS							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$	
								\$	
	UMBRELLA LIAB						EACH OCCURRENCE		
	☐ EXCESS LIAB						AGGREGATE	\$	
	DED ☐ RETENTION \$							\$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y / N ☐ No	N / A	46WBCAQ1438	9/14/2023	9/14/2024	☒ PER STATUTE ☐ OTH-ER		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						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	

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

The City of College Station, its officials, employees and volunteers Insured with regard to the general liability, automobile liability and umbrella excess liability. Waiver of subrogation in favor of the The City of College Station, its officials, employees and volunteers with regard to the general liability, automobile liability, umbrella excess liability, and workers' compensation coverage.

CERTIFICATE HOLDER

CANCELLATION

City of College Station Attn: Risk Management PO BOX 9960 College Station, Texas 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

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February 8, 2024

Item No. 7.4.

Construction Contract for the CCWWTP Equipment Building Project

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with BH Harris Construction, LLC. in the amount of \$907,272.38 for construction services for the Carter Creek Wastewater Treatment Plant Equipment Building Project, plus the City's contingency in the amount of \$100,000 for a total appropriation of \$1,007,272.38. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project is to construct an equipment building to protect and preserve the division's vehicles and mobile equipment. The building will be a three-sided, pre-engineered metal building which provides easy access. The building will also provide a vehicle wash-rack at one end. This project will help reduce the pollution of rain runoff from vehicles and oil leaks from water services equipment to support both the stormwater pollution prevention plan and TMDL (total maximum daily loads).

The City issued a request for Competitive Sealed Proposals (CSP) and received 2 proposals. Following evaluation and interview, BH Harris was selected as the best value to the City.

Budget & Financial Summary: \$1,100,000 is currently budgeted for this project in the Wastewater Projects Fund. A total of \$73,193 has been expended or committed to date, leaving a balance of \$1,026,807 for this construction contract and remaining project expenses.

Attachments:

1. CCWWTP Equipment Building Construction Contract - Vendor Signed



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300210 PROJECT#: WW1800004 BID/RFP/RFQ#: 24-009

Project Name / Contract Description: Carter Creek Wastewater Treatment Plant Equipment Building

Name of Contractor: BH Harris Construction, LLC

CONTRACT TOTAL VALUE: \$ 907,272.38 **Grant Funded** Yes ☐ No ☒
If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☐ N/A **Davis Bacon Wages Used** ☐ Yes ☐ No ☒ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A **Buy America Required** ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

☒ **NEW CONTRACT** ☐ **RENEWAL #** 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)

Lowest responsible bidder from CSP (RFP-24-009)

Funding source - 41379971-6561

CRC Approval Date*: N/A (If required)* **Council Approval Date*:** 2/8/2024 **Agenda Item No*:** N/A

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

1/25/2024
DATE

[Signature]
ASST CITY MGR – CFO

1/25/2024
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 BH Harris Construction, LLC (the "Contractor") for the construction and/or installation of the following:
Carter Creek Wastewater Treatment Plant Equipment Building.

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: Ninety Thousand Seven Hundred Twenty-Seven and 20 /100 Dollars (\$ 90,727.20).

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: Nine Hundred Seven Thousand Two Hundred Seventy-Two and 38 /100 Dollars (\$ 907,272.38).

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.

16.12 Virtual Payment Method. For increased payment and financial information security, the Contractor must use the City's approved virtual payment card system or digital payment system for all payments, storing, and modifications of financial information used for City payments to the Contractor. Any related reasonable fees paid by the Contractor for use of the virtual payment card system or digital payment system may be passed through to the City.

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 five hundred and zero /**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.

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.

46.17 Fraud Reporting. To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at VendorInvoiceEntry@cstx.gov if the Contractor reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

List of Exhibits

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

BH HARRIS CONSTRUCTION, LLC

CITY OF COLLEGE STATION

By: Braden Harris

By: _____

Printed Name: Braden Harris

City Manager

Date: _____

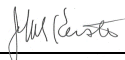
Title: president

Date: 1/25/2024

APPROVED:

City Attorney

Date: _____



Assistant City Manager/CFO

Date: 1/25/2024

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20210007

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 \$15.00 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 2022.

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 \$11.25 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 2022.

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 www.dol.gov/whd/govcontracts.

* 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 SIGNAL INSTALLER

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.

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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 www.dol.gov/whd/govcontracts.

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 Division National Office Branch of Wage Surveys. 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 DECISION"

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. 4458880

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, BH Harris Construction, LLC, as Principal, hereinafter called "Contractor" and the other subscriber hereto Suretec Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Nine-hundred and seven thousand, two-hundred and seventy-two and 38 /100 Dollars (\$907,272.38) 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 C0008-0037; Carter Creek Wastewater Treatment Plant Equipment Building

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

Contract No. 24300210
Construction Agreement Over \$50,000
Form 12-15-2022

Bond No. 445880

FOR THE CONTRACTOR:

BH Harris Construction, LLC

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

WITNESS: (if not a corporation)

(Name of Contractor)

By: Jordyn Stafford

By: [Signature]

Name: Jordyn Stafford

Name: Braden Harris

Title: Admin Asst.

Title: President

Date: 2/8/2024

Date: 2/8/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

Suretec Insurance Company

(Full Name of Surety)

By: [Signature]

3840 Corporate Center Dr

Name: Susan Einkauf

Bryan, TX 77802

Title: Customer Support Rep

(Address of Surety for Notice)

Date: 2/8/2024

By: [Signature]

Name: Bradley Hurt

Title: Attorney in Fact

Date: 2/8/2024

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.

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.

TEXAS STATUTORY PAYMENT BOND

Bond No. 4458880

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, BH Harris Construction, LLC, as Principal, hereinafter called "Principal" and the other subscriber hereto Suretec Insurance Company, a corporation organized and existing under the laws of the State of Texas, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Nine-hundred and seven thousand, two-hundred and seventy-two and 38 /100 Dollars (\$907,272.38) 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 8th day of February, 20 24, for C0008-0037; Carter Creek Wastewater Treatment Plant Equipment Building, 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. 4458880

FOR THE CONTRACTOR:

BH Harris Construction, LLC

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

WITNESS: (if not a corporation)

(Name of Contractor)

By: Jordyn Stafford

By: [Signature]

Name: Jordyn Stafford

Name: Braden Harris

Title: Admin Assist

Title: President

Date: 2/8/2024

Date: 2/8/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

Suretec Insurance Company

(Full Name of Surety)

By: [Signature]

3840 Corporate Center Dr

Name: Susan Einkauf

Bryan, TX 77802

Title: Customer Support Rep

(Address of Surety for Notice)

Date: 2/8/2024

By: [Signature]

Name: Bradley Hurt

Title: Attorney in Fact

Date: 2/8/2024

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.

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Bradley Hurt, Rodney Hurt, Donna P. Beeler, Robert Rainey

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 29th day of March, A.D. 2023.



SURETEC INSURANCE COMPANY

By: Michael C. Keimig
Michael C. Keimig, President

State of Texas ss:
County of Harris

On this 29th day of March, A.D. 2023 before me personally came Michael C. Keimig, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Tanya Sneed
Tanya Sneed, Notary Public
My commission expires March 30, 2027

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 19th day of January, 2024, A.D.

M. Brent Beaty
M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 4221604
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

SureTec Insurance Company

THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION

Statutory Complaint Notice

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, Tx 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write the Texas Department of Insurance at

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-475-1771
Web: <http://www.tdi.state.tx.us>
Email: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

Terrorism Risks Exclusion

The Bond to which this Rider is attached does not provide coverage for, and the surety shall not be liable for, losses caused by acts of terrorism, riot, civil insurrection, or acts of war.

Exclusion of Liability for Mold, Mycotoxins, Fungi & Environmental Hazards

The Bond to which this Rider is attached does not provide coverage for, and the surety thereon shall not be liable for, molds, living or dead fungi, bacteria, allergens, histamines, spores, hyphae, or mycotoxins, or their related products or parts, nor for any environmental hazards, bio-hazards, hazardous materials, environmental spills, contamination, or cleanup, nor the remediation thereof, nor the consequences to persons, property, or the performance of the bonded obligations, of the occurrence, existence, or appearance thereof.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

01/09/2024

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY US ASSURE INSURANCE SERVICES OF FLORIDA, INC. P.O. BOX 10197 JACKSONVILLE, FL 32247-0197	PHONE (A/C, No, Ext):	COMPANY American Zurich Insurance Company
FAX (A/C, No):	E-MAIL ADDRESS: bradley.hurt@sigbcs.com	
CODE: A0205009	SUB CODE:	
AGENCY CUSTOMER ID #:		
INSURED BH HARRIS CONSTRUCTION, LLC 4044 GOLDEN EAGLE DR BRYAN, TX 77808	LOAN NUMBER	POLICY NUMBER ER78581229
	EFFECTIVE DATE 01/10/2024	EXPIRATION DATE 01/10/2025
		☐ CONTINUED UNTIL TERMINATED IF CHECKED
	THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION

LOCATION/DESCRIPTION 2200 N Forest Pkwy College Station, TX 77845
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 EVIDENCE OF PROPERTY INSURANCE 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.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Builders Risk Coverage Form		\$2,500
Any One Building or Structure	\$927,000	
All Covered Property at all Locations	\$927,000	

REMARKS (Including Special Conditions)

--

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS City of College Station 1101 Texas Ave S College Station, TX 77840	MORTGAGEE ☒	ADDITIONAL INSURED ☐
	LOSS PAYEE ☐	
	LOAN #	
	AUTHORIZED REPRESENTATIVE	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/15/2024

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	Service Insurance Group, Inc. PO Box 5753 3840 Corporate Center Dr Bryan TX 77805-5753	CONTACT NAME:			
		PHONE (A/C, No, Ext):	(979)774-3900	FAX (A/C, No):	(979)774-3955
		E-MAIL ADDRESS:			
		INSURER(S) AFFORDING COVERAGE		NAIC #	
		INSURER A : Kinsale Insurance Company			
		INSURER B :			
		INSURER C :			
		INSURER D :			
		INSURER E :			
		INSURER F :			

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			0100278108-0	01/10/2024	01/10/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excl PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	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				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

RE: 2200 N Forest Pkwy College Station, TX 77845; Where contractually required the certificate holder is provided addiitonal insured status. Waiver of subrogation applies to certificate holder where contractually required.

CERTIFICATE HOLDER	CANCELLATION	AI 000241
City of College Station Risk Management Department 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	

Fax: (979)764-3571

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Contract No. 24300210

Name of Project: CCWWTP Equipment Building

REQUEST FOR EXCEPTION TO WORKERS' COMPENSATION REQUIREMENT

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

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

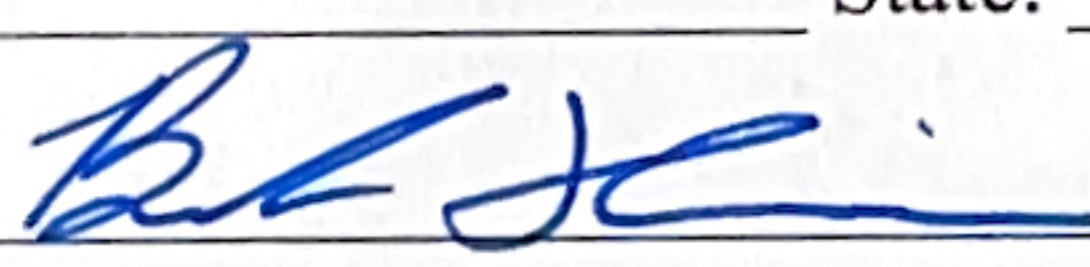
BH Harris Construction, LLC assumes full responsibility for its obligations, if any, under applicable law relating to workers compensation.

Name of Business: BH Harris Construction, LLC

SSN/FEIN No. 92-3420325 Telephone No. 979-777-0828

Address/P.O. Box: 4044 Golden Eagle Dr.

City: Bryan State: TX Zip Code: 77808

Signature of Owner:  Date: 12/08/2023

Witnessed by: _____

RETURN SIGNED FORM TO City Of College Station, OR

FAX TO _____.

Contract No. 24300210

Name of Project: CCWWTP Equipment Building

STATEMENT AFFIRMING NO BUSINESS AUTOS

I, the undersigned, the sole owner, shareholder, principal or partner doing business as Braden Harris herein verify BH Harris Construction, LLC does not have Business Autos, nor does it conduct business in any way that would require it to have Business Autos when performing for the City of College Station under the above-referenced contract.

I understand if BH Harris Construction, LLC purchases, rents, or otherwise uses Business Autos or does anything to change its obligations under state law with respect to carrying Business Auto liability insurance when performing for the City, it will promptly do so and notify the City of same. BH Harris Construction, LLC assumes full responsibility for its obligations, if any, under applicable law relating to business auto liability insurance.

Name of Business: BH Harris Construction, LLC

Telephone No. 979-777-0828

Address: 4044 Golden Eagle Dr.

City: Bryan State: TX Zip Code: 77808

Signature of Owner:  Date: 12-08-2023

RETURN SIGNED FORM TO
City Of College Station

OR

FAX TO

EXHIBIT D
PLANS AND SPECIFICATIONS

CARTER CREEK WASTEWATER TREATMENT PLANT EQUIPMENT BUILDING REVISED BID SCHEDULE CITY OF COLLEGE STATION CITY PROJECT NO. WW1800004 & WW189610 QE JOB NO: C0008-0037-00 RFP (CSP) 24-009 10/26/2023							
				DUDLEY CONSTRUCTION		BH HARRIS	
General Construction							
ITEM NO.	QTY	UNIT	ITEM DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1	1	LS	General Overhead for all Work Including Mobilization, Bonds, Insurance, and Related Items	\$ 131,000.00	\$ 131,000.00	\$ 117,369.00	\$ 117,369.00
2	1	LS	Demolition and Removal of Existing Misc. Material on Site Including Culverts, Concrete Pavement, Asphalt Pavement, Tanks and Structures; Site Preparation including Clearing, Grubbing, and Disposing of Vegetation/Debris; Including Haul Off and Legal Disposal complete as specified for the sum of	\$ 6,200.00	\$ 6,200.00	\$ 12,100.00	\$ 12,100.00
3	1	LS	Construction of new pre-engineered metal shed, complete as specified for the sum of	\$ 411,000.00	\$ 411,000.00	\$ 284,103.00	\$ 284,103.00
4	1	LS	Storm Water Pollution Prevention Plan, complete as specified for the sum of	\$ 5,520.00	\$ 5,520.00	\$ 4,500.00	\$ 4,500.00
5	1	LS	Site Grading and Restoration, including Excavation and Embankment, complete as specified for the sum of	\$ 48,100.00	\$ 48,100.00	\$ 70,919.00	\$ 70,919.00
6	1031	SY	7" Min Thickness 3,500 PSI Reinforced Concrete Pavement	\$ 72.00	\$ 74,232.00	\$ 76.285	\$ 78,649.84
7	1136	SY	8" Min Thickness Lime Stabilized Subgrade	\$ 26.00	\$ 29,536.00	\$ 9.25	\$ 10,508.00
8	25.56	TON	Lime (45 lbs/SY)	\$ 250.00	\$ 6,390.00	\$ 325.00	\$ 8,307.00
9	50	SY	4" Thick Reinforced Concrete Riprap	\$ 68.00	\$ 3,400.00	\$ 50.00	\$ 2,500.00
10	48	LF	Saw Cut and Repair Existing Asphalt Pavement for Water, Sanitary, and Electrical Improvements	\$ 29.00	\$ 1,392.00	\$ 45.00	\$ 2,160.00
11	10	EA	Wheel Stops	\$ 199.00	\$ 1,990.00	\$ 70.00	\$ 700.00
12	4	EA	Gutter Splash Protection	\$ 99.00	\$ 396.00	\$ 250.00	\$ 1,000.00
13	1	LS	Gutters, complete as specified for the sum of	\$ 1,700.00	\$ 1,700.00	w/ Building	w/ Building
14	20	EA	Bollards	\$ 750.00	\$ 15,000.00	\$ 255.00	\$ 5,100.00
15	1	LS	Wash Bay Equipment, complete as specified for the sum of	\$ 10,400.00	\$ 10,400.00	\$ 7,474.00	\$ 7,474.00
16	1	LS	Trench Drain System	\$ 14,300.00	\$ 14,300.00	\$ 22,710.00	\$ 22,710.00
17	1	EA	Floor Drain	\$ 915.00	\$ 915.00	\$ 3,000.00	\$ 3,000.00
18	1	LS	Water Lines in Building, complete as specified for the sum of	\$ 9,900.00	\$ 9,900.00	\$ 20,000.00	\$ 20,000.00
19	3	EA	Hose Bibbs	\$ 295.00	\$ 885.00	\$ 5,000.00	\$ 15,000.00
20	1	LS	Air Compressor and Lines, complete as specified for the sum of	\$ 6,700.00	\$ 6,700.00	\$ 3,200.00	\$ 3,200.00
21	5	EA	Hose Reels	\$ 1,675.00	\$ 8,375.00	\$ 215.28	\$ 1,076.40

22	1	LS	Interior/Exterior LED Lighting, complete as specified for the sum of	\$ 15,732.00	\$ 15,732.00	\$ 13,403.00	\$ 13,403.00
23	1	LS	Building Receptacles, complete as specified for the sum of	\$ 771.00	\$ 771.00	\$ 657.00	\$ 657.00
24	1	LS	Above Ground Conduit, complete as specified for the sum of	\$ 29,400.00	\$ 29,400.00	\$ 35,960.00	\$ 35,960.00
25	1	EA	NEMA 4X Cabinet - 200A Breaker	\$ 3,900.00	\$ 3,900.00	\$ 3,294.00	\$ 3,294.00
26	1	LS	NEMA 4X Cabinet - 150A & 50A Breakers	\$ 7,200.00	\$ 7,200.00	\$ 6,115.00	\$ 6,115.00
27	1	EA	50 KVA Transformer	\$ 5,100.00	\$ 5,100.00	\$ 4,388.00	\$ 4,388.00
28	1	LS	15 KVA Transformer & Lighting Panel	\$ 9,825.00	\$ 9,825.00	\$ 8,370.00	\$ 8,370.00
29	1	EA	Floodlight	\$ 4,070.00	\$ 4,070.00	\$ 3,467.00	\$ 3,467.00
30	1	LS	Misc. Electrical Construction Allowance, complete as specified for the sum of	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
31	1	LS	Under Ground Electrical Conduit, Duct Bank, Wire, complete as specified for the sum of	\$ 58,700.00	\$ 58,700.00	\$ 59,236.00	\$ 59,236.00
32	1	LS	Connect to Existing Box and Extend Fiber Optic, complete as specified for the sum of	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
33	30	LF	12" C-76 Class III RCP Culvert	\$ 214.00	\$ 6,420.00	\$ 125.00	\$ 3,750.00
34	2	EA	12" 4:1 Concrete Sloped End Treatment	\$ 2,900.00	\$ 5,800.00	\$ 2,800.00	\$ 5,600.00
35	238	LF	1.5" PVC Non-Potable Water Piping	\$ 45.00	\$ 10,710.00	\$ 84.03	\$ 19,999.14
36	178	LF	3" 40 PVC Drain Piping through Building to Separator	\$ 79.00	\$ 14,062.00	\$ 55.00	\$ 9,790.00
37	57	LF	4" PVC Drain Piping from Separator to Sanitary Manhole	\$ 199.00	\$ 11,343.00	\$ 68.00	\$ 3,876.00
38	1	EA	Oil/Water Separator	\$ 11,300.00	\$ 11,300.00	\$ 14,000.00	\$ 14,000.00
39	1	EA	Connect to Existing Sanitary Sewer Manhole	\$ 2,100.00	\$ 2,100.00	\$ 5,000.00	\$ 5,000.00
40	1	EA	1.5"x2" PVC Tee	\$ 645.00	\$ 645.00	\$ 350.00	\$ 350.00
41	1	EA	1.5" PVC 22.5-Degree Bend	\$ 205.00	\$ 205.00	\$ 200.00	\$ 200.00
42	1	EA	1.5" PVC 90-Degree Bend	\$ 205.00	\$ 205.00	\$ 200.00	\$ 200.00
43	1	EA	1.5" Double Backflow Preventer with Insulated Enclosure	\$ 3,050.00	\$ 3,050.00	\$ 4,500.00	\$ 4,500.00
44	1	EA	1.5" Gate Valve and Box	\$ 410.00	\$ 410.00	\$ 650.00	\$ 650.00
45	113	CY	Cement Stabilized Sand (1.5 sacks/CY) over Waterline	\$ 172.00	\$ 19,436.00	\$ 107.00	\$ 12,091.00
46	1	LS	Relocate Existing Signs, complete as specified for the sum of	\$ 1,030.00	\$ 1,030.00	\$ 2,000.00	\$ 2,000.00
TOTAL					\$ 1,028,745.00		\$ 907,272.38

CALENDAR DAYS: Total number of calendar days to substantial completion is 240 days
Number of Addenda is Hereby Acknowledged
Award to Lowest Responsible bidder meeting specifications

2

2

February 8, 2024

Item No. 7.5.

Gilchrist Avenue Parking Removal (between Foster Avenue and Texas Avenue)

Sponsor: Randell Smith, Sr. Engineer

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," of the Code of Ordinances of the City of College Station, Texas, by removing parking on the north side of Gilchrist Avenue between Texas Avenue and Foster Avenue.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

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

Summary: The proposed ordinance removes parking from one side of Gilchrist Avenue between Foster Avenue and the driveway to City Hall. This side is the southern block surrounding City Hall and prohibiting parking will be consistent with both the Francis Drive side and the Foster Avenue side. Parking is already prohibited between the driveway and Texas Avenue.

Over the years, staff has received concerns from citizens regarding the parking on Gilchrist and the ability to see oncoming cars while exiting driveways and attempting to cross the street at the two-way stop at Foster. During the construction of the new City Hall, parking was temporarily removed from both sides of Gilchrist so that heavy trucks had the ability to turn in and out of the construction site. The temporary ordinance was only in effect for the duration of construction.

A public meeting was held on October 17, 2023 to discuss parking removal along Gilchrist Avenue. Notifications were sent to all residents along Gilchrist Avenue between Texas Avenue and Puryear Drive (Mabel Clare Thomas Park) and signs were placed in the area notifying the public of the meeting. Although the focus of the public meeting was the future construction of sidewalks along Gilchrist between Foster and Puryear and the associated parking removal to accommodate the proposed sidewalks, the one resident that attended actually lived between Foster Avenue and Texas Avenue and requested the parking prohibitions put in place during the City Hall construction remain in place.

Staff investigated the request and, due to the previous concerns from residents and the site distance issues at the intersection of Foster Avenue and Gilchrist, is recommending to permanently prohibit parking along the remaining portion of the north side (City Hall side) of Gilchrist Avenue between Foster Avenue and the driveway to City Hall, which is 190 feet.

Budget & Financial Summary: The "NO PARKING" signs have already been installed as part of the temporary ordinance and will remain in place. The signs that were placed on the opposite side of the street have been removed.

