



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#

April 25, 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. 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.
- b. City of College Station v. 47 Oaks, LLC, Cause No. 626-CC, in the County Court at Law No. 2 of Brazos County, Texas.
- c. 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.
- d. Cynthia Hopkins & Geoffrey Hopkins v. City of College Station, Cause No. 23-002880-CV-85 in the 85th District Court, Brazos County Texas.
- e. CBL & Associates Management, Inc. v. City of College Station, Cause No. 23-003159-CV-85 In The 85th District Court, Brazos County Texas.
- f. 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.
- g. Legal advice regarding an impact fee appeal for Asher Turkey Creek development.

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

2.3. Real Estate {Gov't Code Section 551.072};

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

- a. Approximately 12 acres of land in the College Station Business Center at the intersection of Gateway Boulevard and State Highway 6.
- b. Property generally located in the area of FM 60, Boyett Street, Church Avenue, and College Main Street.

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 proclaiming May 5th through the 11th as Drinking Water Week.**

Sponsors: Tanya Smith

Attachments: 1. 24 Drinking Water Week

5.2. Presentation proclaiming May 13th through the 19th as Salvation Army Week.

Sponsors: Tanya Smith

Attachments: 1. 24 Salvation Army Week 25th

5.3. Presentation proclaiming May 2024 as National Bike Month.

Sponsors: Carl Ahrens

Attachments: 1. 24 Bike Month Proclamation

5.4. Presentation proclaiming May 2024 as Motorcycle Safety and Awareness Month.

Sponsors: Tanya Smith

Attachments: 1. 24 Motorcycle Safety and Awareness Month

- 5.5. Presentation recognizing the outgoing representatives of the Texas A&M Student Government Association.

Sponsors: Ross Brady

Attachments: 1. Certificate of Recognition - Luke Morrison
2. Certificate of Recognition - Ben Crockett

- 5.6. Presentation proclaiming May 6 through May 10 as Economic Development Week.

Sponsors: Brian Piscacek

Attachments: 1. Economic Development Week Proclamation_4_25_24

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:

- April 11, 2024 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM041124 DRAFT Minutes

- 7.2. Presentation, discussion, and possible action on an agreement for annual concrete curb, gutter, and flatwork installation with Larry Young Paving, Inc., not to exceed \$3,985,400.

Sponsors: Emily Fisher

Attachments: 1. Tabulation 24-022
2. Contract

- 7.3. Presentation, discussion, and possible action on purchasing Panasonic Toughbook Rugged Mobile Data Terminals (MDTs) from Baycom Inc. for \$309,465.

Sponsors: Sam Rivera

Attachments: 1. College Station FZ40_65 Quote_r4 02-01-24

- 7.4. Presentation, discussion, and possible action on a three-year agreement with Kudelski Security, Inc. for Security Operations Center (SOC) services in the amount of \$352,067.59.

Sponsors: Sam Rivera

Attachments: 1. Contract

- 7.5. Presentation, discussion, and possible action on an ordinance amendment to Chapter 40, "Utilities", Division 5: Drought Contingency and Water Emergency Plan, of the Code of Ordinances of the City of College Station, Texas.

Sponsors: Gary Mechler

Attachments: 1. Drought Contingency & Water Emergency Plan Ordinance_v4-16-24

- 7.6. Presentation, discussion, and possible action on a resolution adopting an updated Water Conservation Plan.

Sponsors: Gary Mechler

Attachments: 1. Resolution Adopting Water Conservation Plan 4-19-2024
2. Updated Water Conservation Plan

- 7.7. Presentation, discussion, and possible action on a construction contract with Aggieland Construction, LLC in the amount of \$104,410.26 for an acoustical ceiling at 1207 Texas Ave plus the City's contingency in the amount of \$5,220.51 for a total appropriation of \$109,630.77.

Sponsors: Jennifer Cain

Attachments: 1. 1207 Acoustical Ceiling Construction Contract

8. Workshop Agenda.

- 8.1. Presentation, discussion, and possible action related to a Water Services Department annual update.

Sponsors: Gary Mechler

Attachments: None

- 8.2. Presentation, discussion, and possible action regarding an update on the street maintenance program.

Sponsors: Emily Fisher

Attachments: None

- 8.3. Presentation, discussion, and possible action regarding a paid parking pilot program for special events.

Sponsors: Debbie Eller

Attachments: None

9. Regular Agenda.

- 9.1. Presentation, discussion, and possible action regarding a real estate contract with Fera Diagnostics and Biologicals Corporation for the sale of approximately 12 acres of land in the College Station Business Center at the intersection of Gateway Boulevard and State Highway 6 for the price of \$3,300,000.

Sponsors: Michael Ostrowski

Attachments: 1. Real Estate Contract

- 9.2. Presentation, discussion, and possible action on a professional services contract with Freese & Nichols, Inc. for \$8,416,603 for Wells Nos. 10, 11, and 12 and a collection line for design and construction phase services, and a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Sponsors: Jennifer Cain

Attachments: 1. Contract
2. New Wells and Collection Line DRR
3. New Wells Project Location Map

- 9.3. Presentation, discussion, and possible action on Change Order No. 2 for the Northeast Sewer Trunk Line Ph IV Project design contract with Kimley-Horn and Associates, Inc., not to exceed \$1,030,400.

Sponsors: Jennifer Cain

Attachments: 1. NETL Ph IV Design Change Order #2

- 9.4. Presentation, discussion, and possible action regarding an ordinance amending Chapter 26, "Miscellaneous Provision and Offenses," of the Code of Ordinances of the City of College Station, Texas, by adding certain sections relating to overoccupancy.

Sponsors: Debbie Eller

Attachments: 1. Overoccupancy Ordinance 4-25-24

- 9.5. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Chapter 103, "Buildings and Building Regulations," Article II "Administration and Enforcement," Division 2, "Construction Board of Adjustment and Appeals; Appeals and Variances," and Division 3, "Building and Construction Standards Commission," of the Code of Ordinances of the City of College Station, Texas, by amending certain sections relating to Construction Board of Adjustment and Appeals and the Building and Standards Commission membership.

Sponsors: Brian Binford

Attachments: 1. CBA- BSC Ordinance Amendment 4-25-24

- 9.6. Presentation, discussion, and possible action on an appeal from Caldwell Companies of the Director of Planning and Development Services decision as it relates to impact fees for the Asher Turkey Creek development.

Sponsors: Michael Ostrowski

Attachments: 1. Section 107-94 - Administrative Appeals
2. Impact Fee Appeal to City Council - 20240328
3. Impact Fee Appeal Response - 20240301
4. Impact Fee Appeal - 20240129

10. Council Calendar - Council May Discuss Upcoming Events.

11. Items of Community Interest.

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

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

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

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

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

the subject of a request will be limited to a proposal to place the subject on the agenda for a subsequent meeting.

14. Adjourn.

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

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on April 19, 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."

April 25, 2024
Item No. 5.1.
Drinking Water Week Proclamation

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming May 5th through the 11th as Drinking Water Week.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. 24 Drinking Water Week



Proclamation

WHEREAS, the City Council of the City of College Station, Texas, recognizes that water is our most valuable natural resource; and

WHEREAS, drinking water serves a vital role in daily life, serving an essential purpose to health, hydration and hygiene needs for the quality of life our citizens enjoy; and

WHEREAS, only tap water delivers public health protection, fire protection, support for our economy and the quality of life we enjoy; and

WHEREAS, the hard work performed by the entire water sector, from engineers designing capital projects to operators ensuring the safety and quality of drinking water to members of a pipe crew maintaining the infrastructure communities rely on to transport high quality drinking water from its source to consumers' taps; and

WHEREAS, any measure of a successful society – low mortality rates, economic growth and diversity, productivity, and public safety – needs access to safe water; and

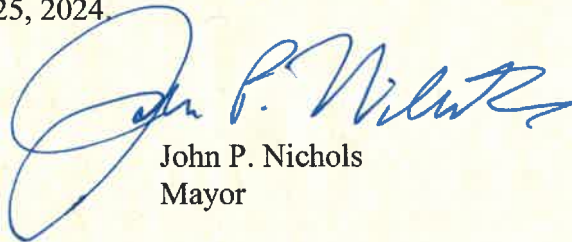
WHEREAS, we are all stewards of the water infrastructure and resources upon which future generations depend; and

WHEREAS, each citizen of our city is called upon to help protect our source waters from pollution, practice water conservation, and stay informed about local water issues.

NOW, THEREFORE, be it resolved that by virtue of the authority vested in me, John P. Nichols, Mayor of College Station, do hereby proclaim May 5-11, 2024 as

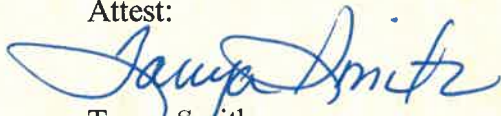
Drinking Water Week

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of College Station to be affixed this April 25, 2024.



John P. Nichols
Mayor

Attest:



Tanya Smith
City Secretary



April 25, 2024
Item No. 5.2.
Salvation Army Week

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming May 13th through the 19th as Salvation Army Week.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. 24 Salvation Army Week 25th



Proclamation

WHEREAS, The Salvation Army's only business in this community of College Station, Texas, as everywhere, is still human business, undertaken with joy for the family of humankind to the greater glory of God; and

WHEREAS, through sound, innovative, and professional services, The Salvation Army serves the people of College Station with unshakable faith in all, no matter how desperate the situation and views all people as people with possibilities; and

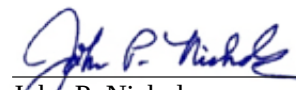
WHEREAS, The Salvation Army acts on behalf of all the residents of our community, with neither salvation nor any other condition prerequisite, nor expecting any thanks, yet nonetheless welcoming community support.

NOW, THEREFORE BE IT RESOLVED, that I, John P. Nichols, as Mayor of the City of College Station, do proclaim the week of May 13-19, 2024 as:

Salvation Army Week

and do urge all citizens to join me in saluting the steadfast men and women who bind up the broken hearted and renew the heart of our community by their quiet service of compassion.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of College Station, Texas to be affixed this 25th day of April 2024.



John P. Nichols
Mayor

Attest:



Tanya Smith
City Secretary

April 25, 2024
Item No. 5.3.
National Bike Month Proclamation

Sponsor: Carl Ahrens, Staff Planner

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming May 2024 as National Bike Month.

Relationship to Strategic Goals:

- Improving Mobility
- Sustainable City

Recommendation(s): Receive the Proclamation

Summary: N/A

Budget & Financial Summary: N/A

Attachments:

1. 24 Bike Month Proclamation



Proclamation

WHEREAS, throughout the month of May, College Station will celebrate the joy, wellbeing, and freedom that bicycling inspires with a Cycle with Council event on May 4th, National Bike to Workday on May 17th; and

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

WHEREAS, bicycle-friendliness contributes to the overall health, traffic safety, quality of life, economic vitality, community spirit, pollution and congestion reduction, and infrastructure longevity of our community; and

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

WHEREAS, College Station is nationally recognized as a Bronze Level Bicycle Friendly Community, as designated by the League of American Bicyclists, reflecting our commitment to a multimodal mobility system that serves all user types; and

WHEREAS, College Station will be the finish line for the thousands of cyclists participating in the 2024 Texas MS 150 bike ride from Houston and Austin on April 27th and 28th, the largest fundraising cycling series in the world and largest multiple sclerosis fundraising event in the country.

NOW, THEREFORE, I, John P. Nichols, by virtue of the authority vested in me as Mayor of the City of College Station, Texas, do hereby proclaim May 2024 as

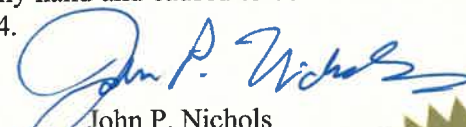
National Bike Month

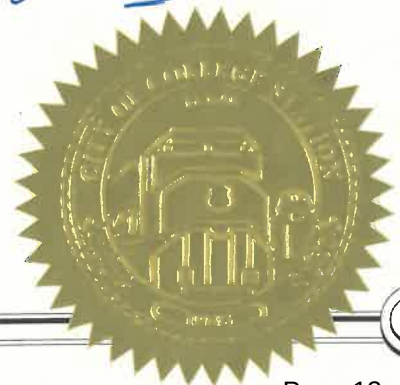
And encourage all citizens to try bicycling as a sensible mode of transportation and recreation and urge all road users to share the road safely with bicyclists.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 25th Day of April 2024.

Attest:


Tanya Smith
City Secretary


John P. Nichols
Mayor



April 25, 2024
Item No. 5.4.
Motorcycle Safety and Awareness Month

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming May 2024 as Motorcycle Safety and Awareness Month.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. 24 Motorcycle Safety and Awareness Month



Proclamation

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

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

WHEREAS, in 2023, there were 9,718 motorcycle crashes on Texas roads, leading to 7,790 serious injuries and 756 riders who lost their lives. Larger vehicles have safety features such as impact crumple zones and seatbelts, motorcycles do not. With the lives of our fellow Texans on the line, we must do more to properly share the road and ensure the safety of motorcyclists, who represent some of our most vulnerable drivers; and

WHEREAS, each year, the month of May is dedicated to awareness campaigns that combat motorcycle-related crashes and fatalities. There are more than 63 percent of motorcyclist deaths happen between May through September, so these campaigns have helped inform riders and motorists alike to motorcycle safety issues to reduce motorcycle related risks, injuries, and most of all fatalities, through a comprehensive approach to motorcycle safety; and

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

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

NOW, THEREFORE, I, John P. Nichols, Mayor of the City of College Station, Texas, do hereby proclaim and officially recognize May 2024 as

Motorcycle Safety and Awareness Month

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 25th day of April 2024.

John P. Nichols
Mayor

Attest:

Tanya Smith
City Secretary

April 25, 2024
Item No. 5.5.

Sponsor: Ross Brady, Assistant to the City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation recognizing the outgoing representatives of the Texas A&M Student Government Association.

Relationship to Strategic Goals:

Good Governance

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

1. Certificate of Recognition - Luke Morrison
2. Certificate of Recognition - Ben Crockett



CERTIFICATE

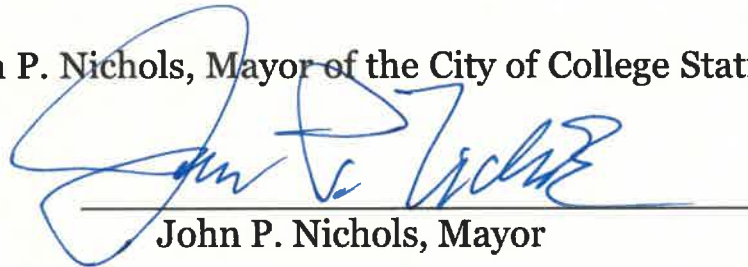
of Recognition

This certificate is awarded to

Luke Morrison

for his outstanding service, tireless effort, and respectful discourse while representing the
Student Government Association of Texas A&M University.

SWORN TO and Subscribed before me by John P. Nichols, Mayor of the City of College Station
on this the 25th day of April 2024.



John P. Nichols, Mayor



CERTIFICATE

of Recognition

This certificate is awarded to

Ben Crockett

for his outstanding service, tireless effort, and respectful discourse while representing the
Student Government Association of Texas A&M University.

SWORN TO and Subscribed before me by John P. Nichols, Mayor of the City of College Station
on this the 25th day of April 2024.



John P. Nichols, Mayor

April 25, 2024
Item No. 5.6.
2024 Economic Development Week

Sponsor: Brian Piscacek, Economic Development Manager

Reviewed By CBC: N/A

Agenda Caption: Presentation proclaiming May 6 through May 10 as Economic Development Week.

Relationship to Strategic Goals:

- Good Governance
- Diverse & Growing Economy

Recommendation(s): N/A

Summary: N/A

Budget & Financial Summary: N/A

Attachments:

1. Economic Development Week Proclamation_4_25_24



Proclamation

WHEREAS, more than 100,000 economic development and related professionals worldwide are committed to creating, retaining, and expanding top-tier opportunities to facilitate long-term community growth, and

WHEREAS, the economic development profession cultivates thriving neighborhoods, champions sustainability and resiliency, boosts economic prosperity, enhances the quality of life, and builds robust tax bases, and

WHEREAS, economic development professionals operate throughout diverse economic environments, including rural, suburban, and urban settings; local, state, provincial, and national governments; public-private partnerships; chambers of commerce; and institutions of higher education, among many similar organizations and associations, and

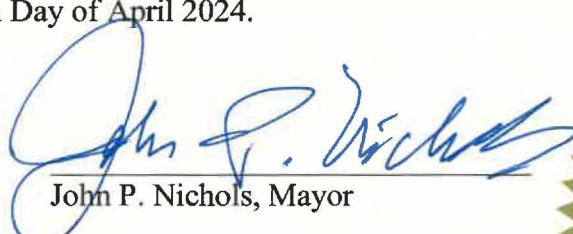
WHEREAS, economic development professionals serve as stewards in connecting residents, business leaders, elected officials, industry executives, and educational administrations to promote job creation, community investment, infrastructure advancements, and an optimistic future, and

WHEREAS, since 1926, the International Economic Development Council has been a leader and driving force in advancing economic development initiatives, with a steadfast commitment to fostering growth and prosperity in communities of all sizes, and

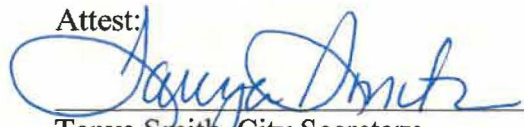
NOW, THEREFORE, I, John Nichols, mayor of the City of College Station, do hereby proclaim the week of May 6-10, 2024, as

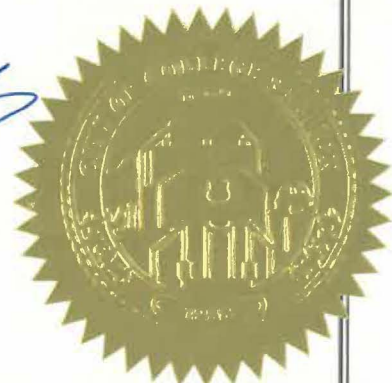
Economic Development Week

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas, this 25th Day of April 2024.


John P. Nichols, Mayor

Attest:


Tanya Smith, City Secretary



April 25, 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:
• April 11, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM041124 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
APRIL 11, 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 4:00 p.m. on April 11, 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, §551.072-Real Property and §551.074-Personnel, and the College Station City Council convened into Executive Session at 4:01 p.m. on April 11, 2024, to continue discussing matters pertaining to:

2.1. Consultation with Attorney to seek advice regarding pending or contemplated litigation, to wit:

- 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.
- Legal advice related to Local Government Code Chapter 145 Financial Statements.

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

- Approximately 12 acres of land in the College Station Business Center at the intersection of Gateway Boulevard and State Highway 6.
- Property generally located in the area of FM 60, Boyett Street, Church Avenue, and College Main Street.

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

- City Manager
- Council Self-Evaluation

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

Executive Session recessed at 6:30 p.m. No action was taken.

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

5. Hear Visitors Comments.

Sherry Frisk, College Station, came before Council to report on the status of the Texas State Historic Marker for the City of College Station.

Peter Bastian, College Station, came before Council regarding the Amazon Drone facility in his neighborhood. Mr. Bastian stated that Amazon has not come out to visit any of his neighbors to discuss concerns raised at the February Council meeting.

Luke Morrison, College Station, came before Council to speak on occupancy restrictions (no more than four) that he feels target students and to thank Council for their support of Texas A&M Student Government. He introduced Campbell Gattis who will be stepping into his role as Chairman of the Community Relations Committee.

Campbell Gattis, College Station, came before Council to introduce herself as she transitions into the Chairman of the Community Relations Committee position in Texas A&M Student Government.

Corbitt Armstrong, College Station, came before Council regarding city occupancy restrictions and stated that they do not create unity in College Station with the Texas A&M students. He stated that students are losing their right with strict enforcement of the ordinances coming in June.

Marcus Glass, College Station, came before Council on how the enforcement of occupancy restrictions will exacerbate local housing issues and requested that Council delay enforcement.

Andrew Applewhite, College Station, came before Council regarding occupancy restrictions on behalf of the student population. He stated that students are unified in opposition of occupancy restrictions and will continue to be because there is not enough affordable housing. He requested Council postpone enforcement until capacity and affordability has been addressed.

Ben Crockett, College Station, came before Council to request postponing the enforcement of occupancy restrictions and provided an example of a group of students that just signed a lease before knowing about the local law. If this law is enforced they will be in violation and have to leave their rental property.

Ava Blackburn, College Station, came before Council to state that if the city wants to effectively enforce occupancy restrictions then the city should first address affordable housing and lowering the cost of living.

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 6.3 were pulled from Consent for clarification.

(6.2) Jennifer Cain, Capital Project Director stated that a deducted change order that the money will come back into the general fund.

(6.3) Councilmember Cunha requested this item being pulled for a separate vote and stated she will be abstaining due to the contract not being included in the agenda packet.

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

- **March 28, 2024 Council Meeting**

6.2. Presentation, discussion, and possible action regarding a deductive change order with Johnson & Pace, Inc. for a credit of \$106,017.72 for the design of the Fleet Fuel System Rehabilitation Project.

6.3. Presentation, discussion, and possible action on a construction contract with Elliot Construction, LLC. for the Well Field Collection Line Rehabilitation Phase One project for \$864,440 plus the City's contingency amount of \$85,560 for a total appropriation of \$950,000. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

6.4. Presentation, discussion, and possible action regarding a professional services contract with The Arkitex Studio, Inc. for \$245,300 for the CSU Office/Lab Building Project.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to approve the Consent Items with the exceptions of Item 6.3. The motion carried unanimously.

(6.3) MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Maloney, the City Council voted six (6) for and none (0) opposed, with Councilmember Cunha abstaining, to approve Consent Item 6.3. The motion carried unanimously.

7. WORKSHOP ITEMS

7.1. Presentation, discussion, and possible action regarding proposed updates to the City's Drought Contingency and Water Conservation Plans.

Jennifer Nations, Water Services Program Coordinator, stated that the Drought Contingency Plan serves as a response to temporary water supply shortages and sets targets for water use reductions. The Water Conservation Plan comprises strategies aimed at achieving water conservation targets and goals. She explained that the proposed 2024 Drought Contingency and Water Conservation Plans feature enhancements intended to improve water demand reduction and address system strains during periods of heightened water demand or emergencies. Both plans are subject to renewal and submission to regulatory agencies every five (5) years.

Drought Contingency Plan

- Strategy for responding to temporary water supply shortages and/or increased water demand
- Must include:
 - Triggers for each drought response stage
 - Specific, quantified targets for water use reductions
 - Procedures for notification, enforcement, & variances
 - Process for public input & education
- Included in Code of Ordinances

Water Conservation Plan

- Long-term strategy to reduce consumption of water, improve efficiency, and/or increase water reuse
- Must include:
 - Quantified five-year and ten-year conservation goals
 - Best Management Practices (BMPs) to meet conservation goals
 - Program for public education
- Adopted by City Council Resolution (not an ordinance)

Proposed Drought Plan Stages

- Year-round water use management when not in drought stage
- Stage 1 – High Water Demand
- Stage 2 – Severe Water Demand
- Stage 3 – Extreme Water Demand
- Stage 4 – Water Supply Emergency
 - Triggered if water system fails or is contaminated; reached immediately

Summary of Changes

- Added third drought stage based on water demand
- Monitor water demand and production capacity on a 7-day average
- Clarified criteria for essential and non-essential water use in each stage of the plan
 - Essential: to sustain life; meet public health/safety/environmental requirements
 - Non-essential: includes irrigation, washing of vehicles/hard surfaces/buildings; single pass splash pads; failure to repair leak; water from hydrants for dust control
- Schedule for irrigation of new landscapes during Stage 1

7.2. Presentation, discussion, and possible action regarding the annual traffic contact report required by Senate Bill 1074 of the Texas 77th legislative session.

Billy Couch, Police Chief, stated that each year, in an effort to remain transparent to our community, the police department employs an independent consultant to analyze traffic contact data and develop this report. The report indicates that the department is in compliance with state law and continues to employ best practice strategies. Since January 1, 2002, the College Station Police Department, in accordance with Texas Racial Profiling Law (SB No. 1074), has been required to implement and mandate policy and procedures to satisfy the requirements of the law.

Summary of Findings

- While annual variance can be expected due to the ever-changing environment, a historical review of data reveals remarkable similarities in data analysis across 10 years of data.
- Overall, the comprehensive analysis of data demonstrates that the College Station Police Department has complied with the Texas Racial Profiling Law and all of its requirements.

8. REGULAR ITEMS

8.1. Presentation, discussion, and possible action on a construction contract with Larry Young Paving, Inc. for \$9,362,556.25 for the Lincoln Avenue Rehab Project, plus the City's contingency in the amount of \$1,400,000 for a total appropriation of \$10,762,556.25 and Resolution No. 04-11-24-8.1 Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Jennifer Cain, Capital Projects Director, stated that the project involves the construction of approximately 6,900 linear feet of improvements on Lincoln Avenue from Texas Avenue to University Drive. The existing asphalt road will be replaced with concrete pavement with curb and gutter with a shared use path on both sides of Lincoln Avenue. The project was bid via competitive sealed proposal (CSP) on January 23, 2024, bid 24-024. Five (5) sealed bids were submitted. After evaluation and interviews, Larry Young Paving, Inc. offered the best value for the city based on the published selection criteria. The base bid was accepted.

The project is proposed to begin in June of 2024 and is contracted to take 425 calendar days to complete. A combined budget in the amount of \$12,275,400 is included in the Streets, Water, and Wastewater Capital Projects Fund. A combined total of \$1,360,356 has been expended or committed to date, leaving a balance of \$10,915,044 for this contract and related costs. The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this project because of the long-term debt projected to be issued for this project has not yet been issued. The debt for the project is scheduled to be issued at a later date.

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 a construction contract with Larry Young Paving, Inc. for \$9,362,556.25 for the Lincoln Avenue Rehab Project, plus the City's contingency in the amount of \$1,400,000 for a total appropriation of \$10,762,556.25 and Resolution No. 04-11-24-8.1 Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount. The motion carried unanimously.

8.2. Presentation, discussion, and possible action regarding a construction contract with Dudley Construction, Inc. in the amount of \$10,976,992.30 for the Carter Creek WWTP Diversion Lift Station and Force Main, plus the City's contingency amount of \$1,000,000 for a total appropriation of \$11,976,992.30 for this project and Resolution No. 04-11-24-8.2 Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Jennifer Cain, Capital Projects Director, stated that as the University Corridor area continues to develop, sewer flows to the Carter Creek Wastewater Treatment Plant (WWTP) are growing. The plant is nearing its permitted capacity, and its location does not allow for any significant expansion. This project will divert flow from the Carter Creek WWTP to the Lick Creek WWTP and was identified in the Wastewater Master Plan as a necessity to decrease the volume of flow being treated at the Carter Creek WWTP. This project will build a diversion lift station and force main to divert some of the existing flow into the Carter Creek Wastewater Treatment Plant (WWTP) to the newly expanded Lick Creek WWTP.

The project will construct a 4 MGD diversion lift station within the Carter Creek WWTP near the existing headworks. A lift station is required to divert the flow because the preferred method of gravity flow is not an option at this location. The lift station construction will include a diversion junction box, pumps, valves, and other equipment. This project will also construct approximately 13,000 linear feet of 20" force main. The force main will tie into an existing manhole and existing trunkline to take flow to the Lick Creek WWTP via gravity flow.

There have been several other projects completed in order to divert flows from the Carter Creek plant to the Lick Creek plant. This includes the newly completed expansion of the Lick Creek WWTP. This project was bid via competitive sealed proposals. 4 proposals were received. Dudley Construction, Inc. was selected as the best value to the city. A budget of \$15,550,000 is included for this project in the Wastewater Capital Improvement Projects Fund. A total of \$3,030,931 has been expended or committed to date, leaving a balance of \$12,519,069 for this contract and related expenses. The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this project because all of the long-term debt projected to be issued for this project has not yet been issued. The debt for the project is scheduled to be issued at a later date.

MOTION: Upon a motion made by Councilmember Smith and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to approve a construction contract with Dudley Construction, Inc. in the amount of \$10,976,992.30 for the Carter Creek WWTP Diversion Lift Station and Force Main, plus the City's contingency amount of \$1,000,000 for a total appropriation of \$11,976,992.30 for this project and Resolution 04-11-24-8.2 Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount. 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 recognized the new push-in of a new College Station Fire Department fire truck for Fire Station No. 6 and the Health Department Open House.

Councilmember Maloney recognized the CSFD new push-in of apparatus 726 and ribbon cuttings for Evie+Oak, LLC and the Restore Hyper Wellness Clinic.

Mayor Nichols recognized the Texas Legislature IT Caucus Committee that came to the City of College Station and the groundbreaking of the DeBaca Steakhouse.

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

Councilmember Cunha reported on Bicycle, Pedestrian, and Greenways Advisory Board.

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

No future items at this time.

14. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 7:42 p.m. on Thursday, April 11, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

April 25, 2024

Item No. 7.2.

Award of Price Agreement for Annual Concrete Curb, Gutter, and Flatwork Installation

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on an agreement for annual concrete curb, gutter, and flatwork installation with Larry Young Paving, Inc., not to exceed \$3,985,400.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

Recommendation(s): Staff recommends awarding of the Price Agreement to Larry Young Paving, Inc.

Summary: Sealed bids for ITB #24-022 were opened on March 12, 2024, with three bid responses received from Larry Young Paving Inc., Brazos Paving, Inc., and DSW Homes, LLC. Larry Young Paving, Inc. is the lowest responsible bidder.

The term will be for the period beginning May 1, 2024, through April 30, 2025. The original contract may be renewed for up to two (2) additional one (1) year terms (three (3) years total).

Budget & Financial Summary: Funding for the Price Agreement for the Annual Concrete Curb, Gutter and Flatwork is available in the Roadway Maintenance and Water Services operational budgets.

Attachments:

1. Tabulation 24-022
2. Contract

CITY OF COLLEGE STATION - PURCHASING DIVISION
 TABULATION for ITB #24-022
 "ANNUAL PRICE AGREEMENT FOR CURB, GUTTER AND FLATWORK"
 Open Date: March 12, 2024 @ 2:00 pm CDT

				Brazos Paving, Inc. (Bryan, TX)		Larry Young Paving, Inc. (College Station, TX)		DSW Homes, LLC (Friendswood, TX)	
ITEM	EST. QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
GENERAL CONSTRUCTION ITEMS									
1	30,000	Linear Foot	Remove and Replace Concrete Curb and Gutter in accordance with the 2014 Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, standard specs, Item 360, Concrete Pavement, Item 529 Concrete Curb, Gutter, and Combined Curb and Gutter, and according to the Bryan/College Station Unified Design Guidelines. Prices should reflect work needed to establish grades to create positive water flow and ADA compliance. FOB Delivered.	\$44.20	\$1,326,000.00	\$37.93	\$1,137,900.00	\$46.00	\$1,380,000.00
2	5,000	Cubic Yard	Remove and Replace Concrete Flatwork (sidewalks, driveways, aprons, gutters) in accordance with the 2014 Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, standard specs, Item 360, Concrete Pavement, Item 529 Concrete Curb, Gutter, and Combined Curb and Gutter, and according to the Bryan/College Station Unified Design Guidelines. The option of using fiber mesh rather than steel rebar may be considered for sections that are not exposed to vehicular traffic and will be determined by the Division Manager. Prices should reflect work needed to establish grades to create positive water flow and ADA compliance. FOB Delivered.	\$551.50	\$2,757,500.00	\$569.50	\$2,847,500.00	\$725.00	\$3,625,000.00
GRAND TOTAL				\$4,083,500.00		\$3,985,400.00		\$5,005,000.00	
Bid Certification				Y		Y		Y	
Bid Bond				Y		Y		Y	



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300401 PROJECT #: N/A BID/RFP/RFQ#: 24-022

Project Name / Contract Description: Annual Price Agreement for Curb, Gutter, and Flatwork
as described in ITB 24-022

Name of Contractor: Larry Young Paving, Inc.

CONTRACT TOTAL VALUE: \$ 3,985,400 **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)

On March 12th bids were solicited for APA Curb, Gutter, and Flatwork services. Three (3) responses were received, of which

Larry Young Paving, Inc was the lowest responsible bidder.

Funding Account: 39131798 5315

(If required)*

CRC Approval Date*: N/A **Council Approval Date*:** 4/25/24 **Agenda Item No*:**

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

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 Larry Young Paving, Inc. (the "Contractor") for the construction and/or installation of the following:
Annual Price Agreement for Curb, Gutter, and Flatwork; As Described in ITB 24-022.

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: N/A
and /100 Dollars (\$).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Three Million Nine Hundred Eighty-Five Thousand Four Hundred and 00 /100 Dollars (\$ 3,985,400.00).

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 00 /**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

LARRY YOUNG PAVING, INC.

CITY OF COLLEGE STATION

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20230007

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)(1).

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 \$17.20 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 2024.
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 \$12.90 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 2024.

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 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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) (iii)).

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 (additionalclassification 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.

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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. 4451353-R2

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Larry Young Paving, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto Markel Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Million Nine Hundred Eighty-Five Thousand Four Hundred and 00 /100 Dollars (\$ 3,985,400.00) 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 Annual Price Agreement for Curb, Gutter, and Flatwork; as described in ITB 24-022

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. 4451353-R2

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: [Signature]

Name: Tracy Lang

Title: Witness

Date: April 25, 2024

LARRY YOUNG PAVING, INC.

By: [Signature]

Name: Herbert L. Young, Jr.

Title: President

Date: April 25, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: [Signature]

Name: Teresa Martin

Title: Witness

Date: April 25, 2024

Markel Insurance Company

(Full Name of Surety)

9500 Arboretum Blvd, Ste 400

Austin, TX 78759

(Address of Surety for Notice)

By: [Signature]

Name: Alexandria Petroski

Title: Attorney-In-Fact

Date: April 25, 2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. 4451353-R2

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Larry Young Paving, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto Markel 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 Three Million Nine Hundred Eighty-Five Thousand Four Hundred and 00 /100 Dollars (\$3,985,400.00) 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 25 day of April, 2024, for Annual Price Agreement for Curb, Gutter, and Flatwork; as described in ITB 24-022, 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. 4451353-R2

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: [Signature]
Name: Tracy Lang
Title: Witness
Date: April 25, 2024

LARRY YOUNG PAVING, INC.

By: [Signature]
Name: Herbert L. Young, Jr.
Title: President
Date: April 25, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: [Signature]
Name: Teresa Martin
Title: Witness
Date: April 25, 2024

Markel Insurance Company
(Full Name of Surety)

9500 Arboretum Blvd, Ste 400
Austin, TX 78759
(Address of Surety for Notice)

By: [Signature]
Name: Alexandria Petroski
Title: Attorney-In-Fact
Date: April 25, 2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

Contract No. 24300401
Construction Agreement Over \$50,000
Form 04-20-2023

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Connie Grocholski, Alexandria Petroski, Teresa Martin, Sally White

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 20th day of January, 2023.

SureTec Insurance Company

By:

Michael C. Keimig, President



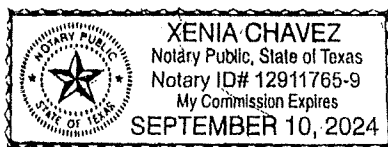
By:

Undey Jennings, Vice President

State of Texas
County of Harris:

On this 20th day of January, 2023 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



By:

Xenia Chavez, Notary Public
My commission expires 9/10/2024

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 25th day of April, 2024.

SureTec Insurance Company

By:

M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By:

Andrew Marquis, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 4221009
For verification of the authority of this Power you may call (713) 812-0800 on any business day between 8:30 AM and 5:00 PM CST.

Markel Insurance Company THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION

Statutory Complaint Notice/Filing of Claims

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

Markel Insurance Company
9500 Arboretum Blvd., Suite
400
Austin, TX 78759

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

PO Box 149104
Austin, TX 78714-
9104
Fax#: 512-490-1007
Web: <http://www.tdi.state.tx.us>
Email: ConsumerProtection@tdi.texas.gov

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

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



LARRYOU-01

TSOUTH1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/15/2024

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 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														
INSURED Larry Young Paving, Inc. Silver Hill Equipt Co, LLC P.O. Box 11779 College Station, TX 77842	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : United Fire & Casualty Co</td><td>13021</td></tr><tr><td>INSURER B : United Fire & Ind Co</td><td>19496</td></tr><tr><td>INSURER C : Texas Mutual Insurance Company</td><td>22945</td></tr><tr><td>INSURER D : Homesite Ins Co Of The Midwest</td><td>13927</td></tr><tr><td>INSURER E : Endurance American Specialty Insurance Company</td><td>41718</td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : United Fire & Casualty Co	13021	INSURER B : United Fire & Ind Co	19496	INSURER C : Texas Mutual Insurance Company	22945	INSURER D : Homesite Ins Co Of The Midwest	13927	INSURER E : Endurance American Specialty Insurance Company	41718	INSURER F :	
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INSURER E : Endurance American Specialty Insurance Company	41718														
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:			85327666	8/23/2023	8/23/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			85327666	8/23/2023	8/23/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			85327666	8/23/2023	8/23/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ Aggregate \$ 1,000,000
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 Y	N / A	0001311091	8/23/2023	8/23/2024	☒ 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
D	Excess Liability			CXP-022988-00	8/23/2023	8/23/2024	Excess Liab \$4M X \$1 4,000,000
E	Excess Liability			ELD30043365100	8/23/2023	8/23/2024	Excess Liab \$5M X \$5M 5,000,000

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

The general liability policy includes a blanket automatic additional insured provision that provides additional insured status to the certificate holder, when there is a written contract between the named insured and the certificate holder that requires such status. Waiver of Subrogation as required by written contract. Insurance is Primary and Non Contributory.

CERTIFICATE HOLDER

CANCELLATION

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

**EXHIBIT D
PLANS AND SPECIFICATIONS**

**PER BID 24-022
ANNUAL PRICE AGREEMENT
FOR
CURB, GUTTER, AND FLATWORK SPECIFICATIONS**

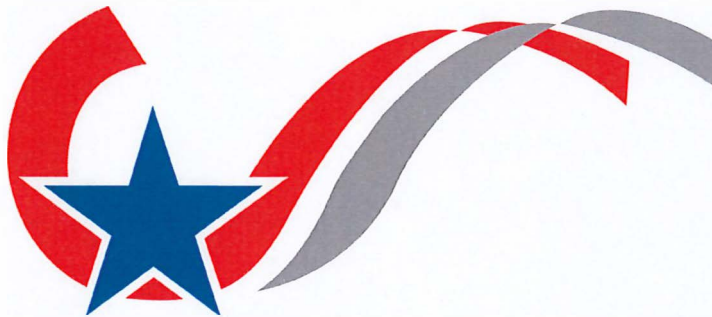
EXHIBIT E
CONSTRUCTION SCHEDULE

EXHIBIT F
SCHEDULE OF VALUES

BID DOCUMENTS

FOR

**ANNUAL PRICE AGREEMENT AND SPECIFICATIONS
FOR CURB, GUTTER, AND FLATWORK**



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

BID NO. 24-022

DUE DATE: Tuesday, March 12, 2024 @ 2:00 P.M. CT

City of College Station, Texas
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842
www.cstx.gov

CONTRACTOR'S PROPOSAL

Date: March 12, 2024

PROPOSAL FROM: Larry Young Paving, 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 APA for Curb, Gutter and Flatwork and to perform the work required for the construction of said APA for Curb, Gutter and Flatwork at the location set by the City through out the contract year.

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.

Quantities indicated in the Bid are estimated based upon the best available information. The City reserves the right to increase or decrease the quantities by any amount deemed necessary to meet its needs without any adjustments in the unit prices bid. Work will be assigned by the City as needed throughout the year.

Contractor will have 5 working days to complete back filling and grading of yards before resodding. Contractor will be required to repair all damage to irrigation systems at work site within 5 working days.

Contractor is required to have 3 fully equipped crews with 6 employees per crew available with the option of a fourth crew to handle utility or citizen complaints.

Contractor will work with Public Works Liaison before removing crews from a city planned job.

Contractor will have Traffic Control in place and will remain in place until the job is completed and must comply with TMUTCD requirements.

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

ITEM	EST. QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
GENERAL CONSTRUCTION ITEMS					
1	30,000	Linear Foot	Remove and Replace Concrete Curb and Gutter in accordance with the 2014 Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, standard specs, Item 360, Concrete Pavement, Item 529 Concrete Curb, Gutter, and Combined Curb and Gutter, and according to the Bryan/College Station Unified Design Guidelines. Prices should reflect work needed to establish grades to create positive water flow and ADA compliance. FOB Delivered.	37.93	1,137,900
2	5,000	Cubic Yard	Remove and Replace Concrete Flatwork (sidewalks, driveways, aprons, gutters) in accordance with the 2014 Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, standard specs, Item 360, Concrete Pavement, Item 529 Concrete Curb, Gutter, and Combined Curb and Gutter, and according to the Bryan/College Station Unified Design Guidelines. The option of using fiber mesh rather than steel rebar may be considered for sections that are not exposed to vehicular traffic and will be determined by the Division Manager. Prices should reflect work needed to establish grades to create positive water flow and ADA compliance. FOB Delivered.	569.50	2,847,500
GRAND TOTAL					\$3,985,400.00

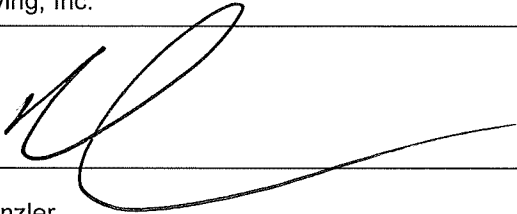
CONTRACTOR'S PROPOSAL (Continued)
AND
ALTERNATES (if applicable)

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: _____

CONTRACTOR NAME: Larry Young Paving, Inc.

CONTRACTOR SIGNATURE: _____



Mark Schinzler

**GENERAL/SUB-CONTRACTOR'S EXPERIENCE
AND
DATA INFORMATION**

Name of Company: Larry Young Paving, Inc.

Company Years in Business: 19

List Municipal Projects
(Similar Projects in Size and Scope Completed in Last Five Years)

Project	Municipality	\$ Amount	Type	Date
Greens Prairie Rd.	C/O College Station	\$9 mil	Concrete	2024
Service Center Area	C/O Conroe	\$3.2 mil	Concrete	2024
CS Annual Curb & Gutter	C/O College Station	\$4 mil	Concrete	2023
Rock Prairie Rd.	C/O College Station	\$5 mil	Concrete	2022
Conroe Park	C/O Conroe	\$13 mil	Concrete	2021
Longmire Rd.	C/O Conroe	\$13 mil	Concrete	2020

Superintendent & Project Manager Information

Include Superintendent proposed for the project, years of experience as superintendent,
project manager proposed for the project, and years experience as project manager

Superintendent	Years Experience	Projects
Robert Willis	6	Rock Prairie Rd.II
		C/O College Station
		C/O Bryan

Project Manager	Years Experience	Projects
Chris Humphries	20	TXDOT
		C/O College Station
		C/O Bryan
		Brazos County

References: Name 5 projects of similar work, giving owner's name, representative's name, project engineers name, and telephone numbers for each

1. Conroe Park

City of Conroe

Tara Gaha, P.E

936-522-3133

2. Peach Creek Cut-off

Brazos County

Gary Arnold

979-361-4284

3. Greens Prairie Rd.

City of College Station

Susan Monnat

979-450-1589

4. I&GN Rd. (2021)

Brazos County

Gessner Engineering

Sean Ray

979-680-8840

5. Railroad St.

City of Navasota

CEC Engineering

Johnnie Price

979-846-6212

* Reference letters attached



CITY OF CONROE

Est. 1904

May 10, 2021

City of Bryan
205 E 28th St.
Bryan, TX 77803

Re: Project Reference

To Whom it May Concern:

Over the past 3 years, Larry Young Paving has contracted approximately \$30 M in work with the City of Conroe. From Rehab to New Construction contracts, Larry Young Paving has completed many difficult projects for the City requiring bridge construction, slipform paving, deep sanitary and waterline mostly with their own crews. We found them to be exceptional in both their knowledge base and their ability to execute the work. They provided solutions to difficult problems and completed projects on time. I would recommend their company without question. If you require any additional information, please don't hesitate to contact me

Sincerely,

Tara B. Gaha, P.E.
Senior Project Engineer
Engineering Dept.
City of Conroe



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

Johnnie Price, P.E., CFM
Civil Engineering Consultants
1555 Greens Prairie Rd.
College Station, TX 77845

May 10, 2021

City of Bryan
205 E 28th St.
Bryan, TX 77803

Re: Reference of Work

To Whom it May Concern:

Larry Young Paving has worked with me several projects in the past and most recently on the City of Navasota Railroad St. Project. The project primarily was a drainage project to alleviate drainage conditions in the downtown area with a budget of approximately \$1.8mil. In addition to the drainage infrastructure, the project included waterline replacement, pavement removal/replacement, electrical, irrigation and telecommunication rerouting were a part of the project scope.

Overall, I found Larry Young Paving to be diligent in the completion of their work and were consistently onsite with various crews as the project required. Their project management team was easy to work with, handled in-field issues well and was knowledgeable regarding the work. With regards to change orders, they were fair and reasonable and overall helped to create a team atmosphere. I would recommend Larry Young Paving without reservation for any civil project for their professionalism, timely accomplishment of the work and quality product.

Sincerely,

A handwritten signature in black ink, appearing to read "JP", is written over the word "Sincerely,".

Johnnie Price, P.E., CFM
Senior Project Manager

SAN ANTONIO • BRYAN/COLLEGE STATION • LAREDO

1555 GREENS PRAIRIE ROAD WEST | COLLEGE STATION, TEXAS 77845 | (979) 846-6212 | FAX: (979) 846-8252
TEXAS FIRM REGISTRATION NUMBERS: ENGINEERING F-2214 | SURVEY 10042800 | WWW.CECTEXAS.COM

Mark Schinzler

From: Gary Arnold <GArnold@brazoscountytx.gov>
Sent: Friday, May 7, 2021 3:58 PM
To: Mark Schinzler
Subject: reference

To whom it may concern Larry Young Paving has completed 6 Road projects with live traffic on each one in the last 2 years for me. All 6 projects were completed well before completion deadline with 0 change orders. There management team and field personnel are second to none.

Gary Arnold
Operations Manager
Brazos County Road and Bridge



May 11, 2021

City of Bryan
205 E 28th Street
Bryan, Texas 77803

Re: Letter of Reference

To Whom it May Concern:

I have had the pleasure of working with Larry Young Paving on several projects including a challenging road failure project that involved extensive grading and storm work. The I&GN Roadway Failure Remediation project was a \$1.4 Million project that improved drainage adjacent to the roadway and lowered the roadway to reduce the embankment side slopes to remediate the embankment failure. The project required Larry Young Paving to perform the extensive work while maintaining access to adjacent properties to owners, mail service, and trash collection.

Larry Young Paving was diligent, respectful and understanding with adjacent property owners, and completed the work ahead of schedule. They ensured the safety of the public was a high priority by continually inspecting traffic control and the site for potential hazards. Punch list items were completed in a timely manner and to the requirements/needs of the project team. I recommend Larry Young Paving for any Civil project and look forward to working with them for many years to come.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Ray'.

Sean Ray, M.E., P.E.
Project Coordination – Department Head
Gessner Engineering, LLC

BRYAN • BRENHAM • FORT WORTH • GEORGETOWN • SAN ANTONIO

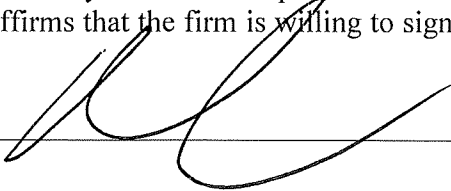
Corporate: 401 25th Street, Suite 3 / Bryan, Texas 77803 • 1-877-GESSNER • www.gessnerengineering.com

CIVIL CONSTRUCTION MATERIALS TESTING GEOTECHNICAL STRUCTURAL SURVEYING

CERTIFICATION

CERTIFICATION OF BID

The undersigned affirms that they are duly authorized to execute this contract, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid have not been communicated to any other bidder prior to the official opening of this bid. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement (if applicable).

Signed By:  Title: COO

Typed Name: Mark Schinzler Company Name: Larry Young Paving, Inc.

