



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#

June 27, 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.

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

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

- a. Power Supply

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

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

Speaker Protocol

An individual who desires to address the City Council regarding any agenda item other than those items posted for Executive Session must register with the City Secretary two (2) hours before the meeting being called to order. Individuals shall register to speak or provide written comments at <https://forms.cstx.gov/Forms/CSCouncil> or provide a name and phone number by calling 979-764-3500. Upon being called to speak an individual must state their name and city of residence, including the state of residence if the city is located out of state. Speakers are encouraged to identify their College Station neighborhood or geographic location. Please do not carry purses, briefcases, backpacks, liquids, foods or any other object other than papers or personal electronic communication devices to the lectern, nor advance past the lectern unless you are invited to do so. 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. Hear Visitors.

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

6. Consent Agenda.

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

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

- June 13, 2024 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM061324 DRAFT Minutes

6.2. Presentation, discussion, and possible action on an ordinance amending the City of College Station's Texas Municipal Retirement System Benefits Plan calculation.

Sponsors: Mary Ellen Leonard

Attachments: 1. College Station TMRS Ordinance - USC-RT_COLA-R_HB2464

- 6.3. Presentation, discussion, and possible action regarding a resolution directing the Brazos County Tax Office to calculate the FY25 voter-approved rate in the manner provided for a special taxing unit affected by a disaster declaration. The Proposed FY26 Budget will not be prepared and presented to the City Council until July 2025.
Sponsors: Mary Ellen Leonard
Attachments: 1. Resolution Voter Approved Tax Rate Disaster Calculation
- 6.4. Presentation, discussion, and possible action regarding an agreement between the City of College Station and Cathy Goss for the purchase of real property located at 2700 Wilderness Dr. S for a purchase price of \$275,000 with Community Development Block Grant Funds.
Sponsors: Debbie Eller
Attachments: 1. Location Map - 2700 Wilderness
 2. 2700 Wilderness Real Estate Contract - Seller Signed
- 6.5. Presentation, discussion, and possible action regarding the Brazos County Interjurisdictional Emergency Management Basic Plan.
Sponsors: Richard Mann
Attachments: 1. Basic Plan - 2024
- 6.6. Presentation, discussion, and possible action on a change order in the amount of \$50,000 with API National Service Group, Inc. for fire alarm and fire extinguisher inspections, monitoring and repairs.
Sponsors: Jennifer Cain
Attachments: 1. API National Service Group CO 1
- 6.7. Presentation, discussion, and possible action on a change order in the amount of \$69,736 to the annual price agreement with Green Teams, Inc. for landscape maintenance and mowing.
Sponsors: Emily Fisher
Attachments: 1. 22300567 R1 CO1 Vendor Signed
- 6.8. Presentation, discussion, and possible action on the second and final renewal of the annual price agreement with Green Teams, Inc. for landscape maintenance and mowing, not to exceed \$1,255,009.63.
Sponsors: Emily Fisher
Attachments: 1. 22300567 R2
 2. 2024 Mowing Budget Worksheet 3% and CO
- 6.9. Presentation, discussion, and possible action on an emergency contract with Larry Young Paving in the amount of \$168,008.74 for repairs to South Dowling Road.
Sponsors: Emily Fisher
Attachments: 1. South Dowling Repair Contract (Vendor Signed)
- 6.10. Presentation, discussion, and possible action on a construction contract with Brazos Paving, Inc. in the amount of \$1,289,729.59, plus the City's contingency in the amount of \$128,972.96 for a total appropriation of \$1,418,702.55 drainage improvements at Milliff Road and Redmond Drive. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.
Sponsors: Jennifer Cain
Attachments: 1. Project Map Milliff and Redmond
 2. Milliff and Redmond Vendor Signed Contract 23300534

7. Workshop Agenda.

- 7.1. Presentation, discussion, and possible action regarding Amazon Prime Air and Federal Aviation Administration (FAA) regulations.

Sponsors: Bryan Woods

Attachments: None

8. Regular Agenda.

- 8.1. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan Future Land Use and Character Map from Urban Residential to General Commercial for approximately three acres, generally located at 116 and 120 Morgan's Lane.

Sponsors: Jesse Dimeolo

Attachments:

1. Ordinance
2. Vicinity, Aerial, and Small Area Maps
3. Background Information
4. Applicants Supporting Information
5. Comprehensive Plan Exhibit
6. Comprehensive Plan Amendment Map

- 8.2. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4 "Zoning Districts," Section 4.2 "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from GS General Suburban to GC General Commercial and NAP Natural Areas Protected on approximately six acres located in the Morgan Rector League Survey, Abstract 46, generally located at 110, 116, and 120 Morgan's Lane.

Sponsors: Jesse Dimeolo

Attachments:

1. Ordinance
2. Vicinity, Aerial, and Small Area Maps
3. Background Information
4. Applicants Supporting Information
5. Rezoning Exhibit
6. Future Land Use Map
7. Rezoning Map

- 8.3. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4 "Zoning Districts," Section 4.2 "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to GS General Suburban and T Townhouse on approximately seven acres located in the Robert Stevenson Survey, A-54, and Needham Estates, Block 1, Lots 1-7, generally located at 2542 and 2522 Barron Road.

Sponsors: Jesse Dimeolo

Attachments:

1. Ordinance
2. Vicinity, Aerial, and Small Area Maps
3. Background Information
4. Applicants Supporting Information
5. Rezoning Exhibit
6. Future Land Use Map
7. Rezoning Map

- 8.4. Public Hearing, presentation, discussion, and possible action regarding a resolution to approve a substantial amendment to the 2020-2024 Consolidated Plan to add Homeowner Acquisition Rehabilitation as a goal and project.

Sponsors: Raney Whitwell

Attachments: 1. Resolution- 2020-2024 Consolidated Plan Substantial Amendment

- 8.5. Presentation, discussion, and possible action on a construction contract with Kieschnick General Contractor, Inc, in the amount of \$7,777,493 for McCulloch Water and Wastewater Rehabilitation, plus the City's contingency in the amount of \$777,749 for a total appropriation of \$8,555,242. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Sponsors: Jennifer Cain

Attachments: 1. McCulloch Utility Rehab Project Map
2. Contract 24300504_--BW

9. Council Calendar - Council May Discuss Upcoming Events.

10. Items of Community Interest.

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

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

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

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

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

13. Adjourn.

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

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on June 21, 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."

June 27, 2024
Item No. 6.1.
June 13, 2024 Minutes

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

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

- June 13, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM061324 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
JUNE 13, 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
Jennifer Prochazka, Assistant City Manager
Jeff Kersten, Assistant City Manager
Leslie Whitten, Deputy City Attorney
John Haislet, Sr. Assistant 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 4:02 p.m. on June 13, 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 4:02 p.m. on June 13, 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 an interlocal agreement with the City of Bryan regarding utilities.
- Legal advice related to the sale of land and land dedication by plat and by separate instrument.
- Legal advice related to protesting the possible issuance of transport and export permits by the Brazos Valley Groundwater Conservation District and an interlocal agreement supporting the same efforts.

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

- Approximately 4,476 SF located at the 1120 block of Midtown Drive in College Station.
- 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 6:02 p.m. No action was taken.

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

5. PRESENTATION - PROCLAMATIONS, AWARDS, AND RECOGNITIONS.

5.1. Presentation to recognize three students from College Station that received a College Station Arts Scholarship.

Mayor Nichols presented a proclamation and certificate to honor Madison Jackson who received the Netta Jackson Simek Emerging Artist Scholarship, and Kendall McKinney who received the College Arts Scholarship. Also awarded but not present was Abraham Guillen who received the James Young Bradfield Fine Arts Scholarship.

5.2. Presentation proclaiming June 13, 2024 as International Community Association Managers Day.

Mayor Nichols presented a proclamation to The Arena Group, Berkshire Hathaway Home Service, Association Services BCS, Beal Properties, and Neighborhood Partners, proclaiming June 13, 2024 as International Community Association Managers Day.

6. Hear Visitors Comments.

Bill Stockton, a resident of College Station, appeared before Council to make the case for the FAA to reject Amazon Prime Air's request to expand, stating the company's substantial negative impact on residents. He suggested that 950 potential noise events were too much in the community and Amazon should look for another location.

Sherry Frisk, College Station, came before Council to give an update on the completion of the Tomb of the Unknown Soldier Never Forget Garden Veterans Memorial and thanked city staff and Council for their support.

Kelly Vernon, College Station, stated that her neighborhood community was affected negatively by the ParkMobile Special Event Paid Parking Pilot Program. She suggests that the event charge an appropriate amount of money in ticket price to cover the costs incurred by the city.

Mary L Parish, College Station, came before council on behalf of the Sister Cities organization to request five-thousand dollars be added to the coming budget for the organization. She stated that this would be used to conduct outreach and that they are also requesting a matching amount from the City of Bryan.

7. CONSENT ITEMS

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

Item 7.2, 7.7, and 7.8 was pulled from Consent for clarification.

(7.2) Debbie Eller, Community Services Director, explained that there was a grammar error in Paragraph B Community Development Block Grant Minor Home Repair Program guidelines.

(7.7) Councilmember Maloney made a statement regarding preserving water.

(7.8) Anthony Armstrong, Planning and Development Director, explained how the petition was submitted and that staff has determined that the removal of these properties from the City's ETJ will have a negative effect on the general health, safety and welfare of people residing in and adjacent to the City.

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

- **May 23, 2024 Council Meeting**

7.2. Presentation, discussion, and possible action regarding a revision to the Community Development Block Grant Minor Home Repair Program guidelines to increase the grant amount available to \$20,000.

7.3. Presentation, discussion, and possible action for the purchase of electric inventory items with Techline, Inc., for the Rock Prairie Widening Project, not to exceed \$240,056.39.

7.4. Presentation, discussion, and possible action on a three-year contract with Baylor Scott & White Health for employee health clinic operations and management services, not to exceed \$2,174,803.55.

7.5. Presentation, discussion, and possible action on the first reading of a franchise agreement ordinance with Organix Recycling, LLC for the collection of recyclables from commercial businesses and multi-family locations. (Item pulled to a future agenda.)

7.6. Presentation, discussion, and possible action regarding a Semi-Annual Report on System-Wide Impact Fees for Water, Wastewater, and Roadway.

7.7. Presentation, discussion, and possible action on Resolution No. 06-13-24-7.7 delegating and authorizing the Mayor and City Manager to protest and request a contested case hearing regarding the water transport and export permits that are currently pending at the Brazos Valley Groundwater Conservation District and to negotiate and enter into an interlocal agreement for cost sharing and joint representation with other similarly aligned entities.

7.8. Presentation, possible action, and discussion regarding Resolution No 06-13-24.7.8 on an Extraterritorial Jurisdiction (ETJ) release petition for approximately 15.78 acres of land generally located at 11630 SH 30.

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 agenda, with a correction to Item 7.2, Section B Second Paragraph of the Community Development Block Grant Minor Home Repair Program guidelines to state the City Manager will authorize the approval of amounts greater than \$20,000.00 and with the exception of Item 7.5, which was pulled to a future agenda. The motion carried unanimously.

8. WORKSHOP ITEMS

8.1. Presentation, discussion, and possible action regarding impact fee waivers.

Anthony Armstrong, Planning and Development Director, provided overview on a development agreement with the city, homebuyers assistant program rebate, waiving fees based on target prices, and things to consider regarding impact fee waivers.

Impact Fee	Total Estimated Capital Costs	Recoverable Costs at Collection Rate (2021 - 2031)	Tax/rate-payer Burden
Water	\$67.7M	\$11.8M	\$55.9M
Wastewater	\$189.7M	\$24.2M	\$165.5M
Roadway Totals	\$215.0M	\$23.7M	\$191.3M

Considerations:

- Home price is set by the market.
- Remaining Capital Expenditures would be from Utility Rates or Property Taxes

- Who/what would qualify? (Developer, Homebuyer, Homebuilder)
- Who benefits/sees the fee reduction?
- How long is the reduction effective?
- What is the mechanism?
- What property classification would qualify?

8.2. Presentation, discussion, and possible action regarding a Capital Projects Update.

Jennifer Cain, Capital Projects Director, gave details on Capital Projects update.

Greens Prairie – County Section

- Update - survey completed, property acquisition process beginning; Schedule - property acquisition anticipated to take 18-24 months. Construction estimated at 18 months.

George Bush Separated Bike Lanes

- Update - design is complete; Schedule - TxDOT to let July 2024.

Krenek Tap Rehabilitation

- Update - currently working on 100% plans; Schedule - construction start anticipated Fall 2024

Rock Prairie East Widening (Town Lake to WD Fitch)

- Update - 60% design submittal due November 2024; Schedule - anticipating substantial completion early 2028.

Lincoln Avenue Rehab

- Update - construction will begin June 2024; Schedule - construction completion anticipated early 2026.

New Water Wells 10, 11, 12

- Update - this project is currently in design. This project will move forward using Construction Manager at Risk (CMAR), to expedite the schedule; Schedule - project will be complete by September of 2028.

McCulloch Utility Rehab

- Update - construction start Summer 2024; Schedule - construction start Summer 2024 and complete Winter 2025.

Bee Creek and Central Park Tennis Courts Improvements

- Update - Final design complete. In permitting phase; Schedule - construction anticipated to start mid-summer 2024.

Central Park Operations Shop

- Update - final design and permitting complete; Schedule - Construction to start Summer of 2024.

Pickleball / Futsal Courts

- Update - finalizing plans for permitting approval. Anticipate going out for bid in June 2024; Schedule - anticipate construction starting late summer 2024.

Lincoln Center Area Improvements

- Update - design is in early stages, to continue through the Fall of 2024; Schedule - construction to start in early Spring 2025.

9. REGULAR ITEMS

9.1. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4522 adopting the standards of care for the City's Parks and Recreation Department's elementary age (5-13) Youth Recreational Program in compliance with the exemptions for childcare licensing according to Texas Human Resources Code Section 42.041(b)(14).

Kelsey Heiden, Parks and Recreation Director, stated that the Texas Human Resource Code, Section 42.041(b)(4), establishes requirements to exempt recreational day camp programs operated by municipalities for elementary age (5-13) children from State childcare licensing. Services provided by the College Station Parks and Recreation Department are recreational in nature, are not child-care facilities and meet all exemptions to this legislation. To receive exempt status from requirements of the Texas Human Resources Code, a municipality must annually submit a copy of the Standards of Care, a notice of a public hearing and a copy of the ordinance adopting the standards.

The Standards of Care provide minimum guidelines and include:

- Staff ratios
- Minimum staff qualifications
- Minimum facility, health, and safety standards
- Mechanisms for monitoring and enforcing the adopted local standards
- Notice to parents that the day camp program is not licensed by the state

Awareness for program participants:

- Provide notice the program is not licensed by the state
- Published on website and program guide
- Directly to program participants

At approximately 7:57 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 7:57 p.m.

MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4522, adopting the standards of care for the City's Parks and Recreation Department's elementary age (5-13) Youth Recreational Program in compliance with the exemptions for childcare licensing according to Texas Human Resources Code Section 42.041(b)(14). The motion carried unanimously.

9.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4523 vacating and abandoning a 1,788 square foot portion of a 20-foot-wide public utility easement located over, across and upon Lot 35, Block 4 of the Williams Creek Lake Estates Subdivision Phase 4, College Station, Brazos County, Texas according to the final plat recorded in Volume 17508, Page 181 of the Official Public Records of Brazos County, Texas.

Lucas Harper, Planning and Recreation, stated that the public utility easement abandonment is being requested by the applicant as a result of a desire to construct a retaining wall in close proximity to the lot line. The proposed site layout necessitates the wall to transition between elevations of the adjacent lots. The portion of the originally dedicated easement was not utilized by utilities and a 10-foot wide portion connecting the front and rear easements will remain in place if needed for future utility installation.

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

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

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-

4523, vacating and abandoning a 1,788 square foot portion of a 20-foot-wide public utility easement located over, across and upon Lot 35, Block 4 of the Williams Creek Lake Estates Subdivision Phase 4, College Station, Brazos County, Texas according to the final plat recorded in Volume 17508, Page 181 of the Official Public Records of Brazos County, Texas. The motion carried unanimously.

9.3. Presentation, discussion, and possible action on Deductive Change Order No. 10 for a credit in the amount of \$802,227 for the Lick Creek WWTP Capacity Expansion construction contract with CSA Construction, Inc.

Jennifer Cain, Capital Projects Director, stated that this deductive change order is a credit that reconciles the final quantities of the contract as well as assesses actual damages for additional engineering costs incurred on the project. A budget of \$39,908,000 is included in the Wastewater Capital Improvements Projects Fund and a total of \$39,423,766 has been expended to date. The proposed deductive change order will reduce the committed amount by \$802,227. This will close out the construction contract.

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 Deductive Change Order No. 10 for a credit in the amount of \$802,227 for the Lick Creek WWTP Capacity Expansion construction contract with CSA Construction, Inc. The motion carried unanimously.

10. Council Calendar

Council reviewed the calendar.

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

Mayor Nichols and Councilmember Maloney and Yancy recognized the passing of former Councilmember Larry Mariott and sent their condolences to the family.

Councilmember Harvell recognized the youth involved in the Texas 4-H Roundup which occurred in the city last week and Visit College Station for their efforts.

Councilmember Maloney recognized Popstroke upon their opening, the success of the Mexico versus Brazil soccer game, Jeremiah Cook with Tourism, Robin Macias and Jesse Dimeolo with Planning and Development for receiving their American Institute of Certified Planners certification, and recognized College Station for being rated one of safest and most affordable cities in the nation.

City Manager Bryan Woods recognized Texas A&M University for a well-managed soccer event and preparations for the upcoming George Strait concert.

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 the International Town and Gown Conference.

Councilmember Maloney reported on Sister Cities.

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.

Councilmember Yancy requested a future item on FAA regulations as they relate to the Amazon Prime Air drones and actions that might be taken by the city.

14. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 8:24 p.m. on Thursday, June 13, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

June 27, 2024
Item No. 6.2.
TMRS Benefit Plan Amendment

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an ordinance amending the City of College Station's Texas Municipal Retirement System Benefits Plan calculation.

Relationship to Strategic Goals:

Good Governance

Financial Sustainability

Sustainable City

Recommendation(s): Staff recommends Council approve the attached resolution.

Summary: Effective May 27, 2023, the Texas Legislature amended the TMRS Act to provide participating cities with a new repeating COLA option.

The new repeating COLA option eliminates the retroactive calculation by only looking back to the change in the Consumer Price Index (CPI) for the one-year period that ends 12 months before the COLA's effective date.

In almost every case, the new COLA option will be slightly less expensive for a city than a repeating COLA calculated retroactively. No retiree's current monthly benefit will be reduced by adopting this new COLA option.

The ordinance adopts a repeating non-retroactive 70% COLA and the readoption of repeating 75% Updated Service Credit with transfers, both effective Jan 1, 2025.

Budget & Financial Summary: The staff reviewed the impact of the change in the COLA calculation and funds are available in the existing budget to enact the change.

Attachments:

1. College Station TMRS Ordinance - USC-RT_COLA-R_HB2464

ORDINANCE NO. _____

AN ORDINANCE REGARDING AND AMENDING THE CITY OF COLLEGE STATION'S TEXAS MUNICIPAL RETIREMENT SYSTEM BENEFITS BY: (1) ADOPTING NON-RETROACTIVE REPEATING COLAS, FOR RETIREES AND THEIR BENEFICIARIES UNDER TMRS ACT §853.404(F) AND (F-1), AND (2) AUTHORIZING ANNUALLY ACCRUING UPDATED SERVICE CREDITS AND TRANSFER UPDATED SERVICE CREDITS; AND 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 the City of College Station's Texas Municipal Retirement System Benefits 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 the City of College Station's Texas Municipal Retirement System Benefits are hereby amended to included and are to read as follows:

WHEREAS, the City of College Station, Texas (the "City"), elected to participate in the Texas Municipal Retirement System (the "System" or "TMRS") pursuant to Subtitle G of Title 8, Texas Government Code, as amended (which subtitle is referred to as the "TMRS Act"); and

WHEREAS, House Bill 2464, 88th Texas Legislature, R.S., 2023 ("HB 2464"), added Subsections 853.404(f) and (f-1) to the TMRS Act and authorized cities participating in the System to provide certain retirees and their beneficiaries with an annually accruing ("repeating") annuity increase (also known as a cost of living adjustment, or "COLA") based on the change in the Consumer Price Index for All Urban Consumers for the one-year period that ends 12 months before the January 1st effective date of the applicable COLA (a "non-retroactive repeating COLA"); and

WHEREAS, new TMRS Act §§853.404(f) and (f-1) allow participating cities to elect to provide non-retroactive repeating COLAs under certain circumstances, as further described by this Ordinance, by adopting an ordinance to be effective January 1st of 2024, 2025 or 2026, in accordance with TMRS Act §854.203 and §853.404; and

WHEREAS, TMRS Act §853.404(f-1) provides the non-retroactive repeating COLA option applies only to a participating city that, as of January 1, 2023, either (1) has not passed an annually repeating COLA ordinance under TMRS Act §853.404(c) or had previously passed a repeating COLA ordinance and then, before January 1, 2023, passed an ordinance rescinding such repeating COLA, or (2) does provide an annually repeating COLA under §853.404(c) and elects to provide a non-retroactive repeating COLA under §853.404(f) for purposes of maintaining or increasing the percentage amount of the COLA; and

WHEREAS, the College Station City Council acknowledges that the City of College Station City meets the above-described criteria under §853.404(f-1) and is eligible to elect a non-retroactive repeating COLA under §853.404(f) and that such election must occur before January 1, 2026, and after that date future benefit changes approved by the City may require reversion to a retroactive repeating COLA; and

WHEREAS, the College Station City Council finds that it is in the public interest to: (1) adopt annually accruing non-retroactive COLAs for retirees and their beneficiaries under TMRS Act §853.404(f) and (f-1); and (2) in accordance with TMRS Act §853.404 and §854.203(h), reauthorize annually accruing Updated Service Credits and transfer Updated Service Credits.

SECTION 1. ADOPTION OF NON-RETROACTIVE REPEATING COLAS.