Attachments:

1. Ordinance - Gilchrist Avenue Parking Removal

2. Exhibit - Gilchrist Avenue Parking Removal

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 38, “TRAFFIC AND VEHICLES,” ARTICLE VI “TRAFFIC SCHEDULES,” SECTION 38-1014 “TRAFFIC SCHEDULE XIV, NO PARKING HERE TO CORNER AND NO PARKING AT ANY TIME,” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY REMOVING PARKING ON THE NORTH SIDE OF GILCHRIST AVENUE BETWEEN TEXAS AVENUE AND FOSTER AVENUE, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Chapter 38, “Traffic and Vehicles,” Article VI “Traffic Schedules,” Section 38-1014 “Traffic Schedule XIV, No Parking Here to Corner and No Parking at Any Time,” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance upon a finding of liability thereof shall be deemed liable for a civil offense and punished with a civil penalty of not less than one dollar (\$1.00) and not more than two thousand dollars (\$2,000.00) or upon conviction thereof guilty of a misdemeanor, shall be punished by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

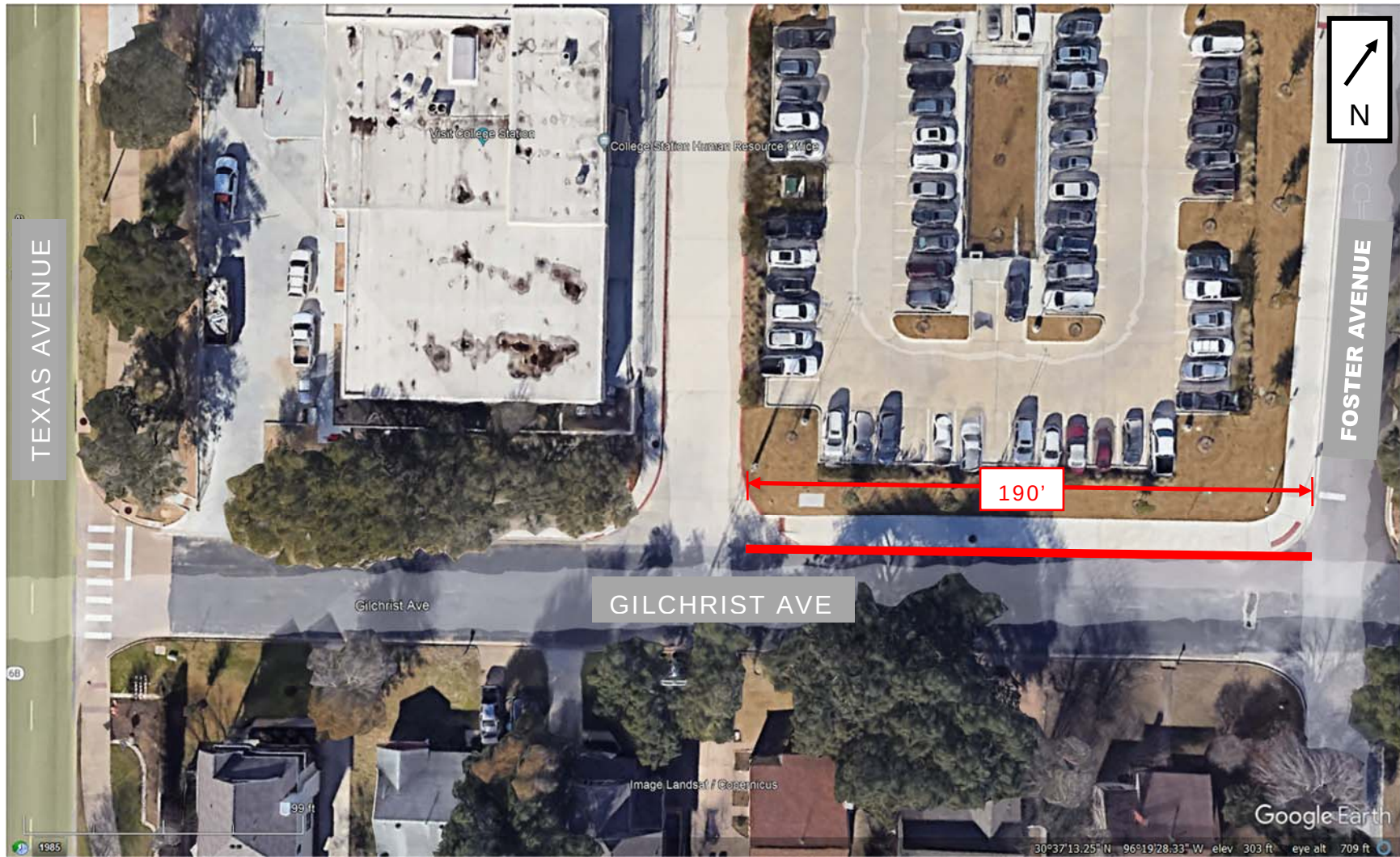
APPROVED:

City Attorney

Exhibit A

That Chapter 38, “Traffic and Vehicles,” Article VI. “Traffic Schedules”, Section 38-1014 “Traffic Schedule XIV, No Parking Here to Corner and No Parking at Any Time,” is hereby amended to reflect the following change:

<i>Traveling on</i>	<i>Between</i>	<i>Travel Direction</i>	
Gilchrist Avenue	Texas Ave and Foster Ave	West	No parking from here to corner and no parking anytime.



 NO PARKING

GILCHRIST AVENUE NO PARKING EXHIBIT
FOR 190 FEET SOUTHWEST OF FOSTER AVENUE

February 8, 2024
Item No. 7.6.
Annual Price Agreement for Cement Treated Base

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an annual price agreement with Brazos Paving, Inc. for Cement Treated Base and Type D Grade 1 Cement Treated (4%) Recycled Crushed Concrete Base, not to exceed \$835,000.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Transportation

Recommendation(s): Staff recommends awarding the annual price agreement to Brazos Paving, Inc.

Summary: One bid was received in response to ITB 24-020 on January 4, 2024. Staff recommends awarding the total annual estimated purchase of Cement Treated Base and Type D Grade 1 Cement Treated (4%) Recycled Crushed Concrete Base to Brazos Paving, Inc. as the lowest responsible bidder. This price agreement is for (1) year and may be renewed for up to two (2) additional one (1) year terms, for a possible total of three (3) years.

Budget & Financial Summary: Funds are available in the Roadway Maintenance Fund.

Attachments:

1. Tabulation
2. Supplier Response (Brazos Paving, Inc.)

ITB # 24-020
ANNUAL PRICE AGREEMENT FOR
CEMENT STABILIZED ROCK

				Brazos Paving, Inc.	
Line #	Description	QTY	UOM	Unit	Extended
1	TYPE A Cement Treated Base (4%) FOB: To be Picked up by City CrewsType A material must meet the requirements in Item 247, TXDOT Specifications.	2000	TON	<u>\$46.00</u>	\$92,000.00
2	TYPE A Cement Treated Base (4%)FOB:To be Delivered to job site as requested.Type A material must meet the requirements in Item 247, TXDOT Specifications.	2000	TON	<u>\$53.50</u>	\$107,000.00
3	Type D Grade 1 Cement Treated (4%) Recycled Crushed Concrete BaseFOB: To be Picked up by City Crews Crushed concrete containing gravel will be considered Type D materialThis product must meet the requirements 2014 TXDOT Specifications.	8000	TON	<u>\$36.00</u>	\$288,000.00
4	Type D Grade 1 Cement Treated (4%) Recycled Crushed Concrete BaseFOB: To be Delivered to job site as requested.Crushed concrete containing gravel will be considered Type D materialThis product must meet the requirements 2014 TXDOT Specifications.	8000	TON	<u>\$43.50</u>	\$348,000.00
				Total Price	\$835,000.00



24-020

Brazos Paving, Inc.

Prewitt

Supplier Response

Event Information

Number: 24-020
Title: Annual Price Agreement for Cement Treated Base
Type: COCS - Invitation to Bid - Electronic
Issue Date: 12/6/2023
Deadline: 1/4/2024 02:00 PM (CT)
Notes: Bids are solicited for the "**Annual Purchase Agreement of Cement Treated Base**" with the following definitions, term and conditions of bidding.

Brazos Paving, Inc. Information

Contact: Billy Prewitt
Address: PO Box 714
7601 W. Hwy 21
Bryan, TX 77806
Phone: (979) 822-7605 x109
Fax: (979) 823-2659
Email: b.prewitt@bpitx.com
Web Address: bpitx.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Billy Prewitt

Signature

b.prewitt@bpitx.com

Email

Submitted at 1/2/2024 02:58:44 PM (CT)

Requested Attachments

Submit Response

only one PDF file

24-020 APA Cement Stab Rock-
BPI Materials Bid.pdf

Bid Lines

1 TYPE A Cement Treated Base (4%) FOB: To be Picked up by City Crews

Type A material must meet the requirements in Item 247, TXDOT Specifications.

Quantity: 2000 UOM: TON Price: \$46.00 Total: \$92,000.00

2 TYPE A Cement Treated Base (4%) FOB: To be Delivered to job site as requested.

Type A material must meet the requirements in Item 247, TXDOT Specifications.

Quantity: 2000 UOM: TON Price: \$53.50 Total: \$107,000.00

3 Type D Grade 1 Cement Treated (4%) Recycled Crushed Concrete Base FOB: To be Picked up by City Crews

Crushed concrete containing gravel will be considered Type D material
This product must meet the requirements 2014 TXDOT Specifications.

Quantity: 8000 UOM: TON Price: \$36.00 Total: \$288,000.00

4 Type D Grade 1 Cement Treated (4%) Recycled Crushed Concrete Base
FOB: To be Delivered to job site as requested.

Crushed concrete containing gravel will be considered Type D material
This product must meet the requirements 2014 TXDOT Specifications.

Quantity: 8000 UOM: TON Price: Total:

Response Total: \$835,000.00

February 8, 2024

Item No. 7.7.

Well #1, #2, and #3 Motor Control Center (MCC) Replacement

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with C.F. McDonald Electric, Inc. for the Well #1, #2, and #3 motor control centers replacement project for \$1,329,469; plus the City's contingency amount of \$132,947; for a total appropriation of \$1,462,416. 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: The City of College Station owns and operates a well field that consists of ten (10) groundwater wells. Each wellsite includes City-owned motor control centers (MCCs), or large electrical devices that are used to regulate and monitor the operation of each water well. The existing MCCs at Wells #1, #2, and #3 are at the end of their useful service lives and require replacement to maintain reliability.

This project consists of replacing the existing MCCs at Wells #1, #2, and #3 with new electrical distribution panel racks. Each electrical distribution panel rack will include necessary replacement equipment, a new concrete pad, canopy, and conduit duct banks.

Budget & Financial Summary: A budget of \$1,700,000 is included for this project in the Water Capital Improvement Projects Fund. A total of \$77,565 has been expended or committed to date, leaving a balance of \$1,622,435 for this contract and future expenses.

Attachments:

1. Contract #24300243

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300243 PROJECT #: WA1800005 BID/RFP/RFQ#: 24-013

Project Name / Contract Description: Wells 1 thru 3 Motor Control Center (MCC) Replacement

Name of Contractor: McDonald Electric, Inc.

CONTRACT TOTAL VALUE: \$ 1,329,469.00 **Grant Funded** Yes ☐ No ☒

If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☒ N/A

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

Section 3 Plan Incl. ☐ Yes ☐ No ☐ N/A

Buy America Required ☐ Yes ☐ No ☐ N/A

Transparency Report ☐ Yes ☐ No ☐ N/A

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

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

A budget of \$1,700,000 is included for this project in the Water Capital Improvement Projects Fund. \$46,000 has been expended to date, leaving a balance of \$1,654,000 for this contract and future expenses.

A 10% contingency amount of \$132,947.00.

(If required)*

CRC Approval Date*: _____ Council Approval Date*: 01/11/24 Agenda Item No*: _____

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

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

SIGNATURES RECOMMENDING APPROVAL

Gary Mechler
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

1/5/2024
DATE


ASST CITY MGR – CFO

1/9/2024

DATE

John R. Haislet
LEGAL DEPARTMENT

1/9/2024

DATE

APPROVED & EXECUTED

CITY MANAGER _____

DATE _____

N/A

MAYOR (if applicable)

DATE _____

N/A

CITY SECRETARY (if applicable)

DATE _____

9.12.23 UPDATED

**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 C.F. MCDONALD ELECTRIC, INC. (the "Contractor") for the construction and/or installation of the following:
AS DESCRIBED IN ITB 24-013 Wells 1 thru 3 Motor Control Center (MCC) Replacement.

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: One Hundred Thirty-Two Thousand Nine Hundred Forty-Seven and NO /100 Dollars (\$ 132,947.00).

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: One Million Three Hundred Twenty-Nine Four Hundred Sixty-Nine and NO /100 Dollars (\$ 1,329,469.00).

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.

16.12 Virtual Payment Method. For increased payment and financial information security, the Contractor must use the City's approved virtual payment card system or digital payment system for all payments, storing, and modifications of financial information used for City payments to the Contractor. Any related reasonable fees paid by the Contractor for use of the virtual payment card system or digital payment system may be passed through to the City.

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 Hundred and NO /100 DOLLARS (\$ 200.00) 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.

46.17 Fraud Reporting. To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at VendorInvoiceEntry@cstx.gov if the Contractor reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

List of Exhibits

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

C.F. MCDONALD ELECTRIC, INC.

By: Wayne Berkenmeier

Printed Name: Wayne Berkenmeier

Title: VP Special Projects

Date: 1/3/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

John R. Haislet

City Attorney

Date: 1/9/2024

Jim Carter

Assistant City Manager/CFO

Date: 1/9/2024

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, McLennan 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. 100294378

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, C.F. McDonald Electric, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto Merchants Bonding Company (Mutual), 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 One Million Three Hundred Twenty-Nine Thousand Four Hundred Sixty-Nine and NO /100 Dollars (\$ 1,329,469.00) 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 ITB 24-013 Wells 1 thru 3 Motor Control Center (MCC) 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.

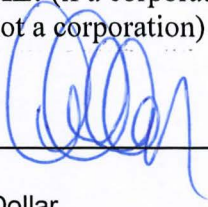
IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

Bond No. 100294378

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: 

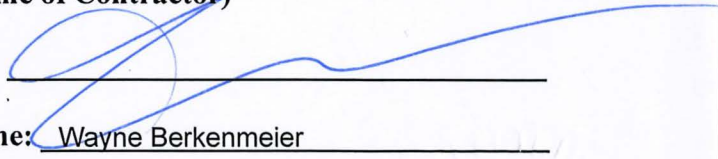
Name: Diane Dollar

Title: Secretary/Treasurer

Date: January 11, 2024

C.F. McDonald Electric, Inc.

(Name of Contractor)

By: 

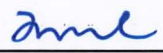
Name: Wayne Berkenmeier

Title: Vice President Special Projects

Date: January 11, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: 

Name: Todd Mohr

Title: Witness

Date: January 11, 2024

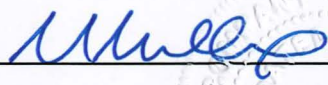
Merchants Bonding Company (Mutual)

(Full Name of Surety)

PO Box 14498

Des Moines, IA 50306-3498

(Address of Surety for Notice)

By: 

Name: Michael Maddux

Title: Attorney-in-Fact

Date: January 11, 2024

FOR THE CITY:

REVIEWED:

John A. Haislet 1/9/2024
City Attorney

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

City Manager

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

MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

C Tyler Smith; Chris Kolkhorst; Denise Raker; James R Reid; Michael Maddux; Ryan K Moss; Sandra Villegas; Stacie Clark

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

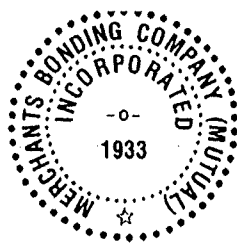
"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 10th day of March, 2023.



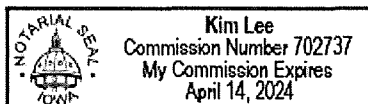
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 10th day of March, 2023, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

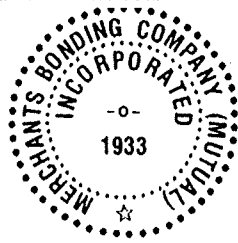


Kim Lee
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____, 2023.



William Warner Jr.
Secretary



MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.
P.O. BOX 14498 • DES MOINES, IOWA 50306-3498 • (800) 678-8171 • (515) 243-3854 FAX

Please send all notices of claim on this bond to:

Merchants Bonding Company (Mutual) / Merchants National Bonding, Inc.

P.O. Box 14498

Des Moines, Iowa 50306-3498

(515) 243-8171

(800) 678-8171

Physical Address: 6700 Westown Parkway, West Des Moines, Iowa 50266



MERCHANTS BONDING COMPANY (MUTUAL) P.O. BOX 14498, DES MOINES, IOWA 50306-3498
PHONE: (800) 678-8171 FAX: (515) 243-3854

IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your insurance agent at the telephone number provided by your insurance agent.

You may call Merchants Bonding Company (Mutual) toll-free telephone number for information or to make a complaint at:

1-800-678-8171

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 at:

P. O. Box 149104

Austin, TX 78714-9104

Fax: (512) 490-1007

Web: www.tdi.texas.gov

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM AND CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the agent 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.

TEXAS STATUTORY PAYMENT BOND

Bond No. 100294378

THE STATE OF TEXAS

§

THE COUNTY OF BRAZOS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, C.F. McDonald Electric, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto Merchants Bonding Company (Mutual), a corporation organized and existing under the laws of the State of IOWA, 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 One Million Three Hundred Twenty-Nine Thousand Four Hundred Sixty-Nine and NO /100 Dollars (\$ 1,329,469.00) 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 11th day of January, 2024, for AS DESCRIBED IN ITB 24-013 Wells 1 thru 3 Motor Control Center (MCC) 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.

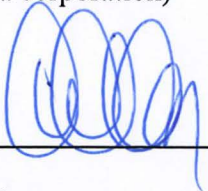
IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

Bond No. 100294378

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: 

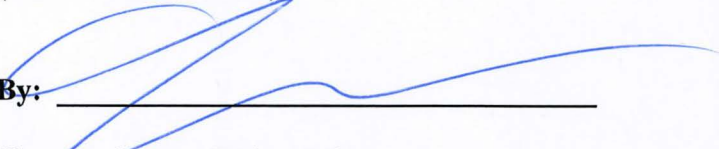
Name: Diane Dollar

Title: Secretary/Treasurer

Date: January 11, 2024

C.F. McDonald Electric, Inc.

(Name of Contractor)

By: 

Name: Wayne Berkenmeier

Title: Vice President Special Projects

Date: January 11, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: 

Name: Todd Mohr

Title: Witness

Date: January 11, 2024

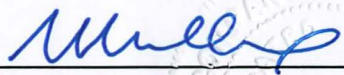
Merchants Bonding Company (Mutual)

(Full Name of Surety)

PO Box 14498

Des Moines, IA 50306-3498

(Address of Surety for Notice)

By: 

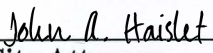
Name: Michael Maddux

Title: Attorney-in-Fact

Date: January 11, 2024

FOR THE CITY:

REVIEWED:

 1/9/2024
City Attorney

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

City Manager

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

MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

C Tyler Smith; Chris Kolkhorst; Denise Raker; James R Reid; Michael Maddux; Ryan K Moss; Sandra Villegas; Stacie Clark

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

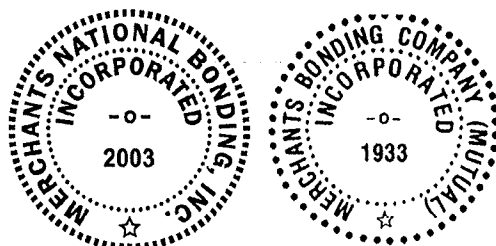
"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 10th day of March, 2023.



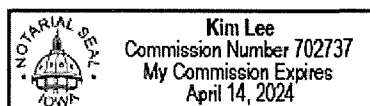
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 10th day of March, 2023, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

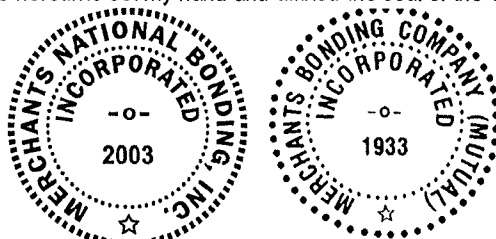


Kim Lee
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____, 2023.



William Warner Jr.
Secretary



MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.
P.O. BOX 14498 • DES MOINES, IOWA 50306-3498 • (800) 678-8171 • (515) 243-3854 FAX

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1-800-252-3439

You may write the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

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ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/6/2023

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 Higginbotham Insurance Agency, Inc. 11700 Katy Freeway, Suite 1100 Houston TX 77079	CONTACT NAME: Ashley Enrique	
	PHONE (A/C, No, Ext): 817-349-2279 FAX (A/C, No): 817-347-6981	
	E-MAIL ADDRESS: aenrique@higginbotham.net	
INSURED McDonald Municipal & Industrial, a Div. of C.F. McDonald Electric, Inc. 5044 Timber Creek Dr. Houston TX 77017-595	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: United Fire & Casualty Co.	13021
	INSURER B: The Travelers Property Casualty Company Of	25674
	INSURER C: Texas Mutual Insurance Company	22945
	INSURER D: Houston Casualty Company	42374
	INSURER E: Westchester Surplus Lines Ins Co	10172
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 529430678

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 ☒ \$1000 Deductible GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:			85318281	4/1/2023	4/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 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			85318281	4/1/2023	4/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			CUP2T41569323NF	4/1/2023	4/1/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 PR/CO Ops Agg \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	0001303563	4/1/2023	4/1/2024	☒ 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 E D	L/R Equipment / Instal. Floater Pollution Liability Professional Liability			46308377 G27577313009 HCC 23 68946	4/1/2023 4/1/2023 4/1/2023	4/1/2024 4/1/2024 4/1/2024	*See Below *See Below *See Below

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

Coverages:
Crime Policy Number: 105917903: Policy Term: 4/01/2023-04/01/2024 Single Loss Limit - \$750,000; \$5,000 Single Loss Retention
Leased/Rented Equipment Policy Number: 46308377: \$200,000 Per Item Limit; \$1,000 Deductible
Pollution Liability Policy Number: G27577313009: \$10,000,000 Each Pollution Condition; \$5,000 Deductible
Professional Liability Policy Number: HCC2368946: \$1,000,000 Each Claim; \$1,000,000 Total of All Claims; \$15,000 Deductible Per Claim

See Attached...

CERTIFICATE HOLDER

CANCELLATION

City of College Station
1101 Texas Ave S
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

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Higginbotham Insurance Agency, Inc.		NAMED INSURED McDonald Municipal & Industrial, a Div. of C.F. McDonald Electric, Inc. 5044 Timber Creek Dr. Houston TX 77017-595
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

The General Liability policy includes a blanket additional insured endorsement that provides additional insured status to the certificate holder only when there is a written insured contract between the insured and certificate holder that requires such status.

The General Liability policy includes a blanket waiver of subrogation endorsement that provides this feature only when there is a written contract between the insured and the certificate holder that requires it.

The General Liability policy includes a primary and non-contributory provision only when there is a written contract between the insured and the certificate holder that requires such provision.

The General Liability policy includes a blanket endorsement providing 30 days' notice of cancellation that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it, except 10 days of nonpayment of premium.

The General Liability policy includes a blanket additional insured endorsement, which includes Completed Operations and Ongoing Operations, that provides additional insured status to the certificate holder only when there is a written insured contract between the insured and certificate holder that requires such status.

The General Liability policy includes Contractual Liability.

The Commercial Automobile policy includes a blanket additional insured endorsement that provides additional insured status to the certificate holder only when there is a written insured contract between the insured and certificate holder that requires such status.

The Commercial Automobile policy includes a blanket waiver of subrogation endorsement that provides this feature only when there is a written contract between the insured and the certificate holder that requires it.

The Commercial Automobile policy includes a primary and non-contributory provision only when there is a written contract between the insured and the certificate holder that requires such provision.

The Commercial Automobile policy includes a blanket endorsement providing 30 days' notice of cancellation that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it, except 10 days of nonpayment of premium.

The Umbrella Liability policy is follow form on the General Liability, Automobile Liability and Employers' Liability policies.

The Umbrella Liability policy includes a blanket endorsement providing 30 days' notice of cancellation that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it, except 10 days of nonpayment of premium.

The Workers Compensation policy includes a blanket waiver of subrogation endorsement that provides this feature only when there is a written contract between the insured and the certificate holder that requires it.

The Workers Compensation policy includes a blanket endorsement providing 30 days' notice of cancellation that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it, except 10 days of nonpayment of premium.

The Workers Compensation policy includes a United States Longshore and Harbor Workers' Compensation Act Coverage Endorsement.

The Workers Compensation policy includes a Texas Maritime Coverage Endorsement.

The Contractors Pollution Liability policy includes a blanket additional insured endorsement that provides additional insured status to the certificate holder only when there is a written insured contract between the insured and certificate holder that requires such status.

The Contractors Pollution Liability policy includes a blanket additional insured endorsement, which shall be primary and non-contributory only when there is a written contract between the insured and the certificate holder that requires such provision.

The Contractors Pollution Liability policy includes a blanket additional insured endorsement, which includes Products- Completed Operations Hazard that provides additional insured status to the certificate holder only when there is a written insured contract between the insured and certificate holder that requires such status.

The Contractors Pollution policy includes a includes a blanket waiver of subrogation endorsement that provides this feature only when there is a written contract between the insured and the certificate holder that requires it.