Phone No.: 979-823-4888 Fax No.: 979-823-4884

Email: m.schinzler@larryyoungpaving.com

Bid Address: PO Box 11779 College Station TX 77842
P.O. Box or Street City State Zip

Order Address: 1852 Silver Hill Rd. Bryan TX 77807
P.O. Box or Street City State Zip

Remit Address: PO Box 11779 College Station TX 77842
P.O. Box or Street City State Zip

Federal Tax ID No.: 20-3237385

DUNS No.: 608643057

Date: March 12, 2024

END OF BID NO. 24-022

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2024-1131748

Date Filed:
03/06/2024

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Larry Young Paving, Inc.
College Station, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of College Station

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

24-022
Road construction/repair

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Larry Young Paving, Inc.	Bryan, TX United States	X	

5 Check only if there is NO Interested Party. ☐

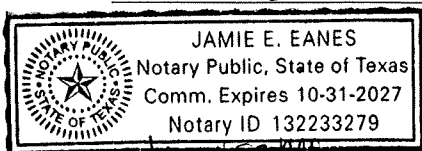
6 UNSWORN DECLARATION

My name is Herbert L. Young, Jr., and my date of birth is 11.30.49.

My address is 5000 Commonwealth (street), College Station (city), TX (state), 77845 (zip code), US (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Brazos County, State of Texas on the 6 day of Mar., 20 24.
(month) (year)



Signature of authorized agent or contracting business entity
(Declarant)



BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we Larry Young Paving, Inc. as principal, hereinafter called the "Principal," and **MARKEL INSURANCE COMPANY**, at 4521 Highwood Parkway, Glen Allen VA 23060, as surety, hereinafter called the "Surety," are held and firmly bound unto City of College Station as obligee, hereinafter called the Obligee, in the sum of Five Percent (5 %) of the Amount Bid by Principal for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a bid for Annual Curb & Gutter Contract.

NOW, THEREFORE, if the contract be timely awarded to the Principal and the Principal shall within such time as specified in the bid, enter into a contract in writing or, in the event of the failure of the Principal to enter into such Contract, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, neither Principal nor Surety shall be bound hereunder unless Obligee prior to execution of the final contract shall furnish evidence of financing in a manner and form acceptable to Principal and Surety that financing has been firmly committed to cover the entire cost of the project.

SIGNED, sealed and dated this 4th day of March, 20 24.

Larry Young Paving, Inc.
(Principal)

BY: Herbert J. Young, Jr.
TITLE: President

Markel Insurance Company
BY: Alexandria Petroski
Alexandria Petroski, Attorney-in-Fact

THE RIDER ATTACHED HERETO IS INCORPORATED IN THIS BOND AND MODIFIES COVERAGE UNDER THIS BOND.

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Connie Grocholski, Alexandria Petroski, Teresa Martin, Sally White

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

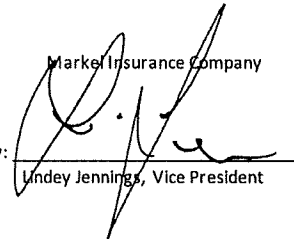
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 20th day of January, 2023.

SureTec Insurance Company

By: 
Michael C. Keimig, President



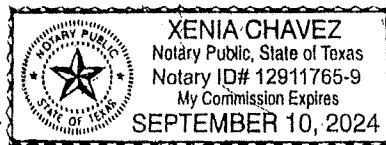
Markel Insurance Company

By: 
Lindsey Jennings, Vice President

State of Texas
County of Harris:

On this 20th day of January, 2023 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.

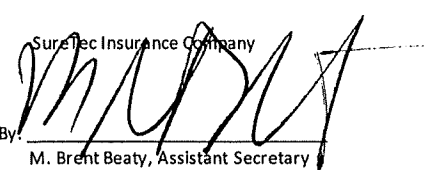


By: 
Xenia Chavez, Notary Public
My commission expires 9/10/2024

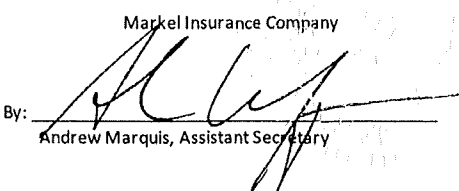
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 4th day of March, 2024.

SureTec Insurance Company

By: 
M. Brent Beatty, Assistant Secretary

Markel Insurance Company

By: 
Andrew Marquis, Assistant Secretary

Any Instrument Issued in excess of the penalty stated above is totally void and without any validity. 4221009
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.

Markel Insurance Company THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION
--

Statutory Complaint Notice/Filing of Claims

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

Markel Insurance Company
9500 Arboretum Blvd., Suite
400
Austin, TX 78759

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

PO Box 149104
Austin, TX 78714-
9104
Fax#: 512-490-1007
Web: <http://www.tdi.state.tx.us>
Email: ConsumerProtection@tdi.texas.gov

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

April 25, 2024

Item No. 7.3.

Purchase of new Panasonic Toughbook Rugged Mobile Data Terminals for PD

Sponsor: Sam Rivera

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on purchasing Panasonic Toughbook Rugged Mobile Data Terminals (MDTs) from Baycom Inc. for \$309,465.

Relationship to Strategic Goals:

Core Services & Infrastructure

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

Summary: The College Station police department uses Panasonic Toughbook Rugged Mobile Data Terminals (MDTs) in all Patrol vehicles to access various maps, write reports, and view dispatch information. This purchase will replace the MDTs for sixty-five patrol vehicles, the docking station that attaches the MDT to the vehicle, and add a warranty for the fourth year of expected use. The current MDTs have been in service for five years, have reached the end of life, and will become unsupported by the manufacturer later this year. In the future MDTs will be replaced every four years.

Budget & Financial Summary: Funds are available in the IT Replacement Fund. Pricing is based on Texas DIR Contract CPO-5225.

Attachments:

1. College Station FZ40_65 Quote_r4 02-01-24



A Lifeline in the
Moments that Matter

Corporate Office
2040 Radisson St.
Green Bay, WI 54302

Texas: 737-231-1836
tschmied@baycominc.com

City of College Station
Larry Vierus
1101 Texas Ave.
College Station, TX 77840
2/26/2024
(979) 764-6319

Quote No. TS20230803LMrev4

PRICING AND FINANCIAL OPTIONS SPECIFIC TO THIS OFFERING:
EQUIPMENT DETAILS AND PRICING

QTY	MODEL AND DESCRIPTION	UNIT PRICE	TOTAL PRICE
State DIR Contract CPO 5225			
65	Panasonic Toughbook FZ-40 Rugged Laptop Intel Core i5-1145G7 < 4.4GHz Pro Processor 14" Full FHD Gloved Touch Display w/ Digitizer 16GB Memory 512GB SSD Storage Infrared Hello Webcam Intel Dual Band WiFi 6 and Bluetooth v4.x 1GB Ethernet Port Windows 11 Pro Emissive Backlit Keyboard 3-Yr Standard Parts & Labor Warranty	\$3,678.00	\$239,070.00
65	Havis FZ40 Docking Stations Screen Support Brace No RF Pass Trough at this time DC Power Supply	\$885.00	\$57,525.00
Warranty and Other Options:			
65	4th-Yr Extended Standard Warranty: \$198.00 5th-Yr Extended Standard Warranty: \$321.00 3-Yr No Fault Warranty Upgrade: \$319.00 4-Yr No Fault Warrant Upgrade: \$469.00 5-Yr No Fault Warranty Upgrade: \$719.00	\$198.00	\$12,870.00

EQUIPMENT COST:		\$309,465.00
SHIPPING:		Included
TAX:		Exempt
TOTAL:		\$309,465.00

Payment Terms: Net 30 Days
Quotation Good for 90 Days
We impose a surcharge of 2% on credit card purchases over \$1,000.00 which is not greater than our cost of acceptance.

Your signature is an agreement to purchase and an acceptance of Baycom's Terms & Conditions
(<http://terms.baycominc.com>)

Approved By: _____ / _____
AUTHORIZED CUSTOMER SIGNATURE DATE

All of the information listed on this proposal is confidential and proprietary information.

If You Have Any Questions, Please Contact Tom Schmied at 737-231-1836

www.baycominc.com

info@baycominc.com

(800) 726-5426



April 25, 2024

Item No. 7.4.

Renewal of Security Operations Center (SOC) contract with Kudelski Security

Sponsor: Sam Rivera

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on a three-year agreement with Kudelski Security, Inc. for Security Operations Center (SOC) services in the amount of \$352,067.59.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): CIO recommends approval

Summary: The Security Operation Center (SOC) contract is to renew a subscription-based software, CrowdStrike Falcon Complete through Kudelski Security. This contract is for a 3 year period. This software combines technology and human expertise to perform threat hunting, monitoring, and response. The main benefit of it is that it helps rapidly identify and limit the impact of threats without the need for additional staffing. Organizations using this type of software can immediately reduce their time-to-detect (and therefore, time to respond) from the typical 280 days to as little as a few minutes –thereby dramatically reducing the impact of an event.

- Improve security posture and become more resilient to potential attack by optimizing security configuration and eliminating rogue systems.
- Identify and stop hidden, sophisticated threats through continuous managed threat hunting.
- Respond to threats more effectively and restore endpoints to a known good status through guided response and managed remediation.
- Redirect staff from reactive and repetitive incident response work toward more strategic projects.
- Protection 24/7/365

Budget & Financial Summary: Funds are available in the IT CyberSecurity operating budget. Pricing is based on Texas DIR Contract CPO-4891.

Attachments:

1. Contract

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300395 PROJECT#: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: Falcon Complete Subscription with Threat Graph Standard

Name of Contractor: Kudelski Security, Inc.

CONTRACT TOTAL VALUE: \$ 352,067.59 **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)

DIR contract number DIR-CPO-4891

Funding from account number 10011210-5399

CRC Approval Date*: N/A (If required)* Council Approval Date*: 4/25/2024 Agenda Item No*: N/A

--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
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

4/18/2024

DATE


ASST CITY MGR – CFO

4/18/2024

DATE

Baron Longoria
LEGAL DEPARTMENT

4/18/2024

DATE

APPROVED & EXECUTED

CITY MANAGER _____

DATE _____

N/A

MAYOR (if applicable)

DATE _____

N/A

CITY SECRETARY (if applicable)

DATE _____

TECHNOLOGY SERVICES CONTRACT

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

ARTICLE I SCOPE OF SERVICE

1.01 This Contract is for Falcon Complete Subscription with Threat Graph Standard (the “Project”). The Master Purchase Agreement, scope and details of the work to be provided to the City by Consultant for the Project are set forth in **Exhibit “A”** to this Contract and are incorporated as though fully set forth herein by reference (the “Work”). Consultant agrees to perform or cause the performance of all the work described in **Exhibit “A.”**

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

ARTICLE II PAYMENT

2.01 Notwithstanding the provisions of Section 2.01, the total amount of payment, including reimbursements, by the City to Consultant for all Work to be performed under this Contract may not, under any circumstances, exceed **Three Hundred Fifty-Two Thousand Sixty-Seven and 59/100 Dollars (\$352,067.59).**

ARTICLE III CHANGE ORDERS

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

- (a) When the original Contract amount plus all change orders is \$100,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more

than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work; and

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

ARTICLE IV TIME OF PERFORMANCE

4.01 Except as provided in Article XI hereinbelow, the term of this Contract shall be for three (3) years from the effective date of this Contract.

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

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

ARTICLE V INDEPENDENT CONTRACTOR AND NONSOLICITATION

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

ARTICLE VI AUTHORIZATION

6.01 The City shall direct Consultant to commence Work on the Project by sending Consultant a "letter of authorization" concurrently with Contract Execution to begin Work on the Project.

6.02 Upon receipt of the letter of authorization to begin Work on the implementation of the Project, Consultant shall meet with the City for the purpose starting the Project and coordinating tasks in the Statement of Work.

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

ARTICLE VII WARRANTY

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

ARTICLE VIII INDEMNIFICATION AND RELEASE

8.01 Indemnity. The Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees, volunteers and agents (separately and collectively referred to in this paragraph as "Indemnatee"), from and against any and all third party claims, losses, damages, causes of action, suits, judgments, and liability of every kind, including all expenses

of litigation, court costs, attorney's fees, and other reasonable costs for damage to or loss of use of any property, for injuries to, or sickness or death of any person, including but not limited to Consultant, any of its subconsultants of any tier, or of any employee or invitee of Consultant or of any such subconsultants, that is caused by, arises out of, related to, or in connection with, the negligence of and/or negligent performance of this Contract by Consultant or by any such subconsultants of any tier, under this Contract. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

8.02 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 Paragraph 8.01, 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.

8.03 Release. The Consultant 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, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's performance of the work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall not apply to the extent such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

ARTICLE IX INSURANCE

9.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subconsultants. The policies, limits and endorsements required are as set forth below:

9.02 Types. During the term of this Contract Consultant's insurance policies shall meet the minimum requirements of this section.

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

(d) Cyber Liability.

9.03 Certificates of Insurance. For each of these policies, the policy shall be endorsed to show the Consultant's insurance coverage as primary with respect to the City, its officials, agents, employees and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, on the most current State of Texas Department of Insurance-approved forms, attached hereto as **Exhibit C**, and approved by the City *before* work commences.

9.04 Additional Insurance. The Consultant shall include all subconsultants as Additional Insureds under its policies, or shall furnish separate certificates and endorsements for each subconsultant. Coverages for subconsultants shall be subject to all requirements stated herein.

9.05 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 shall be accepted.
- (b) Deductibles shall be acceptable only on an "occurrence" basis.
- (c) "Claims made" policies are not accepted, except for Professional Liability insurance.
- (d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days written notice has been given to the City of College Station.
- (e) The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:
 - i. The licensed insurance company is authorized to do business in the State of Texas
 - ii. The insurance policy is underwritten on forms provided by the Texas Department of Insurance or ISO
 - iii. All endorsements and coverages are included according to the requirements of this Contract
 - iv. The form of notice of cancellation, termination, or change in coverage provisions is specified in this attachment
- (f) The City of College Station, its officials, agents, employees, and volunteers are to be listed as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverages shall contain no special limitations on the scope of protection afforded the City, its officials, agents, employees, and volunteers.

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

- (a) Coverage shall be written by a carrier rated “A: VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum limits of liability of \$1,000,000 per occurrence per project with a \$2,000,000 annual aggregate limit.
- (c) Coverage shall be at least as broad as Insurance Service's Office (ISO) Number CG 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: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and Host Liquor Liability.
- (f) The City shall be listed as Additional Insured and policies endorsed to waive rights of subrogation and to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.

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

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

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

- (a) Employer’s Liability limits of \$1,000,000 for each accident is required.
- (b) “Texas Waiver of Our Right to Recover from Others Endorsement, WC 42 03 04” shall be included in this policy.
- (c) Texas must appear in Item 3A of the 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.

9.10 Cyber Liability. Technology Services Errors and Omissions with coverage of \$1,000,000 for each claim.

ARTICLE X TECHNOLOGY REQUIREMENTS

10.1 Closeout.

- i.** Agreement Expiration. When the Contract term expires or terminates, and at any other time at the City's written request, Contractor must promptly return to the City all intellectual and physical property subject to the Contract including, but not limited to system configuration data and information in file or document formats in the Contractor's possession or control.
- ii.** Access. The City will have access to export and retrieve its data for no less than ninety (90) days after the Contract expiration or termination date. The City must be able to access its data at any time during the Agreement term in the format provided by Consultant. The Contractor must provide the City transition work after Contract expiration or termination at Contractor's then-current and generally-charged hourly rates.
- iii.** Data Removal. At the City's request upon Contract expiration or termination, the Contractor must remove, delete, purge, overwrite or otherwise render inaccessible within a reasonable time, all City data remaining on Contractor's servers to the extent possible based on the then-current technology available. Contractor must provide the City a written and signed statement confirming data has been deleted, purged, overwritten or otherwise rendered inaccessible. The Contractor will not otherwise delete the City's data without City's prior written consent.

ARTICLE XI TERMINATION

11.01 Either Party may terminate the Contract, Work or a related SOW for convenience, with thirty (30) days advanced written notice to the non-terminating Party. The Consultant shall cease work immediately upon notice from the City. Consultant shall be compensated for the work performed. If the City terminates this Contract for convenience, the City shall pay Consultant for the work performed and expenses incurred before the date of termination. The Consultant will refund the City for services not performed if Consultant terminates.

11.02 Termination for Cause. Either Party may terminate this Contract and any SOWs if the other Party breaches any material terms or conditions of this Contract or the applicable SOW and the breach remains un-cured for thirty (30) days after receipt of written notice of the breach. For the avoidance of doubt, any breach of an SLA(s) under Section 8.3 (Managed Services) of the Master Purchase Agreement attached to this Agreement is not considered a material breach. In addition to the foregoing, either Party may terminate this Contract and applicable SOWs with advanced written notice of ten (10) days, if the other Party becomes insolvent, enters bankruptcy,

reorganization, or other similar proceedings, admits in writing its inability to pay debts, or attempts or makes an assignment for the benefit of creditors.

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

ARTICLE XII MISCELLANEOUS TERMS

12.01 Venue and Applicable Law. 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. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to this Contract.

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

CITY:
City of College Station

Attn: Tim Van Aken
P.O. Box 9960
College Station, Texas 77842
tvanaken@cstx.gov

CONSULTANT:
Kudelski Security, Inc.,
130 E John Carpenter Freeway, Suite 300
Attn: brian.morgan@kudelskisecurity.com
Irving, TX 75062
With Copy to Legal:
5090 N. 40th Street, Suite 450
Phoenix, AZ 85018

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

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

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

12.06 Assignment. This Contract and all rights and obligations contained herein may not be assigned by Consultant without the prior written approval of the City, provided that Consultant

may assign this Contract and/or any of its rights hereunder to an Affiliate or to a successor in interest (whether by merger, acquisition, or sale of assets); provided that (a) Consultant provides written notice to the City; and (b) the assignee shall be bound by the terms and conditions of this Contract. Subject to the restrictions in assignment contained in this Contract, this Contract will be binding on and inure to the benefit of the parties and their successors and assigns.

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

12.08 Prioritization. Consultant 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 Consultant to this Contract as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Consultant r. In either case, the applicable law or the applicable provision of this Contract excluding such conflicting addition by Consultant r shall prevail. The parties understand this section comprises part of this Contract without necessity of additional consideration.

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

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

12.11 Effective. This Contract goes into effect when duly approved by all the parties hereto.

12.12 No Boycott Israel. To the extent this Contract is considered a contract for goods or work subject to §2270.002 Texas Government Code, Consultant verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Contract.

12.13 Survival. The terms and conditions of this Contract which by sense and content are intended to survive, including payment, warranties and disclaimers, confidentiality and limitation of liability, survive the expiration or termination of this Contract.

12.14 Counterparts. This Contract may be executed in one or more counterparts, each of which will be considered an original but altogether constitute the same instrument. Acceptance of this Contract may be made in electronic form showing the signatures of both parties. The Parties agree that electronic signatures may be used and will be legally valid, effective, and enforceable.

12.15 Miscellaneous. Each Party acknowledges that it has been represented by counsel under this Contract. Accordingly, any rule of applicable law or any legal decision that would require interpretation of any claimed ambiguities in this Contract against the drafting party has no

application and is expressly waived. Headings in this Contract are for reference purposes only and are not to be interpreted as being part of this Contract.

List of Exhibits

- A. Master Purchase Agreement and Scope of Work
- B. Payment Schedule
- C. Certificates of Insurance

KUDELSKI SECURITY, INC.

CITY OF COLLEGE STATION

By: Robert Hall

By: _____
City Manager

Date: _____

Date: 4/18/2024

APPROVED:

Baron Longoria
City Attorney
Date: 4/18/2024

JM Custer
Assistant City Manager/CFO
Date: 4/18/2024

Exhibit A
Master Purchase Agreement and Scope of Work



**Master Purchase Agreement
for Products and Services**

Kudelski

Client

City of College Station

Kudelski Security, Inc.	
Attn: 130 E John Carpenter Freeway, Suite 300 Irving, TX 75062, or 12400 Whitewater Drive, Suite 100 Minnetonka, MN 55343-9466, or 101 Marietta Street, Suite 800 Atlanta, Georgia 30303, or 5090 N. 40 th Street, Suite 450 Phoenix, AZ 85018	Attn: Tim Van Aken P.O. Box 9960 College Station, Texas 77842 tvanaken@cstx.gov
With copy to: 5090 N. 40 th Street, Suite 450 Phoenix, AZ 85018 Attn: Legal	With copy to:

1. Purpose. Kudelski agrees to provide and Client agrees to purchase the equipment, associated third party hardware, and software ("Product(s)") listed in a quote or statement of work ("SOW") for advisory, professional or managed services ("Services") subject to the Parties executing the applicable SOW. This Agreement applies whether a purchase order, other ordering document ("Order") or SOW references this Agreement or not. All SOWs, Addenda, Exhibits are incorporated into this Agreement and are subject to this Agreement, unless expressly stated otherwise.

2. Orders. Unless expressly stated on the quote, Client's Order is subject to acceptance by Kudelski and pricing is subject to change sixty (60) days after issuance. Any Client changes to Orders for Products, including cancellations, depend on each Product manufacturer's respective policies. Client may only change, cancel or reschedule Orders for Products at no charge up to five business days before scheduled shipment and upon written notice to Kudelski, unless the Product has been modified or otherwise reconfigured in accordance with Client's specifications. Cancellation will not relieve Client's duty to pay for Products shipped, before the notice. If an Order is properly cancelled, Client's sole remedy and Kudelski's sole obligation will be a full refund of the purchase price paid for the Product. Cancellation of Orders following shipment must be made in accordance with the return policies of the manufacturer of the Product. Either party may propose to correct any typographical, clerical or other error or omission in any quote, statement of work, price list, Order acknowledgement, invoice, correspondence, or other document, and the parties shall work in good faith to resolve such typographical or clerical error or omission via the change order and/or amendment process, as applicable.

3. Price, Taxes and Expenses. Prices are in US dollars and subject to change without notice at any time before the Order is accepted. Prices are net of taxes including sales, use, excise, VAT, environmental, disposal, duties, or other taxes or fees. Client pays the total purchase price for the Product plus shipping (to the extent shipping is not prepaid by Client), including shipping charges that are invoiced to Kudelski because of using Client's carrier account number. If applicable, Client is responsible for providing Kudelski with a tax exemption certificate acceptable to the taxing authorities or evidence of a valid direct pay permit. For any Services being performed pursuant to a SOW, Client pays for the Services in the amounts and

Master Purchase Agreement for Products and Services

under the payment schedule listed in the applicable SOW. Except as otherwise specified in a SOW, Client will reimburse Kudelski for all reasonable out-of-pocket expenses incurred by Kudelski with the performance of the Services so long as Client provides prior written approval. Expenses may include travel, lodging and meals and provided receipts are submitted by Kudelski. Kudelski will use commercially reasonable efforts to travel as efficiently and cost effectively as possible given timing and travel requirements. Valid expenses typically include parking, meals (but not alcohol), lodging, communication costs, airfare, mileage and automobile rental.

4. Product Related Terms.

4.1 Delivery. Any shipping dates provided by Kudelski for any Product are estimates only. Kudelski will use commercially reasonable efforts to meet requested delivery times. Kudelski reserves the right to make deliveries in installments and allocate the delivery of Products among its customer base. Delay in delivery of one installment will not entitle Client to cancel other installments. Product will ship EXW (facilities of any Kudelski supplier), Incoterms 2010, freight prepaid and added to the invoice. Client authorizes Kudelski to choose the appropriate manner and means of all shipping of Product if a carrier is not designated in advance. For instances requiring international shipping, expedited shipping, or other special considerations, Client is responsible for paying all actual charges associated with the requests including all export and import duties, or other related costs.

4.2 Title, Liens and Encumbrances. Title to Product will not pass to Client until Kudelski has been paid in full for all invoices related to the Products. Notwithstanding anything in this Agreement, title to software either stand-alone or embedded into Product remains with the applicable licensor(s), and Client's rights and obligations related to the software are contained in the license agreement between Client and the applicable licensor(s).

4.3 Returns. Product returns are based on the policies of each of the original product manufacturers. Client should contact Kudelski at salesupport@kudelskisecurity.com to initiate a return or for additional information or direction. Client must notify Kudelski of any damaged Products within 10 days of receipt. If the Product is defective, Client will have to work directly with the manufacturer's support desk to initiate a Return Material Authorization or RMA.

4.4 Limitation on Use. Client is responsible for determining the use of any Products. Products sold by Kudelski are not designed for use in life support, nuclear or other applications where malfunction could reasonably be expected to result in personal injury, death or catastrophic property damage.

4.5 Export and Resale. Client will abide by all applicable import and export laws and regulations, both U.S and foreign, with respect to the Products. Client is solely responsible for obtaining any license(s) or permit(s) required to transfer, export, re-export or import the Products and related technology. Client will not use the Products and related technology in relation to chemical, biological or nuclear weapons, rocket systems (including ballistic missile systems, space launch vehicles and sounding rockets) or unmanned air vehicles capable of delivering same, or in the development of any weapons of mass destruction.

4.6 Kudelski SecureBlueprint. In the event Client chooses to purchase Kudelski's SecureBlueprint and to the extent allowed by the laws of the State of Texas and the Texas Constitution, software-as-a-service or SaaS hosted by Amazon Web Services (AWS), the access and continued use of SecureBlueprint is subject only to the terms of service at <https://www.kudelskisecurity.com/secure-blueprint-terms-services>. The foregoing terms of service control and are independent of the terms and conditions of this Agreement.

5. Scope of Services. Services are provided under the written specifications of the applicable SOW and the SOW incorporates the terms and conditions of this Agreement. Services do not include third party branded services or offerings. Kudelski may use subcontractors to perform Services and will obtain Client's consent in advance. Changes to the scope of the Services in a SOW will be made through a change order executed by authorized representatives of both Parties. Kudelski has no obligation to start work on a change order, until the change order is agreed upon in writing and executed by

Master Purchase Agreement for Products and Services

authorized representatives of both parties. Before Kudelski and its designated subcontractors are authorized to start Services, Client will provide (a) access and all required permissions or authorizations from third parties to access, use, or modify data in Client's information technology systems and resident software with authorizations in place at the start of Services and until Services are completed, (b) physical access during normal business hours or other times as agreed upon, (c) timely responses to Kudelski's inquiries for information, approvals and authorizations, (d) access to staff and resources that Kudelski requires to provide the Services, and (e) establish a backup enabling Client to restore systems, software and data that existed before the start of Services by Kudelski or its authorized subcontractors.

6. Software and Tools.

6.1 Third Party Software. For any Services where Client is accessing or using third party software applications, Client agrees that any terms of use are between the licensor or publisher of the software and Client.

6.2 Software Tools. During the term of the applicable SOW, Kudelski may provide to Client access and use of software, application programming interface (API), Client portal, user IDs, tokens, passwords, computer tools as necessary for Client to receive the Services under the applicable SOW ("**the Software Tools**") and associated documentation and material ("**the Documentation**"). Subject to the terms and conditions of this Agreement, Kudelski grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license during the term of the applicable SOW to access and use the Software Tools and the Documentation for its own internal security purposes. Client will not directly or indirectly a) sell, rent, lease, redistribute, assign or otherwise transfer the Software Tools to any unaffiliated third party except as expressly permitted in the SOW, b) reverse engineer, decompile, disassemble, disable the Software Tools or otherwise attempt to derive the source code, trade secrets or know-how in or underlying any Software Tools or portion thereof, c) reproduce, modify, translate or create derivative works of all or any part of the Software Tools or of the Documentation except that Client may make reasonable numbers of copies of the Documentation for its internal use, or d) remove, alter, or obscure any proprietary notice, labels or marks on the Software Tools or e) use the Software Tools for any illegal, unauthorized or other improper purposes.

7. Warranties and Disclaimers.

7.1 Products and Related Disclaimers. Client understands and agrees that the Products are not manufactured or designed by Kudelski. Only the manufacturer or publisher can offer warranties for the Product. To the extent Kudelski receives any written warranties that are transferable from the manufacturer or publisher, Kudelski will pass those on to Client. PRODUCTS MANUFACTURED OR SOFTWARE PUBLISHED ARE PROVIDED ON AN "AS-IS" BASIS BY KUDELSKI AND ITS AFFILIATES WITHOUT ANY WARRANTY OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED RELATED TO THE PRODUCTS (INCLUDING WITHOUT LIMITATION, ANY STATUTORY, EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, ACCURACY, COMPLETENESS, OR NON-INFRINGEMENT). The disclaimer contained in this Section does not affect the terms of any manufacturer's warranty. Client relies solely on the manufacturer's specifications for the design or use of the Products in high risk environments including aircraft or automobile safety devices or navigation, life support systems or medical devices, nuclear facilities, or weapon systems and not rely on any statements, specifications, photographs or other illustrations of the Products that may be provided by Kudelski or its affiliates.

7.2 Advisory Services and Professional Services. Kudelski warrants that for any SOWs providing advisory (i.e., consulting) or professional Services, those Services collectively or individually will be performed in a (i) workmanlike and professional manner consistent with generally accepted industry standards, and (ii) conform to the written specifications of the SOW for 30 calendar days from completion. Client's sole and with respect to the Services warranty exclusive remedy and Kudelski's entire liability in this Section 7.2 will be, at Kudelski's option, to either (a) use its reasonable commercial efforts to re-perform any non-conforming Services not in substantial compliance with this warranty or (b) refund amounts paid by Client related to the portion of the Services not in substantial compliance. In each situation (a) or (b), Client must notify Kudelski in writing within 30 calendar days after performance of the applicable Services. Any warranty provided by Kudelski under this Section is void if an event outside the control of

Master Purchase Agreement for Products and Services

Kudelski impacts the Services or the Services are in anyway changed, unless Kudelski pre-approves in writing of the changes.

7.3 Managed Services. Kudelski warrants that for any SOWs providing managed Services as further defined in the applicable SOW, those managed Services will be performed in a (i) workmanlike and professional manner consistent with generally accepted industry standards, and (ii) conform to the written service level agreements (SLAs) for that specific Service in the SOW. If Kudelski fails to meet any SLA for a specific Service in the applicable SOW, Client will receive a credit equal to one days' worth of the applicable Service fee for the specific Service and the applicable SLA for that specific Service which was not met. The foregoing remedy is subject to Client notifying Kudelski of any missed SLA in writing within ten calendar days of the date on which the SLA report was provided. Upon verification and agreement by Kudelski, Client will receive a to-be applied credit toward any future invoice. The maximum amount of all credits for all SLAs missed will not exceed 25% of the total monthly charges. The remedies in this Section 7.3 for missed SLAs are Client's sole and exclusive remedy and Kudelski's entire liability with respect to the managed Services warranty.

7.4 Services Disclaimers. EXCEPT AS SET FORTH IN THIS AGREEMENT OR IN ANY STATEMENT OF WORK THAT EXPRESSLY AMENDS KUDELSKI'S SERVICES WARRANTY, AND TO THE EXTENT ALLOWED BY LAW, KUDELSKI MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY STATUTORY, EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, ACCURACY, COMPLETENESS OR NON-INFRINGEMENT) RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN PERFORMING SERVICES AND ANY RESULTS TO BE OBTAINED FROM THE SERVICES. THIS DISCLAIMER AND EXCLUSION APPLIES EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. Client acknowledges that no employee of Kudelski or its affiliates is authorized to make warranty on behalf of Kudelski or any of its affiliates that is not expressly in this Agreement. .

7.5 Except for the foregoing, each Party expressly disclaims all other, representations, warranties, conditions or covenants, whether statutory, express or implied.

8. Intellectual Property and Client Data.

8.1 Kudelski Intellectual Property. Kudelski retains all right, title and interest in any pre-existing intellectual property which may be used in performing the Services, including any modifications or improvements made during the performance of the Services (Kudelski Property). Subject to Client's full payment of applicable invoices, Kudelski grants Client and any Affiliated Company (defined below) of Client a worldwide, non-exclusive, royalty-free, perpetual, fully paid, irrevocable license: (a) to modify any Kudelski Property to create a derivative work of Kudelski Property ("Derivative Work"); (b) to reproduce the resulting Derivative Work of the Kudelski Property; (c) to distribute the Derivative Work of the Kudelski Property, but only to an Affiliated Company of Client; and (d) to use any Kudelski Property or any Derivative Work of the Kudelski Property for Client's own internal business purposes whether Kudelski Property is imbedded in any deliverable or results from Kudelski performing any Services for Client under this Agreement. For purposes of this Section 8.1., "Affiliated Company" means any legal entity that Client controls, that controls Client, or that Client is under common control at the Effective Date of this Agreement and for so long as such control exists. Control is defined as exercising 50% or more of the voting rights.

8.2 Client Data. Client owns all right, title and interest in any data provided by Client to Kudelski or made available to Kudelski through Client systems ("Client Data") in connection with the performance of Services. Client grants Kudelski for the Term of this Agreement a limited, non-exclusive, revocable license to use the foregoing Client Data solely for performing the Services under the applicable SOW.

8.3 Return of Client Data. Upon termination or expiration of this Agreement, Kudelski will promptly make all Client Data available to Client as a native database export provided through Kudelski's secure server or other similar secure method,

Master Purchase Agreement for Products and Services

at no additional charge to Client provided that Client is current on all invoices. If Client requires the return of Client Data in an alternate format or requires any other termination assistance services, then Kudelski and Client will mutually agree upon the scope of such termination assistance services and the fees and expenses payable for such termination assistance services, at Kudelski's then-current fees.

9. Confidential Information.

9.1 "Confidential Information" means information disclosed by one Party to the other Party either directly or indirectly, in writing, orally or by drawings or inspection of samples, equipment or facilities; including (a) information identified by the disclosing Party, in writing or orally, as confidential at the time of disclosure; (b) information relating to the disclosing Party's technology, products, solutions and services used, provided and/or owned by the disclosing Party, including without limitation, technical data, trade secrets, know-how, research, product plans, ideas or concepts, products, services, software, inventions, patent applications, techniques, processes, developments, algorithms, formulas, technology, designs, schematics, drawings, engineering and hardware configuration information, operations, business and financial results or financial plans or strategies, including but not limited to Client, customer lists, markets, financial statements and projections, product pricing, marketing information, financial or other strategic business, plans or information; and (c) the content and terms of this Agreement. Information is not deemed Confidential Information if it (i) is known to the receiving Party before receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party, (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party, (iii) becomes publicly known or otherwise ceases to be confidential, except through a breach of this Section by the receiving Party, or (iv) is independently developed by the receiving Party.

9.2 Neither Party will use or disclose Confidential Information from the other Party without the prior written consent of the other Party except where (a) if in the documented opinion of a Party's counsel shared with the other Party, the disclosure is required by applicable law, the Texas Public Information Act, or regulation (including securities laws regarding public disclosure of business information) or by an order of a court or other governmental body having jurisdiction after taking steps to maintain its confidentiality where practicable; or (b) reasonably necessary to be made to that Party's, or its affiliates', employees, officers, directors, consultants, attorneys, accountants and other advisors, or (c) necessary for a Party to perform its obligations under this Agreement.

9.3 Each Party will restrict disclosure of Confidential Information to only those personnel who have a need to know and will bind its respective personnel to obligations of confidentiality to the same extent that each Party is bound under this Agreement. Upon written request by either Party, the other Party will promptly return all Confidential Information, including copies, to the disclosing Party of the Confidential Information.

9.4 If the Parties have entered into a non-disclosure agreement ("NDA") before the Effective Date of this Agreement, the Parties agree that any material conflict between the terms or provisions of the NDA and this Agreement will be resolved in favor of the stricter of the two terms or provisions, and the higher or greater degree of confidentiality for the Confidential Information of the Parties.

10. Limitation of Liability. Excluding claims for personal injury or death and a Party's indemnification obligations under this Agreement, neither party will be liable to the other Party for any indirect, special, incidental or consequential damages, including without limitation loss of revenue or income, loss of or use of data, operational efficiency, loss of customers or information, arising under this Agreement regardless of the form of action or theory of relief, even if advised of the possibility of such damages. Excluding claims for personal injury or death and a Party's indemnification obligations under this Agreement, any liability for direct damages arising under this Agreement, regardless of the form of action or theory of relief, is limited to the greater of (1) the purchase price of the Product or in the case of a SOW, the total amount paid or to be paid for Services by Client under the applicable SOW that gives rise to the claim under this Agreement; or (2) the amount of insurance proceeds actually paid in connection with such claim.

Master Purchase Agreement for Products and Services

11. Background Checks. Kudelski represents that it will conduct background checks on each and every individual it will have working on the Client's property.

12. Data Security. Kudelski will maintain administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of Client Data and Confidential Information in the possession, under the control or access by Kudelski, which are: (i) no less rigorous than those maintained by Kudelski for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) required by applicable laws.

13. Data Breach.

13.1 Notice. Kudelski will notify Client by email no later than forty-eight (48) hours after confirming a material data security incident, or any data security incident that affects Client's data. Kudelski must:

1. Investigate and resolve the incident in a timely manner;
2. Promptly implement necessary remedial measures; and
3. Document responsive actions taken related to the data breach, including any post-incident review and actions taken to change business practices in providing the work, if necessary.

14. Compliance with Applicable Laws. The Parties enter into this Agreement with the intent of conducting their relationship in full compliance with the applicable state, local, and federal laws.

15. Non-Discrimination. Each Party agrees that it will not discriminate on the basis of race, color, national origin, disability, age, or military service in its administration of policies, programs, services and activities, or in employment.

16. Non-Solicitation and Non-Hire. Without the written consent of the other Party, neither Party will directly or indirectly solicit, divert or otherwise take away any employee of the other Party during the term of this Agreement and for a period of 12 months following its expiration or termination. This obligation does not apply where an employee of a Party has unilaterally responded to a general recruitment advertisement or hiring campaign that was not specifically targeting the employee.

17. Force Majeure. Except for the obligation to pay, neither Party is liable for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control (for example, acts of nature, telecommunication interruptions, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labor, or materials through regular sources).



Scope of Work

5090 North 40th St Suite 450 Phoenix AZ 85018

Date 3/6/2024
Quote # QUO-01589-S7T9W5 Rev. 0

Quoted To
City of College Station
Tim VanAken
tvanaken@cxstx.gov

Expires 5/19/2024
Terms 30 Days
Contract # DIR-CPO-4891

Sales Rep Sonja Young
Phone # +1 512 266 7013
Email sonja.young@kudelskisecurity.com

Item	Qty	Description	Unit Price	Ext. Price
Description	1.00	Falcon Complete Renewal (May 21, 2024 - May 20, 2027)	\$0.00	\$0.00
CS.FCSD.SOLN.T5.36M	1,500.00	Falcon Complete with Threat Graph Standard	\$166.65	\$249,981.60
CS.INSIGHTB.SOLN.T7.36M	1,500.00	Insight	\$0.00	\$0.00
CS.PREVENTB.SOLN.T7.36M	1,500.00	Prevent	\$0.00	\$0.00
CS.DISC.B.SOLN.T7.36M	1,500.00	Discover	\$0.00	\$0.00
CS.FALCOMP.SVC.36M	1,500.00	Falcon Complete Subscription	\$0.00	\$0.00
CS.OWB.SVC.T7.36M	1,500.00	Overwatch	\$0.00	\$0.00
CS.TGB.STD.36M	1,500.00	Threat Graph Standard	\$0.00	\$0.00
CS.FALCOMPONBC.SOLN.36M	1.00	Falcon Complete: Complimentary CID	\$0.00	\$0.00
RR.PSO.ENT.PASS.36M	6.00	University LMS Subscription Customer Access Pass	\$0.00	\$0.00
RR.HOS.ENT.EXPS.36M	1.00	Express Support	\$13,564.80	\$13,564.80
		3 Years		
Description	1.00	Threat Intelligence Renewal (Dec 5, 2024 - May 20, 2027)	\$0.00	\$0.00
CS.INTEL.SOLN.T7.29M	1,500.00	CrowdStrike Falcon Intelligence	\$14.43	\$21,652.20
RR.HOS.ENT.EXPS.29M	1.00	Express Support	\$2,086.56	\$2,086.56
Description	1.00	Additional Solutions (May 21, 2024 - May 20, 2027)	\$0.00	\$0.00
CS.OTP.SOLN.T3.36M	1,064.00	Identity Threat Protection (Accounts)	\$40.32	\$42,900.48
CS.CREDMON.SOLN.T7.36M	1.00	--Falcon Intelligence Recon: Exposed Credential Monitoring-	\$16,833.60	\$16,833.60
RR.HOS.ENT.EXPS.36M	1.00	Express Support	\$5,048.35	\$5,048.35
		3 Years		

Total \$352,067.59

THIS QUOTE IS SUBJECT TO RECEIVING A NON-CANCELLABLE Purchase Order FOR THE FULL AND TOTAL AMOUNT OF \$352,067.59 paid in three installments listed below. All amounts quoted exclusive of sales tax, shipping and handling charges, and other expenses incident to delivery. Signature below indicates acceptance of all terms, including pricing, non-cancellation, and terms and conditions of sale of product and services listed above. Any terms that may conflict with the preceding sentences in a Purchase Order or other similar ordering document are expressly disclaimed and rejected.

City of College Station will be responsible for the entire amount in three installments as follows:
Payment One: \$132,075.45 invoiced on delivery 2024
Payment Two: \$110,011.07 invoiced 2025
Payment Three: \$110,011.07 invoiced 2026

N/A

Authorized Representative

Date

Exhibit B

Payment Terms

Payment is a not to exceed fee in the amount listed in Article II of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the work and written acceptance by the City.

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

Schedule of Payment for each phase:

Consultant shall invoice the City for each year with an annual payment as described below (three years total) beginning on the Subscription Start Date and on each of the two subsequent anniversaries of the Subscription Start Date.

City will be responsible for the entire amount in three installments as follows:

Payment One: \$132,075.45 invoiced on delivery 2024

Payment Two: \$110,011.07 invoiced 2025

Payment Three: \$110,011.07 invoiced 2026

Invoices are due Net thirty (30) days from the date City receives Consultant's invoice without any set-off, offset or deduction of any payment not due, or otherwise in the currency indicated on the invoice. Payment of invoices will be through Automated Clearing House (ACH).

Contact Consultant at ar@kudelskisecurity.com for further instructions. For Product, Kudelski may invoice Client separately for partial shipments, shipping charges or prepayment of third-party Services. Payment or credit terms are at Consultant 's sole discretion and all Orders are subject to Consultant 's credit approval. Any credits provided to Client by Consultant expire if unused within 24 months from the date the credit was issued.

If the City defaults on undisputed payment obligations under this Contract or under any applicable SOW, Consultant may stop performing Work and require the City to pre-pay the agreed-upon fixed fee before Consultant re-commencing Work.

No delay or omission by Consultant in its exercise of any right with respect to receive payments will operate as a waiver.



Quote

5090 North 40th St Suite 450 Phoenix AZ 85018

Date 3/6/2024
Quote # QUO-01589-S7T9W5 Rev. 0
Sales Rep Sonja Young
Phone # +1 512 266 7013
Email sonja.young@kudelskisecurity.com

Quoted To
City of College Station
Tim VanAken
tvanakan@cxstx.gov

Expires 5/19/2024
Terms 30 Days
Contract # DIR-CPO-4891

Item	Qty	Description	Unit Price	Ext. Price
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CS.TGB.STD.36M	1,500.00	Threat Graph Standard	\$0.00	\$0.00
CS.FALCOMPONBC.SOLN.36M	1.00	Falcon Complete: Complimentary CID	\$0.00	\$0.00
RR.PSO.ENT.PASS.36M	6.00	University LMS Subscription Customer Access Pass	\$0.00	\$0.00
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Description	1.00	Additional Solutions (May 21, 2024 - May 20, 2027)	\$0.00	\$0.00
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Total \$352,067.59

THIS QUOTE IS SUBJECT TO RECEIVING A NON-CANCELLABLE Purchase Order FOR THE FULL AND TOTAL AMOUNT OF \$352,067.59 paid in three installments listed below. All amounts quoted exclusive of sales tax, shipping and handling charges, and other expenses incident to delivery. Signature below indicates acceptance of all terms, including pricing, non-cancellation, and terms and conditions of sale of product and services listed above. Any terms that may conflict with the preceding sentences in a Purchase Order or other similar ordering document are expressly disclaimed and rejected.

City of College Station will be responsible for the entire amount in three installments as follows:
Payment One: \$132,075.45 invoiced on delivery 2024
Payment Two: \$110,011.07 invoiced 2025
Payment Three: \$110,011.07 invoiced 2026

N/A

Authorized Representative

Date

Exhibit C
Certificates of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/09/2024

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 MARSH USA LLC. 2325 E. Camelback Road Suite 600 Phoenix, AZ 85016 CN121974050-KSI-GAUWE-24-25	CONTACT NAME: PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: American Zurich Insurance Company INSURER B: American Guarantee and Liability Insurance Company INSURER C: N/A INSURER D: INSURER E: INSURER F:	NAIC # 40142 26247 N/A
INSURED Kudelski Security, Inc. 5090 N. 40th Street, Suite 450 Phoenix, AZ 85018		

COVERAGES**CERTIFICATE NUMBER:**

LOS-002751060-01

REVISION NUMBER: 2

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:			CPO8621365-00	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CPO8621365-00	01/01/2024	01/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 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	N / A	WC8695231-00	01/01/2024	01/01/2025	☒ 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

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

CERTIFICATE HOLDER**CANCELLATION**COCS Risk Management
P.O. Box 9960
College Station, TX 77842

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

AUTHORIZED REPRESENTATIVE

Marsh USA LLC

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/11/2024

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 MARSH USA LLC. 2325 E. Camelback Road Suite 600 Phoenix, AZ 85016 CN121974050-KSI-GAUWE-24-25	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: N/A INSURER B: N/A INSURER C: Continental Casualty Company INSURER D: INSURER E: INSURER F:	NAIC # N/A N/A 20443
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COVERAGES

CERTIFICATE NUMBER:

LOS-002751371-01

REVISION NUMBER: 2

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 \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) 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 \$
C	Tech E&O			652510806	01/01/2024	01/01/2025	Limit: 5,000,000 SIR: \$50,000

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

Certificate is issued as evidence of coverage.

CERTIFICATE HOLDER

CANCELLATION

COCS Risk Management P.O. Box 9960 College Station, TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Marsh USA LLC</i>
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ADDITIONAL REMARKS SCHEDULE

AGENCY MARSH USA LLC.		NAMED INSURED Kudelski Security, Inc.[] 5090 N. 40th Street, Suite 450[] Phoenix, AZ 85018
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

Excess Tech E&O[]
 Carrier: Associated Industries Insurance Company, Inc. (AmTrust)[]
 Policy Number: AES122986001[]
 Effective Dates: 01/01/2024 to 01/01/2025[]
 Limits: \$5,000,000 excess \$5,000,000[]
 Retention: \$0

April 25, 2024

Item No. 7.5.

Drought Contingency and Water Emergency Plan Update

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an ordinance amendment to Chapter 40, "Utilities", Division 5: Drought Contingency and Water Emergency Plan, of the Code of Ordinances of the City of College Station, Texas.

Relationship to Strategic Goals:

Core services and infrastructure.

Recommendation(s): Staff recommends approval.

Summary: In 2019, the College Station City Council adopted the existing Drought Contingency Plan by ordinance, which is designed to manage temporary water supply shortages by establishing targets for reducing water usage.

The proposed 2024 ordinance amendment to the Drought Contingency Plan includes changes aimed at enhancing water demand reduction efforts and mitigating strains on the system during periods of increased demand or emergencies. The updated plan and ordinance amendment was discussed during a City Council workshop held on April 11, 2024, and presented as a Seminar Supper topic on March 27, 2024. This plan undergoes regular review and submission to regulatory authorities every five years to ensure its effectiveness and relevance are maintained.

Budget & Financial Summary: N/A

Attachments:

1. Drought Contingency & Water Emergency Plan Ordinance_v4-16-24

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 40, "UTILITIES," ARTICLE II, "WATER AND SEWER SERVICES," DIVISION 5 "DROUGHT CONTINGENCY AND WATER EMERGENCY PLAN," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY REPEALING AND REENACTING DIVISION 5 "DROUGHT CONTINGENCY AND WATER EMERGENCY PLAN" AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Chapter 40, "Utilities," Article II, "Water and Sewer Services," Division 5 "Drought Contingency and Water Emergency Plan," of the Code of Ordinances of the City of College Station, Texas, be repealed and reenacted 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, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 40, “Utilities,” Article II, “Water and Sewer Services,” Division 5 “Drought Contingency and Water Emergency Plan,” of the Code of Ordinances of the City of College Station, Texas, is hereby repealed and reenacted to read as follows:

Division 5: DROUGHT CONTINGENCY AND WATER EMERGENCY PLAN**A. DECLARATION OF POLICY, PURPOSE, AND INTENT**

To conserve the City of College Station’s available water supply and protect the integrity of its water supply facilities, with regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety; and minimize the adverse impacts of water supply shortage or other water supply emergency conditions such as equipment or system failures, the City of College Station hereby adopts the following regulations and restrictions on the delivery and consumption of water.