- (a)** On the terms and conditions set out in TMRS Act §854.203 and §853.404, the City of College Station authorizes and provides for payment of the increases described by this Section to the annuities paid to retired City of College Station employees and beneficiaries of deceased City of College Station retirees (such increases also called COLAs). An annuity increased under this Section replaces any annuity or increased annuity previously granted to the same person.
- (b)** The amount of the annuity increase under this Section is computed in accordance with TMRS Act §853.404(f) as the sum of the prior service and current service annuities, as increased in subsequent years under TMRS Act §854.203 or TMRS Act §853.404(c), of the person on whose service the annuities are based on the effective date of the annuity increase, multiplied by **70%** of the percentage change in the Consumer Price Index for All Urban Consumers during the 12-month period ending in December of the year that is 13 months before the effective date of the increase under this Section.
- (c)** An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.
- (d)** If a computation under this Section does not result in an increase in the amount of an annuity, the amount of the annuity will not be changed under this Section.
- (e)** In accordance with TMRS Act §853.404(f-1)(2), an increase under this Section only applies with respect to an annuity payable to a TMRS member, or their beneficiary(ies), which annuity is based on the service of a TMRS member who retired, or who is deemed to have retired under TMRS Act §854.003, not later than the last day of December of the year that is 13 months before the effective date of the increase under this Section.
- (f)** The amount of an increase under this Section is an obligation of the City of College Station and of its account in the benefit accumulation fund of the System.
- (g)** The initial increase in annuities authorized by this Section shall be effective on January 1st immediately following the year in which this Ordinance is approved, subject to receipt by the System before such January 1st and approval by the Board of Trustees of the System ("Board"). Pursuant to TMRS Act §853.404, an increase in retirement annuities shall be made on January 1st of each subsequent year, provided that, as to such subsequent year, the actuary for the System has made the determination set forth in TMRS Act §853.404(d), until this Ordinance ceases to be in effect as provided in TMRS Act §853.404(e).

SECTION 2. AUTHORIZATION OF ANNUALLY ACCRUING UPDATED SERVICE CREDITS AND TRANSFER UPDATED SERVICE CREDITS.

(a) As authorized by TMRS Act §854.203(h) and §853.404, and on the terms and conditions set out in TMRS Act §§853.401 through 853.404, the City of College Station authorizes each member of the System who on the first day of January of the calendar year immediately preceding the January 1st on which the Updated Service Credits will take effect (i) has current service credit or prior service credit in the System by reason of service to the City, (ii) has at least 36 months of credited service with the System, and (iii) is a TMRS-contributing employee of the City, to receive “Updated Service Credit,” as that term is defined and calculated in accordance with TMRS Act §853.402.

(b) The City of College Station authorizes and provides that each employee of the City who (i) is eligible for Updated Service Credits under Subsection (a) above, and (ii) who has unforfeited prior service credit and/or current service credit with another System-participating municipality or municipalities by reason of previous employment, shall be credited with Updated Service Credits pursuant to, calculated in accordance with, and subject to adjustment as set forth in TMRS Act §853.601 (also known as “Transfer USC”), both as to the initial grant and all future grants under this Ordinance.

(c) The Updated Service Credit authorized and provided under this Ordinance shall be **75%** of the “base Updated Service Credit” of the TMRS member calculated as provided in TMRS Act §853.402.

(d) Each Updated Service Credit authorized and provided by this Ordinance shall replace any Updated Service Credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(e) The initial Updated Service Credit authorized by this Section shall be effective on January 1st immediately following the year in which this Ordinance is approved, subject to receipt by the System before such January 1st and approval by the System’s Board. Pursuant to TMRS Act §853.404, the authorization and grant of Updated Service Credits in this Section shall be effective on January 1st of each subsequent year, using the same percentage of the “base Updated Service Credit” stated in Subsection (c) in computing Updated Service Credits for each future year, provided that, as to such subsequent year, the actuary for the System has made the determination set forth in TMRS Act §853.404(d), until this Ordinance ceases to be in effect as provided in TMRS Act §853.404(e).

June 27, 2024
Item No. 6.3.
Disaster Calculation Option

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a resolution directing the Brazos County Tax Office to calculate the FY25 voter-approved rate in the manner provided for a special taxing unit affected by a disaster declaration. The Proposed FY26 Budget will not be prepared and presented to the City Council until July 2025.

Relationship to Strategic Goals:

Good Governance
Financial Sustainability
Sustainable City

Recommendation(s): Staff recommends the City Council approve the resolution directing the Brazos County Tax Office to calculate the voter-approved rate in the manner provided for a special taxing unit because the City of College Station is affected by a disaster declaration for tax year 2025.

Summary: On May 7, 2024, the Governor of the State of Texas declared a state of disaster pursuant to Texas Government Code based on severe storms and flooding that began on April 26, 2024 and included heavy rainfall, flash flooding, river flooding, large hail and hazardous wind gusts causing widespread and severe property damage, injury or loss of life or property throughout the State of Texas, including Brazos County, and such declaration is effective to date. Pursuant to Section 26.042 of the Texas Tax Code, the governing body of a taxing unit located in an area declared to be a disaster area by the Governor or by the President of the United States may direct the designated tax officer to calculate the voter-approval tax rate in the manner provided for a special taxing unit (8 percent).

Budget & Financial Summary: Staff will continually evaluate the known and projected impacts of the severe weather event on the FY25 proposed budget as well as the strategic five-year financial plan through FY29. The Proposed FY26 Budget, which would include a recommendation for the tax year 2025 tax rate, will not be prepared and presented to the Council until July 2025.

Attachments:

1. Resolution Voter Approved Tax Rate Disaster Calculation

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE BRAZOS COUNTY TAX OFFICE TO CALCULATE THE VOTER-APPROVAL TAX RATE IN THE MANNER PROVIDED FOR A SPECIAL TAXING UNIT (8 PERCENT) AS THE CITY OF COLLEGE STATION IS LOCATED IN AN AREA DECLARED A DISASTER AREA PURSUANT TO TEXAS TAX CODE § 26.042.

WHEREAS, on May 7, 2024, the Governor of the State of Texas declared a state of disaster pursuant to Texas Government Code based on severe storms and flooding that began on April 26, 2024 and included heavy rainfall, flash flooding, river flooding, large hail and hazardous wind gusts causing widespread and severe property damage, injury or loss of life or property throughout the State of Texas, including Brazos County, and such declaration is effective to date as attached in **Exhibit “A”**; and

WHEREAS, within the City of College Station the severe weather conditions posing an imminent threat of widespread or severe damage, injury or loss of life or property exist; and

WHEREAS, Texas Tax Code § 26.042 provides the governing body of a taxing unit located in an area declared to be a disaster area by the Governor or by the President of the United States may direct the designated officer of the City to calculate the voter-approval tax rate in the manner provided for a special taxing unit (8 percent); and

WHEREAS, the Brazos County Tax Office is the designated officer of the City of College Station.

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

PART 1: That the City of College Station requests according to Texas Tax Code § 26.042 that the Brazos County Tax Office calculate the voter-approval tax rate for tax year 2025 in the manner provided for a special taxing unit at 8 percent.

PART 2: That this Resolution shall become effective immediately from and after its passage.

ADOPTED THIS 27TH DAY OF JUNE, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A
GOVERNOR ABBOTT'S MAY 7, 2024 PROCLAMATION DECLARING A STATE OF
DISASTER FOR SEVERE STORMS AND FLOODING



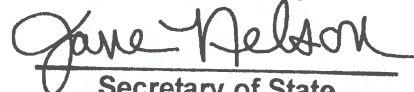
GOVERNOR GREG ABBOTT

May 7, 2024

The Honorable Jane Nelson
Secretary of State
State Capitol, Room 1E.8
Austin, Texas 78701

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK

MAY 07 2024


Secretary of State

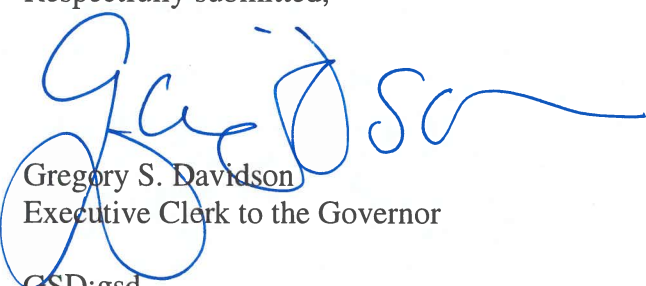
Dear Secretary Nelson:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation amending a previous proclamation that declared a state of disaster in a certain number of counties based on the severe storms and flooding event that began on April 26, 2024, and continues, by adding an additional number of counties.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD:gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

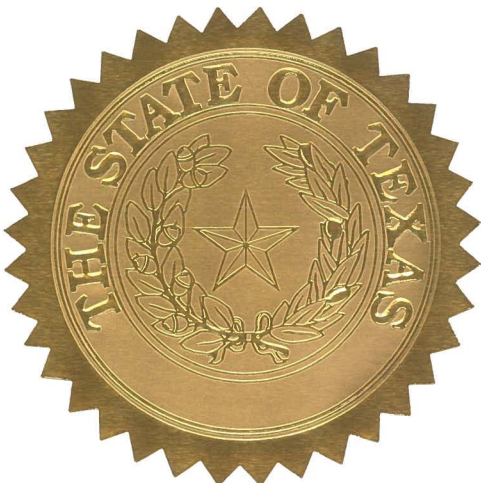
WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Tuesday, April 30, 2024, as amended on Tuesday, May 2, 2024, certifying that the severe storms and flooding that began on April 26, 2024, and included heavy rainfall, flash flooding, river flooding, large hail, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Anderson, Angelina, Austin, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Bosque, Brazos, Burleson, Burnet, Caldwell, Chambers, Cherokee, Colorado, Comal, Coryell, DeWitt, Dickens, Ellis, Falls, Fayette, Freestone, Galveston, Gillespie, Gonzales, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Haskell, Hays, Henderson, Hill, Hood, Houston, Hunt, Jasper, Jefferson, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimble, Knox, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Mason, McLennan, Medina, Milam, Montgomery, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Tarrant, Travis, Trinity, Tyler, Van Zandt, Walker, Waller, Washington, Wichita, Williamson, and Wilson Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in the additional counties of Clay, Coleman, Eastland, and Mills Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 7th day of May, 2024.

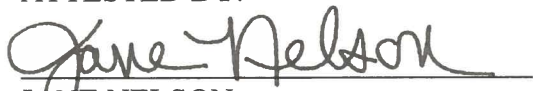
A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00am O'CLOCK

MAY 07 2024

ATTESTED BY:


JANE NELSON
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:20 AM O'CLOCK

MAY 07 2024

June 27, 2024
Item No. 6.4.
2700 Wilderness Rd. S Real Estate Contract

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an agreement between the City of College Station and Cathy Goss for the purchase of real property located at 2700 Wilderness Dr. S for a purchase price of \$275,000 with Community Development Block Grant Funds.

Relationship to Strategic Goals:

Financial Sustainability, Core Services & Infrastructure, Neighborhood Integrity, Diverse & Growing Economy

Recommendation(s): Staff recommends approval of the Real Estate Contract for the acquisition of 2700 Wilderness Dr. S.

Summary: The City Council adopted guidelines for a new program to allow the City to acquire residential properties, perform repairs to comply with specified housing conditions, and convey to a non-profit partner to maintain it as an affordable rental for income-eligible households. Community Development Block Grant funds will be utilized for the acquisition and rehabilitation. A Land Use Restriction Agreement will be placed on the property upon conveyance to ensure long-term affordability. The house at 2700 Wilderness Drive S is a 3 bedroom, 2-bathroom home. The Real Estate Contract includes the acquisition amount of \$275,000. Renovations to bring the property into compliance with approved property standards is expected to be an amount not to exceed \$50,000. Upon completion of the renovations, the house will be conveyed through a Request for Proposal process that will include equity participation in the project.

Budget & Financial Summary: Funds available in the FY24 Community Development budget

Attachments:

1. Location Map - 2700 Wilderness
2. 2700 Wilderness Real Estate Contract - Seller Signed

2700 Wilderness Rd. South





CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300521 PROJECT #: CD2410 BID/RFP/RFQ#: N/A

Project Name / Contract Description: 2700 Wilderness Dr. S - Acquisition & Rehabilitation/
Real Estate Contract

Name of Contractor: Cathy E. Goss

CONTRACT TOTAL VALUE: \$ 275,000.00 Grant Funded Yes ☒ No ☐

If yes, what is the grant number: B-VC-22-48-0007

Debarment Check ☒ Yes ☐ No ☐ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Davis Bacon Wages Used ☐ Yes ☐ No ☒ N/A
Buy America Required ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

This Real Estate Contract in the amount of \$275,000.00 in CDBG funds for the acquisition are available in the
Community Development FY24 budget.

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

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

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

SIGNATURES RECOMMENDING APPROVAL


DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

6/13/2024
DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

REAL ESTATE CONTRACT

THIS CONTRACT OF SALE (the "Real Estate Contract") is made by and between CATHY E. GOSS ("SELLER"), and the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, whose mailing address is P. O. Box 9960, College Station, Texas 77842 ("BUYER"), upon the terms and conditions set forth herein.

ARTICLE I PURCHASE AND SALE

1.1 Property. SELLER agrees to sell and convey in fee simple by General Warranty Deed and BUYER agrees to purchase and pay for Lot Three (3), Block Two (2), RAINTREE SECTION FOUR (4), an addition to the City of College Station, Brazos County, Texas, according to plat recorded in Volume 474, Page 781, Deed Records of Brazos County, Texas, more commonly known as **2700 Wilderness Dr. S., College Station, Texas**, ("PROPERTY"), together with all and singular the rights and appurtenances pertaining to PROPERTY, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way, rights of ingress and egress, together with SELLER's interest in any improvements and fixtures situated on and attached to the PROPERTY, all of the foregoing including such real property, rights, improvements and appurtenances being herein referred to as the "PROPERTY", all for the consideration and subject to the terms, provisions, and conditions set forth herein.

This Real Estate Contract by BUYER to purchase the PROPERTY is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of BUYER's representatives to this Real Estate Contract.

1.2 Title Commitment. BUYER has requested SOUTH LAND TITLE, LLC furnish a Commitment for Title Insurance (the "Title Commitment") to insure title to the BUYER for BUYER's review together with legible copies of all instruments referred to in the Title Commitment. The BUYER shall request the title company to furnish these items to BUYER within five (5) calendar days of the date of this Real Estate Contract.

1.3 Title Review. BUYER shall have a period of ten (10) business days (the "Title Review Period") following the effective date of this Real Estate Contract or following the receipt of the Title Commitment and all copies of the instruments referred to in Schedules B and C, whichever occurs last, to make exceptions by notifying SELLER of BUYER's objection to any item shown on or referenced by those documents ("Title Reviewable Matters"). Any Title Reviewable Matter to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Title Reviewable Matter and gives notice to SELLER as provided herein, SELLER may, at SELLER's election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either:

- (a) waive such objections and accept such title as SELLER is able to convey; or

Contract No. 24300521

A24-001357 Goss Real Estate Contract 05-31-2024

Page 1

(b) terminate this Real Estate Contract by written notice to the Title Company and to SELLER, in which case neither SELLER nor BUYER shall have any further rights or obligations under this Real Estate Contract.

1.4 Survey. BUYER, at its expense, will provide a survey of PROPERTY, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey will reflect any encroachments onto or by PROPERTY onto adjoining properties.

(a) **Survey Review Period.** BUYER shall have a period of ten (10) business days ("Survey Review Period") following the effective date of this Real Estate Contract or following the receipt of the Survey, whichever comes last, within which to notify SELLER of BUYER's objection to any item shown on or referenced on the Survey ("Survey Reviewable Matter"). Any Survey Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at SELLER's election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either:

(i) waive such objections and accept such title as SELLER is able to convey;
or

(ii) terminate this Real Estate Contract by written notice to the Title Company and to SELLER, in which case neither SELLER nor BUYER shall have any further rights or obligations under this Real Estate Contract.

(b) **Survey Requirements.** The survey drawing shall be addressed to and certified in favor of the BUYER and SOUTH LAND TITLE, LLC. The field note description along with the survey plat or diagram of PROPERTY as prepared by the surveyor shall be used in the respective conveyance documents.

1.5 Environmental Site Assessment. BUYER, at BUYER's expense, may obtain a Phase I Environmental Site Assessment to be performed on the PROPERTY not later than fifteen (15) days after the execution date of this Real Estate Contract. BUYER shall have a period of fifteen (15) business days after receipt of the Environmental Site Assessment to review the assessment and notify SELLER of BUYER's rejection of the PROPERTY. BUYER, at its option, may elect to provide SELLER with an opportunity to cure the environmental problem. If BUYER elects not to provide SELLER with an opportunity to cure or if SELLER fails to cure once BUYER provides that opportunity, this Real Estate Contract shall be terminated and neither party will have any further liability.

BUYER and BUYER's representatives have SELLER's permission, at BUYER's risk and expense, to enter the PROPERTY at any reasonable time before closing to inspect the PROPERTY and conduct any and all investigations BUYER deems necessary, including surveys, environmental site assessments, and appraisals. No inspections, assessments or surveys of the PROPERTY by BUYER shall be conducted in a manner which disturbs or interferes with SELLER use of the PROPERTY.

1.6 Taxes. The parties agree that general real estate taxes on the PROPERTY for the then current year and all prior years, interest on any existing indebtedness, and rents, if any, shall be prorated as of the closing date and shall be adjusted in cash at closing. SELLER alone shall be liable for any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. All installments that have matured prior to the closing date on any special taxes or assessments shall be paid by SELLER; and any installments that are provided in the special assessment to mature after closing shall be assumed by BUYER.

1.7 Conveyance Documents. The sale of the PROPERTY shall be made by the General Warranty Deed conveying PROPERTY from SELLER to BUYER in the form prepared by BUYER as substantially set forth in **EXHIBIT A**.

ARTICLE II PURCHASE PRICE

2.1 The purchase price for said PROPERTY shall be the sum of TWO HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$275,000.00). The purchase price shall be payable in full at closing.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 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.

(b) SELLER has no actual knowledge of any parties in possession of any portion of the PROPERTY, either as lessees, tenants at sufferance, trespassers, or other persons in possession. Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon the PROPERTY, or any significant adverse fact or condition relating to the PROPERTY, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated use of the PROPERTY.

(c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting the PROPERTY or any part thereof. SELLER has no

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actual knowledge of any such proceedings or assessments contemplated by any governmental entity.

(d) SELLER has no actual knowledge that the PROPERTY does not have full and free access to and from public highways, streets, or roads. SELLER has no actual knowledge that there are pending or threatened governmental proceedings that would impair or result in the termination of such access. If SELLER obtains actual knowledge of any such matter subsequent to the date of this Real Estate Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Real Estate Contract and receiving back its earnest money, if any, in which case neither party shall have any further obligation to the other.

(e) The PROPERTY has not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.

(f) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PROPERTY or any part thereof.

(g) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Real Estate Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Real Estate Contract and receiving back its earnest money, if any, in which case neither party shall have any further obligation to the other.

(h) SELLER has no knowledge that the PROPERTY contains any environmental hazard not shown on the environmental assessment provided by SELLER to BUYER.

(i) SELLER is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(j) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY, or the business operated thereon, if any, which could give rise to any mechanic's or materialmen's or other statutory lien against the PROPERTY, or any part thereof, or for which BUYER will be responsible.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

4.1 BUYER represents and warrants to SELLER as of the effective date and as of the closing date that:

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(a) BUYER has the full right, power, and authority to purchase the PROPERTY from SELLER as provided in this 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 or on or before closing will have been obtained.

ARTICLE V CLOSING

5.1 The closing shall be held at SOUTH LAND TITLE, LLC, within thirty (30) calendar days from the full execution of this Real Estate Contract by BUYER and SELLER, at such time and date as SELLER and BUYER may agree upon (the "closing date"). The City Manager for the BUYER is authorized to extend the time for closing if BUYER and SELLER agree to extend the time for closing.

5.2 At the closing, SELLER shall:

(a) Deliver to BUYER a duly executed and acknowledged General Warranty Deed prepared by BUYER conveying good and indefeasible title in the PROPERTY, free and clear of any and all liens, encumbrances, except for the Reviewable Matters and subject to the BUYER's election to terminate this Real Estate Contract in the event BUYER disapproves of any Title Reviewable Matter, which objection may be cured by SELLER on or prior to the closing as provided by Article I of this Real Estate Contract.

(b) Deliver possession of the PROPERTY to BUYER.

(c) Deliver to BUYER, at BUYER'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 and not objected to by BUYER prior to closing.

(d) Pay any and all required property taxes for all prior years and prorated taxes for the current year.

(e) Pay any and all homeowner's or maintenance fees, if any, for all prior years and for the current year prorated up to the date of closing.

(f) Pay the costs to obtain and deliver releases of all liens to be released at closing.

(g) Pay the costs to record all documents to cure title objections agreed to be cured by SELLER.

(h) Pay the SELLER's expenses and attorney fees.

5.3 Upon such performance by SELLER at closing, BUYER shall:

Contract No. 24300521

- (a) Pay the purchase price.
- (b) Pay the escrow fees of the title company and costs of tax certificates.
- (c) Pay the title insurance premium.
- (d) Prepare, at its cost, the General Warranty Deed.
- (e) Pay the cost to record releases of all liens, if any, to be released at closing.
- (f) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense.
- (g) Pay the BUYER's expenses or attorney fees.
- (h) Pay the cost of the survey of the PROPERTY and pay the additional premium for the survey/boundary deletion in the policy, if the deletion is requested by BUYER.
- (i) Pay the costs of work required by BUYER to have the survey reflect matters other than those required under this Real Estate Contract.
- (j) Pay for any and all environmental assessments and other inspections, if any.

ARTICLE VI BREACH BY SELLER

6.1 In the event SELLER fails to fully and timely perform any of its obligations under this Real Estate Contract or fails to consummate the sale of the PROPERTY for any reason except BUYER's default, BUYER may:

- (a) Enforce specific performance of this agreement; and/or
- (b) Bring suit for damages against SELLER.

ARTICLE VII BREACH BY BUYER

7.1 In the event BUYER fails to consummate the purchase of the PROPERTY (BUYER being in default and SELLER not being in default hereunder), SELLER shall have the right to bring suit against BUYER only for expectancy and incidental damages, if any.

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**ARTICLE VIII
MISCELLANEOUS**

8.1 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.