RE: Wells 1 thru 3 Motor Control Center (MCC) Replacement; Bid Number 24-013, Project No. WA1800005

EXHIBIT D
PLANS AND SPECIFICATIONS

All Documents posted as separate documents on Brazosbid.onwave.net

EXHIBIT E
CONSTRUCTION SCHEDULE

EXHIBIT F
SCHEDULE OF VALUES

**CONTRACTOR'S PROPOSAL
AND
ALTERNATES (if applicable)**

**BID SUMMARY
BID NO. 24-013**

Date: 12/12/23
McDonald Municipal and Industrial - A Division
PROPOSAL FROM: of C. F. McDonald Electric, Inc.

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/rehabilitation of the Wells 1 thru 3 Motor Control Center (MCC) Replacement and to perform the work required for the construction/rehabilitation of said Wells 1 thru 3 Motor Control Center (MCC) Replacement 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: (\$ 1,296,469.00)

Base Bid + Alternate: (\$ 1,329,469.00)

CALENDAR DAYS: Total number of calendar days to substantial completion is 600 days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: None

McDonald Municipal and Industrial - A Division
of C. F. McDonald Electric, Inc.
CONTRACTOR NAME: _____

CONTRACTOR SIGNATURE: _____
Wayne Berkenmeier

City of College Station
 Bid No. 24-013 Wells 1 thru 3 Motor Control Center Replace
 Bid Opening; Tuesday, December 12, 2023 at 2:00PM CT

The Undersigned proposes to furnish all labor, services, materials, tools, and necessary equipment for the Wells 1 through 3 Motor Control Center (MCC) Replacement, and to perform the work required for the annual price agreement for sample testing as set out by the 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.

Item No.	Quantity	Unit	Item Description	Unit Price	Total
GENERAL					
1	1	LS	Move-in and start-up, including performance and payment bonds for 100 percent (100%) of the contract amount and all necessary permits and insurance requirements.	\$ 50,000.00	\$ 50,000.00
Water Well No. 1					
2	1	LS	Demolish and remove the existing Water Well No. 1 electrical service, Motor Control Center, SCADA shack, Antenna Tower, and remaining equipment complete as specified and as shown on Construction Drawings.	\$ 10,000.00	\$ 10,000.00
3	1	LS	Install proposed Water Well No. 1 electrical service, Motor Control Center, Autosensory Panel, SSRV Enclosure, pull boxes, floodlight poles, and remaining electrical work complete as specified and as shown on Construction Drawings.	\$ 341,000.00	\$ 341,000.00
4	1	LS	Install proposed Water Well No. 1 canopy structure complete as specified and as shown on Construction Drawings.	\$ 50,000.00	\$ 50,000.00
5	1	LS	Allowance for electric utility charge to relocate and install new overhead service for Water Well No. 1. Exact amount will be reimbursed to Contractor upon submittal of invoice from Utility Service Provider.	\$ 15,000.00	\$ 15,000.00
6	1	LS	Allowance for coordination and Arc Flash Hazard Analysis per Section 16015, completed by Baird Gilroy & Dixon, LLC.	\$ 5,000.00	\$ 5,000.00
Water Well No. 2					
6	1	LS	Demolish and remove the existing Water Well No. 2 electrical service, Motor Control Center, SCADA shack, Antenna Tower, and remaining equipment complete as specified and as shown on Construction Drawings.	\$ 10,000.00	\$ 10,000.00
7	1	LS	Install proposed Water Well No. 2 electrical service, Motor Control Center, Autosensory Panel, SSRV Enclosure, pull boxes, floodlight poles, and remaining electrical work complete as specified and as shown on Construction Drawings.	\$ 341,000.00	\$ 341,000.00
8	1	LS	Install proposed Water Well No. 2 canopy structure complete as specified and as shown on Construction Drawings.	\$ 50,000.00	\$ 50,000.00
9	1	LS	Allowance for electric utility charge to relocate and install new overhead service for Water Well No. 2. Exact amount will be reimbursed to Contractor upon submittal of invoice from Utility Service Provider.	\$ 15,000.00	\$ 15,000.00
10	1	LS	Allowance for coordination and Arc Flash Hazard Analysis per Section 16015, completed by Baird Gilroy & Dixon, LLC.	\$ 5,000.00	\$ 5,000.00
Water Well No. 3					
11	1	LS	Demolish and remove the existing Water Well No. 3 electrical service, Motor Control Center, SCADA shack, and remaining equipment complete as specified and as shown on Construction Drawings.	\$ 10,000.00	\$ 10,000.00
12	1	LS	Install proposed Water Well No. 3 electrical service, Motor Control Center, Autosensory Panel, SSRV Enclosure, pull boxes, floodlight poles, and remaining electrical work complete as specified and as shown on Construction Drawings.	\$ 339,469.00	\$ 339,469.00
13	1	LS	Install proposed Water Well No. 3 canopy structure complete as specified and as shown on Construction Drawings.	\$ 50,000.00	\$ 50,000.00
14	1	LS	Allowance for coordination and Arc Flash Hazard Analysis per Section 16015, completed by Baird Gilroy & Dixon, LLC.	\$ 5,000.00	\$ 5,000.00

Total Base Bid \$ **1,296,469.00**

Alternate

Item No.	Quantity	Unit	Item Description	Unit Price	Total
GENERAL					
1	1	LS	Provide spare 600 HP Eaton S811 SSRV loose to Owner	\$ 33,000.00	\$ 33,000.00

Total Base Bid +Alternate \$ **1,329,469.00**

Total Number of Calendar Days to Substantial Completion 600 days

February 8, 2024

Item No. 7.8.

Rehabilitation of Water Well #5 & Carrizo Water Well #1

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Weisinger, Inc. for the Well #5 and Carrizo Well #1 Rehabilitation project for \$1,457,830; plus the City's contingency amount of \$142,170; for a total appropriation of \$1,600,000. 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: The City of College Station owns and operates a well field that consists of ten (10) groundwater wells. As part of the Water Services Department's asset management program, City-owned wells are rehabilitated on a recurring basis to improve production, reliability, and efficiency. Well rehabilitation generally includes the cleaning of well screens, replacing/lowering pumping equipment, and other necessary improvements.

This contract includes the rehabilitation of City-owned Water Well #5 and the Carrizo Water Well #1. Alternative bid items 11-A, 12-A, 15-A, 16-A, 21-A, 22-A, 24-A, and 25-A are included in addition to the base bid.

Budget & Financial Summary: Budget in the amount of \$2,960,000 is included for this project in the Water Capital Improvement Projects Fund. A total of \$1,352,709 has been expended or committed to date, leaving a balance of \$1,607,291 for this contract and future expenses.

Attachments:

1. Contract #24300289



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300289 PROJECT #: WA1877982 BID/RFP/RFQ#: 24-010

Project Name / Contract Description: Rehabilitation of Water Well No. 5 and Carrizo

Name of Contractor: Weisinger Inc.

CONTRACT TOTAL VALUE: \$ 1,457,830.00 Grant Funded Yes ☐ No ☒

If yes, what is the grant number:

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

Section 3 Plan Incl. ☐ Yes ☐ No ☐ N/A Buy America Required ☐ Yes ☐ No ☐ N/A

Transparency Report ☐ Yes ☐ No ☐ N/A

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

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

Budget in the amount of \$2,960,000 is included for this project in the Water Capital Improvement Projects Fun. A total of \$1,352,709 has been expended or committed to date, leaving a balance of \$1,607,291 for this contract and future expenses.

(If required)*

CRC Approval Date*: N/A Council Approval Date*: 2/8/2024 Agenda Item No*:

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

Insurance Certificates: DDV Performance Bond: BW Payment Bond: BW Info Tech: N/A

SIGNATURES RECOMMENDING APPROVAL

Alan Gibbs 1/26/2024
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

Jim Eiste 1/26/2024
ASST CITY MGR – CFO DATE

John D. Haislet 1/26/2024
LEGAL DEPARTMENT DATE

APPROVED & EXECUTED

CITY MANAGER DATE

N/A
MAYOR (if applicable) DATE

N/A
CITY SECRETARY (if applicable) DATE

**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 WEISINGER INC. (the "Contractor") for the construction and/or installation of the following:
as described in ITB 24-010, to include base bid + 11A, 12A, 15A, 16A, 21A, 22A, 24A and 25A .

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: One Hundred Forty-two Thousand One Hundred Seventy and NO /100 Dollars (\$ 142,170.00).

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: One Million Four Hundred Fifty-Seven Thousand Eight Hundred Thirty and NO /100 Dollars (\$ 1,457,830.00).

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.

16.12 Virtual Payment Method. For increased payment and financial information security, the Contractor must use the City's approved virtual payment card system or digital payment system for all payments, storing, and modifications of financial information used for City payments to the Contractor. Any related reasonable fees paid by the Contractor for use of the virtual payment card system or digital payment system may be passed through to the City.

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 One Thousand and NO **/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.

46.17 Fraud Reporting. To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at VendorInvoiceEntry@cstx.gov if the Contractor reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

List of Exhibits

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

WEISINGER, INC

By: Michael Weisinger

Printed Name: Michael weisinger

Title: vice President

Date: 1/26/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

John R. Haislet

City Attorney

Date: 1/26/2024

Jim Carter

Assistant City Manager/CFO

Date: 1/26/2024

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, McClennon 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 <http://www.dol.gov/whd/govcontracts>.

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. S04-20-61

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Weisiniger Incorporated, as Principal, hereinafter called "Contractor" and the other subscriber hereto EMPLOYERS MUTUAL CASUALTY COMPANY UNION INSURANCE COMPANY OF PROVIDENCE, 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 One Million Four Hundred Fifty-Seven Thousand Eight Hundred Thirty and no /100 Dollars (\$ 1,457,830.00) 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 ITB 24-010, to include base bid + 11A, 12A, 15A, 16A, 21A, 22A, 24A and 25A,
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

Contract No. 24300289
Construction Agreement Over \$50,000
Form 04-20-2023

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.

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation

4. Illinois EMCASCO Insurance Company, an Iowa Corporation
5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

JOHN A PRINCE

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond(s):

Surety Bond Principal:
Number Weisinger Incorporated

S042061

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

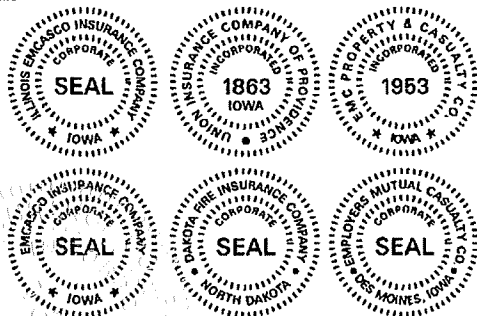
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



Scott R. Jean
Scott R. Jean, President & CEO
of Company 1; Chairman, President
& CEO of Companies 2, 3, 4, 5 & 6

Todd Strother
Todd Strother, Executive Vice President
Chief Legal Officer & Secretary of
Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

Kathy Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 8th day of February, 2024.

Ryan J. Springer
Vice President

TEXAS STATUTORY PAYMENT BOND

Bond No. S04-20-61

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Weisiniger Incorporated, as Principal, hereinafter called "Principal" and the other subscriber hereto EMPLOYERS MUTUAL CASUALTY COMPANY UNION INSURANCE COMPANY OF PROVIDENCE, a corporation organized and existing under the laws of the State of Iowa, 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 One Million Four Hundred Fifty-Seven Thousand Eight Hundred Thirty and no /100 Dollars (\$1,457,830.00) 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 8th day of February, 2024, for as described in ITB 24-010, to include base bid + 11A, 12A, 15A, 16A, 21A, 22A, 24A and 25A, 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.

Contract No. 24300289
Construction Agreement Over \$50,000
Form 04-20-2023

Bond No. S04-20-61

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: [Signature]

Name: Camille Weisinger

Title: Secretary/Treasurer

Date: February 8, 2024

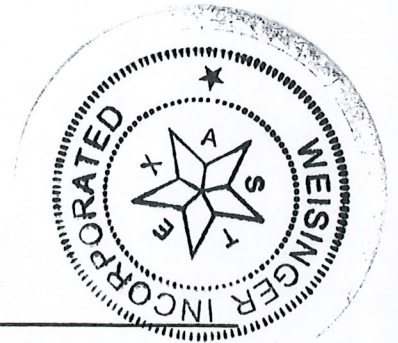
WEISINGER, INC

By: [Signature]

Name: Michael Weisinger

Title: Vice President

Date: February 8, 2024



FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: [Signature]

Name: Michael P. Berry

Title: Witness

Date: February 8, 2024

EMPLOYERS MUTUAL CASUALTY COMPANY
UNION INSURANCE COMPANY OF PROVIDENCE

(Full Name of Surety)

P.O. Box 712 Des Moines, Iowa 50306-0712

(Address of Surety for Notice)

By: [Signature]

Name: John A. Prince

Title: Attorney-in-Fact

Date: February 8, 2024

FOR THE CITY:

REVIEWED:

John A. Haidet 1/26/2024
City Attorney

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

City Manager

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

Contract No. 24300289
Construction Agreement Over \$50,000
Form 04-20-2023

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation

4. Illinois EMCASCO Insurance Company, an Iowa Corporation
5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

JOHN A PRINCE

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond(s):

Surety Bond Principal:
Number Welsinger Incorporated

S042061

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

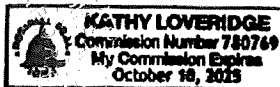
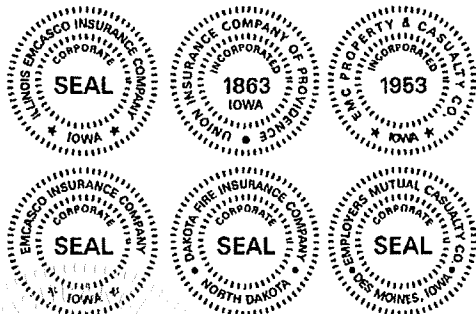
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



Scott R. Jean
Scott R. Jean, President & CEO
of Company 1; Chairman, President
& CEO of Companies 2, 3, 4, 5 & 6

Todd Strother
Todd Strother, Executive Vice President
Chief Legal Officer & Secretary of
Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

Kathy Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 8th day of February, 2024.

Ryan J. Springer
Vice President



IMPORTANT NOTICE

To obtain information or to make a complaint:

You may call EMC Insurance Companies' toll free telephone number for information or to make a complaint at:

1-800-223-0562

You may also write to EMC Insurance Companies at:
P.O. Box 1739
Wichita, KS 67201-1739

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, Texas 78714-9104
FAX: (512) 490-1007
Web: 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 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 información o para presentar una queja:

Usted puede llamar al número de teléfono gratuito de EMC Insurance Companies' para obtener información o para presentar una queja al:

1-800-223-0562

Usted también puede escribir a EMC Insurance Companies:

P.O. Box 1739
Wichita, KS 67201-1739

Usted puede comunicarse con el Departamento de Seguros de Texas para obtener información sobre compañías, coberturas, derechos, o quejas al:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a:

P.O. Box 149104
Austin, Texas 78714-9104
FAX: (512) 490-1007
Sitio web: www.tdi.texas.gov
E-Mail: ConsumerProtection@tdi.texas.gov

DISPUTAS POR PRIMAS DE SEGUROS O RECLAMACIONES:

Si tiene una disputa relacionada con su prima de seguro o con una reclamación, debe comunicarse con el agente primero. Si la disputa no es resuelta, usted puede comunicarse con el Departamento de Seguros de Texas.

ADJUNTE ESTE AVISO A SU PÓLIZA:

Este aviso es solamente para propósitos informativos y no se convierte en parte o en condición del documento adjunto.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/17/2024

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 Adams Risk Management Services, LLC Adams Insurance Service, Inc. 427 W. 20th Street, Suite 500 Houston TX 77008	CONTACT NAME: Blanche Cunningham PHONE (A/C, No, Ext): 713-869-8346 E-MAIL ADDRESS: bcunningham@adamsins.com FAX (A/C, No): 713-869-9144												
INSURED Weisinger, Inc. PO Box 909 Willis TX 77378	INSURER(S) AFFORDING COVERAGE <table><tr><td>INSURER A: EMCASCO Insurance Company</td><td>NAIC # 21407</td></tr><tr><td>INSURER B: Employers Mutual Casualty Company</td><td>21415</td></tr><tr><td>INSURER C: Union Insurance Company of Providence</td><td>21423</td></tr><tr><td>INSURER D: Bridgefield Casualty Insurance Company</td><td>10335</td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER A: EMCASCO Insurance Company	NAIC # 21407	INSURER B: Employers Mutual Casualty Company	21415	INSURER C: Union Insurance Company of Providence	21423	INSURER D: Bridgefield Casualty Insurance Company	10335	INSURER E:		INSURER F:	
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INSURER B: Employers Mutual Casualty Company	21415												
INSURER C: Union Insurance Company of Providence	21423												
INSURER D: Bridgefield Casualty Insurance Company	10335												
INSURER E:													
INSURER F:													

COVERAGES**CERTIFICATE NUMBER:** 2125382490**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 INSP	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	6D57369	6/30/2023	6/30/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 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 ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	Y	Y	6E57369	6/30/2023	6/30/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000	Y	Y	6J57369	6/30/2023	6/30/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	0196-53218	6/30/2023	6/30/2024	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

INSTALLATION FLOATER Policy Number: 6C57369
Employers Mutual Casualty Company - Policy Dates: 06/30/2023 to 06/30/2024
Policy Limits: \$500,000 Per Jobsite

THE GENERAL LIABILITY & AUTOMOBILE LIABILITY POLICIES INCLUDE A BLANKET AUTOMATIC ADDITIONAL INSURED ENDORSEMENT & THE GENERAL LIABILITY, AUTOMOBILE LIABILITY & WORKERS COMPENSATION POLICIES INCLUDE A BLANKET WAIVER OF SUBROGATION ENDORSEMENT THAT PROVIDES ADDITIONAL INSURED STATUS & WAIVER OF SUBROGATION STATUS TO THE CERTIFICATE HOLDER ONLY WHEN THERE IS A WRITTEN CONTRACT BETWEEN THE NAMED INSURED & THE CERTIFICATE HOLDER THAT REQUIRES SUCH STATUS AS PER See Attached...

CERTIFICATE HOLDER**CANCELLATION**

CITY OF COLLEGE STATION 1101 TEXAS AVENUE COLLEGE STATION TX 77840 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Adams Risk Management Services, LLC		NAMED INSURED Weisinger, Inc. PO Box 909 Willis TX 77378
POLICY NUMBER		
CARRIER	NAIC CODE	
EFFECTIVE DATE:		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

THE ATTACHED.

THE GENERAL LIABILITY POLICY INCLUDES THE FOLLOWING ENDORSEMENTS: 1) CG 7193.1- WHO IS AN INSURED IS AMENDED TO INCLUDE AS ADDITIONAL INSURED, INCLUDING COMPLETED OPERATIONS, ANY PERSON OR ORGANIZATION WHEN YOU HAVE AGREED IN A WRITTEN CONTRACT THAT SUCH PERSON OR ORGANIZATION BE ADDED AS AN ADDITIONAL INSURED ON YOUR POLICY. PRIMARY & NON-CONTRIBUTORY BASIS IF THE ADDITIONAL INSURED SPECIFICALLY AGREED IN A WRITTEN CONTRACT THAT THE INSURANCE BE PRIMARY & WHEN COVERAGE IS PROVIDED ON A PRIMARY BASIS WE WILL NOT SEEK CONTRIBUTION FROM ANY OTHER INSURANCE AVAILABLE TO THE ADDITIONAL INSURED IF A WRITTEN CONTRACT REQUIRES THAT THIS INSURANCE BE NON-CONTRIBUTORY 2) CG7578.3 - BLANKET WAIVER OF SUBROGATION WHEN REQUIRED IN A WRITTEN CONTRACT OR AGREEMENT 3) CG 7429- PER PROJECT AGGREGATE LIMIT. 4) IL7447.6 - NOTICE OF CANCELLATION-30 DAY BLANKET AS REQUIRED BY WRITTEN CONTRACT.

THE AUTOMOBILE POLICY INCLUDES THE FOLLOWING ENDORSEMENTS: 1) CA 7450- BLANKET ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT EXECUTED PRIOR TO THE BODILY INJURY OR PROPERTY DAMAGE. 2) CA 7450- BLANKET WAIVER OF SUBROGATION AS REQUIRED BY WRITTEN CONTRACT. 3) IL 7447.6- NOTICE OF CANCELLATION-30 DAYS BLANKET AS REQUIRED BY WRITTEN CONTRACT.

THE WORKERS COMPENSATION POLICY INCLUDES THE FOLLOWING ENDORSEMENTS: 1) WC 42 03 04B-WAIVER OF SUBROGATION-BLANKET WAIVER FOR ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER. 2) WC 42 06 01-NOTICE OF CANCELLATION-30 DAYS BLANKET AS REQUIRED BY WRITTEN CONTRACT.

THE UMBRELLA/EXCESS LIABILITY POLICY APPLIES IN EXCESS OF THE UNDERLYING GENERAL LIABILITY, AUTOMOBILE LIABILITY AND EMPLOYERS LIABILITY POLICIES ABOVE INCLUDING FOLLOWING THE TERMS OF ANY ADDITIONAL INSURED ENDORSEMENTS. THE POLICY FOLLOWS THE TERMS AND CONDITIONS OF SUCH UNDERLYING POLICIES UNLESS THEY ARE INCONSISTENT WITH THE TERMS OF THE POLICY.

RE: ITB 24-010 Water Well #5 and Carrizo Rehabilitation

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS
INCLUDING COMPLETED OPERATIONS –
PRIMARY AND NONCONTRIBUTORY**

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s): BLANKET ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT EXECUTED PRIOR TO THE BODILY INJURY OR PROPERTY DAMAGE

Project:

Location Of Project: ALL LOCATIONS

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of "your work" performed for that additional insured by or for you at the location designated and described in the Schedule of this endorsement.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

C. The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

Primary and Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ELITE EXTENSION – TEXAS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is amended to include the following clarifications and extensions of coverage. The provisions of the Coverage Form apply unless modified by endorsement.

A. EXPECTED OR INTENDED INJURY

Section I – Coverage A, Exclusion **a.** is amended as follows:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

B. NON-OWNED WATERCRAFT

Section I – Coverage A, Exclusion **g.(2)** is amended as follows:

- (2) A watercraft you do not own that is:

- (a) Less than 60 feet long; and
- (b) Not being used to carry person(s) or property for a charge;

C. EXTENDED PROPERTY DAMAGE COVERAGE

Section I – Coverage A, Exclusions **j.(3)** and **(4)** is amended to add the following:

Paragraphs **(3)** and **(4)** of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

SCHEDULE	
Limits Of Insurance	Deductible
\$5,000 Each Occurrence	\$250 Per Claim
\$10,000 Annual Aggregate	

- a. The each occurrence limit listed above is the most we will pay for all damages because of "property damage" to property in the care, custody and control of or property loaned to an insured as the result of any one "occurrence", regardless of the number of:

- (1) insureds;
- (2) claims made or "suits" brought;
- (3) persons or organizations making claims or bringing "suits".

The aggregate limit listed above is the most we will pay for all damages because of "property damage" to property in the care, custody and control of or property loaned to an insured during the policy period.

Any payment we make for damages because of "property damage" to property in the care, custody and control of or property loaned to an insured will apply against the General Aggregate Limit shown in the declarations.

- b. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the deductible amount listed above. We may pay any part or all of the deductible amount listed above. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification by us, you will promptly reimburse us for that part of the deductible we paid.

- c. If two or more coverages apply under one "occurrence", only the highest per claim deductible applicable to these coverages will apply.

- d. Insurance provided by this provision is excess over any other insurance, whether primary, excess, contingent or any other basis. Since insurance provided by this endorsement is excess, we will have no duty to defend any claim or "suit" to which insurance provided by this endorsement applies if any other insurer has a duty to defend such a claim or "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

D. PROPERTY DAMAGE – ELEVATORS

Section I – Coverage A.2. Exclusions paragraphs **j.(3)**, **j.(4)**, **j.(6)** and **k.** do not apply to use of elevators.

This insurance afforded by this provision is excess over any valid and collectible property insurance (including any deductible) available to the insured and **Section IV – Commercial General Liability Conditions Paragraph 4. Other Insurance.**

FIRE, LIGHTNING OR EXPLOSION DAMAGE

Except where it is used in the term "hostile fire", the word fire includes fire, lightning or explosion wherever it appears in the Coverage Form.