Water uses regulated or prohibited under this Drought Contingency Plan (the Plan) are considered non-essential. Continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section M (Enforcement) of this Plan. The Plan will be reviewed and updated as necessary, at least every five (5) years.

B. AUTHORIZATION

The City Manager or their designee is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The City Manager or their designee shall have the authority to initiate or terminate drought stages or water supply emergency response measures as described in this Plan.

C. APPLICATION

The provisions of this Plan shall apply to all persons, customers, and property utilizing potable water provided by the City of College Station. The terms “person” and “customer” as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities. Utilization of a water source other than City of College Station potable water is exempt from the provisions of this Plan.

D. COORDINATION WITH REGIONAL WATER PLANNING GROUP

The water service area of the City of College Station is located within the Brazos Region G Regional Water Planning Group. The City of College Station has provided a copy of this Plan to the Brazos Region G Regional Water Planning Group.

E. DEFINITIONS

For the purposes of this Plan, the following definitions shall apply:

1. Aesthetic water use: water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.
2. Commercial and institutional water use: water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.
3. Conservation: those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.
4. Customer: any person, company, or organization using water supplied by the City of College Station.
5. Domestic water use: water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.
6. Essential water use: water necessary for firefighting, health and safety purposes; water needed to sustain human and animal life; and water necessary to satisfy federal, state and local public health, safety or environmental protection requirements.
7. Even number address: street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.
8. Foundation watering: an application of water to the soils directly abutting (within 2 feet) the foundation of a building or structure.
9. Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.
10. Landscape irrigation use: water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.
11. Non-essential water use: water uses that are neither essential nor required for the protection of public, health, safety, and welfare, including:
 - a. irrigation of landscaped areas, including parks, athletic fields, and golf courses, except as otherwise provided under this Plan;
 - b. use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
 - c. use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
 - d. use of water to wash down buildings or structures for purposes other than immediate fire protection;

- e. flushing gutters or permitting water to run or accumulate in any gutter or street;
- f. use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pools;
- g. use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- h. failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s);
- i. use of water from hydrants for dust control; and
- j. Use of water to operate a single-pass splash pad system.

12. Non-Potable Water: water that has not been treated to public drinking water standards.

13. Odd numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

14. Production/Distribution Capacity: Capacity of operable wells and the flow from regional interconnects.

15. Recycled or Reclaimed Water: Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use.

F. PUBLIC EDUCATION

The City will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated, and the drought response measures to be implemented in each stage. This information will be provided by means of press releases, public events, social media, and similar methods.

G. PUBLIC INVOLVEMENT

Opportunity for the public to provide input into the preparation of the Plan is provided by the City of College Station at a regularly scheduled City Council meetings.

H. NOTIFICATION

1. Notification of the Public: Public notification of the initiation or termination of drought response stages shall be by means of online publication, as allowed by state or local laws and ordinances, or publication in a newspaper widely circulated in College Station, and public service announcements on local television and/or cable service. Additional methods of public notification may include signs posted in public places, utility bill inserts, and other means to be determined by the City.
2. Executive Director Notification: When mandatory restrictions are enacted with the initiation of any stage found within this plan, the Executive Director of TCEQ will be notified, at a minimum via telephone or email, within five (5) business days. When any stage is rescinded, the Executive Director of TCEQ will again be notified, at a minimum via telephone or via email, within five (5) business days.

I. YEAR-ROUND WATER USE MANAGEMENT AND CONSERVATION

This section establishes year-round water use management practices and applies year-round regardless of Drought Stage. The purpose of year-round water use management is to raise public and customer awareness of water demand conditions.

Voluntary Water Conservation Guidelines:

The peak season for water usage in College Station is the period from May 1 to September 30 and thus attention to water conservation in this period is critical to protecting valuable drinking water resources. During this time, water customers are requested to voluntarily conserve water and limit non-essential water uses. Water conservation practices are discussed in more detail in the City of College Station's Water Conservation Plan.

Permanent Water Use Restrictions:

To minimize water lost to evaporation and leaks, the following water use restrictions apply year-round:

- (1) Landscape irrigation using automatic in-ground or hose-end sprinkler systems is prohibited between the hours of 10:00 A.M. and 6:00 P.M.
- (2) The time restrictions in (1) above do not apply to:
 - (a) The irrigation of commercial plant nurseries.
 - (b) Irrigation using reclaimed water or other non-potable water sources.
 - (c) New landscape installation during planting and the first ten days after planting.
 - (d) The testing of new irrigation systems or existing irrigation systems being tested or under repair.
 - (e) Irrigation using a hand-held bucket or hose equipped with a positive pistol grip nozzle, pressure-washing system, or other device that automatically shuts off water flow when the hose is not being held by the water user,
 - (f) Irrigation by drip irrigation or soaker hoses
- (3) The following uses constitute a waste of water and are prohibited:
 - (a) Allowing water to run off a property or allowing water to pond in the street or parking lot.
 - (b) Operating an irrigation system with sprinkler heads that are broken or out of adjustment.
 - (c) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).
- (4) Ornamental fountains or ponds for aesthetic or scenic purposes must be equipped with a recirculation device. This restriction does not apply to ornamental fountains or ponds that use reclaimed water, non-potable water, or water provided by sources other than the City.

J. TRIGGER CONDITIONS

The City Manager or their designee shall monitor daily water supply and/or demand conditions on a regular basis. The City Manager, on recommendation of College Station Water Services, shall determine when conditions warrant initiation or termination of each stage of the Plan, that is, when the specified trigger conditions are reached. The triggering criteria described below are based on emergency situations caused by high daily average water demand, equipment or system failure, or a natural disaster. The trigger conditions also recognize that the City of College Station uses groundwater as its water supply, and therefore, will likely be constrained by system capacity before shortage of supply.

Water system interconnections may be utilized to provide water in emergency conditions, provided there is not an additional emergency situation created by any water transfer. These shared water resources shall be evaluated and/or implemented prior to initiation of each stage of the Plan.

(1) Stage 1 – High Water Demand

- (a) Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on non-essential water uses, as outlined herein in Responses to Trigger Conditions, Stage 1, when:
- (i) Average daily water consumption for seven (7) days reaches 85% of production/distribution capacity of the City water system;
 - or
 - (ii) Emergency water supplied to the City of College Station through system interconnections is curtailed or interrupted;
 - or
 - (iii) A mechanical failure occurs in the water production or distribution system that reduces water production/delivery capacity.
- (b) Requirements for termination – Stage 1 of the Plan may be rescinded by the City Manager when seven (7) day average daily water demand drops below 85% production/distribution capacity, or the water system is returned to fully operational conditions. Upon termination of Stage 1, the standard condition of Year-Round Water Use Management becomes operative.

(2) Stage 2 – Severe Water Demand

- (a) Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on non-essential water uses, as outlined herein in Responses to Trigger Conditions, Stage 2, when:
- (i) The seven (7) day average water consumption reaches 90% of production/distribution capacity of the system,
 - or
 - (ii) The City daily water consumption will not enable storage levels to be maintained for fire protection.
- (b) Requirements for termination – Stage 2 of the Plan may be rescinded by the City Manager when the seven (7) day average water consumption decreases below 90%.

Upon termination of Stage 2, Stage 1 becomes operative as directed by the City Manager.

(3) Stage 3 – Extreme Water Demand

(a) Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on non-essential water uses, as outlined herein in Responses to Trigger Conditions, Stage 3, when:

(i) The 7 day average water consumption reaches 95% of production/distribution capacity of the system,

or

(ii) The City daily water consumption will not enable storage levels to be maintained for fire protection.

(b) Requirements for termination – Stage 3 of the Plan may be rescinded by the City Manager when the seven (7) day average water consumption decreases below 95%. Upon termination of Stage 3, Stage 2 becomes operative as directed by the City Manager.

(4) Stage 4 – Water Supply Emergency

(a) Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on non-essential water uses, as outlined herein in Responses to Trigger Conditions, Stage 4, when:

(i) The City water system is contaminated, whether accidentally or intentionally. A Water Supply Emergency condition is reached immediately upon detection.

or

(ii) The City water system fails for any reason. A Water Supply Emergency condition is reached immediately upon detection.

(b) Requirements for termination – Stage 4 of the Plan may be rescinded by the City Manager with TCEQ guidance when the condition(s) listed above as triggering events have ceased to exist. Upon termination of Stage 4, the previously initiated stage becomes operative as directed by the City Manager.

K. RESPONSES TO TRIGGER CONDITIONS

The City shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth herein, shall determine that a high, severe, extreme, or emergency condition exists and shall implement the following actions upon notice as provided herein:

(1) Stage 1 – High Water Demand

The goal for **Stage 1** of the Plan is to achieve a 5% reduction in daily water demand and maintain average daily water demand below eighty-five percent (85%) of system capacity.

If the City Manager enacts **Stage 1**, the following water use restrictions shall apply to all customers using water provided by the City, in addition to the Year-Round Water Use Restrictions:

- (a) Transmission of flow through interconnects to other water utilities requires City Manager approval.
- (b) Water customers are required to participate in the Stage 1 Watering Schedule for non-essential water use. Non-essential water use shall only occur on designated outdoor watering days, which will be no more than twice each week. The Stage 1 Watering Schedule will be determined and distributed each year by the City.
- (c) Non-essential water use is permitted:
 - (i) From 12:00 midnight to 10:00 A.M. and from 6:00 P.M. to 12:00 midnight on a customer's designated watering day
- (d) The time of day restrictions do not apply to:
 - (i) The irrigation of commercial plant nurseries.
 - (ii) Irrigation using reclaimed water.
 - (iii) The testing of new irrigation systems or existing irrigation systems being tested or under repair.
 - (iv) Irrigation using hand-held hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being held by the water user, by drip irrigation, by soaker hose, or by hand-held buckets.
- (e) Irrigation of new landscapes is permitted according to the following schedule:
 - (i) During planting and the first ten days after installation, once per day;
 - (ii) Day 11 through Day 20 after installation, once every other day;
 - (iii) Day 21 through Day 30 after installation, once every third day.
- (f) The washing of automobiles, trucks, motorbikes, boats, trailers, airplanes or other vehicles is permitted:
 - (i) On designated watering days, from 12:00 midnight to 10:00 A.M. and from 6:00 P.M. to 12:00 midnight.
 - (ii) Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses.
 - (iii) The washing of individual vehicles may be done at any time on the immediate premises of a commercial car wash or commercial service station.
 - (iv) Further, this restriction does not apply to the washing of vehicles or any other type of mobile equipment (such as garbage trucks and vehicles to transport food and perishables) when the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing.
- (g) Use of water for the irrigation of golf course greens, tees, and fairways is permitted only on designated watering days. Such irrigation shall only occur from 12:00 midnight to 10:00 A.M. and from 6:00 P.M. to 12:00 midnight. These restrictions do not apply

to the irrigation of any golf course that uses reclaimed water, or other non-potable water sources.

(2) Stage 2 – Severe Water Demand

The goal for **Stage 2** of the Plan is to achieve a 5% reduction in daily water demand, maintaining average daily water demand below ninety percent (90%) of system capacity.

If the City Manager enacts **Stage 2**, the following water use restrictions shall apply to all persons:

- (a) **Supply Management Measures** – The City will cease the flushing of water mains except when necessary to maintain public health, safety, and welfare.
- (b) **Water Use Restrictions** – All requirements of Stage 1 shall remain in effect during Stage 2, with these additional water use restrictions:
 - (i) The use of permanently installed irrigation systems, drip irrigation systems, and hose end irrigation is allowed one day per week. The Stage 2 Watering Schedule will be determined and distributed each year by the City. Such water use may occur only between the hours of 6:00 A.M. to 10:00 A.M. and 6:00 P.M. to 10:00 P.M. on designated water use days.
 - (ii) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited. This restriction does not apply to a commercial carwash or a commercial service station or if washing is necessary to protect the health safety, and welfare of the public.
 - (iii) Commercial plant nurseries may use only hand-held buckets, or hand-held hoses equipped with a positive pistol grip nozzle, or other device that automatically shuts off water flow when the hose is not being held by the water user.

All variances granted in a particular stage shall expire upon advancing to a more restrictive Stage of the Plan.

(3) Stage 3 – Extreme Water Demand

The goal for **Stage 3** of the Plan is to achieve a 5% reduction in daily water demand, maintaining average daily water demand below ninety percent (95%) of system capacity.

If the City Manager enacts **Stage 3**, the following water use restrictions shall apply to all persons:

- (a) **Supply Management Measures** – All City departments will discontinue irrigating public landscaped areas except when such areas are irrigated with reclaimed water, or water source other than that provided by the City water system.

(b) Water Use Restrictions – All requirements of Stage 2 shall remain in effect during Stage 3, with these additional water use restrictions:

- (i) The use of permanently installed irrigation systems, drip irrigation systems, and hose end irrigation is prohibited.
- (ii) Non-essential water use is restricted to use of hand-held buckets, or hand-held hoses equipped with a positive pistol grip nozzle, or other device that automatically shuts off water flow when the hose is not being held by the water user.
- (iii) Such water use may occur only between the hours of 6:00 A.M. to 10:00 A.M. and 6:00 P.M. to 10:00 P.M. on a single designated non-essential water use day each week.
- (iv) The washing of automobiles, trucks, trailers, boats, airplanes, and other types of mobile equipment not occurring on the immediate premises of a commercial car wash or a commercial service station and not in the immediate interest of the public health, safety, and welfare are prohibited.
- (v) Commercial plant nurseries may use only hand-held buckets, or hand-held hoses equipped with a positive pistol grip nozzle, or other device that automatically shuts off water flow when the hose is not being held by the water user.
- (vi) The filling, refilling, or adding of potable water to swimming or wading pools is prohibited.
- (vii) No new landscapes of any type may be installed.
- (viii) Charity car washes are prohibited.
- (ix) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life. This restriction does not apply to ornamental fountains or ponds that use reclaimed water, non-potable water, or water sources other than the City water system.

All variances granted in a particular stage shall expire upon advancing to a more restrictive Stage of the Plan.

(4) **Stage 4 – Water Supply Emergency**

The goal for **Stage 4**, Water Supply Emergency, is to rectify the emergency and return to normal operating conditions as soon as possible.

In the event of an imminent or actual water supply emergency due to a loss of water supply source (including contamination), system or equipment failure, or any other condition that reasonably constitutes an emergency, the City Manager has the authority to initiate the following Water Supply Emergency Responses:

- (a) The City Manager may request assistance from the City of Bryan and Texas A&M University in maintaining distribution system volume and pressure during the emergency conditions.
- (b) Effective immediately upon initiation of **Stage 4**, all non-essential water use shall be discontinued.
- (c) If water shortage or water emergency conditions threaten public health, safety, and welfare, the City Manager, upon recommendation of the Water Services Director, may order water rationing and/or terminate service to selected users of the system in accordance with the following sequence:
 - (i) Recreational users,
 - (ii) Commercial users,
 - (iii) School users,
 - (iv) Residential users, and
 - (v) Hospitals, public health, and safety facilities.
- (d) Public Notification:

If minimum health and safety standards for drinking water are not met during emergency conditions, public service announcements on local television and radio stations will be utilized to notify the public of the emergency conditions and response measures. These response measures may include notifying the public of the need to boil water, use bottled water, or use a designated alternate water source, as appropriate.
- (e) Emergency Management Assistance:

The City may seek assistance through the local and/or State Emergency Management Program.

L. WHOLESALE AGREEMENTS/CONTRACTS PROVISION

In the event that the Trigger Conditions specified by Stage 3 – Severe Water Shortage, or Stage 4 – Water Supply Emergency, of this Plan have been met, the City Manager is hereby authorized to initiate allocation of water supplies to wholesale customers on a pro rata basis. This stipulation applies to all existing and future wholesale water supply contracts or agreements made with the City. The pro rata basis for water allocation to wholesale customers will be made in accordance with the Texas Water Code §11.039 and as specified in 30 Texas Administrative Code §288.22(a)(7).

M. ENFORCEMENT

- (1) No person shall knowingly or intentionally allow the use of potable water from the City for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the stage in effect at the time pursuant to action taken by the City Manager in accordance with provisions of this Plan.

- (2) If a person is convicted of three or more distinct violations of this Plan, the City shall provide written notice to the person of possible termination of water service. The notice shall apprise the person of the possible termination of service, the reasons for such possible termination, and afford the person an opportunity to present their objections to termination in a hearing before the City Manager or the City Manager's designee. The person shall have not less than ten (10) days to present their objections. The notice shall also contain the notice requirements described in TCEQ Commission Rules located in 30 Texas Administrative Code §291.88(a), as it currently exists or as amended from time to time. If after such hearing, the City Manager or the City Manager's designee determines that service will be terminated, services discontinued under such circumstances shall be restored only upon payment of the reconnection charge, as established by City's Code of Ordinances, and any other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given to the City Manager or the City Manager's designee, that the same action shall not be repeated while the Plan is in effect. Compliance with this Plan may also be sought through injunctive relief in a Texas district court.
- (3) Any person who violates this Plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If a person is convicted of three or more distinct violations of this Plan, the City Manager or the City Manager's designee shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, as established by the City's Code of Ordinances, and any other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given to the City Manager or the City Manager's designee that the same action shall not be repeated while the Plan is in effect. Compliance with this plan may also be sought through injunctive relief in a Texas district court.
- (4) A City of College Station Police Officer, Code Enforcement Officer, or other authorized employee designated by the City Manager may issue a citation or a summons to a person they reasonably believe to be in violation of this Ordinance. The citation or summons shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the date or dates of the violation, the location of the violation, the offense or offenses charged, and shall direct the alleged violator to appear in the City of College Station Municipal Court on the date shown on the citation or summons, for which the date shall not be less than 3 days nor more than 5 days from the date the citation or summons was issued. The alleged violator shall be served a copy of the citation or summons either by hand-delivery or certified United States Postal Service mail, with return receipt confirmation. Service of the citation or summons shall be complete upon delivery of the citation or summons to the alleged violator, to an agent or employee of an alleged violator, or to a person over 14 years of age who is a member of the alleged violator's immediate family or is a resident of the alleged violator's residence. The alleged violator shall appear in municipal court to enter a plea of guilty, no contest, or not guilty for the violation of this

Plan. If the alleged violator fails to appear in municipal court, a warrant for the alleged violator's arrest may be issued. A summons to appear may be issued in lieu of a citation or an arrest warrant. These cases shall be expedited and given preferential setting in municipal court before all other cases.

N. PRESUMPTIONS

- (1) Any person, including a person classified as a water customer of the City, in apparent control of the property where a violation occurs or originates, shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that they did not commit the violation.
- (2) Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation. Any such parent may be excused if they prove that they had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.

O. VARIANCES

The City Manager or the City Manager's designee may, in writing, grant temporary variances for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such a variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance, or if one or more of the following conditions are met:

- (1) Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons or entities requesting an exemption from the provisions of this Ordinance shall file a petition for variance with the City within five (5) business days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager or the City Manager's designee and shall include the following:

- (a) Name and address of the petitioner(s),
- (b) Location and purpose of water use,
- (c) Specific provision(s) of the Plan from which the petitioner is requesting relief,
- (d) Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Plan,
- (e) Description of the relief requested,
- (f) Period of time for which the variance is sought,

- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date,
 - (h) Estimated water savings, as a percentage (%) of normal monthly water use, while operating under the variance requested, and
 - (i) Other information reasonably requested by the City.
- (3) Variances granted by the City Manager or the City Manager's designee shall be subject to the following conditions, unless waived or modified by the City Manager or the City Manager's designee:
- (a) Variances granted shall include a timetable for compliance, and
 - (b) Variances granted in a particular stage shall expire upon advancing to a more restrictive stage of the Plan.
 - (c) Petitioners shall prominently display the variance granting document where it can be read by the general public at all location(s) for which the variance applies, and make said variance available to the public.
 - (d) Variances granted may be revoked by the City Manager or the City Manager's designee if the petitioner fails to meet the specific requirements set forth in the variance.
 - (e) No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

April 25, 2024
Item No. 7.6.
Water Conservation Plan Update

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a resolution adopting an updated Water Conservation Plan.

Relationship to Strategic Goals:

Core services and infrastructure.

Recommendation(s): Staff recommends approval.

Summary: In 2019, the College Station City Council approved the current Water Conservation Plan, geared towards maximizing water efficiency, curbing waste, and fostering sustainable water resource management for present and future needs.

The proposed 2024 Water Conservation Plan features revised strategies and initiatives aimed at curbing water consumption and advocating for efficient water management practices among users. The updated plan was discussed during a City Council workshop held on April 11, 2024, and presented as a Seminar Supper topic on March 27, 2024. This plan undergoes regular review and submission to regulatory authorities every five years to ensure its effectiveness and relevance are maintained.

Budget & Financial Summary: N/A

Attachments:

1. Resolution Adopting Water Conservation Plan 4-19-2024
2. Updated Water Conservation Plan

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING UPDATES TO THE CITY OF COLLEGE STATION’S WATER CONSERVATION PLAN AS REQUIRED BY THE TEXAS ADMINISTRATIVE CODE (30 TAC 288).

WHEREAS, the City Council of the City of College Station, Texas, previously updated its Water Conservation Plan on October 23, 2008, April 24, 2014, and April 25, 2019; and

WHEREAS, the City Council of the City of College Station, Texas, desires to maintain a Water Conservation Plan (“Plan”) as evidence of its commitment to providing its customers with a reliable and safe water supply; and

WHEREAS, the City shall update the Plan as appropriate based on an assessment of previous five and ten year targets and any other new or updated information to keep the Plan current; and

WHEREAS, the Plan meets the requirements of Texas Commission on Environmental Quality (TCEQ) and 30 TAC Chapter 288 in regard to its content and water conservation goals; now therefore,

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

PART 1: That the Utility Profile of the Water Conservation Plan is updated to reflect current population figures, water production, and wastewater treatment capacities.

PART 2: That the City Council hereby approves the May 2024 Water Conservation Plan as set forth in Exhibit “A” which is attached to this Resolution.

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

ADOPTED this 25th day of April, 2024.

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:

City Attorney



Water Conservation Plan

May 2024

Public Water Supply Identification Number: 0210002

P.O. Box 9960

1601 Graham Road

College Station, TX 77842

979-764-3660

<http://www.cstx.gov/water>

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SECTION 1. INTRODUCTION

In accordance with the requirements of the Texas Commission on Environmental Quality (TCEQ), the City of College Station (the City) has updated its water conservation plan for adoption as a City resolution. The resolution of the City Council adopting the Water Conservation Plan shall authorize the City to implement, enforce, and administer the program.

SECTION 2. UTILITY PROFILE

Population and customer data

The City of College Station Water Services Department manages a water service area covering 47 square miles and a water service population of over 90,000 customers and nearly 40,000 water connections. It should be noted that some residents within College Station City limits are served by Wellborn Special Utility District. Additionally, Texas A&M University maintains its own separate water system, serving the on-campus population of students and staff. Figures given for population served by College Station Water Services do not include Wellborn or Texas A&M customers.

Water Production and Delivery System

The City utilizes ground water for its public water supply and since 1980 College Station has developed its own water production facilities. The City has eleven groundwater wells, ten of which withdraw groundwater from the Carrizo-Wilcox Aquifer, and one in the Sparta Aquifer. The City's wellfield is located northwest of Bryan in the vicinity of Sandy Point Road near Old San Antonio Road. The Simsboro Sand formation of the Carrizo-Wilcox aquifer occurs approximately 3,000 feet below the land surface. This water rises through artesian pressure to 500 feet below the land surface. This groundwater is approximately 118° F before being cooled to 85° through cooling towers located at the Sandy Point Pump Station. The water is then pumped through two parallel water transmission lines to the Dowling Road Pump Station in College Station. Here the water is treated to meet Safe Drinking Water Act standards before being pumped to storage and distribution facilities. The City's water distribution system includes 450 miles of water lines, two ground storage reservoirs and three elevated storage tanks, providing a total storage capacity of 16 million gallons.

Wastewater Collection and Treatment System

Raw wastewater in College Station travels through a network of 370 miles of wastewater collection lines to one of three wastewater treatment plants: Carter's Creek Wastewater Treatment Plant, Lick Creek Wastewater Treatment Plant, and Carter Lake Wastewater Treatment Plant. These three wastewater treatment plants and numerous lift stations serve a population of over 85,000 people, with an average daily discharge of 6 to 7 million gallons per day (MGD) and maximum daily wastewater treatment capacity of 11.5 MGD.

Water use data

Table 1 below summarizes key water use statistics for 2019-2023. Average per person usage is given in gallons per capita per day (gpcd). Average and peak daily water demand are given in million gallons per day (MGD). The peak day to average day ratio varies between 1.7 and 1.9, meaning that peak day demand is nearly twice the average demand.

The peak demand for the City is 27.15 MGD, reached in 2023, followed closely by a peak day of 26.99 MGD in 2022. During high demand periods when large volumes of water are being pumped from the aquifer, the production capacity of the wells is reduced due to declining water levels of the aquifer.

Table 1. Municipal Water Demand 2019 - 2023

Year	2019	2020	2021	2022	2023	5-Year Avg.
Annual Average GPCD ²	124	120	126	146	127	129
Peak Day (MGD)	23.94	22.39	25.30	26.99	27.15	25.15
Average Day (MGD)	12.60	12.04	13.04	15.60	15.26	13.71
Peaking Factor	1.9	1.86	1.94	1.72	1.78	1.84

1. Peak GPCD = (Total Gallons Used in Peak Month ÷ Permanent Population) ÷ Days in Month

2. Annual Average GPCD = (Total Gallons in System ÷ Permanent Population) ÷ 365

SECTION 3. WATER CONSERVATION GOALS

The purpose of this water conservation plan is to reduce long-term demand on limited water resources by encouraging more efficient water use practices in College Station. Its primary goals are to reduce peak seasonal water demand and reduce the peaking factor on the water production and delivery system. Peaking factor is defined as the ratio between peak daily water use and average daily water use. A peaking factor of 1.5 or more shows potential for significant water conservation savings, particularly in seasonal water use.

Quantified Five (5) and Ten (10) Year Water Conservation Targets and Goals

Goal 1: Reduce peak daily water demand

Goal 2: Reduce peaking factor to 1.6 or below

Goal 3: Reduce Non-Revenue Water

TCEQ rules require the City build capacity to meet escalating peak daily demands, which, as discussed in Section 1, can be up to twice the average demand. This capacity is expensive to build and maintain, particularly when this peak demand is only reached a few days per year. Reducing peak demands enables the City to defer new capital expenditures for production facilities, and optimize use of available water resources.

The City aims to reduce peak demand through two methods: programs targeted at reducing peak per capita demand, and programs aimed at reducing the peaking factor. Table 2 outlines projected targets for reducing per capita demand and peaking factor.

Table 2. Municipal per capita water use goals

Year	2028	2033
Peak GPCD	220	213
Annual Average GPCD	135	130
Peaking Factor	1.6	1.5

The goal of the City’s water loss control program is to gradually reduce the percentage of Non-Revenue Water (defined as unbilled authorized plus unbilled unauthorized usage) from the baseline of 7.6 % of water produced, on an annual basis. In order to meet this goal, the City has several programs in place, including routine water audits, a program of leak detection and repair, and a meter testing and replacement program. These are described in the following section.

Table 3: Water Loss Goals

	Five Year Average	5-yr Goal (2028)	10-yr Goal (2038)
Water Loss (GPCD) ¹	11	9	8
Water Loss (Percentage) ²	9	7	6

1. *Water Loss GPCD = (Total Water Loss ÷ Permanent Population) ÷ 365*

2. *Water Loss Percentage = (Total Water Loss ÷ Total Gallons in System) x 100*

Time frame for achieving conservation goals

The three goals outlined above are designed to be achieved within five to ten years of the date of adoption of this Plan. The City will periodically evaluate the plan in accordance with State and Federal regulations to determine the extent, if any, that the plan needs modification.

Section 4. WATER CONSERVATION STRATEGIES TO ACHIEVE CONSERVATION GOALS

This section outlines Best Management Practices developed by the Texas Water Development Board’s Water Conservation Advisory Council, updated as of 2020, and adopted by the City as a means of achieving the water conservation goals described in Section 3.

Universal Metering, Meter Testing, And Replacement

The ability to meter all water distribution and consumption uses allows the City to closely monitor actual water use, water losses, and prevent unauthorized use. All service connections in the City are metered. All production wells, pumping stations, interconnections, irrigation, swimming pools, parks, and municipal structures operated by the City are metered.

Master meters at water production pump stations are calibrated and tested annually in accordance with American Water Works Association (AWWA) standards to provide a minimum accuracy of plus or minus 1.5 percent.

The City will continue to provide a preventive maintenance program for its water meters, wherein regular scheduled testing, repairs, and replacement are performed in accordance with American Water Works Association (AWWA) standards. After a certain number of years or quantity of usage, mechanical wear on traditional water meters causes them to under-report water usage due to parts rotating slower, resulting in lost revenue. Routine replacement results in more accurate meter readings and the ability to provide customers with detailed water usage data on request.

Utility Water Audit and Water Loss Control Measures

The Water Services Department generates a monthly water loss report that compares metered production with billed metered consumption, as well as unbilled authorized consumption. This report

provides an effective tracking system of water loss. The City also completes a detailed water system audit following Texas Water Development Board (TWDB) guidelines annually in accordance with the requirements of Texas Water Code Section 16.0121(b). The water system audit determines the volume of actual water loss, the identification of water loss sources, the status and condition of primary water meters, an analysis of water line breaks, an evaluation of underground leakage potential, and provides recommendations for meter replacement.

Leak Detection And Repair

The City administers a leak detection and repair program for its water distribution system. This program features a work order prioritization system for leaks needing repair and an inventory of equipment and materials needed to promptly repair all detected or reported leaks. The City also conducts an annual distribution system rehabilitation program that replaces the high water loss sections of the distribution system. This program is based on findings of monthly water loss reports and the leak detection program.

Public Information and Education

Water Services' public education program makes direct outreach to customers through presentations, booths at community fairs, and tours of its water and wastewater facilities. Indirect contacts include blog posts, social media, radio and television, and similar programs. The City promotes water conservation issues by informing the public in the following ways:

- Offering water conservation audits to all water customers
- Providing water conservation information to all customers upon request
- Coordinating educational presentations, lectures, and demonstrations for schools, civic groups, and the general public
- Publishing water conservation information on a regular basis in coordination with the City's Public Communications Department
- Participating in community environmental education activities with the City of Bryan, Brazos Valley Groundwater Conservation District, Brazos County Master Gardeners, and other local organizations to promote water conservation education
- Since 2022 Water Services has partnered with KAMU-FM on the Waterful Wednesday podcast, which communicates about all water topics including conservation in short segments.
- Supporting annual events and demonstrations relating to water conservation and environmental issues that affect water supply quantity and quality
- Promoting the latest innovations in water conservation through partnerships with Texas Water Development Board's Water IQ program and EPA's Water Sense program.

Non-Promotional Water Rate Structure

The City utilizes an inclining water rate structure to discourage the inefficient use or waste of water. . Under an inclining rate structure, the rate per thousand gallons increases as the amount of water used increases. The City first implemented this inclining water rate structure in Fiscal Year 2008. The rate structure in place as of the date of this Plan charges monthly service charges based on meter size, plus a uniform rate per thousand (1,000) gallons up to 10,000 gallons for single-family residential water customers. After 10,000 gallons, the rate per thousand gallons for residential customers increases per thousand gallons for the next four usage blocks, up to 26,000 gallons. Commercial customers are charged monthly service charges based on meter size, plus a varying volumetric rate usage rate per

thousand (1000) gallons for domestic or irrigation usage. Both schedules are detailed in Table 4 below (Resolution 01-25-24-6.2, updated 1/25/24).

Table 4. FY 2024 Water Rates

Customer Class	Monthly Usage	Rate per 1,000 Gallons
Single-Family Residential	0 – 10,000	\$2.75
	11,000 - 15,000	\$3.60
	16,000 - 20,000	\$4.40
	21,000 - 25,000	\$5.20
	26,000- above	\$6.05
	Meter Fee (based on ¾" meter)	\$12.40
Commercial – Domestic	Domestic (inside) usage	\$3.05
Commercial – Irrigation	Irrigation (outside) usage	\$3.25
	Meter Fee	Varies by meter size

This rate structure shall be reviewed on a regular basis.

Conservation Coordinator

A Conservation Coordinator is the individual charged with responsibility for preparing and implementing the utility's water conservation and drought contingency plans, preparing and submitting annual conservation status reports, promoting water conservation programs, and other duties necessary to carry out implementation of the utility's conservation program. As of September 1, 2017, this position is required for retail public water utilities, such as the City of College Station, with 3,300 or more service connections. The Water Resource Coordinator fulfills this function for the City.

Landscape Irrigation Conservation and Incentives

The City provides information to residential and non-residential customers regarding the methods and benefits of water conserving landscaping practices and devices, through public education to homeowners, business owners, landscape architects and designers, and irrigation professionals. The use of water-efficient landscaping techniques, including drought tolerant plants and grasses is encouraged for landscaping new homes and commercial areas.

Enforcement of Irrigation Standards

The City has a commercial landscape ordinance that requires certain point values based on the size and type of development. Additional point credits are given to commercial landscapes that employ water-efficient irrigation systems such as drip irrigation systems when possible or other water conserving irrigation systems that utilize efficient sprinklers.

The City's landscape irrigation ordinance was updated in December 2008 to comply with state law requiring that landscape irrigation systems are designed, installed, and operated in a water conserving manner. Under this ordinance, a permit and an irrigation plan drawn to scale are required for all irrigation systems. The irrigation plan must be drawn up by a licensed irrigator, and include location & type of sensors, backflow prevention devices, and water emission devices (sprinklers), irrigation controller(s), and valves. A rain shutoff sensor is required, and all emission devices must be installed according to manufacturer's specifications for spacing and pressure. The effect of this ordinance is that

new irrigation systems in College Station are designed and installed to operate much more efficiently than older systems.

The City also works with landscape supply businesses and nurseries to encourage them to sell locally adapted, drought tolerant plants and grasses along with efficient irrigation systems, and to promote use of these materials through demonstrations and advertisements. Examples include partnering with Rooted In for the Go & Grow Garden Box featuring native plants, and promotion of local plant sales.

The City partners with the Brazos Valley Groundwater Conservation District (BVGCD) and Texas A&M Agri-Life to implement innovative methods to promote landscape water conservation. Through a system of a weather station and rain gauges located throughout the City, customers are able to access weather-based landscape watering recommendations localized for their neighborhood. Customers can also receive weekly weather-based landscape watering recommendations via email. The Brazos Valley Watersmart website and watering recommendations have shown significant savings for College Station since implementation in 2014.

Residential Landscape Irrigation Evaluations

Summertime average water use in College Station is typically twice as high as annual average water use. That increase is primarily due to outdoor irrigation. Irrigation water is easily wasted due to overwatering, leaks and broken or misaligned sprinklers.

The City of College Station Water Services Department partnered with Texas A&M Agri-Life Research for several years to study the effectiveness of residential water conservation methods. Each year residential water customers with above average seasonal water use receive a letter containing water budgets comparing their estimated outdoor water use against an estimated landscape need, as well as comparing their household water use with neighborhood average household water use.

Landscape irrigation evaluations are offered to residential customers with automatic in-ground irrigation systems to educate customers about proper irrigation and eliminate wasteful irrigation practices. While this service is available to all water customers, the program is targeted to water customers with above-average seasonal water use and customers with high bill complaints. The program is advertised through social media as well as direct letters to high water use customers. Customers with above-average seasonal water use are encouraged to sign up for a free landscape irrigation evaluation.

To date over 1,000 irrigation evaluations have been completed. A Licensed Irrigator conducts the evaluation, which includes a system checkup, an efficiency check, a recommended irrigation schedule, and a written report of all problems observed. The City has also provided homeowner associations within high water use neighborhoods with articles regarding the program for publication in newsletters, and given presentations regarding program specifics, such as procedures and goals.

Plumbing Code and Plumbing Fixture Retrofit Program

The City has adopted the International Plumbing Code, which requires water saving, Ultra Low Flow (ULF) fixtures to be installed in new construction and in the replacement of plumbing in existing structures. The City educates residents, plumbers, and contractors on the benefits of retrofitting existing facilities with water saving devices through its public education program.

The City offers rebates toward the replacement of high-flow toilets with qualifying WaterSense toilets in residential and commercial structures built prior to 1994. This program is available to residential and

commercial customers, for new construction as well as retrofits. Since 2010, 695 commercial and multi-family toilets have been replaced, along with 227 single-family residential toilets, saving over 6 million gallons of water and wastewater.

Rainwater Harvesting

Rainwater harvesting is an effective method of reducing potable water usage while maintaining healthy landscapes and avoiding problems due to excessive run-off. Rainwater harvesting is the practice of collecting and storing rainwater close to its source and using it for nearby needs. This can be done through a rain barrel, cistern (larger container), or a rain garden.

In 2010 the City began providing customers with education on the proper installation and use of rainwater harvesting systems, along with a modest rebate for rainwater collection barrels. The City plans to modify the existing rainwater rebate program from a set rebate per barrel to a rebate per gallon of water storage. This will incentivize the purchase and installation of larger rainwater collection systems.

Water Reuse

The City has received authorization from the TCEQ to reuse its treated wastewater effluent as Type I reuse water, the highest quality of reuse water. This authorization is available for direct reuse projects as well as indirect reuse through its Bed and Banks permit. The goal for the City's water reuse program is to reduce peak demand on the potable (drinking) water system by switching non-potable uses of water, such as athletic field irrigation, to reuse water.

The City currently provides reclaimed water to the City's Veterans Park and Athletic Complex, reducing demand on the potable water system. A future Water Reuse Implementation Plan will focus on expanding the water reuse program to include large volume commercial customers, such as shopping centers and business parks.

Prohibition on Wasting Water

The City's Drought Contingency Plan includes the following prohibitions on water waste, which apply year-round:

- Operating automatic in-ground or hose-end sprinkler systems between the hours of 10:00 AM and 6:00 PM
- Allowing water to run off a property or allowing water to pond in the street or parking lot
- Operating an irrigation system with sprinkler heads that are broken or out of adjustment
- Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s)
- Operating fountains or ponds without a recirculation device

SECTION 5 WHOLESALE WATER SUPPLY CONTRACTS

The City will, as part of contracts for sale of water to any other entity re-selling water, require that entity to adopt applicable provisions of the City's water conservation and drought contingency plan or have a plan in effect previously adopted and meeting the basic requirements of 30 TAC §288. These provisions will be through contractual agreement prior to the sale of any water to the water re-seller.

SECTION 6. METHOD FOR TRACKING EFFECTIVENESS OF WATER CONSERVATION PLAN

In order to track the effectiveness of the Water Conservation Plan, the City compiles and submits an annual report on its Water Conservation Plan to TCEQ, which includes the following performance metrics:

- Summary of public information issued in the previous year
- Summary of water loss control program
- Peak water demand and overall water consumption
- Per capita water usage for the previous calendar year.
- Evaluation of status of plan and progress toward meeting stated goals

SECTION 7. MEANS OF IMPLEMENTATION AND ENFORCEMENT

The City Manager or his/her designee will act as Administrator of this Water Conservation Plan. The Administrator shall oversee execution and implementation of all elements of this Plan and is responsible for overseeing adequate record-keeping for program documentation.

As a means of implementing and enforcing this Plan, all Plan elements discussed in this document are adopted by City Council Resolution (see Appendix A).

SECTION 8. COORDINATION

This Water Conservation Plan shall work in accordance with the related City of College Station Ordinance, Drought Contingency and Water Emergency Plan, first adopted in January 2000 and as it may be revised or amended from time to time.

The City of College Station will provide a copy of this Water Conservation Plan to the Brazos Region (Region G) Water Planning Group, as designated by the TWDB. See Appendix B.

The City of College Station will provide a copy of this Plan to the Brazos Valley Groundwater Conservation District. See Appendix C.

**APPENDIX A: Resolution of the College Station City Council adopting
Water Conservation Plan**

APPENDIX B: Transmittal Letter to Brazos Region G Regional Water Planning Group

APPENDIX C: Transmittal Letter to Brazos Valley Groundwater Conservation District

April 25, 2024
Item No. 7.7.
Acoustical Ceiling at 1207 Texas Ave.

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Aggieland Construction, LLC in the amount of \$104,410.26 for an acoustical ceiling at 1207 Texas Ave plus the City's contingency in the amount of \$5,220.51 for a total appropriation of \$109,630.77.

Relationship to Strategic Goals:

Core services and infrastructure

Recommendation(s): Staff recommends approval.

Summary: In 2023, the City completed the renovation of the facility located at 1207 Texas Avenue for office and event space for the Economic Development and Tourism department. The renovation project includes updating the building to current codes and upgrading mechanical, plumbing, and electrical systems, as well as adding an event space in the old fire station bays. Extensive facade work to the exterior of the building is also included.

After utilizing the event space, it was determined the acoustics needed improvement. This project includes the installation of an acoustical ceiling in the event space at 1207 Texas Ave.

The City of College Station utilized a Choice Partners job order contract number 21/039MR-01.

Budget & Financial Summary: Funds are available in the Capital Projects and Facilities Maintenance operating budget for this contract and related expenses.

Attachments:

1. 1207 Acoustical Ceiling Construction Contract



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300418 PROJECT#: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: New Acoustic Ceiling in Building 1207

Name of Contractor: Aggieland Construction, LLC

CONTRACT TOTAL VALUE: \$ 104,410.26 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)

Choice Partners JOC Contract number 21/039MR-01

Funding from account 10010180-5315

CRC Approval Date*: N/A (If required)* Council Approval Date*: 4/25/2024 Agenda Item No*: TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

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

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Aggieland Construction, LLC. (the "Contractor") for the construction and/or installation of the following:
New Acoustic Ceiling in Building 1207.

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: Five Thousand Two Hundred Twenty and 51 /100 Dollars (\$5,220.51).

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 Hundred Four Thousand Four Hundred Ten and 26 /100 Dollars (\$104,410.26).

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 00 /**100 DOLLARS (\$ 500.00**) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

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

**AGGIELAND CONSTRUCTION,
LLC.**

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

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. SPAI50405-006

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Aggieland Construction Ltd, as Principal, hereinafter called "Contractor" and the other subscriber hereto SiriusPoint America 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 One Hundred Four Thousand Four Hundred Ten and 26 /100 Dollars (\$104,410.26----) 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 New Acoustic Ceiling in Building 1207

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. 24300418
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.

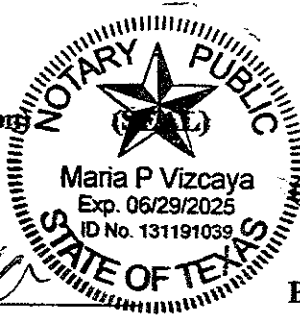
Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed 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.

Bond No. SPA150405-006

FOR THE CONTRACTOR:

ATTEST & SEAL: (if a corporation)
WITNESS: (if not a corporation)



Aggieland Construction Ltd
(Name of Contractor)

By: Maria Vizcaya
Name: Maria Vizcaya
Title: Office Manager
Date: April 25th, 2024

By: Matt Shive
Name: Matt Shive
Title: COO
Date: April 25th, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Michael Hotchkiss
Name: Michael Hotchkiss
Title: Witness
Date: April 25th, 2024

SiriusPoint America Insurance Company
(Full Name of Surety)

285 Fulton Street, Ste 47J
New York, NY 10007
(Address of Surety for Notice)

By: Trenae Marsh
Name: Trenae Marsh
Title: Attorney-in-Fact
Date: April 25th, 2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. SPA150405-006

THE STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

THAT WE, Aggieland Construction Ltd, as Principal, hereinafter called "Principal" and the other subscriber hereto SiriusPoint America Insurance Company, a corporation organized and existing under the laws of the State of _____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of One Hundred Four Thousand Four Hundred Ten and 26 /100 Dollars (\$104,410.26) 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 25th day of April, 2024, for New Acoustic Ceiling in Building 1207

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.

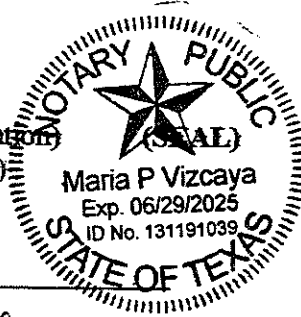
IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

Bond No. SPA150405-006

FOR THE CONTRACTOR:

ATTEST & SEAL: (if a corporation)

WITNESS: (if not a corporation)



By: Maria Vizcaya

Name: Maria Vizcaya

Title: Office Manager

Date: April 25th, 2024

Aggieland Construction Ltd
(Name of Contractor)

By: [Signature]

Name: Matt Shive

Title: COO

Date: April 25th, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: [Signature]

Name: Michael Hotchkiss

Title: Witness

Date: April 25th, 2024

SiriusPoint America Insurance Company
(Full Name of Surety)

285 Fulton Street, Ste 47J

New York, NY 10007
(Address of Surety for Notice)

By: [Signature]

Name: Trenae Marsh

Title: Attorney-in-Fact

Date: April 25th, 2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

**POWER OF ATTORNEY
SIRIUSPOINT AMERICA INSURANCE COMPANY
NEW YORK**

KNOW ALL MEN BY THESE PRESENTS: That SiriusPoint America Insurance Company, a New York corporation, having its principal office in the City of New York, pursuant to the following Resolution, which was adopted by the Board of Directors of the Company, to wit:

RESOLVED, that the President, Senior Vice President, Chief Financial Officer, Secretary or Assistant Secretary is hereby authorized to execute Powers of Attorney appointing as attorneys-in-fact selected employees of certain surety companies who shall have the power for and on behalf of the Company to execute and affix the seal of the Company to surety contracts as co-surety.

Does hereby nominate, constitute and appoint:

Daphne Clark, Farrah Carlton, Gary Lindsey, Greg Hotchkiss, Ken Hotchkiss, Maryana Zhuk, Mike Hotchkiss, Trenae Marsh, Tye Justice, Wes Weathered

Its true and lawful attorney-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed; any and all bonds, contracts, agreements of indemnity, and other undertakings in suretyship (NOT INCLUDING bonds without a fixed penalty or financial guarantee bonds) and to bind the Company thereby as fully and to the same extent as if same were signed by the duly authorized officers of the Company, provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

\$50,000,000 single bond limit

All acts of said attorneys-in-fact pursuant to the authorities herein given are hereby ratified and confirmed. The executive officers listed above in the Resolution may from time to time and at any time remove any such appointee and revoke the power given to him or her.

The execution of such bonds or undertakings in pursuance of these presents, within one year of the date of issue of these presents, shall be binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in New York, New York, in their own proper persons.

IN WITNESS WHEREOF, SiriusPoint America Insurance Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its Secretary this 17th day of August in the year 2023.

SiriusPoint America Insurance Company

By: Melissa J. Ralph
Melissa J. Ralph
Secretary

State of New Jersey }

) ss.

County of Monmouth }

On this 17th day of August 2023, before me, a Notary Public of the State of New Jersey in and for the County of Monmouth duly commissioned and qualified, came Melissa J. Ralph, Secretary, of SiriusPoint America Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and acknowledged the execution of the same, and, being by me duly sworn, depose and saith, that she is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument as the corporate seal of said Company, and the said corporate seal and her signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal.

TNAEJA E LEWIS-SCOTT
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES MARCH 31, 2028
COMMISSION: #50208541

State of New Jersey
County of Monmouth

TNAEJA E LEWIS-SCOTT
Notary Public
My Commission expires
March 31, 2028

I, Melissa J. Ralph, Secretary, of SiriusPoint America Insurance Company, a New York corporation, do hereby certify that the above and foregoing is a full, true correct copy of Power of Attorney, is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this

25 day of April, 2024.