8.2 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:

SELLER: CATHY E. GOSS
2603 Belair West Ln.
Burnet County
Granite Shoals, Texas 78654-3117
Phone: _____
Email: _____

With a copy to
SELLER's Agent:

Alyson Gorman, Realtor Associate
Inhabit Real Estate Group
4508 Mills Park Circle, #500
College Station, TX 77845
Telephone: 979-255-4309

BUYER: CITY OF COLLEGE STATION, TEXAS
Attn: City Attorney's Office
P.O. Box 9960
College Station, Texas 77842
Telephone: 979-764-3507
Facsimile: 979-764-3481

With a copy to
BUYER's Agent:

Mark McAuliffe, Senior Land Agent
City of College Station
P.O. Box 9960
College Station, Texas 77842
Telephone: 979-764-6272

Disclosure: Pursuant to a previous, separate agreement (such as an MLS offer of compensation or other agreement between brokers), SELLER'S Agent has agreed to pay BUYER's agent a co-broker fee. This disclosure is for informational purposes and does not change affect this Real Estate Contract between BUYER and SELLER or the previous agreement between brokers to pay or share a commission.

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8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

8.8 Time of Essence. Time is of the essence to this Real Estate Contract.

8.9 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.

8.10 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.

8.11 Real Estate Contract Execution. This Real Estate Contract by BUYER to purchase the PROPERTY is subject to approval by the City Council of the City of College Station, Texas; such

Contract No. 24300521

approval indicated by signature of BUYER's representative to this Real Estate Contract. Once this Real Estate Contract is executed by the SELLER, the FULLY EXECUTED date shall be the date this Real Estate Contract is approved by the City Council.

FULLY EXECUTED on this the _____ day of _____, 2024.

SELLER:



CATHY E. GOSS

Date: 6/6/24

BUYER:

CITY OF COLLEGE STATION, TEXAS
a Texas Home Rule Municipal Corporation

BY: _____

JOHN P. NICHOLS, Mayor

Date: _____

ATTEST:

TANYA SMITH, City Secretary

Date: _____

APPROVED:

BRYAN C. WOODS, City Manager

Date: _____

Assistant City Manager/CFO

Date: _____

City Attorney

Date: _____

Attached Exhibits:

EXHIBIT A – General Warranty Deed

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**EXHIBIT A (TO REAL ESTATE CONTRACT)
GENERAL WARRANTY DEED**

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NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

DATE: _____, 2024

GRANTOR: CATHY E. GOSS

GRANTOR'S MAILING ADDRESS: 2603 Belair West Ln.
(including county) Burnet County
Granite Shoals, Texas 78654-3117

GRANTEE: CITY OF COLLEGE STATION, TEXAS

GRANTEE'S MAILING ADDRESS: P. O. Box 9960
(including county) Brazos County
College Station, Texas 77842

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration.

PROPERTY:

All that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas, and being Lot Three (3), Block Two (2), RAINTREE SECTION FOUR (4), an addition to the City of College Station, Texas, according to plat recorded in Volume 474, Page 781, Deed Records of Brazos County, Texas.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. Restrictive covenants as recorded in Volume 486, page 117, Deed Records of Brazos County, Texas.
2. Easements and building lines as shown on record on plat of Raintree, Section Four, recorded in Volume 474, page 781, Deed Records of Brazos County, Texas.
3. Right of Way Easement from Frank Stasney, C.S. Jones, C.E. Jones, Frank Dobrovolny, to Humble Pipe Line Company, dated July 22, 1919, recorded in Volume 49, pages 17, 25 and 32, and amended in Volume 386, page 312, Deed Records of Brazos County, Texas.
4. Amendment of Easement from E.W. Schultz, M.L. Cashion, and Bryco, Incorporated, to Exxon Pipeline Company, dated October 12, 1977, recorded in Volume 386, page 312, Deed Records of Brazos County, Texas.
5. Right of Way Easement from Frank Stasney to The City of Bryan, dated May 6, 1937, recorded in Volume 98, page 218, Deed Records of Brazos County, Texas.
6. Right of Way Easement from C. Edgar Jones to Gulf States Utilities, dated May 15, 1974, recorded in Volume 130, page 235, Deed Records of Brazos County, Texas.
7. Right of Way Easement from C. Edgar Jones to The City of Bryan, dated February 18, 1950, recorded in Volume 141, page 448, Deed Records of Brazos County, Texas.
8. Easement for Highway Purposes from C. Edgar Jones, to The State of Texas, dated February 15, 1968, recorded in Volume 267, page 795, Deed Records of Brazos County, Texas.
9. Right of Way Easement from Calloway-Rhodes, Inc., and Edwin W. Schultz, to the City of Bryan, dated June 20, 1974, and recorded in Volume 329, page 577, Deed Records of Brazos County, Texas.
10. Right of Way Easement from E.W. Schultz, M.L. Cashion, and Bryco, Inc., dba Raintree Development Joint Venture, to City of College Station, Texas, dated October 28, 1977, recorded in Volume 384, page 507, Deed Records of Brazos County, Texas.
11. Right of Way Easement from E.W. Schultz, M.L. Cashion, and Bryco, Inc., dba Raintree Development Joint Venture, to City of College Station, Texas, dated October 28, 1977, recorded in Volume 384, page 509, Deed Records of Brazos County, Texas.

12. Right of Way Easement from E.W. Schultz, M.L. Cashion, and Bryco, Inc., dba Raintree Development Joint Venture, to City of College Station, Texas, dated December 20, 1977, recorded in Volume 387, page 581, Deed Records of Brazos County, Texas.
13. Easement from E.W. Schultz, M.L. Cashion, and Bryco, Inc., dba Raintree Development Joint Venture, to City of College Station, Texas, dated December 20, 1977, recorded in Volume 387, page 583, Deed Records of Brazos County, Texas.
14. Right of Way Easement from E.W. Schultz, M.L. Cashion, and Bryco, Inc., dba Raintree Development Joint Venture, to City of College Station, dated August 7, 1978, recorded in Volume 407, pages 649, 654 and 653, Deed Records of Brazos County, Texas.
15. Mineral reservation in Deed from Edwin W. Schultz, M.L. Cashion, and Bryco, Inc., dba Raintree Development Joint Venture, to L & H Homes, Inc., dated April 7, 1982, recorded in Volume 516, Page 359, Deed Records of Brazos County, Texas.
16. Mineral reservation in Deed from Jay B. Goss to Cathy E. Goss, dated January 1, 2016, recorded in Volume 13693, page 82, Official Records of Brazos County, Texas.
17. Mineral Deed from Raintree Development Joint Venture, to E. W. Schultz, M.L. (Red) Cashion, and LaFarge North America, Inc., dated October 8, 2008, recorded in Volume 8837, page 76, Official Records of Brazos County, Texas.
18. Estate created by Oil and Gas Lease(s) from Edwin W. Schultz and Nancy B. Schultz, to Petroedge Energy III LLC, dated July 16, 2014, as disclosed in Memorandum of Oil and Gas Lease recorded in Volume 12163, page 141, and extended in Volume 14449, page 171, Official Records of Brazos County, Texas.
19. Estate created by Oil and Gas Lease(s) from Ethyl Walton Burgess Family Trust to PetroEdge Energy III, LLC, dated July 31, 2014, as disclosed in Memorandum of Oil and Gas Lease recorded in Volume 12258, page 120, Official Records of Brazos County, Texas.

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, 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 and assigns forever. GRANTOR binds GRANTOR and GRANTOR's heirs, executors and administrators, to warrant and forever defend all and singular the property to GRANTEE and GRANTEE's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

CATHY E. GOSS

THE STATE OF TEXAS

§

§

ACKNOWLEDGMENT

COUNTY OF _____

§

This instrument was acknowledged before me on this the ____ day of _____, 2024, by CATHY E. GOSS

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

June 27, 2024

Item No. 6.5.

Approval and implementation of the Brazos County Interjurisdictional Emergency Management Basic Plan

Sponsor: Richard Mann, Chief of Fire and Emergency Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding the Brazos County Interjurisdictional Emergency Management Basic Plan.

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Recommend council approve the plan.

Summary: This Basic Plan outlines our approach to emergency operations and is applicable to the counties and cities. It provides general guidance for emergency management activities and an overview of our methods of prevention, protection, mitigation, response, and recovery. The plan describes our emergency response organization and assigns responsibility for various emergency tasks. This plan is intended to provide a framework for more specific functional annexes that describe in more detail who does what, when, and how. This plan applies to all local officials, departments, and agencies.

Budget & Financial Summary: None.

Attachments:

1. Basic Plan - 2024

EMERGENCY MANAGEMENT PLAN

FOR

**BRAZOS COUNTY, TEXAS A&M
UNIVERSITY AND THE CITIES OF
BRYAN, COLLEGE STATION, KURTEN
AND WIXON VALLEY**

JUNE 2024

APPROVAL & IMPLEMENTATION

**The Brazos County Interjurisdictional
Emergency Management Plan**

This emergency management plan is hereby approved. This plan is effective immediately and supersedes all previous editions.

County Judge, Brazos County

Date

Mayor, City of Bryan

Date

Mayor, City of College Station

Date

Mayor, City of Kurten

Date

Mayor, City of Wixon Valley

Date

Chief Operating Officer, Texas A&M University

Date

RECORD OF CHANGES

Basic Plan

Change #	Date of Change	Change Entered By	Date Entered

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BASIC PLAN

I. AUTHORITY

A. Federal

1. U. S. Constitution, as amended
2. Robert T. Stafford Disaster Relief & Emergency Assistance Act, (as amended), 42 U.S.C. 5121
3. 42 S. Code- 5170 (2013, January 29) Procedure for Declaration
4. Price- Anderson Amendments Act of 1988, Public Law 100-408, as amended
5. Post-Katrina Emergency Management Reform Act (PKEMRA), 2006
6. Housing and Economic Recovery Act of 2008
7. Sandy Recovery Improvement Act (SRIA) of 2013
8. Disaster Recovery Reform Act of 2018
9. 42 United States Chapter 68 Disaster Relief Sub Chapter IV. Major Disaster Assistance Programs Section Code 5170 (2023, January 3, 2022). Procedure for Declaration
10. The National Security Strategy, October 2022
11. Emergency Alert System, Code of Federal Regulations (CFR) 47, Chapter 1, Subchapter A, Part 11
12. Emergency Management and Assistance, Code of Federal Regulations, (CFR) 44
13. Emergency Planning and Community Right-to-Know Act Section 301
14. Emergency Management and Assistance Compact, Public Law 104-321
15. Executive Orders of the President
 - Homeland Security Presidential Directive, *HSPD-3*: Homeland Security Advisory System
 - Homeland Security Presidential Directive. *HSPD-5*: Management of Domestic Incidents
 - Homeland Security Presidential Directive, *HSPD-7*: Critical Infrastructure Identification, Prioritization, and Protection, December 2003
 - Homeland Security Presidential Directive, *HSPD-8*: National Preparedness, March 2011
 - Executive Order 13347, Federal Register, Individuals with Disabilities in Emergency Preparedness
 - National Incident Management System
 - National Response Plan
 - National Strategy for Homeland Security, July 2002
 - Nuclear/Radiological Incident Annex of the National Response Plan
 - Presidential Policy Directive 8: National Preparedness

B. State

1. Constitution of the State of Texas
2. Respective state agency, department, and commission-enabling legislation
3. Texas Education Code 88

4. Texas Government Code
 - 411.301-307 Power Outage Alert
 - 418 Emergency Management
 - 421 Homeland Security
 - 433 State of Emergency
 - 791.006 Liability in the Fire Protection Contract or Provision of Law Enforcement Services
 - 791.025 Contracts for Purchases
 - 791.027 Emergency Assistance
5. Texas Health & Safety Code 773 Emergency Medical Services
6. Texas Health & Safety Code 778 Emergency Management Assistance Compact
7. Texas Local Government Code
 - 616 Emergency Interim Public Office Succession Act
 - 391 Regional Planning Commissions
 - Texas Water Code 13 Water Rates and Services
 - Subtitle C, 16 Provisions Generally Applicable to Water Development
8. Executive Orders of the Government
 - GA 05 Relating to Emergency Management of Natural and Human- Caused Events, Emergencies and Disasters (2018)
 - RP 16 Relating to the Creation of the Statewide Amber Alert Network (2002)
 - RP 40 Relating to the Designation of the National Incident Management System as the Incident Management System for the State of Texas (2005)
 - RP 68 Relating to the Creation of the Blue Alert Program (2008)
 - RP 69 Relating to the Creation of the Governor's Commission for Disaster Recovery and Renewal (2008)
9. Texas Homeland Security Strategic Plan 2021-2025
10. Texas State Historical Association (2022). Texas Almanac. (E. Alvarez, Ed) Dallas: Texas State Historical Commission

C. Local

1. College Station City Ordinance # 3180 dated May 18, 2009.
2. Bryan City Ordinance # 621 dated August 11, 1986.
3. Wixon Valley City Ordinance # 108 dated August 7, 1987.
4. Kurten City Ordinance #11, dated March 27, 2003
5. Brazos County Commissioner's Court Order dated October 8, 1984.
6. Interjurisdictional Joint Resolution # 9-25-97-6-b among the County of Brazos and the Cities of College Station, Bryan, Kurten and Wixon Valley dated August 15, 1997; and September 16, 2003.
7. Inter-local Agreements & Contracts. See the summary in Attachment 6.

II. PURPOSE

This Basic Plan outlines our approach to emergency operations and is applicable to the county, cities, and Texas A&M University. It provides general guidance for emergency management activities and an overview of our methods of prevention, protection, mitigation, response, and recovery. The plan describes our emergency response organization and assigns

responsibilities for various emergency tasks. This plan is intended to provide a framework for more specific functional annexes that describe in more detail who does what, when, and how. This plan applies to all local officials, departments, and agencies. The primary audience for the document includes our chief elected official(s), other elected officials and university administrators, the emergency management staff, department and agency heads and their senior staff members, leaders of local volunteer organizations that support emergency operations, and others who may participate in our prevention, protection, mitigation, response, and recovery efforts.

III. EXPLANATION OF TERMS

A. Acronyms

AAR	After Action Report
ARC	American Red Cross
CFR	Code of Federal Regulations
DDC	Disaster District Committee
DHS	Department of Homeland Security
EMC	Emergency Management Coordinator
EOC	Emergency Operations or Operating Center
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency, an element of the U.S. Department of Homeland Security
Hazmat	Hazardous Material
HSPD-5	Homeland Security Presidential Directive 5
ICP	Incident Command Post
ICS	Incident Command System
IP	Improvement Plan
JFO	Joint Field Office
JIC	Joint Information Center
JIS	Joint Information System
NIMS	National Incident Management System
NRF	National Response Framework
OSHA	Occupational Safety & Health Administration
PIO	Public Information Officer
SOGs	Standard Operating Guidelines
SOPs	Standard Operating Procedures
SOC	State Operations Center
TSA	The Salvation Army
VOADs	Volunteer Organizations Active in Disasters

B. Definitions

1. Area Command (Unified Area Command). An organization established (1) to oversee the management of multiple incidents that are each being managed by an ICS organization or (2) to oversee the management of large or multiple incidents to which several Incident Management Teams have been assigned. Sets overall strategy and

priorities, allocates critical resources according to priorities, ensures that incidents are properly managed, and ensures that objectives are met and strategies followed. Area Command becomes Unified Area Command when incidents are multijurisdictional.

2. Disaster District. Disaster Districts are regional state emergency management organizations mandated by the Executive Order of the Governor relating to Emergency Management whose boundaries parallel those of Highway Patrol Districts and Sub-Districts of the Texas Department of Public Safety.
3. Disaster District Committee. The DDC consists of a Chairperson (the TDEM District Chief), and agency representatives that mirror the membership of the State Emergency Management Council. The DDC Chairperson, supported by committee members, is responsible for identifying, coordinating the use of, committing, and directing state resources within the district to respond to emergencies.
4. Emergency Operations Center. Specially equipped facilities from which government officials exercise direction and control and coordinate necessary resources in an emergency situation.
5. Public Information. Information that is disseminated to the public via the news media before, during, and/or after an emergency or disaster ensuring the needs of the whole community are addressed.
6. Emergency Situations. As used in this plan, this term is intended to describe a *range* of occurrences, from a minor incident to a catastrophic disaster. It includes the following:
 - a. Incident. An incident is a situation that is limited in scope and potential effects. Characteristics of an incident include:
 - 1) Involves a limited area and/or limited population.
 - 2) Evacuation or in-place sheltering is typically limited to the immediate area of the incident.
 - 3) Warning and public instructions are provided in the immediate area, not community wide.
 - 4) One or two local response agencies or departments acting under an Incident Commander normally handle incidents. Requests for resource support are normally handled through agency and/or departmental channels.
 - 5) May require limited external assistance from other local response agencies or contractors.
 - 6) For the purposes of the NRF, incidents include the full range of occurrences that require an emergency response to protect life or property.
 - b. Emergency. An emergency is a situation that is larger in scope and more severe in terms of actual or potential effects than an incident. Characteristics include:
 - 1) Involves a large area, significant population, or important facilities.
 - 2) May require implementation of large-scale evacuation or in-place sheltering and implementation of temporary shelter and mass care operations.
 - 3) May require community-wide warning and public instructions.

- 4) Requires a sizable multi-agency response operating under an Incident Commander.
 - 5) May require some external assistance from other local response agencies, contractors, and limited assistance from state or federal agencies.
 - 6) The EOC will be activated to provide general guidance and direction, coordinate external support, and provide resource support for the incident.
 - 7) For the purposes of the NRF, an emergency (as defined by the Stafford Act) is “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of catastrophe in any part of the United States.”
- c. Disaster. A disaster involves the occurrence or threat of significant casualties and/or widespread property damage that is beyond the capability of the local government to handle its organic resources. Characteristics include:
- 1) Involves a large area, a sizable population, and/or important facilities.
 - 2) May require implementation of large-scale evacuation or in-place sheltering and implementation of temporary shelter and mass care operations.
 - 3) Requires community-wide warning and public instructions.
 - 4) Requires a response by all local response agencies operating under one or more incident commanders.
 - 5) Requires significant external assistance from other local response agencies, contractors, and extensive state or federal assistance.
 - 6) The EOC will be activated to provide general guidance and direction, provide emergency information to the public, coordinate state and federal support, and coordinate resource support for emergency operations.
 - 7) For the purposes of the NRF, a *major disaster* (as defined by the Stafford Act) is any catastrophe, regardless of the cause, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster federal assistance.
- d. Catastrophic Incident. For the purposes of the NRF, this term is used to describe any natural or manmade occurrence that results in extraordinary levels of mass casualties, property damage, or disruptions that severely affect the population, infrastructure, environment, economy, national morale, and/or government functions. An occurrence of this magnitude would result in sustained national impacts over prolonged periods of time and would immediately overwhelm local and state capabilities. All catastrophic incidents are *Incidents of National Significance*.
7. Hazard Analysis. A document published separately from this plan that identifies the local hazards that have caused or possess the potential to adversely affect public health and safety, public or private property, or the environment.
 8. Hazardous Material (Hazmat). A substance in a quantity or form posing an unreasonable risk to health, safety, and/or property when manufactured, stored, or transported. The substance, by its nature, containment, and reactivity, has the capability for inflicting harm during an accidental occurrence. A substance that is toxic, corrosive, flammable, reactive, an irritant, or a strong sensitizer, and poses a threat to health and the environment when improperly managed (Includes toxic substances,

certain infectious agents, radiological materials, and other related materials such as oil, used oil, petroleum products, and industrial solid waste substances).

9. Incident of National Significance. An actual or potential high-impact event that requires a coordinated and effective response by and appropriate combination of federal, state, local, tribal, nongovernmental, and/or private sector entities in order to save lives and minimize damage and provide the basis for long-term communication recovery and mitigation activities.
10. Inter-local agreements. Arrangements between governments and/or organizations, either public or private, for reciprocal aid and assistance during emergency situations where the resources of a single jurisdiction or organization are insufficient or inappropriate for the tasks that must be performed to control the situation. Commonly referred to as mutual aid agreements.
11. Stafford Act. The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes federal agencies to undertake special measures designed to assist the efforts of states in expediting the rendering of aid, assistance, emergency services, and reconstruction and rehabilitation of areas devastated by disaster.
12. Standard Operating Guidelines. Approved methods for accomplishing a task or set of tasks. SOGs are typically prepared at the department or agency level.

IV. SITUATION AND ASSUMPTIONS

A. Situation

Brazos County is exposed to many hazards, all of which have the potential for disrupting the community, causing casualties, and damaging or destroying public or private property. A summary of our major hazards is provided in Figure 1. More detailed information is provided in our Hazard Analysis, published separately.

Figure 1

HAZARD SUMMARY

	Likelihood of Occurrence*	Estimated Impact on Public Health & Safety			Estimated Impact on Property		
Hazard Type:	(See below)	Limited	Moderate	Major	Limited	Moderate	Major
<i>Natural</i>							
Drought	HIGHLY LIKELY	LIMITED			MODERATE		
Earthquake	UNLIKELY	LIMITED			LIMITED		
Flash Flooding	HIGHLY LIKELY	MODERATE			LIMITED		
Flooding (river)	HIGHLY LIKELY	MODERATE			LIMITED		
Hurricane	UNLIKELY	LIMITED			LIMITED		
Subsidence	UNLIKELY	LIMITED			LIMITED		
Tornado	UNLIKELY	MAJOR			MAJOR		
Wildfire	HIGHLY LIKELY	LIMITED			MODERATE		
Winter Storm	UNLIKELY	LIMITED			LIMITED		
Infectious Disease	UNLIKELY	MAJOR			LIMITED		

<i>Technological</i>			
Dam Failure	UNLIKELY	MODERATE	MODERATE
Energy/Fuel Shortage	OCCASIONAL	MODERATE	LIMITED
Hazmat/Oil Spill (fixed site)	OCCASIONAL	MODERATE	MODERATE
Hazmat/Oil Spill (transport)	LIKELY	MODERATE	MODERATE
Major Structural Fire	HIGHLY LIKELY	MODERATE	MAJOR
Nuclear Facility Incident	UNLIKELY	MODERATE	MODERATE
Water System Failure	OCCASIONAL	MODERATE	MODERATE
Electrical System Failure	LIKELY	MODERATE	MODERATE
Aircraft Incident	UNLIKELY	LIMITED	LIMITED
<i>Security</i>			
Civil Disorder	UNLIKELY	MODERATE	MODERATE
Enemy Military Attack	UNLIKELY	MAJOR	MAJOR
Terrorism	UNLIKELY	MAJOR	MAJOR
Active Attacker	UNLIKELY	MAJOR	MODERATE
* Likelihood of Occurrence: Unlikely, Occasional, Likely, or Highly Likely			

B. Assumptions

1. Brazos County will continue to be exposed to and subject to the impact of the hazards described above and as well as lesser hazards and others that may develop in the future.
2. It is possible for a major disaster to occur at any time and at any place. In many cases, dissemination of warning to the public and implementation of increased readiness measures may be possible. However, some emergency situations occur with little or no warning. Major disasters and emergencies may generate widespread media and public interest; information provided to the public needs to be accurate, timely, and reviewed by a designated Public Information Officer or Officers. The media must be considered an ally in large-scale emergencies and disasters; it can provide considerable assistance in emergency public information and warning.
3. Outside assistance will be available in most emergency situations, affecting our county. Since it takes time to summon external assistance, it is essential for us to be prepared to carry out the initial emergency response on an independent basis. Further, disasters and emergencies may require extended commitment of personnel and other resources from involved agencies and jurisdictions.
4. Proper mitigation actions, such as floodplain management, fire inspections, and building inspections, can prevent or reduce disaster-related losses. Detailed emergency planning, training of emergency responders and other personnel, and conducting periodic emergency drills and exercises can improve our readiness to deal with emergency situations.