Under **Section I – Coverage A**, the last paragraph (after the exclusions) is replaced with the following:

Exclusions c. through n. do not apply to damage by fire, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance**.

F. MEDICAL PAYMENTS

If **Section I – Coverage C. Medical Payments Coverage** is not otherwise excluded from this Coverage Form:

The requirement, in the Insuring Agreement of Coverage C., that expenses must be incurred and reported to us within **one year** of the accident date is changed to **three years**.

G. SUPPLEMENTARY PAYMENTS

Supplementary Payments – Coverages A and B Paragraphs 1.b. and 1.d. are replaced by the following:

1.b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

H. SUBSIDIARIES AS INSURED

Section II – Who Is An Insured is amended to add the following:

1.f. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, insured does not include any subsidiary that is an insured under any other general liability policy, or would have been an insured under such a policy but for termination of that policy or the exhaustion of that policy's limits of liability.

I. BLANKET ADDITIONAL INSUREDS – AS REQUIRED BY CONTRACT

1. ~~Section II – Who Is An Insured~~ is amended to include as an additional insured any person(s) or organization(s) subject to provisions in Paragraph 2. below, (hereinafter referred to as additional insured) when you and such person(s) or organization(s) have agreed in a written contract or written agreement that such person(s) or organization(s) be added as an additional insured on your policy provided that the written contract or agreement is:

- a. Currently in effect or becomes effective during the policy period; and
- b. Executed prior to an "occurrence" or offense to which this insurance would apply.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured; and
- c. Applies only if the person or organization is not specifically named as an additional insured under any other provision of, or endorsement added to, **Section II – Who Is An Insured** of this policy.

2. As provided herein, the insurance coverage provided to such additional insureds is limited to:

- a. Any Controlling Interest, but only with respect to their liability arising out of their financial control of you; or premises they own, maintain, or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- b. Any architect, engineer, or surveyor engaged by you but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations.

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

- c. Any manager or lessor of a premises leased to you, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- d. Any state or governmental agency or subdivision or political subdivision, subject to the following:
- (1) This insurance applies only with respect to the following hazards for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:
 - (a) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
 - (b) The construction, erection or removal of elevators; or
 - (c) The ownership, maintenance or use of any elevators covered by this insurance.
 - (2) This insurance applies only with respect to operations performed by you or on your behalf for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".
- e. Any vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.
- With respect to the insurance afforded to these vendors, the following additional exclusions apply:
- (1) The insurance afforded any vendor does not apply to:
 - (a) "Bodily injury" or "property damage" for which any vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that any vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by any vendor;
 - (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (e) Any failure to make such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (f) Demonstration, installation, servicing or repair operations, except such operations performed at any vendor's premises in connection with the sale of the product;
 - (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for any vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of any vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Subparagraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- f. Any Mortgagee, Assignee Or Receiver, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you.
This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.
- g. Any Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you.
With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
 - (1) This insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land;
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- h. Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- i. Any Owners, Lessees, or Contractors for whom you are performing operations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

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

This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

(2) "Bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- j. Any Grantor of Licenses to you, but only with respect to their liability as grantor of licenses to you.
- Their status as additional insured under this endorsement ends when:
- 1. The license granted to you by such person(s) or organization(s) expires; or
 - 2. Your license is terminated or revoked by such person(s) or organization(s) prior to expiration of the license as stipulated by the contract or agreement.
- k. Any Grantor of Franchise, but only with respect to their liability as grantor of a franchise to you.
- l. Any Co-owner of Insured Premises, but only with respect to their liability as co-owner of any insured premises.
- m. Any Concessionaires Trading Under Your Name, but only with respect to their liability as a concessionaire trading under your name.
3. Any insurance provided to any additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or its agents, "employees" or any other representative of the additional insured.
4. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance:**
- If coverage provided to any additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

J. COVERAGE FOR INJURY TO CO-EMPLOYEES AND/OR YOUR OTHER VOLUNTEER WORKERS

Section II – Who is an Insured, Paragraph 2.a. (1) is amended to add the following:

- e. Paragraphs (a), (b), and (c) do not apply to your "employees" or "volunteer workers" with respect to "bodily injury" to a co-"employee" or other "volunteer worker".

Damages owed to an injured co-"employee" or "volunteer worker" will be reduced by any amount paid or available to the injured co-"employee" or "volunteer worker" under any other valid and collectible insurance.

K. HEALTH CARE SERVICE PROFESSIONALS AS INSURED - INCIDENTAL MALPRACTICE

Section II – Who is an Insured, Paragraph 2.a. (1) (d) is amended as follows:

This provision does not apply to Nurses, Emergency Medical Technicians, or Paramedics who provide professional health care services on your behalf.

However this exception does not apply if you are in the business or occupation of providing any such professional services.

L. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Section II – Who Is An Insured, Paragraph 3.a. is replaced by the following:

- 3.a.** Coverage under this provision is afforded until the end of the policy period.

This provision does not apply if newly formed or acquired organizations coverage is excluded either by the provisions of the Coverage Form or by endorsements.

M. DAMAGE TO PREMISES RENTED TO YOU

Section III – Limits of Insurance, Paragraph 6. is replaced by the following:

Subject to 5.a. above, the Damage To Premises Rented To You Limit, or \$500,000, whichever is higher, is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke or leakage from automatic protection systems, while rented to you or temporarily occupied by you with permission of the owner.

N. MEDICAL PAYMENTS – INCREASED LIMITS

Section III – Limits of Insurance, Paragraph 7. is replaced by the following:

7. Subject to Paragraph 5. above, \$10,000 is the Medical Expense Limit we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, unless the amount shown on the Declarations of this Coverage Part for Medical Expense Limit states:
- (a) No Coverage; or
 - (b) \$1,000; or
 - (c) \$5,000; or
 - (d) A limit higher than \$10,000.

O. DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Section IV – Commercial General Liability Conditions Paragraph 2. is amended to add the following:

1. The requirement in Condition 2.a. that you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim, applies only when the "occurrence" or offense is known to:
- (1) You, if you are an individual or a limited liability company;
 - (2) A partner, if you are a partnership;
 - (3) A member or manager, if you are a limited liability company;
 - (4) An "executive officer" or insurance manager, if you are a corporation; or
 - (5) A trustee, if you are a trust.
2. The requirement in Condition 2.b. that you must see to it that we receive notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:
- (1) You, if you are an individual or a limited liability company;
 - (2) A partner, if you are a partnership;
 - (3) A member or manager, if you are a limited liability company;
 - (4) An "executive officer" or insurance manager, if you are a corporation; or
 - (5) A trustee, if you are a trust.

P. PRIMARY AND NONCONTRIBUTORY – ADDITIONAL INSURED EXTENSION

Section IV – Commercial General Liability Conditions Paragraph 4. **Other Insurance** is amended to add the following:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

However, if the additional insured has been added as an additional insured on other policies, whether primary, excess, contingent or on any other basis, this insurance is excess over any other insurance regardless of the written agreement between you and an additional insured.

Q. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES

Section IV – Commercial General Liability Conditions Paragraph 6. **Representations** is amended to add the following:

If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under the Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

R. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

Section IV – Commercial General Liability Condition Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of:

- 1. Your ongoing operations; or
- 2. "Your work" included in the "products-completed operations hazard".

However, this waiver applies only when you have agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

- 1. Is in effect or becomes effective during the term of this policy; and
- 2. Was executed prior to loss.

S. MENTAL ANGUISH

Section V – Definition 3. is replaced by the following:

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

T. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT — AGGREGATE LIMITS OF INSURANCE (PER PROJECT)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The General Aggregate Limit under LIMITS OF INSURANCE (Section III) applies separately to each of your projects away from premises owned by or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION PROVIDED BY US TO PERSON(S) OR
ORGANIZATION(S) WITH WHOM YOU HAVE AGREED IN A WRITTEN
CONTRACT OR AGREEMENT**

This policy is subject to the following additional Conditions:

If we cancel this policy by notice to the first Named Insured, for any statutorily permitted reason other than for non-payment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to any person(s) or organization(s) with whom you have agreed in a written contract or agreement to provide such person(s) or organization(s) with a notice of cancellation but only if:

1. You have provided the name and address of such person(s) or organization(s) to your authorized agent; and
2. Your authorized agent provides us with that list within three (3) business days from the date we request it from them.

If notice is mailed, proof of mailing to the last known mailing address of such person(s) or organization(s) will be sufficient proof of notice.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTO ELITE EXTENSION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

The BUSINESS AUTO COVERAGE FORM is amended to include the following clarifications and extensions of coverage. With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

Section I – Covered Autos Paragraph C. Certain Trailers, Mobile Equipment, and Temporary Substitute Autos is amended by adding the following:

If **Physical Damage Coverage** is provided by this coverage form for an "auto" you own, the **Physical Damage Coverages** provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of breakdown, repair, servicing, "loss" or destruction.

The coverage provided is the same as the coverage provided for the vehicle being replaced.

B. BLANKET ADDITIONAL INSURED

The **Who Is An Insured** provision under **Section II – Covered Autos Liability Coverage** is amended to include the following as an "insured":

1. Any person or organization whom you have agreed in a written contract or agreement to name as an additional "insured" under your "auto" Policy to provide "bodily injury" or "property damage" coverage, but only with respects to liability arising out of the use of a covered "auto" you own, hire or borrow and resulting from the acts or omissions by you, any of your "employees" or agents. The insurance afforded to such additional "insured" will not be broader than that which you are required to provide for such additional "insured" and applies only to a written contract executed prior to the "bodily injury" or "property damage" and is still in force at the time of the "accident".
2. With respect to the insurance afforded to the additional "insured" described above, the following is added to **Section – C. Limit Of Insurance Covered Autos Liability Coverage**:

The most we will pay on behalf of the additional "insured" is the amount of insurance:

- (1) Required by the written contract or agreement described above, or

- (2) Available under the applicable Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations; whichever is less.

C. EMPLOYEES AS INSURED

The following is added to the **Section II – Covered Autos Liability Coverage, Paragraph A.1. Who Is An Insured** provision:

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

D. EMPLOYEE HIRED AUTOS

1. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions

Paragraph **5.b.** of the **Other Insurance** in the Business Auto Coverage Form is amended by the addition of the following:

For **Hired Auto Physical Damage Coverage** any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

E. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured is amended by adding the following:

Any organization which you acquire or form after the effective date of this Policy in which you maintain ownership or majority interest. However:

- (1) Coverage under this provision is afforded only up to 180 days after you acquire or form the organization, or to the end of the Policy period, whichever is earlier.

F. SUBSIDIARIES AS INSURED

Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured is amended by adding the following:

Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this Policy. However, "insured" does not include any subsidiary that is an "insured" under any other automobile liability Policy or was an "insured" under such a Policy but for termination of that Policy or the exhaustion of the Policy's limits of liability.

G. SUPPLEMENTARY PAYMENTS

Section II – Covered Autos Liability Coverage, A.2.a. Coverage Extensions, Supplementary Payments (2) and (4) are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

H. FELLOW EMPLOYEE COVERAGE

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by workers compensation exclusivity rule, or similar protection. The following provision is added:

Subparagraph 5. of Paragraph B. Exclusions in **Section II – Covered Autos Liability Coverage** does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

I. TOWING AND LABOR

Section III – Physical Damage Coverage, A.2. Towing And Labor is replaced with the following:

We will pay for **Towing And Labor** costs incurred, subject to the following:

- a. Up to \$100 each time a covered "auto" that is a private passenger type is disabled; or
- b. Up to \$500 each time a covered "auto" other than the private passenger type is disabled.

However, the labor must be performed at the place of disablement.

J. LOCKSMITH SERVICES

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$250 per occurrence for necessary locksmith services for keys locked inside

a covered private passenger "auto". The deductible is waived for these services.

K. TRANSPORTATION EXPENSES

Section III – Physical Damage Coverage, A.4. Coverage Extensions Subparagraph a. Transportation Expenses is replaced by the following:

- (1) We will pay up to \$75 per day to a maximum of \$2,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the Policy's expirations, when the covered "auto" is returned to use or we pay for its "loss".
- (2) If the temporary transportation expenses you incur arise from your rental of an "auto" of the private passenger type, the most we will pay is the amount it costs to rent an "auto" of the private passenger type which is of the same like, kind and quality as the stolen covered "auto".

L. ELECTRONIC EQUIPMENT COVERAGE ADDED LIMITS

All electronic equipment that reproduces, receives or transmits audio, visual, or data signals in any one "loss" is \$5,000, in addition to the sublimit in Paragraph C.1.b. of the **Limits Of Insurance** provision under **Section III – Physical Damage Coverage**.

M. HIRED AUTO PHYSICAL DAMAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following: If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision Coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you lease, hire, rent or borrow is deemed to be a covered "auto" you own, subject to the following limit and deductible:

- (1) The most we will pay for loss to any leased, hired, rented or borrowed "auto" is the lesser of up to a limit of \$100,000, Actual Cash Value or Cost of Repair, minus the deductible.
- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- (3) Subject to the above limit and deductible provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will pay up to \$1,000, in addition to the limit above, for **Loss Of Use** of a hired auto to a leasing or rental concern for a monetary loss

sustained, provided it results from an "accident" for which you are legally liable.

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

N. AUTO LOAN/LEASE GAP COVERAGE

Section III – Physical Damage Coverage Paragraph A.4. Coverage Extensions is amended by the addition of the following:

Autos of the private passenger, light or medium trucks that are loaned or leased for a period of six months or longer and which have been provided Physical Damage Coverage is a covered "auto" under this Policy for which a premium charge has been made for Comprehensive, Specified Cause of Loss, or Collision Coverage. We will pay any unpaid amount due up to a limit of \$10,000 on the lease or loan for a covered "auto", including up to a maximum of \$500 for early termination fees or penalties, on the lease or loan for a covered "auto", less:

1. The amount paid under the Policy's **Physical Damage Coverage**; and
2. Any:
 - a. Overdue or any deferred lease/loan payments at the time of the "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - c. Security deposits not returned by the lessor;
 - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous loans or leases.

The insurance provided by this Auto Loan/Lease Gap Coverage is excess over any other collectible insurance including but not limited to any coverage provided by or purchased from the lessor or any financial institution.

O. PERSONAL PROPERTY OF OTHERS

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$500 for loss to Personal Property Of Others in or on your covered "auto" in the event of a covered "auto" loss.

No deductibles apply to this coverage.

P. PERSONAL EFFECTS COVERAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$500 for "loss" to your Personal Effects not otherwise covered in the Policy or, if you

are an individual, the Personal Effects of a family member, that is in the covered auto at the time of the "loss".

For the purposes of this extension Personal Effects means tangible property that is worn or carried by an insured including portable audio, visual, or electronic devices. Personal Effects does not include tools, jewelry, guns, money and securities, or musical instruments.

Q. EXTRA EXPENSE FOR STOLEN AUTO

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$1,000 for the expense incurred returning a stolen covered "auto" to you because of the total theft of such covered "auto". Coverage applies only to those covered "autos" for which you carry Comprehensive or Specified Causes Of Loss Coverage.

R. RENTAL REIMBURSEMENT EXPENSES

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. We will pay for **Rental Reimbursement Expenses** incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
3. We will pay only for those expenses incurred during the Policy period beginning 24 hours after the "loss" and ending, regardless of the Policy's expiration, with the lesser of the following number of days
 - a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
 - b. 30 days.
4. Our payment is limited to the lesser of the following amounts:
 - a. Necessary and actual expenses incurred; or
 - b. \$75 per day, subject to a \$2,250 limit.
5. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
6. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your **Rental Reimbursement Expenses** which is not already provided for under the **Physical Damage – Transportation Expense**

Coverage Extension included in this endorsement.

7. Coverage provided by this extension is excess over any other collectible insurance and/or endorsement to this Policy.

S. VEHICLE WRAPS COVERAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. Vehicle wraps that are damaged are covered at the lessor of replacement cost or the original purchase cost of the vehicle wrap, whichever is less, up to \$2,000.

This coverage does not apply to wear and tear.

T. AIRBAG COVERAGE

Section III – Physical Damage Coverage, B.3.a. Exclusions is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this Policy, the exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

U. NEW VEHICLE REPLACEMENT COST

The following is added to Paragraph **C. Limit Of Insurance** of **Section III – Physical Damage Coverage**

In the event of a total "loss" to a covered "auto" you own of the private passenger type or vehicle having a gross vehicle weight of 20,000 pounds or less, to which this coverage applies, we will pay to replace such covered "auto", minus any applicable deductible shown in the Declarations, at your option:

- a. The verifiable new vehicle purchase price you paid for your damaged vehicle, not including any insurance or warranties.
- b. The purchase price, as negotiated by us, of a new vehicle of the same make, model, and equipment, or most similar model available, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.
- c. The market value of your damaged vehicle, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.

We will not pay for initiation or set up costs associated with a loans or leases.

For the purposes of this coverage extension a new covered auto is defined as an "auto" of which you are the original owner that has not been previously titled which you purchased less than 180 days prior to the date of loss.

V. LOSS TO TWO OR MORE COVERED AUTOS FROM ONE ACCIDENT

Section III – Physical Damage Coverage, D. Deductible Subparagraph 2. is replaced by the following:

2. Regardless of the number of covered "autos" damaged or stolen the maximum deductible applicable for all "loss" in any one event caused by:

- a. Theft or Mischief or Vandalism; or
- b. All Perils
- c. Collision

Will be equal to two times the highest deductible applicable to any one covered "auto" on the Policy for Comprehensive, Specified Causes of Loss or Collision Coverage. The application of the highest deductible used to calculate the maximum deductible will be made regardless of which covered "autos" were damaged or stolen in the "loss".

W. FULL GLASS COVERAGE

Section III – Physical Damage Coverage, D. Deductible is amended by the addition of the following:

If the Comprehensive Coverage applies to the covered "autos", no Comprehensive Coverage Deductible applies to the cost of repairing or replacing damaged glass on the covered "auto(s)".

X. PHYSICAL DAMAGE DEDUCTIBLE – VEHICLE TRACKING SYSTEM

Section III – Physical Damage D. Deductible is amended by adding the following:

Comprehensive Coverage Deductible shown in the Declaration will be reduced by 50% for any "loss" caused by theft of the vehicle when equipped with a vehicle tracking device such as a radio tracking device or a global positioning device and that device was the method of recovery of the vehicle.

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

Section IV – Business Auto Conditions, A.2. Duties In The Event Of Accident, Claim, Suit Or Loss is amended by adding the following:

Your obligation to notify us promptly of an "accident", claim, "suit" or "loss" is satisfied if you send us the required notice as soon as practicable after your Insurance Administrator or anyone else designated by you to be responsible for insurance matters is notified, or in any manner made aware, of an "accident", claim, "suit" or "loss".

Z. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

~~Subparagraph 5. of Paragraph A. Loss Conditions of Section IV – Business Auto Conditions~~ is deleted in its entirety and replaced with the following.

Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, we waive any right of recovery we may have against any person, or organization with whom you have a

written contract, agreement or permit executed prior to the "loss" that requires a waiver of recovery for payments made for damages arising out of your operations done under contract with such person or organization.

AA. PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

~~Section IV – Business Auto Conditions, B. General Conditions, 5. Other Insurance c.~~ is replaced by the following:

This Coverage Form's **Covered Autos Liability Coverage** is primary to and will not seek contribution from any other insurance available to an "insured" under your Policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

AB. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES

Section IV – Business Auto Conditions, B.2. Concealment, Misrepresentation, Or Fraud is amended by adding the following:

If you unintentionally fail to disclose any exposures existing at the inception date of this Policy, we will not deny coverage under this Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

AC. MENTAL ANGUISH

Section V – Definitions, C. is replaced by the following:

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

AD. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION PROVIDED BY US TO PERSON(S) OR
ORGANIZATION(S) WITH WHOM YOU HAVE AGREED IN A WRITTEN
CONTRACT OR AGREEMENT**

This policy is subject to the following additional Conditions:

If we cancel this policy by notice to the first Named Insured, for any statutorily permitted reason other than for non-payment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to any person(s) or organization(s) with whom you have agreed in a written contract or agreement to provide such person(s) or organization(s) with a notice of cancellation but only if:

1. You have provided the name and address of such person(s) or organization(s) to your authorized agent; and
2. Your authorized agent provides us with that list within three (3) business days from the date we request it from them.

If notice is mailed, proof of mailing to the last known mailing address of such person(s) or organization(s) will be sufficient proof of notice.

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

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

3. Premium:

The premium charge for this endorsement shall be 2% percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium:

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 6/30/23

Policy No 0196-53218

Endorsement No.
Premium

Insured WEISINGER INC

Countersigned by _____

Insurance Company
BRIDGEFIELD CASUALTY INSURANCE COMPANY

WC 42 03 04 B
(Ed. 6-14)

TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

In the event of cancelation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

1. Number of days advance notice: (*) 30
2. Notice will be mailed to: BLANKET AS REQUIRED BY WRITTEN CONTRACT EXECUTED PRIOR TO BODILY INJURY OR
PROPERTY DAMAGE

*10 DAYS NOTICE FOR NON-PAYMENT OF PREMIUM

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 6/30/23
Insured WEISINGER INC.

Effective Policy No. 0196-53218

Endorsement No.
Premium

Insurance Company
BRIDGEFIELD CASUALTY INSURANCE COMPANY

Countersigned by _____

EXHIBIT D
PLANS AND SPECIFICATIONS

Loaded as Separate Documents on Brazosbid.ionwave.net

EXHIBIT E
CONSTRUCTION SCHEDULE

Completion time is 120 days.