Melissa J. Ralph
Melissa J. Ralph
Secretary

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/15/2024

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 Hotchkiss Insurance Agency, LLC 4120 International Parkway Suite 2000 Carrollton TX 75007	CONTACT NAME: PHONE (A/C, No, Ext): 800-899-3750 E-MAIL ADDRESS: info@hiallc.com FAX (A/C, No): 972-512-7799
INSURED Aggieland Construction, Ltd. P.O. Box 271 Wellborn TX 77881	INSURER(S) AFFORDING COVERAGE INSURER A : Allmerica Financial Benefit Insurance Co INSURER B : Hanover Insurance Company INSURER C : Massachusetts Bay Insurance Company INSURER D : The Hanover Casualty Company INSURER E : INSURER F :

COVERAGES**CERTIFICATE NUMBER:** 475842397**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
D	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			ZLDH46632603	1/1/2024	1/1/2025	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 ☒ Hired Auto ☐ Phys. Damage			AWDH46635503	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired Car Phys Damage \$ \$50,000
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			UHDH46632703	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WDD-H452460-03	1/1/2024	1/1/2025	☒ 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
D	Property - Location 1 Property - Location 2 Equipment			ZLDH46632603	1/1/2024	1/1/2025	Bus Pers Prop Loc. 1 \$26,500 Bus Pers Prop Loc. 2 \$106,000 Rented/Leased Equip \$100,000

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

The general liability policy includes a blanket Additional Insured, blanket Primary and Non-Contributory and blanket Waiver of Subrogation endorsement (421-2915 06/15) when required by written contract or agreement and Texas Blanket Additional Insured by Contract or Agreement with Products-Completed Operations Coverage (421-4492 04/18). The auto policy includes a blanket Additional Insured, Blanket Primary and Non-Contributory (461-0478 12/12) and blanket Waiver of Subrogation (461-0500 11/13) when required by written contract. The workers compensation policy includes a blanket Waiver of Our Right to Recover from Others endorsement (WC420304B).

RE: Contract Number: 24300418

Project Name: New Acoustic Ceiling in Building 1207

Certificate holder continued: The City of College Station, its agents, officials, employees, and volunteers.

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
Attn: Risk Management
P.O. Box 9960
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

ALL TEXAS OPERATIONS

3. Premium:

The premium charge for this endorsement shall be 2 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
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS BLANKET ADDITIONAL INSURED BY CONTRACT OR AGREEMENT WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE AND INJURY TO INDEMNITOR'S EMPLOYEE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to SECTION II – WHO IS AN INSURED:

Additional Insured – Written Contract, Agreement or Permit

a. Any person or organization as required by a written contract, agreement or permit to add as an additional insured on your policy is an additional insured 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, and only with respect to:

(1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

(2) Premises you own, rent, lease or occupy;

(3) Your maintenance, operation or use of equipment leased to you; or

(4) "Your work" for the additional insured(s) designated in the contract, agreement or permit including "bodily injury" or "property damage" included in the "products-completed operations hazard" provided that:

(a) This Coverage Part provides such coverage; and

(b) The written contract, agreement or permit requires such coverage for the additional insured.

(5) A claim for "bodily injury" to an employee of the indemnitor, its agents or its subcontractor of any tier as permitted by Texas Title 2, Subtitle C, Chapter 151.103.

b. If the written contract or agreement specifically requires you to add an additional insured to your policy via endorsement CG 20 10 11 85, CG 20 10 10 93, CG 20 10 03 97, CG 20 10 10 01 or endorsement CG 20 37 10 01, then the words "caused in whole or in part by" in paragraph **a.** above are replaced by the words "arising out of".

c. The insurance afforded to such additional insured described above:

(1) Only applies to the extent permitted by law.

(2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

(3) Is primary to and will not seek contribution from any other insurance available to such additional insured provided that:

(a) The additional insured is a Named Insured under such other insurance; and

(b) 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.

(4) Will not be broader than coverage provided to any other insured.

(5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

d. This provision does not apply:

(1) Unless the written contract or agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".

(2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.

(3) If the "bodily injury", "property damage", or "personal and advertising injury" arises out of sole negligence of the additional insured unless such "bodily injury" is to an employee of the indemnitor, its agents or

its subcontractor of any tier as permitted by Texas Title 2, Subtitle C, Chapter 151.103.

- (4) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage", or "personal and advertising injury" arises out of sole negligence of the lessor
- (5) To any:
 - (a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The occurrence takes place after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (6) To "bodily injury", "property damage" or "personal and advertising injury" arising

out of the rendering of or the failure to render any professional services.

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

- B. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III – LIMITS OF INSURANCE:**

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the written contract, agreement or permit described in paragraph **A.a.**; or
2. Available under the applicable Limits of Insurance shown in the Declarations or any endorsement to this policy.

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

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

A. The following is added to SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured:

Additional Insured if Required by Contract

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional “insured” under this Coverage Part, such person or organization is an “insured”; but only to the extent that such person or organization qualifies as an “insured” under paragraph **A.1.c.** of this Section.

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional “insured” under this Coverage Part, the most we will pay on behalf of such additional “insured” is the lesser of:

- (1) The Limits of Insurance for liability coverage specified in the written contract, written agreement or written permit; or
- (2) The Limits of Insurance for Liability Coverage shown in the Declarations applicable to this Coverage Part.

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations applicable to this Coverage Part. Regardless of the number of covered “autos”, “insureds”, premiums paid, claims made or vehicles involved in the “accident”, the most we will pay for the total of all damages and “covered pollution cost or expense” combined resulting from any one “accident” is the Limit of Insurance for Liability Coverage shown in the Declarations.

B. The following is added to SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph B. General Conditions, subparagraph 5. Other Insurance:

Primary and Non-Contributory

If you agree in a written contract, written agreement or written permit that the insurance provided to a person or organization who qualifies as an additional “insured” under **SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured, subparagraph Additional Insured if Required by Contract** is primary and non-contributory, the following applies:

The liability coverage provided by this Coverage Part is primary to any other insurance available to the additional “insured” as a Named Insured. We will not seek contribution from any other insurance available to the additional “insured” except:

- (1) For the sole negligence of the additional “insured”; or
- (2) For negligence arising out of the ownership, maintenance or use of any “auto” not owned by the additional “insured” or by you, unless that “auto” is a “trailer” connected to an “auto” owned by the additional “insured” or by you; or
- (3) When the additional “insured” is also an additional “insured” under another liability policy.

C. This endorsement will apply only if the “accident” occurs:

1. During the policy period;
2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and
3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional “insured”.

D. Coverage provided to an additional “insured” will not be broader than coverage provided to any other “insured” under this Coverage Part.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SUMMARY OF COVERAGES

1.	Additional Insured by Contract, Agreement or Permit	Included
2.	Additional Insured – Primary and Non-Contributory	Included
3.	Blanket Waiver of Subrogation	Included
4.	Bodily Injury Redefined	Included
5.	Broad Form Property Damage – Borrowed Equipment, Customers Goods & Use of Elevators	Included
6.	Knowledge of Occurrence	Included
7.	Liberalization Clause	Included
8.	Medical Payments – Extended Reporting Period	Included
9.	Newly Acquired or Formed Organizations - Covered until end of policy period	Included
10.	Non-owned Watercraft	51 ft.
11.	Supplementary Payments Increased Limits	
	- Bail Bonds	\$2,500
	- Loss of Earnings	\$1000
12.	Unintentional Failure to Disclose Hazards	Included
13.	Unintentional Failure to Notify	Included

This endorsement amends coverages provided under the Commercial General Liability Coverage Part through new coverages, higher limits and broader coverage grants.

1. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II – WHO IS AN INSURED:**

Additional Insured by Contract, Agreement or Permit

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add an additional insured on your policy is an additional insured 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, but only with respect to:

(1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

(2) Premises you own, rent, lease or occupy; or

(3) Your maintenance, operation or use of equipment leased to you.

- b. The insurance afforded to such additional insured described above:

(1) Only applies to the extent permitted by law; and

(2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
 - (4) Will not be broader than coverage provided to any other insured.
 - (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.
- c. This provision does not apply:
- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
 - (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
 - (3) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor
 - (4) To any:
 - (a) Owners or other interests from. whom land has been leased which takes place after the lease for the land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The occurrence takes place after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
 - (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and

advertising injury" involved the rendering of or failure to render any professional services by or for you.

- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III – LIMITS OF INSURANCE**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

- 1. Required by the contract, agreement or permit described in Paragraph a.; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations.

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

2. Additional Insured – Primary and Non-Contributory

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. Other insurance:

Additional Insured – Primary and Non-Contributory

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II – WHO IS AN INSURED**, is primary and non-contributory, the following applies:

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

a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the

Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (1) For the sole negligence of the Additional Insured;
- (2) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (3) when b. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

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

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

(b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;

(c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**.

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

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

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self insured amounts under all that other insurance.

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

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each

insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers

3. Blanket Waiver of Subrogation

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damage under this coverage form. The damage must arise out of your activities under a written contract with that person or organization. This waiver applies only to the extent that subrogation is waived under a written contract executed prior to the "occurrence" or offense giving rise to such payments.

4. Bodily Injury Redefined

SECTION V – DEFINITIONS, Definition 3. "bodily injury" is replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

5. Broad Form Property Damage – Borrowed Equipment, Customers Goods, Use of Elevators

a. **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph 2. **Exclusions** subparagraph j. is amended as follows:

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraphs (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor do they apply to the use of elevators at premises you own, rent, lease or occupy.

b. The following is added to **SECTION V – DEFINITIONS**:

24. "Customers goods" means property of your customer on your premises for the purpose of being:

- a. worked on; or
- b. used in your manufacturing process.
- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent

6. Knowledge of Occurrence

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

- e. Notice of an "occurrence", offense, claim or "suit" will be considered knowledge of the insured if reported to an individual named insured, partner, executive officer or an "employee" designated by you to give us such a notice.

7. Liberalization Clause

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

Liberalization Clause

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium, within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

8. Medical Payments – Extended Reporting Period

- a. **SECTION I – COVERAGES, COVERAGE C – MEDICAL PAYMENTS**, Paragraph 1. **Insuring Agreement**, subparagraph a.(3)(b) is replaced by the following:

- (b) The expenses are incurred and reported to us within three years of the date of the accident; and

- b. This coverage does not apply if **COVERAGE C – MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Part or by endorsement.

9. Newly Acquired Or Formed Organizations

SECTION II – WHO IS AN INSURED, Paragraph 3.a. is replaced by the following:

- a. Coverage under this provision is afforded until the end of the policy period.

10. Non-Owned Watercraft

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2. **Exclusions**, subparagraph g.(2) is replaced by the following:

g. Aircraft, Auto Or Watercraft

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

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

11. Supplementary Payments Increased Limits

SECTION I – SUPPLEMENTARY PAYMENTS COVERAGES A AND B, Paragraphs 1.b. and 1.d. are replaced by the following:

- 1.b. Up to \$2,500 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 \$1000 a day because of time off from work.

12. Unintentional Failure to Disclose Hazards

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 6. **Representations:**

We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

13. Unintentional Failure to Notify

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

Your rights afforded under this policy shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury" or "property damage" is not covered under this policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

**ALL ENTITIES AS REQUIRED BY WRITTEN
CONTRACT OR AGREEMENT**

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

The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

EXHIBIT D
PLANS AND SPECIFICATIONS



PO Box 271

Wellborn, TX 77881

Bids@aggielandconstruction.com

Proposal

Project: Welcome Center Event Space Cloud Ceiling

Client: City of College Station

Project Location: 1207 Texas Ave

Date: December 7, 2023

Dear Mr. Alan Degelman,

We are pleased to offer our proposal for all labor and material per the included scope listed below:

SCOPE INCLUSIONS:

General Conditions

- Supervision
- Clean up
- Scissor Lift
- Insurance
- Bond

Acoustical Cloud Ceiling

- Provide and install one hundred (100) 4' x 4' x 2 3/4" Frasch SQUARE CLOUD NON-LIT Ceiling tiles; approximately 1,600SF
 - Mounting height and pattern TBD with client before installation
 - Color TBD by client before order is placed
 - Includes all necessary mounting hardware

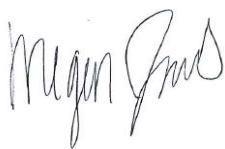
CLARIFICATIONS:

- Pricing assumes work will be scheduled in an efficient manner with minimal mobilizations and will be uninterrupted once begun
- Pricing includes for the receipt and completion of a single punch list
- Parking/staging area to be provided on site by owner

EXCLUSIONS:

- Anything not specifically mentioned in above scope of work.
- Sales Tax
- Testing of any kind
- Engineering and Design
- Abatement
- Handling or removal of any hazardous material
- Overtime
- Davis Bacon Wages
- ROCIP
- Moving of furniture or any personal items
- Liquidated damages
- Electrical
- Mechanical
- Plumbing
- Audio/Visual
- Data/Low Voltage
- Fire Alarm
- Fire Suppression

Thank you for the opportunity. If there is anything else we can do for you, please let us know.



Megan Jones

12/07/2023

Date

Authorized Signature

Date

*HUB certification #1465359949900

*JOC TAMU/SSC Service Solutions

*JOC Choice Partners #21/039MR -01

*Prices are good for 30 days

EXHIBIT F
SCHEDULE OF VALUES

Costs based on RSMeans data

COST ESTIMATE REPORT

DATE: 03/26/2024

Estimate Name: Welcome Center Event Space Cloud Ceiling

ESTIMATE INFORMATION

Client Name: City of College Station
Estimate Address: 1207 Texas Avenue, College Station, TX, 77840

Calllog: Facilities and Commercial Renovation
Format: MasterFormat 2018
Release: Year 2024 (C1)
Labor Type: Repair & Renovation
City Code/Notes: TEXAS / BRYAN (778)

ESTIMATE

Quantity	Line Number	SubContracted	Description	Crew	Daily Output	Labor Hours	Unit	Material	Labor	Equipment	Total	Excl. Mat.	Excl. Labor	Excl. Equip.	Excl. Total	Mat. O&P	Labor O&P	Equip. O&P	Total O&P	Excl. Mat. O&P	Excl. Labor O&P	Excl. Equip. O&P	Excl. Total O&P	Labor Type	Notes
18.00	015433400020		Reel aerial lift, scissor type, to 30' high, 1,200 lb. capacity, electric, Incl. Hourly Oper. Cost.		0	0 Week		\$ -	\$ -	\$ 490.02	\$ 490.02	\$ -	\$ -	\$ 8,820.36	\$ 8,820.36	\$ -	\$ -	\$ 539.02	\$ 539.02	\$ -	\$ -	\$ 9,702.40	\$ 9,702.40	RR	
5.00	015439501300		Modification or demarcation, off-highway charge for equipment, included on open capacity towed trailer	ASO	2.67	3 Ea.		\$ -	\$ 118.93	\$ 106.48	\$ 224.11	\$ -	\$ 711.78	\$ 632.85	\$ 1,344.66	\$ -	\$ 184.26	\$ 116.03	\$ 306.28	\$ -	\$ 1,105.50	\$ 696.16	\$ 1,801.66	RR	
6.00	015616100020		Quick-lam, temporary, spring loaded, telescoping pole & head, 12', erect and dismantle	1 Cldo	240	0.033 Ea.		\$ -	\$ 1.04	\$ -	\$ 1.04	\$ -	\$ 6.24	\$ -	\$ 6.24	\$ -	\$ 1.65	\$ -	\$ 1.65	\$ -	\$ 9.90	\$ -	\$ 9.90	RR	
40.00	017413200002		Cleaning up, cleanup of floor area, continuous, per day, during construction	AS	16	1.125 M.S.F.		\$ 5.69	\$ 35.65	\$ 5.89	\$ 47.13	\$ 223.60	\$ 1,426.00	\$ 235.60	\$ 1,885.20	\$ 6.14	\$ 56.47	\$ 6.46	\$ 66.07	\$ 245.60	\$ 2,358.80	\$ 258.40	\$ 2,762.80	RR	
14.00	024119190800		Selective demolition, rubbish handling, dumpster, 30 C.Y., 7 ton capacity, weekly rental, includes one dump per week, cost to be added to demolition cost		0	0 Week		\$ 730.00	\$ -	\$ -	\$ 730.00	\$ 10,220.00	\$ -	\$ -	\$ 10,220.00	\$ 800.00	\$ -	\$ -	\$ 800.00	\$ 11,300.00	\$ -	\$ -	\$ 11,300.00	RR	
8.00	024119190920		Selective demolition, rubbish handling, dumpster, alternate pricing method, haul, average for all sizes, includes one dump per week, cost to be added to demolition cost		0	0 Ea.		\$ 235.00	\$ -	\$ -	\$ 235.00	\$ 1,880.00	\$ -	\$ -	\$ 1,880.00	\$ 259.00	\$ -	\$ -	\$ 259.00	\$ 2,072.00	\$ -	\$ -	\$ 2,072.00	RR	
700.00	024119192000		Selective demolition, rubbish handling, C-207 haul, load, haul, dump and return, hand carried, cost to be added to demolition cost	2 Cldo	24	6.867 C.Y.		\$ -	\$ 27.86	\$ -	\$ 27.86	\$ -	\$ 19,586.00	\$ -	\$ 19,586.00	\$ -	\$ 44.10	\$ -	\$ 44.10	\$ -	\$ 30,670.00	\$ -	\$ 30,670.00	RR	
8088.00	085123101165		Suspended acoustic ceiling tiles, mineral fiber tile, regular, fire resistant, 2' x 2' or 2' x 4', 3/4" thick	1 Carp	400	0.016 S.F.		\$ 3.54	\$ 0.56	\$ -	\$ 4.10	\$ 28,631.52	\$ 4,526.26	\$ -	\$ 33,160.80	\$ 3.89	\$ 0.89	\$ -	\$ 4.78	\$ 31,482.32	\$ 7,156.32	\$ -	\$ 38,660.64	RR	
8081.00	085323300320		Ceiling suspension system, steel, 35% recycled, 2' x 2' grid	1 Carp	650	0.012 S.F.		\$ 2.14	\$ 0.39	\$ -	\$ 2.53	\$ 17,283.34	\$ 3,151.59	\$ -	\$ 20,444.83	\$ 2.35	\$ 0.62	\$ -	\$ 2.88	\$ 18,071.16	\$ 5,010.22	\$ -	\$ 24,081.38	RR	
80.00	085323301080		Hanging wire, 6 long, 12 gauge	1 Carp	60	0.123 C.S.F.		\$ 3.34	\$ 3.60	\$ -	\$ 6.24	\$ 187.20	\$ 312.00	\$ -	\$ 499.20	\$ 2.57	\$ 6.19	\$ -	\$ 8.76	\$ 205.60	\$ 495.20	\$ -	\$ 700.80	RR	

Grand Total \$ 1,766.15 \$ 58,435.66 \$ 29,722.89 \$ 9,898.84 \$ 97,047.39 \$ 2,029.64 \$ 64,256.68 \$ 46,947.94 \$ 10,656.86 \$ 121,861.60

Contractor Coefficient .81 \$ (3,697.36)

Project Subtotal \$ 102,164.24

P&P Bond \$ 2,047.26

April 25, 2024
Item No. 8.1.
Water Services Department Annual Update

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action related to a Water Services Department annual update.

Relationship to Strategic Goals:

Core services and infrastructure.

Recommendation(s): N/A

Summary: Water Services Department annual update will be presented regarding historical and current status as well as key future actions planned.

Budget & Financial Summary: N/A

Attachments:

None

April 25, 2024
Item No. 8.2.
Street Maintenance Update

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding an update on the street maintenance program.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): N/A

Summary: N/A

Budget & Financial Summary: N/A

Attachments:

None

April 25, 2024

Item No. 8.3.

Paid Parking Pilot Program for Special Events

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a paid parking pilot program for special events.

Relationship to Strategic Goals:

Fiscal Sustainability, Core Services & Infrastructure, Diverse & Growing Economy

Recommendation(s): Staff recommends City Council receive a presentation and provide direction to staff.

Summary: Staff will present information regarding a potential paid parking pilot program to be conducted in the summer of 2024 when special events are held in the community. After the conclusion of the pilot program, the Council will have the opportunity to consider continuing the program in the future.

Budget & Financial Summary: Generate revenue to assist with City costs for special events held on campus.

Attachments:

None

April 25, 2024

Item No. 9.1.

Real Estate Contract for Lots 1 & 2 in College Station Business Center

Sponsor: Michael Ostrowski, Chief Development Officer

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a real estate contract with Fera Diagnostics and Biologicals Corporation for the sale of approximately 12 acres of land in the College Station Business Center at the intersection of Gateway Boulevard and State Highway 6 for the price of \$3,300,000.

Relationship to Strategic Goals:

Diverse and Growing Economy

Recommendation(s): Staff recommends approval of the real estate contract.

Summary: Comprising a total of approximately 12 acres on the corner of Gateway Boulevard and State Highway 6 frontage road, Lot 1 is a 6.007 acre lot, and Lot 2 is a 5.635 acre lot in Block 6, Phase Two of the College Station Business Center. The real estate contract is for the sale of these lots for \$3,300,000, which is approximately \$6.50 per sq.ft., to Fera Diagnostics and Biologicals Corporation for the intended construction of their new headquarters. Fera Diagnostics and Biologicals Corporation is a research-driven company that focuses on developing products to improve the welfare of animals.

Budget & Financial Summary: The sale of the property would be for a price of \$3,300,000.

Attachments:

1. Real Estate Contract

REAL ESTATE CONTRACT

THIS CONTRACT OF SALE ("Real Estate Contract") is made by and between the **CITY OF COLLEGE STATION, TEXAS**, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("SELLER"), and **FERA DIAGNOSTICS AND BIOLOGICALS CORPORATION**, a Delaware Corporation ("BUYER"), upon the terms and conditions set forth herein.

ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey by Special Warranty Deed and BUYER agrees to purchase and pay for:

a fee simple interest in and to all those certain lots, tracts or parcels of land, lying and being situated in Brazos County, Texas and being Lot One "R" (1R) and Lot Two (2), Block Six (6), THE BUSINESS CENTER AT COLLEGE STATION, PHASE TWO, an addition to the City of College Station, Brazos County, Texas, according to the Resubdivision and Final Plat recorded in Volume 15639, Page 231, of the Official Public Records of Brazos County, Texas, a copy of said Resubdivision and Final Plat attached hereto as **EXHIBIT A** together with all and singular the rights and appurtenances pertaining to the PROPERTY, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way (all of such real property, rights, and appurtenances being herein referred to as the "PROPERTY"), for the consideration and subject to the terms, provisions, and conditions set forth herein.

1.2 City Council Approval. This Real Estate Contract to sell and purchase the PROPERTY is subject to approval by vote of the City Council of the City of College Station, Texas, such approval reflected by the signature of SELLER's representatives to this Real Estate Contract.

1.3 The SELLER has provided a Commitment for Title Insurance (the "Title Commitment") to insure title to the BUYER at BUYER'S option pursuant to the terms of this Real Estate Contract; said Title Commitment attached hereto as **EXHIBIT B** and made a part hereof for all intents and purposes.

1.4 The SELLER has provided a copy of the Final Plat (being a replat) of THE BUSINESS CENTER AT COLLEGE STATION, PHASE TWO, BLOCK 6, LOTS 1R & 2-5, an addition to the City of College Station, Brazos County, Texas, recorded in Volume 15639, Page 231, of the Official Public Records of Brazos County, Texas, out of which 6.007 acres comprising Lot 1R and 5.635 acres comprising Lot 2, Block 6 is the PROPERTY to be conveyed to BUYER, as shown in **EXHIBIT A**.

1.5 BUYER may at its cost order a Phase I Environmental Site Assessment.

1.6 The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness shall be prorated as of the closing date and shall be adjusted

in cash at the closing. SELLER is a tax-exempt entity. BUYER agrees and understands that SELLER assumes no responsibility for rollback taxes, if any.

1.7 Feasibility.

- (a) **Feasibility Period.** BUYER requires adequate time to complete due diligence. BUYER shall have a **feasibility period of one hundred and eighty (180) days** from **Opening of Escrow** as set forth below (the "Feasibility Period") to conduct pre-marketing studies, engineering, environmental, feasibility, zoning, land plan or land use studies or reviews, inspections, investigations, and reviews of the PROPERTY. BUYER and its employees, agents and/or independent contractors may come upon said PROPERTY at any time during the Feasibility Period in connection with the BUYER'S review of the PROPERTY (**provided that BUYER shall indemnify and hold harmless SELLER from and against any and all liability, responsibility or damages incurred or sustained by SELLER as a result of the actions of BUYER, its employees, agents or independent contractors in connection therewith, but not the mere discovery of an existing condition on the PROPERTY**). BUYER shall, at its expense, promptly repair and restore any damage to the PROPERTY caused by BUYER and/or its agents in connection with such inspections, studies, or tests. **BUYER hereby agrees to indemnify, defend, and hold SELLER harmless from and against all loss, cost, damage, claims or cause of action actually incurred by SELLER or asserted against SELLER arising from personal injury or property damage caused by actions taken at the PROPERTY by BUYER or its agents, engineers or consultants, but not the mere discovery of an existing condition on the PROPERTY.** SELLER acknowledges that BUYER intends to conduct an investigation of the PROPERTY, which may include examination of any and all documentation with respect to the PROPERTY, examination of the title to the PROPERTY, conduct tests to determine the presence or absence of hazardous waste, asbestos, radon and other similar materials and substances, and determine the compliance of the PROPERTY with all applicable laws, rules, codes and regulations. Notwithstanding anything contained herein to the contrary, BUYER'S repair and indemnification obligations pursuant to this Section shall survive closing hereunder or termination of this Agreement (regardless of the reason for termination), as the case may be. During the first thirty (30) days of the Feasibility Period, Seller shall provide to Buyer copies of any previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the PROPERTY, any plats of the PROPERTY, and copies of current utility capacity letters for the PROPERTY.

1.8 Governmental Approvals.

- (a) During the Feasibility Period as part of BUYER'S due diligence, BUYER may pursue, at BUYER'S sole cost and expense, such governmental consents or approvals regarding the PROPERTY with respect to BUYER'S proposed PROPERTY development ("Governmental Approvals") and contact appropriate governmental

authorities according to applicable law regarding the PROPERTY; provided, however, that BUYER shall pay all fees and expenses incurred by BUYER in attempting to obtain any governmental approvals. SELLER may provide reasonable assistance to the BUYER regarding governmental approvals.

(b) BUYER acknowledges that SELLER is a Texas Home Rule Municipal Corporation with regulatory authority over land use and building applications, including subdivision, zoning, development, and construction on real property within College Station city limits.

(c) **THE BUYER RECOGNIZES AND EXPRESSLY AGREES THAT THE SELLER IS NOT OBLIGATED BY VIRTUE OF THIS AGREEMENT TO APPROVE ANY APPLICATION OR REQUEST FOR GOVERNMENTAL APPROVALS WHICH SELLER OR BUYER MAY SUBMIT TO A GOVERNMENTAL BODY AND CERTIFIES AND ACKNOWLEDGES THAT SELLER HAS NOT MADE ANY REPRESENTATIONS TO OR AGREEMENTS WITH BUYER THAT SELLER WILL GRANT ANY GOVERNMENTAL APPROVALS SUBMITTED BY BUYER OR SELLER.**

1.9 On or before the expiration of the Feasibility Period, BUYER shall provide the SELLER and the Title Company with written notice that either (i) the PROPERTY is acceptable and BUYER desires to consummate the transaction contemplated herein or (ii) the PROPERTY is not acceptable and BUYER desires to terminate this Agreement. BUYER'S failure to notify SELLER, in writing, that the PROPERTY is not acceptable during the Feasibility Period shall mean the PROPERTY is acceptable and the Agreement remains in effect. BUYER'S election to proceed to close the transaction contemplated with respect to the PROPERTY shall constitute BUYER's election that the PROPERTY is acceptable.

1.10 The sale of the PROPERTY shall be made by a Special Warranty Deed in the form prepared by SELLER attached hereto as **EXHIBIT C**.

ARTICLE II PURCHASE PRICE

2.1 The purchase price for said PROPERTY shall be the amount of **THREE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,300,000.00)**.

2.2 The purchase price shall be payable in full at closing.

ARTICLE III
EARNEST MONEY AND FEASIBILITY FEE

3.1 Earnest Money. BUYER agrees to deposit with SOUTH LAND TITLE, LLC at 3800 Cross Park Drive, Bryan, Texas 77802 (the "Title Company") as an earnest money deposit, the sum of **THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00)** in cash (the "Earnest Money"). Within three (3) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER will deposit the sum of **THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00)** with the Title Company. The date on which such Earnest Money is deposited with the Title Company is referred to herein as "**Opening of Escrow**". The Title Company shall be directed to invest the Earnest Money in an interest-bearing account mutually acceptable to SELLER and BUYER. Any interest earned on this account shall be added to the Earnest Money and considered a part of the Earnest Money. The Earnest Money shall be credited to the Purchase Price at Closing.

If BUYER terminates this Agreement at any time for any reason in BUYER's sole discretion by written notice to SELLER on or before the end of the Feasibility Period hereinafter defined, or if the transaction contemplated by this Agreement fails to close by reason of default or breach of SELLER (or the failure of a condition precedent), the Earnest Money shall be returned to BUYER. Should BUYER determine not to go forward with purchasing the PROPERTY, BUYER's sole recourse shall be to terminate this Agreement prior to the expiration of the Feasibility Period (or later if such election to terminate is in connection with the failure of a condition precedent) and receive the return of the Earnest Money as provided above. If the transaction contemplated by this Agreement fails to close by reason of default or breach of BUYER, then SELLER shall be entitled to receive and retain from BUYER the Earnest Money as liquidated damages and as SELLER's sole and exclusive remedy against BUYER. Upon BUYER and SELLER'S joint written notice to the Title Company of the termination of this Real Estate Contract, the Title Company shall disburse such Earnest Money and any accrued interest thereon to BUYER and/or SELLER as instructed therein.

3.2 Feasibility Fee. Within seven (7) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER will deliver to SELLER the sum of **ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00)** in cash ("Feasibility Fee") as the required fee for the one hundred and eighty (180) day Feasibility Period as defined herein above. This Feasibility Fee is non-refundable, and it will not be a credit to the purchase price.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER**

4.1 SELLER hereby represents and warrants to BUYER as follows:

- (a) SELLER has the full right, power, and authority to enter into and perform its obligations under this Real Estate Contract.

THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS.

BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). BUYER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND SELLER EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN EXPRESS OR IMPLIED, (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION, (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFIT-ABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO ANY IMPROVEMENTS ON THE PROPERTY HEREIN CONVEYED, AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER**

5.1 BUYER represents and warrants to SELLER as of the effective date and as of the closing date that:

- (a) BUYER has the full right, power, and authority to purchase the PROPERTY from SELLER as provided in this Real Estate Contract and to carry out BUYER's obligations under this Real Estate Contract and all requisite action necessary to authorize BUYER to enter into this Real Estate Contract and to carry out BUYER's obligations hereunder has been obtained on or before closing will have been taken.

ARTICLE VI CLOSING

6.1 The closing shall be held at SOUTH LAND TITLE, LLC, within sixty (60) days from the expiration of the Feasibility Period (the "closing date"). SELLER and BUYER may mutually agree, in writing, to extend the closing date, but in no event shall the closing be extended later than **January 1, 2025**. The City Manager is authorized to extend the closing date on behalf of SELLER.

6.2 At the closing, SELLER shall:

- (a) Prepare, at SELLER's cost, and deliver to BUYER the duly executed and acknowledged Special Warranty Deed conveying the PROPERTY, free and clear of any and all liens and encumbrances, except for those listed on Schedule B of the Title Commitment attached as **EXHIBIT B** and those additional reservations and matters set forth in the Special Warranty Deed attached hereto as **EXHIBIT C**.
- (b) Deliver possession of the PROPERTY to BUYER.
- (c) At BUYER's election, deliver to BUYER, at SELLER's expense, a Title Policy insuring indefeasible title issued by South Land Title, LLC, in BUYER's favor in the full amount of the purchase price, insuring BUYER's fee simple interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment attached as **EXHIBIT B** and those additional easements, reservations and other matters set forth in the Special Warranty Deed attached hereto as **EXHIBIT C**.
- (d) Pay BUYER'S Broker and/or Real Estate Commission fees, if any not to exceed three percent (3%) of the purchase price
- (e) Pay SELLER'S Broker and/or Real Estate Commission fees, if any.
- (f) Pay the SELLER's expenses or attorney fees.
- (g) Receive the Purchase Price and Feasibility Fee, together with any accrued interest thereon.

6.3 Upon such performance by SELLER at closing, BUYER shall:

- (a) Pay the purchase price.
- (b) If BUYER elects to get a new survey of the PROPERTY, pay the cost of the new survey of the PROPERTY, and pay any additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.
- (c) If BUYER elects to acquire a Title Policy, SELLER will pay the cost of the title policy premium for a Title Policy insuring indefeasible title issued by South Land Title, LLC, in BUYER's favor in the full amount of the purchase price, insuring

BUYER's fee simple interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment attached as **EXHIBIT B** and those additional easements, reservations and other matters set forth in the Special Warranty Deed attached hereto as **EXHIBIT C**.

- (d) Pay the escrow fees.
- (e) Pay the cost for tax certificates.
- (f) Pay the sole costs to obtain, deliver and record all documents to be recorded at closing relative to any lien BUYER may obtain for the purchasing of the PROPERTY.
- (g) Pay the costs to record all documents recorded at closing for the purchase of the PROPERTY.
- (h) Pay the BUYER's expenses and attorney fees.
- (i) Pay any and all other closing costs customary to BUYER.

ARTICLE VII SPECIAL CONDITIONS

7.1 The Special Warranty Deed will contain the following reservations and information, and the following **AS IS** language:

GRANTOR hereby reserves for itself, its successors and assigns, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved Groundwater - All of the Groundwater now or in the future located in, on or under the Property. Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other properties, from surface locations other than on the PROPERTY, including, without limitation, all personal property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure; provided that there shall never in any event be any ingress or egress on or across the surface of the above-described premises for the purposes of exploration, development, production or transportation of such Groundwater, it being expressly contemplated by the parties to this instrument that any production of such Groundwater shall be from the surface of other property.

GRANTOR hereby reserves unto itself, its successors and assigns, any and all oil, gas and other minerals in, on or under the premises described on the attached **EXHIBIT A**;

provided that there shall never in any event be any ingress or egress on or across the surface of the above described premises for the purposes of exploration, development, production or transportation of such oil, gas or other minerals, it being expressly contemplated by the parties to this instrument that any production of such minerals shall be from the surface of other property and that there shall be no development of any minerals that would require mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface of the PROPERTY, or through the pooling of such mineral interests for the development with adjacent parcels.

GRANTOR waives all rights with respect to the surface and no owner of the mineral estate shall ever have rights of ingress or egress except as may have been reserved by GRANTOR under the reservations and exceptions expressly listed in this deed or its predecessors in title.

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (II) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE (I) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (II) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.

**ARTICLE VIII
BREACH BY BUYER**

8.1 In the event BUYER fails to fully and timely perform any of BUYER'S obligations under this Real Estate Contract or fails to consummate the sale of the PROPERTY for any reason except SELLER's default, SELLER may, as its sole and exclusive remedy, collect the Earnest Money and terminate this Real Estate Contract.

**ARTICLE IX
BREACH BY SELLER**

9.1 In the event SELLER fails to consummate the conveyance of the PROPERTY (SELLER being in default and BUYER not being in default hereunder), BUYER shall have the right to:

- (a) Collect the Earnest Money and terminate this Real Estate Contract; and/or
- (b) Bring suit against SELLER only for expectancy and incidental damages, if any.

**ARTICLE X
MISCELLANEOUS**

10.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

10.2 Notice: Any notice required or permitted to be delivered by this Real Estate Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to SELLER or BUYER, as the case may be, at the addresses set forth below:

BUYER: FERA DIAGNOSTICS AND BIOLOGICALS CORPORATION,
a Delaware Corporation
5900 Matrix Dr.
College Station, Texas 77845
Email: bicalho@feraah.com

SELLER: City of College Station
Attention: Adam C. Falco, City Attorney
City Attorney's Office
P. O. Box 9960
College Station, Texas 77842
Telephone: 979-764-3507
Email: afalco@estx.gov

10.3 Texas Law to Apply: This Real Estate Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Real Estate Contract are to be performed in Brazos County, Texas.

10.4 Parties Bound: This Real Estate Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Real Estate Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Real Estate Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative. Buyer may assign this Real Estate Contract without the consent of Seller if such assignment is to an affiliate of Buyer or a wholly owned entity of Buyer or Buyer's owner. Except as provided above, any other assignment of this Real Estate Contract by Buyer shall require the consent of Seller.

10.5 Invalid Provision: In case any one or more of the provisions contained in this Real Estate Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Real Estate Contract, and this Real Estate Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Real Estate Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Real Estate Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.6 Construction: The parties acknowledge that each party and its counsel have reviewed and revised this Real Estate Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Real Estate Contract or any amendments or exhibits hereto.

10.7 Prior Agreements Superseded: This Real Estate Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought.

10.8 Time of Essence: Time is of the essence to this Real Estate Contract.

10.9 Gender: Words of any gender used in this Real Estate Contract 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.

10.10 Multiple Counterparts: This Real Estate Contract may be executed in a number of identical counterparts. If so executed, each of the counterparts shall, collectively, constitute but one agreement. In making proof of this Real Estate Contract it shall not be necessary to produce or account for more than one counterpart.

10.11 Real Estate Contract Execution. This Real Estate Contract by SELLER to SELL the PROPERTY is approved by vote of the City Council of the City of College Station, Texas; such approval reflected by the signature of SELLER's representative to this Real Estate Contract. Once this Real Estate Contract is executed by the BUYER and SELLER, the FULLY EXECUTED date shall be the date this Real Estate Contract is approved by vote of the City Council.

10.12 Memorandum of Real Estate Contract: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

LIST OF EXHIBITS:

EXHIBIT A Copy of Final Plat (being a replat) of THE BUSINESS CENTER AT COLLEGE STATION, PHASE TWO, BLOCK 6, LOTS 1R & 2-5, an addition to the City of College Station, Brazos County, Texas, recorded in Volume 15639, Page 231, of the Official Public Records of Brazos County, Texas

EXHIBIT B South Land Title, LLC Title Commitment with an effective date of November 10, 2023

EXHIBIT C Special Warranty Deed

EXECUTED on this the _____ day of _____, 2024.

SELLER:

CITY OF COLLEGE STATION, TEXAS
a Texas Home Rule Municipal Corporation

By: _____
Mayor

Date: _____

BUYER:

**FERA DIAGNOSTICS AND
BIOLOGICALS CORPORATION,**
a Delaware corporation

By: *[Signature]*

Name: RODRIGO BICALHO

Title: CEO

Date: 04/19/2024

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

Assistant City Manager/CFO

Date: _____

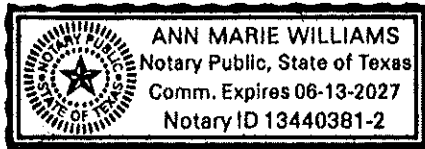
City Attorney

Date: _____

THE STATE OF TEXAS §
COUNTY OF HARRIS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 19th day of April, 2024,
by Rodrigo Bicalho CEO of FERA DIAGNOSTICS AND BIOLOGICALS
CORPORATION, a Delaware corporation, on behalf of said FERA DIAGNOSTICS AND
BIOLOGICALS CORPORATION, a Delaware corporation.



[Signature]
NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2024,
by JOHN P. NICHOLS, as Mayor of the CITY OF COLLEGE STATION, TEXAS, a Texas Home
Rule Municipal Corporation, on behalf of said municipality.

NOTARY PUBLIC in and for the State of Texas

EXHIBIT A

Copy of Final Plat (being a replat) of THE BUSINESS CENTER AT COLLEGE STATION, PHASE TWO, BLOCK 6, LOTS 1R & 2-5, an addition to the City of College Station, Brazos County, Texas, recorded in Volume 15639, Page 231, of the Official Public Records of Brazos County, Texas

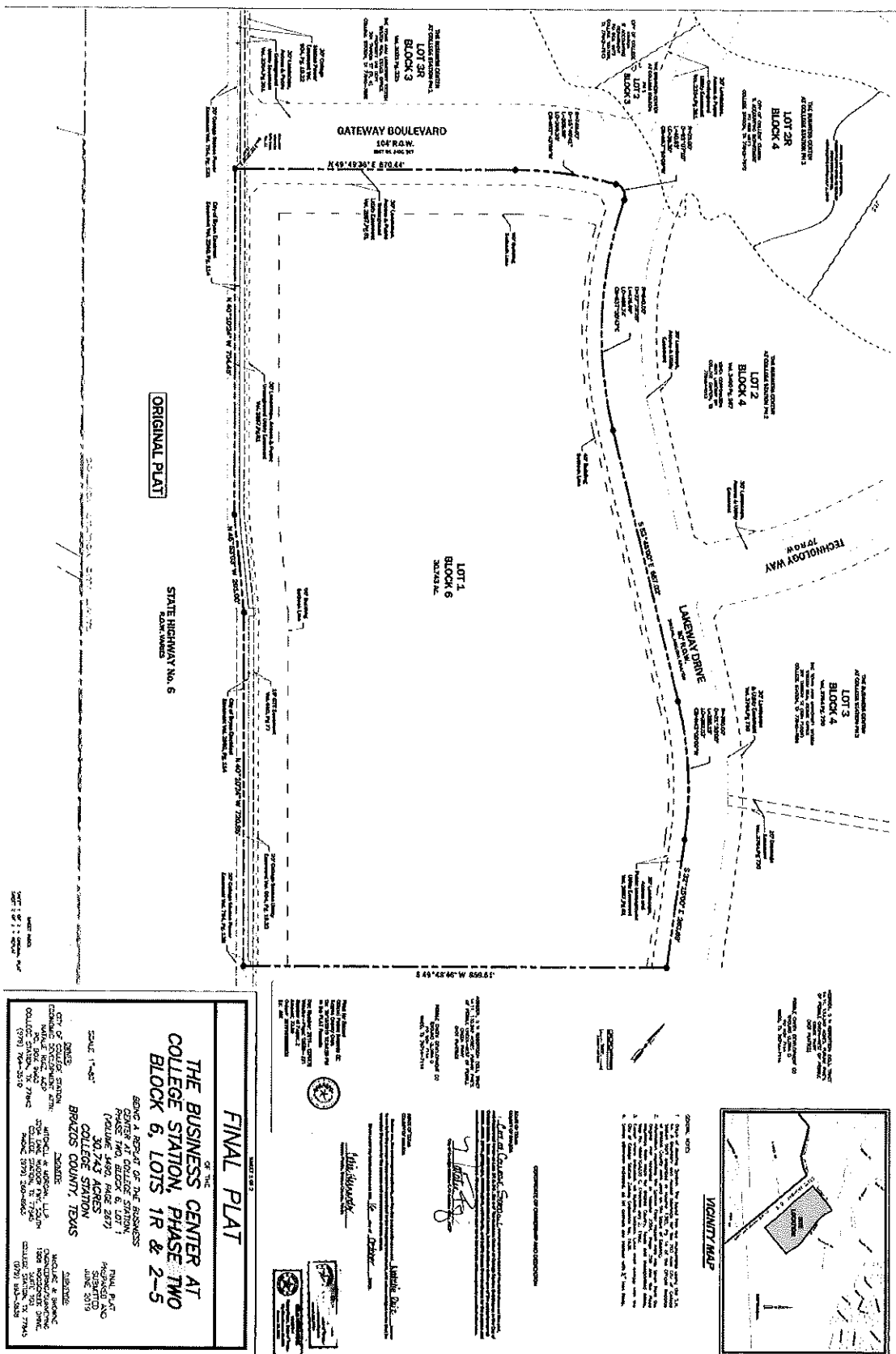


EXHIBIT B

South Land Title, LLC Title Commitment effective November 10, 2023

COMMITMENT FOR TITLE INSURANCE (T-7)

ISSUED BY

TEXAN TITLE INSURANCE COMPANY

We, TEXAN TITLE INSURANCE COMPANY, will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

Countersigned by:

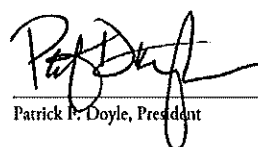


Authorized Countersignature
South Land Title, LLC

Company Name



Texan Title Insurance Company


Patrick P. Doyle, President

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at 6710 Stewart Road, Suite 300, Galveston, Texas 77551.

File No. BC2312582
Commitment of Title Insurance (T-7) - Version 1/3/14

TEXAN TITLE INSURANCE COMPANY

IMPORTANT INFORMATION

FOR INFORMATION, OR
TO MAKE A COMPLAINT
CALL OUR TOLL-FREE TELE-
PHONE NUMBER

1-866-55-TEXAN

ALSO
YOU MAY CONTACT
THE TEXAS DEPARTMENT
OF INSURANCE AT

1-800-252-3439

to obtain information on:

1. filing a complaint against an insurance company or agent,
2. whether an insurance company or agent is licensed,
3. complaints received against an insurance company or agent,
4. policyholder rights, and
5. a list of consumer publications and services available through the Department.

YOU MAY ALSO WRITE TO
THE TEXAS DEPARTMENT OF
INSURANCE

P.O. BOX 149104
AUSTIN, TEXAS 78714-9104
FAX NO. (512) 490-1007

AVISO IMPORTANTE

PARA INFORMACION, O
PARA SOMETER UNA QUEJA
LLAME AL NUMERO GRATIS

1-866-55-TEXAN

TAMBIEN
PUEDE COMUNICARSE CON
EL DEPARTAMENTO DE SEGUROS
DE TEXAS AL

1-800-252-3439

para obtener informacion sobre:

1. como someter una queja en contra de una compania de seguros o agente de seguros,
2. si una compania de seguros o agente de seguros tiene licencia,
3. quejas recibidas en contra de una compania de seguros o agente de seguros,
4. los derechos del asegurado, y
5. una lista de publicaciones y servicios para consumidores disponibles a traves del Departamento.

TAMBIEN PUEDE ESCRIBIR AL
DEPARTAMENTO DE SEGUROS DE
TEXAS

P.O. BOX 149104
AUSTIN, TEXAS 78714-9104
FAX NO. (512) 490-1007

File No. BC2312582
Commitment of Title Insurance (T-7) - Version 1/3/14

TEXAN TITLE INSURANCE COMPANY
TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title. The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.	El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad. El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.
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Your commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the title insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied, or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.
- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.
- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-866-55-TEXAN or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the Policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure

File No. BC2312582
Commitment of Title Insurance (T-7) - Version 1/3/14

you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.

- Allow the Company to add an exception to "rights of parties in possession". If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

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Commitment of Title Insurance (T-7) - Version 1/3/14

COMMITMENT FOR TITLE INSURANCE T-7

ISSUED BY

TEXAN TITLE INSURANCE COMPANY

SCHEDULE A

Effective Date: **November 5, 2023, 8:00 am**

GF No. **BC2312582**

Commitment issued **November 10, 2023,**

1. The policy or policies to be issued are:

- a. **OWNER'S POLICY OF TITLE INSURANCE (Form T-1)**
(Not applicable for improved one-to-four family residential real estate)
Policy Amount: **\$3,489,000.00**
PROPOSED INSURED: **HFLPI-College Station, LLC**
- b. **TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE**
ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
Policy Amount:
PROPOSED INSURED:
- c. **LOAN POLICY OF TITLE INSURANCE (Form T-2)**
Policy Amount:
PROPOSED INSURED:
Proposed Borrower:
- d. **TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)**
Policy Amount:
PROPOSED INSURED:
Proposed Borrower:
- e. **LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)**
Binder Amount:
PROPOSED INSURED:
Proposed Borrower:
- f. **OTHER**
Policy Amount:
PROPOSED INSURED:

2. The interest in the land covered by this Commitment is: Fee Simple

3. Record title to the land on the Effective Date appears to be vested in:

City of College Station, a municipal home rule corporation

4. Legal description of land:

Being all that certain lot, tract or parcel of land, lying and being situated in Brazos County, Texas, and being Lot One "R" (1R) and Two (2) Block Six (6), THE BUSINESS CENTER AT COLLEGE STATION, PHASE TWO, an addition to the City of College Station, Brazos County, Texas, according to the Resubdivision and Final Plat recorded in Volume 15639, Page 231, Official Records of Brazos County, Texas.

**COMMITMENT FOR TITLE INSURANCE T-7
ISSUED BY**

GF No. BC2312582

**TEXAN TITLE INSURANCE COMPANY
SCHEDULE B**

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

Volume 15639, Page 231 (on plat), Volume 15667, page 143 and 195, of the Official Records of Brazos County, Texas, but omitting any covenant, condition or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the covenant, condition or restriction (a) is exempt under Title 42 of the United States Code, or (b) relates to handicap, but does not discriminate against handicapped persons.