Disasters and emergencies may pose serious long-term threats to public health, property, the environment, and local economy. While responding to significant disasters and emergencies, all strategic decisions must consider each of these potential impacts.

5. All EOC staff have read the Basic Emergency Plan and its supporting documents, and are prepared to work in the EOC environment.

V. CONCEPT OF OPERATIONS

A. Objectives

The objectives of our emergency management program are to protect public health and safety and preserve public and private property. Emergency operations address the entire spectrum of contingencies, ranging from relatively minor incidents such as utility failure, to large-scale disasters such as major flash flooding. Some emergencies will be preceded by a build-up period, which, if recognized, may offer advance warning to potentially affected areas and populations. Other emergencies occur with little or no advanced warning, and therefore require a response characterized by efficient and coordinated mobilization and deployment of local resources. This section of the plan outlines how the plan will be activated and implemented, with the purpose of protecting lives, property, and the environment of Brazos County as a whole.

B. General

1. It is our responsibility to protect public health and safety and preserve property from the effects of hazardous events. We have the primary role in identifying and mitigating hazards, preparing for, and responding to, and managing the recovery from emergency situations that affect our community.
2. It is impossible for government to do everything that is required to protect the lives, property, and the environment of our population. Our citizens have the responsibility to prepare themselves and their families to cope with emergency situations and manage their affairs and property in ways that will aid the government in managing emergencies. We will assist our citizens in carrying out these responsibilities by providing public information and instructions prior to and during emergency situations.
3. Local government is responsible for organizing, training, and equipping local emergency responders and emergency management personnel, providing appropriate emergency facilities, providing suitable warning and communications systems, and for contracting for emergency services. The state and federal governments offer programs that provide some assistance with portions of these responsibilities.
4. To achieve our objectives, we have organized an emergency management program that is both integrated (employs the resources of government, organized volunteer groups, and businesses) and comprehensive (addresses mitigation, prevention, protection, response, and recovery). This plan captures the elements of the National Preparedness Goal.
5. This plan is based on an all-hazard approach to emergency planning. It addresses general functions that may need to be performed during any emergency situation and is not a collection of plans for specific types of incidents. For example, Annex A (Warning) addresses techniques that can be used to warn the public during any emergency situation, whatever the cause.
6. Departments and agencies tasked in this plan are expected to develop and keep current standard operating procedures that describe how emergency tasks will be performed.

Departments and agencies are charged with ensuring the training and equipment necessary for an appropriate response are in place.

7. This plan is based upon the concept that the emergency functions that must be performed by many departments or agencies generally parallel some of their normal day-to-day functions. To the extent possible, the same personnel and material resources used for day-to-day activities will be employed during emergency situations. Because personnel and equipment resources are limited, some routine functions that do not contribute directly to the emergency may be suspended for the duration of an emergency. The personnel, equipment, and supplies that would normally be required for those functions will be redirected to accomplish emergency tasks.
8. We have adopted the National Incident Management System (NIMS) in accordance with the President's Homeland Security Directive (HSPD)-5. Our adoption of NIMS will provide a consistent approach to the effective management of situations involving natural or man-made disasters, or terrorism. NIMS allows us to integrate our response activities using a set of standardized organizational structures designed to improve interoperability between all levels of government, private sector, and nongovernmental organizations.
9. This plan, in accordance with the National Response Framework (NRF), is an integral part of the national effort to prevent, and reduce America's vulnerability to terrorism, major disasters, and other emergencies, minimize the damage and recover from attacks, major disasters, and other emergencies that occur. In the event of an Incident of National Significance, as defined in HSPD-5, we will integrate all operations with all levels of government, private sector, and nongovernmental organizations through the use of the NRF coordinating structures, processes, and protocols.

C. Operational Guidance

We will employ the six components of the NIMS in all operations, which will provide a standardized framework that facilitates our operations in all phases of emergency management. Attachment 7 provides further details of the NIMS.

1. Initial Response. Our emergency responders are likely to be the first on the scene of an emergency situation. They will normally take charge and remain in charge of the incident until it is resolved or others who have legal authority to do so assume responsibility. They will seek guidance and direction from our local officials and seek technical assistance from state and federal agencies and industry where appropriate.
2. Implementation of ICS
 - a. The first local emergency responder to arrive at the scene of an emergency will implement the incident command system and serve as the Incident Commander until relieved by a more senior or more qualified individual. The Incident Commander will establish an incident command post (ICP) and provide an assessment of the situation to local officials, identify response resources required, and direct the on-scene response from the ICP.

- b. For some types of emergency situations, a specific incident scene may not exist in the initial response phase and the EOC may accomplish initial response actions, such as mobilizing personnel and equipment and issuing precautionary warnings to the public. As the potential threat becomes more clear and a specific impact site (or sites) identified, an incident command post may be established, and direction and control of the response transitioned to the Incident Commander .

3. Source and Use of Resources.

- a. We will use our own resources, all of which meet the requirements for resource management in accordance with the NIMS, to respond to emergency situations, purchasing supplies and equipment if necessary, and request assistance if our resources are insufficient or inappropriate. §418.102 of the Government Code provides that the county should be the first channel through which a municipality requests assistance when its resources are exceeded. If additional resources are required, we will:
 - 1) Summon those resources available to us pursuant to inter-local agreements. See Attachment 6 to this plan.
 - 2) Summon emergency service resources that we have contracted for. See Attachment 6.
 - 3) Request assistance from volunteer organizations active in disasters.
 - 4) Request assistance from industry or individuals who have resources needed to deal with the emergency situation.
- b. When external agencies respond to an emergency situation within our jurisdiction, we expect them to conform to the guidance and direction provided by our Incident Commander, which will be in accordance with the NIMS.

D. Incident Command System (ICS)

- 1. We intend to employ ICS, an integral part of the NIMS, in managing emergencies. ICS is both a strategy and a set of organizational arrangements for directing and controlling field operations. It is designed to effectively integrate resources from different agencies into a temporary emergency organization at an incident site that can expand and contract with the magnitude of the incident and resources on hand. A summary of ICS is provided in Attachment 7.
- 2. The Incident Commander is responsible for carrying out the ICS function of command -- managing the incident. The four other major management activities that form the basis of ICS are operations, planning, logistics, and finance/administration. For small-scale incidents, the Incident Commander and one or two individuals may perform all of these functions. For larger incidents, a number of individuals from different departments or agencies may be assigned to separate staff sections charged with those functions.
- 3. An Incident Commander using response resources from one or two departments or agencies can handle the majority of emergency situations. Departments or agencies participating in this type of incident response will normally obtain support through their own department or agency.

4. In emergency situations where other jurisdictions or the state or federal government are providing significant response resources or technical assistance, it is generally desirable to transition from the normal ICS structure to a Unified or Area Command structure. This arrangement helps to ensure that all participating agencies are involved in developing objectives and strategies to deal with the emergency. Attachment 7 provides additional information on Unified and Area Commands.

E. ICS - EOC Interface

1. For major emergencies and disasters, the Emergency Operations Center (EOC) will be activated. When the EOC is activated, it is essential to establish a division of responsibilities between the incident command post and the EOC. A general division of responsibilities is outlined below. It is essential that a precise division of responsibilities be determined for specific emergency operations.
2. The Incident Commander is generally responsible for field operations, including:
 - a. Isolating the scene.
 - b. Directing and controlling the on-scene response to the emergency situation and managing the emergency resources committed there.
 - c. Warning the population in the area of the incident and providing emergency instructions/information to them.
 - d. Determining and implementing protective measures (evacuation or shelter-in-place) for the population in the immediate area of the incident and for emergency responders at the scene.
 - e. Implementing traffic control arrangements in and around the incident scene.
 - f. Notifying the appropriate EMC and requesting additional resources as needed.
3. The EOC is generally responsible for:
 - a. Providing resource support for incident command operations.
 - b. Issuing community-wide warning.
 - c. Issuing instructions and providing information to the general public.
 - d. Organizing and implementing large-scale evacuation.
 - e. Organizing and implementing shelter and mass care arrangements for evacuees.
 - f. Coordinating traffic control for large-scale evacuations.
 - g. Requesting assistance from the State and other external sources.
 - h. Working with the chief elected officials of the jurisdictions to declare a local state of disaster or emergency as needed as well as requesting disaster recovery assistance.
4. In some large-scale emergencies or disasters, emergency operations with different objectives may be conducted at geographically separated scenes. In such situations, more than one incident command operation may be established. If this situation occurs, a transition to an Area Command or a Unified Area Command is desirable, and the allocation of resources to specific field operations will be coordinated through the EOC.

F. State, Federal & Other Assistance

1. State & Federal Assistance

- a. If local resources are inadequate to deal with an emergency situation, the EOC will request assistance from the State. State assistance furnished to local governments is intended to supplement local resources and not substitute for such resources, including mutual aid resources, equipment purchases or leases, or resources covered by emergency service contracts. As noted previously, cities must request assistance from their county before requesting state assistance.
- b. Requests for state assistance should be made to the Disaster District Committee (DDC) Chairperson, who is located at the Texas A&M University System RELLIS Campus in Bryan, Texas. See Appendix 3 to Annex M (Resource Management) for a form that can be used to request state assistance. In essence, state emergency assistance to local governments begins at the DDC level and the key person to validate a request for, obtain, and provide that state assistance and support is the DDC Chairperson. A request for state assistance must be made by the chief elected official (the County Judge/Mayor(s)) or designee and may be made via STAR board in WebEOC, email, or telephone. The DDC Chairperson has the authority to utilize all state resources within the district to respond to a request for assistance, with the exception of the National Guard. Use of National Guard resources requires approval of the Governor.
- c. The Disaster District staff will forward requests for assistance that cannot be satisfied by state resources within the District to the State Operations Center (SOC) in Austin for action.

2. Other Assistance

- a. If resources required to control an emergency situation are not available within the State, the Governor may request assistance from other states pursuant to a number of interstate compacts or from the federal government through the Federal Emergency Management Agency (FEMA).
- b. For major emergencies and disasters for which a Presidential declaration has been issued, federal agencies may be mobilized to provide assistance to states and local governments. The National Response Framework (NRF) describes the policies, planning assumptions, concept of operations, and responsibilities of designated federal agencies for various response and recovery functions. The *Nuclear/Radiological Incident Annex of the NRF* addresses the federal response to major incidents involving radioactive materials.
- c. FEMA has the primary responsibility for coordinating federal disaster assistance. No direct federal disaster assistance is authorized prior to a Presidential emergency or disaster declaration, but FEMA has limited authority to stage initial response resources near the disaster site and activate command and control structures prior to a declaration and the Department of Defense has the authority to commit its resources to save lives prior to an emergency or disaster declaration.

- d. See Annex J (Recovery) for additional information on the assistance that may be available during disaster recovery.
- e. The NRF applies to Stafford and non-Stafford Act incidents and is designed to accommodate not only actual incidents, but also the threat of incidents. Therefore, NRF implementation is possible under a greater range of incidents.

G. Emergency Authorities

1. Key federal, state, and local legal authorities pertaining to emergency management are listed in Section I of this plan.
2. Texas statutes and the Executive Order of the Governor Relating to Emergency Management provide local government, principally the chief elected official, with a number of powers to control emergency situations. If necessary, we shall use these powers during emergency situations. These powers include:
 - a. Emergency Declaration. In the event of riot or civil disorder, the County Judge and/or Mayor(s) may request the Governor to issue an emergency declaration for this jurisdiction and take action to control the situation. Use of the emergency declaration is explained in Annex U (Legal).
 - b. Disaster Declaration. When an emergency situation has caused severe damage, injury, or loss of life or it appears likely to do so, the County Judge and/or Mayor(s) may by Executive Order or proclamation declare a local state of disaster. The County Judge and/or Mayor(s) may subsequently issue orders or proclamations referencing that declaration to invoke certain emergency powers granted the Governor in the Texas Disaster Act on an appropriate local scale in order to cope with the disaster. These powers include:
 - 1) Suspending procedural laws and rules to facilitate a timely response.
 - 2) Using all available resources of government and commandeering private property, subject to compensation, to cope with the disaster.
 - 3) Restricting the movement of people and occupancy of premises.
 - 4) Prohibiting the sale or transportation of certain substances.
 - 5) Implementing price controls.

A local disaster declaration activates the recovery and rehabilitation aspects of this plan. A local disaster declaration is required to obtain state and federal disaster recovery assistance. See Annex U (Legal) for further information on disaster declarations and procedures for invoking emergency powers.

- c. Authority for Evacuations. State law provides a County Judge or Mayor with the authority to order the evacuation of all or part of the population from a stricken or threatened area within their respective jurisdictions.

H. Actions by Phases of Emergency Management

1. This plan addresses emergency actions that are conducted during all four phases of emergency management.

- a. Prevention

We will conduct activities that will lead to the prevention and avoidance of an imminent, threatened, or actual act of terrorism.

- b. Protection

We will conduct preparedness activities to develop the response capabilities needed in the event an emergency. Among the preparedness activities included in our emergency management program are:

- 1) Providing emergency equipment and facilities.
- 2) Emergency planning, including maintaining this plan, its annexes, and appropriate SOGs.
- 3) Conducting or arranging appropriate training for emergency responders, emergency management personnel, other local officials, and volunteer groups who assist us during emergencies.
- 4) Conducting periodic drills and exercises to test our plans and training.

- c. Mitigation

We will conduct mitigation activities as an integral part of our emergency management program. Mitigation is intended to eliminate hazards, reduce the probability of hazards causing an emergency situation, or lessen the consequences of unavoidable hazards. Mitigation should be a pre-disaster activity, although mitigation may also occur in the aftermath of an emergency situation with the intent of avoiding repetition of the situation. Our mitigation program is outlined in Annex P (Mitigation).

- d. Response

We will respond to emergency situations effectively and efficiently. The focus of most of this plan and its annexes is on planning for the response to emergencies. Response operations are intended to resolve an emergency situation while minimizing casualties, property damage, and impacts to the environment. Response activities include warning, emergency medical services, firefighting, law enforcement operations, evacuation, shelter and mass care, emergency public information, search and rescue, as well as other associated functions.

- e. Recovery

If a disaster occurs, we will carry out a recovery program that involves both short-term and long-term efforts. Short-term operations seek to restore vital services to the community and provide for the basic needs of the public. Long-term recovery focuses on restoring the community to its normal state. The federal government, pursuant to the Stafford Act, provides the vast majority of disaster recovery

assistance. The recovery process includes assistance to individuals, businesses, and to government and other public institutions.

Examples of recovery programs include temporary housing, restoration of government services, debris removal, restoration of utilities, disaster mental health services, and reconstruction of damaged roads and bridges. Our recovery program is outlined in Annex J (Recovery).

VI. ORGANIZATION AND ASSIGNMENT OF RESPONSIBILITIES

A. Organization

1. General

Most departments and agencies of local government have emergency functions in addition to their normal day-to-day duties. During emergency situations, our normal organizational arrangements are modified to facilitate emergency operations. Our governmental organization for emergencies includes an executive group, emergency services group, and a support services group. Attachment 3 depicts our emergency organization.

2. Executive Group

The Executive Group provides guidance and direction for emergency management programs and for emergency response and recovery operations. The Executive Group includes the County Judge, Mayor(s), City Manager(s), University Executive(s), and Emergency Management Coordinator(s).

3. Emergency Services

Emergency Services include the Incident Commander and those departments, agencies, and groups with primary emergency response actions.
The Incident Commander is the person in charge at an incident site.

4. Emergency Support Services

This group includes departments and agencies that support and sustain emergency responders and also coordinate emergency assistance provided by organized volunteer organizations, business and industry, and other sources.

5. Volunteer and Other Services

This group includes organized volunteer groups and businesses that have agreed to provide certain support for emergency operations.

B. Assignment of Responsibilities

1. General

For most emergency functions, successful operations require a coordinated effort from a number of departments, agencies, and groups. To facilitate a coordinated effort, elected and appointed officials, departments and agency heads, and other personnel are assigned primary responsibility for planning and coordinating specific emergency functions. Generally, primary responsibility for an emergency function will be assigned to an individual from the department or agency that has legal responsibility for that function or possesses the most appropriate knowledge and skills. Other officials, departments, and agencies may be assigned support responsibilities for specific emergency functions. Attachment 4 summarizes the general emergency responsibilities of local officials, department and agency heads, and other personnel.

2. The individual having primary responsibility for an emergency function is normally responsible for coordinating preparation of and maintaining that portion of the emergency plan that addresses that function. Plan and annex assignments are outlined in Attachment 5. Listed below are general responsibilities assigned to the Executive Group, Emergency Services, Support Services, and other Support Agencies. Additional specific responsibilities can be found in the functional annexes to this Basic Plan.

3. Executive Group Responsibilities

- a. The County Judge and/or Mayor(s) and/or University Executives will:

- 1) Establish objectives and priorities for the emergency management program and provide general policy guidance on the conduct of that program.
 - 2) Monitor the emergency response during disaster situations and provides direction where appropriate.
 - 3) With the assistance of the Public Information Officer (PIO) and the Joint Information Center (JIC), keep the public informed during emergency situations.
 - 4) With the assistance of the legal staff, declare a local state of disaster, request the Governor declare a state of emergency, or invoke the emergency powers of government when necessary (except University Executives).
 - 5) Request assistance from other local governments or the State when necessary.
 - 6) Direct activation of the EOC.

- b. The County Judge, Mayor(s), City Manager(s), University Assistant VP for Safety and Security and EMC(s) will:

- 1) Implement the policies and decisions of the governing body relating to emergency management.
 - 2) Organize the emergency management program and identifies personnel, equipment, and facility needs.
 - 3) Assign emergency management program tasks to departments and agencies.

- 4) Ensure that departments and agencies participate in emergency planning, training, and exercise activities.
 - 5) Coordinate the operational response of local emergency services.
 - 6) Coordinate activation of the EOC and supervise its operation.
- c. The Emergency Management Coordinator(s) will:
- 1) Serve as the staff advisor to our County Judge, Mayor(s), and City Manager(s) on emergency management matters.
 - 2) Keep the County Judge, Mayor(s), and City Manager(s), as well as our governing body, apprised of our preparedness status and emergency management needs.
 - 3) Coordinate local planning and preparedness activities and the maintenance of this plan.
 - 4) Prepare and maintain a resource inventory.
 - 5) Arrange appropriate training for local emergency management personnel and emergency responders.
 - 6) Coordinate periodic emergency exercises to test our plan and training.
 - 7) Manage the EOC, develop procedures for its operation, and conduct training for those who staff it.
 - 8) Activate the EOC when required.
 - 9) Perform day-to-day liaison with the state emergency management staff and other local emergency management personnel.
 - 10) Coordinate with organized volunteer groups and businesses regarding emergency operations.
4. Common Responsibilities.
- All emergency services and support services will:
- a. Provide personnel, equipment, and supplies to support emergency operations as able, upon request.
 - b. Develop and maintain SOGs for emergency tasks.
 - c. Provide trained personnel to staff the incident command post and EOC and conduct emergency operations.

- d. Provide current information on emergency resources for inclusion in the Resource List in Appendix 1 to Annex M (Resource Management).
 - e. Report information regarding emergency situations and damage to facilities and equipment to the Incident Commander or the EOC.
5. Emergency Services Responsibilities.
- a. The Incident Commander will:
 - 1) Manage emergency response resources and operations at the incident site command post to resolve the emergency situation.
 - 2) Determine and implement required protective actions for response personnel and the public at an incident site.
 - b. Warning.
 - 1) Primary responsibility for this function is assigned to the Police Chief(s) and/or County Sheriff who, with assistance from the EMC(s), will prepare and maintain Annex A (Warning) to this plan and supporting SOGs.
 - 2) Emergency tasks to be performed include:
 - a) Receive information on emergency situations.
 - b) Alert key local officials of emergency situations.
 - c) Disseminate warning information and instructions to the public through available warning systems ensuring the needs of the whole community are addressed.
 - d) Disseminate warnings and instructions to special facilities such as schools and hospitals.
 - c. Communications.
 - 1) Primary responsibility for this function is assigned to the Police Chief(s) and/or County Sheriff who, with assistance from the EMCs, will prepare and maintain Annex B (Communications) to this plan and supporting SOGs.
 - 2) Emergency tasks to be performed include:
 - a) Identify the communications systems available within the local area and determine the connectivity of those systems, and ensure their interoperability.
 - b) Develop plans and procedures for coordinated use of the various communications systems available in this jurisdiction during emergencies.
 - c) Determine and implement means of augmenting communications during emergencies, including support by volunteer organizations.
 - d. Radiological Protection.

- 1) Primary responsibility for this function is assigned to the Fire Chief(s) who, with assistance from the EMCs, will prepare and maintain Annex D (Radiological Protection) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Maintain inventory of radiological equipment.
 - b) Ensure response forces include personnel with current training in radiological monitoring and decontamination.
 - c) Respond to radiological incidents and terrorist incidents involving radiological materials.
 - d) Make notification concerning radiological incidents to state and federal authorities.

e. Evacuation.

- 1) Primary responsibility for this function is assigned to the Police Chief(s) and/or Sheriff who, with assistance from the EMCs, will prepare and maintain Annex E (Evacuation) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Identify areas where an evacuation has occurred, or may in the future, and determine the population at risk.
 - b) Perform evacuation planning for known risk areas to include route selection and determination of traffic control requirements.
 - c) Develop simplified planning procedures for ad hoc evacuations.
 - d) Determine emergency public information requirements.
 - e) Perform evacuation planning for functional and access needs facilities (schools, hospitals, nursing homes, and other institutions) and/or review plans prepared by the facility as requested.

f. Firefighting.