EXHIBIT F
SCHEDULE OF VALUES

See Attached Bid response submittal

Base Bid	\$1,036,830
Plus (+) Alternates	
11-A	17,000
12-A	109,000
15-A	81,000
16-A	48,000
21-A	12,000
22-A	60,000
24-A	62,000
25-A	<u>32,000</u>
Total Base bid + Alts (as listed above)	<u>1,457,830.00</u>

CONTRACTOR'S PROPOSAL					
Rehabilitation of Water Well No. 5 and Carrizo					
Bid Opening Friday, December 15, 2023 at 2:00 p.m. CT					
BID NO. 24-010					
The Undersigned proposes to furnish all labor, services, materials, tools, and necessary equipment for the annual price agreement for Rehabilitation of Water Well No. 5 and Carrizo, and to perform the work required for the annual price agreement for sample testing as set out by the 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.					
ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
BASE BID ITEMS					
A. GENERAL - WATER WELL NO. 5 & CARRIZO WATER WELL NO. 1					
A-1	1	LS	Water Well No. 5. - Contractor mobilization and demobilization and delivery of service rig and all equipment, materials and personnel to and from Contractor office / yard, subcontractors and job site, including bonds, insurance, etc. Complete as specified.	\$54,000	\$54,000
A-2	1	LS	Provide performance and payment bonds for Water Well No. 5 Rework.	\$15,000	\$15,000
A-3	1	LS	Carrizo Water Well No. 1. - Contractor mobilization and demobilization and delivery of service rig and all equipment, materials and personnel to and from Contractor office / yard, subcontractors and job site, including bonds, insurance, etc. Complete as specified.	\$37,000	\$37,000
A-4	1	LS	Provide performance and payment bonds for Carrizo Water Well No. 1 Rework.	\$10,000	\$10,000
SUBTOTAL: A. GENERAL \$					\$116,000
B. WATER WELL NO. 5					
B-1	1	LS	Conduct and submit a written test report and data for a well and well pumping equipment performance test at 3 pumping rates and discharge pressures to document the baseline field performance prior to beginning work.	\$1,000	\$1,000
B-2	1	LS	Remove and inspect existing well motor, well discharge head, pump column assembly (620 feet) and pump bowl, and provide written inspection reports, Complete as specified.	\$57,000	\$57,000

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
B-3	3	EA	Bail oil from the well and dispose of properly. Perform a well video survey of entire well depth interval and provide acceptable electronic copies, selected video images and written report of each video survey, Complete as specified.	\$3,100	\$9,300
B-4	1	LS	Furnish, install and remove appropriately sized steel tank(s) and temporary leak-proof discharge piping to convey water to discharge point at the well site during pumping, jetting or testing operations, plus restore land surface and grass to as good or better condition that existed prior to work, Complete as specified.	\$3,000	\$3,000
B-5	40	HR	Perform mechanical cleaning (wire brushing) of the 9-5/8 - inch well screens, 2,364 to 2,862 feet, 456 feet of screen, Complete as specified.	\$680	\$27,200
B-6	30	HR	Jet out and remove the fill material and sediment from the bottom of the well, Complete as specified.	\$865	\$25,950
B-7	1	LS	Perform chlorine treatment of 9-5/8 inch well screens by inserting and agitating chlorine into 9-5/8 inch screens, 2,364 to 2,862 feet, 456 feet of screen, and jet out and neutralize chlorinated water from the well prior to discharge, Complete as specified.	\$25,000	\$25,000
B-8	1	LS	Perform acid treatment of 9-5/8 inch well screens using injection and agitation with a double disk surge block agitator with 15% Hydrochloric Acid with 1.5% QC-21, Napco 224 or Nu Well-310 liquid enhancer or approved equal and 2 pounds of Rodine 103 acid corrosion inhibitor or approved equal per 1,000 gallons of acid (all non-toxic for potable wells), 9-5/8 - inch screen interval 2,364 to 2,862 feet, 456 feet of screen, 2,300 gallons of HCL acid at minimum 5.0 gallons per foot of 9-5/8 - inch screen, Complete as specified.	\$25,000	\$25,000
B-9	30	HR	Perform airlift pumping, agitation with double disk surge block agitator, and neutralization of chemicals following chemical treatment, Complete as specified.	\$800	\$24,000

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
B-10	1	LS	Perform sonar jetting of 9-5/8 inch screen interval 2,364 to 2,862 feet, Complete as specified.	\$10,000	\$10,000
B-11	1	LS	Furnish new vertical turbine, line shaft, permanent pump bowl with design conditions of 2,900 gpm at 485 feet of total dynamic head (TDH) with stainless steel pump bowl shaft and bowl coupling with stainless steel collets and wear rings with new 12-inch pump suction pipe (length of 10 feet or less) and new stainless steel cone strainer, Complete as specified. Pump submittal to include 3 pump options for the owner's consideration and approval. Pumps for submittal should be selected based on the each pump's future head - capacity performance and efficiency as static head increases over time.	\$62,000	\$62,000
B-12	30	20-Foot Section Each	Furnish 20-foot section of new 12-inch diameter (0.375-inch wall thickness) threaded column pipe, 2-3/16-inch diameter line shaft, 3-1/2-inch diameter oil tubing, bearings and couplings, Complete as specified.	\$5,900	\$177,000
B-13	1	10-Foot Section Each	Furnish 10-foot section of new 12-inch diameter (0.375-inch wall thickness) threaded column pipe, 2-3/16-inch diameter line shaft, 3-1/2-inch diameter oil tubing, bearings and couplings, Complete as specified.	\$3,245	\$3,245
B-14	1	10-Foot Section	Furnish 10-foot section of new 12-inch diameter (0.375-inch wall thickness) top special threaded column pipe, 2-3/16-inch diameter line shaft, 3-1/2-inch diameter oil tubing, bearings and couplings, Complete as specified.	\$4,095	\$4,095
B-15	1	LS	Furnish and install a new 2-3/16-inch x 3-1/2-inch tension bearing, nut and plate assembly, Complete as specified.	\$2,900	\$2,900

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
B-16	31	EA	Furnish new rubber tube stabilizer for 12-inch diameter column pipe and 3-1/2-inch diameter oil tubing, Complete as specified.	\$40	\$1,240
B-17	620	FT	Furnish 1/4-inch stainless steel PVC-wrapped airline and oil-filled pressure gauge, with all strapping material and fittings, Complete as specified.	\$5	\$3,100
B-18	620	FT	Furnish 1-1/4-inch PVC water-level measuring pipe, Complete as specified.	\$3	\$1,860
B-19	1	LS	Sandblast, steam clean, prime and paint (approved color) the existing fabricated steel well discharge head, Complete as specified.	\$2,000	\$2,000
B-20	1	LS	Recondition the existing 500 Hp electric well motor, including: electric motor inspection; steam clean, dip and bake the stator; rewind the motor stator (if needed and approved); lathe check the motor; replace the bearings; balance the motor; replace the sight glass, oil and heaters; assemble and test the motor at full voltage; include any and all required machine work; install a new combination drive shaft and gib keys; steam clean or sand blast, prime and paint the motor with a paint and paint color acceptable to the OWNER; and install the motor and make it operational, Complete as specified.	\$27,000	\$27,000
B-21	1	LS	Install permanent pump bowl at 620 feet, pump column assembly, airline, water-level pipe, well discharge head and electric motor and make all pump and motor equipment operational, Complete as specified.	\$52,000	\$52,000

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
B-22	1	LS	Furnish and install a new lubricator with 3-gallon capacity reservoir, immersion heater and thermostat, solenoid and flow-regulating valve, Complete as specified.	\$5,000	\$5,000
B-23	1	LS	Chlorinate and disinfect the well pump and well and perform bacteriological sampling and analyses (require 3 negative bacteriological samples), Complete as specified.	\$9,000	\$9,000
B-24	1	LS	Perform well, pump and motor performance test with vibration test and provide written report, Complete as specified.	\$1,000	\$1,000
B-25	1	LS	Well site restoration to restore land surface and grass to as good or better condition than existed prior to work, Complete as specified.	\$2,500	\$2,500
B-26	1	LS	Provide a submittal stating the anticipated pumping rate of Well No. 5 based on the Well 5 field performance testing by the Contractor (Item B-1) and the pump performance information provided in Appendix D - Factory Test of City of College Station's Spare Pump.	\$500	\$500
SUBTOTAL: B. WATER WELL NO. 5 \$					\$561,890
C. CARRIZO WATER WELL NO. 1					
C-1	1	LS	Conduct and submit a written test report and data for a well and well pumping equipment performance test at 3 pumping rates and discharge pressures to document the baseline field performance prior to beginning work.	\$1,000	\$1,000
C-2	1	LS	Remove and inspect existing well motor, well discharge head, pump column assembly (500 feet) and pump bowl, and provide written inspection reports, Complete as specified	\$44,000	\$44,000
C-3	3	EA	Bail oil from the well and dispose of properly. Perform a well video survey of entire well depth interval and provide acceptable electronic copies, selected video images and written report of each video survey, Complete as specified.	\$3,100	\$9,300

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
C-4	1	LS	Furnish, install and remove appropriately sized steel tank(s) and temporary leak-proof discharge piping to convey water to discharge point at the well site during pumping, jetting or testing operations, plus restore land surface and grass to as good or better condition that existed prior to work, Complete as specified.	\$3,900	\$3,900
C-5	30	HR	Perform mechanical cleaning (wire brushing) of the 10-inch well screens, est. 1,120 to 1,340 feet, 168 feet of screen, Complete as specified.	\$680	\$20,400
C-6	30	HR	Jet out and remove the fill material and sediment from the bottom of the well, Complete as specified.	\$865	\$25,950
C-7	1	LS	Perform chlorine treatment of 10-inch well screens by inserting and agitating chlorine into 10-inch screens, est. 1,120 to 1,340 feet, 168 feet of screen, and jet out and neutralize chlorinated water from the well prior to discharge, Complete as specified.	\$20,000	\$20,000
C-8	1	LS	Perform acid treatment of 10-inch well screens using injection and agitation with a double disk surge block agitator with 15% Hydrochloric Acid with 1.5% QC-21, Napco 224 or Nu Well-310 liquid enhancer or approved equal and 2 pounds of Rodine 103 acid corrosion inhibitor or approved equal per 1,000 gallons of acid (all non-toxic for potable wells), 10-inch screen interval est. 1,120 to 1,340 feet, 168 feet of screen, 850 gallons of HCL acid at minimum 5.0 gallons per foot of 10-inch screen, Complete as specified.	\$20,000	\$20,000
C-9	25	HR	Perform airlift pumping, agitation with double disk surge block agitator, and neutralization of chemicals following chemical treatment, Complete as specified.	\$800	\$20,000
C-10	1	LS	Perform sonar jetting of 10-inch screen interval est. 1,120 to 1,340 feet, Complete as specified.	\$15,000	\$15,000

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
C-11	1	LS	Furnish new vertical turbine, line shaft, permanent pump bowl with design conditions of 1,000 gpm at 410 feet of total dynamic head (TDH) with stainless steel pump bowl shaft and bowl coupling with stainless steel collets and wear rings with new 8-inch pump suction pipe (length of 10 feet or less) and new stainless steel cone strainer, Complete as specified. Pump submittal to include 3 pump options for the owner's consideration and approval. Pumps for submittal should be selected based on each pump's future head - capacity performance and efficiency as static head increases over time.	\$37,000	\$37,000
C-12	24	20-Foot Section Each	Furnish 20-foot section of new 8-inch diameter (0.322-inch wall thickness) threaded column pipe, 1-11/16 - inch diameter line shaft, 2-1/2-inch diameter oil tubing, bearings and couplings, Complete as specified.	\$2,805	\$67,320
C-13	1	10-Foot Section Each	Furnish 10-foot section of new 8-inch diameter (0.322-inch wall thickness) threaded column pipe, 1-11/16 - inch diameter line shaft, 2-1/2-inch diameter oil tubing, bearings and couplings, Complete as specified.	\$1,530	\$1,530
C-14	1	10-Foot Section Each	Furnish 10-foot section of new 8-inch diameter (0.322-inch wall thickness) top special threaded column pipe, 1-11/16 - inch diameter line shaft, 2-1/2-inch diameter oil tubing, bearings and couplings, Complete as specified.	\$1,940	\$1,940
C-15	1	LS	Furnish and install a new 1-11/16 - inch x 2-1/2-inch tension bearing, nut and plate assembly, Complete as specified.	\$2,500	\$2,500
C-16	25	EA	Furnish new rubber tube stabilizer for 8-inch diameter column pipe and 2-1/2-inch diameter oil tubing, Complete as specified.	\$24	\$600
C-17	500	FT	Furnish 1/4-inch stainless steel PVC-wrapped airline and oil-filled pressure gauge, with all strapping material and fittings, Complete as specified.	\$5	\$2,500
C-18	500	FT	Furnish 1-1/4-inch PVC water-level measuring pipe, Complete as specified.	\$3	\$1,500
C-19	1	LS	Sandblast, steam clean, prime and paint (approved color) the existing fabricated steel well discharge head, Complete as specified.	\$2,000	\$2,000

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
C-20	1	LS	Recondition the existing 150 Hp electric well motor, including: electric motor inspection; steam clean, dip and bake the stator; rewind the motor stator (if needed and approved); lathe check the motor; replace the bearings; balance the motor; replace the sight glass, oil and heaters; assemble and test the motor at full voltage; include any and all required machine work; install a new combination drive shaft and gib keys; steam clean or sand blast, prime and paint the motor with a paint and paint color acceptable to the OWNER; and install the motor and make it operational, Complete as specified.	\$12,000	\$12,000
C-21	1	LS	Install permanent pump bowl at 500 feet, pump column assembly, airline, water-level pipe, well discharge head and electric motor and make all pump and motor equipment operational, Complete as specified.	\$33,000	\$33,000
C-22	1	LS	Furnish and install a new lubricator with 3-gallon capacity reservoir, immersion heater and thermostat, solenoid and flow-regulating valve, Complete as specified.	\$5,000	\$5,000
C-23	1	LS	Chlorinate and disinfect the well pump and well and perform bacteriological sampling and analyses (require 3 negative bacteriological samples), Complete as specified.	\$9,000	\$9,000
C-24	1	LS	Perform well, pump and motor performance test with vibration test and provide written report, Complete as specified.	\$1,000	\$1,000
C-25	1	LS	Well site restoration to restore land surface and grass to as good or better condition than existed prior to work, Complete as specified.	\$2,500	\$2,500
SUBTOTAL: C. CARRIZO WATER WELL NO. 1				\$	\$358,940
TOTAL BASE BID AMOUNT (Subtotals A. + B. + C.)				\$	\$1,036,830
ADDITIVE ALTERNATE BID ITEMS					
WATER WELL NO. 5 ALTERNATES OR CARRIZO WATER WELL NO. 1 ALTERNATES					
1-A	10	HR	Contractor service rig, equipment & personnel rate, Complete, for time for additional work approved by the Owner for this project.	\$690	\$6,900
2-A	50	GALS	15% Hydrochloric Acid and specified additives for acid volume more or less than specified in Item No. B-7 or C-7, Complete as specified.	\$10	\$500
3-A	1	LS	Sound the depth of the gravel pack outside the top of the existing 9-inch or 10-inch diameter blank liner, Complete as specified.	\$2,760	\$2,760
4-A	15	FT3	If needed and approved, add gravel pack outside the top of the existing 9-inch or 10-inch diameter blank liner, Complete as specified.	\$1,000	\$15,000

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5-A	4	HR	Perform specified, well specific capacity check test of well with the specified materials and equipment and provide written testing records and data, Complete as specified.	\$690	\$2,760
6-A	1	LS	Furnish, install and remove Contractor's minimum 1,000 gpm temporary test pump bowl, well pumping equipment and materials, Complete as specified.	\$62,000	\$62,000
7-A	8	HR	Perform specified, well pumping test with the temporary test pump bowl, equipment and materials and provide written testing records and data, Complete as specified.	\$690	\$5,520
WATER WELL NO. 5 ALTERNATES					
8-A	1	EA	Furnish and install new cast iron pump bowl stage to meet final pump design conditions that are different than specified in Bid Item No. B-11, Complete as specified	\$3,850	\$3,850
9-A	1	EA	Furnish and install new ductile iron pump bowl stage to meet final pump design conditions that are different than specified in Bid Item No. B-11, Complete as specified.	\$4,715	\$4,715
10-A	1	LS	Machine holes in the existing well discharge head for the airline, water-level measuring pipe and any other accessories, Complete as specified.	\$1,000	\$1,000
11-A	1	LS	Furnish and install new coated fabricated steel discharge head with 4 lifting lugs and correct well discharge sized for Well No. 5 and machined holes for airline, PVC pipe and any other accessories, plus a short section of new discharge piping, expansion joint and/or flange(s) to connect the new head and existing piping, if needed, Complete as specified.	\$17,000	\$17,000
12-A	1	LS	Furnish and install new 500 Hp, WP-I, 1,770 rpm, 460 volt, 3-phase premium efficient electric well motor with new combination motor drive shaft and new head shaft nut and gib keys, and any necessary electrical wiring and connections, Complete as specified.	\$109,000	\$109,000
13-A	1	LS	If directed by the Owner, furnish, install and remove Contractor's minimum 2,500 gpm temporary pump bowl, temporary pumping equipment and materials with Contractor's minimum 450 Hp or 500 Hp temporary electric well motor and any electrical wiring and connections, disinfect the well, and make the well and temporary well pumping equipment operational for well pumping operations, Complete as specified.	\$99,980	\$99,980

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
14-A	8	WK	Rental of the Contractor's temporary pump bowl and temporary well pumping equipment and electric well motor in Bid Item No. 13-A, Complete as specified.	\$11,500	\$92,000
15-A	1	LS	If directed by the Owner based on the information in Bid Items B-1 and B-25, furnish and install the City's spare pump and furnish, install and remove the Contractor's temporary 500 Hp electric well motor and any necessary electrical wiring and connections, Complete as specified.	\$81,000	\$81,000
16-A	8	WK	Rental of the Contractor's temporary electric well motor in Bid Item No. 15-A, Complete as specified.	\$6,000	\$48,000
CARRIZO WATER WELL NO. 1 ALTERNATES					
17-A	1	EA	Furnish and install new cast iron pump bowl stage to meet final pump design conditions that are different than specified in Bid Item No. C-11, Complete as specified.	\$2,530	\$2,530
18-A	1	EA	Furnish and install new ductile iron pump bowl stage to meet final pump design conditions that are different than specified in Bid Item No. C-11, Complete as specified.	\$3,500	\$3,500
19-A	1	LS	Furnish and install new vertical turbine, line shaft, permanent pump bowl with design conditions of 1,200 gpm at 455 feet of total dynamic head (TDH) with stainless steel collets and wear rings with new 8-inch pump suction pipe (length of 10 feet or less) and new stainless steel cone strainer, Complete as specified.	\$54,000	\$54,000
20-A	1	LS	Machine holes in the existing well discharge head for the airline, water-level measuring pipe and any other accessories, Complete as specified.	\$1,000	\$1,000
21-A	1	LS	Furnish and install new fabricated steel well discharge head with 4 lifting lugs and correct discharge sized for Carrizo Well and machined holes for airline, PVC pipe and any other accessories, plus a short section of new discharge piping, expansion joint and/or flange(s) to connect the new head and existing piping, if needed, Complete as specified.	\$12,000	\$12,000
22-A	1	LS	Furnish and install new 150 Hp, WP-I, 1,770 rpm, 460 volt, 3-phase premium efficient electric well motor with new combination motor drive shaft and new head shaft nut and gib keys, and any necessary electrical wiring and connections, Complete as specified.	\$60,000	\$60,000

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
23-A	1	LS	Furnish and install new 200 Hp, WP-I, 1,770 rpm, 460 volt, 3-phase premium efficient electric well motor with new combination motor drive shaft and new head shaft nut and gib keys, and any necessary electrical wiring and connections, Complete as specified.	\$87,000	\$87,000
24-A	1	LS	If directed by the Owner, furnish, install and remove Contractor's minimum 1,000 gpm temporary pump bowl, temporary pumping equipment and materials with Contractor's 150 Hp temporary electric well motor and electrical wiring and connections, disinfect the well, and make the well and temporary well pumping equipment operational for well pumping operations, Complete as specified.	\$62,000	\$62,000
25-A	8	WK	Rental of the Contractor's temporary pump bowl and temporary well pumping equipment and electric well motor in Bid Item No. 24-A, Complete as specified.	\$4,000	\$32,000
26-A	1	LS	If directed by the Owner, furnish, install and remove Contractor's minimum 1,200 gpm temporary pump bowl, temporary pumping equipment and materials with Contractor's 200 Hp temporary electric well motor and electrical wiring and connections, disinfect the well, and make the well and temporary well pumping equipment operational for well pumping operations, Complete as specified.	\$62,000	\$62,000
27-A	8	WK	Rental of the Contractor's temporary pump bowl and temporary well pumping equipment and electric well motor in Bid Item No. 26-A, Complete as specified.	\$5,000	\$40,000
			TOTAL Alternate Items	\$968,015	
			TOTAL BASE BID + Alternate Items AMOUNT	\$2,004,845	
Total calendar work days:				120 days	
RECEIPT OF ADDENDA I hereby acknowledge receipt of the following Addenda:					

Per addendum #1

February 8, 2024

Item No. 7.9.

Annual Purchase of Auto Parts, Shop Equipment and Services

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on annual purchases of auto parts, shop equipment and services from NAPA Auto Parts in the annual not-to-exceed \$180,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Financially Sustainable City

Recommendation(s): Staff recommends approval to purchase various auto parts, shop equipment and related services from NAPA Auto Parts through the Purchasing Solutions Alliance (PSA) contract. The estimated annual expenditure of \$180,000.00 is based on the average amount spent on automotive and truck parts since January 2022 and the anticipated needs for existing vehicles and new vehicles being added to inventory this fiscal year.

Summary: NAPA Auto Parts is the local (College Station, TX) PSA contract dealer for auto parts, shop equipment and services. PSA is a purchasing cooperative for public agencies. All products and services available for purchase through PSA contracts have been competitively bid and awarded and satisfy any State law requirements relating to competitive bids or proposals. Contingent upon Council approval, a blanket contract will be issued for the term of February 8, 2024, through February 7, 2025.

Budget & Financial Summary: Purchases of auto parts are made through an inventory account as budgeted and available in the Fleet Maintenance Funds. Charges are made to the various departments for vehicle maintenance based on the average annual cost for each piece of equipment.

Attachments:

1. 20-201 2nd Amendment and Extension
2. Award_Letter_NAPA

SECOND AMENDMENT TO PSA CONTRACT NO. 20-201

THIS SECOND AMENDMENT (this “Amendment”) TO CONTRACT NO. 20-201 (“Agreement”), dated as of March 9, 2022, is made by and between Purchasing Solutions Alliance, a purchasing cooperative for public agencies (“PSA”) and a program of Brazos Valley Council of Governments, having its principal place of business at 3991 East 29th Street, Bryan, Texas 77802 and Genuine Parts Company dba NAPA (the “Contractor”), having its principal place of business at 2999 Wildwood Parkway, Atlanta, Georgia 30339.

WHEREAS, PSA and Contractor entered into that certain Contract No. 20-201, dated as of March 17, 2020 and extended the contract through March 16, 2023; and

WHEREAS, PSA and Contractor again desire to extend the Agreement for one year.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to extend the Agreement through March 16, 2024. This is the final of two optional one-year extensions of the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment to Contract No. 20-201 as of the date first written above.

CONTRACTOR:
GENUINE PARTS COMPANY DBA NAPA

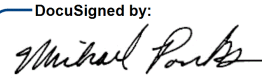
PSA:
PURCHASING SOLUTIONS ALLIANCE
BRAZOS VALLEY COUNCIL OF GOVERNMENTS

By: 
DocuSigned by:
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Name: Jett Kuntz

Title: Vice President - Store Ops Excellence

Date: 3/10/2023

By: 
DocuSigned by:
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Name: Michael Parks

Title: Executive Director

Date: 3/9/2023

Purchasing Solutions Alliance

a purchasing cooperative for public agencies



March 24, 2020

Don Lachance
Genuine Parts Company dba NAPA
2999 Wildwood Pkwy
Atlanta, GA 30339

Dear Mr. Lachance,

Purchasing Solutions Alliance (PSA), a cooperative purchasing program of the Brazos Valley Council of Governments (BVCOG) is pleased to announce that Genuine Parts Company dba NAPA has been awarded the contract for the following products and services, based on your proposal submitted to PSA in response to Request for Proposals (RFP) No. 20-201.

➤ Products and Services Description: Automotive Parts and Services

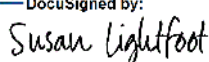
Notice is hereby given that Genuine Parts Company dba NAPA may commence with the publicity and marketing of the contract and sales of products and services effective March 24, 2020 under terms of our contract.

It is with great pleasure that we continue to build our relationship with you as a supplier to PSA/BVCOG and member agencies of PSA. If you have any questions or concerns, please feel free to contact me at (979) 595-2801 ext. 2035, or by email susan.lightfoot@bvcog.org.

Sincerely,

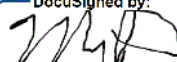
Purchasing Solutions Alliance:

a program of the Brazos Valley Council of Governments

DocuSigned by:


D065BBFC737E4C6...
Susan Lightfoot, Program Manager

Brazos Valley Council of Governments:

DocuSigned by:


0E4A9664C82F4C2...
Michael Parks, AICP, Deputy Executive Director

Enclosures

cc: Tom Wilkinson, Jr., Executive Director
Procurement File



February 8, 2024

Item No. 7.10.

Annual Purchase of Emergency Response Vehicle Parts and Services

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an annual blanket purchase order for repair parts and repair labor for fire trucks from Siddons-Martin Emergency Group not to exceed \$250,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Financially Sustainable City

Recommendation(s): Staff recommends approval of an annual blanket purchase order to purchase various repair parts and services from Siddons-Martin Emergency Group through the BuyBoard Purchasing Cooperative. The estimated annual expenditure of \$250,000.00 is based on the average amount spent on repair parts and services since January 2022 and the anticipated needs for existing vehicles and new vehicles being added to inventory this fiscal year.

Summary: BuyBoard is a purchasing cooperative for public agencies. All products and services available for purchase through BuyBoard contracts have been competitively bid and awarded and satisfy any State law requirements relating to competitive bids or proposals. Contingent upon Council approval, a blanket purchase order will be issued for the term of February 8, 2024, through February 7, 2025.

Budget & Financial Summary: Purchases of fire apparatus parts are made through an inventory account as budgeted and available in the Fleet Maintenance Funds. Charges are made to the Fire Department for fire apparatus vehicle maintenance and repairs based on the average annual cost for each piece of equipment.