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - c. to filled-in lands, or artificial islands, or
 - d. to statutory water rights, including riparian rights, or
 - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.(Applies to the Owner's Policy only.)
5. Standby fees, taxes and assessments by any taxing authority for the year 2023, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2023 and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate

FORM T-7: Commitment for Title Insurance

Page 2

Continuation of Schedule B

GF No. **BC2312682**

exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

- a. **Rights of Parties in possession.**
- b. **Subject to any and all visible and/or apparent easements over, under or across subject property, which a survey or physical inspection may disclose.**
- c. **Any encroachment, encumbrance violation, variation or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.**
- d. **Any portion of the subject property lying within the boundaries of a public or private roadway, whether dedicated or not.**
- e. **All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.**
- f. **Rights of tenants, as tenants only, under existing lease agreements affecting the land.**
- g. **Easements and Building lines, as shown by the plat of said subdivision recorded in Volume 15639, Page 231, Official Records of Brazos County, Texas.**
- h. **Easement from E. S. Wickes to Humble Pipeline Co., dated July 7, 1919, recorded in Volume 48, page 614, Deed Records of Brazos County, Texas.**
- i. **Easement from C. E. Jones to Humble Pipeline Co., dated July 22, 1919, recorded in Volume 49, page 25, Deed Records of Brazos County, Texas.**
- j. **Easement from J.E. Marsh to Gulf States Utilities Company, dated April 1, 1947, recorded in Volume 129, page 496, Deed Records of Brazos County, Texas.**
- k. **Easement from C. Edgar Jones to Gulf States Utilities Company, dated May 14, 1947, recorded in Volume 130, page 152, Deed Records of Brazos County, Texas.**
- l. **Easement in Deed from Holloway Sand & gravel Co., Inc. to Howard L. Perry, dated June 1, 1973, recorded in Volume 316, page 416, Deed Records of Brazos County, Texas.**
- m. **Easement from Kenneth M. Morris, Trustee to Clajon Gas Company, dated January 27, 1981, recorded in Volume 473, page 65, Deed Records of Brazos County, Texas.**
- n. **Easement from J. A. C. Developers, Inc. to General Telephone Company of the Southwest, dated February 2, 1984, recorded in Volume 650, page 77, Official Records of Brazos County, Texas.**
- o. **Easement from W.D. Fitch to City of College Station, dated January 2, 1985, recorded in Volume 754, page 138, Official Records of Brazos County, Texas.**
- p. **Easement from W.D. Fitch to City of College Station, dated July 31, 1985, recorded in Volume 904, page 22, Official Records of Brazos County, Texas.**

FORM T-7: Commitment for Title Insurance

Page 3

Continuation of Schedule B

GF No. **BC2312582**

- q. Easement from City of College Station to City of Bryan, dated October 23, 1997, recorded in Volume 2960, page 109, Official Records of Brazos County, Texas.
- r. Easement from City of College Station to Pebble Creek Development, Co., dated September 24, 1999, recorded in Volume 3618, page 83, Official Records of Brazos County, Texas.
- s. Mineral reservation in Deed from Sally N. White et al to E. S. Wilkes, dated August 24, 1918, recorded in Volume 46, page 626, Deed Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.
- t. Mineral reservation as shown in deed from Ed S. Wickes, et al to J.E. Marsh, dated April 28, 1940 and recorded in Volume 103, page 279, Deed Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.
- u. Mineral reservation in Deed from C. Edgar Jones to Navasota Land & Cattle Company, dated October 12, 1961, recorded in Volume 215, page 227, Deed Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.
- v. Royalty Reservation from Grace H. Marsh to Michigan International Speedway, Inc., dated March 19, 1969, recorded in Volume 277, page 84, Deed Records, Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.
- w. Mineral reservation in Deed from Kenneth M. Morris, Trustee to Jerry D. Spearman, dated June 23, 1981, recorded in Volume 487, page 199, Deed Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.
- x. Mineral reservation as shown in deed from Kenneth M. Morris, Trustee to R.F. Spearman, dated June 23, 1981 and recorded in Volume 487, page 204, Deed Records; subject to release of surface rights as set forth in instrument recorded in Volume 1025, Page 826, Official Records, both being of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.
- y. Royalty Deeds from Grace H. Marsh, to Louise M. Reeves, Trustee dated December 30, 1981, recorded in Volume 504, pages 677 and 681, Deed Records of Brazos County, Texas. Title to these mineral interests has not been traced subsequent to the date of the above-cited instruments.
- z. Mineral Deed from Kenneth M. Morris, Trustee to Howard L. Terry, et al, dated March 19, 1991, recorded in Volume 1252, page 211, Official Records of Brazos County, Texas. Title to this mineral interest has not been traced subsequent to the date of the above-cited instrument.
- aa. Mineral/Royalty Deed from D. E. Roberson et ux to The Robyn's Nest Family Revocable Trust, dated September 26, 2000, recorded in Volume 3979, page 181, Official Records of Brazos County, Texas. Title to this mineral interest has not been traced subsequent to the date of the above-cited instrument.
- bb. Mineral/Royalty Deed from Henry O. Boswell, Jr et ux to Dome Lake Investment, LP, dated April 13, 2005, recorded in Volume 6751, page 16, Official Records of Brazos County, Texas. Title to this mineral interest has not been traced subsequent to the date of the above-cited instrument.
- cc. Mineral Deed from Dorothy Abbott to Donna Janette Baldwin, dated January 4, 2014, recorded in Volume 11791, page 190, Official Records of Brazos County, Texas. Title to this mineral interest has not been traced subsequent to the date of the above-cited instrument.

FORM T-7: Commitment for Title Insurance

Page 4

Continuation of Schedule B

GF No. **BC2312582**

FORM T-7: Commitment for Title Insurance

Page 5

Fera - Business Center Lot 1R & 2 Real Estate Contract
Contract No. 24300467

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**COMMITMENT FOR TITLE INSURANCE T-7
ISSUED BY**

GF No. BC2312582

**TEXAN TITLE INSURANCE COMPANY
SCHEDULE C**

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
 - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - b. all standby fees, taxes, assessments and charges against the property have been paid,
 - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
 - d. there is legal right of access to and from the land,
 - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. NOTE: Procedural Rule P-27 as provided for in Article 9.39A of the Texas Insurance Code requires that "Good Funds" be received and deposited before a Title Agent may disburse from its Trust Fund Account.
6. NOTE: We find no outstanding liens of record affecting the subject property. Inquiry should be made concerning the existence of any unrecorded lien or other indebtedness which could give rise to any security interest claim in the subject property.
7. Provide evidence of authority of the Representative of the City of College Station, a municipal home rule corporation, to act on behalf of same in execution of documents required to consummate the instant transaction.
8. Company requires proof that the subject property qualified for each ad valorem tax exemption that was granted to it for the last five tax years.
9. Company will require tax certificates on the subject property showing all taxes paid up to and including the year 2022.
10. Company will require a properly executed Waiver of Inspection.
11. Company requires an Affidavit as to Debts and Liens to be executed at closing.
12. "The title insurance policy being issued to you contains an Arbitration Provision. It allows you or the Company to require arbitration if the amount of Insurance is \$2,000,000 or less. If you want to retain your

FORM T-7: Commitment for Title Insurance

Page 6

Continuation of Schedule C

GF No. BC2312582

right to sue the Company in case of a dispute over a claim, you must request deletion of the Arbitration Provision before the policy is issued. If you are the purchaser in the transaction and elect deletion of the Arbitration Provision, a form will be presented to you at closing for execution. If you are the lender in the transaction and desire deletion of the Arbitration Provision, please inform us through your Closing Instructions."

The following is for informational purposes only:

The current vesting deed is as follows:

Warranty Deed executed by College Station Economic Development Foundation, a non-profit corporation to City of College Station, a municipal home rule corporation, dated December 3, 1991, recorded in Volume 1385, page 14, Official Records of Brazos County, Texas.

Countersigned
South Land Title, LLC



By:
Authorized Counter Signature

FORM T-7: Commitment for Title Insurance

Page 7

COMMITMENT FOR TITLE INSURANCE

SCHEDULE D

GF No. **BC2312582**

Effective Date: **November 5, 2023, 8:00 am**

Pursuant to the requirements of Rule P-21, Basic Manual of Rules, Rates and Forms for the writing of Title Insurance in the State of Texas, the following disclosures are made:

1. The following individuals are directors and/or officers, as indicated, of the Title Insurance Company issuing this Commitment:
 - (a) The Title Insurance Company, **Texan Title Insurance Company**, is wholly owned by Texan Title Holdings, LLC. Individuals, partnerships, corporations, trusts or other entities owning ten percent (10%) or more of Texan Title Holdings, LLC:

Patrick F. Doyle - 100%
 - (b) The directors of Texan Title Insurance Company are Patrick F. Doyle, Jessica R. Carper, Jeffrey A. Adams and Russell Sugg
 - (c) The president, executive or senior vice-president, secretary and treasurer of Texan Title Insurance Company:

Patrick F. Doyle - Chief Executive Officer and President
Jessica R. Carper - Senior Vice President and Treasurer
Jeffrey A. Adams - General Counsel and Secretary
J. Brandon Linscomb - Senior Vice President
Russell Sugg - Executive Vice President
2. The issuing Title Insurance Agent, **South Land Title, LLC** a Texas Limited Liability Company, whose members owning or controlling, directly or indirectly, 1% or more of said company (or owning or controlling 10% or more of an entity that owns 1% or more of the Agent), and managers are listed below:

Patrick F. Doyle, President
Jessica R. Carper, Treasurer

South Land Title, LLC is owned 100% by Texan Title Holdings, LLC which is owned 100% by Patrick F. Doyle.

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium* is:

Owner's Policy	<u>\$16,352.00</u>
Loan Policy	<u>\$0.00</u>
Endorsement Charges	<u>\$0.00</u>
Other	<u>\$0.00</u>
Total	<u>\$16,352.00</u>

Of this total amount: 15% will be paid to the policy issuing Title Insurance Company; 85% will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

<u>Amount</u>	<u>To Whom</u>	<u>For Services</u>
---------------	----------------	---------------------

" *The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."

COMMITMENT FOR TITLE INSURANCE (Form T-7)

TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.

El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.

Your Commitment of Title insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- **MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

Continuation of Texas Title Insurance Information

GF No. BC2312582

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

DELETION OF ARBITRATION PROVISION

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

SIGNATURE

DATE

Texan Title Insurance Company

Premium Amount	Rate Rules	Property Type	County Code	Liability at Reissue Rate	6	7	8
1 \$16,352.00	2 1000	3 3	4 41	5			

DISCLOSURE TO SELLER, BUYER/BORROWER ABOUT
PATRICK F. DOYLE AND DOYLE LAW FIRM, PLLC

I. REPRESENTATION OF INTERESTS

In connection with the transaction you are closing today, a document of conveyance and/or curative documents have been prepared on behalf of Seller and Buyer/Borrower, and/or a loan has been obtained from a lending institution (or individual owner under an owner-finance) to finance all or part of the purchase price of Borrower's property, or to refinance an earlier loan made to Borrower, or which Borrower assumed, that is secured on the subject property. Seller, Buyer/Borrower or and/or lender is using the services of the law firm of DOYLE LAW FIRM, PLLC in the preparation of various legal instruments and loan documents in connection with this transaction, and you must pay for such services. By signing below, Borrower is acknowledging that DOYLE LAW FIRM, PLLC has not represented Borrower's interests or given Borrower any legal advice concerning the contract to sell and purchase the property, if applicable, or otherwise related to the property or to the legal instruments and loan documents executed in connection with the home loan transaction or the closing of the transaction itself.

II. RELATIONSHIP OF PATRICK F. DOYLE AND DOYLE LAW FIRM, PLLC

PATRICK F. DOYLE is the sole owner of the law firm of DOYLE LAW FIRM, PLLC.

III. RELATIONSHIP OF TITLE COMPANY AND PATRICK F. DOYLE

PATRICK F. DOYLE is the sole owner of Texan Title Holdings, LLC, which is the parent company of SOUTH LAND TITLE, LLC, located in Bryan, Texas

IV. RELATIONSHIP OF TAX SERVICE PROVIDER AND PATRICK F. DOYLE

PATRICK F. DOYLE is the sole owner of Realty Tax Search, Inc., which provides ad valorem tax searches, and collects, stores and disseminates such information regarding your transaction, and collects a standard fee for services related thereto.

V. FREEDOM TO HIRE A LAWYER

By signing below, each party hereto acknowledges that they have had the opportunity to consult independent counsel or hire an attorney to represent them regarding this transaction and its consequences.

VI. OBLIGATION TO PAY LEGAL FEES

By signing below, each party acknowledges that they must pay at the time of closing, or on demand, the legal fees of DOYLE LAW FIRM, PLLC as each party may have agreed to pay in the contract of sale and purchase or in the loan application or any other document they may have signed. The charges for the services of DOYLE LAW FIRM, PLLC are set forth on the closing statement or settlement statement furnished by the closing agent. You have not been charged any fee for preparation of any Truth-in-Lending Statement or RESPA Good Faith Estimate of closing costs. Attached hereto as Exhibit "A" and incorporated herein is PATRICK F. DOYLE's Affiliated Business Arrangement Disclosure Statement, which sets forth DOYLE LAW FIRM, PLLC's relationship to PATRICK F. DOYLE and Settlement Service Charge or range of charges.

VII. DESCRIPTION OF LEGAL SERVICES

In representing the lender's interest in this loan transaction, DOYLE LAW FIRM, PLLC provided a variety of services of a legal nature. DOYLE LAW FIRM, PLLC reviews as necessary the sales contract, survey, title report or commitment of title insurance, various documents of record such as restrictions and easements, and typically prepares such instruments as the Note, Deed of Trust, Affidavits and various miscellaneous documents required by the lender.

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Furthermore, each party hereto acknowledges that DOYLE LAW FIRM, PLLC may have prepared certain documents upon the request of **South Land Title, LLC**, and has not in any manner, undertaken to assist or render legal advice to the undersigned, with respect to this transaction. The attorney preparing the documents represents **South Land Title, LLC**.

Each party hereto has been provided with an opportunity to examine the title commitment issued by the title company in this transaction, and is satisfied with the contents of such commitment. Further, each party hereto agrees and understands that this transaction is not "closed" until all disbursements are made on behalf of all parties. In the event there are any additional charges for anyone furnishing services, requiring payoff, or by any taxing authority, each party hereto will pay such charges upon written request.

The undersigned understand and agree that the parties may allocate payment of legal fees between themselves as they may agree.

VIII. ACKNOWLEDGEMENT/WHAT SIGNING THIS MEANS

By signing below, you acknowledge to the lender, DOYLE LAW FIRM, PLLC and PATRICK F. DOYLE that you have received a copy of this disclosure, that you have read all of the above statements, that you understand them, and that what has been stated in this disclosure is accurate and truthful. Furthermore, you acknowledge that you have read this disclosure form and understand that PATRICK F. DOYLE is referring you to purchase the settlement services as described herein on Exhibit "A" and may receive a financial or other benefits as the result of this referral.

{00028567.DOC}

EXHIBIT "A"

AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT
NOTICE

FROM: PATRICK F. DOYLE

GF#: BC2312582

This is to give you notice that PATRICK F. DOYLE has a business relationship with and ownership interest in REALTY TAX SEARCH, INC. and TEXAN TITLE HOLDINGS, LLC, which is the parent company of SOUTH LAND TITLE, LLC. PATRICK F. DOYLE, sole owner of the law firm of DOYLE LAW FIRM, PLLC, is also the sole owner of TEXAN TITLE HOLDINGS, LLC, which is the parent company of SOUTH LAND TITLE, LLC (real estate closing services).

Set forth below is the estimated charge or range of charges of the settlement services listed. You are NOT required to use the listed providers as a condition for closing your transaction of the subject property. THERE ARE OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Provider and Settlement Services Charge or Range of Charges:

SOUTH LAND TITLE, LLC	(premium fees as set by State Board of Insurance and vary depending on value of transaction and credits available to consumer)
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Realty Tax Search	\$81.19
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ACKNOWLEDGEMENT

I/we have read this disclosure form, and understand that Patrick F. Doyle is referring me/us to purchase the above-described settlement services and may receive a financial or other benefit as the result of this referral.

{00028567.DOC}

**SOUTH LAND TITLE, LLC
PRIVACY POLICY**

PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a non-affiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of SOUTH LAND TITLE, LLC.

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you, such as on applications or other forms
- Information about your transactions we secure from our files, or from our affiliates or others
- Information we receive from a consumer reporting agency
- Information that we receive from others involved in your transaction, such as the real estate agent or lender

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT OUR CUSTOMERS OR FORMER CUSTOMERS TO ANYONE, EXCEPT AS PERMITTED BY LAW.

WE RESTRICT ACCESS TO NONPUBLIC PERSONAL INFORMATION ABOUT YOU TO THOSE EMPLOYEES WHO NEED TO KNOW THAT INFORMATION TO PROVIDE THE PRODUCTS OR SERVICES REQUESTED BY YOU OR YOUR LENDER.

WE MAINTAIN PHYSICAL, ELECTRONIC, AND PROCEDURAL SAFEGUARDS THAT COMPLY WITH APPROPRIATE FEDERAL AND STATE REGULATIONS.

NO PERSON, ENTITY OR FIRM WHO IS NOT A PARTY TO YOUR CONTRACT IS PERMITTED TO RECEIVE ANY INFORMATION FROM THIS COMPANY ON ANY MATTER RELATED TO YOUR CONTRACT.

**DOYLE LAW FIRM, PLLC
PRIVACY POLICY NOTICE**

PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of DOYLE LAW FIRM, PLLC

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you, such as on applications or other forms
- Information about your transactions we secure from our files, or from our affiliates or others
- Information we receive from a consumer reporting agency
- Information that we receive from others involved in your transaction, such as the real estate agent or lender

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

EXHIBIT C
Special Warranty Deed

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

DATE: _____, 202__

GRANTOR: THE CITY OF COLLEGE STATION, TEXAS,
a Texas Home Rule Municipal Corporation

GRANTOR'S MAILING ADDRESS: P. O. Box 9960
(including county) Brazos County
College Station, Texas 77842

GRANTEE: FERA DIAGNOSTICS AND BIOLOGICALS CORPORATION, a
Delaware corporation

GRANTEE'S MAILING ADDRESS: 5900 Matrix Drive
(including county) Brazos County
College Station, Texas 77845

CONSIDERATION: TEN AND NO/ Dollars (\$10.00) and other good and valuable
consideration

PROPERTY:

Being all that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas, and being Lot One "R" (1R) and Lot Two (2), Block Six (6), THE BUSINESS CENTER AT COLLEGE STATION, PHASE TWO, an addition to the City of College Station, Brazos County, Texas, according to the Resubdivision and Final Plat recorded in Volume 15639, Page 231, of the Official Public Records of Brazos County, Texas (the "Land"), together with all and singular the rights and appurtenances pertaining to the Land, including all right, title and interest of GRANTOR as owner of the Land in and to adjacent roads, streets, alleys or rights-of-way, all easements benefitting the Land, and all utility rights and reservations with respect to the Land.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. Restrictive covenants, terms, conditions, stipulations, easements and building lines as shown on Final Plat of The Business Center at College Station, Phase Two, Block 6, Lots 1R and 2-5, recorded in Volume 15639, Page 231, Official Public Records of Brazos County, Texas.
2. Terms, conditions and stipulations contained in Declaration of Covenants and Restrictions for The Business Center at College Station dated November 1, 2019, recorded in Volume 15667, Page 143, Official Public Records of Brazos County, Texas.
3. Terms, conditions and stipulations contained in Declaration of Restrictive Covenants of The Business Center at College Station, Phase Two, Block 6, Lots 1R & 2-5 Subdivision, dated November 1, 2019, recorded in Volume 15667, Page 195, Official Public Records of Brazos County, Texas.
4. Easement dated July 7, 1919, from E. S. Wickes to Humble Pipe Line Company, recorded in Volume 48, Page 614, Deed Records of Brazos County, Texas.
5. Easement dated July 22, 1919, from C.E. Jones to Humble Pipe Line Company, recorded in Volume 49, Page 25, Deed Records of Brazos County, Texas.
6. Easement dated April 1, 1947, from J. E. Marsh and Grace H. Marsh to Gulf States Utilities Company, recorded in Volume 129, Page 496, Deed Records of Brazos County, Texas.
7. Easement dated May 14, 1947, from C. Edgar Jones to Gulf States Utilities Company, recorded in Volume 130, Page 152, Deed Records of Brazos County, Texas.
8. Easement reserved in Deed dated June 1, 1973, from Holloway Sand & Gravel Company, Inc. and Holloway Construction Company to Howard L. Terry, T. J. Collins and Duncan Properties, recorded in Volume 316, Page 416, Deed Records of Brazos County, Texas.
9. Pipeline Easement dated January 27, 1981, from Kenneth M. Morris, Trustee to Clajon Gas Company, recorded in Volume 473, Page 65, Deed Records of Brazos County, Texas.

10. Easement and Right of Way dated February 2, 1984, from J.A.C. Developers Inc. to General Telephone Company of the Southwest, recorded in Volume 650, Page 77, Official Records of Brazos County, Texas.
11. Utility Easement dated January 2, 1985, from W. D. Fitch to the City of College Station, Texas, recorded in Volume 754, Page 138, Official Records of Brazos County, Texas.
12. Utility Easement dated July 31, 1986, from W. D. Fitch to the City of College Station, Texas, recorded in Volume 904, Page 22, Official Records of Brazos County, Texas.
13. Right-Of-Way Easement dated October 23, 1997, from the City of College Station, Texas to the City of Bryan, Texas, recorded in Volume 2960, Page 109, Official Public Records of Brazos County, Texas.
14. Utility Easement dated September 24, 1999, from the City of College Station, Texas to Pebble Creek Development Co., recorded in Volume 3618, Page 83, Official Public Records of Brazos County, Texas.
15. Mineral reservation set out in Deed dated August 24, 1918, from James C. White, Sallie N. White, Robert L. White, Fay W. Rodes and G. E. Rodes to E. S. Wicks, recorded in Volume 46, Page 626, Deed Records of Brazos County, Texas.
16. Mineral reservation set out in Deed dated April 28, 1940, from Edna Wickes Wilkerson, I. O. Wilkerson, Henry G. Wickes, Ed S. Wickes, for himself and as survivor in community of himself and his deceased wife, Annie Wickes, W. C. Mitchell, Anne Lile Wickes Mitchell, W. M. Wickes and John Wickes to J. E. Marsh, recorded in Volume 103, Page 279, Deed Records of Brazos County, Texas.
17. Mineral reservation set out in Deed dated October 12, 1961, from C. Edgar Jones to Navasota Land & Cattle Company, recorded in Volume 215, Page 227, Deed Records of Brazos County, Texas.
18. Royalty reservation set out in Deed dated March 19, 1969, from Grace H. Marsh, Individually and as Independent Executrix of the Estate of J. E. Marsh, deceased to Michigan International Speedway, Inc., recorded in Volume 277, Page 84, Deed Records of Brazos County, Texas.
19. Mineral reservation set out in Warranty Deed dated June 23, 1981, from Kenneth M. Morris, Trustee to Jerry D. Spearman, recorded in Volume 487, Page 199, Deed Records of Brazos County, Texas.

20. Mineral reservation set out in Warranty Deed dated June 23, 1981, from Kenneth M. Morris, Trustee to R. F. Spearman, recorded in Volume 487, Page 204, Deed Records of Brazos County, Texas.
21. Release of Surface Rights dated January 28, 1988, from Kenneth M. Morris, Trustee to W. D. Fitch, Area Progress Corporation and College Station Economic Development Foundation, recorded in Volume 1025, Page 826, Official Records of Brazos County, Texas.
22. Royalty Deed dated December 30, 1981, from Grace H. Marsh to Louise M. Reeves, Trustee, recorded in Volume 504, Page 677, Deed Records of Brazos County, Texas.
23. Royalty Deed dated December 30, 1981, from Grace H. Marsh to Louise M. Reeves, Trustee, recorded in Volume 504, Page 681, Deed Records of Brazos County, Texas.
24. Mineral Deed dated March 19, 1991 but effective January 27, 1991, from Kenneth M. Morris, Trustee to Howard L. Terry, D. K. Royal, Duncan Properties, a partnership, E. Hal Dickson, D. E. Roberson, Gene R. Mendel, L. E. Richey and Vernon F. Runnels, recorded in Volume 1252, Page 211, Official Records of Brazos County, Texas.
25. Mineral and Royalty Deed dated September 26, 2000, from D. E. Roberson and wife, Carolyn M. Roberson to The Robyns' Nest Family Revocable Trust, recorded in Volume 3979, Page 181, Official Public Records of Brazos County, Texas.
26. Mineral and Royalty Deed dated April 13, 2005, from Henry O. Boswell, Jr. and wife, Jean S. Boswell to Dome Lake Investment, L.P., recorded in Volume 6751, Page 16, Official Public Records of Brazos County, Texas.
27. Gift Mineral Deed dated January 4, 2014, from Dorothy Abbott by her attorney in fact, Donna Baldwin to Donna Janette Baldwin, recorded in Volume 11791, Page 190, Official Public Records of Brazos County, Texas.

GRANTOR hereby reserves for itself, its successors and assigns, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved Groundwater - All of the Groundwater now or in the future located in, on or under the Property. Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other

properties, from surface locations other than on the Property, including, without limitation, all personal property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure; provided that Grantor agrees for itself, its successors and assigns that, notwithstanding anything herein to the contrary, none of Grantor, its successors or assigns shall have any right of ingress or egress on or across the surface of the Property including without limitation for the purposes of exploration, development, production or transportation of such Groundwater, it being expressly contemplated by the parties to this instrument that any production of such Groundwater shall be from the surface of other property located at least 500 feet from every point on the boundary of the Property.

GRANTOR hereby reserves unto itself, its successors and assigns, any and all oil, gas and other minerals in, on or under the Property described on the attached EXHIBIT A; provided that Grantor agrees for itself, its successors and assigns that, notwithstanding anything herein to the contrary, none of Grantor, its successors or assigns shall have any right of ingress or egress on or across the surface of the Property for the purposes of exploration, development, production or transportation of such oil, gas or other minerals, it being expressly contemplated by the parties to this instrument that any production of such minerals shall be from the surface of other property located at least 500 feet from every point on the boundary of the Property and that there shall be no development of any minerals that would require mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface of the Property or the surface of other property located less than 500 feet from every point on the boundary of the Property, or through the pooling of such mineral interests for the development with adjacent parcels.

GRANTOR waives for itself, its successors and assign all rights with respect to the surface of the PROPERTY and no owner of the mineral estate shall ever have rights of ingress or egress except as may have been reserved by GRANTOR'S predecessors in title.

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY, OTHER THAN THE EXPRESS WARRANTIES AND/OR REPRESENTATIONS OF GRANTOR SET FORTH HEREIN THE REAL ESTATE CONTRACT DATED ____, 2024 BETWEEN GRANTOR AND GRANTEE, AS IT MAY HAVE BEEN AMENDED, AND/OR IN ANY OTHER CLOSING DOCUMENT OF EVEN DATE HERewith (COLLECTIVELY, THE "EXPRESS WARRANTIES"). GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT FOR THE EXPRESS WARRANTIES, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, EXCEPT FOR THE EXPRESS WARRANTIES, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY,

SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (II) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE OR HAS HAD THE OPPORTUNITY TO MAKE (I) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (II) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and warranty recited above, **GRANTS, SELLS, and CONVEYS** to **GRANTEE** the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to **GRANTEE and GRANTEE's** successors, legal representatives and assigns forever. **GRANTOR** binds **GRANTOR and GRANTOR's** legal representatives, successors and assigns to warrant and forever defend all and singular the property to **GRANTEE and GRANTEE's** successors, legal representatives and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under **GRANTOR** but not otherwise, and except as to the reservations from and exceptions to conveyance and warranty recited above.

When the context requires, singular nouns and pronouns include the plural.

CITY OF COLLEGE STATION, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

**THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §**

This instrument was acknowledged before me on the _____ day of _____, 2024. By John P. Nichols, as Mayor of the City of College Station, a Texas Home Rule Municipal Corporation, on behalf of said municipality.

NOTARY PUBLIC in and for the State of Texas

PREPARED IN THE OFFICE OF:
City of College Station
City Attorney's Office
P. O. Box 9960
College Station, Texas 77842-9960

RETURN ORIGINAL DOCUMENT TO:
City of College Station
City Attorney's Office
P. O. Box 9960
College Station, Texas 77842-9960

April 25, 2024

Item No. 9.2.

Wells Nos. 10, 11, and 12 and Collection Line Design Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a professional services contract with Freese & Nichols, Inc. for \$8,416,603 for Wells Nos. 10, 11, and 12 and a collection line for design and construction phase services, and a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Relationship to Strategic Goals:

Core services and infrastructure.

Recommendation(s): Staff recommends approval of this contract and recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: This project includes the design on wells nos. 10, 11, and 12 as well as an associated water collection line. This contract would also provide construction phase services for the construction of the wells and the collection line.

The City of College Station received two Statements of Qualifications (SOQ) that were submitted. After the review process, Freese & Nichols, Inc. was selected as the most qualified firm for the project.

Budget & Financial Summary: A combined budget of \$17,250,000 is included in the Water Capital Improvement Projects Fund for this project. A combined total of \$2,966 has been spent or committed to date, leaving a combined balance of \$17,247,034 for this contract and related costs.

The “Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt” is necessary for this project because all of the long-term debt projected to be issued for this project has not yet been issued. The debt for the project is scheduled to be issued at a later date.

Attachments:

1. Contract
2. New Wells and Collection Line DRR
3. New Wells Project Location Map



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300457 PROJECT #: WA2400 BID/RFP/RFQ#: 24-025

Project Name / Contract Description: Wells 10, 11, 12 and Collection Line / Design Contract

Name of Contractor: Freese & Nichols, Inc.

CONTRACT TOTAL VALUE: \$ 8,416,603.00

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 combined budget of \$17,250,000 is included in the Water Capital Improvement Projects Fund. A combined total of \$2,966 has been spent or committed to date, leaving a combined balance of \$17,247,034 for this contract and related costs.

(If required)*

CRC Approval Date*: N/A Council Approval Date*: 04/25/24 Agenda Item No*:

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION
PROFESSIONAL SERVICES CONTRACT
(REGARDING CONSTRUCTION MANAGER AT RISK PROJECT)**

This Contract ("Contract" or "Agreement") is between the **City of College Station**, a Texas home-rule municipal corporation, (the "City") and **FREESE AND NICHOLS, INC.**, a Texas (the "Consultant"), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
Scope of Services**

1.01 In consideration of the compensation stated in paragraph 2.01 hereinbelow, the Consultant agrees to provide the City with the professional services as described in **Exhibit "A"**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: Project programming, preparing schematics, design development, preparing construction documents and construction administration for the design contract located at Wells 10, 11, 12 and Collection line for the City of College Station, Texas (the "Project").

1.02 As used in this Contract unless otherwise designated (and whether the term or phrase appears in capital letters, quotations, or bold or italicized print): (a) **"City"** means the City of College Station, Texas, a Texas home-rule municipality, including its elected officials (including its City Council), appointed officials, employees, agents and consultants (other than the Consultant and the Construction Manager), volunteers, assigns, and successors in interest; (b) **"Construction Manager"** means a Construction Manager at Risk as described in this Contract; (c) **"Consultant"** means the Texas licensed architect or Texas architectural firm and/or the Texas licensed engineer or engineering firm which sign this Contract as a Party providing the herein described professional services for the Project, including their directors, partners, officers, members, managers, employees, consultants or subconsultants, agents, permitted assigns, and successors in interest; (d) **"Party"** means a signing Party to this Contract; and (e) the past, present, or future tense shall each include the other, the masculine or feminine gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning. All documents attached to or referenced by this Contract are incorporated by reference for all purposes.

**ARTICLE II
Payment and Construction Cost**

2.01 In consideration of the Consultant's provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit "B"**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **Eight Million Four Hundred Sixteen Six Hundred Three and NO/100 Dollars (\$8,416,603.00)**.

2.02 Consultant's evaluations of the City's project budget and the preliminary estimates of

construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.

2.03 The construction budget for this Project, which is established as a condition of this Contract is \$10,000,000.00. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE III Time of Performance

3.01 The Consultant shall perform with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant shall perform all professional services necessary for the complete design and construction documentation of the Project within the times set forth below and in Section 3.02. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

(a) **Conceptual Design:** 0 calendar days after the authorization to commence planning.

(b) **Preliminary Design:** 150 calendar days after authorization to commence development.

(c) **Final Design:** 390 calendar days after authorization to commence final design.

3.02 All design work and other professional services provided under this Contract must be completed by the following date(s): March 30, 2029.

3.03 Time is of the essence of this Contract. The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule, over which Consultant has control and agrees are as expeditious as are prudent considering the ordinary professional skill and care of a competent engineer or architect, shall not be exceeded without written approval from the City.

3.04 The Consultant's services for the Project shall consist of all the services required to be performed by Consultant, Consultant's employees and Consultant's consultants under the terms of this Contract. Such services include: (a) normal or basic civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services; (b) any other design services that are normally or customarily furnished and reasonably necessary for the Project; (c) (i) schematic (or conceptual) design phase services, (ii) design development phase services, (iii) construction document phase services, (iv) procurement phase services, (v) construction phase services, (vi) evaluation of work services, including the review and certification

of requests for and payments proposed to contractors or other service, equipment, or material providers, (vii) project completion services, and (viii) supplemental and/or additional services requested by the City; and (d) all other services herein described to be provided by the Consultant to the City for the Project. The Consultant shall contract and employ at its expense consultants (or subconsultants) necessary for the design of the Project, and such consultants shall be licensed as required by the State of Texas and approved in writing by the City.

3.05 The Consultant shall designate a principal of the firm satisfactory to the City who shall, so long as employed by Consultant and acceptable to the City, remain in charge of professional services through completion and be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

3.06 Consultant shall be responsible for the coordination of its services with those of its subconsultants, the City, and the City's consultants, including the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for their compliance with all applicable state, federal, or local (including the City) codes, ordinances, regulations, laws and statutes. Upon receipt from the City, the Consultant shall review the services and information furnished by the City and the City's consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

ARTICLE IV

Conceptual Design

4.01 Upon the Consultant's receipt from the City of a Letter of Authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal Projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the project budget, if applicable.

4.03 The Consultant shall prepare a Conceptual Design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the City's Program, the Project Schedule and budget. The Consultant shall reach an understanding with the City regarding the requirements of the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and the City Council to make a presentation of its report.

ARTICLE V

Preliminary Design

5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a "letter of authorization" to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the Letter of Authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design including any material changes and deviations that have taken place from the Conceptual Design cost estimate, and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the project budget and schedule.

ARTICLE VI

Final Design

6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a "letter of authorization" to begin work on the final design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the contract documents, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.

6.02 Notwithstanding the City’s approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project.

6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City’s current pre-approved, “City of College Station Standard Form of Agreement Between City and Construction Manager at Risk” (“CMAR Agreement”) for the construction contract between the City and the Construction Manager. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City’s standard form without the prior written approval of the City. The Consultant shall assist the City with all phases of the procurement and engagement of the Construction Manager, including assistance with the review of, consultation regarding, and any proposed modifications regarding the CMAR Agreement.

6.04 The Consultant shall provide the City and Construction Manager at Risk (“CMAR”) with complete contract documents sufficient to be advertised for bids by the CMAR. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City Staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design, including identification of all material changes and deviations that have taken place from the Preliminary Design Documents and a cost estimate. The Consultant shall verify that, to the best of Consultant’s belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VII

Bid Preparations & Evaluation for Subcontractors

7.01 The Consultant shall assist the Construction Manager in advertising for and obtaining bids or negotiating proposals for the construction of the Project, in compliance with state law. Upon request, the Consultant shall meet with City Staff and the City Council to present, and make recommendations on, the bids and proposals submitted for the construction of the Project.

7.02 The Consultant shall review the Construction Manager’s bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid.

7.03 Where substitutions are requested by a Construction Manager, the Consultant shall review the substitution requested with the City and make a recommendation to the City to either approve or disapprove such substitution(s).

ARTICLE VIII

Construction

8.01 The Consultant shall be a representative of, and shall advise and consult with, the City **(a)** during construction, and **(b)** at the City’s direction from time to time during the correction or

warranty period described in the construction contract or CMAR Agreement. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.

8.02 The Consultant shall make visits to the Project site, to inspect the progress and quality of the executed work of the Construction Manager and its contractors and subcontractors and to determine if such work is proceeding in accordance with the contract documents. The minimum number of site visits and their frequency shall be established by the City and Consultant prior to commencement of construction. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.

8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall exercise the utmost care and diligence in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform with the contract documents.

8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that the Construction Manager or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by the Construction Manager or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the Construction Manager in accordance with the contract documents.

8.06 The Consultant shall issue all instructions of the City to the Construction Manager as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, but not later than twenty (20) calendar days after a written request, render such interpretations and clarifications in writing as it may deem necessary for the proper execution and progress of the Work. Consultant shall receive no additional compensation for providing clarification of the Drawings and Specifications.

8.07 The Consultant shall review the amounts owing to the Construction Manager and recommend to the City, in writing, payments to the Construction Manager of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.

8.08 Upon notification from the Construction Manager that the Project is substantially complete,

the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the Construction Manager that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project site to verify final completion.

8.09 The Consultant shall not be responsible for the work of the Construction Manager or any of its subcontractors, except that the Consultant shall be responsible for the Construction Manager's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

8.10 The Consultant shall conduct at least two on-site inspections during the warranty period and shall report to the City as to the continued acceptability of the work.

8.11 The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

8.12 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

8.13 The Consultant shall assist the Construction Manager and City in obtaining an Occupancy Permit by accompanying governing officials during inspections of the Project if requested to do so by the City.

8.14 The Standard Form of Agreement between City and Construction Manager at Risk is attached hereto as **Exhibit "D"** and incorporated herein by reference. The Consultant shall comply with all terms and conditions pertaining to the Architect as set out in the final and executed version of said agreement. In the event of an inconsistency between a term or condition in this Contract and the agreement between City and Construction Manager at Risk, the agreement between City and Construction Manager at Risk shall control.

ARTICLE IX

Change Orders, Documents & Materials

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized City personnel. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.

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

9.03 When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or its designee may approve the written change order provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work.

9.04 Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in Article II of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.05 The Consultant shall furnish the City with one (1) sets of physical hard-copy plans and specifications, and digital files of the same. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City one (1) sets of reproducible, mylar-record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the Construction Manager to the Consultant. The Consultant shall provide copies of Work Product including documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's Work Product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall also furnish one set of digital files representing the final as-built mylars.

ARTICLE X

Warranty, Indemnification & Release

10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant warrants that the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

10.02 The Consultant shall promptly correct any defective Work Product, including designs or specifications furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final Work Product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of its professional services. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project site or any of the work being done on the site or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

10.05 Indemnity and Release. Pursuant to Section 271.904 of the Texas Local Government Code and other authority, the Parties agree as follows:

(a) The Consultant, as the indemnitor, shall indemnify, defend, and hold harmless the City against liability for all damage or liability (including all monetary damages and judgments, legal or equitable relief, costs, expenses, court costs, interest, reasonable attorney's fees, and just and lawful offsets and credits) regarding the Project to the extent that said damage or liability is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier, and committed by said indemnitor or said indemnitor's agent, consultant under contract, or another entity over which said indemnitor exercises control; however, this indemnitor obligation expressly does not apply when the damage, liability, claim or judgment is based wholly or partly on the negligence of, fault of, or breach of contract by the City, the City's employee or agent, or other person or entity over which the City exercises control.

(b) Regarding this RELEASE, the Consultant (as the Indemnitor) 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 work on the Project performed by the Consultant, 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 said claims, demands, and causes of action are covered in whole or in part by insurance. In the event of injury, death, property damage, or loss suffered by the Consultant, 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 not apply when such injury, death, loss, or damage was caused in whole or in part by the intentional or willful act, negligence, or gross negligence of the City.

(c) Notwithstanding anything stated to the contrary in this Paragraph 10.05, it is required that: (a) the City shall be included as an additional insured under the Consultant's general liability insurance policy, and the Consultant shall provide any and all defenses to the City as provided by that policy; and (b) the Consultant, and a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Consultant, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

(d) The Consultant's indemnification and release obligations in this Paragraph 10.05 shall survive termination, completion, abandonment and final payment.

10.06 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05 and 10.06, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI

Insurance

11.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth below. During the term of this Contract all of Consultant's insurance shall meet the minimum requirements of this section.

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

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Excess Liability.

- (d) Workers' Compensation/Employer's Liability.
- (e) Professional Liability.

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

(a) Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.

(b) Self-insured retentions must be declared to and approved by the City in writing. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention ("SIR") or deductible that exceeds \$25,000 unless approved in writing by City. All deductibles and SIRs shall be the sole responsibility of Consultant or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Consultant to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements.

(c) "Claims Made" policies are not accepted, except for Professional Liability.

(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) For any claims related to this project, the Consultant's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.

(f) Consultant hereby agrees to waive rights of subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

(g) Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(h) Consultant shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

(i) If applicable, CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.

(j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

(k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance, at least as broad as ISO Form:

1. CG 20 10 and CG 11 85; or
2. both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms (if later revisions used).

11.04 Commercial (General) Liability Requirements. The following Commercial (General) Liability requirements shall apply:

(a) Minimum Limit of \$2,000,000 per occurrence for bodily injury and property damage with a \$4,000,000 annual aggregate.

(b) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.

(c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

(d) The coverage shall not exclude: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), Host Liquor Liability and where exposures exist, “Explosion Collapse and Underground” (XCU) coverage.

11.05 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

(a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A.M. Best Key Rating Guide.

(b) Minimum Combined Single Limit of \$2,000,000 per occurrence for bodily injury and property damage.

(c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.

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

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

(a) The Consultant may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.

(b) The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant’s primary and excess liability policies are exhausted.

11.07 Additional Insured. Those policies set forth in Paragraphs 11.04 Commercial (General) Liability, 11.05 Business Automobile Liability and 11.06 Excess Liability shall contain an endorsement listing the City as Additional Insured and further providing that the Consultant’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 Consultant in compliance with the terms of this Agreement. Consultant 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.

11.08 Workers' Compensation/Employer's Liability Insurance requirements. The following Workers' Compensation requirements shall apply; and whenever the term "Contractor" is used same shall be construed to refer to "Consultant" herein:

(a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, 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) The worker's compensation 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, this Contract, the bid specifications and all subcontracts on this Project must include the terms and conditions set forth below, 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") - A copy of a 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 paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract, 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 contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

11.08 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A: VII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum of \$2,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$200,000.00. Financial statements shall be furnished to the City of College Station when requested.
- (c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of three (3) years after completion of the Project or termination of this Contract, as may be amended and whichever occurs later. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.
- (d) Retroactive date must be shown on certificate.

ARTICLE XII

Use of Drawings, Specifications and Other Documents

12.01 Any and all Project drawings, specifications and other documents prepared, furnished, or both prepared and furnished by Consultant or any subconsultant or other designer contracted under Consultant pursuant to this Contract (including, without limitation, the Construction Documents) (said total documents called “Work Product”), shall be the exclusive property of the City whether the Project is completed or not. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all Work Product, records, notes, data, memoranda, models, and equipment of any nature that are within Consultant’s possession or control and that are the City’s property or relate to the City or its business regarding the Project. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant’s Work Product and other aforesaid and related documents and information pertaining to the Project.

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

12.03 Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this Article XII of the Contract. The drawings, specifications and other documents prepared by the Consultant and Consultant’s sub-consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be

furnished and permitted to retain reproducible copies and electronic versions of Consultant's drawings, specifications and other documents.

12.04 The Project documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its subconsultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect to perform the site adaptation and other architectural services involved in reuse of the prototype, that architect will be entitled to use Consultant's subconsultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect. The Consultant shall commit its sub-consultants to the terms of this subparagraph.

12.05 In the event of termination of this Contract for any reason, the City shall receive all original Project documents (as described in this Article XII) prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

12.06 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII

Termination and Liquidated Damages

13.01 The City may, through the exercise of its sole discretion and best business judgment, terminate this Contract, with or without cause, at any time upon **thirty (30)** calendar days written notice to the Consultant. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant, in the event of said termination, shall be compensated pursuant to this Agreement for the Project services satisfactorily performed prior to the termination date, provided Consultant is not in default of this Contract regarding the provision of said services.

13.02 If the Consultant commits conduct, an act, or omission which constitutes a breach or default of the Contract, the City may: (a) terminate this Contract, and if so, the Consultant will be compensated for its Contract approved Project services satisfactorily performed prior to the termination date, provided Consultant is not in default of this Contract regarding the provision of said services; and/or (b) initiate and complete litigation against the Consultant, and against all other necessary or desired Parties (including Consultant's sureties), for the City's recovery, upon the exercise of its discretion, of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Contract, including without limitation

Contract termination, the recovery of all actual and consequential damages, and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

13.03 Regarding the application of liquidated damages, upon the exercise of the City's discretion, the Parties agree as follows:

(a) The time for the completion of all work described in this Agreement is reasonable times for the completion of each task by the agreed upon days or dates, taking into consideration all conditions, including but not limited to the usual industry conditions prevailing in this locality. The amount of liquidated damages for the Consultant's failure to meet contractual deadlines specifically set forth in the Consultant's scope of services and schedule are fixed and agreed on by the Consultant 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 deducted by the City from current amounts owed to Consultant for payment or from final payment.

(b) As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Consultant to achieve timely completion of the work, if the Consultant should neglect, or fail, or refuse to complete the work within the times specified in the Consultant's scope of services and schedule, or any proper extension thereof granted by the City's Representative pursuant to this Agreement, then the Consultant does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Consultant's total compensation the sum of **Two Hundred Fifty and 00/100 DOLLARS (\$250.00)** for each and every calendar day that the Consultant shall be in default after the time(s) stipulated for completion of the task(s) in question, 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 any of the deadlines specified in the Consultant's scope of services and schedule for completion in this Agreement.

13.04 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for all damages and recoveries sustained by the City because of any breach of this Contract committed by the Consultant in performing this Contract, or because of the intentional act, omission and/or negligence or gross negligence committed by the Consultant in performing this Contract. Notwithstanding anything to the contrary stated in this Contract, the City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages or other recoveries due the City from the Consultant are determined and paid.

ARTICLE XIV Dispute Resolution

14.01 No suit shall be filed by a Party regarding a dispute arising under or related to this Contract unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Contract, however, a Party may file suit solely for injunction or mandamus relief regarding an

aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509, ((800) 733-9529 telephone).

ARTICLE XV Miscellaneous Terms

15.01 Choice of Laws and Venue. The Parties expressly agree that: (a) this Contract shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the performance and work performed under this Contract for the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue for any lawsuit or legal proceeding regarding or relating to this Contract or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United States of America, or the appropriate United States District Court designated for said county.

15.02 Notice. Written notice required under this Contract shall be deemed to have been served only if in writing and hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

CITY OF COLLEGE STATION

Attn: Casey Rhodes
P.O. Box 9960
College Station, Texas 77842

Freese and Nichols, Inc.

Attn: Richard Weatherly
11200 Broadway Street,
Office West Ste 2320
Pearland, TX 77584_

A Party may change its notice address by providing written notice to the other Party in the manner described above.

15.03 No Waiver. No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing. Notwithstanding anything to the contrary stated in this Contract, no waiver of a default of this Contract occurs if the non-defaulting Party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting Party of this Contract.

15.04 Entire Agreement. This Contract with all attached exhibits and incorporated by reference documents represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This

Contract may only be amended by written instrument approved and executed by the Parties. Copies of this fully executed Contract shall be effective as the original.

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

15.06 Invalidity. If any provision of this Contract shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15.07 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.

15.08 Governmental Immunity. Notwithstanding anything to the contrary stated in this Contract, the Parties acknowledge and agree that this Contract is subject to the proper application of, and to all protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

15.09 Compliance with Laws. The Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national governments, boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

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

15.11 Effective Date. The effective date of this Contract is the date the last signing Party executes this Contract.

15.12 Notice of Indemnification and Release. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification and release obligations and covenants.

15.13 Verification of No Boycott and Conflicts Disclosure. To the extent made applicable by controlling law, this Contract is subject to the following:

(a) No Boycott of Israel. Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (i) does not boycott Israel, and (ii) will not boycott Israel during the term of this Agreement;

(b) No Boycott of Firearms. Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the 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 Agreement against a firearm entity or firearm trade association;

(c) No Boycott of Energy Companies. Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (i) does not boycott energy companies, and (ii) will not boycott energy companies during the term of this Agreement; and

(d) Conflicts Disclosure. Before the approval of this Contract, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (i) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (ii) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

15.14 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.