- 1) Primary responsibility for this function is assigned to the Fire Chief(s) who, with assistance from the EMCs, will prepare and maintain Annex F (Firefighting) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Fire prevention activities.
 - b) Fire detection and control.
 - c) Hazardous material and oil spill response.
 - d) Terrorist incident response.
 - e) Evacuation support.
 - f) Post-incident reconnaissance and damage assessment.
 - g) Fire safety inspection of temporary shelters.
 - h) Prepare and maintain fire resource inventory.

g. Law Enforcement.

- 1) Primary responsibility for this function is assigned to the Police Chief(s) and/or Sheriff who, with assistance from the EMCs, will prepare and maintain Annex G (Law Enforcement) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Maintenance of law and order.
 - b) Traffic control.
 - c) Terrorist incident response.
 - d) Provision of security for vital facilities, evacuated areas, and shelters.
 - e) Access control for damaged or contaminated areas.
 - f) Warning support.
 - g) Post-incident reconnaissance and damage assessment.
 - h) Prepare and maintain law enforcement resource inventory.

h. Health and Medical Services.

- 1) Primary responsibility for this function is assigned to the Public Health Office, who with assistance from the EMCs, will prepare and maintain Annex H (Health & Medical Services) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Coordinate health and medical care and EMS support during emergency situations.
 - b) Public health information and education.
 - c) Inspection of food and water supplies.
 - d) Develop emergency public health regulations and orders.
 - e) Coordinate collection, identification, and interment of deceased victims.

i. Direction and Control.

- 1) Primary responsibility for this function is assigned to the County Judge and/or Mayor(s) and/or designated University Executives and EMCs who will prepare and maintain Annex N (Direction & Control) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Direct and control our local operating forces.
 - b) Maintain coordination with neighboring jurisdictions and the Disaster District in Bryan, Texas.
 - c) Maintain the EOC in an operating mode or be able to convert the designated facility space into an operable EOC rapidly.
 - d) Assign representatives, by title, to report to the EOC and develops procedures for crisis training.
 - e) Develop and identify the duties of the staff, use of displays and message forms, and procedures for EOC activation.
 - f) Coordinate the evacuation of areas at risk.

j. Hazardous Materials & Oil Spill.

- 1) The primary responsibility for this function is assigned to the Fire Chief(s) who, with assistance from the EMCs will prepare and maintain Annex Q (Hazardous Material & Oil Spill Response) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) In accordance with OSHA regulations, establish ICS to manage the response to hazardous materials incidents.
 - b) Establish the hazmat incident functional areas (e.g., Hot Zone, Warm Zone, Cold Zone, etc.)
 - c) Determine and implement requirements for personal protective equipment for emergency responders.
 - d) Initiate appropriate actions to control and eliminate the hazard in accordance with established hazmat response guidance and SOGs.
 - e) Determine areas at risk and which public protective actions, if any, should be implemented.
 - f) Apply appropriate firefighting techniques if the incident has, or may, result in a fire.
 - g) Determine when affected areas may be safely reentered.

k. Search & Rescue.

- 1) The primary responsibility for this function is assigned to the Fire Chief(s) who, with assistance from the EMCs, will prepare and maintain Annex R (Search and Rescue) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Coordinate and conduct search and rescue activities.
 - b) Identify requirements for specialized resources to support rescue operations.
 - c) Coordinate external technical assistance and equipment support for search and rescue operations.

l. Terrorist Incident Response.

- 1) Primary responsibility for this function is assigned to the Police Chief(s) and/or Sheriff who, with assistance from the EMCs, will prepare and maintain Annex V (Terrorist Incident Response) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Coordinate and carry out defensive anti-terrorist activities, including criminal intelligence, investigation, protection of facilities, and public awareness activities.
 - b) Coordinate and carry out offensive counter-terrorist operations to neutralize terrorist activities.

- c) Carry out terrorism consequence operations conducted in the aftermath of a terrorist incident to save lives and protect public and private property.
- d) Ensure required notification of terrorist incidents is made to state and federal authorities.

6. Support Services Responsibilities.

a. Shelter and Mass Care.

- 1) Primary responsibility for this function is assigned to the EMCs who will prepare and maintain Annex C (Shelter and Mass Care) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Perform emergency shelter and mass care planning.
 - b) Coordinate and conduct shelter and mass care operations with our other departments, relief agencies, and volunteer groups.

b. Public Information.

- 1) Primary responsibility for this function is assigned to the Chief Elected Officials and County, City and/or Texas A&M University Public Information Officers who, with assistance from the EMCs will prepare and maintain Annex I (Public Information) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Establish a Joint Information Center (JIC).
 - b) Conduct on-going hazard awareness and public education programs.
 - c) Pursuant to the Joint Information System (JIS), compile and release information and instructions for the public during emergency situations and respond to questions relating to emergency operations.
 - d) Provide information to the media and the public during emergency situations.
 - e) Arrange for media briefings.
 - f) Compiles print and photo documentation of emergency situations.

c. Recovery.

- 1) Primary responsibility for this function is assigned to the EMCs and/or Finance Director(s) and Tax Assessor. The EMCs will prepare and maintain Annex J (Recovery) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Establish and train a damage assessment team using local personnel. Coordinate the efforts of that team with state and federal damage assessment personnel who may be dispatched to assist us.

- b) Assess and compile information on damage to public and private property and needs of disaster victims and formulate and carry out programs to fill those needs.
- c) If damages are beyond our capability to deal with, compile information for use by our elected officials in requesting state or federal disaster assistance.
- d) If we are determined to be eligible for state or federal disaster assistance, coordinate with state and federal agencies to carry out authorized recovery programs.

d. Public Works & Engineering.

- 1) Primary responsibility for this function is assigned to the County Engineer and/or City Public Works Director(s) who, with assistance from the EMC, will prepare and maintain Annex K (Public Works & Engineering) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Protect government facilities and vital equipment where possible.
 - b) Assess damage to streets, bridges, traffic control devices, and other public facilities.
 - c) Direct temporary repair of vital facilities.
 - d) Restore damaged roads and bridges.
 - e) Restore waste treatment and disposal systems.
 - f) Arrange for debris removal.
 - g) General damage assessment support.
 - h) Building inspection support.
 - i) Provide specialized equipment to support emergency operations.
 - j) Support traffic control and search and rescue operations.

e. Utilities.

- 1) Primary responsibility for this function is assigned to the Public Utilities Director(s) who, with assistance from the EMCs, will prepare and maintain Annex L (Energy and Utilities) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Prioritize restoration of utility service to vital facilities and other facilities.
 - b) Arrange for the provision of emergency power sources where required.
 - c) Identify requirements for emergency drinking water and portable toilets to the department or agency responsible for mass care.
 - d) Assess damage to, repair, and restore public utilities.
 - e) Monitor recovery activities of privately owned utilities.

f. Resource Management.

- 1) Primary responsibility for this function is assigned to the EMCs, who will seek guidance and assistance as needed from Human Resources Directors, Finance

Directors, and Purchasing Officials. The EMCs will prepare and maintain Annex M (Resource Management) to this plan and supporting SOGs.

- 2) Emergency tasks to be performed include:
 - a) Maintain an inventory of emergency resources.
 - b) During emergency operations, locates supplies, equipment, and personnel to meet specific needs.
 - c) Maintain a list of suppliers for supplies and equipment needed immediately in the aftermath of an emergency.
 - d) Establish emergency purchasing procedures and coordinate emergency procurements.
 - e) Establish and maintain a manpower reserve and coordinate assignment of reserve personnel to departments and agencies that require augmentation.
 - f) Coordinate transportation, sorting, temporary storage, and distribution of resources during emergency situations.
 - g) Establish staging areas for resources, if required.
 - h) During emergency operations, identify to the Donations Management Coordinator those goods, services, and personnel that are needed.
 - i) Maintain records of emergency-related expenditures for purchases and personnel.

g. Human Services.

- 1) Primary responsibility for this function is assigned to the EMCs, who will seek guidance and assistance as needed from local volunteer groups and/or organized disaster relief agencies. EMCs will prepare and maintain Annex O (Human Services) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Identify emergency feeding sites.
 - b) Identify sources of clothing for disaster victims.
 - c) Secure emergency food supplies.
 - d) Coordinate the operation of shelter facilities, whether operated by local government, local volunteer groups, or organized disaster relief agencies such as the American Red Cross.
 - e) Coordinate special care requirements for disaster victims such as the aged, functional and access needs individuals, and others.
 - f) Coordinate the provision of disaster mental health services to disaster victims, emergency workers, and/or others suffering trauma due to the emergency incident/disaster.

h. Hazard Mitigation.

- 1) The primary responsibility for this function is assigned to the EMCs, who with assistance from the Hazard Mitigation Coordinator, will prepare and maintain Annex P (Hazard Mitigation) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:

- a) Maintain the local Hazard Analysis.
- b) Identify beneficial pre-disaster hazard mitigation projects and seek approval from local officials to implement such projects.
- c) In the aftermath of an emergency, determine appropriate actions to mitigate the situation and coordinate implementation of those actions.
- d) Coordinate and carry out post-disaster hazard mitigation program.

i. Transportation.

- 1) The primary responsibility for this function is assigned to the EMCs and Transportation Director(s)/Supervisor(s) who will prepare and maintain Annex S (Transportation) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:
 - a) Identifies local public and private transportation resources and coordinates their use in emergencies.
 - b) Coordinates deployment of transportation equipment to support emergency operations.
 - c) Establishes and maintains a reserve pool of drivers, maintenance personnel, parts, and tools.
 - d) Maintains records on use of transportation equipment and personnel for purpose of possible reimbursement.

j. Donations Management.

- 1) The primary responsibility for this function is assigned to The Salvation Army, who, with assistance from the EMC(s), will prepare and maintain Annex T (Donations Management) to this plan and supporting SOGs. The United Way of the Brazos Valley will be tasked with soliciting and managing financial donations.
- 2) Emergency tasks to be performed include:
 - a) Compile resource requirements identified by the Resource Management staff.
 - b) Solicit donations to meet known needs.
 - c) Establish and implement procedures to receive, accept or turn down offers of donated goods and services, and provide instructions to donors of needed goods or services.
 - d) In coordination with the Resource Management staff, establish a facility to receive, sort, and distribute donated goods.

k. Legal.

- 1) The primary responsibility for this function is assigned to the City Attorney and/or County Attorney and/or Texas A&M University System Office of General Council who, with assistance from the EMC(s), will prepare and maintain Annex U (Legal) to this plan and supporting SOGs.
- 2) Emergency tasks to be performed include:

- a) Advise local officials on emergency powers of local government and procedures for invoking those measures.
 - b) Review and advise our officials on possible legal issues arising from disaster operations.
 - c) Prepare and/or recommend legislation to implement the emergency powers that may be required during an emergency.
 - d) Advise local officials and department heads on record-keeping requirements and other documentation necessary for the exercising of emergency powers.
- I. Department and agency heads not assigned a specific function in this plan will be prepared to make their resources available for emergency duty at the direction of their chief elected official(s).

7. Volunteer & Other Services.

- a. Volunteer Groups. The following are local volunteer agencies that can provide disaster relief services and traditionally have coordinated their efforts with our local government:

- 1) HEART OF TEXAS Chapter of the American Red Cross, office is located in Bryan and Waco, Texas.

Provides shelter management, feeding at fixed facilities and through mobile units, first aid, replacement of eyeglasses and medications, provision of basic clothing, and limited financial assistance (if available) to those affected by emergency situations. The Red Cross also provides feeding for emergency workers.

- 2) The Salvation Army.

Provides emergency assistance to include: mass and mobile feeding, temporary shelter, counseling, missing person services, medical assistance, and the warehousing and distribution of donated goods including food clothing, and household items. Also provides referrals to government and private agencies for special services.

- 3) Southern Baptist Convention Disaster Relief.

Provides mobile feeding units staffed by volunteers. Active in providing disaster childcare, the agency has several mobile childcare units. Can also assist with clean-up activities, temporary repairs, reconstruction, counseling, and bilingual services.

- 4) ARES/RACES.

The Amateur Radio Emergency Service/Radio Amateur Civil Emergency Service provides amateur radio support for emergency operations, including communications support in the EOC.

- b. Business Support.

There are no pre-positioned contracts with the following local businesses, but these companies have previously agreed to provide support for emergency operations:

- 1) HEB
- 2) Lowes
- 3) Home Depot
- 4) Walmart

VII. DIRECTION AND CONTROL

A. General

1. The County Judge and/or Mayor(s), and/or the University Chief Operating Officer is responsible for establishing objectives and policies for emergency management and providing general guidance for disaster response and recovery operations, all in compliance with the NIMS. During disasters, the CEO(s) may carry out those responsibilities from the EOC.
2. The EMC(s) will provide overall direction of the response activities of all our departments. During major emergencies and disasters, he/she will normally carry out those responsibilities from the EOC.
3. The EMC(s) will manage the EOC.
4. The Incident Commander, assisted by a staff sufficient for the tasks to be performed, will manage the emergency response at an incident site.
5. During emergency operations, department heads retain administrative and policy control over their employees and equipment. However, personnel and equipment will carry out mission assignments directed by the incident commander. Each department and agency is responsible for having its own operating procedures to be followed during response operations, but interagency procedures, such as common communications protocol, may be adopted to facilitate a coordinated effort.
6. If our own resources are insufficient or inappropriate to deal with an emergency situation, we may request assistance from other jurisdictions, organized volunteer groups, or the State. The process for requesting State or federal assistance is covered in section V.F of this plan; see also the Request for Assistance form in Annex M, Appendix 3. External agencies are expected to conform to the general guidance and direction provided by our senior decision-makers.

B. Emergency Facilities

1. Incident Command Post. Except when an emergency situation threatens, but has not yet occurred, and those situations for which there is no specific hazard impact site (such as a severe winter storm or area-wide utility outage), an incident command post or command posts will be established in the vicinity of the incident site(s). As noted previously, the incident commander will be responsible for directing the emergency response and managing the resources at the incident scene.

2. Emergency Operating Center (EOC). When major emergencies and disasters have occurred or appear imminent, we will activate our EOC, which is located in Bryan, TX near the Brazos County Courthouse.
3. The following individuals are authorized to activate the EOC:
 - a. County Judge and/or EMC
 - b. Mayor(s), City Manager(s) and/or the EMC(s)
 - c. University President, University Chief Operating Officer and/or University EMC
4. The general responsibilities of the EOC are to:
 - a. Assemble accurate information on the emergency situation and current resource data to allow local officials to make informed decisions on courses of action.
 - b. Working with representatives of emergency services, determine and prioritize required response actions and coordinate their implementation.
 - c. Provide resource support for emergency operations.
 - d. Suspend or curtail government services, recommend the closure of schools and businesses, and cancellation of public events.
 - e. Organize and activate large-scale evacuation and mass care operations.
 - f. Provide emergency information to the public.
5. Representatives of those departments and agencies assigned emergency functions in this plan will staff the EOC. EOC operations are addressed in Annex N (Direction and Control). The interface between the EOC and the incident command post is described in paragraph V.E above.
6. Our alternate EOC is located at Kyle Field Command, 756 Houston Street, on the Texas A&M University Campus in College Station, TX. This facility will be used if our primary EOC becomes unusable.
7. We have a mobile command and control vehicle, operated by the City of Bryan Fire Department, which may be used as an incident command post.

C. Line of Succession

1. The line of succession for the County Judge is:
 - a. County Judge
 - b. County Judge Pro-Tem
 - c. County Commissioners (in order of their seniority on the Commissioners' Court)
2. The line of succession for the Mayor is:

- a. Mayor
 - b. Mayor Pro-Tem
 - c. City Council Members (in order of their seniority on the City Council)
- 3. The line of succession for the City Manager(s) is:
 - a. City Manager
 - b. Deputy/Assistant City Manager
 - c. Assistant City Manager (City of College Station); Public Works Director (City of Bryan)
- 4. The line of succession for the Texas A&M Chief Operating Officer is:
 - a. Chief Operating Officer
 - b. Executive Director of Emergency Management
 - c. Associate Director and/or Assistant Director of Emergency Management
- 5. The line of succession for the Emergency Management Coordinator is:
 - a. Emergency Management Coordinator
 - b. Deputy EMC or Assistant EMC
 - c. EMC from our interjurisdictional partners; Fire Chief or Asst. Fire Chief (City of Bryan)
- 6. The lines of succession for each of our department and agency heads shall be in accordance with the SOGs established by those departments and agencies.

VIII. READINESS LEVELS

- A.** Many emergencies follow some recognizable build-up period during which actions can be taken to achieve a gradually increasing state of readiness. We use a four-tier system. Readiness Levels will be determined by the County Judge, and/or Mayors or, for certain circumstances, the Emergency Management Coordinator. General actions to be taken at each readiness level are outlined in the annexes to this plan; more specific actions will be detailed in departmental or agency SOPs/SOGs.
- B.** The following Readiness Levels will be used as a means of increasing our alert posture.
 - 1. Level 4: Normal Conditions
 - a. Emergency incidents occur and local officials are notified. One or more departments or agencies respond to handle the incident; an incident command post may be established. Limited assistance may be requested from other jurisdictions pursuant to established inter-local agreements.
 - b. The normal operations of government are not affected.
 - 2. Level 3: Increased Readiness

- a. Increased Readiness refers to a situation that presents a greater potential threat than “Level 4” but poses no immediate threat to life and/or property. Increased readiness actions may be appropriate when the situations like the following occur:
 - 1) Tropical Weather Threat. A tropical weather system has developed that has the potential to impact the local area. Readiness actions may include regular situation monitoring, a review of plans and resource status, determining staff availability and placing personnel on-call.
 - 2) Tornado Watch. indicates possibility of tornado development. Readiness actions may include increased situation monitoring and placing selected staff on alert.
 - 3) Flash Flood Watch. indicates flash flooding is possible due to heavy rains occurring or expected to occur. Readiness actions may include increased situation-monitoring, reconnaissance of known trouble spots, deploying warning signs.
 - 4) Wildfire Threat. During periods of extreme wildfire threat, readiness actions may include deploying additional resources to areas most at risk, arranging for standby commercial water tanker support, conducting daily aerial reconnaissance, or initiating burn bans.
 - 5) Mass Gathering. For mass gatherings with or without previous history of problems, readiness actions may include reviewing security, traffic control, fire protection, and first aid planning with organizers and determining additional requirements.
- b. Declaration of “Level 3” will generally require the initiation of the “Increased Readiness” activities identified in each annex to this plan.

3. Level 2: High Readiness

- a. High Readiness refers to a situation with a significant potential and probability of causing loss of life and/or property. This condition will normally require some degree of warning to the public. Actions could be triggered by severe weather warning information issued by the National Weather Service such as:
 - 1) Tropical Weather Threat. A tropical weather system may impact the local area within 72 hours. Readiness actions may include continuous storm monitoring, identifying worst-case decision points, increasing preparedness of personnel and equipment, updating evacuation checklists, verifying evacuation route status, and providing the public information for techniques to protect homes and businesses on the evacuation routes.
 - 2) Tornado Warning. Issued when a tornado has actually been sighted in the vicinity or indicated by radar and might strike in the local area. Readiness actions may include activating the EOC, continuous situation monitoring, and notifying the public about the warning.

- 3) Flash Flood Warning. Issued to alert persons that flash flooding is imminent or occurring on certain streams or designated areas, and immediate action should be taken. Readiness actions may include notifying the public about the warning, evacuating low-lying areas, opening emergency shelters to house evacuees, and continuous situation monitoring.
 - 4) Winter Storm Warning. Issued when heavy snow, sleet, or freezing rain are forecast to occur separately or in a combination. Readiness actions may include preparing for possible power outages, putting road crews on stand-by to clear and/or sand the roads, and continuous situation monitoring.
 - 5) Mass Gathering. Civil disorder with relatively large-scale localized violence is imminent. Readiness actions may include increased law enforcement presence, putting hospitals and fire departments on alert, and continuous situation monitoring.
- b. Declaration of a “Level 2” will generally require the initiation of the “High Readiness” activities identified in each annex to this plan.

4. Level 1: Maximum Readiness

- a. Maximum Readiness refers to a situation where hazardous conditions are imminent. This condition denotes a greater sense of danger and urgency than associated with a “Level 2” event. Actions could also be generated by severe weather warning information issued by the National Weather Service combined with factors making the event more imminent.
- 1) Tropical Weather Threat. The evacuation decision period is nearing for an approaching tropical weather system that may impact the local area. Readiness actions may include continuous situation monitoring, full activation of the EOC, recommending precautionary actions for special facilities, pre-positioning emergency personnel and equipment for emergency operations, and preparing public transportation resources for evacuation support.
 - 2) Tornado Warning. A tornado has been sighted close to a populated area or is moving toward a populated area. Readiness actions may include taking immediate shelter and putting damage assessment teams on stand-by.
 - 3) Flash Flood Warning. Flooding is imminent or is occurring at specific locations. Readiness actions may include evacuations, putting rescue teams on alert, sheltering evacuees and/or others displaced by the flooding and continuous monitoring of the situation.
 - 4) Mass Gathering. Civil disorder is about to erupt into large-scale and widespread violence. Readiness actions may include having all EMS units on stand-by, all law enforcement present for duty, notify the DDC that assistance may be needed and keep them apprised of the situation, and continuous situation monitoring is required.

- b. Declaration of “Level 1” will generally require the initiation of the “Maximum Readiness” activities identified in each annex to this plan.

IX. ADMINISTRATION AND SUPPORT

A. Agreements and Contracts

1. Should our local resources prove to be inadequate during an emergency, requests will be made for assistance from other local jurisdictions, other agencies, and industry in accordance with existing mutual-aid agreements and contracts and those agreements and contracts entered into during the emergency. Such assistance may include equipment, supplies, or personnel. All agreements will be entered into by authorized officials and should be in writing whenever possible. Agreements and contracts should identify the local officials authorized to request assistance pursuant to those documents.
2. In an effort to facilitate assistance pursuant to mutual aid agreements, our available resources are identified.
3. The agreements and contracts pertinent to emergency management (that we are a party to) are summarized in Attachment 6.

B. Reports

1. Hazardous Materials Spill Reporting. If we are responsible for a release of hazardous materials of a type or quantity that must be reported to state and federal agencies, the department or agency responsible for the spill shall make the required report. See Annex Q (Hazardous Materials and Oil Spill Response) for more information. If the party responsible for a reportable spill cannot be located, the Incident Commander shall ensure that the required report(s) are made.
2. Initial Emergency Report. This short report should be prepared and transmitted by the EOC when an on-going emergency incident appears likely to worsen and we may need assistance from other local governments or the State. See Annex N (Direction and Control) for the format and instructions for this report.
3. Situation Report. A daily situation report should be prepared and distributed by the EOC during major emergencies or disasters. See Annex N (Direction and Control) for the format of and instructions for this report.
4. Other Reports. Several other reports covering specific functions are described in the annexes to this plan.