Attachments:

1. BuyBoard 651-21 Siddons Martin Emergency Group



Vendor Contract Information Summary

Vendor Name	Siddons-Martin Emergency Group, LLC
Contact	Jeffrey A. Doran
Phone Number	800-784-6806
Email	jdoran@siddons-martin.com
Website	www.siddons-martin.com
Federal ID	27-433590
Accepts RFQs	Yes
Address Line 1	1362 East Richey
Vendor City	Houston
Vendor Zip	77073
Vendor State	TX
Vendor Country	USA
Delivery Days	10
Freight Terms	FOB Destination
Payment Terms	Net 30 days
Shipping Terms	Pre-paid and added to invoice
Ship Via	Driven
Is Designated Dealer	No
EDGAR Forms Received	Yes
Service-Disabled Veteran Owned	No
Minority Owned	No
Women Owned	No
Is National	Yes
No Excluded Foreign Terrorist Orgs	Yes
No Israel Boycott Certificate	Yes
Is MWBE	No
Regions Served	All Texas Regions
States Served	All States
Contract Name	Fire Service Apparatus Vehicles
Contract #	651-21
Effective Date	10/01/2021
Expiration Date	09/30/2024
Service Fee Note	Vehicle purchase orders are subject to a \$1500 service fee
Quote Reference Number	651-21
Additional Dealers	See Additional Dealers/Distributors for dealer list



February 8, 2024
Item No. 7.11.
Annual Auto & Truck Tire Purchases

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on annual tire purchases and retread services from Southern Tire Mart, LLC not-to-exceed \$310,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Financially Sustainable City

Recommendation(s): Staff recommends approval to purchase new tires and retread services from Southern Tire Mart, LLC through the BuyBoard Purchasing Cooperative contract. The estimated annual expenditure of \$310,000.00 is based on the average amount spent on new tires and retread services since January 2022 and the anticipated needs for existing vehicles and new vehicles being added to inventory this fiscal year.

Summary: Southern Tire Mart, LLC is BuyBoard's contractor for the sale of new tires and retread services. BuyBoard is a purchasing cooperative for public agencies. All products and services available for purchase through BuyBoard contracts have been competitively bid and awarded. Purchasing products and services via BuyBoard contracts satisfies any requirement of State law relating to competitive bids or proposals. Contingent upon Council approval a blanket contract will be issued to Southern Tire Mart, LLC for the term of February 8, 2024 through February 7, 2025.

Budget & Financial Summary: Funds are available and budgeted in the Fleet Maintenance fund which is funded by all other departments.

Attachments:

1. BuyBoard 636-21 Southern Tire Mart



Vendor Contract Information Summary

Vendor Name	Southern Tire Mart, LLC
Contact	Richard Conwill
Phone Number	8777864681
Email	gov-sales@stmtires.com
Website	www.stmtires.com
Federal ID	06-1689011
Accepts RFQs	Yes
Address Line 1	800 Highway 98
Vendor City	Columbia
Vendor Zip	39429
Vendor State	MS
Vendor Country	USA
Delivery Days	14
Freight Terms	FOB Destination
Payment Terms	Net 30 days
Shipping Terms	Pre-paid and added to invoice
Ship Via	Company Truck
Is Designated Dealer	No
EDGAR Forms Received	Yes
Service-Disabled Veteran Owned	No
Minority Owned	No
Women Owned	No
Certificate Number	N
Certifying Agency	N
Is National	Yes
No Excluded Foreign Terrorist Orgs	Yes
No Israel Boycott Certificate	Yes
Is MWBE	No
Regions Served	All Texas Regions
States Served	Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nebraska, New Mexico, Oklahoma, Tennessee, Texas, Utah, Virginia
Contract Name	Tires, Tubes, Supplies and Equipment
Contract #	636-21
Effective Date	03/01/2021
Expiration Date	02/29/2024



Vendor Contract Information Summary

Service Fee Note Vehicle purchase orders are subject to a \$100 service fee

Quote Reference Number 636-21

Return Policy See attached.

Additional Dealers See Additional Dealers/Distributors for dealer list

February 8, 2024

Item No. 7.12.

Container Source Storage & Roll-Off Franchise Agreement Ordinance First Reading

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on the first reading of a franchise agreement ordinance with Container Source Storage & Roll-Off for the collection of recyclables from commercial businesses and multi-family locations.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

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

Summary: This item is an ordinance granting Container Source Storage & Roll-Off a non-exclusive franchise for the use of public streets, alleys, and public rights-of-ways within the city for the purpose of providing collection of demolition and construction debris, recyclables, and organic waste from commercial, industrial, and multi-family sites.

This franchise agreement allows Container Source Storage & Roll-Off to collect and haul recyclables and construction and demolition debris from commercial, industrial, and multi-family sites. This standard agreement sets the franchise fee based on the contractors' monthly gross revenues, delivery revenues, and hauling revenues, as well as the percentage of aggregate recycling and composting. Contractors must provide the total number of customers and total tons landfilled quarterly but are not required to disclose specific sites that are utilizing recycling services. The term of this agreement is five years.

If the second reading of this franchise agreement ordinance is approved, the city will have a total of eighteen (18) franchised haulers. This list can be found on the city's website under Public Works.

Budget & Financial Summary: N/A

Attachments:

1. Franchise Agreement _ Vendor Signed



CONTRACT#: 24300244 PROJECT#: N/A BID/RFP/RFQ#: N/A

Page 370 of 425

ORDINANCE NO. _____

RECYCLABLES COLLECTION FRANCHISE AGREEMENT

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

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

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

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

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

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ARTICLE I. DEFINITIONS

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

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

ARTICLE II. GRANT OF AUTHORITY AND ACCEPTANCE

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

ARTICLE III. PAYMENT AND TERM

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

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

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

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

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

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

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

ARTICLE IV. ACCESS TO RECORDS & REPORTING

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

ARTICLE V. RATES TO BE CHARGED BY CONTRACTOR

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

ARTICLE VI. APPEARANCE OF PERSONNEL AND EQUIPMENT

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

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

ARTICLE VII. COLLECTION AND TRANSPORT

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

ARTICLE VIII. PLACEMENT OF RECEPTACLES

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

ARTICLE IX. SERVICE COMPLAINTS

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

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

ARTICLE X. DISPOSAL AND PROCESSING

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

ARTICLE XI. VIOLATION AND PENALTY

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

ARTICLE XII. INSURANCE

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

ARTICLE XIII. INDEMNIFICATION AND RELEASE

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

ARTICLE XIV. DISPUTES AND MEDIATION

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

ARTICLE XV. GENERAL TERMS

- 15.1 Performance.** Contractor, its employees, associates, or subcontractors shall perform all the services in a professional manner and be fully qualified and competent to perform those services.
- 15.2 Termination.**
- a. For Convenience.** At any time, the City or Contractor may terminate this Agreement for convenience, in writing with thirty (30) days' written notice. City shall be compensated for outstanding Franchise Fees.
 - b. For Cause.** City may terminate this Agreement if Contractor materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Agreement, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) days of City providing Contractor written notice, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time upon which the parties may agree.
 - c. Hearing.** This Agreement shall not be terminated except upon a majority vote of the City Council, after giving reasonable notice to Contractor. The Contractor will have an opportunity to be heard, provided if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.
- 15.3 Venue.** This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.
- 15.4 Amendment.** This Agreement may only be amended by written instrument approved and executed by the parties.
- 15.5 Taxes.** The City is tax exempt and is not responsible for the payment of any taxes.
- 15.6 Compliance with Laws.** The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA.
- 15.7 Waiver of Terms.** No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver of deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.

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

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

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

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

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

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

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

Container Source Storage and Roll-Off
Attn: Dylan Dollar, Manager
12662 HWY 36 N
Brenham, TX 77833
sales@containersourceinc.com

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

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

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

- a. First Consideration & Approval on the 8 day of February, 2024.
- b. Second Consideration & Approval on the 22 day of February, 2024.

**CONTAINER SOURCE STORAGEE
AND ROLL-OFF**

By: Dylan Dollar

Printed Name: Dylan Dollar

Title: **Owner/Member**

Date: 1/26/2024

CITY OF COLLEGE STATION

By: _____
Mayor

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

John A. Haislet

City Attorney

Date: 1/29/2024

Jim Enster

Assistant City Manager/CFO

Date: 1/29/2024

EXHIBIT A. SCHEDULE OF RATES

- I. Contractor's base rate is below, and may increase, depending on a variety of conditions, including but not limited to:
- a. Location of Customer
 - b. Impact on Existing Routes
 - c. Ingress and Egress Capabilities
 - d. Special Requests by Customers
 - e. Frequency of Collections
 - f. Volume of Materials
 - g. Type of Materials
 - h. External Contributing Conditions of Market Costs

College Station Roll-Off Rates 2024

20YD- \$375

30YD- \$425

40YD- \$475

Each dumpster includes 3 tons of free disposal. Any debris over 3 tons will be an additional \$30/ton.

These prices also include 10 days. There will be a \$5/day charge for each day over 10 days.

EXHIBIT B. INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

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

IV. Business Automobile Liability

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

V. Workers' Compensation Insurance

- a. Workers compensation insurance shall include the following terms:
 - i. Employer's Liability minimum limits of liability not less than \$500,000 for each accident/each disease/each employee are required
 - ii. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy
 - iii. TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY"

EXHIBIT C. CERTIFICATES OF INSURANCE



CONTSOU-01

SDRAEHN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/3/2024

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 Wellmann Insurance Agency, Inc 103 E Academy St. Brenham, TX 77833	CONTACT NAME: Stacie Draehn	
	PHONE (A/C, No, Ext): (979) 836-3613	FAX (A/C, No): (979) 836-6990
	E-MAIL ADDRESS: sdraehn@wellmanninsurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Acuity	14184
INSURED Container Source LLC 12662 HWY 36 N Brenham, TX 77833	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			ZK8506	9/20/2023	9/20/2024	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			ZK8506	9/20/2023	9/20/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			ZK8506	9/20/2023	9/20/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ PER STATUTE ☐ OTH-ER ☐
	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				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Included:

CA-9948R Pollution Liability - Broadened Coverage for Covered Autos - Business Auto and Motor Carrier Coverage Forms, CA-7274 Motor Carrier Endorsement, CU-7043 Pollution Exclusion - Autos, CA-7100 End. for motor carrier policies of insurance for public liability form MCS-90
Blanket endorsements included and applicable when agreed with named insured in written contract or agreement. Insurance is Primary & Non-Contributory (endorsement CG0001R)
CG-7264 Waiver of Transfer of Rights of Recovery Against Others to Us-Automatic Status
CG-2043R Additional Insured - Automatic Status
SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

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



ADDITIONAL REMARKS SCHEDULE

AGENCY Wellmann Insurance Agency, Inc		NAMED INSURED Container Source LLC 12662 HWY 36 N Brenham, TX 77833	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1		
		EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

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

Description of Operations/Locations/Vehicles:
CA-7214 Additional Insured Primary (auto)
CU-7098 Additional Insured (umbrella)

IL7002: 30 day Notice of Cancellation Endorsement is in favor of the certificate holder.



SMITPRO-01

TSOUTH1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/24/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rollo Insurance Group, Inc 1202 Amistad Loop College Station, TX 77845	CONTACT NAME: PHONE (A/C, No, Ext): (979) 307-7700 FAX (A/C, No): E-MAIL ADDRESS: jon.ellison@rolloinsurance.com
	INSURER(S) AFFORDING COVERAGE INSURER A : Texas Mutual Insurance Company INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :
INSURED Smith's Pro-tech Auto Repair LLC; Container Source LLC 601 Harvey Rd College Station, TX 77840-3453	NAIC # 22945

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
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N / A		0001302507	3/4/2023	3/4/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 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 1101 Texas Ave 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
--	---

Workers' Compensation and Employer's Liability Policy

NCCI Carrier Code: 29939

Information Page

Insured copy

Item 1 Insured name and address Producer 14005	SMITHS PRO TEC AUTO REPAIR LLC DBA: PRO-TECH AUTO REPAIR 601 HARVEY RD COLLEGE STATION TX 77840-3453 Other workplaces not shown above See Schedule of Operations attached. ROLLO INSURANCE GROUP INC 1500 EARL RUDDER FWY S COLLEGE STATION TX 77840-2677 Policy number 0001302507 Federal tax ID 813431479 Entity LLC Interim adjustment Annual Bureau no. 421573492 Branch Houston Renewal of 0001302507																																	
Item 2	The policy period is from: 3/4/23 To: 3/4/24 12:01 a.m. standard time at the insured's mailing address																																	
Item 3	A. Workers' Compensation Insurance: Part One of the policy applies to the Workers' Compensation Law of the states listed here: Texas B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3A. The Limits of our Liability under Part Two are: <table border="0"> <tr> <td>Bodily Injury by Accident</td> <td>\$500,000.00</td> <td>Each Accident</td> </tr> <tr> <td>Bodily Injury by Disease</td> <td>\$500,000.00</td> <td>Policy Limit</td> </tr> <tr> <td>Bodily Injury by Disease</td> <td>\$500,000.00</td> <td>Each Employee</td> </tr> </table> C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here: None D. This policy includes these endorsements and schedules: see Schedule of Endorsements attached.	Bodily Injury by Accident	\$500,000.00	Each Accident	Bodily Injury by Disease	\$500,000.00	Policy Limit	Bodily Injury by Disease	\$500,000.00	Each Employee																								
Bodily Injury by Accident	\$500,000.00	Each Accident																																
Bodily Injury by Disease	\$500,000.00	Policy Limit																																
Bodily Injury by Disease	\$500,000.00	Each Employee																																
Item 4	The premium for this policy will be determined by our manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit. <table border="0"> <tr> <td></td> <td>Payroll</td> <td>Premium</td> </tr> <tr> <td>Total payroll and estimated manual premium</td> <td>\$451,986.00</td> <td>\$9,155.00</td> </tr> </table> <table border="0"> <tr> <td>Description</td> <td>Factor</td> <td>Amount</td> </tr> <tr> <td>Waiver of Subrogation</td> <td></td> <td>183.00</td> </tr> <tr> <td>Increased Limits Factor 500,000/500,000/500,000</td> <td>0.011</td> <td>101.00</td> </tr> <tr> <td>Experience Modifier</td> <td></td> <td>(850.00)</td> </tr> <tr> <td>Schedule Modifier</td> <td>0.810</td> <td>(1,632.00)</td> </tr> <tr> <td>Healthcare Network Option</td> <td>0.120</td> <td>(835.00)</td> </tr> <tr> <td>Premium Discount</td> <td>0.017</td> <td>(104.00)</td> </tr> <tr> <td>Expense Constant</td> <td></td> <td>150.00</td> </tr> <tr> <td>Total estimated annual premium</td> <td></td> <td>\$6,168.00</td> </tr> </table> Minimum premium \$250.00 Issue date: 1/26/23 Countersigned by  Includes copyright material of the National Council on Compensation Insurance, Inc. used with its permission ©Copyright 2023 National Council of Compensation Insurance, Inc. All rights reserved.		Payroll	Premium	Total payroll and estimated manual premium	\$451,986.00	\$9,155.00	Description	Factor	Amount	Waiver of Subrogation		183.00	Increased Limits Factor 500,000/500,000/500,000	0.011	101.00	Experience Modifier		(850.00)	Schedule Modifier	0.810	(1,632.00)	Healthcare Network Option	0.120	(835.00)	Premium Discount	0.017	(104.00)	Expense Constant		150.00	Total estimated annual premium		\$6,168.00
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Workers' Compensation and Employer's Liability Policy

Policy number	Issue date	Policy period
0001302507	1/26/23	3/4/23 to 3/4/24

Extension of Information Page

Item 1: Insured Name Extended

Insured copy

Additional named insured	FEIN	Entity
CONTAINER SOURCE LLC	813082190	LLC

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 3/4/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001302507 of Texas Mutual Insurance Company effective on 3/4/23

Issued to: SMITHS PRO TEC AUTO REPAIR LLC

DBA: PRO-TECH AUTO REPAIR

This is not a bill

NCCI Carrier Code: 29939



Authorized representative

1/26/23

Workers' Compensation and Employer's Liability Policy

Policy number 0001302507
Issue date 1/26/23
Policy period 3/4/23 to 3/4/24

Extension of Information Page

Item 1: Locations

Insured copy

Location	Address	Effective	Expires
00001	SMITHS PRO TEC AUTO REPAIR LLC 601 HARVEY RD COLLEGE STATION, TX 77840-3453	3/4/23	3/4/24
00002	SMITHS PRO TEC AUTO REPAIR LLC 101 WHISPER LN BRENHAM, TX 77833-1175	3/4/23	3/4/24
00003	SMITHS PRO TEC AUTO REPAIR LLC 12662 HIGHWAY 36 N BRENHAM, TX 77833-5780	3/4/23	3/4/24

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 3/4/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001302507 of Texas Mutual Insurance Company effective on 3/4/23

Issued to: SMITHS PRO TEC AUTO REPAIR LLC

DBA: PRO-TECH AUTO REPAIR

This is not a bill

NCCI Carrier Code: 29939



Authorized representative

1/26/23

Workers' Compensation and Employer's Liability Policy

Policy number 0001302507
Issue date 1/26/23
Policy period 3/4/23 to 3/4/24

Schedule of Operations

Item 4: Premium Calculation

Insured copy

Class codes for primary named insured

State	Location	Code	Classification	Premium basis total estimated annual remuneration	Rate per \$100 of remuneration	Estimated annual premium
3/4/23 to 3/4/24						
42	00001	8107	Brass or Copper Dealer-Wholesale-& Drivers	251,612.00	2.420	6,089.00
42	00001	8391	Automobile Repair Shop & Parts Department Employees, Drivers	200,374.00	1.530	3,066.00
42	00002	8391	Automobile Repair Shop & Parts Department Employees, Drivers	If any	1.530	0.00
42	00003	8391	Automobile Repair Shop & Parts Department Employees, Drivers	If any	1.530	0.00
Estimated manual premium						\$9,155.00
	0930	Blanket Waiver: ALL TEXAS OPERATIONS 03/04/2023 - 03/04/2024			0.020	183.00
	9807	Increased Limits Factor 500,000/500,000/500,000			0.011	101.00
	9898	Experience Modifier of 0.91			0.910	(850.00)
	9887	Schedule Modifier			0.810	(1,632.00)
	9874	Healthcare Network Option			0.120	(835.00)
	0063	Premium Discount			0.017	(104.00)
	0900	Expense Constant			1.000	150.00
Total payroll and Texas total premium				\$451,986.00		\$6,168.00

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
 (The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
 This endorsement, effective on 3/4/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001302507 of Texas Mutual Insurance Company effective on 3/4/23

Issued to: SMITHS PRO TEC AUTO REPAIR LLC

DBA: PRO-TECH AUTO REPAIR

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

1/26/23

February 8, 2024
Item No. 8.1.
Southside Historic District Street Signs

Sponsor: Barbara Moore, Assistant to the City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on Southside Historic District Street Signs.

Relationship to Strategic Goals:

Neighborhood Integrity

Recommendation(s): Council receive presentation on Southside Historic District Street Signs

Summary: Representatives from the Southside neighborhood are raising funds to purchase new Maroon street signs that celebrate the neighborhood's 100th anniversary.

Budget & Financial Summary: N/A

Attachments:

None

February 8, 2024

Item No. 8.2.

Update from the College Station Police Department

Sponsor: Billy Couch

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an update from the College Station Police Department.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Receive the report and provide feedback.

Summary: Update on calendar year 2023 operations and activities for the College Station Police Department.

Budget & Financial Summary: None.

Attachments:

None

February 8, 2024
Item No. 8.3.
Update from the College Station Fire Department

Sponsor: Richard Mann, Chief of Fire and Emergency Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an update from the College Station Fire Department.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Receive the report and provide feedback.

Summary: Update on calendar year 2023 operations and activities for the College Station Fire Department.

Budget & Financial Summary: None.

Attachments:

None

February 8, 2024
Item No. 9.1.
PUE Abandonment - 2425 Harvey Mitchell Parkway S

Sponsor: Lindsey Pressler

Reviewed By CBC: N/A

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance vacating and abandoning a 0.126 acre portion of a 15-foot wide Public Utility Easement located in Lot 3, Block 1 of Waters Edge Subdivision, according to the plat recorded in Volume 18474, page 262 of the Official Public Records of Brazos County, Texas.

Relationship to Strategic Goals:

- Core Services and Infrastructure
- Diverse Growing Economy

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

Summary: The public utility easement abandonment is being requested by the applicant as a result of further development of the area. The originally dedicated easement was intended for utilities extending through the property. A new easement on the eastern side of the lot has been dedicated for this purpose. The abandonment will not prevent utility access for the rear tract.

The public utility easement is 15-feet-wide, extending 365 feet northeast from near Harvey Mitchell onto the 1.41 acre lot.

Budget & Financial Summary: N/A

Attachments:

1. Abandonment Ordinance
2. Exhibit A
3. Vicinity Map
4. Location Map
5. Abandonment Application

ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AFFIRMATIVE FINDINGS AND VACATING AND ABANDONING A 0.126 ACRE PORTION OF A 15 FOOT WIDE PUBLIC UTILITY EASEMENT, SAID PORTION LYING IN LOT 3, BLOCK 1 OF THE WATERS EDGE SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN VOLUME 18474, PAGE 262 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

WHEREAS, the City of College Station, Texas, has received an application for the vacation and abandonment of a 0.126 acre portion of a 15 foot wide Public Utility Easement, said portion lying in Lot 3, Block 1 of Waters Edge Subdivision, according to the plat recorded in Volume 18474, Page 262 of the Official Public Records of Brazos County, Texas, as described in **Exhibit “A”**, attached hereto (such portion hereinafter referred to as the “Public Utility Easement”); and

WHEREAS, in order for the Public Utility Easement to be vacated and abandoned by the City Council of the City of College Station, Texas, the City Council must make certain affirmative findings; now therefore,

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

PART 1: That after opening and closing a public hearing, the City Council finds the following pertaining to the vacating and abandoning of the Public Utility Easement described in **Exhibit “A”** attached hereto and made a part of this ordinance for all purposes.

1. Abandonment of the Public Utility Easement will not result in property that does not have access to public roadways or utilities.
2. There is no public need or use for the Public Utility Easement.
3. There is no anticipated future public need or use for the Public Utility Easement.
4. Abandonment of the Public Utility Easement will not impact access for all public utilities to serve current and future customers.

PART 2: That the Public Utility Easement as described in **Exhibit “A”** be abandoned and vacated by the City.

PASSED, ADOPTED and APPROVED this 8th day of February, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A**15' PUE PARTIAL ABANDONMENT**

**FIELD NOTES DESCRIPTION
OF A PORTION OF A
15' WIDE PUBLIC UTILITY EASEMENT
(17232/190 OPRBCT)
TO BE ABANDONED**

**MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

A FIELD NOTES DESCRIPTION OF A PORTION OF A 15' WIDE PUBLIC UTILITY EASEMENT TO BE ABANDONED IN THE MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, DEDICATED IN VOLUME 17232, PAGE 190 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT) AND BEING OVER, ACROSS AND UPON LOT 3, BLOCK 1, OF THE WATERS EDGE SUBDIVISION REPLAT, FILED IN VOLUME 18474, PAGE 262 (OPRBCT); SAID 15' WIDE PUBLIC UTILITY EASEMENT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" found on the northeast line of Harvey Mitchell Parkway S. (variable width right-of-way, 1222/698 & 1224/588 of the Official Records of Brazos County Texas, OPRBCT, and 17232/190 OPRBCT), for the west corner of said Lot 3 of Waters Edge Subdivision and being the south corner of Lot 3, Block 1, of Lakeview Acres, Phase II, filed in Volume 15525, Page 164 (OPRBCT);

THENCE, with the common line of said Lot 3 of Waters Edge Subdivision and said Lot 3 of Lakeview Acres for the following two (2) courses and distances:

- 1) N 43° 06' 07" E**, for a distance of **33.28 feet** to a point for corner, being the **POINT OF BEGINNING** hereof;
- 2) N 43° 06' 07" E**, for a distance of **197.96 feet** to a 1/2 inch iron rod found for the east corner of said Lot 3 of Lakeview Acres and being the south corner of a called 20.40 acre tract of land described in a deed to Whitworth Financial, Inc. recorded in Volume 6062, Page 147 (OPRBCT);

THENCE, with the common line of said 20.40 acres and said Lot 3 of Waters Edge Subdivision, **N 43° 25' 12" E**, for a distance of **169.16 feet** to a point for corner;

THENCE, across said Lot 3 of Waters Subdivision for the following four (4) courses and distances:

- 1) S 51° 40' 29" E**, for a distance of **15.06 feet** to a point for corner;

1 | Page**23-833 15'PUE MGB.docx**

15' PUE PARTIAL ABANDONMENT

- 2) **S 43° 25' 12" W**, for a distance of **170.45 feet** to a point for corner from which the City of College Station Monument CS94-129 bears S 56° 39' 16" E, a distance of 1,485.99 feet;
- 3) **S 43° 06' 07" W**, for a distance of **193.63 feet** to a point for corner;
- 4) **N 62° 51' 07" W**, for a distance of **15.60 feet** to the **POINT OF BEGINNING** hereof and containing **0.126 acres**, more or less.