15.15 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.** Scope of Services
- B.** Payment Terms
- C.** Certificates of Insurance
- D.** Construction Manager at Risk Agreement

FREESE AND NICHOLS, INC.

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

Exhibit “A”
Scope of Services

EXHIBIT A
City of College Station
Wells 10, 11, and 12
Engineering Scope of Services
April 10, 2024

Scope Narrative:

The City of College Station (CITY) desires to construct three new water supply wells and approximately 10,000 linear feet of well collection line to convey flow to the existing well collection system near Well 6 or Well 5. This agreement establishes the relationship between the CITY and Freese and Nichols (FNI) to provide engineering services for preliminary design, final design, bid, construction and startup phases of the project.

The major project components that will be included in the design, in general, include the following elements:

- Three new water supply wells, each with a permitted peak capacity of 3,300 GPM.
- Pre-fabricated electrical building to house VFDs and other electrical and control equipment, one at each well site.
- Stand-by generator with automatic transfer switch at each well site.
- Associated electrical, controls and SCADA system improvements.
- Associated yard piping and hydraulic improvements.
- Associated drainage, landscaping and paving improvements.
- Approximately 10,000 linear feet of 36" well collection piping from each well site to the existing well collection system near Well 5 or Well 6; connection location and pipe routing will be determined during the Preliminary Design Phase.
- Associated pipeline facilities, such as air release valves, manholes and isolation valves.

It is assumed that the wells and collection line will be procured using the Construction Manager at Risk (CMAR) project delivery method. Though ultimately determined by the CITY and CMAR, five bid packages are assumed for this scope of work and are anticipated to be:

- Early earth work package to construct access roads and well pads.
- Well test hole drilling.
- Electrical and pumping equipment procurement.
- Well and site construction.
- Off-site collection line construction.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services for the development of the Project:

I. Project Management

- A. Conduct a project kick-off meeting with CITY to review project scope of services, team, communication procedures, and schedule.
- B. Conduct an internal project kick-off meeting with FNI and Subconsultants to review project scope of services, roles and responsibilities, communications procedures, and schedule.

- C. Perform general administrative duties associated with the project including progress monitoring and monthly progress reporting, scheduling, general correspondence, documentation, office administration and invoicing for the scope items identified below. Documentation shall be in accordance with any regulatory requirements for the project. These duties include maintaining routine contact with the CITY to help meet the needs of the CITY in a timely manner and executing the work in accordance with the work plan, budget and schedule.
- D. Conduct bi-weekly project progress meetings with CITY, CMAR, and FNI through the design and bid phases. One meeting per month will be in-person at CITY's offices, with the remainder being held virtually.

II. Preliminary Design

A. Floodplain Evaluation

- 1. Identify and obtain available hydraulic modeling for the Little Brazos River. This may be a FEMA effective model or Base Level Engineering (BLE) model. Project site is within the 100-year floodplain but there is no floodway defined. It is assumed that a CLOMR or LOMR will not be necessary for the development of the project.
- 2. Review available hydraulic model to obtain 100-yr and 500-yr water surface elevations and coordinate with design team to inform fill elevations as well as elevations for critical infrastructure.
- 3. Modify available model to reflect pre-project and post-project conditions. Coordinate with design team on approaches to minimize impacts to flood elevations along Little Brazos River.
- 4. Prepare a technical memorandum documenting the findings from the hydraulic analysis.
- 5. Coordinate project with floodplain administrator with jurisdiction within project area to obtain no objection letter. It is assumed that a CLOMR or LOMR will not be needed.

B. Site Layout

- 1. Prepare site layouts for each well site and the overall project site. Include considerations for:
 - a) Access to each well site.
 - b) On-site routing for off-site utilities, including fiber optic communications, power, and well collection pipeline.
 - c) Typical well pad layout, including water supply well, monitoring well, utility power, electrical building, and generator.
- 2. Develop up to three alternatives for power supply:
 - a) Individual power drops at each well site.
 - b) Two power drops, one on each side of the Little Brazos.
 - c) One power drop with internal distribution to each site.
 - d) Meet on site with BTU and CITY to review power supply alternatives and routing.
 - e) Prepare one-line diagram for the selected alternative.

C. Determine CITY preferences and standards for electrical, instrumentation, controls, and communications.

D. Well Construction Parameters

- 1. Collect and review existing data on CITY's wells 5 and 6 (nearest wells).
- 2. Collect and review electric or geophysical logs for one or more oil or gas wells or test holes are located in the general vicinity of the planned well sites.

3. Provide pilot hole or test hole, test well and public supply well construction, permanent well pump and well motor equipment design parameters and estimates for each new well.
- E. Well Pollution Hazards Study and Report
 1. Perform and pollution hazard study for each planned well site that addresses the Texas Commission on Environmental Quality (TCEQ) rules and regulations for public supply wells in TCEQ Chapter 290 and the TCEQ Well Pollution Hazard Survey Checklist.
 2. Provide a written report for the pollution hazard study that is sealed by a Professional Geoscientist (PG) that is currently licensed in Texas.
- F. Collection Line Route Analysis
 1. Evaluate up to two routes for the off-site collection line. One route will generally follow the UPRR north to Sandy Point Road and connect to the existing system near Well 6. The second route will follow Bart Road to OSR and connect to the existing system near Well 5.
 - a) Prepare a map book for each route.
 - b) Prepare Opinion of Probable Construction Cost (OPCC) for each route.
 - c) Determine number of easements required for each route and provide list of affected property owners.
- G. Well Collection System Hydraulic Modeling
 1. Update the existing well field hydraulic model to incorporate the new wells and selected collection line route.
 2. Confirm size of proposed collection line.
 3. Model up to six different operational scenarios of the well collection system.
- H. Preliminary Design Report
 1. Prepare a Preliminary Design Report (PDR) summarizing the preliminary design tasks and design recommendations.
 - a) Prepare an updated OPCC for the full project.
 - b) Prepare an updated project schedule.
 - c) Include exhibits of recommended layouts.
 - d) Include final map book of selected collection line alignment.
 2. Submit a draft PDR for review by CITY.
 3. Hold an in-person review workshop to receive comments on the PDR.
 4. Revise and submit Final PDR.

III. Final Design

- A. Milestone Submittals
 1. FNI will prepare interim submittals for review by the CITY and CMAR at 50%, 90%, and Final levels of development. Submittals will include:
 - a) Construction drawings (PDF format).
 - b) Technical Specifications.
 - c) Contract Documents (90% and Final submittals only).
 - d) Updated project schedule.
 - e) Review of CMAR-Provided Cost Estimate
 2. Conduct one in-person review meeting with the CITY and CMAR for both the 50% and 90% submittals to receive comments on the design.
- B. Prepare drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed for each milestone submittal, CMAR bid packages, and for the

final construction contract documents. If a configuration other than what is outlined in the Scope Narrative is chosen, then any additional engineering effort required to incorporate the alternative would be an Additional Service.

- C. Prepare plans, details, schedules, and specifications for electrical, instrumentation, and controls improvements at each site. Gear at each site will include one medium voltage VFD and one medium voltage switchgear housed in a prefabricated electrical building. Power distribution will include one 480V panelboard for HVAC and one 120V panelboard for miscellaneous loads. SCADA design will include an RTU at each site located inside of the electrical building and connected to the CITY's network via fiber optic cable.
- D. Prepare plans, profiles, details, and specifications for the wells, well discharge piping and valves, and collection piping on site.
- E. Prepare plans, details, and specifications for necessary site improvements, including access roads from both Sims Lane Cutoff and Bart Road, earthwork, and drainage design.
- F. Prepare plans, profiles, details, and specifications for the off-site collection line.
- G. Furnish CITY, when requested, the engineering data necessary for applications for routine permits required by local, state and federal authorities. Preparation of applications and supporting documents for government grants, TWDB or other funding, or for planning advances is an Additional Service.
- H. Submit drawings, specifications, design documentation and Construction Contract Documents to the applicable regulatory agencies for regulatory approval, where required. Because no occupied buildings are anticipated for this project, no coordination with Texas Department of Licensing and Regulation for required ADA compliance rule reviews and associated approvals is included in this scope of work.
- I. This project assumes the use of the CITY's standard construction documents including the General Conditions, specifications, details, and design guidelines. FNI will use its technical standards for drawings and technical specifications. FNI will coordinate with the CITY for any changes to match required specification standards in the Supplemental Conditions and Front-End Documents. FNI will review the CITY's CMAR contract and provide recommendations for modifications based on FNI's experience with other CMAR contracts.
- J. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.
- K. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
- L. Furnish CITY one electronic PDF copy of final drawings, specifications, and bid proposals for each bid package.

IV. Bid Phase Services

Bid phase services assume the project is constructed based on an award through a CMAR using the Competitive Sealed Proposal process. Five bid packages are assumed for this project. Upon completion of the design services and approval of "Final" drawings and specifications by CITY, FNI will proceed with the performance of services in this phase as follows:

- A. Assist CITY and CMAR by responding to questions and interpreting proposal documents. Prepare and issue addenda to the proposal documents to plan holders, if necessary, following the CITY's standard bid process.

- B. Assist CITY and CMAR in securing Competitive Sealed Proposals. In coordination with the CITY, assist the CITY and CMAR in development of CSP selection criteria, assist in development of bidding documents for CSP using the CITY's standard construction contract documents format, assist the City with evaluating bids/proposals for compliance (no interviews are assumed as a part of this scope), and assist with the CSP award process.
- C. Attend one (1) pre-proposal conference for each bid package and coordinate responses with CITY. Response to the pre-proposal conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
- D. The CMAR will receive and open, and evaluate Competitive Sealed Proposals based on the published bid/proposer evaluation criteria at the appointed time. Assist the CITY with final negotiation with the selected Contractor.
- E. Assist CMAR in conforming Construction Contract Documents for execution. "As-Bid" plans and specifications shall incorporate any changes from addendum into the final electronic documents and the documents shall be reprinted with the appropriate changes notated and clouded per FNI record drawing standards.
- F. Provide CITY and CMAR with electronic (PDF) copies of conformed working contract documents. Hard copy sets of documents can be provided as an Additional Service.

Deliverables:

- 1. Addenda as necessary
- 2. Conformed Construction Contract Documents

V. Construction Phase General Representation:

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect CITY in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

- A. Assist CITY in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
- B. Establish communication procedures with the CITY and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.

- C. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process.
- D. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- E. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
- F. Make up to 36 monthly visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the CITY against defects and deficiencies in the work of Contractors and will report any observed deficiencies to CITY. Visits to the site in excess of the specified number are an Additional Service.
- G. Make up to twelve (12) additional visits to the site, non-concurrent with the monthly site visits and meetings, to provide additional specialty observation or inspection as may be required for the project.
- H. Notify the CITY of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
- I. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by CITY and is not included in the services to be performed by FNI.
- J. Interpret the drawings and specifications for CITY and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by CITY, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- K. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf

- of the CITY to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the CITY. Documentation of field orders, where cost to CITY is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the CITY are an additional service. Substitutions of materials or equipment or design modifications requested by the CITY are an additional service.
- L. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the CITY on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the CITY if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
 - M. Conduct, in company with CITY's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two (2) trips are an Additional Service.
 - N. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish CITY one (1) full-size set of "Record Drawings" each for the on-site work and off-site collection line shall be provided by FNI to the CITY. All digital record drawings in PDF format and model files will be provided to the CITY via electronic submission.

Deliverables:

- 1. Record Drawings

ARTICLE II

SPECIAL SERVICES: Special Services to be performed by FNI, if authorized by CITY, which are not included in the above described Basic Services, are described as follows:

I. CMAR Coordination

- A. Assist the CITY with selection of a CMAR.
 - 1. Review procurement documents prepared by CITY and provide comments.

2. Review and score proposals submitted.
3. Participate in up to three shortlist interviews. Interviews will be held at CITY's offices.
4. Participate in a selection workshop with CITY to select a CMAR.

B.

II. Topographic Survey (Baseline | DCCM)

- A. BL will perform a detailed topographic survey of the three well pad sites and connecting access corridors, as well as the chosen offsite utility route(s) and alternate access route if needed. The well pad sites are approximately 400 feet square and the connecting strips are approximately 100 feet wide. If the utility route within OSR is selected, up to the full width of the right-of-way will be surveyed where requested. If the utility route along the railroad is selected, the topo strip surveyed will be approximately 100 feet in width.
- B. The topo survey will include: sufficient surface elevation points and breaklines to create an accurate digital terrain model (DTM) with contours. Manholes, headwalls, fences, roads, concrete slabs, buildings, culverts, utility poles, guys, valves, hydrants, meters, and similar features pertinent to the project. Rim and flowline elevations of sanitary sewers and storm inlets will be determined. Buried utility line marks by others (SUE) and pertinent trees (>24" trunk dia.) will also be located, if requested.
- C. Record deed lines, rights-of-way, known existing easement lines and ownership information will be researched and included in the topographic drawings at mapping accuracy (~6") for the topographic deliverables.
- D. BL will establish accurate 3d survey control points and benchmarks. Horizontal and vertical datums will be based on City of Bryan and/or Brazos County GPS control monuments and published datums (NAD83 & NAVD88).
- E. LiDAR scanning by UAV will be performed and its data will be processed where needed to supplement the ground survey work, especially in the offsite utility and access routes.

III. Easement Surveys (Baseline | DCCM)

- A. Prepare easement surveys as requested. Up to 30.

IV. Field Staking (Baseline | DCCM)

- A. BL will set stakes for well locations, soil test bores and SUE potholes as requested during the course of the Topo and Easement survey work. Construction staking after design is not included in this scope of work.

V. Subsurface Utility Engineering (SUE) (BBI | DCCM):

- A. Quality Level D (QL-D) is to research and draw all known public and private utilities onto a topographical or planimetric drawing.
 1. Utility identification within the Project Area
 - a) Research through the One-Call System, the Railroad Commission, the City and County to identify all the utility providers.
 2. Utility Contact List
 - a) Identification of the proper contact for each utility provider.
 - b) Creation of a list containing the name and contact information for each provider.
 3. Utility Record Acquisition
 - a) Requesting records and persisting in the request until they arrive.

- b) Review of gathered information to determine proper utility location or if additional records are required.
- 4. Development of the Composite Utility Map
 - a) Draw the record information on a separate layer of the topographical or planimetric drawing using a unique line style for each utility in the color pursuant to the utility identification color as prescribed by APWA. When possible, indicate the line size.
- 5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including , but not limited to, giving notification to utility owners or “One-Call Notifications Centers” before excavation.
- B. Quality Level B (QL-B) is to indicate by marking with paint, the presence and approximate horizontal location of subsurface utilities by use of geophysical prospecting techniques including, without limitations, electromagnetic, sonic, and acoustical techniques. BBI will provide the following designating services to aid the Client in the location of existing utilities:
 - 1. Provide all equipment, personnel and supplies required for performing designating services. BBI shall determine which equipment, personnel and supplies are required to perform designating services.
 - 2. Designate the approximate horizontal location of existing utilities within the project limits as described above, by use of Electromagnetic Equipment.
 - 3. Mark the utility locations on the ground pursuant to the utility identification color as prescribed by APWA, survey utility marks and map collected data.
 - 4. Markings on the ground are to be used for design and verification purposes and not for construction excavation purposes.
 - 5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including, but not limited to, giving notification to utility owners or “One-Call Notification Centers” before excavation.
 - 6. The accuracy of subsurface data can be influenced by factors beyond our control, such as conductivity of materials and their surroundings, soil moisture content, proximity of other underground utilities or structures, depth of utility, etc.
 - 7. Therefore, only the accuracy of data obtained by actual physical verification (through vacuum or hydro excavation or otherwise) can meet applicable engineering and/or surveying standards.
- C. Quality Level A (QL-A) Test Hole Services are the location and accurate horizontal and vertical position of subsurface utilities by excavating a test hole using vacuum excavation techniques and equipment that is non-destructive to utilities. In performing locating (test hole) services, BBI will:
 - 1. Provide all equipment, personnel and supplies required to perform locating services. BBI shall determine which equipment, personnel and supplies are required to perform such services.
 - 2. Conduct appropriate investigation of site conditions and utilize the Plan Sheets provided by the Client to establish conditions and understand the utility locations.
 - 3. Excavate test holes at Client selected locations to expose the utility to be measured in such a manner that doesn’t compromise the safety of the excavation and the integrity of the utility to be measured. In performing such excavations, BBI shall comply with applicable utility damage prevention laws.

4. Excavations will be performed using specially developed vacuum excavation equipment that is non-destructive to existing facilities. If contaminated soils are discovered during the excavation process, BBI will so notify the Client.
5. Investigate, evaluate, measure and record:
 - a) Actual depth to top of utility referenced to a survey marker installed directly above the centerline of the exposed utility structure and
 - b) Outside diameter of utility and configuration of non-encased, multi-conduit systems.
6. Furnish and install survey markers directly above the centerline of utility structure.
7. Backfill around the exposed facility using pea gravel in the roadways.
8. Evaluate and compare field information with utility information described in utility records and resolve conflicts.

VI. Geotechnical Investigation and Engineering (Terracon, FNI)

- A. Field Exploration
 1. Perform up to 60 borings with a total boring depth of 2,040 feet.
 2. Clear paths for drilling rig, up to three days.
- B. Provide traffic control for boring activities in road rights-of-way, up to four days.
- C. Perform standard laboratory testing of soil samples, including soil classification, compressive strength, triaxial testing, consolidation, and up to three corrosivity tests. Final testing schedule will be determined at completion of field work.
- D. Prepare two geotechnical engineering reports – for onsite work (FNI) and offsite utility lines (Terracon).

VII. Construction Materials Testing (Terracon)

- A. Field Services
 1. Earthwork observation and testing.
 2. Reinforcing steel observation and testing.
 3. Cast-in-place concrete observation and testing.
 4. An allowance of \$100,000 is assumed for this effort. Materials Testing beyond this allowance will be an Additional Service.

VIII. Test Hole and Test Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to three (3) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole.
- E. Provide written information and recommendations regarding the collection of one or more water samples from the test hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water

sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.

- F. Prepare a memorandum report for the test hole and test well that provides: a summary of the water well contractor's test hole drilling and logging and temporary test well construction, testing and sampling operations and water quality analyses with the related records and logs in one or more appendices; an assessment of the prospects for the drilling and completion of a new water supply well at or near the test hole site; and evaluation of whether there are any changes or revisions needed in the public supply well design or specifications.

IX. Public Supply Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to eight (8) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services during a few critical water well drilling, construction, development and/or testing operations. The preliminary list of possible critical well drilling, construction and testing phases for field observation or inspection are: pilot hole geophysical logging; well casing installation or the casing pressure cementing operation; well screen(s) prior to or during field installation; well pumping test(s); and/or substantial or final well inspection with the City well pumping equipment installed and operational.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole for the production well.
- E. If a test hole is not drilled and completed previously as a separate project phase at the same site or a nearby site as planned City Wells 10, 11 and 12, then provide written information and recommendations regarding the collection of one or more water samples from the pilot hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.
- F. Review the water well contractor's well construction or completion recommendations and provide a written evaluation regarding the proposed well construction design, material diameters and depth settings, the gravel pack gradation and the screen slot size. If requested or needed, participate in a conference call(s) or meeting(s) regarding the pilot hole data and logs, any water sample field data or laboratory analyses and the water well contractor's proposed well construction recommendations.
- G. Review the submittals for the well drilling and construction materials and operations. Review and evaluate the well development and pumping test field data, the proposed pumping rate, total dynamic head and depth setting for the permanent well pump and well motor horsepower and the well pumping equipment submittals. Also review the laboratory analyses for the water samples collected from the water well during the 36-hour pumping test and provide written review information to the CITY.

X. Water Well Laboratory Testing (AGS)

- A. If any laboratory analysis of a water or gas sample collected by AGS from a test hole, pilot hole or water well is requested or approved by the CITY, then AGS will be reimbursed for any water or gas samples collected that AGS is sent an invoice by the lab that performs the analysis.
- B. An allowance of \$6,600 is assumed for this effort.

XI. Environmental Services (FNI)

- A. FNI will complete a desktop evaluation of the proposed project utilizing readily available existing information. The types of information that will be gathered will include U.S. Geological Survey (USGS) 7.5-minute topographic maps, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, Natural Resources Conservation Service (NRCS) soils maps, as well as recent and historical aerial photographs of the site. FNI understands that no real estate transactions or ROW acquisition is anticipated to warrant the need of a Phase I Environmental Site Assessment (ESA).
- B. FNI environmental scientists will conduct a pedestrian survey of the proposed well sites and along the proposed collection line alignment, to make observations of existing environmental conditions. Potential waters of the U.S., if present, will be identified and delineated. FNI environmental scientists will also analyze the vegetation cover types and habitat conditions along the alignment regarding the potential for threatened and endangered species to occur within the proposed project area. Note this effort would not include any presence/absence surveys for threatened and endangered species.
- C. Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Based on a preliminary review of the proposed project area the project exceeds one or both of these thresholds, thus, coordination with THC is required. FNI will develop a desktop cultural resources evaluation to submit an informed letter describing the proposed project to the THC via their eTRAC online system. The THC will review the project description and respond within 30 days regarding whether a cultural resources survey is required or not. If a cultural resources survey is required, FNI would be able to assist with retaining a qualified subconsultant to perform these services through an amendment.
- D. Information gathered during the desktop evaluation and pedestrian survey will be used to prepare a draft technical memorandum. The memorandum will include discussions of methodologies used, the hydrologic characterization and locations of potential waters of the U.S., if present, and an opinion on their jurisdictional status. The memorandum will also describe any threatened and endangered species habitat and if potential effects to these species exist. During development of the memorandum, FNI will analyze the information gathered with the proposed project impacts to determine if the project could be constructed utilizing a U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) without requiring the preparation and submittal of a Pre-Construction Notification (PCN) to the USACE. The draft technical memorandum will be submitted to the CITY for review and comment. After incorporating the CITY's comments into the document, FNI will submit a final technical memorandum to the CITY. If submittal of a PCN is required, then FNI will prepare and submit one to the USACE. If it is determined that preparation and submittal of an Individual Permit is required, FNI would be able to assist with these services through an amendment.

XII. Resident Project Representative

The Engineer will have a Resident Project Representative on the Site. In performing these services, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

A. The duties, responsibilities, and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:

1. Resident Project Representative is Engineer's agent at the site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with Engineer and Contractor, keeping CITY advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with CITY with the knowledge of and under the direction of Engineer.
2. These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the CITY agrees to include provisions in the General Conditions that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the CITY is named as an indemnified party.

B. Duties and Responsibilities of Resident Project Representative:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by Contractor and consult with Engineer concerning acceptability.
2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist Engineer in serving as CITY's liaison with Contractor when Contractor's operations affect CITY's on-site operations.

- b. Assist in obtaining from CITY additional details or information, when required for proper execution of the Work.
- 4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and Samples.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.
- 5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the Contractor maintains adequate records thereof; and observe record and report to Engineer appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.
- 6. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 7. Request for Revisions: Consider and evaluate Contractor's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written

Amendments, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to Contractor and other Project related documents.

9. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
- b. Consult with Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Written Amendments, Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to Engineer Written Amendments, Change Orders, Work Change Directives, and Field Orders.
- d. Report immediately to Engineer and CITY the occurrence of any accident.

10. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to CITY, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment at the Site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Engineer for review and forwarding to CITY prior to final payment for the Work.

12. Completion:

- a. Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Conduct a final inspection in the company of Engineer, CITY and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance.

C. Limitations of Authority of Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Engineer.
2. Shall not exceed limitations of Engineer's authority as set forth in Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractor, Suppliers, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of CITY or Contractor.
6. Shall not accept shop drawing or sample submittals from anyone other than the Contractor.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by Engineer.

D. Schedule:

1. FNI assumed a per week average for the duration of the project. It is understood that certain weeks during the course of the project will require less effort (i.e. mobilization, weather impacts, demobilization) and some weeks will require more effort (i.e. early concrete pours, tie-ins, etc.). FNI will work to manage the peaks and valleys in effort onsite to cover "inspectable work" and conserve budget for the higher effort periods. FNI will communicate to the Owner monthly on effort expended, effort remaining, projected burn rates, and highlight any concerns.

E. Fee:

1. FNI proposes to perform the Inspection services as described in the fee summary attachment. This amount includes labor costs for one full time inspector at 50 hours per week for 30 months, one full time inspector at 50 hours per week for 185 months for pipe laying activities, 2 additional site visits per month and 1 day per week of virtual support from a CM/senior inspector for 30 months, as well as expenses such as mileage, per diem, and vehicle allowance. Inspector will come equipped with laptop, WIFI hotspot and a cell phone. Rate also includes minor equipment needed for the inspection of the project such as levels, tape measures, PPE, coatings thickness gauges and other similar items. Major equipment purchases requested by the CITY for the project will need to be negotiated. It does not include the provision of project site office space and related furnishings or office equipment.

ARTICLE III

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

EXHIBIT A
City of College Station
Wells 10, 11, and 12
Engineering Scope of Services
April 10, 2024

Scope Narrative:

The City of College Station (CITY) desires to construct three new water supply wells and approximately 10,000 linear feet of well collection line to convey flow to the existing well collection system near Well 6 or Well 5. This agreement establishes the relationship between the CITY and Freese and Nichols (FNI) to provide engineering services for preliminary design, final design, bid, construction and startup phases of the project.

The major project components that will be included in the design, in general, include the following elements:

- Three new water supply wells, each with a permitted peak capacity of 3,300 GPM.
- Pre-fabricated electrical building to house VFDs and other electrical and control equipment, one at each well site.
- Stand-by generator with automatic transfer switch at each well site.
- Associated electrical, controls and SCADA system improvements.
- Associated yard piping and hydraulic improvements.
- Associated drainage, landscaping and paving improvements.
- Approximately 10,000 linear feet of 36" well collection piping from each well site to the existing well collection system near Well 5 or Well 6; connection location and pipe routing will be determined during the Preliminary Design Phase.
- Associated pipeline facilities, such as air release valves, manholes and isolation valves.

It is assumed that the wells and collection line will be procured using the Construction Manager at Risk (CMAR) project delivery method. Though ultimately determined by the CITY and CMAR, five bid packages are assumed for this scope of work and are anticipated to be:

- Early earth work package to construct access roads and well pads.
- Well test hole drilling.
- Electrical and pumping equipment procurement.
- Well and site construction.
- Off-site collection line construction.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services for the development of the Project:

I. Project Management

- A. Conduct a project kick-off meeting with CITY to review project scope of services, team, communication procedures, and schedule.
- B. Conduct an internal project kick-off meeting with FNI and Subconsultants to review project scope of services, roles and responsibilities, communications procedures, and schedule.

- C. Perform general administrative duties associated with the project including progress monitoring and monthly progress reporting, scheduling, general correspondence, documentation, office administration and invoicing for the scope items identified below. Documentation shall be in accordance with any regulatory requirements for the project. These duties include maintaining routine contact with the CITY to help meet the needs of the CITY in a timely manner and executing the work in accordance with the work plan, budget and schedule.
- D. Conduct bi-weekly project progress meetings with CITY, CMAR, and FNI through the design and bid phases. One meeting per month will be in-person at CITY's offices, with the remainder being held virtually.

II. Preliminary Design

A. Floodplain Evaluation

- 1. Identify and obtain available hydraulic modeling for the Little Brazos River. This may be a FEMA effective model or Base Level Engineering (BLE) model. Project site is within the 100-year floodplain but there is no floodway defined. It is assumed that a CLOMR or LOMR will not be necessary for the development of the project.
- 2. Review available hydraulic model to obtain 100-yr and 500-yr water surface elevations and coordinate with design team to inform fill elevations as well as elevations for critical infrastructure.
- 3. Modify available model to reflect pre-project and post-project conditions. Coordinate with design team on approaches to minimize impacts to flood elevations along Little Brazos River.
- 4. Prepare a technical memorandum documenting the findings from the hydraulic analysis.
- 5. Coordinate project with floodplain administrator with jurisdiction within project area to obtain no objection letter. It is assumed that a CLOMR or LOMR will not be needed.

B. Site Layout

- 1. Prepare site layouts for each well site and the overall project site. Include considerations for:
 - a) Access to each well site.
 - b) On-site routing for off-site utilities, including fiber optic communications, power, and well collection pipeline.
 - c) Typical well pad layout, including water supply well, monitoring well, utility power, electrical building, and generator.
- 2. Develop up to three alternatives for power supply:
 - a) Individual power drops at each well site.
 - b) Two power drops, one on each side of the Little Brazos.
 - c) One power drop with internal distribution to each site.
 - d) Meet on site with BTU and CITY to review power supply alternatives and routing.
 - e) Prepare one-line diagram for the selected alternative.

C. Determine CITY preferences and standards for electrical, instrumentation, controls, and communications.

D. Well Construction Parameters

- 1. Collect and review existing data on CITY's wells 5 and 6 (nearest wells).
- 2. Collect and review electric or geophysical logs for one or more oil or gas wells or test holes are located in the general vicinity of the planned well sites.

3. Provide pilot hole or test hole, test well and public supply well construction, permanent well pump and well motor equipment design parameters and estimates for each new well.
- E. Well Pollution Hazards Study and Report
 1. Perform and pollution hazard study for each planned well site that addresses the Texas Commission on Environmental Quality (TCEQ) rules and regulations for public supply wells in TCEQ Chapter 290 and the TCEQ Well Pollution Hazard Survey Checklist.
 2. Provide a written report for the pollution hazard study that is sealed by a Professional Geoscientist (PG) that is currently licensed in Texas.
- F. Collection Line Route Analysis
 1. Evaluate up to two routes for the off-site collection line. One route will generally follow the UPRR north to Sandy Point Road and connect to the existing system near Well 6. The second route will follow Bart Road to OSR and connect to the existing system near Well 5.
 - a) Prepare a map book for each route.
 - b) Prepare Opinion of Probable Construction Cost (OPCC) for each route.
 - c) Determine number of easements required for each route and provide list of affected property owners.
- G. Well Collection System Hydraulic Modeling
 1. Update the existing well field hydraulic model to incorporate the new wells and selected collection line route.
 2. Confirm size of proposed collection line.
 3. Model up to six different operational scenarios of the well collection system.
- H. Preliminary Design Report
 1. Prepare a Preliminary Design Report (PDR) summarizing the preliminary design tasks and design recommendations.
 - a) Prepare an updated OPCC for the full project.
 - b) Prepare an updated project schedule.
 - c) Include exhibits of recommended layouts.
 - d) Include final map book of selected collection line alignment.
 2. Submit a draft PDR for review by CITY.
 3. Hold an in-person review workshop to receive comments on the PDR.
 4. Revise and submit Final PDR.

III. Final Design

- A. Milestone Submittals
 1. FNI will prepare interim submittals for review by the CITY and CMAR at 50%, 90%, and Final levels of development. Submittals will include:
 - a) Construction drawings (PDF format).
 - b) Technical Specifications.
 - c) Contract Documents (90% and Final submittals only).
 - d) Updated project schedule.
 - e) Review of CMAR-Provided Cost Estimate
 2. Conduct one in-person review meeting with the CITY and CMAR for both the 50% and 90% submittals to receive comments on the design.
- B. Prepare drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed for each milestone submittal, CMAR bid packages, and for the

final construction contract documents. If a configuration other than what is outlined in the Scope Narrative is chosen, then any additional engineering effort required to incorporate the alternative would be an Additional Service.

- C. Prepare plans, details, schedules, and specifications for electrical, instrumentation, and controls improvements at each site. Gear at each site will include one medium voltage VFD and one medium voltage switchgear housed in a prefabricated electrical building. Power distribution will include one 480V panelboard for HVAC and one 120V panelboard for miscellaneous loads. SCADA design will include an RTU at each site located inside of the electrical building and connected to the CITY's network via fiber optic cable.
- D. Prepare plans, profiles, details, and specifications for the wells, well discharge piping and valves, and collection piping on site.
- E. Prepare plans, details, and specifications for necessary site improvements, including access roads from both Sims Lane Cutoff and Bart Road, earthwork, and drainage design.
- F. Prepare plans, profiles, details, and specifications for the off-site collection line.
- G. Furnish CITY, when requested, the engineering data necessary for applications for routine permits required by local, state and federal authorities. Preparation of applications and supporting documents for government grants, TWDB or other funding, or for planning advances is an Additional Service.
- H. Submit drawings, specifications, design documentation and Construction Contract Documents to the applicable regulatory agencies for regulatory approval, where required. Because no occupied buildings are anticipated for this project, no coordination with Texas Department of Licensing and Regulation for required ADA compliance rule reviews and associated approvals is included in this scope of work.
- I. This project assumes the use of the CITY's standard construction documents including the General Conditions, specifications, details, and design guidelines. FNI will use its technical standards for drawings and technical specifications. FNI will coordinate with the CITY for any changes to match required specification standards in the Supplemental Conditions and Front-End Documents. FNI will review the CITY's CMAR contract and provide recommendations for modifications based on FNI's experience with other CMAR contracts.
- J. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.
- K. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
- L. Furnish CITY one electronic PDF copy of final drawings, specifications, and bid proposals for each bid package.

IV. Bid Phase Services

Bid phase services assume the project is constructed based on an award through a CMAR using the Competitive Sealed Proposal process. Five bid packages are assumed for this project. Upon completion of the design services and approval of "Final" drawings and specifications by CITY, FNI will proceed with the performance of services in this phase as follows:

- A. Assist CITY and CMAR by responding to questions and interpreting proposal documents. Prepare and issue addenda to the proposal documents to plan holders, if necessary, following the CITY's standard bid process.

- B. Assist CITY and CMAR in securing Competitive Sealed Proposals. In coordination with the CITY, assist the CITY and CMAR in development of CSP selection criteria, assist in development of bidding documents for CSP using the CITY's standard construction contract documents format, assist the City with evaluating bids/proposals for compliance (no interviews are assumed as a part of this scope), and assist with the CSP award process.
- C. Attend one (1) pre-proposal conference for each bid package and coordinate responses with CITY. Response to the pre-proposal conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
- D. The CMAR will receive and open, and evaluate Competitive Sealed Proposals based on the published bid/proposer evaluation criteria at the appointed time. Assist the CITY with final negotiation with the selected Contractor.
- E. Assist CMAR in conforming Construction Contract Documents for execution. "As-Bid" plans and specifications shall incorporate any changes from addendum into the final electronic documents and the documents shall be reprinted with the appropriate changes notated and clouded per FNI record drawing standards.
- F. Provide CITY and CMAR with electronic (PDF) copies of conformed working contract documents. Hard copy sets of documents can be provided as an Additional Service.

Deliverables:

- 1. Addenda as necessary
- 2. Conformed Construction Contract Documents

V. Construction Phase General Representation:

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect CITY in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

- A. Assist CITY in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
- B. Establish communication procedures with the CITY and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.

- C. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process.
- D. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- E. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
- F. Make up to 36 monthly visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the CITY against defects and deficiencies in the work of Contractors and will report any observed deficiencies to CITY. Visits to the site in excess of the specified number are an Additional Service.
- G. Make up to twelve (12) additional visits to the site, non-concurrent with the monthly site visits and meetings, to provide additional specialty observation or inspection as may be required for the project.
- H. Notify the CITY of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
- I. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by CITY and is not included in the services to be performed by FNI.
- J. Interpret the drawings and specifications for CITY and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by CITY, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- K. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf

of the CITY to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the CITY. Documentation of field orders, where cost to CITY is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the CITY are an additional service. Substitutions of materials or equipment or design modifications requested by the CITY are an additional service.

- L. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the CITY on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the CITY if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
- M. Conduct, in company with CITY's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two (2) trips are an Additional Service.
- N. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish CITY one (1) full-size set of "Record Drawings" each for the on-site work and off-site collection line shall be provided by FNI to the CITY. All digital record drawings in PDF format and model files will be provided to the CITY via electronic submission.

Deliverables:

- 1. Record Drawings

ARTICLE II

SPECIAL SERVICES: Special Services to be performed by FNI, if authorized by CITY, which are not included in the above described Basic Services, are described as follows:

I. CMAR Coordination

- A. Assist the CITY with selection of a CMAR.
 - 1. Review procurement documents prepared by CITY and provide comments.

2. Review and score proposals submitted.
3. Participate in up to three shortlist interviews. Interviews will be held at CITY's offices.
4. Participate in a selection workshop with CITY to select a CMAR.

B.

II. Topographic Survey (Baseline | DCCM)

- A. BL will perform a detailed topographic survey of the three well pad sites and connecting access corridors, as well as the chosen offsite utility route(s) and alternate access route if needed. The well pad sites are approximately 400 feet square and the connecting strips are approximately 100 feet wide. If the utility route within OSR is selected, up to the full width of the right-of-way will be surveyed where requested. If the utility route along the railroad is selected, the topo strip surveyed will be approximately 100 feet in width.
- B. The topo survey will include: sufficient surface elevation points and breaklines to create an accurate digital terrain model (DTM) with contours. Manholes, headwalls, fences, roads, concrete slabs, buildings, culverts, utility poles, guys, valves, hydrants, meters, and similar features pertinent to the project. Rim and flowline elevations of sanitary sewers and storm inlets will be determined. Buried utility line marks by others (SUE) and pertinent trees (>24" trunk dia.) will also be located, if requested.
- C. Record deed lines, rights-of-way, known existing easement lines and ownership information will be researched and included in the topographic drawings at mapping accuracy (~6") for the topographic deliverables.
- D. BL will establish accurate 3d survey control points and benchmarks. Horizontal and vertical datums will be based on City of Bryan and/or Brazos County GPS control monuments and published datums (NAD83 & NAVD88).
- E. LiDAR scanning by UAV will be performed and its data will be processed where needed to supplement the ground survey work, especially in the offsite utility and access routes.

III. Easement Surveys (Baseline | DCCM)

- A. Prepare easement surveys as requested. Up to 30.

IV. Field Staking (Baseline | DCCM)

- A. BL will set stakes for well locations, soil test bores and SUE potholes as requested during the course of the Topo and Easement survey work. Construction staking after design is not included in this scope of work.

V. Subsurface Utility Engineering (SUE) (BBI | DCCM):

- A. Quality Level D (QL-D) is to research and draw all known public and private utilities onto a topographical or planimetric drawing.
 1. Utility identification within the Project Area
 - a) Research through the One-Call System, the Railroad Commission, the City and County to identify all the utility providers.
 2. Utility Contact List
 - a) Identification of the proper contact for each utility provider.
 - b) Creation of a list containing the name and contact information for each provider.
 3. Utility Record Acquisition
 - a) Requesting records and persisting in the request until they arrive.

- b) Review of gathered information to determine proper utility location or if additional records are required.
 4. Development of the Composite Utility Map
 - a) Draw the record information on a separate layer of the topographical or planimetric drawing using a unique line style for each utility in the color pursuant to the utility identification color as prescribed by APWA. When possible, indicate the line size.
 5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including , but not limited to, giving notification to utility owners or “One-Call Notifications Centers” before excavation.
- B. Quality Level B (QL-B) is to indicate by marking with paint, the presence and approximate horizontal location of subsurface utilities by use of geophysical prospecting techniques including, without limitations, electromagnetic, sonic, and acoustical techniques. BBI will provide the following designating services to aid the Client in the location of existing utilities:
 1. Provide all equipment, personnel and supplies required for performing designating services. BBI shall determine which equipment, personnel and supplies are required to perform designating services.
 2. Designate the approximate horizontal location of existing utilities within the project limits as described above, by use of Electromagnetic Equipment.
 3. Mark the utility locations on the ground pursuant to the utility identification color as prescribed by APWA, survey utility marks and map collected data.
 4. Markings on the ground are to be used for design and verification purposes and not for construction excavation purposes.
 5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including, but not limited to, giving notification to utility owners or “One-Call Notification Centers” before excavation.
 6. The accuracy of subsurface data can be influenced by factors beyond our control, such as conductivity of materials and their surroundings, soil moisture content, proximity of other underground utilities or structures, depth of utility, etc.
 7. Therefore, only the accuracy of data obtained by actual physical verification (through vacuum or hydro excavation or otherwise) can meet applicable engineering and/or surveying standards.
- C. Quality Level A (QL-A) Test Hole Services are the location and accurate horizontal and vertical position of subsurface utilities by excavating a test hole using vacuum excavation techniques and equipment that is non-destructive to utilities. In performing locating (test hole) services, BBI will:
 1. Provide all equipment, personnel and supplies required to perform locating services. BBI shall determine which equipment, personnel and supplies are required to perform such services.
 2. Conduct appropriate investigation of site conditions and utilize the Plan Sheets provided by the Client to establish conditions and understand the utility locations.
 3. Excavate test holes at Client selected locations to expose the utility to be measured in such a manner that doesn’t compromise the safety of the excavation and the integrity of the utility to be measured. In performing such excavations, BBI shall comply with applicable utility damage prevention laws.

4. Excavations will be performed using specially developed vacuum excavation equipment that is non-destructive to existing facilities. If contaminated soils are discovered during the excavation process, BBI will so notify the Client.
5. Investigate, evaluate, measure and record:
 - a) Actual depth to top of utility referenced to a survey marker installed directly above the centerline of the exposed utility structure and
 - b) Outside diameter of utility and configuration of non-encased, multi-conduit systems.
6. Furnish and install survey markers directly above the centerline of utility structure.
7. Backfill around the exposed facility using pea gravel in the roadways.
8. Evaluate and compare field information with utility information described in utility records and resolve conflicts.

VI. Geotechnical Investigation and Engineering (Terracon, FNI)

- A. Field Exploration
 1. Perform up to 60 borings with a total boring depth of 2,040 feet.
 2. Clear paths for drilling rig, up to three days.
- B. Provide traffic control for boring activities in road rights-of-way, up to four days.
- C. Perform standard laboratory testing of soil samples, including soil classification, compressive strength, triaxial testing, consolidation, and up to three corrosivity tests. Final testing schedule will be determined at completion of field work.
- D. Prepare two geotechnical engineering reports – for onsite work (FNI) and offsite utility lines (Terracon).

VII. Construction Materials Testing (Terracon)

- A. Field Services
 1. Earthwork observation and testing.
 2. Reinforcing steel observation and testing.
 3. Cast-in-place concrete observation and testing.
 4. An allowance of \$100,000 is assumed for this effort. Materials Testing beyond this allowance will be an Additional Service.

VIII. Test Hole and Test Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to three (3) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole.
- E. Provide written information and recommendations regarding the collection of one or more water samples from the test hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water

sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.

- F. Prepare a memorandum report for the test hole and test well that provides: a summary of the water well contractor's test hole drilling and logging and temporary test well construction, testing and sampling operations and water quality analyses with the related records and logs in one or more appendices; an assessment of the prospects for the drilling and completion of a new water supply well at or near the test hole site; and evaluation of whether there are any changes or revisions needed in the public supply well design or specifications.

IX. Public Supply Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to eight (8) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services during a few critical water well drilling, construction, development and/or testing operations. The preliminary list of possible critical well drilling, construction and testing phases for field observation or inspection are: pilot hole geophysical logging; well casing installation or the casing pressure cementing operation; well screen(s) prior to or during field installation; well pumping test(s); and/or substantial or final well inspection with the City well pumping equipment installed and operational.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole for the production well.
- E. If a test hole is not drilled and completed previously as a separate project phase at the same site or a nearby site as planned City Wells 10, 11 and 12, then provide written information and recommendations regarding the collection of one or more water samples from the pilot hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.
- F. Review the water well contractor's well construction or completion recommendations and provide a written evaluation regarding the proposed well construction design, material diameters and depth settings, the gravel pack gradation and the screen slot size. If requested or needed, participate in a conference call(s) or meeting(s) regarding the pilot hole data and logs, any water sample field data or laboratory analyses and the water well contractor's proposed well construction recommendations.
- G. Review the submittals for the well drilling and construction materials and operations. Review and evaluate the well development and pumping test field data, the proposed pumping rate, total dynamic head and depth setting for the permanent well pump and well motor horsepower and the well pumping equipment submittals. Also review the laboratory analyses for the water samples collected from the water well during the 36-hour pumping test and provide written review information to the CITY.

X. Water Well Laboratory Testing (AGS)

- A. If any laboratory analysis of a water or gas sample collected by AGS from a test hole, pilot hole or water well is requested or approved by the CITY, then AGS will be reimbursed for any water or gas samples collected that AGS is sent an invoice by the lab that performs the analysis.
- B. An allowance of \$6,600 is assumed for this effort.

XI. Environmental Services (FNI)

- A. FNI will complete a desktop evaluation of the proposed project utilizing readily available existing information. The types of information that will be gathered will include U.S. Geological Survey (USGS) 7.5-minute topographic maps, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, Natural Resources Conservation Service (NRCS) soils maps, as well as recent and historical aerial photographs of the site. FNI understands that no real estate transactions or ROW acquisition is anticipated to warrant the need of a Phase I Environmental Site Assessment (ESA).
- B. FNI environmental scientists will conduct a pedestrian survey of the proposed well sites and along the proposed collection line alignment, to make observations of existing environmental conditions. Potential waters of the U.S., if present, will be identified and delineated. FNI environmental scientists will also analyze the vegetation cover types and habitat conditions along the alignment regarding the potential for threatened and endangered species to occur within the proposed project area. Note this effort would not include any presence/absence surveys for threatened and endangered species.
- C. Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Based on a preliminary review of the proposed project area the project exceeds one or both of these thresholds, thus, coordination with THC is required. FNI will develop a desktop cultural resources evaluation to submit an informed letter describing the proposed project to the THC via their eTRAC online system. The THC will review the project description and respond within 30 days regarding whether a cultural resources survey is required or not. If a cultural resources survey is required, FNI would be able to assist with retaining a qualified subconsultant to perform these services through an amendment.
- D. Information gathered during the desktop evaluation and pedestrian survey will be used to prepare a draft technical memorandum. The memorandum will include discussions of methodologies used, the hydrologic characterization and locations of potential waters of the U.S., if present, and an opinion on their jurisdictional status. The memorandum will also describe any threatened and endangered species habitat and if potential effects to these species exist. During development of the memorandum, FNI will analyze the information gathered with the proposed project impacts to determine if the project could be constructed utilizing a U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) without requiring the preparation and submittal of a Pre-Construction Notification (PCN) to the USACE. The draft technical memorandum will be submitted to the CITY for review and comment. After incorporating the CITY's comments into the document, FNI will submit a final technical memorandum to the CITY. If submittal of a PCN is required, then FNI will prepare and submit one to the USACE. If it is determined that preparation and submittal of an Individual Permit is required, FNI would be able to assist with these services through an amendment.

XII. Resident Project Representative

The Engineer will have a Resident Project Representative on the Site. In performing these services, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

A. The duties, responsibilities, and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:

1. Resident Project Representative is Engineer's agent at the site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with Engineer and Contractor, keeping CITY advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with CITY with the knowledge of and under the direction of Engineer.
2. These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the CITY agrees to include provisions in the General Conditions that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the CITY is named as an indemnified party.

B. Duties and Responsibilities of Resident Project Representative:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by Contractor and consult with Engineer concerning acceptability.
2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist Engineer in serving as CITY's liaison with Contractor when Contractor's operations affect CITY's on-site operations.

- b. Assist in obtaining from CITY additional details or information, when required for proper execution of the Work.
- 4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and Samples.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.
- 5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the Contractor maintains adequate records thereof; and observe record and report to Engineer appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.
- 6. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 7. Request for Revisions: Consider and evaluate Contractor's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written

Amendments, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to Contractor and other Project related documents.

9. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
- b. Consult with Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Written Amendments, Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to Engineer Written Amendments, Change Orders, Work Change Directives, and Field Orders.
- d. Report immediately to Engineer and CITY the occurrence of any accident.

10. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to CITY, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment at the Site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Engineer for review and forwarding to CITY prior to final payment for the Work.

12. Completion:

- a. Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Conduct a final inspection in the company of Engineer, CITY and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance.

C. Limitations of Authority of Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Engineer.
2. Shall not exceed limitations of Engineer's authority as set forth in Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractor, Suppliers, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of CITY or Contractor.
6. Shall not accept shop drawing or sample submittals from anyone other than the Contractor.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by Engineer.

D. Schedule:

1. FNI assumed a per week average for the duration of the project. It is understood that certain weeks during the course of the project will require less effort (i.e. mobilization, weather impacts, demobilization) and some weeks will require more effort (i.e. early concrete pours, tie-ins, etc.). FNI will work to manage the peaks and valleys in effort onsite to cover "inspectable work" and conserve budget for the higher effort periods. FNI will communicate to the Owner monthly on effort expended, effort remaining, projected burn rates, and highlight any concerns.