C. Records

1. Record Keeping for Emergency Operations

Our local governments are responsible for establishing the administrative controls necessary to manage the expenditure of funds and to provide reasonable accountability and justification for expenditures made to support emergency operations. This shall be

done in accordance with the established local fiscal policies and standard cost accounting procedures.

- a. Activity Logs. The Incident Command Post and the EOC shall maintain accurate logs recording key response activities, including:
 - 1) Activation or deactivation of emergency facilities.
 - 2) Emergency notifications to other local governments and to state and federal agencies.
 - 3) Significant changes in the emergency situation.
 - 4) Major commitments of resources and/or requests for additional resources from external sources.
 - 5) Issuance of protective action recommendations to the public.
 - 6) Evacuations and road closures/impacts
 - 7) Casualties.
 - 8) Containment or termination of the incident.
- b. Incident Costs. All departments and agencies shall maintain records summarizing the use of personnel, equipment, and supplies during the response to day-to-day incidents to obtain an estimate of annual emergency response costs that can be used as in preparing future department or agency budgets.
- c. Emergency or Disaster Costs. For major emergencies or disasters, all departments and agencies participating in the emergency response shall maintain detailed records of costs for emergency operations to include:
 - 1) Personnel costs, especially overtime costs
 - 2) Equipment operations costs
 - 3) Costs for leased or rented equipment
 - 4) Costs for contract services to support emergency operations
 - 5) Costs of specialized supplies expended for emergency operations

These records may be used to recover costs from the responsible party or insurers or as a basis for requesting financial assistance for certain allowable response and recovery costs from the state and/or federal government.

2. Preservation of Records

- a. In order to continue normal government operations following an emergency situation or disaster, vital records must be protected. These include legal documents as well as property and tax records. The principal causes of damage to records are fire and water; therefore, essential records should be protected accordingly. Each agency responsible for preparation of annexes to this plan will include protection of vital records in its SOPs/SOGs.
- b. If records are damaged during an emergency situation, we will seek professional assistance to preserve and restore them.

D. Training

It will be the responsibility of each agency director/department head to ensure that agency personnel, in accordance with the NIMS, possess the level of training, experience, credentialing, currency, physical and medical fitness, or capability for any positions they are tasked to fill.

E. Consumer Protection

Consumer complaints regarding alleged unfair or illegal business practices often occur in the aftermath of a disaster. Such complaints will be referred to the County and/or City Attorney, who will pass such complaints to the Consumer Protection Division of the Office of the Attorney General.

F. Post-Incident and Exercise Review

The EMCs are responsible for organizing and conducting a critique following the conclusion of a significant emergency event/incident or exercise. The After Action Report (AAR) will entail both written and verbal input from all appropriate participants. An Improvement Plan will be developed based on the deficiencies identified, and an individual, department, or agency will be assigned responsibility for correcting the deficiency and a due date shall be established for that action.

X. PLAN DEVELOPMENT AND MAINTENANCE
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A. Plan Development

The County Judge, Mayors, and TAMU Chief Operating Officer are responsible for approving and promulgating this plan.

B. Distribution of Planning Documents

1. The Basic Plan and annexes to the Brazos County Interjurisdictional Plan are updated and then uploaded to bcdem.org/emergency/plans so that any individuals, departments, agencies, and organizations tasked in the Plan can have access readily to those documents. On occasion, certain information in the annexes may be redacted and copies should be distributed accordingly. A hard copy of the plan should be kept on hand at the CEOC in event access to critical infrastructure is lost.
2. The Basic Plan should include a distribution list (See Attachment 1 to this plan) that indicates who should receive notification of updates or changes to the Basic Plan and the various annexes to it. In general, individuals who receive annexes to the basic plan should also receive a copy of this plan, because the Basic Plan describes our emergency management organization and basic operational concepts. In some cases, the plan may be distributed electronically or via the internet.

C. Review

The Basic Plan and its annexes shall be reviewed annually by local officials. The EMCs will establish a schedule for annual review of planning documents by those tasked in them.

D. Update

1. This plan will be updated based upon deficiencies identified during actual emergency situations, exercises, and when changes in threat hazards, resources and capabilities, or government structure occur.
2. The Basic Plan and its annexes must be revised or updated by a formal change at least **every five years**. Responsibility for revising or updating the Basic Plan is assigned to the EMCs. Responsibility for revising or updating the annexes to this plan is outlined in Section VI.B, Assignment of Responsibilities, as well as in each annex. For details on the methods of updating planning documents as well as more information on when changes should be made, refer to Chapter 3 of the Texas Division of Emergency Management (TDEM) *Local Emergency Management Planning Guide* (TDEM-10).
3. Revised or updated planning documents will be provided to all departments, agencies, and individuals tasked in those documents.
4. §418.043(4) of the Government Code provides that TDEM shall review local emergency management plans. The process for submitting new or updated planning documents to TDEM is described in Chapter 6 of the TDEM-10. The Brazos County EMC is responsible for submitting copies of planning documents to our TDEM Plans Section for review. This may be done electronically.

ATTACHMENTS:

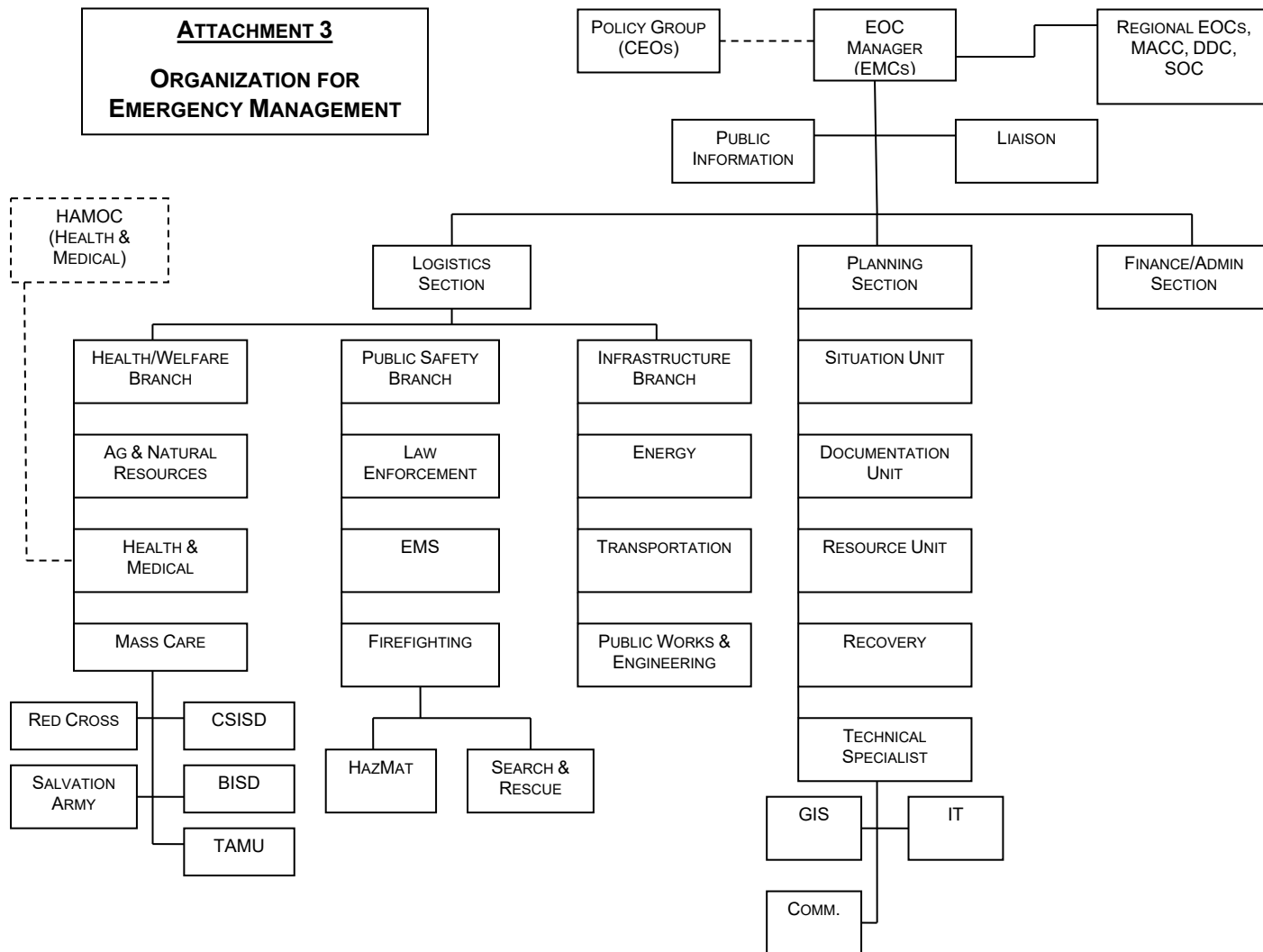
1. Distribution List
2. References
3. Organization for Emergencies
4. Functional Responsibility Matrix
5. Annex Assignments
6. Summary of Agreements & Contracts
7. National Incident Management System

ATTACHMENT 1 - DISTRIBUTION LIST WILL BE DISTRIBUTED ELECTRONICALLY THROUGH THE BRAZOS COUNTY EMERGENCY MANAGEMENT WEBSITE

<u>Jurisdiction/Agency Plan</u>	<u>Basic Plan</u>	<u>Annexes</u>
EOC	Yes	All
County Judge/Mayors	Yes	All
City Managers	Yes	All
Each County Commissioner	Yes	All
EMCs	Yes	All
City Secretary/Asst. to the Judge	Yes	All
County Sheriff	Yes	All
Police Chiefs	Yes	All
Each Constable	Yes	All
Fire Chiefs/Fire Marshals	Yes	All
Community Supervision	Yes	All
County Health Officer	Yes	All
Finance Directors/Tax Assessor	Yes	All
City Public Works Directors/County Engineer	Yes	All
Public Utilities Directors	Yes	All
Human Resources Directors	Yes	All
County/City Attorneys	Yes	All
Justices of the Peace	Yes	All
RACES Group	Yes	All
St Joseph's Hospital – Bryan & College Station	Yes	All
The Physician's Center	Yes	All
Baylor Scott & White	YES	All
County/City Animal Control	Yes	All
ISD Transportation Directors	Yes	All
Independent School Districts	Yes	All
Brazos County L.E.P.C.	Yes	All
American Red Cross	Yes	All
The Salvation Army	Yes	All
Victim Relief Ministries	Yes	All
Brazos Valley Transit Authority	Yes	All
TDEM District Chief	Yes	All
D.P.S. Captain, Bryan	Yes	All
Brazos Valley V.O.A.D	Yes	All

ATTACHMENT 2 REFERENCES

1. Texas Department of Public Safety, Texas Division of Emergency Management, *Local Emergency Management Planning Guide*, TDEM-10
2. Texas Department of Public Safety, Texas Division of Emergency Management, *Disaster Recovery Manual*
3. Texas Department of Public Safety, Texas Division of Emergency Management, *Mitigation Handbook*
4. FEMA, Independent Study Course, IS-288: *The Role of Voluntary Organizations in Emergency Management*
5. FEMA, *Comprehensive Preparedness Guide (CPG-101)*
6. U. S. Department of Homeland Security, *National Response Plan*
7. 79th Texas Legislature, *House Bill 3111*



ATTACHMENT 4
EMERGENCY MANAGEMENT FUNCTIONAL RESPONSIBILITIES

	Warning	Communications	Shelter & Mass Care	Radiological Protection	Evacuation	Firefighting	Law Enforcement	Health & Medical	Public Information	Recovery	Public Works & Engineering	Utilities	Resource Management	Direction & Control	Human Services	Hazard Mitigation	Hazmat & Oil Spill Response	Search & Rescue	Transportation	Donations Management	Legal	Terrorist Incident Response
Co. Judge/Mayor/Univ Exec	S	S	S	S	S	S	S	S	P	S	S	S	S	P	S	S	S	S	S	S	S	S
Asst. to County Judge/City Manager/Asst. VP Safety Security									S	S			S							S		
EMC	S	C	P	C	S	C	C	C	C	P	C	C	P	C	P	P	C	C	P	S	C	C
Law Enforcement	P	P	S	S	P	S	P						S	S	S		S	S		S		P
Fire Service	S	S	S	P	S	P							S	S		S	P	P		S		S
Public Works/Univ. Facilities		S	S	S	S		S			S	P	S	S	S		S	S	S				S
Utilities		S								S		P	S	S		S	S			S		S
Health & Medical Services			S	S	S			P					S	S	S		S	S	S	S		S
Human Services			S		S								S		S	S				S		S
Community Services			S	S	S								S	S	S					S		S
Human Resources													S							S		
Tax Assessor/Finance Dir.										S			S			S				S		
Transportation/ISD			S		S								S		S		S		S			S
City/County Attorney's Office/TAMUS OGC					S								S			S				S	P	S
Search & Rescue					S									S				S				S
Salvation Army			S																	P		
American Red Cross			S																			

P – INDICATES PRIMARY RESPONSIBILITY
S – INDICATES SUPPORT RESPONSIBILITY
C – INDICATES COORDINATION RESPONSIBILITY

ATTACHMENT 5 ANNEX ASSIGNMENTS
--

ANNEX	ASSIGNED TO:
Annex A: Warning	Police Chiefs/County Sheriff
Annex B: Communications	Police Chiefs/County Sheriff
Annex C: Shelter & Mass Care	American Red Cross/EMCs
Annex D: Radiological Protection	Fire Chiefs
Annex E: Evacuation	Police Chiefs/County Sheriff
Annex F: Firefighting	Fire Chiefs/Fire Marshal
Annex G: Law Enforcement	Police Chiefs/County Sheriff
Annex H: Health and Medical Services	County Health Authority
Annex I: Public Information	CEOs/PIOs
Annex J: Recovery	EMCs
Annex K: Public Works & Engineering	Public Works Directors/County Engineer
Annex L: Utilities	Public Utilities Directors
Annex M: Resource Management	EMCs
Annex N: Direction & Control	CEOs/EMCs
Annex O: Human Services	EMCs
Annex P: Hazard Mitigation	EMCs
Annex Q: Haz-Mat & Oil Spill Response	Fire Chiefs
Annex R: Search & Rescue	Fire Chiefs
Annex S: Transportation	EMCs
Annex T: Donations Management	The Salvation Army
Annex U: Legal	City/County Attorneys
Annex V: Terrorist Incident Response	Police Chiefs/County Sheriff

ATTACHMENT 6 SUMMARY OF AGREEMENTS & CONTRACTS

Agreements

Brazos County and the cities within Brazos County have Mutual Aid Agreements in place with all jurisdictions in our 7-county region (Brazos Valley Region).

Contracts

Brazos County has no pre-positioned contracts for emergency management activities, but has numerous vendor agreements through our Purchasing Department that will be used as needed during any disaster/event.

ATTACHMENT 7 NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) SUMMARY
--

A. BACKGROUND

1. NIMS is a comprehensive, national approach to incident management that is applicable to all jurisdictional levels and across functional disciplines. This system is suitable across a wide range of incidents and hazard scenarios, regardless of size or complexity. It provides a flexible framework for all phases of incident management, as well as requirements for processes, procedures, and systems designed to improve interoperability.
2. NIMS is a multifaceted system that provides a national framework for preparing for, preventing, responding to, and recovering from domestic incidents.

B. COMPONENTS

1. Command and Management. The incident management structures employed by NIMS can be used to manage emergency incidents or non-emergency events such as celebrations. The system works equally well for small incidents and large-scale emergency situations. The system has built-in flexibility to grow or shrink depending on current needs. It is a standardized system, so personnel from a variety of agencies and geographic locations can be rapidly incorporated into a common management structure.
 - a. Incident Management System. A system that can be used to manage emergency incidents or non-emergency events such as celebrations.

1) FEATURES OF ICS

ICS has a number of features that work together to make it a real management system. Among the primary attributes of ICS are:

- a) Common Terminology. ICS requires the use of common terminology, such as the use of standard titles for facilities and positions within an organization, to ensure efficient and clear communications.
- b) Organizational Resources. All resources including personnel, facilities, major equipment, and supply items used to support incident management activities must be “typed” with respect to capability. This typing will minimize confusion and enhance interoperability.
- c) Manageable Span of Control. Span of control should ideally vary from three to seven. Anything less or more requires expansion or consolidation of the organization.
- d) Organizational Facilities. Common terminology is used to define incident facilities, the activities conducted at these facilities, and the organizational positions that can be found working there.

- e) Use of Position Titles. All ICS positions have distinct titles.
- f) Reliance on an Incident Action Plan. The incident action plan, which may be verbal or written, is intended to provide supervisory personnel a common understanding of the situation and direction for future action. The plan includes a statement of objectives, organizational description, assignments, and support material such as maps. Written plans are desirable when two or more jurisdictions are involved, when state and/or federal agencies are assisting local response personnel, or there has been significant turnover in the incident staff.
- g) Integrated Communications. Integrated communications includes interfacing disparate communications as effectively as possible, planning for the use of all available systems and frequencies, and requiring the use of clear text in communications.
- h) Accountability. ICS is based on an orderly chain of command, check-in for all responders, and only one supervisor for each responder.

2) UNIFIED COMMAND

- a) Unified Command is a variant of ICS used when there is more than one agency or jurisdiction with responsibility for the incident or when personnel and equipment from a number of different agencies or jurisdictions are responding to it. This might occur when the incident site crosses jurisdictional boundaries or when an emergency situation involves matters for which state and/or federal agencies have regulatory responsibility or legal requirements.
- b) ICS Unified Command is intended to integrate the efforts of multiple agencies and jurisdictions. The major change from a normal ICS structure is at the top. In a Unified command, senior representatives of each agency or jurisdiction responding to the incident collectively agree on objectives, priorities, and an overall strategy or strategies to accomplish objectives; approve a coordinated Incident Action Plan; and designate an Operations Section Chief. The Operations Section Chief is responsible for managing available resources to achieve objectives. Agency and jurisdictional resources remain under the administrative control of their agencies or jurisdictions but respond to mission assignments and direction provided by the Operations Section Chief based on the requirements of the Incident Action Plan.

3) AREA COMMAND

- a) An Area Command is intended for situations where there are multiple incidents that are each being managed by an ICS organization or to oversee the management of large or multiple incidents to which several Incident Management Teams have been assigned. Area Command becomes Unified Area Command when incidents are multijurisdictional.
- b) The organization of an Area Command is different from a Unified Command in that there is no operations section, since all operations are conducted on-scene, at the separate ICPs.

- 4) **Multiagency Coordination Systems.** Multiagency coordination systems may be required for incidents that require higher level resource management or information management. The components of multiagency coordination systems include facilities, equipment, EOCs, specific multiagency coordination entities, personnel, procedures, and communications; all of which are integrated into a common framework for coordinating and supporting incident management.
- 5) **Public Information.** The NIMS system fully integrates the ICS Joint Information System (JIS) and the Joint Information Center (JIC). The JIC is a physical location where public information staff involved in incident management activities can co-locate to perform critical emergency information, crisis communications, and public affairs functions. More information on JICs can be obtained in the DHS *National Incident Management System Plan*, dated March 2004.
- 6) **Preparedness.** Preparedness activities include planning, training, and exercises as well as certification of response personnel, and equipment acquisition and certification. Activities would also include the creation of mutual aid agreements and Emergency Management Assistance Compacts. Any public information activities such as publication management would also be preparedness activities.
- 7) **Resource Management.** All resources, such as equipment and personnel, must be identified and typed. Systems for describing, inventorying, requesting, and tracking resources must also be established.
- 8) **Communications and Information Management.** Adherence to NIMS specified standards by all agencies ensures interoperability and compatibility in communications and information management.
- 9) **Supporting Technologies.** This would include any technologies that enhance the capabilities essential to implementing the NIMS. For instance, voice and data communication systems, resource tracking systems, or data display systems.
- 10) **Ongoing Management and Maintenance.** The NIMS Integration Center provides strategic direction and oversight in support of routine review and continual refinement of both the system and its components over the long term.

June 27, 2024

Item No. 6.6.

Change Order 1 with API National Service Group

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a change order in the amount of \$50,000 with API National Service Group, Inc. for fire alarm and fire extinguisher inspections, monitoring and repairs.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This is a change order in the amount \$50,000 for the contract with API National Service Group, Inc for fire alarm and fire extinguisher inspections, monitoring and repairs. Previously, there were two contracts, one for general extinguisher inspections and repairs, and one for fire alarm system inspections. Now the two contracts have been combined into one. With the added services and numerous extinguisher repairs, additional funds are needed on the contract for this year.

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

Attachments:

1. API National Service Group CO 1



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CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 23300029R1 PROJECT#: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: Fire Extinguisher Monitoring, Inspections and Purchase of Refills

Name of Contractor: API National Service Group, Inc.

CONTRACT TOTAL VALUE: \$ 141,380.00 **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 #** N/A ☐ **CHANGE ORDER #** 1 ☐ **OTHER** N/A

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

Change Order #1 to renewal contract 22300029R1 based on pricing from the BuyBoard contract number 654-21.