See plat prepared September 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are grid distances. To obtain surface distances (not surface areas) multiply by a combined scale factor of 1.000103 (calculated using GEOID12B). Reference drawing: 23-833-EASEMENT. REVISED 10/12/2023. Adjusted size of easement to be abandoned.

Revised 11/30/2023. Altered deed and easement references.



Michael Konetski 1/4/24

Michael Konetski

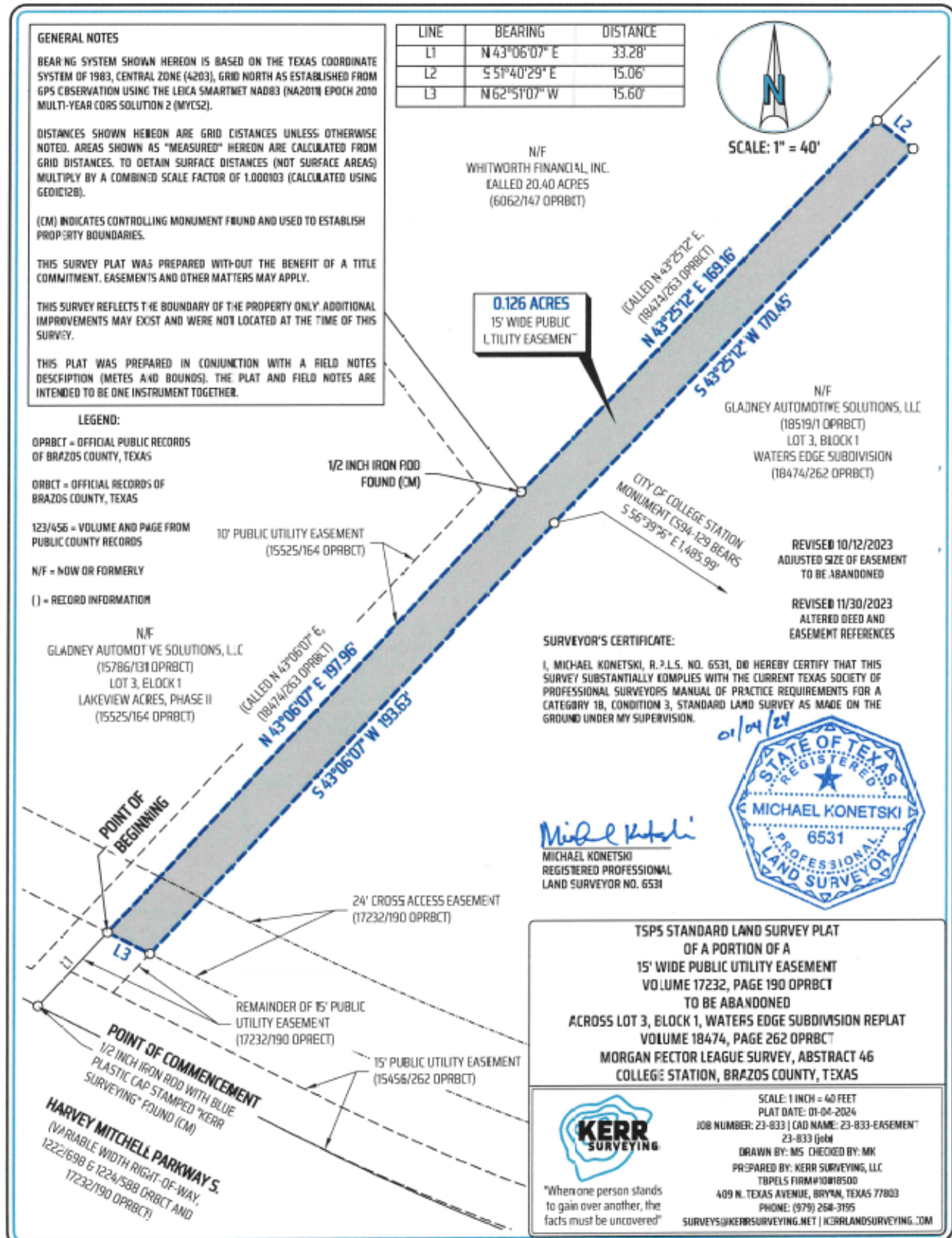
Registered Professional Land Surveyor No. 6531

**KERR
SURVEYING**

Kerr Surveying, LLC | 409 N. Texas Ave. Bryan, TX 77803

Office: (979) 268-3195 | Web: www.kerrlandsurveying.com

Surveys@kerrsurveying.net | TBPELS Firm No. 10018500





**FIELD NOTES DESCRIPTION
OF A PORTION OF A
15' WIDE PUBLIC UTILITY EASEMENT
(17232/190 OPRBCT)
TO BE ABANDONED
MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

A FIELD NOTES DESCRIPTION OF A PORTION OF A 15' WIDE PUBLIC UTILITY EASEMENT TO BE ABANDONED IN THE MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, DEDICATED IN VOLUME 17232, PAGE 190 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT) AND BEING OVER, ACROSS AND UPON LOT 3, BLOCK 1, OF THE WATERS EDGE SUBDIVISION REPLAT, FILED IN VOLUME 18474, PAGE 262 (OPRBCT); SAID 15' WIDE PUBLIC UTILITY EASEMENT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" found on the northeast line of Harvey Mitchell Parkway S. (variable width right-of-way, 1222/698 & 1224/588 of the Official Records of Brazos County Texas, ORBCT, and 17232/190 OPRBCT), for the west corner of said Lot 3 of Waters Edge Subdivision and being the south corner of Lot 3, Block 1, of Lakeview Acres, Phase II, filed in Volume 15525, Page 164 (OPRBCT);

THENCE, with the common line of said Lot 3 of Waters Edge Subdivision and said Lot 3 of Lakeview Acres for the following two (2) courses and distances:

- 1) **N 43° 06' 07" E**, for a distance of **33.28 feet** to a point for corner, being the **POINT OF BEGINNING** hereof;
- 2) **N 43° 06' 07" E**, for a distance of **197.96 feet** to a 1/2 inch iron rod found for the east corner of said Lot 3 of Lakeview Acres and being the south corner of a called 20.40 acre tract of land described in a deed to Whitworth Financial, Inc. recorded in Volume 6062, Page 147 (OPRBCT);

THENCE, with the common line of said 20.40 acres and said Lot 3 of Waters Edge Subdivision, **N 43° 25' 12" E**, for a distance of **169.16 feet** to a point for corner;

THENCE, across said Lot 3 of Waters Subdivision for the following four (4) courses and distances:

- 1) **S 51° 40' 29" E**, for a distance of **15.06 feet** to a point for corner;

- 2) **S 43° 25' 12" W**, for a distance of **170.45 feet** to a point for corner from which the City of College Station Monument CS94-129 bears S 56° 39' 16" E, a distance of 1,485.99 feet;
- 3) **S 43° 06' 07" W**, for a distance of **193.63 feet** to a point for corner;
- 4) **N 62° 51' 07" W**, for a distance of **15.60 feet** to the **POINT OF BEGINNING** hereof and containing **0.126 acres**, more or less.

See plat prepared September 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are grid distances. To obtain surface distances (not surface areas) multiply by a combined scale factor of 1.000103 (calculated using GEOID12B). Reference drawing: 23-833-EASEMENT. REVISED 10/12/2023. Adjusted size of easement to be abandoned.

Revised 11/30/2023. Altered deed and easement references.



Michael Konetski

1/4/24

Michael Konetski

Registered Professional Land Surveyor No. 6531

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Surveys@kerrsurveying.net | TBPELS Firm No. 10018500

GENERAL NOTES

BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTION 2 (MYCS2).

DISTANCES SHOWN HEREON ARE GRID DISTANCES UNLESS OTHERWISE NOTED. AREAS SHOWN AS "MEASURED" HEREON ARE CALCULATED FROM GRID DISTANCES. TO OBTAIN SURFACE DISTANCES (NOT SURFACE AREAS) MULTIPLY BY A COMBINED SCALE FACTOR OF 1.000103 (CALCULATED USING GEOID12B).

(CM) INDICATES CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY BOUNDARIES.

THIS SURVEY PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. EASEMENTS AND OTHER MATTERS MAY APPLY.

THIS SURVEY REFLECTS THE BOUNDARY OF THE PROPERTY ONLY. ADDITIONAL IMPROVEMENTS MAY EXIST AND WERE NOT LOCATED AT THE TIME OF THIS SURVEY.

THIS PLAT WAS PREPARED IN CONJUNCTION WITH A FIELD NOTES DESCRIPTION (METES AND BOUNDS). THE PLAT AND FIELD NOTES ARE INTENDED TO BE ONE INSTRUMENT TOGETHER.

LEGEND:

OPRBCT = OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS

ORBCT = OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS

123/456 = VOLUME AND PAGE FROM PUBLIC COUNTY RECORDS

N/F = NOW OR FORMERLY

() = RECORD INFORMATION

N/F
GLADNEY AUTOMOTIVE SOLUTIONS, LLC
(15786/131 OPRBCT)
LOT 3, BLOCK 1
LAKEVIEW ACRES, PHASE II
(15525/164 OPRBCT)

10' PUBLIC UTILITY EASEMENT
(15525/164 OPRBCT)

1/2 INCH IRON ROD
FOUND (CM)

0.126 ACRES
15' WIDE PUBLIC
UTILITY EASEMENT

(CALLED N 43°06'07" E,
(18474/263 OPRBCT))
N 43°06'07" E 197.96'
S 43°06'07" W 193.63'

POINT OF
BEGINNING

24' CROSS ACCESS EASEMENT
(17232/190 OPRBCT)

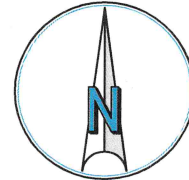
REMAINDER OF 15' PUBLIC
UTILITY EASEMENT
(17232/190 OPRBCT)

15' PUBLIC UTILITY EASEMENT
(15456/262 OPRBCT)

POINT OF COMMENCEMENT
1/2 INCH IRON ROD WITH BLUE
PLASTIC CAP STAMPED "KERR
SURVEYING" FOUND (CM)

HARVEY MITCHELL PARKWAYS.
(VARIABLE WIDTH RIGHT-OF-WAY,
1222/698 & 1224/588 ORBCT AND
17232/190 OPRBCT)

LINE	BEARING	DISTANCE
L1	N 43°06'07" E	33.28'
L2	S 51°40'29" E	15.06'
L3	N 62°51'07" W	15.60'



SCALE: 1" = 40'

N/F
WHITWORTH FINANCIAL, INC.
CALLED 20.40 ACRES
(6062/147 OPRBCT)

(CALLED N 43°25'12" E,
(18474/263 OPRBCT))
N 43°25'12" E 169.16'
S 43°25'12" W 170.45'

N/F
GLADNEY AUTOMOTIVE SOLUTIONS, LLC
(18519/1 OPRBCT)
LOT 3, BLOCK 1
WATERS EDGE SUBDIVISION
(18474/262 OPRBCT)

REVISED 10/12/2023
ADJUSTED SIZE OF EASEMENT
TO BE ABANDONED

REVISED 11/30/2023
ALTERED DEED AND
EASEMENT REFERENCES

SURVEYOR'S CERTIFICATE:

I, MICHAEL KONETSKI, R.P.L.S. NO. 6531, DO HEREBY CERTIFY THAT THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS MANUAL OF PRACTICE REQUIREMENTS FOR A CATEGORY 1B, CONDITION 3, STANDARD LAND SURVEY AS MADE ON THE GROUND UNDER MY SUPERVISION.

01/04/24

Michael Konetski

MICHAEL KONETSKI
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6531



TSPS STANDARD LAND SURVEY PLAT
OF A PORTION OF A
15' WIDE PUBLIC UTILITY EASEMENT
VOLUME 17232, PAGE 190 OPRBCT
TO BE ABANDONED
ACROSS LOT 3, BLOCK 1, WATERS EDGE SUBDIVISION REPLAT
VOLUME 18474, PAGE 262 OPRBCT
MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46
COLLEGE STATION, BRAZOS COUNTY, TEXAS



"When one person stands
to gain over another, the
facts must be uncovered"

SCALE: 1 INCH = 40 FEET
PLAT DATE: 01-04-2024
JOB NUMBER: 23-833 | CAD NAME: 23-833-EASEMENT
23-833 (job)
DRAWN BY: MS CHECKED BY: MK
PREPARED BY: KERR SURVEYING, LLC
TBPELS FIRM#10018500
409 N. TEXAS AVENUE, BRYAN, TEXAS 77803
PHONE: (979) 268-3195
SURVEYS@KERRSURVEYING.NET | KERRLANDSURVEYING.COM

VICINITY MAP

NORTH

GLADNEY AUTOMOTIVE SOLUTIONS
PUE ABANDONMENT

DARTMOUTH STREET

HARVEY MITCHELL PARKWAY SOUTH

FRONTAGE 6 ROAD WEST

EARL RUDDER FREEWAY SOUTH

EMERALD PLAZA

EMERALD PARKWAY

CORSAIR DRIVE

FRONTAGE 6 ROAD EAST

MORGANS LANE

0 0.04 0.07 0.14 Miles

LOCATION MAP



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. No warranty is made by the City of College Station regarding specific accuracy or completeness.

FOR OFFICE USE ONLY

CASE NO.: _____
 DATE SUBMITTED: _____
 TIME: _____
 STAFF: _____

ABANDONMENT OF PUBLIC RIGHT-OF-WAY/EASEMENT APPLICATION

MINIMUM SUBMITTAL REQUIREMENTS:

- ☒ Abandonment of Public Right-of-Way/Easement Application Fee. **(Refer to the Planning and Development Fee Schedule for all applicable fees)**
- ☒ Application completed in full. This application form provided by the City of College Station must be used and may not be adjusted or altered. Please attach pages if additional information is provided.
- ☒ All exhibits processed (except for Exhibit No. 4, which will be processed by staff).
- ☒ Title report for property current within ninety (90) days or accompanied by a Nothing Further Certificate current within ninety (90) days. The report must include applicable information such as ownership, liens, encumbrances, etc.
- ☐ For unplatted property, a signed, sealed and dated metes and bounds description and a diagram of the property showing the location of the abandonment.
- ☒ For platted property, a copy of the plat showing the lot, block, subdivision, and recording information.

LOCATION OF RIGHT-OF-WAY/EASEMENT TO BE ABANDONED (include legal description):

Gladney Automotive Solutions LLC
2425 Harvey Mitchell Pkwy S
College Station, TX 77845
Waters Edge Block 1, Lot 3, Acres: 1.41

APPLICANT/PROJECT MANAGER'S INFORMATION (Primary contact for the project):

Name Mitchell and Morgan, c/o Tristen Fisher E-mail tristen@mitchellandmorgan.com
 Street Address 3204 Earl Rudder Fwy S
 City College Station State Texas Zip Code 77845
 Phone Number 979-260-6963 Fax Number _____

PROPERTY OWNER'S INFORMATION (ALL owners must be identified. Please attach an additional sheet for multiple owners):

Name Gladney Automotive, c/o Kirk Holland E-mail gladneyautomotive@gmail.co
 Street Address: 1511 Texas Avenue South
 City College Station State Texas Zip Code 77840
 Phone Number 979-645-6113 Fax Number _____

The applicant has prepared this application and certifies that the facts stated herein and exhibits attached hereto are true and correct. IF THIS APPLICATION IS FILED BY ANYONE OTHER THAN THE OWNER OF THE PROPERTY, this application must be accompanied by a power of attorney statement of the owner. If there is more than one owner, all owners must sign the application or power of attorney. If the owner is a company, the application must be accompanied by proof of authority for the company's representative to sign the application on its behalf.

Signature and title

Date

President 10/23/23

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF COLLEGE STATION:

The undersigned hereby makes application for the abandonment of that portion of the above right-of-way particularly described in Exhibit No. 1, attached. In support of this application, the undersigned represents and warrants the following:

1. The undersigned will hold the City of College Station harmless, and indemnify it against all suits, costs, expenses, and damages that may arise or grow out of such abandonment.
2. Attached, marked Exhibit No. 1, is a sealed metes and bounds description of the area sought to be abandoned, prepared by a Registered Public Surveyor.
3. Attached, marked Exhibit No. 2, is a copy of a plat or detailed sketch of that portion of the public right-of-way/easement sought to be abandoned and the surrounding area to the nearest streets in all directions, showing the abutting lots and block, and the subdivision in which the above described right-of-way/easement is situated, together with the record owners of such lots.
4. Attached, marked Exhibit No. 3, is the consent of all public utilities to the abandonment.
5. Attached, marked Exhibit No. 4, is the consent of the City of College Station staff to the abandonment.
6. Attached, marked Exhibit No. 5, is the consent of all the abutting property owners, except the following: (if none, so state)

Name N/A E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name N/A E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name N/A E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

7. That the abandonment will not result in property that does not have access to public roadways or utilities because:

All existing and proposed utilities are outside of the section of PUE to be abandoned.

8. That there is no current public need or use for the easement or right-of-way because:

Both sites adjacent to the PUE have recently been developed or are under development and have not placed any public utilities within the PUE to be abandoned.

9. That there is no anticipated future public need or use for the easement or right-of-way because:

Both existing developments are being fully serviced privately within the sites. All public utilities have access from the existing PUE's at the front of both properties.

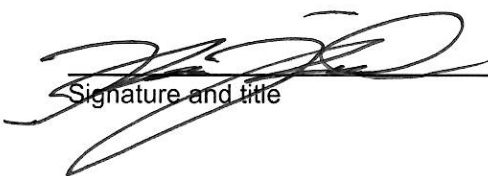
10. That all public utilities have access to serve current and future customers because:

All public utilities have full access from the existing PUEs at the front of both properties.

11. Such public right-of-way/easement has been and is being used as follows:

The portion to be abandoned is currently empty of all utilities and has no use.

I swear that all of the information contained in this application is true and correct to the best of my knowledge and belief.

 President
Signature and title

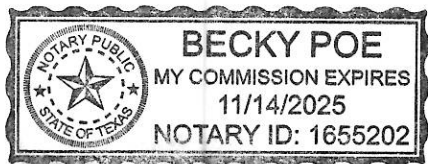
10/23/23
Date

STATE OF TEXAS
COUNTY OF BRAZOS

§
§
§

ACKNOWLEDGEMENT

Subscribed and sworn to before me, a Notary Public, this 23 day of October, 2023 by Kirk Holland, 2009 by




Notary Public in and for
the State of Texas

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 1

Attached is a sealed copy of the metes and bounds description of the public right-of-way/easement situated in

WATERS EDGE, BLOCK 1, LOT 3, ACRES: 1.41

Addition/Subdivision to the City of College Station, Brazos County, Texas, sought to be abandoned.



**FIELD NOTES DESCRIPTION
OF A PORTION OF A
15' WIDE PUBLIC UTILITY EASEMENT
(17232/190 OPRBCT)
TO BE ABANDONED
MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

A FIELD NOTES DESCRIPTION OF A PORTION OF A 15' WIDE PUBLIC UTILITY EASEMENT TO BE ABANDONED IN THE MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, DEDICATED IN VOLUME 17232, PAGE 190 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT) AND BEING OVER, ACROSS AND UPON LOT 3, BLOCK 1, OF THE WATERS EDGE SUBDIVISION REPLAT, FILED IN VOLUME 18474, PAGE 262 (OPRBCT); SAID 15' WIDE PUBLIC UTILITY EASEMENT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" found on the northeast line of Harvey Mitchell Parkway S. (variable width right-of-way, 1222/698 & 1224/588 of the Official Records of Brazos County Texas, ORBCT, and 17232/190 OPRBCT), for the west corner of said Lot 3 of Waters Edge Subdivision and being the south corner of Lot 3, Block 1, of Lakeview Acres, Phase II, filed in Volume 15525, Page 164 (OPRBCT);

THENCE, with the common line of said Lot 3 of Waters Edge Subdivision and said Lot 3 of Lakeview Acres for the following two (2) courses and distances:

- 1) **N 43° 06' 07" E**, for a distance of **33.28 feet** to a point for corner, being the **POINT OF BEGINNING** hereof;
- 2) **N 43° 06' 07" E**, for a distance of **197.96 feet** to a 1/2 inch iron rod found for the east corner of said Lot 3 of Lakeview Acres and being the south corner of a called 20.40 acre tract of land described in a deed to Whitworth Financial, Inc. recorded in Volume 6062, Page 147 (OPRBCT);

THENCE, with the common line of said 20.40 acres and said Lot 3 of Waters Edge Subdivision, **N 43° 25' 12" E**, for a distance of **169.16 feet** to a point for corner;

THENCE, across said Lot 3 of Waters Subdivision for the following four (4) courses and distances:

- 1) **S 51° 40' 29" E**, for a distance of **15.06 feet** to a point for corner;

- 2) **S 43° 25' 12" W**, for a distance of **170.45 feet** to a point for corner from which the City of College Station Monument CS94-129 bears S 56° 39' 16" E, a distance of 1,485.99 feet;
- 3) **S 43° 06' 07" W**, for a distance of **193.63 feet** to a point for corner;
- 4) **N 62° 51' 07" W**, for a distance of **15.60 feet** to the **POINT OF BEGINNING** hereof and containing **0.126 acres**, more or less.

See plat prepared September 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are grid distances. To obtain surface distances (not surface areas) multiply by a combined scale factor of 1.000103 (calculated using GEOID12B). Reference drawing: 23-833-EASEMENT. REVISED 10/12/2023. Adjusted size of easement to be abandoned.

Revised 11/30/2023. Altered deed and easement references.



Michael Konetski 1/4/24

Michael Konetski

Registered Professional Land Surveyor No. 6531

KERR
SURVEYING

Kerr Surveying, LLC | 409 N. Texas Ave. Bryan, TX 77803

Office: (979) 268-3195 | Web: www.kerrlandsurveying.com

Surveys@kerrsurveying.net | TBPELS Firm No. 10018500

GENERAL NOTES

BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTION 2 (MYCS2).

DISTANCES SHOWN HEREON ARE GRID DISTANCES UNLESS OTHERWISE NOTED. AREAS SHOWN AS "MEASURED" HEREON ARE CALCULATED FROM GRID DISTANCES. TO OBTAIN SURFACE DISTANCES (NOT SURFACE AREAS) MULTIPLY BY A COMBINED SCALE FACTOR OF 1.000103 (CALCULATED USING GEOID12B).

(CM) INDICATES CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY BOUNDARIES.

THIS SURVEY PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. EASEMENTS AND OTHER MATTERS MAY APPLY.

THIS SURVEY REFLECTS THE BOUNDARY OF THE PROPERTY ONLY. ADDITIONAL IMPROVEMENTS MAY EXIST AND WERE NOT LOCATED AT THE TIME OF THIS SURVEY.

THIS PLAT WAS PREPARED IN CONJUNCTION WITH A FIELD NOTES DESCRIPTION (METES AND BOUNDS). THE PLAT AND FIELD NOTES ARE INTENDED TO BE ONE INSTRUMENT TOGETHER.