E. Fee:

1. FNI proposes to perform the Inspection services as described in the fee summary attachment. This amount includes labor costs for one full time inspector at 50 hours per week for 30 months, one full time inspector at 50 hours per week for 185 months for pipe laying activities, 2 additional site visits per month and 1 day per week of virtual support from a CM/senior inspector for 30 months, as well as expenses such as mileage, per diem, and vehicle allowance. Inspector will come equipped with laptop, WIFI hotspot and a cell phone. Rate also includes minor equipment needed for the inspection of the project such as levels, tape measures, PPE, coatings thickness gauges and other similar items. Major equipment purchases requested by the CITY for the project will need to be negotiated. It does not include the provision of project site office space and related furnishings or office equipment.

ARTICLE III

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

City of College Station
Wells 10, 11, and 12
Scope of Work

- A. Any items of work noted as not included throughout the scope.
- B. Procurement by other means such as CMAR.
- C. Providing changes within the flood plain requiring review and submittal of Conditional Letter of Map Revision (CLOMR) or Letter of Map Revision (LOMR).
- D. Clearing of trees to access geotechnical boring locations in excess of three days of clearing.
- E. Preparation of construction traffic control plan(s).
- F. Field layouts or the furnishing of construction line and grade surveys.
- G. GIS mapping services or assistance with these services.
- H. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
- I. Providing renderings, model, and mock-ups requested by the CITY.
- J. Revising drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of FNI.
- K. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required regarding the replacement of such Work.
- L. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by CITY.
- M. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- N. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- O. Conducting pilot plant studies or tests.
- P. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by FNI as an Additional Service.
- Q. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- R. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance (beyond the services shown in Special Services), and other assistance required to address environmental issues.
- S. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- T. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- U. Visits to the site more than the number of trips included in Basic Services for periodic site visits, coordination meetings, or contract completion activities.
- V. Any services required because of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- W. Providing services after the completion of the construction phase not specifically listed in Basic or Special Services.

City of College Station
Wells 10, 11, and 12
Scope of Work

- A. Any items of work noted as not included throughout the scope.
- B. Procurement by other means such as CMAR.
- C. Providing changes within the flood plain requiring review and submittal of Conditional Letter of Map Revision (CLOMR) or Letter of Map Revision (LOMR).
- D. Clearing of trees to access geotechnical boring locations in excess of three days of clearing.
- E. Preparation of construction traffic control plan(s).
- F. Field layouts or the furnishing of construction line and grade surveys.
- G. GIS mapping services or assistance with these services.
- H. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
- I. Providing renderings, model, and mock-ups requested by the CITY.
- J. Revising drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of FNI.
- K. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required regarding the replacement of such Work.
- L. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by CITY.
- M. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- N. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- O. Conducting pilot plant studies or tests.
- P. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by FNI as an Additional Service.
- Q. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- R. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance (beyond the services shown in Special Services), and other assistance required to address environmental issues.
- S. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- T. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- U. Visits to the site more than the number of trips included in Basic Services for periodic site visits, coordination meetings, or contract completion activities.
- V. Any services required because of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- W. Providing services after the completion of the construction phase not specifically listed in Basic or Special Services.

- X. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
- Y. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- Z. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- AA. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- BB. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- CC. Provide follow-up professional services during Contractor's warranty period.
- DD. Providing data, reports or briefings to City Council on the status of the project.
- EE. Design for additional stormwater retention or treatment facilities beyond those identified in Basic Services.
- FF. Preparation of an Individual Section 404 permit application;
- GG. Preparation of a Nationwide Permit (NWP) Pre-Construction Notification (PCN) for submittal to the USACE;
- HH. Preparation of a mitigation plan or coordinating the purchase of mitigation bank credits for impacts to waters of the U.S. or other natural resources;
- II. Conducting function or condition assessments (e.g., TXRAM) of waters of the U.S. potentially impacted by the proposed project;
- JJ. Presence/absence surveys for federally listed threatened/endangered species;
- KK. Formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act;
- LL. Conducting cultural resources studies or surveys;
- MM. Phase I/II Environmental Site Assessment;
- NN. Conducting an archeological survey along the proposed pipeline alignment;
- OO. Preparation of a Preliminary Jurisdictional Determination report.
- PP. Identification of tree species and/or preparation of a tree mitigation or preservation plan required due to tree ordinance compliance; and
- QQ. Other environmental services not specifically defined in this scope of services.

ARTICLE IV

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

<u>Preliminary Design Completion</u>	<u>5 months from NTP</u>
<u>Final Design Completion</u>	<u>8 months from Preliminary Design Completion</u>
<u>Proposal Phase</u>	<u>3 Months from Final Design Completion</u>
<u>Construction Phase</u>	<u>36 Months from Contractor NTP</u>
<u>Post Construction Phase</u>	<u>2 Months from Completion of Warranty Period</u>

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in

CITY or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE V

FNI has considered the following in development of FNI's scope and fee proposal for this project:

- A. CITY recognizes and expects that certain Change Orders may be required. FNI recommends that the CITY budget a minimum of 5% of the estimated project cost for construction change orders. Any responsibility of FNI for the costs of Covered Changed Orders, unless the Change Order is needed from FNI's responsibilities, will be determined based on applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:
- Any costs that CITY would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of FNI related thereto,
 - Any costs that are due to unforeseen site conditions,
 - Any costs that are due to changes made by the CITY, or
 - Any costs that are due to the Contractor.
- Wherever used in this document, the term FNI includes FNI's officers, directors, partners, employees, agents, and FNIs Consultants.
- B. CITY will designate in writing a person to act as CITY's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to FNI's services for the Project.
- C. CITY will provide all criteria and full information as to CITY's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CITY will require to be included in the drawings and specifications.
- D. CITY will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. CITY will arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- F. CITY will attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
- G. CITY will give prompt written notice to FNI whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and CITY designate the following representatives:

CITY's Designated Representative –

Casey Rhodes
300 Krenek Tap Road
College Station, TX 77845
979-764-6248
crhodes@cstx.gov

CITY's Accounting Representative –

Lisa Davis
1101 South Texas Avenue
College Station, TX 77840
979-764-3558
ldavis@cstx.gov

FNI's Designated Representative –

Richard Weatherly
11200 Broadway Street
Offices West Ste. 2320
Pearland, TX 77584
713-600-6824
raw@freese.com

FNI's Accounting Representative –

Kristina Isaac
10497 Town and Country Way, Ste. 600
Houston, TX 77024
713-600-6860
kristina.isaac@freese.com

Exhibit "B"
Payment Terms

SELECT ONE:

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase:

Eight Million Four Hundred Sixteen Thousand Six Hundred Three (\$8,416,603.00)

ARTICLE VII – COMPENSATION (ATTACHMENT CO)

City of College Station Wells 10, 11, and 12 Summary of Fee by Task	
Task 1 – Project Management	\$366,000
Task 2 – Preliminary Design	\$675,000
Task 3 – Final Design	\$1,510,000
Task 4 – Bid Phase	\$175,000
Task 5 – Construction Phase General Representation	\$2,395,000
Basic Services Total (Lump Sum)	\$5,121,000
Task 1 – CMAR Selection	\$61,729
Task 2 – Topographic Survey	\$56,069
Task 3 – Easement Survey	\$165,000
Task 4 – Field Staking	\$16,500
Task 5 – Subsurface Utility Engineering (SUE)	\$52,868
Task 6 – Geotechnical Engineering	\$323,583
Task 7 – Construction Materials Testing	\$95,502
Task 8 – Test Hole and Test Well Construction Services	\$82,500
Task 9 – Public Supply Well Construction Services	\$99,000
Task 10 – Water Well Laboratory Testing	\$6,600
Task 11 – Environmental Services	\$47,249
Task 12 – Resident Project Representative (RPR)	
Well Site RPR (1 RPR, 30 months, 50 hours per week)	\$1,565,958
Collection Line RPR (1 RPR, 15 months, 50 hours per week)	\$723,724
Special Services Total (Cost Plus Max)	\$3,295,603
Project Total	\$8,416,603

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Exhibit A, FNI will notify CITY for CITY's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges below.

City of College Station
Wells 10, 11, and 12
Scope of Work

Schedule of Charges:

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	91	182
Professional 2	123	200
Professional 3	140	305
Professional 4	161	333
Professional 5	238	361
Professional 6	242	448
Construction Manager 1	119	168
Construction Manager 2	123	207
Construction Manager 3	154	207
Construction Manager 4	179	270
Construction Manager 5	214	315
Construction Manager 6	284	375
Construction Representative 1	81	95
Construction Representative 2	95	123
Construction Representative 3	130	196
Construction Representative 4	130	196
CAD Technician/Designer 1	88	126
CAD Technician/Designer 2	105	207
CAD Technician/Designer 3	137	263
Corporate Project Support 1	74	165
Corporate Project Support 2	84	242
Corporate Project Support 3	105	350
Intern / Coop	56	98

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	
	Small Format (per copy)	\$0.10	\$0.25	Valve Crew Vehicle (hour) \$75
	Large Format (per sq. ft.)			Pressure Data Logger (each) \$200
<u>Technology Charge</u>	Bond	\$0.25	\$0.75	Water Quality Meter (per day) \$100
\$8.50 per hour	Glossy / Mylar	\$0.75	\$1.25	Microscope (each) \$150
	Vinyl / Adhesive	\$1.50	\$2.00	Pressure Recorder (per day) \$100
				Ultrasonic Thickness Gauge (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day) \$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each) \$500
				Backpack Electrofisher (each) \$1,000
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.10. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2024.

350022024

Exhibit “C”
Certificate(s) of Insurance



FREEAND-02

KSUTTON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/12/2024

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 Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME:	
	PHONE (A/C, No, Ext): (703) 827-2277	FAX (A/C, No): (703) 827-2279
	E-MAIL ADDRESS: admin@amesgough.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : National Fire Insurance Company of Hartford A(XV)	20478
INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	INSURER B : Valley Forge Insurance Company A(XV)	20508
	INSURER C : Continental Insurance Company A(XV)	35289
	INSURER D : Travelers Casualty and Surety Company A++. XV	19038
	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			7063394194	10/23/2023	10/23/2024	EACH OCCURRENCE \$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000				
	☒ Contractual Liab.		MED EXP (Any one person) \$ 15,000				
	☐		PERSONAL & ADV INJURY \$ 1,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	☐ POLICY ☒ PROJECT ☐ LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
	OTHER:						\$
B	AUTOMOBILE LIABILITY			7063394177	10/23/2023	10/23/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS		BODILY INJURY (Per person) \$				
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY		BODILY INJURY (Per accident) \$				
	☐		PROPERTY DAMAGE (Per accident) \$				
							\$
C	☒ UMBRELLA LIAB ☒ OCCUR			7063394180	10/23/2023	10/23/2024	EACH OCCURRENCE \$ 10,000,000
	☐ EXCESS LIAB ☐ CLAIMS-MADE		AGGREGATE \$ 10,000,000				
	☐ DED ☒ RETENTION \$ 10,000		\$				
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			7063394213	10/23/2023	10/23/2024	☒ PER STATUTE ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y ☒ N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liab.			107930947	10/23/2023	10/23/2024	Per Claim 5,000,000

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

RE: Wells 10, 11, and 12

City of College Station is included as Additional Insured with respect to General Liability, Auto Liability, and Umbrella Liability when required by written contract. General Liability, Auto Liability and Umbrella Liability are primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. General Liability, Auto Liability, Umbrella Liability and Workers Compensation SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

City of College Station 2677 North Main Street Suite 400 College Station, TX 77845	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 Ames & Gough		NAMED INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102
POLICY NUMBER SEE PAGE 1		
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1

ADDITIONAL REMARKS

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

Description of Operations/Locations/Vehicles:

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

Exhibit “D”
City of College Station
Standard Form of Agreement between
City and Construction Manager at Risk

**If the plans and specifications from the RFP/CSP are not physically inserted here, then
they are fully incorporated into this contract by reference.**

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

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

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$17,250,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 25th DAY OF April, 2024.

John Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

(Seal)

APPROVED:

A handwritten signature in blue ink, appearing to be 'J. K.', is written over a horizontal line.

McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The project to be financed that are the subject of this Statement is:

Wells Nos 10, 11, and 12 and Collection Line (\$17,250,000)

This project includes the design on wells nos. 10, 11, and 12 as well as an associated water collection line. This contract would also provide construction phase services for the construction of the wells and the collection line. Construction is anticipated to begin in late 2025.



Lake Bryan

Union Pacific Railroad

Sandy Point Road

Well #10

Well #11

Well #12

OSR



April 25, 2024
Item No. 9.3.
NETL Ph 4 Design Change Order 2

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on Change Order No. 2 for the Northeast Sewer Trunk Line Ph IV Project design contract with Kimley-Horn and Associates, Inc., not to exceed \$1,030,400.

Relationship to Strategic Goals:

Core services and infrastructure

Recommendation(s): Staff recommends approval.

Summary: The City of College Station approved a contract in 2022 with Kimley-Horn and Associates, Inc. for the design of the Northeast Sewer Trunk Line Phase IV. The design will include installation of a sewer trunk line which will serve areas of the community including the University Corridor and Northgate. This project will allow for continued development in this area which could soon be limited by existing sewer capacity. The contract amendment allows for the design of the lift station in order to reroute the sewer trunk line to Cooner Street/Chimney Hill instead of through the Beverley Estates neighborhood in Bryan.

Budget & Financial Summary: A budget of \$25,500,000 is included in the Wastewater Capital Improvement Projects Fund for this project. A total of \$1,585,093 has been spent or committed to date, leaving a balance of \$23,914,907 for this change order and future costs.

Attachments:

1. NETL Ph IV Design Change Order #2

CHANGE ORDER NO. 2		DATE: March 14, 2024	Contract No. 22300588			
P.O.#- 22204717		PROJECT: NE SEWER TRUNKLINE PH IV DESIGN				
OWNER: City of College Station P.O. Box 9960 College Station, Texas 77842		CONTRACTOR: Kimley-Horn and Associates, Inc. 2800 S. Texas Ave, Ste 201 Ph: 979-775-9595 Bryan, Texas 77802 Fax: N/A				
PURPOSE OF THIS CHANGE ORDER:						
A. This change order is for additional design services neccesitated by the route change of the proposed sewer trunkline through the Chimney Hill area instead of Beverly Estates. The significant cost increase to the design is due to the added cost of designing the lift station required by this route.						
ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	PREVIOUS QUANTITY	REVISED QUANTITY	ADDED COST
CO2	EA	Scope Amendment No. 2 Design Fees	\$1.00	1458500	2488900	\$1,030,400.00
					TOTAL	\$1,030,400.00
THE NET AFFECT OF THIS CHANGE ORDER IS 82%.						
LINE 2 SEWER (SCWOC-6590)			\$541,498.00			
LINE 3 SEWER (SCWOC-6590)			\$488,902.00			
TOTAL CHANGE ORDER			<u>\$1,030,400.00</u>			
ORIGINAL CONTRACT AMOUNT			\$1,371,000.00			
CHANGE ORDER NO. 1			\$87,500.00			
CHANGE ORDER NO. 2			<u>\$1,030,400.00</u>			
REVISED CONTRACT AMOUNT			<u>\$2,488,900.00</u>			
SUBSTANTIAL COMPLETION DATE			6/4/2025			
APPROVED						
_____ A/E CONTRACTOR		Date	_____ ASST CITY MGR - CFO		Date	
_____ PROJECT MANAGER		Date	_____ CITY ATTORNEY		Date	
_____ DEPARTMENT DIRECTOR		Date	_____ CITY MANAGER		Date	

AMENDMENT NUMBER 2 TO THE AGREEMENT BETWEEN CLIENT AND KIMLEY-HORN AND ASSOCIATES, INC.

This is Amendment number 2 dated March 14, 2024 to the agreement between City of College Station ("Client") and Kimley-Horn and Associates, Inc. ("Consultant") dated July 28, 2022 ("the Agreement") concerning Northeast Sewer Trunkline Ph IV Design Contract (the "Project").

The Consultant has entered into the Agreement with Client for the furnishing of professional services, and the parties now desire to amend the Agreement.

The Agreement is amended to include services to be performed by Consultant for compensation as set forth below in accordance with the terms of the Agreement, which are incorporated by reference.

This Amendment is for additional professional services determined to be needed during preliminary sanitary sewer trunk line design, public involvement, and jurisdictional coordination phases. The scope of the project has changed to conveying sanitary sewer flow from the Hensel Park Lift Station to the upstream end of Northeast Sanitary Sewer – Phase 3, on the west side of SH 6, via sanitary sewer force main and gravity sewer. The new alignment will route through Winter Park, Autumn Circle, Tarrow Street, Hearthstone Circle, Chimney Hill Drive, Texas Avenue, and Hensel Street. Services involve design of approximately 1,660 linear feet of 30-inch sanitary sewer gravity line, 6,340 linear feet of 24-inch sanitary sewer gravity line, 2,930 linear feet of 18-inch sanitary sewer force main, and one (1) 6.7 million gallon per day (MGD) sanitary sewer lift station. The proposed 18-inch sanitary sewer force main will convey flow from the proposed sanitary sewer lift station at Hensel Park to an existing 24-inch sanitary sewer along Cooner Street. The proposed 24-inch sanitary sewer will connect to the existing 24-inch sanitary sewer at the east end of Cooner street and route towards Winter Park.

Consultant will perform the following services based on direction provided by City. Additional scope detailed below will be performed in accordance with the original Project scope. Reference **Attachment A** Scoping Exhibit.

Task 1: Project Management

- Prepare and attend five (5) additional project status meetings.
- Perform additional project administration.
- Perform additional Quality Assurance/Quality Control (QA/QC)
 - o Perform quality control reviews for the following submittals:
 - Design Survey
 - Preliminary Sanitary Sewer Trunk Line Design (50%)
 - Lift Station Design (50%, 90%)
 - Force Main Design (50%, 90%)

Task 2: Preliminary Investigation

- Perform additional data collection and record research.
- Perform additional data review with the City.

Task 3: Design Survey

- For Setting horizontal and vertical control based on the City of College Station Control Monumentation.
- Chimney Hill Gravity Alignment Survey limits include the area from Cooner Street to Chimney Hill Drive, along Chimney Hill Drive to Spring Loop, along Spring Loop to Tarrow Street, along Tarrow Street to Autumn Circle, along Autumn Circle to Winter Park, along Winter Park for approximately 1500 lf to the southwest line of Parcel 38996, along the southwest line of Parcel 38996 to the south corner, along the southeast line of Parcel

38996 to the existing city of College Station sewer easement, along the existing sewer easement to end of line for a total length of approximately 8200 linear feet.

- Sewer Force Main Survey extents is approximately 2,600 linear feet along with 450 linear feet along Cooner Street to tie to the existing gravity main.

Task 4: Easement Documents – No Change in Scope

Task 5: Subsurface Utility Engineering

- Perform additional Level A – vacuum excavation of existing utility lines up to four (4) locations (up to 12 feet below existing grade).
- Perform Level B – Two-dimensional horizontal information obtained through application and interpretation of non-destructive surface geophysical methods. Also known as “designating,” this level incorporate Level C information and provides horizontal positioning of subsurface utilities to within approximately 1.0 foot. Designation extents will be along the proposed sanitary sewer force main corridor along the east side of Texas Avenue.
 - o Level C – Surveyed data depicting visible above-ground features supplemented with Level D information.
 - o Level D – information obtained from existing utility records.
 - o

Task 6: Geotechnical Investigation – No Change in Scope

Task 7: Preliminary Sanitary Sewer Trunk Line Design (50%)

- Prepare 50% design submittal based upon new alignment.

Task 8: Jurisdictional Coordination

- Perform additional coordination with Texas A&M University and Texas Department of Transportation (TxDOT).

Task 9: Final Sanitary Sewer Trunk Line Design – No additional Scope

Task 10: Erosion Control Plan

- Perform additional plan preparation for sanitary sewer force main and sanitary sewer lift station.

Task 11: Environmental Services

- Perform additional environmental services for sanitary sewer force main and sanitary sewer lift station.

Task 12: Tree Protection Plan

- Perform additional plan preparation for sanitary sewer force main and sanitary sewer lift station.

Task 13: Traffic Control

- Perform additional plan preparation for sanitary sewer force main and sanitary sewer lift station.

Task 14: Public Involvement

- Prepare and attend additional public meetings with affected property owners along new alignment and Texas A&M University.
- Prepare additional exhibits, handouts, presentation slides, and meeting notes.

Task 15: Bidding Phase Services – No additional Scope

Task 16: Control Staking – No additional Scope

Task 17: Construction Phase Services

- Perform additional construction phase services for sanitary sewer force main and sanitary sewer lift station.

Task 18: Construction Materials Testing Services

- Perform additional construction materials testing for sanitary sewer lift station.

Task 19: As-built Survey – No additional Scope**Task 20: Record Drawings**

- Prepare record drawings for sanitary sewer force main and sanitary sewer lift station.

Task 21: Tree Inventory – No additional Scope**Task 22: Further Investigation Directed by the City – No additional Scope****Task 23: Lift Station Design**

- Preliminary Design
 - o Lift Station
 - Site selection
 - Site access
 - Site screening and landscaping
 - Preliminary site layout (up to three (3) site layouts options will be provided)
 - Design calculations
 - Pump head calculations
 - Cycle time calculations
 - Hydraulic grade line calculations
 - Electrical needs
 - Instrumentation, controls, and SCADA
 - Emergency backup power options
 - Ventilation and odor control
 - Metering options (force main)
 - Site security
 - Safety considerations
 - Evaluation of reusing equipment from existing Market Center lift station (including pumps and generator)
 - Geotechnical considerations
 - Opinion of probable construction cost
 - o Prepare and submit preliminary (50%) construction plan sheets for the proposed lift station. A list of specifications by section number and title will be submitted with the preliminary 60% submittal. Kimley-Horn will identify any specifications requiring a “delegated design”.
 - Plan sheets will consist of the following:
 - Cover
 - General Notes
 - Project Horizontal and Vertical Control
 - Grading Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Electrical site plan
 - Electrical control schematics

- o Prepare and submit final (90% and 100% level) Contract Documents for the proposed lift station. Contract Documents shall include construction plans, front-end documents, and technical specifications.
 - Plan sheets will consist of the following:
 - Cover
 - General Notes
 - Project Horizontal and Vertical Control
 - Site Plan
 - Grading and Erosion Control Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Structural details (anticipate generator pad and electrical rack/canopy)
 - Odor control details and notes
 - Electrical site plan with arc flash analysis
 - One-line diagram, load analysis
 - Generator sizing calculations
 - Conduit schedule
 - Electrical control schematics
 - Electrical details and notes
 - Existing lift station demolition plan
- o Preparation of an opinion of probable construction cost (OPCC) at 60%, 90%, and 100% design.
- o Incorporate the City's 60% and 90% comments.
- o TCEQ Coordination – Prepare correspondence for submittal to the TCEQ. Kimley-Horn will receive and address up to one (1) round of ordinary and reasonable comments from the TCEQ.

Task 24: Force Main Design

- Prepare and submit preliminary (60% level) 24"x36" construction plan sheets for the proposed lift station. A list of specifications by section number and title will be submitted with the preliminary 60% submittal. Kimley-Horn will identify any specifications requiring a "delegated design".
 - o Plan sheets will consist of the following:
 - General Notes
 - Project Horizontal and Vertical Control
 - Site Plan
 - Grading Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Electrical site plan
 - Electrical control schematics
- Prepare and submit final (90% and 100% level) Contract Documents for the proposed lift station. Contract Documents shall include construction plans, front-end documents, and technical specifications.
 - Plan sheets will consist of the following:
 - Cover
 - General Notes
 - Project Horizontal and Vertical Control
 - Site Plan
 - Grading and Erosion Control Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Structural details (anticipate generator pad and electrical rack/canopy)

- Odor control details and notes
- Electrical site plan with arc flash analysis
- One-line diagram, load analysis, and fault current analysis
- Generator sizing calculations
- Conduit schedule
- Electrical control schematics
- Electrical details and notes
- Preparation of an opinion of probable construction cost (OPCC) at 60%, 90%, and 100% design.
- Incorporate the City's 60% and 90% comments.
- TCEQ Coordination – Prepare correspondence for submittal to the TCEQ. Kimley-Horn will receive and address up to one (1) round of ordinary and reasonable comments from the TCEQ.

We will provide our services as expeditiously as practicable with the goal of meeting the following schedule and presenting 100% Design Plans for the Sanitary Sewer Gravity Main, Sanitary Sewer Force Main, and Sanitary Sewer Lift Station to City Staff by March 14, 2025:

Task 3: Design Survey		<u>16 Weeks</u> from 2/13/2024
Task 7: Preliminary Sanitary Sewer Trunk Line Design (50%)		<u>28 Weeks</u> from 2/13/2024
Task 23: Lift Station Design	<u>28 Weeks</u> for 50%, <u>12 Weeks</u> for 90%, <u>8 Weeks</u> for 100%	
Task 24: Force Main Design	<u>28 Weeks</u> for 50%, <u>12 Weeks</u> for 90%, <u>8 Weeks</u> for 100%	

For the services set forth above, Client shall pay Consultant the following compensation noted under proposed CO #2 in **Attachment B**.

CLIENT:

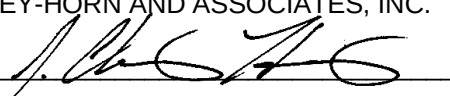
By: _____

Title: _____

Date: _____

CONSULTANT:

KIMLEY-HORN AND ASSOCIATES, INC.

By: 

Title: Senior Associate

Date: 03/14/2024

4 - Chimney Hill Atmospheric
City Sewer Trunk Line V Phase 2-4 PEI Exhibit A (AO) (Sheet 00200009)
The contents and designs presented herein, as an
entirety of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

LEGEND

- PROPERTY LINE
- CITY LIMIT
- EXISTING OVERHEAD POWER
- EXISTING BRYAN SANITARY SEWER MAIN
- EXISTING COLLEGE STATION SANITARY SEWER MAIN
- EXISTING COLLEGE STATION SANITARY SEWER FORCE MAIN
- EXISTING SANITARY SEWER MAIN TO BE ABANDONED

CO#1 - DESIGN
SURVEY
COMPLETE

ORIGINAL
CONTRACT -
DESIGN SURVEY
COMPLETE

PROP. CO#2 -
- ADD JURISDICTIONAL COORDINATION
- ADD EROSION CONTROL
- ADD ENVIRONMENTAL
- ADD TREE PROTECTION
- ADD TRAFFIC CONTROL
- ADD PUBLIC INVOLVMENT
- ADD BIDDING PHASE SERVICES
- ADD CONSTRUCTION PHASE SERV.
- ADD RECORD DRAWINGS
- ADD LIFT STATION DESIGN
- ADD FORCE MAIN DESIGN

PROP. CO#2 - ADDITIONAL
SUE LEVEL A AND LEVEL B

ORIGINAL
CONTRACT -
DESIGN SURVEY
COMPLETE
(MANHOLES
ONLY FOR SLIP
LINING)

PROP. CO#2 -
ADDITIONAL DESIGN
SURVEY / PRELIMINARY
INVESTIGATION

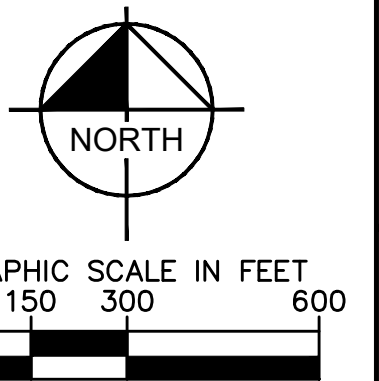
PROP. CO#2 -
ADDITIONAL
DESIGN SURVEY

ORIGINAL
CONTRACT -
DESIGN SURVEY
IN PROGRESS

ORIGINAL
CONTRACT - (8)
SUE LEVEL A'S
REPOSITIONED
FOR CHIMNEY
HILL ALIGNMENT
(TYP.)

ORIGINAL
CONTRACT - (14)
GEOTECHNICAL
INVESTIGATIONS
REPOSITIONED
FOR CHIMNEY
HILL ALIGNMENT
(TYP.)

- = PROP. GEOTECHNICAL BORE
- = PROP. SUE LEVEL A
- = PROP. ADDITIONAL SUE
LEVEL A AND LEVEL B AREAS



Kimley»Horn

Texas Board of Professional Engineers Firm Registration Number: F-938
2800 South Texas Ave., Suite 201, Bryan, TX 77802, 979-307-5043

THIS DOCUMENT IS INCOMPLETE
AND IS RELEASED TEMPORARILY
FOR INTERIM REVIEW ONLY. IT IS
NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
MARTY S. PARIS P.E.
SERIAL NO. 84766
DATE: MARCH 2024

NORTHEAST
TRUNK LINE
REHABILITATION

PHASE 4
AMENDMENT #2
SCOPING EXHIBIT

DATE: MARCH 2024
DESIGN: EDP
DRAWN: BJP
CHECKED: WSP
KHA NO: 064295020

EXHIBIT

A

Phase 4 - Chimney Hill Dr Alignment (8,000 LF of 30"/24" Sanitary Sewer Line, 3,000 LF of 18" Force Main, and 4,500 LF of 18"/12" Replacement - Including Trenchless Specialist

Task	Original Contract 7/28/2022	CO #1 7/6/2023	Revised Contract Amount with CO #1	Proposed Amendment Number 2 3/14/2024	Revised Contract Amount with Amendment Number 2
1 Project Management	\$ 67,300.00		\$ 67,300.00	\$ 17,600.00	\$ 84,900.00
2 Preliminary Investigation	\$ 46,100.00		\$ 46,100.00	\$ 20,000.00	\$ 66,100.00
3 Design Survey	\$ 163,600.00	\$ 6,400.00	\$ 170,000.00	\$ 78,000.00	\$ 248,000.00
4 Easement Documents	\$ 53,700.00		\$ 53,700.00		\$ 53,700.00
5 Subsurface Utility Engineering	\$ 24,500.00		\$ 24,500.00	\$ 47,500.00	\$ 72,000.00
6 Geotechnical Investigation	\$ 37,600.00	\$ 1,600.00	\$ 39,200.00	\$ 9,000.00	\$ 48,200.00
7 Preliminary Sanitary Sewer Trunk Line Design	\$ 317,900.00	\$ 30,000.00	\$ 347,900.00	\$ (36,400.00)	\$ 311,500.00
8 Jurisdictional Coordination	\$ 21,300.00		\$ 21,300.00	\$ 6,800.00	\$ 28,100.00
9 Final Sanitary Sewer Trunk Line Design	\$ 246,700.00		\$ 246,700.00	\$ (42,600.00)	\$ 204,100.00
10 Erosion Control Plan	\$ 27,100.00		\$ 27,100.00	\$ 12,500.00	\$ 39,600.00
11 Environmental Services	\$ 23,200.00		\$ 23,200.00	\$ 13,200.00	\$ 36,400.00
12 Tree Protection Plan	\$ 25,400.00		\$ 25,400.00	\$ 12,200.00	\$ 37,600.00
13 Traffic Control	\$ 12,600.00		\$ 12,600.00	\$ 10,200.00	\$ 22,800.00
14 Public Involvement	\$ 40,600.00	\$ 15,000.00	\$ 55,600.00	\$ 5,400.00	\$ 61,000.00
15 Bidding Phase Services	\$ 30,900.00		\$ 30,900.00	\$ (1,000.00)	\$ 29,900.00
16 Control Staking	\$ 4,300.00		\$ 4,300.00		\$ 4,300.00
17 Construction Phase Services	\$ 114,400.00		\$ 114,400.00	\$ 41,900.00	\$ 156,300.00
18 Construction Material Testing Services	\$ 54,000.00		\$ 54,000.00	\$ 3,000.00	\$ 57,000.00
19 As-built Survey	\$ 12,200.00		\$ 12,200.00		\$ 12,200.00
20 Record Drawings	\$ 47,600.00		\$ 47,600.00	\$ 8,500.00	\$ 56,100.00
21 Tree Inventory		\$ 17,000.00	\$ 17,000.00		\$ 17,000.00
22 Further Investigation Directed by the City		\$ 17,500.00	\$ 17,500.00	\$ (17,500.00)	\$ -
23 Lift Station Design				\$ 688,800.00	\$ 688,800.00
24 Force Main Design				\$ 153,300.00	\$ 153,300.00
Contract Totals =	\$ 1,371,000.00	\$ 87,500.00	\$ 1,458,500.00	\$ 1,030,400.00	\$ 2,488,900.00

ATTACHMENT B

**Amendment 2 Fee Summary
Northeast Wastewater Trunk Line - Phase 4
City of College Station**

Phase 4 - Chimney Hill Dr Alignment (8,000 LF of 30"/24" Sanitary Sewer Line, 3,000 LF of 18" Force Main, and 4,500 LF of 18"/12" Replacement - Including Trenchless Specialist												
Task	Labor Hours					Labor Costs					ODC's and Subs	Subtotal
	Senior Professional	Professional	Analyst	Support Staff	Total	Senior Professional	Professional	Analyst	Support Staff	Total		
1 Project Management	10	42	12	12	76	\$ 4,000	\$ 9,600	\$ 1,900	\$ 1,300	\$16,800	\$800	\$17,600
2 Preliminary Investigation	4	36	59		99	\$ 1,600	\$ 8,200	\$ 9,300		\$19,100	\$900	\$20,000
3 Design Survey	12	124	12		148		\$ 2,800	\$ 21,200		\$24,000	\$54,000	\$78,000
4 Easement Documents												
5 Subsurface Utility Engineering											\$47,500	\$47,500
6 Geotechnical Investigation											\$9,000	\$9,000
7 Preliminary Sanitary Sewer Trunk Line Design	-12	-40	-140		-192	\$ (4,800)	\$ (9,100)	\$ (20,800)		(\$34,700)	(\$1,700)	(\$36,400)
8 Jurisdictional Coordination	4	9	17		30	\$ 1,600	\$ 2,100	\$ 2,700		\$6,400	\$400	\$6,800
9 Final Sanitary Sewer Trunk Line Design	-10	-42	-184		-236	\$ (4,000)	\$ (9,600)	\$ (27,100)		(\$40,700)	(\$1,900)	(\$42,600)
10 Erosion Control Plan		12	62		74		\$ 2,800	\$ 9,100		\$11,900	\$600	\$12,500
11 Environmental Services		30	40		70		\$ 6,900	\$ 5,700		\$12,600	\$600	\$13,200
12 Tree Protection Plan	2	10	58		70	\$ 800	\$ 2,300	\$ 8,500		\$11,600	\$600	\$12,200
13 Traffic Control	2	14	40		56	\$ 800	\$ 3,200	\$ 5,700		\$9,700	\$500	\$10,200
14 Public Involvement	2	8	16		26	\$ 800	\$ 1,900	\$ 2,500		\$5,200	\$200	\$5,400
15 Bidding Phase Services		-4			-4		\$ (900)			(\$900)	(\$100)	(\$1,000)
16 Control Staking												
17 Construction Phase Services	15	80	100		195	\$ 6,000	\$ 18,200	\$ 15,700		\$39,900	\$2,000	\$41,900
18 Construction Material Testing Services											\$3,000	\$3,000
19 As-built Survey												
20 Record Drawings		12	30		42		\$ 2,700	\$ 4,600		\$7,300	\$1,200	\$8,500
21 Tree Inventory												
22 Further Investigation Directed by the City		-38	-51				\$ (8,700)	\$ (8,000)		(\$16,700)	(\$800)	(\$17,500)
23 Lift Station Design	240	1,048	2,117		3,405	\$ 95,100	\$ 238,400	\$ 320,200		\$653,700	\$35,100	\$688,800
24 Force Main Design	82	192	444		718	\$ 32,500	\$ 43,700	\$ 68,200		\$144,400	\$8,900	\$153,300
Contract Totals =	351	1,493	2,632	12	4,577	\$ 134,400	\$ 314,500	\$ 419,400	\$ 1,300	\$869,600	\$160,800	\$1,030,400

Amendment 2 Fee Summary
Northeast Wastewater Trunk Line - Phase 4
City of College Station

Phase 4 - Chimney Hill Dr Alignment (8,000 LF of 30"/24" Sanitary Sewer Line, 3,000 LF of 18" Force Main, and 4,500 LF of 18"/12" Replacement - Including Trenchless Specialist													
Task		Labor Hours					Labor Costs					ODC's and Subs	Subtotal
		Senior Professional	Professional	Analyst	Support Staff	Total	Senior Professional	Professional	Analyst	Support Staff	Total		
1	Project Management	10	42	12	12	76	\$ 4,000	\$ 9,600	\$ 1,900	\$ 1,300	\$16,800	\$800	\$17,600
2	Preliminary Investigation	4	36	59		99	\$ 1,600	\$ 8,200	\$ 9,300		\$19,100	\$900	\$20,000
3	Design Survey	12	124	12		148		\$ 2,800	\$ 21,200		\$24,000	\$54,000	\$78,000
4	Easement Documents												
5	Subsurface Utility Engineering											\$47,500	\$47,500
6	Geotechnical Investigation											\$9,000	\$9,000
7	Preliminary Sanitary Sewer Trunk Line Design	-12	-40	-140		-192	\$ (4,800)	\$ (9,100)	\$ (20,800)		(\$34,700)	(\$1,700)	(\$36,400)
8	Jurisdictional Coordination	4	9	17		30	\$ 1,600	\$ 2,100	\$ 2,700		\$6,400	\$400	\$6,800
9	Final Sanitary Sewer Trunk Line Design	-10	-42	-184		-236	\$ (4,000)	\$ (9,600)	\$ (27,100)		(\$40,700)	(\$1,900)	(\$42,600)
10	Erosion Control Plan		12	62		74		\$ 2,800	\$ 9,100		\$11,900	\$600	\$12,500
11	Environmental Services		30	40		70		\$ 6,900	\$ 5,700		\$12,600	\$600	\$13,200
12	Tree Protection Plan	2	10	58		70	\$ 800	\$ 2,300	\$ 8,500		\$11,600	\$600	\$12,200
13	Traffic Control	2	14	40		56	\$ 800	\$ 3,200	\$ 5,700		\$9,700	\$500	\$10,200
14	Public Involvement	2	8	16		26	\$ 800	\$ 1,900	\$ 2,500		\$5,200	\$200	\$5,400
15	Bidding Phase Services		-4			-4		\$ (900)			(\$900)	(\$100)	(\$1,000)
16	Control Staking												
17	Construction Phase Services	15	80	100		195	\$ 6,000	\$ 18,200	\$ 15,700		\$39,900	\$2,000	\$41,900
18	Construction Material Testing Services											\$3,000	\$3,000
19	As-built Survey												
20	Record Drawings		12	30		42		\$ 2,700	\$ 4,600		\$7,300	\$1,200	\$8,500
21	Tree Inventory												
22	Further Investigation Directed by the City		-38	-51				\$ (8,700)	\$ (8,000)		(\$16,700)	(\$800)	(\$17,500)
23	Lift Station Design	240	1,048	2,117		3,405	\$ 95,100	\$ 238,400	\$ 320,200		\$653,700	\$35,100	\$688,800
24	Force Main Design	82	192	444		718	\$ 32,500	\$ 43,700	\$ 68,200		\$144,400	\$8,900	\$153,300
Contract Totals =		351	1,493	2,632	12	4,577	\$ 134,400	\$ 314,500	\$ 419,400	\$ 1,300	\$869,600	\$160,800	\$1,030,400

April 25, 2024
Item No. 9.4.
Unrelated Overoccupancy

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 26, "Miscellaneous Provision and Offenses," of the Code of Ordinances of the City of College Station, Texas, by adding certain sections relating to overoccupancy.

Relationship to Strategic Goals:

Good Governance, Neighborhood Integrity

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

Summary: This item amends Chapter 26 of the Code of Ordinances to add Sec. 26-12 Civil Unrelated Overoccupancy and Sec. 26-13 Penal Unrelated Overoccupancy, providing two additional enforcement tools for Unrelated Overoccupancy. One option is a civil ordinance with set fines and the other is a penal ordinance that follows the penalties listed in Sec. 1-7 of the Code. Both ordinances include definitions for dwelling unit, family, responsible persons, single-family, and single-family dwelling for clarity. The ordinances contain an overoccupancy violation, rebuttable presumptions, and affirmative defenses.

Budget & Financial Summary: Expense for enforcement is included in the General Fund Code Enforcement budget.

Attachments:

1. Overoccupancy Ordinance 4-25-24

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 26, “MISCELLANEOUS PROVISIONS AND OFFENSES,” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY ADDING CERTAIN SECTIONS RELATING TO OVER OCCUPANCY; 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 26, “Miscellaneous Provisions and Offenses,” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 26, “Miscellaneous Provisions and Offenses,” of the Code of Ordinances of the City of College Station, Texas is hereby amended by adding Section 26-12 Civil Unrelated Overoccupancy and Section 26-13 Criminal Unrelated Overoccupancy and is to read as follows:

Sec. 26-12 Civil Unrelated Overoccupancy.

A. Administrative Enforcement. The City Manager or designee may issue administrative citations and impose an administrative penalty for Unrelated Overoccupancy violations as a civil offense against any responsible person violating this section. Administrative penalties in this section are in addition to any other enforcement or remedies, including the penal provisions authorized by the Code of Ordinances. A Code Enforcement Officer or a Peace Officer has the authority to issue administrative citations or file notice of an administrative penalty with the Municipal Court for violations.

B. Definitions.

1. Dwelling Unit means a residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating, and sanitation.

2. Family means any number of persons occupying a single dwelling unit, provided that no such family shall contain more than four (4) persons, unless all members are related by blood, adoption, guardianship, or marriage, are an authorized caretaker, or are part of a group home for disabled persons. When counting the number of unrelated persons in a single dwelling unit, a maximum of one group of persons related by blood, adoption, guardianship, marriage, an authorized caretaker, or members of a group home for disabled persons shall be permitted, provided that all other persons shall each count as one unrelated person. Guardianship shall include foster children, exchange students, or those in the process of securing legal custody of a person under age 18. Any asserted common law marriage must be subject to an affidavit of record under the family code, or a judicial determination. The term “family” shall not be construed to mean a club, a lodge, or a fraternity/sorority house.

3. Responsible Person means a property owner, property manager or agent, local contact person, person living or staying at the property, or any person in possession of the property violating Unrelated Overoccupancy regulations.

4. Single-Family means a structure providing one (1) dwelling unit on a single lot or building plot.

5. Single-Family Dwelling means a residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating and sanitation.

C. Administrative Penalty.

1. The administrative penalty is **\$250 dollars** for the first violation.
2. The administrative penalty is **\$350 dollars** for the second violation.
3. The administrative penalty is **\$500 dollars** for three or more violations
4. An administrative penalty may be assessed for each day a violation continues.

D. Administrative Penalty Notice. An administrative citation or notice of the administrative penalty may be served personally by issuing an administrative citation to a responsible person. The notice of administrative penalty may be served personally or by regular or certified mail.

E. Civil Violation, Presumptions and Defenses.

1. **Civil Violation.** It is unlawful for a responsible person to allow or have a family of more than four unrelated persons occupying a single-family dwelling unit.
2. **Unrelated Overoccupancy.** Unrelated Overoccupancy is evidence showing more than four vehicles with registrations to persons having different surnames and addresses are parked on the property, on the street directly in front of the property, on either side of the street, or immediately adjacent to the property on a majority of days during any 30-day period creates a rebuttable presumption that a responsible person is violating this section.
3. **Residence.** Residence is evidence showing a vehicle registered to a person or registered to an immediate family member of a person that is parked on the property, on the street directly in front of the property, on either side of the street, or immediately adjacent to the property on a majority of the days during any 30-day period creates a rebuttable presumption that a person occupies a property and violating this section.
4. **Affirmative Defenses.** It is an affirmative defense to prosecution to an offense under this section if:
 - a. The occupants meet the requirements for definition of family in this section and the total number of family and unrelated persons is less than four (4).
 - b. The residence qualifies as a Group Home as defined in the UDO.
 - c. The occupants are not residents of the single-family dwelling unit.

F. Administrative Hearing Procedures.

1. **Administrative Process.** The administrative adjudication process is initiated by issuing an administrative citation or notice of administrative penalty. An administrative citation or notice of administrative penalty serves as notice of administrative hearing.
2. **Notice.** A person is presumed to have received notice of a violation upon personal service or notice posted at the property. A person is presumed to have notice of a violation 10 business days after the notice of the administrative penalty was mailed.

3. Administrative Citation Information. An administrative citation or notice of administrative penalty shall include the following information:

- a. The nature, date, time and location of the alleged violation;
- b. A statement that a person charged with a civil offense under the Code of Ordinances is entitled to an administrative hearing to determine liability for the charged offense and that such right to a hearing shall be exercised by personally appearing before the Hearing Officer, within ten days from the date of the citation or receipt of notice of administrative penalty; and
- c. Failure to answer the administrative citation or to appear at the administrative hearing is considered an admission of liability for the violation and will result in the assessment of all penalties, civil fines, costs and fees.

4. Administrative Hearing. A person receiving an administrative citation or notice of administrative penalty under this section is entitled to an administrative hearing.

- a. At a hearing before a Hearing Officer, the defendant may either admit, admit with explanation, or deny the alleged violation.
- b. The issuing Code Enforcement Officer or Peace Officer is not required to attend the hearing.
- c. The City Attorney is not required to attend the hearing. However, if the defendant is represented by legal counsel, the Hearing Officer may notify the City Attorney, who shall have the right to appear on behalf of the City at the hearing.
- d. No formal or sworn complaint shall be necessary.
- e. The Hearing Officer shall base their decision upon an examination of the contents of the citation or summons and the evidence related to the presumptions and other prima facie evidence established by this section and other applicable law, and the evidence and testimony presented by the defendant and the City.
- f. If the Hearing Officer determines by a preponderance of the evidence that the defendant is liable for the violation, the Hearing Officer shall find the defendant liable.
- g. At the conclusion of the hearing, the Hearing Officer shall issue an order stating whether the defendant is liable for the violation of this section and the amount, if any, of civil fines, costs or fees assessed against the defendant.
- h. All orders issued by the Hearing Officer shall be filed with the Clerk of the College Station Municipal Court. All such orders shall be maintained in a separate index or file by the Municipal Court Clerk. The order may be recorded using computer printouts, or electronic or data processing techniques.
- i. Failure of a defendant to appear by mail or personal appearance within the aforesaid ten-business-day period shall be considered an admission of liability for the charged offense. Such defendant shall be liable for the civil fines, costs and fees assessed by order of the Hearing Officer.

5. Hearing Officer. The City Manager or designee shall appoint one or more Hearing Officers to administratively adjudicate all violations and with having the authority to:

- a. Administer oaths;
- b. Accept admissions and hear and determine contests of violations under this section;
- c. Issue orders enforceable by the Municipal Court compelling the attendance of witnesses and the production of documents;
- d. Issue orders at administrative hearings stating whether the person charged with violating the ordinance is liable for the violation or not; and the amount of the penalty, civil fines, fees and costs assessed against the person; and
- e. Dismiss citations that are found unenforceable.

6. Citation Record. The original or a copy of the citation or notice of administrative penalty, including an electronic copy, is a governmental record kept in the ordinary course of City business and is rebuttable proof of the facts it contains.

7. Service. The original and all copies of any administrative citation or notice of administrative penalty are prima facie evidence that it was issued, and service was proper.

8. Administrator Procedures. The City Manager or designee shall implement and enforce this section with necessary and consistent procedures and may file an action to collect the fine, cost, or fee in a court of competent jurisdiction.

G. Appellate Review. Any person assessed an administrative penalty under this section shall have the right to appeal the Hearing Officer's decision to the Municipal Court. A petition appealing the decision of the Hearing Officer must be filed with the Municipal Court not later than 30 calendar days after the Hearing Officer's order is filed with the Municipal Court.

1. Appeal. A person determined by a Hearing Officer to be liable for an Unrelated Overoccupancy violation may appeal the determination by filing a petition with the Municipal Court, along with any other costs required by law for Municipal Courts not later than 30 calendar days after the Hearing Officer's order is filed with the Municipal Court.

2. Notice. Upon receipt of an appeal petition, the Municipal Court shall schedule an appeal hearing and notifying the City Attorney and all parties of the date, time, and location of the hearing.

3. Review. The appeal hearing shall be a de novo review by the Municipal Judge. Based upon the evidence presented at the appeal hearing and if the Judge determines by a preponderance of the evidence that the defendant committed the violation, the Judge shall find the defendant liable.