CRC Approval Date*: N/A *(If required)** **Council Approval Date*:** 6/13/2024 **Agenda Item No*:** TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

6/3/2024
DATE

Jim Everts
ASST CITY MGR – CFO

6/3/2024
DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A
MAYOR (if applicable)

DATE

N/A
CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on

Scanned into Laserfiche on

Original(s) sent to Fiscal on

CHANGE ORDER NO. 1		DATE: 05/22/2024		Contract No. 23300029R1		
PO No. 24200846		PROJECT: Annual Fire Alarm Inspections/Fire Alarm Monitoring and Fire Extinguishers		RFP No.		
OWNER: City of College Station P.O. Box 9960 College Station, Texas 77842			CONTRACTOR: API National Service Group, Inc. 1100 Old Highway 8 NW Ph: New Brighton, MN 55112 Fax:			
PURPOSE OF THIS CHANGE ORDER: Previously, there have been two contracts, one for general inspections and extinguisher repairs, and one for general system inspections. Now we have combined the contracts into one, so with the added services and numerous extinguisher repairs, additional funds are needed on the contract for this year.						
ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	EA	Added systems and extinguisher repairs	\$50,000.00	0	1	\$50,000.00
					TOTAL	\$50,000.00
THE NET AFFECT OF THIS CHANGE ORDER IS 54.72% INCREASE.						
CO #1			\$50,000.00			
TOTAL CHANGE ORDER			<u>\$50,000.00</u>			
ORIGINAL CONTRACT AMOUNT			\$91,380.00			
CHANGE ORDER NO. 1			\$50,000.00			
CHANGE ORDER NO. 2						
			54.72% CHANGE			
			0.00% CHANGE			
			0.00% CHANGE			
			0.00% CHANGE			
			0.00% CHANGE			
REVISED CONTRACT AMOUNT			<u>\$141,380.00</u>			
			54.72% TOTAL CHANGE			
ORIGINAL CONTRACT TIME			n/a Days			
			<u>0</u> Days			
Revised Contract Time			<u>0</u> Days			
SUBSTANTIAL COMPLETION DATE			n/a			
REVISED SUBSTANTIAL COMPLETION DATE			n/a			
APPROVED						
N/A				6/3/2024		
A/E CONTRACTOR	Date	<i>Jennifer Cain</i>		DEPARTMENT DIRECTOR		
<i>Cutter Tylia</i>	5/31/2024			Date		
CONSTRUCTION CONTRACTOR	Date	<i>Jim Carsten</i>		6/3/2024		
<i>Craig Dolunalik</i>	6/3/2024			ASST CITY MGR - CFO		
PROJECT MANAGER	Date			Date		
N/A				CITY ATTORNEY		
CITY ENGINEER	Date			Date		
				CITY MANAGER		
				Date		

June 27, 2024

Item No. 6.7.

Change Order to Annual Price Agreement with Green Teams, Inc. for Landscape Maintenance and Mowing

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a change order in the amount of \$69,736 to the annual price agreement with Green Teams, Inc. for landscape maintenance and mowing.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): Staff recommends approval of the change order.

Summary: This change order is an increase of \$69,736 to the annual price agreement with Green Teams, Inc. for City Wide Landscape Maintenance and Mowing. The change order includes the addition of monthly flower bed maintenance to the following parks:

- Gabbard Park
- Steeplechase Dog Park
- Stephen C. Beachy Park
- University Dog Park
- Veterans Athletic Center
- W.A. Tarrow Park

In addition, the change order adds turf and bed maintenance to the following road rights of ways and medians:

- Greens Prairie Road (turf and bed maintenance)
- Royder Road (bed maintenance only)
- Rock Prairie Road West (turf maintenance only)
- University Drive Medians (bed maintenance only)

The first three listed roads are newly constructed roads added to the Public Works' assets. University Drive is switching from city staff to Green Teams for bed maintenance. Attached is a breakdown of costs for each park and street.

The change order is an overall six percent (6%) increase to the contract and will be paid out of operation and maintenance funds from each department.

Budget & Financial Summary: Operation and maintenance funds are budgeted in the General Fund Streets and Parks for citywide mowing needs.

Attachments:

1. 22300567 R1 CO1 Vendor Signed

CHANGE ORDER NO. 1		DATE: 6/27/2024	Contract No. 22300567R1			
PO No. 23203836		PROJECT: Landscaping and Mowing				
OWNER: City of College Station P.O. Box 9960 College Station, Texas 77842			CONTRACTOR: Green Teams 731 Industrial Blvd Bryan, Tx 77803 Ph: (979) 823-7551 Fax:			
PURPOSE OF THIS CHANGE ORDER: A. Adding additional bed maintenance Parks and Recreation B. Adding additional Finish mowing sites that includes turf, bed and tree maintenance for Public Works. C.						
ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1		See attached for more detail explanation - Parks	\$13,984.00	0	1	\$13,984.00
2		See attached for more detail explanation - Public Works	\$55,752.00	0	1	\$55,752.00
3						
					TOTAL	\$69,736.00
THE NET EFFECT OF THIS CHANGE ORDER IS A 6% INCREASE.						
LINE 1 PARD Operations (1001-1140-5212)			\$ 13,984.00			
LINE 2 Finish Mowing (1001-0760-5212)			\$ 55,752.00			
LINE 3 (acct./work order number)						
TOTAL CHANGE ORDER			\$ 69,736.00			
ORIGINAL CONTRACT AMOUNT			\$ 1,150,844.00			
CHANGE ORDER NO. 1			\$ 69,736.00	6.06%	% CHANGE	
CHANGE ORDER NO. 2			\$ -	0.00%	% CHANGE	
REVISED CONTRACT AMOUNT			\$ 1,220,580.00	6.06%	% TOTAL CHANGE	
ORIGINAL CONTRACT TIME				Days		
Time Extension No. 1				Days		
Revised Contract Time			0	Days		
SUBSTANTIAL COMPLETION DATE						
REVISED SUBSTANTIAL COMPLETION DATE						
APPROVED						
N/A						
A/E CONTRACTOR		Date	DEPARTMENT DIRECTOR		Date	
Tucker Gallagher		6/7/2024	[Signature]		6/7/2024	
CONSTRUCTION CONTRACTOR		Date	ASST CITY MGR - CFO		Date	
Ronnie Lopez		6/7/2024	John A. Haislet		6/7/2024	
PROJECT MANAGER		Date	CITY ATTORNEY		Date	
N/A						
CITY ENGINEER		Date	CITY MANAGER		Date	

June 27, 2024

Item No. 6.8.

Second Renewal of Annual Agreement for Landscape Maintenance and Mowing

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on the second and final renewal of the annual price agreement with Green Teams, Inc. for landscape maintenance and mowing, not to exceed \$1,255,009.63.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

Recommendation(s): Staff recommends approval of the second and final renewal.

Summary: In 2022, staff solicited proposals for all the city's mowing and landscape maintenance services (except regional parks and athletic fields). Requests for Proposals solicited from contractors for mowing and landscape maintenance were divided into five (5) categories:

- 1) Facilities – City buildings and Northgate District
- 2) Electric – CSU electric substations and buildings
- 3) Water/Wastewater – CSU water and wastewater sites
- 4) Parks – Includes neighborhood parks and cemeteries
- 5) Finish mowing – Primarily street rights of ways and medians

Two vendors responded to RFP 22-054. Green Teams, Inc. was selected as the most responsible bidder to provide all city-wide mowing and landscape services. Green Teams, Inc. has requested an increase of 3% because of increased costs. The revised contract amount is \$1,255,009.63 and includes a change order to include additional bed and turf maintenance. This renewal term will be from June 27, 2024, through June 26, 2025. This is the second and final renewal.

Budget & Financial Summary: Operation and maintenance funds are budgeted in the General Fund (Streets, Facilities and Parks), Electric Fund, and Water/Wastewater Funds for citywide mowing needs.

Attachments:

1. 22300567 R2
2. 2024 Mowing Budget Worksheet 3% and CO



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CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: ^{22300567R2} PROJECT#: _____ BID#: _____ RFP#: 22-054

Project Name / Contract Description: Annual Landscaping Maintenance and Mowing

Name of Contractor: Green Teams, Inc.

CONTRACT TOTAL VALUE: \$ 1,255,009.63

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

Debarment Check ☐ Yes ☐ No ☒ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Davis Bacon Wages Used ☐ Yes ☐ No ☒ N/A
Buy America Required ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

☐ NEW CONTRACT ☒ RENEWAL # 1 ☐ CHANGE ORDER # _____ ☐ OTHER _____

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

Funding is available in the appropriate budget line items for all of the funds relating to this contract

CRC Approval Date*: n/a (If required)* Council Approval Date*: 06/27/2024 Agenda Item No*: _____

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

Insurance Certificates: DDV Performance Bond: n/a Payment Bond: n/a Form 1295: BW

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

LEGAL DEPARTMENT

DATE

ASST CITY MGR – CFO

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

n/a

MAYOR (if applicable)

DATE

n/a

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____



CONTRACT NO. 22300567
Annual Purchase Agreement for Landscape Maintenance
for Parks, Cemeteries, City Facilities, Electric ROW & Finish

RENEWAL 2 ACCEPTANCE

By signing herewith, I acknowledge and agree to renew Contract No. 22300567 in accordance with all terms and conditions previously agreed to and accepted for an amount not to exceed One Million Two Hundred Fifty-Five Thousand Nine and 00/100 Dollars (\$1,255,009.63). This is a 3% increase to the overall contract including any change orders.

I understand this renewal term will be for June 22, 2024, through June 23, 2025. This is the final renewal options.

Green Teams, Inc.

By: Tucker Gallagher

Printed Tucker Gallagher

Title: Date: 6/21/2024

CITY OF COLLEGE STATION

By: _____

Name: City Manager

Date: _____

APPROVED:

By: _____

Asst. City Manager/CFO

Date: _____

By: _____

City Attorney Offices

Date: _____

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/29/2024

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Nitsche Group 143 East Austin Street Giddings, TX 78942 979 542-3666	CONTACT NAME: Ciera Brown Kmoch PHONE (A/C, No, Ext): 979 540-2206 FAX (A/C, No): E-MAIL ADDRESS: cierak@thenitschegroup.com														
INSURED Green Teams, Inc. 731 Industrial Blvd. Bryan, TX 77803	<table border="1"> <thead> <tr> <th data-bbox="803 430 1437 451">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1437 430 1576 451">NAIC #</th> </tr> </thead> <tbody> <tr> <td data-bbox="803 451 1437 483">INSURER A : Cincinnati Insurance Company</td> <td data-bbox="1437 451 1576 483">10677</td> </tr> <tr> <td data-bbox="803 483 1437 514">INSURER B : Texas Mutual Insurance Company</td> <td data-bbox="1437 483 1576 514">22945</td> </tr> <tr> <td data-bbox="803 514 1437 546">INSURER C :</td> <td data-bbox="1437 514 1576 546"></td> </tr> <tr> <td data-bbox="803 546 1437 577">INSURER D :</td> <td data-bbox="1437 546 1576 577"></td> </tr> <tr> <td data-bbox="803 577 1437 609">INSURER E :</td> <td data-bbox="1437 577 1576 609"></td> </tr> <tr> <td data-bbox="803 609 1437 638">INSURER F :</td> <td data-bbox="1437 609 1576 638"></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Cincinnati Insurance Company	10677	INSURER B : Texas Mutual Insurance Company	22945	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER A : Cincinnati Insurance Company	10677														
INSURER B : Texas Mutual Insurance Company	22945														
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ PD Ded: \$1,000 GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:			EPP0674361	01/01/2024	01/01/2025	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			EBA0674361	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) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$0			EPP0674361	01/01/2024	01/01/2025	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
B	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	0001118856	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)

Contract No. 22300567 RFP No. 22-054: Citywide Landscape Maintenance & Mowing

As per policy provision, City of College Station, its officials, employees & volunteers, are listed as additional insured in regard to the auto and general liability policies as provided by additional insured endorsement. A waiver of subrogation endorsement is provided to City of College Station, its officials, employees & volunteers, in regard to the auto, general liability and workers' compensation (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

City of College Station
 1101 Texas Ave.
 College Station, TX 77840

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

AUTHORIZED REPRESENTATIVE

R.J. Nitsche

DESCRIPTIONS (Continued from Page 1)

policies as per policy provision. As per policy provision, the general liability policy contains an endorsement with primary and noncontributory wording. General liability, auto and workers' compensation policies include(s) a 30 days notice of cancellation endorsement providing 30 days advance notice if policy is canceled by the company other than for nonpayment of premium, or direct cancellation by named insured as per policy provision.

CITY PARKS	Turf Maintenance											Bed Maintenance											Tree Maintenance							
City of College Station 2022 Mowing RFP	Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost Tree Maintenance	Grand Total by Facility
PARD Operations (1001-1140-5212)	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		
Anderson Park	18	\$ 325.48			18	\$ 18.54					\$ 6,192.36																		\$ 6,192.36	
Art & Myra Bright Park	18	\$ 278.10	18	\$ 111.24	18	\$ 24.72					\$ 7,453.08																		\$ 7,453.08	
Bachmann Park Flower Beds (CO#3)												12	\$ 21.00	1	\$ 95.00	4	\$ 28.00	2	\$ 36.00			0		\$ 531.00					\$ 531.00	
Barracks - Park 1 (Exercise)	18	\$ 37.08			18	\$ 11.33					\$ 871.38																		\$ 871.38	
Barracks - Park 2 (Horse Shoe Pits)	18	\$ 28.84			18	\$ 17.51					\$ 834.30																		\$ 834.30	
Barracks - Park 3 (Undeveloped)	18	\$ 37.08			18	\$ 13.39					\$ 908.46	12	\$ 84.46	1	\$ 746.75	4	\$ 24.72	2	\$ 29.87	2	\$ 22.66	2	\$ 636.54	\$ 3,237.29					\$ 4,145.75	
Barracks - Park 4 (Walking Paths)	18	\$ 93.73			18	\$ 22.66					\$ 2,095.02	12	\$ 40.17	1	\$ 497.49	4	\$ 28.84	2	\$ 17.51	2	\$ 82.40	2	\$ 382.13	\$ 2,058.97					\$ 4,153.99	
Barracks - Park 5 (Basketball Courts)	18	\$ 93.73			18	\$ 28.84					\$ 2,206.26	12	\$ 58.71	1	\$ 347.11	4	\$ 25.75	2	\$ 13.39	2	\$ 15.45	2	\$ 382.13	\$ 1,976.57					\$ 4,182.83	
Barracks - Park 6 (Volleyball Courts)	18	\$ 37.08			18	\$ 13.39					\$ 908.46																		\$ 908.46	
Barracks - Park 7 (Dog Park)	18	\$ 65.92			18	\$ 12.36					\$ 1,409.04																		\$ 1,409.04	
Barracks - Park 7, mow strip (Jogging Track in Design)	18	\$ 166.86			18	\$ 43.26					\$ 3,782.16																		\$ 3,782.16	
Bee Creek Park Flower Beds (CO#3)												12	\$ 21.00	1	\$ 156.00	4	\$ 29.00	2	\$ 42.00			0		\$ 608.00					\$ 608.00	
Billie Madeley Park	18	\$ 65.92			18	\$ 39.14					\$ 1,891.08																		\$ 1,891.08	
Bridgewood	18	\$ 74.16			18	\$ 38.11					\$ 2,020.86																		\$ 2,020.86	
Brison Park	18	\$ 278.10			18	\$ 42.23					\$ 5,765.94																		\$ 5,765.94	
Brothers Pond Park	18	\$ 296.64			18	\$ 65.92	2	\$ 653.02			\$ 7,832.12																		\$ 7,832.12	
Business Center - Block 3/Lot 1			18	\$ 213.21	18						\$ 3,837.78																		\$ 3,837.78	
Business Center - Hwy. 6 frontage (City Sign)			18	\$ 148.32	18						\$ 2,669.76																		\$ 2,669.76	
Business Center - Lakeway Drive			18	\$ 48.41	18						\$ 871.38																		\$ 871.38	
Business Center - Main Site	18	\$ 631.39			18	\$ 54.59					\$ 12,347.64	12	\$ 296.64	1	\$ 6,055.37	4	\$ 193.64	2	\$ 169.95	2	\$ 46.35	2	\$ 3,242.44	\$ 17,307.09					\$ 29,654.73	
Business Center - Technology Way			18	\$ 48.41	18						\$ 871.38																		\$ 871.38	
Carters Crossing Park Primary	18	\$ 214.24			18	\$ 24.72					\$ 4,301.28	12	\$ 49.44	1	\$ 80.34	4	\$ 19.57	2	\$ 6.18	2	\$ 22.66			\$ 809.58					\$ 5,110.86	
Carters Crossing Park Secondary			18	\$ 111.24	18						\$ 2,002.32																		\$ 2,002.32	
Castlegate Lake Area			18	\$ 158.62	18						\$ 2,855.16																		\$ 2,855.16	
Castlegate Park	18	\$ 166.86			18	\$ 50.47	2	\$ 337.84			\$ 4,587.62																		\$ 4,587.62	
Castlerock Park	18	\$ 166.86			18	\$ 50.47	2	\$ 364.62			\$ 4,641.18																		\$ 4,641.18	
Cove of Nantucket Park	18	\$ 166.86			18	\$ 27.81					\$ 3,504.06																		\$ 3,504.06	
Creek View Park	18	\$ 278.10			18	\$ 22.66					\$ 5,413.68																		\$ 5,413.68	
Crescent Pointe Park	18	\$ 222.48			18	\$ 24.72					\$ 4,449.60																		\$ 4,449.60	
Cy Miller	18	\$ 65.92			18	\$ 31.93					\$ 1,761.30																		\$ 1,761.30	
Eastgate Park	18	\$ 84.46			18	\$ 20.60					\$ 1,891.08	12	\$ 126.69	1	\$ 1,606.80	4	\$ 75.19	2	\$ 52.53	2	\$ 25.75	2	\$ 1,274.11	\$ 6,132.62					\$ 8,023.70	
Edelweiss Park	18	\$ 464.53			18	\$ 50.47	2	\$ 1,430.67			\$ 12,131.34																		\$ 12,131.34	
Edelweiss Gartens Park	18	\$ 520.15			18	\$ 105.06	2	\$ 738.51			\$ 12,730.80	12	\$ 66.95	1	\$ 249.26	4	\$ 19.57	2	\$ 25.75	2	\$ 13.39	2	\$ 1,274.11	\$ 3,757.44					\$ 16,488.24	
Emerald Forest Park	18	\$ 129.78			18	\$ 23.69					\$ 2,762.46	12	\$ 32.96	1	\$ 111.24	4	\$ 19.57	2	\$ 22.66	2	\$ 13.39	2	\$ 339.90	\$ 1,336.94					\$ 4,099.40	
Etonbury Park	18	\$ 166.86			18	\$ 20.60					\$ 3,374.28																		\$ 3,374.28	
Freeman Tract	18	\$ 344.02									\$ 6,192.36																		\$ 6,192.36	
Gabbard Park (CO#3 Add Bed Maintenance)	18	\$ 370.80			18	\$ 27.81					\$ 7,174.98	12	\$ 21.00	1	\$ 95.00	4	\$ 28.00	2	\$ 36.00			2	\$ 340.00	\$ 1,211.00					\$ 8,385.98	
Georgie K. Fitch Park	18	\$ 194.67			18	\$ 23.69					\$ 3,930.48																		\$ 3,930.48	
Jack and Dorothy Miller Park	18	\$ 370.80			18	\$ 21.63	2	\$ 952.75			\$ 8,969.24																		\$ 8,969.24	
John Crompton Park	18	\$ 296.64			1																									

CITY FACILITIES		Turf Maintenance										Bed Maintenance												Tree Maintenance					Grand Total by Facility		
City of College Station 2022 Mowing RFP		Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost	
		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year			Cost per Cycle
General Fund (1001-0180-5212)		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Total Annual Cost			
City Hall Complex		18	\$ 194.67			18	\$ 21.63			2	\$ 96.82	\$ 4,087.04	12	\$ 150.38	1	\$ 2,817.05	4	\$ 71.07	2	\$ 91.67	2	\$ 44.29	2	\$ 1,162.87	\$ 7,503.55	1	\$ 584.01		\$ 601.53	\$ 12,192.12	
College Station Library		18	\$ 222.48			18	\$ 22.66	4	\$ 637.57	2	\$ 150.38	\$ 7,263.56	12	\$ 133.90	1	\$ 678.77	4	\$ 32.96	2	\$ 32.96	2	\$ 24.72			\$ 2,532.77	1	\$ 447.02		\$ 460.43	\$ 10,256.76	
Fire Station #1		18	\$ 74.16			18	\$ 12.36			2	\$ 39.14	\$ 1,635.64													1	\$ 239.99		\$ 247.19	\$ 1,882.83		
Fire Station #2		18	\$ 84.46			18	\$ 21.63			2	\$ 36.05	\$ 1,981.72													1	\$ 196.73		\$ 202.63	\$ 2,184.35		
Fire Station #3		18	\$ 103.00			18	\$ 12.36			2	\$ 52.53	\$ 2,181.54	12	\$ 109.18	1	\$ 3,700.79	4	\$ 52.53	2	\$ 72.10	2	\$ 35.02			\$ 5,435.31	1	\$ 486.16	1	\$ 327.54	\$ 838.11	\$ 8,454.96
Fire Station #5		18	\$ 74.16			18	\$ 12.36			2	\$ 46.35	\$ 1,650.06	12	\$ 65.92	1	\$ 1,475.99	4	\$ 39.14	2	\$ 49.44	2	\$ 22.66			\$ 2,567.79	1	\$ 253.38	1	\$ 105.06	\$ 369.19	\$ 4,587.04
Fire Station #6		18	\$ 74.16			18	\$ 12.36			2	\$ 29.87	\$ 1,617.10	12	\$ 74.16	1	\$ 1,318.40	4	\$ 38.11	2	\$ 49.44	2	\$ 21.63			\$ 2,502.90	1	\$ 419.21	1	\$ 270.89	\$ 710.80	\$ 4,830.80
Fueling Station - Arnold Road (future site)		18	\$ 37.08			18	\$ 11.33			2	\$ 31.93	\$ 935.24	12	\$ 62.83	1	\$ 1,031.03	4	\$ 21.63	2	\$ 28.84	2	\$ 24.72			\$ 1,978.63	\$ -				\$ 2,913.87	
Municipal Court Building		18	\$ 166.86			18	\$ 20.60			2	\$ 77.25	\$ 3,528.78	12	\$ 61.80	1	\$ 1,006.31	4	\$ 41.20	2	\$ 32.96	2	\$ 15.45			\$ 2,009.53	1	\$ 150.38		\$ 154.89	\$ 5,693.22	
New Police Department		18	\$ 259.56			18	\$ 58.71			2	\$ 165.83	\$ 6,060.52	12	\$ 269.86	1	\$ 5,981.21	4	\$ 247.20	2	\$ 352.26	2	\$ 62.83	2	\$ 165.83	\$ 11,370.17	1	\$ 606.67		\$ 624.87	\$ 18,055.56	
Old Police Department		18	\$ 140.08			18	\$ 12.36					\$ 2,743.92	12	\$ 90.64	1	\$ 1,183.47	4	\$ 38.11	2	\$ 42.23	2	\$ 22.66	2	\$ 688.04	\$ 3,929.45	1	\$ 231.75		\$ 238.70	\$ 6,912.07	
Post Oak Mall (Macy's Building)**** 2022 CO#2		18	\$ 35.02			18	\$ 7.21					\$ 760.14	12	\$ 30.90	1	\$ 188.49	4	\$ 12.36	2	\$ 15.45	2	\$ 16.48			\$ 672.59	\$ -				\$ 1,432.73	
Public Works Service Center		18	\$ 140.08			18	\$ 20.60					\$ 2,892.24	12	\$ 93.73	1	\$ 180.25	4	\$ 12.36	2	\$ 15.45	2	\$ 16.48	2	\$ 110.21	\$ 1,638.73	1	\$ 554.14		\$ 570.76	\$ 5,101.73	
																											General Fund (1001-0180-5212)		\$ 84,498.04	\$ 84,498.04	
																											10% Contract Contingency		\$ 8,450.00	\$ 8,450.00	