LEGEND:

OPRBCT = OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS

ORBCT = OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS

123/456 = VOLUME AND PAGE FROM PUBLIC COUNTY RECORDS

N/F = NOW OR FORMERLY

() = RECORD INFORMATION

N/F
GLADNEY AUTOMOTIVE SOLUTIONS, LLC
(15786/131 OPRBCT)
LOT 3, BLOCK 1
LAKEVIEW ACRES, PHASE II
(15525/164 OPRBCT)

10' PUBLIC UTILITY EASEMENT
(15525/164 OPRBCT)

1/2 INCH IRON ROD
FOUND (CM)

(CALLED N 43°06'07" E,
(18474/263 OPRBCT)
N 43°06'07" E 197.96'
S 43°06'07" W 193.63'

POINT OF
BEGINNING

24' CROSS ACCESS EASEMENT
(17232/190 OPRBCT)

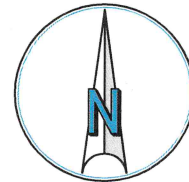
REMAINDER OF 15' PUBLIC
UTILITY EASEMENT
(17232/190 OPRBCT)

15' PUBLIC UTILITY EASEMENT
(15456/262 OPRBCT)

POINT OF COMMENCEMENT
1/2 INCH IRON ROD WITH BLUE
PLASTIC CAP STAMPED "KERR
SURVEYING" FOUND (CM)

HARVEY MITCHELL PARKWAYS.
(VARIABLE WIDTH RIGHT-OF-WAY,
1222/698 & 1224/588 ORBCT AND
17232/190 OPRBCT)

LINE	BEARING	DISTANCE
L1	N 43°06'07" E	33.28'
L2	S 51°40'29" E	15.06'
L3	N 62°51'07" W	15.60'



SCALE: 1" = 40'

N/F
WHITWORTH FINANCIAL, INC.
CALLED 20.40 ACRES
(6062/147 OPRBCT)

0.126 ACRES
15' WIDE PUBLIC
UTILITY EASEMENT

(CALLED N 43°25'12" E,
(18474/263 OPRBCT)
N 43°25'12" E 169.16'
S 43°25'12" W 170.45'

N/F
GLADNEY AUTOMOTIVE SOLUTIONS, LLC
(18519/1 OPRBCT)
LOT 3, BLOCK 1
WATERS EDGE SUBDIVISION
(18474/262 OPRBCT)

REVISED 10/12/2023
ADJUSTED SIZE OF EASEMENT
TO BE ABANDONED

REVISED 11/30/2023
ALTERED DEED AND
EASEMENT REFERENCES

SURVEYOR'S CERTIFICATE:

I, MICHAEL KONETSKI, R.P.L.S. NO. 6531, DO HEREBY CERTIFY THAT THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS MANUAL OF PRACTICE REQUIREMENTS FOR A CATEGORY 1B, CONDITION 3, STANDARD LAND SURVEY AS MADE ON THE GROUND UNDER MY SUPERVISION.

01/04/24

Michael Konetski
MICHAEL KONETSKI
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6531



TSPS STANDARD LAND SURVEY PLAT
OF A PORTION OF A
15' WIDE PUBLIC UTILITY EASEMENT
VOLUME 17232, PAGE 190 OPRBCT
TO BE ABANDONED
ACROSS LOT 3, BLOCK 1, WATERS EDGE SUBDIVISION REPLAT
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COLLEGE STATION, BRAZOS COUNTY, TEXAS



"When one person stands
to gain over another, the
facts must be uncovered"

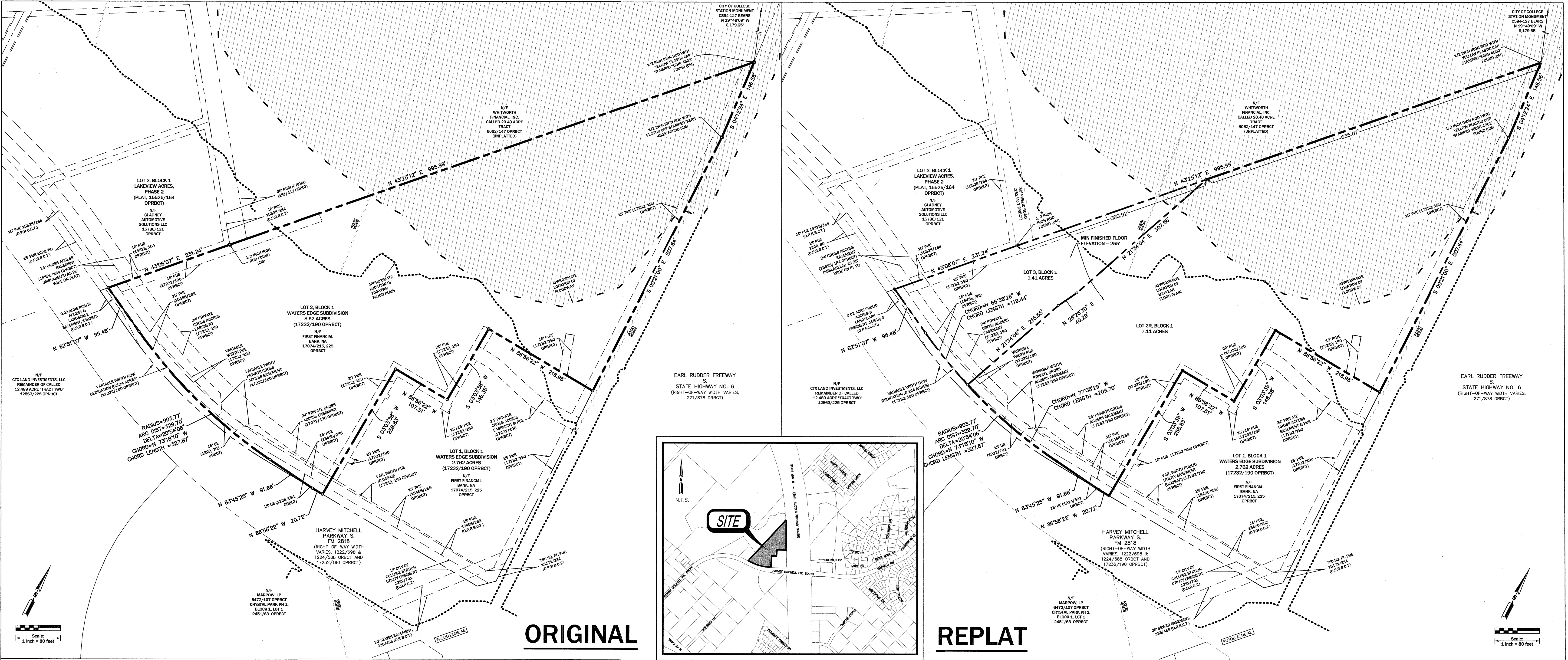
SCALE: 1 INCH = 40 FEET
PLAT DATE: 01-04-2024
JOB NUMBER: 23-833 | CAD NAME: 23-833-EASEMENT
23-833 (job)
DRAWN BY: MS CHECKED BY: MK
PREPARED BY: KERR SURVEYING, LLC
TBPELS FIRM#10018500
409 N. TEXAS AVENUE, BRYAN, TEXAS 77803
PHONE: (979) 268-3195
SURVEYS@KERRSURVEYING.NET | KERRLANDSURVEYING.COM

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 2

Attached is a copy of a plat or detailed sketch of the public right-of-way/easement sought to be abandoned in the above-mentioned application, showing the surrounding area to the nearest streets in all directions, abutting lots, the block or blocks in which the portion of the public right-of-way/easement sought to be vacated is situated, and the addition or subdivision in which the portion of the public right-of-way/easement sought to be abandoned is situated. Also, the names of record owners of the abutting lots are shown.



CERTIFICATE OF OWNERSHIP AND DEDICATION

STATE OF TEXAS
COUNTY OF BRAZOS

I, Nora Thompson, President of First Financial Bank, NA, owner and developer of the land shown on this plat, and designated herein as the Lot 2R, Block 1, and Lot 3, Block 1 of the Waters Edge Subdivision in the City of College Station, Texas, and whose names are subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, greenways, infrastructure, easements, and public places thereon shown for the purpose and consideration therein expressed. All such dedications shall be in fee simple unless expressly provided otherwise.

By: *Nora Thompson*
Nora Thompson, President
First Financial Bank, NA

THE STATE OF TEXAS
COUNTY OF BRAZOS

Before me, the undersigned authority, on this day personally appeared Nora Thompson, President of First Financial Bank, NA, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein stated.

Given under my hand and seal of office this 13 day of February, 2023.

Maria Garcia
Notary Public
Brazos County, Texas

CERTIFICATE OF CITY PLANNER

I, *Nathan Paul Kerr*, City Planner of the City of College Station, Texas, hereby certify that this Subdivision Plat conforms to the requirements of the Subdivision Regulations of the City of College Station.

Nathan Paul Kerr
City Planner
City of College Station, Texas

CERTIFICATE OF CITY ENGINEER

I, *Carol L. Carter*, City Engineer of the City of College Station, Texas, hereby certify that this Subdivision Plat conforms to the requirements of the Subdivision Regulations of the City of College Station.

Carol L. Carter
City Engineer
City of College Station

CERTIFICATE OF THE COUNTY CLERK

Filed for Record
Official Public Records Of:
Brazos County Clerk
On: 2/17/2023 9:25:49 AM
In the PLAT Records
Doc Number: 2023-1495357
Volume - Page: 18474 - 262
Number of Pages: 1
Amount: 75.00
Order#: 20230217000023
By: MG

Karen McQueen
County Clerk
Brazos County, Texas

CERTIFICATE OF SURVEYOR

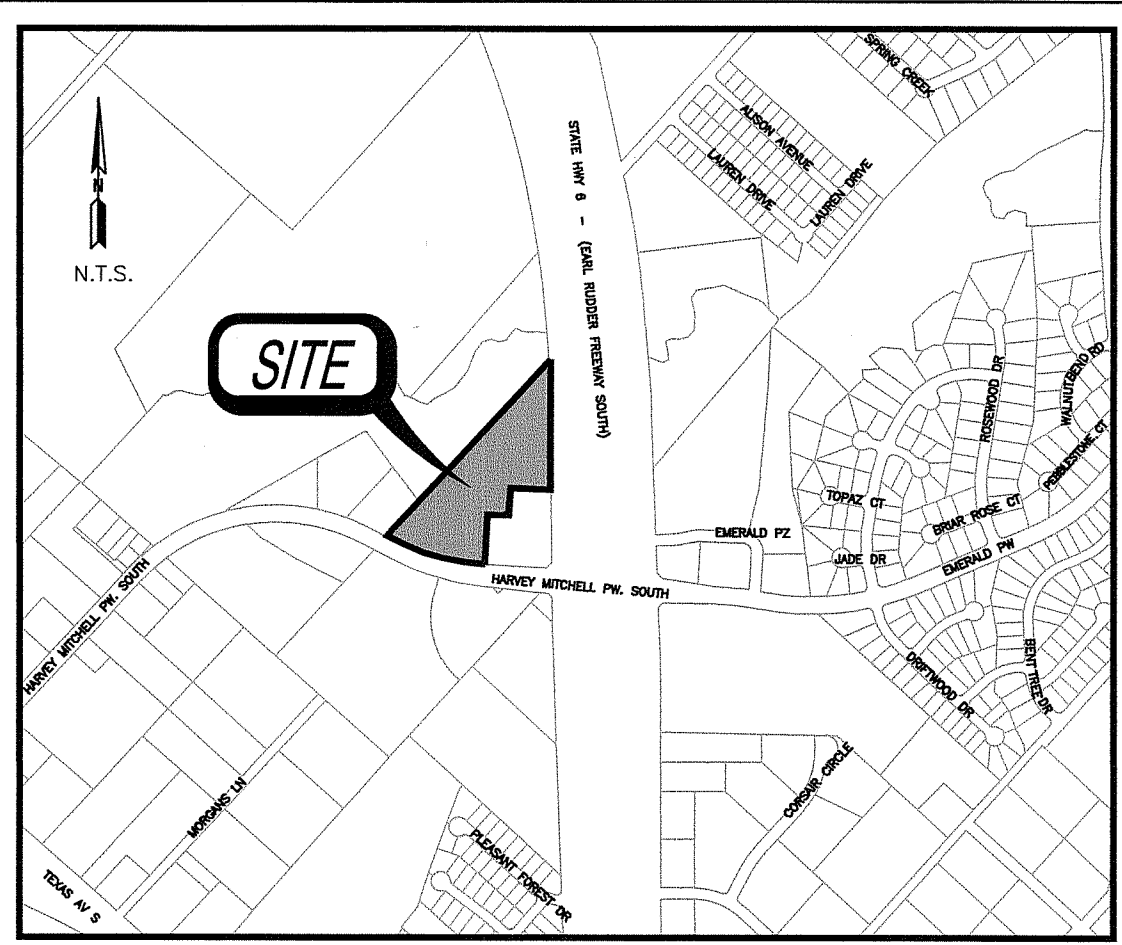
STATE OF TEXAS
COUNTY OF BRAZOS

I, Nathan Paul Kerr, Registered Professional Land Surveyor, No. 6834 in the State of Texas, hereby certify that this plat is true and correct and was prepared from an actual survey of the property and that property markers and monuments were placed under my supervision on the ground.

Nathan Paul Kerr
Nathan Paul Kerr R.P.L.S. No. 6834
2/9/2023



VICINITY MAP
N.T.S.



ORIGINAL

REPLAT

GENERAL NOTES:

1. BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS STATE PLANE CENTRAL ZONE GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTION 2 (MYCS2).
2. DISTANCES SHOWN HEREON ARE GRID DISTANCES UNLESS OTHERWISE NOTED. AREAS SHOWN AS "MEASURED" HEREON ARE CALCULATED FROM GRID DISTANCES. TO OBTAIN SURFACE DISTANCES (NOT SURFACE AREAS) MULTIPLY BY A COMBINED SCALE FACTOR OF 1.000103 (CALCULATED USING GDA012B).
3. PROPERTY LINE DIMENSIONS SHOWN ARE PLAT CALL AND MEASURED, 17232/190 OPRBCT.
4. PROPERTY CORNERS ARE 1/2 INCH IRON ROD WITH BLUE PLASTIC CAP STAMPED 'KERR SURVEYING' SET UNLESS OTHERWISE NOTED.
5. (CM) INDICATES CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY BOUNDARIES.
6. THIS SURVEY PLAT WAS PREPARED TO REFLECT THE TITLE COMMITMENT ISSUED BY UNIVERSITY TITLE COMPANY, OF NO. 222850, EFFECTIVE DATE: 07-14-2022, ISSUED: 07-26-2022. ITEMS LISTED ON SCHEDULE B ARE ADDRESSED AS FOLLOWS:
 - ITEM 10d: EASEMENTS SET OUT ON PLAT (17232/190 OPRBCT) DO AFFECT/CROSS THIS TRACT AS SHOWN HEREON.
 - ITEM 10e: EASEMENT TO CITY OF BRYAN (98/75 DRBCT) DOES AFFECT THIS TRACT. THIS EASEMENT IS BLANKET IN NATURE AND CANNOT BE PLOTTED.
 - ITEM 10f: EASEMENT TO SOUTHWESTERN STATE TELEPHONE CO. (179/543 DRBCT) DOES AFFECT THIS TRACT. THIS EASEMENT IS BLANKET IN NATURE AND CANNOT BE PLOTTED.
 - ITEM 10g: EASEMENT TO THE CITY OF COLLEGE STATION (1224/591 ORBCT) DOES CROSS THIS TRACT AS SHOWN.
 - ITEM 10h: EASEMENT TO THE CITY OF COLLEGE STATION (15456/255 OPRBCT) DOES CROSS THIS TRACT AS SHOWN.
 - ITEM 10i: EASEMENT TO THE CITY OF COLLEGE STATION (15456/282 OPRBCT) DOES CROSS THIS TRACT AS SHOWN.
 - ALL OTHER ITEMS ARE NOT SURVEY ITEMS AND/OR ARE NOT ADDRESSED BY THIS PLAT.
7. ORIGINAL SURVEY LINES SHOWN HEREON (IF ANY) ARE BASED ON RAILROAD COMMISSION GIS DATA, ARE APPROXIMATED ONLY AND WERE NOT LOCATED ON THE GROUND. THIS SURVEYOR DID NOT DETERMINE THE EXISTENCE OF ANY VACANCY, EXCESS, OR SHORTAGE OF AREA IN ANY OF THE ORIGINAL GRANTS SHOWN HEREON.
8. UNDERGROUND UTILITIES ARE APPROXIMATED BASED ON ABOVE GROUND FEATURES, AVAILABLE MAPS AND MARKINGS BY UTILITY PROVIDERS. ADDITIONAL UTILITIES MAY EXIST THAT ARE NOT SHOWN ON THIS SURVEY.
9. DISTANCES SHOWN ALONG CURVES ARE CHORD LENGTHS.
10. THE SUBJECT TRACT DOES LIE WITHIN FLOOD ZONE "X" UNSHADED, "AE", AND "FLOODWAY" AND DOES PARTIALLY LIE WITHIN A SPECIAL FLOOD HAZARD AREA SUBJECT TO THE 1% ANNUAL CHANCE FLOOD (100 YEAR FLOOD PLAIN) ACCORDING TO THE F.E.M.A. FLOOD INSURANCE RATE MAPS FOR BRAZOS COUNTY, TEXAS AND INCORPORATED AREAS. COMMUNITY NO. 480083, PANEL NO. 310F, MAP NO. 48041C0310F, EFFECTIVE DATE APRIL 2, 2014.
11. ELEVATION DATUM: NAVD 1988 BASED ON PUBLISHED ELEVATION OF THE CITY OF COLLEGE STATION CONTROL MONUMENT CS94-127. (PROJECT BENCHMARK N: 10213187.10, E: 3565890.17, ELEV. 258.97')
12. FOR THE PURPOSES OF THIS SUBDIVISION FOR REGULATION OF APPLICABLE DEVELOPMENT STANDARDS, THE FOLLOWING ARE CONSIDERED BUILDING PLOTS:
 - A. LOT 1, BLOCK 1
 - B. LOT 2R & LOT 3, BLOCK 1

GENERAL NOTES:

13. ELECTRIC SUPPLIER: ELECTRIC SERVICE AND STREET LIGHTING FOR THIS SUBDIVISION WILL BE PROVIDED BY COLLEGE STATION UTILITIES (CSU).
14. LOT SETBACKS: ALL LOTS WILL MEET SETBACK AND OTHER REQUIREMENTS AS SPECIFIED IN THE CITY OF COLLEGE STATION UNIFIED DEVELOPMENT ORDINANCE FOR THE ZONING CLASSIFICATION IN WHICH THEY LAY.
15. WATER SUPPLIER: THE WATER SUPPLIER FOR THIS DEVELOPMENT IS THE CITY OF COLLEGE STATION. WATERLINES PROVIDED WILL MEET THE REQUIRED FLOW TO FIRE HYDRANTS FOR FIRE PROTECTION REQUIREMENTS.
16. MINIMUM FINISHED FLOOR WAS SET ON THESE LOTS BASED UPON THE 100 YEAR FLOOD ELEVATION. SANITARY SEWER FLOWLINES MAY DICTATE THE NEED FOR A HIGHER FINISHED FLOOR ELEVATION.

LEGEND:

DRBCT = DEED RECORDS OF BRAZOS COUNTY, TEXAS
ORBCT = OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS
OPRBCT = OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS
123/456 = VOLUME AND PAGE FROM PUBLIC COUNTY RECORDS
N/F = NOW OR FORMERLY
() = RECORD INFORMATION
UE = UTILITY EASEMENT
PUE = PUBLIC UTILITY EASEMENT
PDE = PRIVATE DRAINAGE EASEMENT
[222] = BASE FLOOD ELEVATION (100 YEAR)

FINAL PLAT

SCALE 1"=80'

OF THE

REPLAT
PREPARED AND
SUBMITTED
FEB. 2023

WATERS EDGE
SUBDIVISION

BLOCK 1,
LOTS 2R & 3

BEING A MINOR REPLAT OF
WATERS EDGE SUBDIVISION
BLOCK 1, LOT 2
VOLUME 17232, PAGE 190 OPRBCT

8.520 Acres

MORGAN RECTOR LEAGUE SURVEY, A-46
COLLEGE STATION, BRAZOS COUNTY, TEXAS

OWNER:

FIRST FINANCIAL BANK, NA
2900 SOUTH TEXAS AVE.
BRYAN, TX 77801

ENGINEER:

MITCHELL & MORGAN, L.L.P.
3204 EARL RUDDER FWY. SOUTH
COLLEGE STATION, TX 77845
PHONE (979) 260-6963

SURVEYOR:

KERR SURVEYING, LLC
TBPELS FIRM#10018500
409 N. TEXAS AVENUE
BRYAN, TX 77803
(979) 268-3195
Kerr Job 22-840

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: 

Title: Engineer 3

VERIZON TELEPHONE COMPANY

By: _____

Title: _____

SUDDENLINK COMMUNICATIONS

By: _____

Title: _____

BRYAN TEXAS UTILITIES

By: _____

Title: _____

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: _____

Title: _____

VERIZON TELEPHONE COMPANY

By: Jared Cornelius

Title: Spur, Network Operations

SUDDENLINK COMMUNICATIONS

By: _____

Title: _____

BRYAN TEXAS UTILITIES

By: _____

Title: _____

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: _____
Title: _____

VERIZON TELEPHONE COMPANY

By: _____
Title: _____

SUDDENLINK COMMUNICATIONS

By: 
Title: Sup. Ops - Construction
10.23.23

BRYAN TEXAS UTILITIES

By: _____
Title: _____

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: _____

Title: _____

VERIZON TELEPHONE COMPANY

By: _____

Title: _____

SUDDENLINK COMMUNICATIONS

By: _____

Title: _____

BRYAN TEXAS UTILITIES

David Hering

By: David Hering

Title: Electrical Engineering Manager

Application for Abandonment of a Public Right-of-Way / Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO.4

The undersigned, City staff of the City of College Station, certify that they have carefully considered the Application for Abandonment of the public right-of-way/easement referred to above the standpoint of City of College Station ordinances and with respect to recent and future needs of the City of College Station and see no objection to the requested abandonment from the City's standpoint.

X 

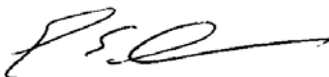
City Engineer
City of College Station

X 

Building Official
City of College Station

X 

Zoning Official
City of College Station

X 

Fire Marshal
City of College Station

X 

Electric Department
City of College Station

X 

Water Services Department
City of College Station

X 

Public Works Director
City of College Station

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 5

The undersigned, owners of property abutting upon that portion of the public right-of-way/easement named and described in the Application for Abandonment of a Public Right-of-Way/Easement referred to above, do hereby consent to such abandonment.

NAME: Kirk Holland
ADDRESS: Gladney Automotive Solutions
2421 Harvey Mitchell Pkwy S
College Station Texas 77840

NAME: _____
ADDRESS: _____

NAME: _____
ADDRESS: _____

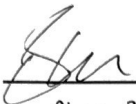
NAME: _____
ADDRESS: _____

Application for Abandonment of
a Public Right-of-Way/Easement

Location: 2425 Harvey Mitchell Pkwy S College Station TX 77845

EXHIBIT NO. 5

The undersigned, owners of property abutting upon that portion of the public right-of-way/easement named and described in the Application for Abandonment of a Public Right-of-Way/Easement referred to above, do hereby consent to such abandonment.

NAME: 
ADDRESS: Shan Rajan, manager
Whitworth Financial, Inc.
2001 S. College Ave, Bryan TX 77801

NAME: _____
ADDRESS: _____

NAME: _____
ADDRESS: _____

NAME: _____
ADDRESS: _____



February 8, 2024
Item No. 9.2.
Parks Board Appointments

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an appointment to the Parks and Recreation Board.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): None

Summary: Scott Shafer serves on the Park and Recreation Board but once he learned he was appointed to the Planning and Zoning Commission, Mr. Shafer felt it was best to resign from the Parks Board as he assumed the new role of Planning and Zoning. Mr. Shafer's term would have expired in 2026, leaving a 2-year unexpired term.

Budget & Financial Summary: N/A

Attachments:

None

February 8, 2024

Item No. 12.1.

Council Reports on Committees, Boards, and Commissions

Sponsor: City Council

Reviewed By CBC: City Council

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

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Review meetings attended.

Summary: Animal Shelter Board, Arts Council of Brazos Valley, Architectural Advisory Committee, Audit Committee, Bond Citizens Advisory Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Economic Development Corporation, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, Census Committee Group, Compensation and Benefits Committee, Experience Bryan-College Station, Design Review Board, Economic Development Committee, Gulf Coast Strategic Highway Coalition, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Metropolitan Planning Organization, Operation Restart, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Technology Council, Regional Transportation Committee for Council of Governments, Sister Cities Association, Spring Creek Local Government Corporation, Transportation and Mobility Committee, TAMU Student Senate, Texas Municipal League, Walk with the Mayor, YMCA, Zoning Board of Adjustments. (Notice of Agendas posted on City Hall bulletin board.)

Budget & Financial Summary: None.

Attachments:

None