4. Bond. Service of notice of appeal under this section does not stay the enforcement and collection of any order of a Hearing Officer, unless the person filing the appeal posts

with the Municipal Court an appeal bond in an amount equal to all civil fines, costs and fees assessed by the Hearing Officer.

Sec. 26-13 Penal Unrelated Overoccupancy

A. Definitions.

1. Dwelling Unit means a residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating, and sanitation.

2. Family means any number of persons occupying a single dwelling unit, provided that no such family shall contain more than four (4) persons, unless all members are related by blood, adoption, guardianship, or marriage, are an authorized caretaker, or are part of a group home for disabled persons. When counting the number of unrelated persons in a single dwelling unit, a maximum of one group of persons related by blood, adoption, guardianship, marriage, an authorized caretaker, or members of a group home for disabled persons shall be permitted, provided that all other persons shall each count as one unrelated person. Guardianship shall include foster children, exchange students, or those in the process of securing legal custody of a person under age 18. Any asserted common law marriage must be subject to an affidavit of record under the family code, or a judicial determination. The term “family” shall not be construed to mean a club, a lodge, or a fraternity/sorority house.

3. Responsible Person means a property owner, property manager or agent, local contact person, person living or staying at the property, or any person in possession of the property violating Unrelated Overoccupancy regulations.

4. Single-Family means a structure providing one (1) dwelling unit on a single lot or building plot.

5. Single-Family Dwelling means a residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating and sanitation.

B. Violation, Presumptions and Defenses.

1. Violation. It is unlawful for a responsible person to allow or have a family of more than four unrelated persons occupying a single-family dwelling unit.

2. Penalty. The penalties provided for in Section 1-7 are in addition to any other enforcement remedies and penalties which the City may have under City ordinances or State law.

3. Unrelated Overoccupancy. Unrelated Overoccupancy is evidence showing more than four vehicles with registrations to persons having different surnames and addresses are parked on the property, on the street directly in front of the property on either side of the street, or immediately adjacent to the property on a majority of days during any 30-day period creates a rebuttable presumption that a responsible person is violating this section.

4. Residence. Residence is evidence showing a vehicle registered to a person or registered to an immediate family member of a person that is parked on the property, on the street directly in front of the property, on either side of the street, or immediately adjacent to the property a majority of the days during any 30-day period creates a rebuttable presumption that a person occupies a property and violating this section.

5. Affirmative Defenses. It is an affirmative defense to prosecution to an offense under this section if:

- a. The occupants meet the requirements for definition of family in this section and the total number of family and unrelated persons is less than four (4).
- b. The residence qualifies as a Group Home as defined in the UDO.
- c. The occupants are not residents of the single-family residential unit.

April 25, 2024
Item No. 9.5.
Building and Construction Standards Commission

Sponsor: Brian Binford, Building Official

Reviewed By CBC: N/A

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Chapter 103, "Buildings and Building Regulations," Article II "Administration and Enforcement," Division 2, "Construction Board of Adjustment and Appeals; Appeals and Variances," and Division 3, "Building and Construction Standards Commission," of the Code of Ordinances of the City of College Station, Texas, by amending certain sections relating to Construction Board of Adjustment and Appeals and the Building and Standards Commission membership.

Relationship to Strategic Goals:

- Good Governance
- Neighborhood Integrity

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

Summary: The purpose of this proposed amendment is to formerly appoint the duties and responsibilities of the Building and Standards Commission to the Construction Board of Adjustments and Appeals. The Building and Standards Commission may hear cases concerning violations of ordinance that regulate:

- The preservation of public safety, relating to the materials or methods used to construct a building or improvements, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances and exits
- Relating to the fire safety of a building or improvement, including provisions related to materials, types of construction or design, warning devices, availability of water supply for extinguishing fires, or location, design or width of entrances or exits
- Relating to dangerously damaged or deteriorated buildings or improvements
- Relating to conditions caused by accumulations of refuse, vegetation or other matter that creates a breeding grounds for insects and rodents

Background: This ordinance amendment is needed to align the ordinance with changes that were previously made in the Board, Committees, and Commissions Handbook. The handbook states:

The Construction Board of Adjustments and Appeals also sits as the Building and Standards Commission. The duties and responsibilities of the Construction Board are to hear appeals of decisions and interpretations of the Building Official, and to consider variances to the terms of the technical codes. The Building and Standards Commission hears and determines cases concerning violations of the building codes.

This change in language was made only in the handbook and not codified within the ordinance. In addition, a change is proposed to the membership term as the Local Government Code mandates two-year terms for members of the Building and Standards Commission.

Staff has contacted the members of the Construction Board of Adjustments and Appeals and they have agreed to take on the additional duties of the Building and Standards Commission.

If this ordinance amendment is approved, a future item will be needed for the official appointment of the members.

Budget & Financial Summary: N/A

Attachments:

1. CBA- BSC Ordinance Amendment 4-25-24

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 103 “BUILDINGS AND BUILDING REGULATIONS,” ARTICLE II “ADMINISTRATION AND ENFORCEMENT” DIVISION 2 “CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS; APPEALS AND VARIANCES” AND DIVISION 3 “BUILDING AND CONSTRUCTION STANDARDS COMMISSION” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO THE MEMBERSHIP OF THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS AND THE BUILDING AND STANDARDS COMMISSION; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Chapter 103 “Buildings and Building Regulations,” Article II “Administration and Enforcement” Division 2 “Construction Board of Adjustment and Appeals; Appeals and Variances” 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: That Chapter 103 “Buildings and Building Regulations,” Article II “Administration and Enforcement” Division 3 “Buildings and Construction Standards Commission” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.

PART 3: 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 4: That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 5: 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 25th day of April, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Chapter 103 “Buildings and Building Regulations,” Article II “Administration and Enforcement” Division 2 “Construction Board of Adjustment and Appeals; Appeals and Variances,” Section 103-45 of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

Sec. 103-45. - Membership.

- (a) Members.** The Construction Board of Adjustment and Appeals shall consist of five members appointed by City Council for two-year terms and four alternate members who shall serve in the absence of one or more of the regular members when requested to do so by the Mayor or City Manager. The City Council shall appoint one member as Chairperson. The alternate Board Members serve for the same period and are subject to removal in the same manner as the regular members.
- (b) Removal.** The City Council may remove a Board Member for cause on a written charge. Before a decision regarding removal is made, the City Council shall hold a public hearing on the matter if requested by the Board Member subject to the removal action.
- (c) Dual Appointment.** The membership of the Construction Board of Adjustment and Appeals shall be the same as the membership of the Building and Standards Commission. Appointment to, or removal from, one body shall have the same effect for the other body.

Exhibit B

That Chapter 103 “Buildings and Building Regulations,” Article II “Administration and Enforcement” Division 3 “Building and Construction Standards Commission,” Section 103-75 of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

Sec. 103-75. – Membership.

- (a) Members.** The Building and Construction Standards Commission shall consist of five members appointed by City Council for two-year terms and four alternate members who shall serve in the absence of one or more of the regular members when requested to do so by the Mayor or City Manager. The alternate Commission Members serve for the same period and are subject to removal in the same manner as the regular members.
- (b) Removal.** The City Council may remove a Commission Member for cause on a written charge. Before a decision regarding removal is made, the City Council shall hold a public hearing on the matter if requested by the Commission Member subject to the removal action.
- (c) Dual Appointment.** The membership of the Building and Standards Commission shall be the same as the membership of the Construction Board of Adjustment and Appeals. Appointment to, or removal from, one body shall have the same effect for the other body.

April 25, 2024
Item No. 9.6.
Impact Fee Appeal - Asher Turkey Creek

Sponsor: Michael Ostrowski, Chief Development Officer

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on an appeal from Caldwell Companies of the Director of Planning and Development Services decision as it relates to impact fees for the Asher Turkey Creek development.

Relationship to Strategic Goals:

Recommendation(s): Staff recommends denial of the appeal.

Summary: This item relates to an appeal by Caldwell Companies of the Director of Planning and Development Services decision as it relates to the impact fees that are to be assessed for the Asher Turkey Creek development. The process for the appeal is set forth in Section 107-94 of the Code of Ordinances for the City of College Station, see attached.

Budget & Financial Summary:

Attachments:

1. Section 107-94 - Administrative Appeals
2. Impact Fee Appeal to City Council - 20240328
3. Impact Fee Appeal Response - 20240301
4. Impact Fee Appeal - 20240129

Sec. 107-94. - Administrative appeals.

- (a) The property owner or applicant for new development may appeal the following decisions to the Director of Planning and Development Services, or his or her designee:
 - (1) The applicability of an impact fee to the development;
 - (2) The value of the impact fee due;
 - (3) The availability or the value of an offset or credit;
 - (4) The application of an offset or credit against an impact fee due; and/or
 - (5) The amount of the refund due, if any.
- (b) All appeals shall be taken within 30 days of notice of the action from which the appeal is taken.
- (c) The burden of proof shall be on the appellant to demonstrate that the value of the fee or the value of the offset or credit was not calculated according to the applicable impact fee schedule or the guidelines established for determining offsets and credits.
- (d) The appellant may appeal the decision of the Director of Planning and Development Services to the Council. A notice of appeal to the Council must be filed by the applicant with the City Secretary within 30 days following the Director's decision. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Director's determination of the impact fee due, the development application, utility application, subdivision plat, building permit or other required City permit or authorization for development may be processed and issued while the appeal is pending.

(Ord. No. 2016-3814, exh. A(15-9), 9-22-2016)

State Law reference— Judicial appeals, Texas Local Government Code § 395.077.



First Class Letter and Email at tdsmith@cstx.gov

March 28, 2024

Tanya D. Smith
City Secretary
City of College Station
P.O. Box 9960,
College Station, TX 77842

Re: *Appeal of the Decision of the Director of Planning and Development Services Regarding the Impact Fee Value Determination for the Asher Turkey Creek Multi-Family Development Project to be located at 10001 Turkey Creek, College Station, Texas (the "Project")*

Dear Ms. Smith:

Caldwell Companies ("Caldwell") has been working on the Project since 2015, and by the end of 2023, Caldwell was ready to submit its building permits for review and approval. The building permit applications were submitted to the City on December 20, 2023, and Caldwell received a preliminary refusal to accept the permits on December 22nd. After multiple meetings and correspondence, on January 3, 2024, the Director of Planning and Development Services ("Director") issued a final determination of refusal to accept and review the building permits for the Project. The City's refusal to accept the building permit applications has resulted in a material increase (\$256,804.25) in the collection rate for impact fees applicable to Caldwell's Project. If the City had followed its own policies and procedures, the collection rate imposed would have been established on December 20, 2023.

On January 29, 2024, Caldwell submitted to the Director an appeal of the Director's January 3rd decision. A copy of Caldwell's appeal is attached to this letter as **Exhibit A**. The attached appeal contains a detailed description of the background that gives rise to this further appeal. Please refer to Exhibit A for further details.

On March 1, 2024, the Director denied Caldwell's appeal, and a copy of the Director's response letter is attached to this appeal as **Exhibit B**.

Caldwell is hereby submitting its appeal to the City Council of the Director's denial of Caldwell's appeal in accordance with City Ordinance Section 107-94.

This appeal is being pursued because the City departed from its historic practice of permitting concurrent review of a plat and building permits, and in doing so made a decision to add \$256,804.25 to the road and water impact fees that are payable on the Project. Without the additional impact fees, the Project will pay impact fees to the City in the amount of **\$213,655.03**, in which Caldwell reasonably relied on the City's common course of conduct.

In June of 2023 Caldwell had a choice to either construct the public improvements on the Project and then file the plat, or post a bond to allow the plat to be filed and then construct the public improvements.





In the end there is no difference, in both processes the end result is a filed plat and completed infrastructure improvements. Caldwell chose to construct the public improvements on the Project and then file the plat.

The Director admits that Caldwell's choice to construct the infrastructure prior to filing the plat has resulted in the Director's refusal to allow the plat and the building permits to be reviewed concurrently, and the timing of that decision has added \$256,804.25 to the cost of the Project. The Director acknowledges that concurrent reviews are allowed at least on occasion. Caldwell has provided evidence that concurrent review has been routinely provided without an advance request by the developer. Again, Caldwell reasonably relied on the City's previous course of conduct with no reason to believe the City would choose to deviate therefrom.

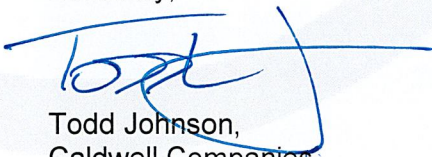
We have attached to this letter as **Exhibit C** a timeline of the development history of the Project. Caldwell has worked closely with the City on every step of this project in an effort to comply with all of the City's development ordinances. Caldwell has acted in good faith and made no effort to "beat the system". To the contrary, Caldwell has worked so closely with the City that we would have expected the City to advise Caldwell of the potential adverse consequences of choosing to construct the infrastructure rather than posting a bond, especially since concurrent review has been available to numerous developers without objection from the city.

Caldwell started this project long before the new impact fee schedule was put in place. Caldwell has relied on the historic practices of the City, and Caldwell's decision to construct the infrastructure prior to filing the plat has neither inconvenienced the City nor caused the City to incur any additional expenses. **This appeal is an isolated situation, based on our inquiries, the City has no other similar situations, and none will arise going forward.**

The pre-development process in the City of College Station is complicated and expensive. Caldwell has complied at every step with the ordinances of the City. The Director's decision is simply not fair, it is punitive to a developer that has tried to add value to the City. We are asking that the City Council grant this appeal, accept the building permit applications as of December 20, 2023, and reduce the impact fees payable on the project by \$256,804.25, with Caldwell still paying impact fees of \$213,655.03 to the City.

Thank you.

Sincerely,



Todd Johnson,
Caldwell Companies

Exhibit A: January 29, 2024, from Caldwell to the Director
Exhibit B: March 1, 2024, from the Director to Caldwell
Exhibit C: Project Timeline



January 29, 2024

Michael Ostrowski, CEcD, AICP
Director of Planning and Development Services
City of College Station
P.O. Box 9960,
College Station, TX 77842

Re: *Appeal Regarding the Impact Fee Value Determination for the Asher Turkey Creek Multi-Family Development Project to be located at 10001 Turkey Creek, College Station, Texas (the "Project")*

Mr. Ostrowski:

This letter is an appeal of the proposed value of the water and roadway impact fees that are associated with the Project. This appeal is submitted pursuant to *Section 107-94.-Administrative Appeals* of the City of College Station Unified Development Ordinance Item A.2. "The Value of the Impact Fee Due" and is submitted within thirty (30) days of notice of the action from which the appeal is taken, January 3, 2024. On that date your refusal to accept for review the building permits associated with this Project resulted in a significant increase (\$256,804.25) to the water and roadway impact fees associated with the Project.

Project Entitlement Timeline:

Caldwell Companies ("Caldwell") has been working on this Project since 2015. The preliminary plan was approved in March 2022, and the final plat was submitted in April 2022. A pre-application conference regarding the site plan and building plans was conducted on March 8, 2023. The civil/site plan package was submitted in September 2023, and it is currently under review, and that review has been undertaken prior to the recording of a final plat.

Building permit applications were submitted to the City on December 20, 2023, and we received a preliminary refusal to accept the permits on the 22nd. On January 3, 2024, your office issued the final determination of refusal to accept and review the building permits for the Project.

Background to this Appeal Request:

Following the initial submission of the building permits on December 20th, the Project architect received a call from a Building Department representative requesting that the architect stop submitting the applications. The Building Department representative explained that he was directed to not accept these applications because the Project did not have a plat approved by the Planning & Zoning Commission and/or filed of record. The refusal to accept these building permit applications was relayed to our civil engineer, Veronica Morgan, PE, CFM with Mitchell & Morgan, LLP, who in turn started conversing with staff and yourself regarding this refusal and its direct impact related to the value of impact fees that will be collected from this Project. After several discussions with staff, it was determined that the refusal to accept the building permits was based on the premise that the application was an incomplete submittal.

Previous Policy:

Based on the experience of both engineering firms that we use in College Station (Mitchell & Morgan and Schultz Engineering), for at least 6 years the City's procedural policies have allowed concurrent review of development applications. Based on those policies, building permit applications have been accepted and reviewed concurrently with other entitlement processes. In fact, in this Project the site plan has been reviewed concurrently with the final plat. Caldwell's submission of the building permit applications concurrent with the final plat was in good faith and consistent with the City's policies and procedures. Because of this, and the concurrent review of our site plan with the final plat, we were acting in good faith that this policy would still be in place in December 2023 when we submitted our building permit applications.

Our research has identified more than 20 examples of the City's review of building permits prior to the recording of a final plat. We have attached examples as an exhibit to this letter.

Impact of Policy Change:

In your email dated January 3, 2024, you mention that the City allows financial surety to be provided for plat infrastructure so that a plat can be filed prior to construction. A Pre-Construction meeting regarding the construction of the plat infrastructure was held with City Staff on Friday, October 13, 2023. Caldwell elected to construct the infrastructure in lieu of posting financial surety, and that decision was made, in part, in reliance of the long-standing City policy that the building permits would be accepted for review concurrent with the final plat review. At no point did the City staff inform Caldwell that the policies and procedures would change.

At this point, not only is Caldwell appealing the value of the impact fees, but we are also making the City aware of the fact that the change in policy has prevented the review of building permits, which in turn is causing material delays in the construction schedule at significant cost to Caldwell.

Based on your comments in a December 21st meeting with Caldwell's employee, Laurin Randall, we are concerned that the change in policy was implemented to prevent applicants from filing building permits prior to the impact fee increase scheduled to go into effect on 12-31-23. At Caldwell we believe that we have followed and complied with all of the City's policies and procedures, and that we were right in our expectation that the building permits would be accepted in 2023 and the impact fees established in accordance with the 2023 values.

Collection Rate:

UDO Sections 107.71 and 107.73 include tables that establish the collection rate imposed per service unit for water and roadway impact fees. *The tables indicate that the collection rates are established on the building permit application date.* The City's refusal to accept the building permit applications was contrary to the City's historical policies and procedures and has resulted in a material increase (\$256,804.25) in the collection rate for impact fees applicable to Caldwell's Project. If the City had followed its own policies and procedures, the collection rate imposed would have been established on December 20, 2023.



Conclusion:

Caldwell has been working on the Project for over seven (7) years. Our final plat was submitted in April 2022, was reviewed by staff and is waiting for infrastructure completion. The site plan was submitted in September 2023; it was accepted as complete prior to the increase in parkland dedication fees and is currently under review. At no time did we anticipate that the building permit applications would not be accepted based upon the natural progression of this Project, and the historical policies and procedures of the Planning & Development Services Department.

The City of College Station Planning and Development Services Department has historically accepted concurrent review of building permits and plats. Section 3.2.H. of the UDO 'Simultaneous Processing of Applications' states: "At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO."

For at least 6 years, the Administrator has allowed concurrent review of building permits and plats. The decision to refuse the building permits on this Project was contrary to the historical policies and procedures of the City and appears to be an arbitrary and capricious withholding of the Administrator's discretion to the detriment of this Project.

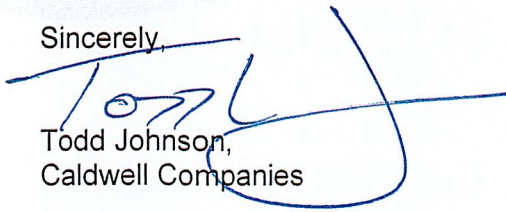
The acceptance of the building permits on this Project would not have in any manner had a negative impact on the City's regulation of this Project. Had the City informed Caldwell of its intended policy change it would have been a simple process to submit the financial surety so that the building permits could be accepted by the City. The City has had the plat for nearly 2 years, the site plan has been accepted for review, the Project infrastructure is under construction.

Caldwell filed its building permits, in part, to take advantage of the period of time allowed by the City Council for projects and developments to proceed in advance of increasing impact fees. There was no hidden agenda and the City has been reviewing this project for 2 years.

Caldwell requests that the City reverse its position, accept the building permits for review as of December 20, 2023, and establish the collection rate imposed per service unit for water and roadway impact fees as of that date.

Thank you.

Sincerely,


Todd Johnson,
Caldwell Companies





CALDWELL
COMPANIES

Exhibit

Table 1: Concurrent Review Examples

No.	Project Name	P&Z Approval Date	Plat Filing Date	Building Permit Submittal Date
1	IL Texas Aggieland High School	11/2/2023	Not Filed as of 1/9/2024	11/1/2022
2	DR Horton Office	9/15/2022	10/17/2022	8/15/2022
3	Gulf Coast Regional Blood Center	City Planner	2/10/2022	12/30/2021
4	McDonalds at Holleman and Wellborn Road	3/16/2023	3/29/2023	10/14/2021
5	First Financial Bank	City Planner	7/30/2021	7/2/2021
6	New Heights Church Expansion	City Planner	6/10/2021	5/11/2021
7	Ascend at Harvey Apartments	11/4/2021	11/30/2021	3/5/2021
8	Independence Ballpark Concession Stand	Un-Platted	Un-Platted	10/4/2019
9	Broadstone Traditions Phase II	9/5/2019	9/6/2019	7/8/2019
10	Huntington Senior Living Apartments	5/16/2019	6/14/2019	4/15/2019
11	Grace Bible Church Creekside Campus	City Planner	10/15/2018	8/17/2018
12	Chick-Fil-A at Jones Crossing	City Planner	3/20/2019	11/30/2018
13	College Station Police Department	Un-Platted	Un-Platted	11/12/2018
14	Sodalis College Station	3/15/2018	4/16/2018	12/20/2017
15	The Ranch at Arrington	6/21/2018	7/9/2018	11/30/2017
16	IL Texas K-8th Grade School	8/3/2017	8/11/2017	6/13/2017
17	Ariza Multi-Family (Now Oakwood Crossing)	7/20/2017	7/24/2017	5/4/2017
18	River Bend Elementary	City Planner	4/8/2019	2/7/2017
19	Wellborn Middle School	6/21/2018	7/2/2018	9/16/2016
20	Ed Froehling Office	9/20/2018	9/24/2018	5/5/2016
21	Costco		11/3/21	8/17/21
22	The Creek Place Development Building A	11/4/21	12/17/21	11/8/19

Commercial Development ▪ Residential Development ▪ Brokerage ▪ Property Management

9955 Barker Cypress Road, Suite 250, Cypress, TX 77433 Toll-Free: 877.527.SALE Fax: 713.690.0490 CaldwellCos.com



Todd Johnson
Caldwell Companies
9955 Barker Cypress Road
Suite 250
Cypress, TX 77433

Re: Response to January 29, 2024 Impact Fee Appeal for Asher Turkey Creek

March 1, 2024

Mr. Johnson:

This letter is in response to your January 29th appeal letter regarding the impact fee determination for the Asher Turkey Creek multi-family development. Your appeal is denied for the reasons stated in this response.

Your letter states it is the City's policy to accept concurrent reviews of building permits before the approval of a final plat. Your letter also states several examples when this has occurred previously. After reviewing your examples there have been times when this has occurred. However, as the Administrator I do not consider this the City's standard practice. Several of your examples are not similar to your project. For example, projects for the school district are not required to plat; several examples were before system-wide impact fees were implemented or collection rates were established; and other examples are for projects that were either not in the City limits, had an economic development agreement, or were partially platted.

You provide examples of projects when a building permit was submitted before the property was platted, however this is not consistent with my interpretation of the adopted City Ordinance. According to the City Ordinance, it is at the discretion of the Administrator to accept the simultaneous processing of applications. Since there are factors, such as code changes, and because of review and discretion, simultaneous review is not automatically granted. Please see the pertinent City Ordinance reference below:

Unified Development Ordinance (UDO) Section 3.2.H. *Simultaneous Processing of Applications.* *Two (2) or more forms of review and approval are typically required in the development process. Development proposals that require applications for Zoning Map Amendments (Rezoning) are required to be acted upon by the City Council before plat and other development applications will be accepted for review by the City. In addition, Preliminary Plans are to be acted upon by the Planning and Zoning Commission or the*

Planning & Development Services

P.O. BOX 9960 • 1101 TEXAS AVENUE • COLLEGE STATION • TEXAS • 77842

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cstx.gov/devservices

Administrator before a subsequent Final Plat will be accepted for review by the City. At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO. Such processing shall occur at the applicant's own risk.

Regarding your appeal and project, the approval procedures for a building permit application cannot be completed because the subject property is not platted. The assessment of impact fees occurs when the plat is recorded. See the pertinent City Ordinance below on System Wide Impact Fees:

107-71.(h) and 107-72.(h) Assessment and collection. *Assessment and collection of the impact fees established under this section shall be as set forth herein and in accordance with applicable State law, and with assessment to occur at the time the final plat is recorded when platting is required. If platting is not required, assessment shall occur at the earliest time allowed by law or by agreement as allowed by law.*

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Also, you claim City Ordinance Sections 107-71 and 107-73 establish collection rates based on the building permit application. While this is true, your building permit application has not been accepted as you have not met the prerequisite platting requirements. You can only establish the appropriate collection rate once the property is platted and the building permit application has been accepted. Even if the City were to accept the building permit application, the assessment of the impact fees occurs at plat, and it would be the impact fees and collection rates in effect at the time of plat approval that would be charged to the project.

Your letter states you were aware the impact fee collection rates were increasing after December 31, 2023. With the adoption of the new ordinance modifying the collection rates, the City Council provided ample time for developers to take the necessary steps with their projects to preserve the ability to be subject to the previous impact fee collection rates. Your engineering firm notified us in July of 2023 that you were choosing to construct the infrastructure, rather than choosing to post a surety bond, which would have allowed you to move forward with filing your plat, assuming it met all the standards. While you state in your letter you were working under the assumption you could just apply for the building permits before platting, and that would preserve the prior collection rate, however, that is not the case here. Also, you or your engineering firm did not request simultaneous processing of applications before late last year.

Your appeal is denied based on these facts and the City Ordinances in place. If you should decide to appeal my determination, City Ordinance Section 107-94 establishes the appeal process to the City Council.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Ostrowski". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Ostrowski".

Michael Ostrowski
Director of Planning and Development Services
City of College Station

Exhibit C: Project Timeline

Page 1 of 7

March 1, 2024	Caldwell Companies receives rejection from Michael Ostrowski to Impact Fee Appeal letter from CSTAT.
January 29, 2024	Caldwell Companies mails Impact Fee Appeal letter to CSTAT stating specific examples of concurrent reviews.
January 22, 2025	Laurin Randell spoke with CSTAT official, Anthony Armstrong, to discuss CSTAT's ability to review drawings prior to appealing. It was encouraged to bond the remaining cost of the offsite work in order for the building permit to be accepted.
December 22, 2023	Caldwell Companies and M&M met with CSTAT (Michael Ostrowski) to discuss why the increased fees would be charged. CSTAT stated: • Building Permit would not be complete due to lack of completeness because plat was not recorded • Building Permit plans would not be reviewed until plat is recorded • We should have bonded the offsite work • Impact Fees will be assessed as of the date of final plat recording and a complete application • He would investigate the matter in the Development Code
December 21, 2023	Caldwell Companies was informed by phone call from CSTAT plan review to stop submitting because it would not be accepted (Ben McCarty): • Building Permit would not be accepted by CSTAT as complete • Caldwell will incur the 1/1/2024 increased Impact Fees due to timing of Building Permit submittal. Increase of ~\$250,000.
December 19, 2023	Caldwell <u>received</u> Notice to Proceed of Alternative Parking Plan
December 5, 2023	CSTAT <u>approved</u> Alternative Parking Plan
November 20, 2023	Caldwell Companies <u>breaks ground</u> on Final Plat, Easements, and Construction Documents
November 9, 2023	Received <u>approved</u> and stamped plans for Final Plat, Easements, and Construction Documents from COB and CSTAT
November 6, 2023	Caldwell <u>submitted</u> to City for Final Plat, Easements, and Construction Documents
November 15, 2023	CSTAT confirms receipt of Alternative Parking Plan
November 3, 2023	Caldwell <u>resubmitted</u> response to Alternative Parking Plan :

Exhibit C: Project Timeline

Page 2 of 7

	• Agrees to build shared use path instead of paying fee in lieu of sidewalk for Final Plat, Easements, and Construction Documents • Agrees to provide additional outdoor bike parking storage at each building
October 27, 2023	Caldwell and M&M meet with CSTAT Planners to discuss requests made in latest Alternative Parking Plan comments
October 25, 2023	Alternative Parking Plan comments provided by CSTAT: • Requested Caldwell to build shared use path instead of paying fee in lieu of sidewalk for Final Plat, Easements, and Construction Documents • Requested Caldwell change building design by moving bike storage facilities to CSTAT's desired location • Requested additional outdoor bike parking facilities located around buildings
October 16, 2023	Civil Site Plan comments provided by CSTAT
October 11, 2023	Alternative Parking Plan <u>resubmitted</u>
October 1, 2023	CSTAT increased Parkland Fees to 80% of total proposed fee: • \$1,504.80 per unit on Multifamily (~2.2x increase, \$228,166.20 lump sum increase from June 23, 2022) • Caldwell to pay \$419,839.20 to CSTAT
September 27, 2023	Civil Site Plan <u>submitted</u> to CSTAT
September 19, 2023	Alternative Parking Plan comments provided by CSTAT: • Rejected our submittal stating that parking ordinance changed on 8/10. • Required Caldwell to demonstrate the proposed plan results in a better situation for the overall area • CSTAT requested bicycle access to site and connections to existing bicycle facilities • M&M called CSTAT for clarification the same day
August 28, 2023	Alternative Parking Plan <u>submitted</u> to CSTAT
August 10, 2023	Alternative Parking Plan code language is changed by CSTAT. Caldwell was not made aware of CSTAT's intent to change language in August 7 th meeting.
August 7, 2023	Caldwell meets with CSTAT to discuss plans for Alternative Parking Plan

Exhibit C: Project Timeline

Page 3 of 7

May 5, 2023	FAA <u>approved</u> building heights claiming a determination of no hazard to air navigation
February 7, 2023	FAA survey <u>submitted</u> by Caldwell Companies
December 5, 2022	Resubmitted application for Final Plat, Easements, and Construction Documents (Sewer lines) to COB
November 29, 2022	COB releases hold on comments and/or approvals. Provides comments.
October 1, 2022	CSTAT increased Parkland Fees to 60% of total <u>proposed</u> fee: • \$1,128.60 per unit on Multifamily (~1.6x increase, \$123,206.40 lump sum increase from June 23, 2022) • Caldwell missed this deadline
September 7, 2022	Review put on hold by COB due: • Effects both comments or approval of plans being released by COB • Related to lack of resolution with CSTAT on an issue on the east side for sewer they are supposed to provide but wont
August 30, 2022	Resubmitted application for Final Plat, Easements, and Construction Documents (Water and Sewer lines) to CSTAT and COB
July 18, 2022	Received comments on Application for Final Plat, Easements, and Construction Documents (Water and Sewer lines) from CSTAT and COB
June 29, 2022	Resubmitted application for Final Plat, Easements, and Construction Documents (Water and Sewer liens) to CSTAT and COB
June 23, 2022	CSTAT adopted new Parkland Dedication Fee that will increase over next three years: <u>The current Fees:</u> Single Family - \$1,261 per platted lot (assessed during platting) Multi-Family - \$687 per bedroom (assessed with the building permit) <u>The proposed fees were adopted:</u> Single Family - \$5,256 per platted lot (assessed during platting) Multi-Family - \$1,881 per bedroom (assessed with the building permit) <u>Implementation:</u> Between now and October 1, 2022 - the <u>current</u> fees apply October 1, 2022 - 60% of the total <u>proposed</u> fee will be applied

Exhibit C: Project Timeline

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October 1, 2023 - 80% of the total proposed fee will be applied
October 1, 2024 - 100% of the total proposed fee will be applied

May 16, 2022	Received comments on Application for Final Plat, Easements and Construction Documents (Water and Sewer lines) from CSTAT and COB
April 11, 2022	<u>Submitted</u> application for Final Plat, Easements, and Construction Documents (Water and Sewer lines) to CSTAT and COB
March 28, 2022	CSTAT Preliminary Plan Application is <u>approved</u>
March 8, 2022	M&M responds to CSTAT Preliminary Plan comments on behalf of Caldwell Companies
March 1, 2022	Received CSTAT comments after reviewing Preliminary Plan Application
February 11, 2022	Preliminary Plan Application <u>submitted</u> to CSTAT
July 28, 2020	TX Public Utility Commission <u>approved</u> through Interlocal Agreement
April 17, 2020	TX Public Utility Commission petition for approval of service area <u>submitted</u> through Interlocal Agreement
February 20, 2020	Global economic market crash due to Covid-19
January 1, 2020	Covid-19 Pandemic begins in U.S.
July 17, 2017	City of College officially <u>issues</u> updated Rezoning property
February 18, 2016	Met with Steven Maldonado and David Coleman (CS Wastewater) • Discussed plan to upgrade lift • Maldonado and Coleman amenable to plan ○ Only unknown is the capacity of the line that runs from the Pornada lift across 2818 (relatively small/manageable unknown) ○ Wastewater confirms support for rezoning Planning and Zoning Commission • 5 voting members present • Unanimous support for comp plan change and rezoning • Concerns: ○ Easterwood height restrictions ○ (1) member voiced concern about MF fitting into the bio-corridor theme • Council to review March 10, 2016

Exhibit C: Project Timeline

Page 5 of 7

February 17, 2016	Met with David Schmitz (Director of CS Parks and Rec.) • Make David aware of our intent to run sewer behind the TAMU cemetery • David was amenable to our plan but warned there was a gas line that ran through the cemetery that we would need to avoid.
February 15, 2016	Engineering meeting with Mitchell and Morgan to review remaining action items to prepare for P&Z • \$100K to improve Pornada lift to support TC sewer ○ Does not include line to lift ○ Only need to upgrade pump (not wet well)
February 12, 2016	City staff reports confirm staff support of proposed rezoning and comp plan amendment
January 28, 2016	Made contact with the city regarding 2nd round of comments via Mitchell and Morgan. City officials did not review last submittal until the 20th and consequently did not start advertising for the 2/4 P&Z date in time. We are confirmed to be on the agenda for the 2/18 P&Z meeting.
January 12, 2016	Responded to city comments and requested advertisement for 2/4 P&Z meeting.
January 7, 2016	Received lift station CDs from Maldonado.
November 19, 2015	Met with College Station Utilities (Steven Maldonado and David Coleman) • Current lift does not have extra capacity to take TC sewer ○ All remaining capacity reserved for ultimate build out of Pornada tract (adjacent to TC) • Options ○ Tie into Bryan utilities ○ Execute agreement with Pornada tract to grant remaining capacity to TC ○ Increase lift capacity ▪ Two parts: (1) wet well capacity, (2) pump rate ▪ Sewer from this lift will go through COCS and A&M lines to TAMU
November 13, 2015	Engineering meeting to discuss city comments: • ILA guarantees capacity of TAMU treatment plant (not lift or lines to treatment plant) • Nearest lift may not support added load from TC • Need: ○ Current lift design ○ New development agreement that reserves line and lift capacity for Caldwell development • Veronica to use TxDOT correspondence to address city comments on drives

Exhibit C: Project Timeline

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October 15, 2015	City comments: • planning comments: none • engineering comments: ○ prelim sanitary sewer layout requested (offsite easement required?) ○ water service layout requested ○ white creek drainage easement required (address during plat phase) • traffic comments: ○ move drive 4 out of FM 60 exit ramp area ○ drive 5 needs to be centrally located on exit ramps
September 18, 2015	Submit comp plan designation amendment and rezoning requests to city.
September 11, 2015	Call with Mitchell and Morgan: • Staff and key council members understand our intent with the TC parcel • Confirmation that we are comfortable moving forward with the comp plan and zoning change requests • Anticipate P&Z before November • Anticipate Council before December
June 30, 2015	Engaged Veronica (Mitchell and Morgan) to pursue entitlements with city.
June 6, 2015	Met with Lance Simms and Molly Hitchcock (Assistant Planning Director). Discussion outcomes: • Lance reinforced Molly's and Natalie's initial assertion that a MF use on the TC tract would not be supported by staff • A land use plan amendment is needed to pursue MF use on the tract. ○ The zoning and land use change request can be processed concurrently • The best approach to pursue MR use is to split the parcels. ○ Southern parcel: ▪ Comp plan designation: General Commercial ▪ Zoning: General Commercial ○ Northern parcel: ▪ Comp plan designation: Urban ▪ Zoning: MF
June 1, 2015	Met with Natalie Ruiz (Economic Development Director). Discussion outcomes: • Natalie reinforced Molly's initial assertion that MF use on the TC tract will not be supported by staff • Natalie warned that an urban land use designation may not be correct. She encouraged us to speak with Lance Sims (Planning Director) before pursuing either a zoning or comp plan change.

Exhibit C: Project Timeline

Page 7 of 7

May 27, 2015	Received comment from TxDOT requiring the right-out only lane on FM 60 to be eliminated. This contradicts previous verbal and written approval of that lane.
May 14, 2015	Received a memo from city stating the rezoning request was not in compliance with the current land use plan. A comp plan amendment request must be submitted to continue review of the rezoning request.
May 13, 2015	On Caldwell's behalf, Kimley Horn sends a draft of the requested TIA to city for review.
May 4, 2015	McClure Browne submits rezoning request on Caldwell's behalf that splits the TC parcel into two components (MF and commercial).
March 11, 2015	Attended Pre-application conference with various planning officials in attendance to discuss development plan for the Turkey Creek parcel. • Land Use Plan: ○ Hotel, office, and retail uses are acceptable ○ MF would not be supported by staff • PDD of P-MUD would be the preferred zoning vehicle for any mixed uses on this parcel
February 25, 2015	Received direction from Danielle Singh (Transportation Planning Coordinator) stating any rezoning application will require a Traffic Impact Analysis including two intersections near the Turkey Creek parcel.
March 25, 2014	Received approval from Doug Marino (TxDOT Bryan District Planning Engineer) via email for two access points along FM 60
September 27, 2013	Caldwell purchases Gilmore tract (TC).
August 8, 2013	ILA revision between City of College Station and TAMU – allows City to direct sanitary sewer from Gilmore tract (TC) to TAMU sanitation facility. • Average wastewater flow – 90,000 gallons • Daily peak wastewater flow – 360,000 gallons



Todd Johnson
Caldwell Companies
9955 Barker Cypress Road
Suite 250
Cypress, TX 77433

Re: Response to January 29, 2024 Impact Fee Appeal for Asher Turkey Creek

March 1, 2024

Mr. Johnson:

This letter is in response to your January 29th appeal letter regarding the impact fee determination for the Asher Turkey Creek multi-family development. Your appeal is denied for the reasons stated in this response.

Your letter states it is the City's policy to accept concurrent reviews of building permits before the approval of a final plat. Your letter also states several examples when this has occurred previously. After reviewing your examples there have been times when this has occurred. However, as the Administrator I do not consider this the City's standard practice. Several of your examples are not similar to your project. For example, projects for the school district are not required to plat; several examples were before system-wide impact fees were implemented or collection rates were established; and other examples are for projects that were either not in the City limits, had an economic development agreement, or were partially platted.

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Administrator before a subsequent Final Plat will be accepted for review by the City. At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO. Such processing shall occur at the applicant's own risk.

Regarding your appeal and project, the approval procedures for a building permit application cannot be completed because the subject property is not platted. The assessment of impact fees occurs when the plat is recorded. See the pertinent City Ordinance below on System Wide Impact Fees:

107-71.(h) and 107-72.(h) Assessment and collection. *Assessment and collection of the impact fees established under this section shall be as set forth herein and in accordance with applicable State law, and with assessment to occur at the time the final plat is recorded when platting is required. If platting is not required, assessment shall occur at the earliest time allowed by law or by agreement as allowed by law.*

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Your letter states you were aware the impact fee collection rates were increasing after December 31, 2023. With the adoption of the new ordinance modifying the collection rates, the City Council provided ample time for developers to take the necessary steps with their projects to preserve the ability to be subject to the previous impact fee collection rates. Your engineering firm notified us in July of 2023 that you were choosing to construct the infrastructure, rather than choosing to post a surety bond, which would have allowed you to move forward with filing your plat, assuming it met all the standards. While you state in your letter you were working under the assumption you could just apply for the building permits before platting, and that would preserve the prior collection rate, however, that is not the case here. Also, you or your engineering firm did not request simultaneous processing of applications before late last year.

Your appeal is denied based on these facts and the City Ordinances in place. If you should decide to appeal my determination, City Ordinance Section 107-94 establishes the appeal process to the City Council.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Ostrowski".

Michael Ostrowski
Director of Planning and Development Services
City of College Station



January 29, 2024

Michael Ostrowski, CEcD, AICP
Director of Planning and Development Services
City of College Station
P.O. Box 9960,
College Station, TX 77842

Re: *Appeal Regarding the Impact Fee Value Determination for the Asher Turkey Creek Multi-Family Development Project to be located at 10001 Turkey Creek, College Station, Texas (the "Project")*

Mr. Ostrowski:

This letter is an appeal of the proposed value of the water and roadway impact fees that are associated with the Project. This appeal is submitted pursuant to *Section 107-94.-Administrative Appeals* of the City of College Station Unified Development Ordinance Item A.2. "The Value of the Impact Fee Due" and is submitted within thirty (30) days of notice of the action from which the appeal is taken, January 3, 2024. On that date your refusal to accept for review the building permits associated with this Project resulted in a significant increase (\$256,804.25) to the water and roadway impact fees associated with the Project.

Project Entitlement Timeline:

Caldwell Companies ("Caldwell") has been working on this Project since 2015. The preliminary plan was approved in March 2022, and the final plat was submitted in April 2022. A pre-application conference regarding the site plan and building plans was conducted on March 8, 2023. The civil/site plan package was submitted in September 2023, and it is currently under review, and that review has been undertaken prior to the recording of a final plat.

Building permit applications were submitted to the City on December 20, 2023, and we received a preliminary refusal to accept the permits on the 22nd. On January 3, 2024, your office issued the final determination of refusal to accept and review the building permits for the Project.

Background to this Appeal Request:

Following the initial submission of the building permits on December 20th, the Project architect received a call from a Building Department representative requesting that the architect stop submitting the applications. The Building Department representative explained that he was directed to not accept these applications because the Project did not have a plat approved by the Planning & Zoning Commission and/or filed of record. The refusal to accept these building permit applications was relayed to our civil engineer, Veronica Morgan, PE, CFM with Mitchell & Morgan, LLP, who in turn started conversing with staff and yourself regarding this refusal and its direct impact related to the value of impact fees that will be collected from this Project. After several discussions with staff, it was determined that the refusal to accept the building permits was based on the premise that the application was an incomplete submittal.



Previous Policy:

Based on the experience of both engineering firms that we use in College Station (Mitchell & Morgan and Schultz Engineering), for at least 6 years the City's procedural policies have allowed concurrent review of development applications. Based on those policies, building permit applications have been accepted and reviewed concurrently with other entitlement processes. In fact, in this Project the site plan has been reviewed concurrently with the final plat. Caldwell's submission of the building permit applications concurrent with the final plat was in good faith and consistent with the City's policies and procedures. Because of this, and the concurrent review of our site plan with the final plat, we were acting in good faith that this policy would still be in place in December 2023 when we submitted our building permit applications.

Our research has identified more than 20 examples of the City's review of building permits prior to the recording of a final plat. We have attached examples as an exhibit to this letter.

Impact of Policy Change:

In your email dated January 3, 2024, you mention that the City allows financial surety to be provided for plat infrastructure so that a plat can be filed prior to construction. A Pre-Construction meeting regarding the construction of the plat infrastructure was held with City Staff on Friday, October 13, 2023. Caldwell elected to construct the infrastructure in lieu of posting financial surety, and that decision was made, in part, in reliance of the long-standing City policy that the building permits would be accepted for review concurrent with the final plat review. At no point did the City staff inform Caldwell that the policies and procedures would change.

At this point, not only is Caldwell appealing the value of the impact fees, but we are also making the City aware of the fact that the change in policy has prevented the review of building permits, which in turn is causing material delays in the construction schedule at significant cost to Caldwell.

Based on your comments in a December 21st meeting with Caldwell's employee, Laurn Randall, we are concerned that the change in policy was implemented to prevent applicants from filing building permits prior to the impact fee increased scheduled to go into effect on 12-31-23. At Caldwell we believe that we have followed and complied with all of the City's policies and procedures, and that we were right in our expectation that the building permits would be accepted in 2023 and the impact fees established in accordance with the 2023 values.

Collection Rate:

UDO Sections 107.71 and 107.73 include tables that establish the collection rate imposed per service unit for water and roadway impact fees. *The tables indicate that the collection rates are established on the building permit application date.* The City's refusal to accept the building permit applications was contrary to the City's historical policies and procedures and has resulted in a material increase (\$256,804.25) in the collection rate for impact fees applicable to Caldwell's Project. If the City had followed its own policies and procedures, the collection rate imposed would have been established on December 20, 2023.



Conclusion:

Caldwell has been working on the Project for over seven (7) years. Our final plat was submitted in April 2022, was reviewed by staff and is waiting for infrastructure completion. The site plan was submitted in September 2023; it was accepted as complete prior to the increase in parkland dedication fees and is currently under review. At no time did we anticipate that the building permit applications would not be accepted based upon the natural progression of this Project, and the historical policies and procedures of the Planning & Development Services Department.

The City of College Station Planning and Development Services Department has historically accepted concurrent review of building permits and plats. Section 3.2.H. of the UDO 'Simultaneous Processing of Applications' states: "At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO."

For at least 6 years, the Administrator has allowed concurrent review of building permits and plats. The decision to refuse the building permits on this Project was contrary to the historical policies and procedures of the City and appears to be an arbitrary and capricious withholding of the Administrator's discretion to the detriment of this Project.

The acceptance of the building permits on this Project would not have in any manner had a negative impact on the City's regulation of this Project. Had the City informed Caldwell of its intended policy change it would have been a simple process to submit the financial surety so that the building permits could be accepted by the City. The City has had the plat for nearly 2 years, the site plan has been accepted for review, the Project infrastructure is under construction.

Caldwell filed its building permits, in part, to take advantage of the period of time allowed by the City Council for projects and developments to proceed in advance of increasing impact fees. There was no hidden agenda and the City has been reviewing this project for 2 years.

Caldwell requests that the City reverse its position, accept the building permits for review as of December 20, 2023, and establish the collection rate imposed per service unit for water and roadway impact fees as of that date.

Thank you.

Sincerely,


Todd Johnson,
Caldwell Companies



Exhibit

Table 1: Concurrent Review Examples

No.	Project Name	P&Z Approval Date	Plat Filing Date	Building Permit Submittal Date
1	IL Texas Aggieland High School	11/2/2023	Not Filed as of 1/9/2024	11/1/2022
2	DR Horton Office	9/15/2022	10/17/2022	8/15/2022
3	Gulf Coast Regional Blood Center	City Planner	2/10/2022	12/30/2021
4	McDonalds at Holleman and Wellborn Road	3/16/2023	3/29/2023	10/14/2021
5	First Financial Bank	City Planner	7/30/2021	7/2/2021
6	New Heights Church Expansion	City Planner	6/10/2021	5/11/2021
7	Ascend at Harvey Apartments	11/4/2021	11/30/2021	3/5/2021
8	Independence Ballpark Concession Stand	Un-Platted	Un-Platted	10/4/2019
9	Broadstone Traditions Phase II	9/5/2019	9/6/2019	7/8/2019
10	Huntington Senior Living Apartments	5/16/2019	6/14/2019	4/15/2019
11	Grace Bible Church Creekside Campus	City Planner	10/15/2018	8/17/2018
12	Chick-Fil-A at Jones Crossing	City Planner	3/20/2019	11/30/2018
13	College Station Police Department	Un-Platted	Un-Platted	11/12/2018
14	Sodalis College Station	3/15/2018	4/16/2018	12/20/2017
15	The Ranch at Arrington	6/21/2018	7/9/2018	11/30/2017
16	IL Texas K-8th Grade School	8/3/2017	8/11/2017	6/13/2017
17	Ariza Multi-Family (Now Oakwood Crossing)	7/20/2017	7/24/2017	5/4/2017
18	River Bend Elementary	City Planner	4/8/2019	2/7/2017
19	Wellborn Middle School	6/21/2018	7/2/2018	9/16/2016
20	Ed Froehling Office	9/20/2018	9/24/2018	5/5/2016
21	Costco		11/3/21	8/17/21
22	The Creek Place Development Building A	11/4/21	12/17/21	11/8/19

April 25, 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