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ELECTRIC SITES		Turf Maintenance										Bed Maintenance												Tree Maintenance								
City of College Station 2022 Mowing RFP		Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost	Grand Total by Facility	
													Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year				Cost per Cycle
Electric (8205629-5212)		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle				
Dowling Road Substation		18	\$ 272.95									\$ 4,913.10																	\$ -	\$ 4,913.10		
Graham Road Substation				18	\$ 140.08							\$ 2,521.44																	\$ -	\$ 2,521.44		
Greens Prairie Substation		18	\$ 185.40									\$ 3,337.20																	\$ -	\$ 3,337.20		
Post Oak Mall Substation		18	\$ 166.86									\$ 3,003.48																	\$ -	\$ 3,003.48		
Southwood Valley Substation		18	\$ 92.70									\$ 1,668.60																	\$ -	\$ 1,668.60		
Spring Creek Substation		18	\$ 92.70									\$ 1,668.60																	\$ -	\$ 1,668.60		
Switch Station Substation 1		18	\$ 333.72									\$ 6,006.96																	\$ -	\$ 6,006.96		
Note: Northgate Substation does not receive services																																
																												Electric (8205629-5212)		\$ 23,119.38	\$ 23,119.38	
																												10% Contract Contingency		\$ 2,312.00	\$ 2,312.00	

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WATER / WASTEWATER SITES		Turf Maintenance										Bed Maintenance												Tree Maintenance					Grand Total by Facility		
City of College Station 2022 Mowing RFP		Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost	
		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year			Cost per Cycle
Water Production (90W9320M-5212)																															
Dowling Road Pump Station - 401 N Dowling Rd				18	\$ 222.48					2	\$ 223.51	\$ 4,451.66														1	\$ 157.59		\$ 157.59	\$ 4,609.25	
Sandy Point Pump Station - 7290 Sandy Point Rd		18	\$ 198.79	18	\$ 55.62	18	\$ 47.38	4	\$ 1,127.85	2	\$ 280.16	\$ 10,503.94														1	\$ 60.77		\$ 60.77	\$ 10,564.71	
Transmission Line Easement - 2910 W 28th St				18	\$ 48.41					2	\$ 65.92	\$ 1,003.22																		\$ 1,003.22	
Water Well #1 - 7901 Sandy Point Rd				18	\$ 90.64					2	\$ 67.98	\$ 1,767.48																		\$ 1,767.48	
Water Well #2 - 8351 Sandy Point Rd				18	\$ 105.06					2	\$ 73.13	\$ 2,037.34																		\$ 2,037.34	
Water Well #3 - 8628 Sandy Point Rd				18	\$ 72.10					2	\$ 49.44	\$ 1,396.68																		\$ 1,396.68	
Water Well #5 - 4665 Old San Antonio Rd				18	\$ 70.04					2	\$ 55.62	\$ 1,371.96																		\$ 1,371.96	
Water Well #6 - 9620 Sandy Point Rd				18	\$ 70.04					2	\$ 55.62	\$ 1,371.96																		\$ 1,371.96	
Water Well #7 - 4210 Old San Antonio Rd				18	\$ 58.71					2	\$ 67.98	\$ 1,192.74																		\$ 1,192.74	
Note: Five foot mow strip required outside of fenced area, except where there is dense brush or trees.																															
Water Production (90W9320M-5212)																											\$ 25,315.34	\$ 25,315.34			
10% Contract Contingency																											\$ 2,532.00	\$ 2,532.00			

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FINISH MOWING SITES	Turf Maintenance											Bed Maintenance											Tree Maintenance										
City of College Station 2022 Mowing RFP	Primary Mow		Secondary Mow		Hardscape Weed Control		Turf Weed Control (Pre/Post-Emergent)		Ant Control		Total Annual Cost Turf Maintenance	Basic Monthly Maintenance		Mulch		Pre/Post-Emergent		Fertilizer		Ant Control		Seasonal Color		Total Annual Cost Bed Maintenance	Crepe Myrtle Maintenance - Pruning and Mulching		New Tree Maintenance - One Time Mulch		Total Annual Cost	Grand Total by Facility			
	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle		Cycles per Year	Cost per Cycle	Cycles per Year	Cost per Cycle			Total Annual Cost		
Finish Mowing (1001-0760-5212)																																	
Barron Road - SH6 Interchange	18	\$ 194.67									\$ 3,504.06						\$ -												\$ 3,504.06				
Barron Road - W.D. Fitch Pkwy Interchange	18	\$ 65.92									\$ 1,186.56																		\$ 1,186.56				
Barron Road (Alexandria Ave-Longmire Dr)	18	\$ 76.22			18	\$ 22.66			2	\$ 23.69	\$ 1,827.22	12	\$ 121.54	1	\$ 2,074.42	4	\$ 40.17	2	\$ 120.51	2	\$ 43.26			\$ 4,021.12	1	\$ 76.22		\$ 76.22	\$ 5,924.56				
Barron Road (Longmire Dr-SH6)	18	\$ 43.26			18	\$ 13.39			2	\$ 25.75	\$ 1,071.20	12	\$ 100.94	1	\$ 1,821.04	4	\$ 29.87	2	\$ 70.04	2	\$ 30.90			\$ 3,353.68	1	\$ 727.18		\$ 727.18	\$ 5,152.06				
Barron Road (Victoria Ave-Alexandria Ave)	18	\$ 229.69			18	\$ 50.47			2	\$ 79.31	\$ 5,201.50	12	\$ 168.92	1	\$ 3,236.26	4	\$ 126.69	2	\$ 153.47	2	\$ 56.65			\$ 6,190.30	1	\$ 112.27		\$ 112.27	\$ 11,504.07				
Barron Road (WD Fitch-Victoria Ave)	18	\$ 168.92			18	\$ 47.38			2	\$ 55.62	\$ 4,004.64	12	\$ 130.81	1	\$ 2,413.29	4	\$ 71.07	2	\$ 127.72	2	\$ 50.47			\$ 4,623.67	1	\$ 72.10		\$ 72.10	\$ 8,700.41				
Costco - 4321 State HWY6 South* - 2022 CO#1		\$ -	18	\$ 375.95		\$ -					\$ 6,767.10														\$ -				\$ 6,767.10				
Dartmouth St Medians (Krenek Tap Rd-FM2818)	18	\$ 357.41			18	\$ 41.20					\$ 7,174.98			1	\$ 993.95								\$ 993.95	1	\$ 534.57	1	\$ 196.73	\$ 731.30	\$ 8,900.23				
Dartmouth St. & Southwest Pkwy - street frontage	18	\$ 168.92				\$ -					\$ 3,040.56																		\$ 3,040.56				
Dominik / Glenhaven Medians	18	\$ 37.08			18	\$ 11.33					\$ 871.38																		\$ 871.38				
Eagle Avenue - street frontage	18	\$ 214.24				\$ -					\$ 3,856.32																		\$ 3,856.32				
FM 2818 Crepe Myrtle Plantings	18	\$ 187.46				\$ -					\$ 3,374.28	12	\$ 109.18		\$ -	4	\$ 252.35							\$ 2,319.56	1	\$ 450.11		\$ 450.11	\$ 6,143.95				
George Bush Drive (Wellborn Rd-FM2818)	18	\$ 218.36			18	\$ 144.20	4	\$ 204.97			\$ 7,345.96		\$ -		\$ -		\$ -												\$ 7,345.96				
George Bush Drive East - (KBB & Medians)	18	\$ 272.95			18	\$ 21.63	4	\$ 222.48	2	\$ 117.42	\$ 6,427.20	12	\$ 103.00	1	\$ 873.44	4	\$ 46.35	2	\$ 52.53	2	\$ 22.66			\$ 2,445.22	1	\$ 134.93		\$ 134.93	\$ 9,007.35				
Greens Prairie Rd (Royder Rd - Long Creek Ln)	18	\$ 207.03			18	\$ 97.85					\$ 5,487.84	12	\$ 23.69	1	\$ 298.70		\$ -		\$ -	2	\$ 46.35			\$ 675.68					\$ 6,163.52				
Greens Prairie (Arrington to XXX) and bed Maintenance (CO#3)	18	\$ 730.00			18	\$ 40.00	4	\$ 2,065.00	2	\$ 790.00	\$ 23,700.00	12	\$277.00	1	\$10,920.00	4	\$207.00			2	\$110.00			\$ 15,292.00					\$ 38,992.00				
Hereford/Winding - Median		\$ -			18	\$ 19.57					\$ 352.26	12	\$ 57.68	1	\$ 183.34	4	\$ 19.57		\$ -	2	\$ 16.48			\$ 986.74					\$ 1,339.00				
Holleman Dr S (FM2818-Rock Prairie Rd W)	18	\$ 902.28			18	\$ 43.26					\$ 17,019.72		\$ -		\$ -		\$ -		\$ -		\$ -								\$ 17,019.72				
Krenek Tap Crossing - Bed Maintenance		\$ -				\$ -						12	\$ 60.77	1	\$ 571.65	4	\$ 11.33	2	\$ 58.71	2	\$ 25.75	2	\$ 186.00	\$ 1,887.13	1	\$ 430.54		\$ 430.54	\$ 2,317.67				
Lakeway Dr / Venture Dr	18	\$ 138.02				\$ -					\$ 2,484.36																		\$ 2,484.36				
Midtown Dr (Corporate Pkwy-WD Fitch)	18	\$ 450.11				\$ -					\$ 8,101.98																		\$ 8,101.98				
Midtown Dr (Medical Ave-Corporate Pkwy) new map	18	\$ 375.95				\$ -					\$ 6,767.10																		\$ 6,767.10				
Nantucket Dr / SH6 Interchange map language	11	\$ 225.57				\$ -					\$ 2,481.27																		\$ 2,481.27				
Rock Prairie Rd - Medians	18	\$ 65.92				\$ -					\$ 1,186.56			1	\$ 458.35									\$ 458.35	1	\$ 163.77	1	\$ 67.98	\$ 231.75	\$ 1,876.66			
Royder Road (Wellborn to Tanya Renee) (CO#3)						\$ -					\$ -	12	\$48.00	1	\$1,400.00	4	\$64.00			2	\$47.00			\$ 2,326.00	1	\$ 225.00		\$ 225.00	\$ 2,551.00				
Rock Prairie Road West (Rock Prairie to Ridge Bluff) (CO#3)	18	\$ 220.00			18	\$ 22.00	4	\$ 507.00	2	\$ 193.00	\$ 6,770.00													\$ -					\$ 6,770.00				
Tarrow St - Medians	18	\$ 47.38				\$ 25.75					\$ 1,316.34	12	\$ 82.40	1	\$ 766.32	4	\$ 48.41							\$ 1,948.76		\$ -		\$ -	\$ 3,265.10				
Texas Ave (University Dr-FM2818)	18	\$ 558.26			18	\$ 177.16					\$ 13,237.56	12	\$ 323.42	1	\$ 3,009.66	4	\$ 170.98	2	\$ 196.73	2	\$ 88.58			\$ 8,145.24	1	\$ 1,430.67	1	\$ 830.18	\$ 2,260.85	\$ 23,643.65			
Texas Ave & Walton Islands - seasonal flower plantings	18	\$ 93.73			18	\$ 11.33					\$ 1,891.08	12	\$ 162.74	1	\$ 1,485.26	4	\$ 85.49	2	\$ 72.10	2	\$ 88.58	2	\$ 3,675.00	\$ 11,451.46	1	\$ 380.07	1	\$ 229.69	\$ 609.76	\$ 13,952.30			
Unity Plaza - street frontage	18	\$ 93.73			18	\$ 25.75					\$ 2,150.64	12	\$ 83.43	1	\$ 1,530.58	4	\$ 71.07	2	\$ 72.10	2	\$ 66.95			\$ 3,094.12	1	\$ 333.72		\$ -	\$ 333.72	\$ 5,578.48			
University Dr E (Copperfield Pkwy-FM158)	18	\$ 168.92			18	\$ 52.53					\$ 3,986.10														1	\$ 382.13	1	\$ 450.11	\$ 832.24	\$ 4,818.34			
University Dr E (SH6 Interchange) - Tree Farm		\$ -	18	\$ 2,628.56		\$ -					\$ 47,314.08																		\$ 47,314.08				
University Dr E (SH6-Copperfield Pkwy)	18	\$ 187.46			18	\$ 103.00					\$ 5,228.28														1	\$ 130.81	1	\$ 204.97	\$ 335.78	\$ 5,564.06			
University Dr E (Texas Ave-SH6)	18	\$ 65.92			18	\$ 87.55					\$ 2,762.46	12	\$ 77.25	1	\$ 2,427.71	4	\$ 71.07	2	\$ 141.11	2	\$ 50.47			\$ 4,022.15	1	\$ 229.69	1	\$ 163.77	\$ 393.46	\$ 7,178.07			
University Drive Medians (between Church & South College) (CO#3)						\$ -					\$ -	12	\$51.00	1	\$1,400.00	4	\$66.25			2	\$47.00			\$ 2,371.00					\$ 2,371.00				
Victoria (Barron Rd-WD Fitch)	18	\$ 187.46				\$ -					\$ 3,374.28																		\$ 3,374.28				
Victoria Ave / W.D. Fitch Pkwy Interchange	18	\$ 38.11				\$ -					\$ 685.98																		\$ 685.98				
W.D. Fitch Pkwy (Lakeway Dr-Pebble Creek Pkwy)	18	\$ 130.81			18	\$ 72.10					\$ 3,652.38	12	\$ 130.81	1	\$ 547.96	4	\$ 31.93	2	\$ 55.62	2	\$ 44.29			\$ 2,445.22	1	\$ 2,273.21	1	\$ 982.62	\$ 3,255.83	\$ 9,353.43			
W.D. Fitch Pkwy (Pebble Creek Pkwy-Rock Prairie Rd)	18	\$ 206.00			18	\$ 30.90					\$ 4,264.20	12	\$ 80.34	1	\$ 342.99	4	\$ 44.29	2	\$ 85.49	2	\$ 13.39			\$ 1,681.99	1	\$ 990.86	1	\$ 758.08	\$ 1,748.94	\$ 7,695.13			
Wellborn Rd (Cain Rd/Navarro Dr-Rock Prairie Rd)	18	\$ 375.95			18	\$ 59.74					\$ 7,842.42	12	\$ 87.55	1	\$ 1,366.81	4	\$ 59.74	2	\$ 39.14	2	\$ 62.83			\$ 2,860.31	1	\$ 702.46	1	\$ 551.05	\$ 1,253.51	\$ 11,956.24			
Wellborn Rd (FM2818-Cain Rd/Navarro Dr)	18	\$ 394.49			18	\$ 46.35					\$ 7,935.12	12	\$ 75.19	1	\$ 456.29	4	\$ 48.41	2	\$ 85.49	2	\$ 25.75			\$ 1,774.69	1	\$ 2,026.01	1	\$ 1,726.28	\$ 3,752.29	\$ 13,462.10			
Wellborn Rd (Graham Rd-Southern Trace Dr)	18	\$ 337.84			18	\$ 58.71					\$ 7,137.90	12	\$ 41.20	1	\$ 212.18	4	\$ 25.75	2	\$ 25.75	2	\$ 25.75			\$ 912.58	1	\$ 338.87	1	\$ 259.56	\$ 598.43	\$ 8,648.91			
Wellborn Rd (Rock Prairie Rd-Graham Rd)	18	\$ 337.84			18	\$ 58.71					\$ 7,137.90	12	\$ 53.56	1	\$ 210.12	4	\$ 44.29	2	\$ 43.26	2	\$ 43.26			\$ 1,203.04	1	\$ 351.23	1	\$ 231.75	\$ 582.98	\$ 8,923.92			
Wellborn Rd / FM2818 Interchange	18	\$ 1,239.09			18	\$ 129.78					\$ 24,639.66																		\$ 24,639.66				
																										ROW (1001-0760-5212)		\$ 381,193.58		\$ 381,193.58			
																										10% Contract Contingency		\$ 38,119.00		\$ 38,119.00			

****Change order #1 for mowing Costco drainage area**

*****Change order #2 for mowing & landscaping at the mall**

Change order #3 for additional Parks flower beds / Finish Mowing

Mowing Total	\$1,140,916.63	\$1,140,916.63
Contingency Total	\$114,093.00	\$114,093.00
Contract Total	\$1,255,009.63	\$ 1,255,009.63

June 27, 2024
Item No. 6.9.
South Dowling Road Emergency Repairs

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an emergency contract with Larry Young Paving in the amount of \$168,008.74 for repairs to South Dowling Road.

Relationship to Strategic Goals:

- Core Services and Infrastructure

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

Summary: After the recent storms, the 72-inch corrugated metal pipe crossing South Dowling Road west of FM 2154 washed away and caused the road to collapse. City crews immediately closed the road and acquired quotes to perform an emergency repair on the road. Larry Young Paving, Inc. submitted a quoted in the amount of \$168,008.74 and ordered replacement pipe as soon as contracts were routed. Once the pipe is received, the contractor will replace the washed out 72-inch pipe and repair the road.

Budget & Financial Summary: Funds for the repair of South Dowling Road are available in the Drainage Utility Fund.

Attachments:

1. South Dowling Repair Contract (Vendor Signed)



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300507 PROJECT#: _____ BID#: _____ RFP#: _____

Project Name / Contract Description: South Dowling Road 72" CMP Replacement

Name of Contractor: Larry Young Paving, Inc.

CONTRACT TOTAL VALUE: \$ 168,008.74

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

Debarment Check ☐ Yes ☐ No ☒ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Davis Bacon Wages Used ☐ Yes ☐ No ☒ N/A
Buy America Required ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

This is an emergency contract for repairs related to the May 16th storm. Funding is available in the Drainage Maintenance budget in account# 3912-9971-6561 under project SD1701.

CRC Approval Date*: n/a (If required)* Council Approval Date*: 06/27/24 Agenda Item No*: _____

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

Insurance Certificates: DDV Performance Bond: BW Payment Bond: BW Form 1295: BW

SIGNATURES RECOMMENDING APPROVAL

Emily Fisher
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

6/11/2024
DATE

John A. Haislet
LEGAL DEPARTMENT

6/11/2024
DATE

Jim Carter
ASST CITY MGR – CFO

6/11/2024
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 LARRY YOUNG PAVING INC. (the "Contractor") for the construction and/or installation of the following:
South Dowling Road 72" CMP Replacement (Emergency Repair).

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: zero
and no /100 Dollars (\$0.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: one hundred sixty-eight thousand eight
and 74 /100 Dollars (\$168,008.74).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

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

10.06 Work Stoppage. If in the judgment of either the City or City's Representative any of the Work or materials furnished is not in strict accordance with this Agreement or any portion of the Work is being performed

so as to create a hazardous condition, they may, in their sole discretion, order the Work of the Contractor or any subcontractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

access space to determine errors, inconsistencies or omissions. In all cases of interconnection of the Work with existing conditions, Contractor shall verify at the site all dimensions relating to such existing conditions.

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

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

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

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

12. MATERIALS

12.01 Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

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

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

(a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.

(b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.

(c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

(d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.

(e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

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

12.05 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

15.02 Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the Work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. Contractor's subcontract agreement shall provide that subcontractors shall assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which the Contractor, by these Documents, assumes toward the City and Consultant. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

16. PAYMENT

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

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

not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the Work.

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

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

OR:

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

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

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

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

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

16.09 Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

OR:

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

included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non-included cost.

17.04 The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the Work shall not excuse the Contractor from performing all the Work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the Work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the Work and the Contractor shall assume and pay the costs of the performance of the Work as contracted.

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, workers' compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

21.03 No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance or delay in the progress of the Work, unless such delays (i) are caused by the actual interference, fraud, bad faith or misrepresentation by the City or its agents, (ii) extend for an unreasonable length of time; or (iii) were not contemplated by the parties at the time of contracting. In the event of any delay entitling Contractor to an

increase in Contract Amount, except when due to City's intentional interference or fraud, Contractor's recovery shall be limited as outlined in Section 21.04 below. The City's reasonable exercise of any of its rights or remedies under the Contract, regardless of the extent or frequency, shall not under any circumstances be construed as interference with the Contractor's performance of the Work.

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

23.01 The time for the Substantial and Final Completion of the Work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages

that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02 As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of two hundred and no **/100 DOLLARS (\$ 200.00**) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

25.06 Defective Work Discovered During Warranty Period. If any of the Work is found or determined to be either defective, including obvious defects under warranty as set forth in this Section 25, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the Work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly, upon receipt of written notice by the City, correct the defective work at no cost to the City.

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

25.08 If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the Work, the Contractor has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the Work to be done by a third party. The cost of the work shall be paid by the Contractor or its surety.

25.09 The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

25.10 The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all Work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the Work.

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

26.04 No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit

shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

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

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

27. INSURANCE

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

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

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

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

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

- (a) Only licensed Insurance Carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.

- (e) The City of College Station, its agents, officials, employees and volunteers, are to be named as “Additional Insured” to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents, officials, employees or volunteers.

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

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

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

- (a) Business Automobile Liability insurance shall be written by a carrier rated “A:VIII” or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00, where such exposures exist.

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

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

27.07 Additional Insured.

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

27.08 Builder's Risk

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

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

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

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

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) Workers' Compensation/ Employer's Liability insurance shall include the following terms:
 - 1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each

employee are required.

2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

"A. Definitions:

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

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

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

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

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

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

extended.

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

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

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

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

June 13, 2024

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: Herbert L. Young Jr.

By: _____

Printed Name: Herbert L. Young Jr.

City Manager

Date: _____

Title: President

Date: 6/11/2024

APPROVED:

John R. Haislet

City Attorney

Date: 6/11/2024

Jim Costa

Assistant City Manager/CFO

Date: 6/11/2024

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>.

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. 4469498

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 one hundred sixty-eight thousand eight and 74 /100 Dollars (\$ 168,008.74) 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 South Dowling Road 72" CMP Replacement

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

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

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

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

Contract No. 24300507
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.

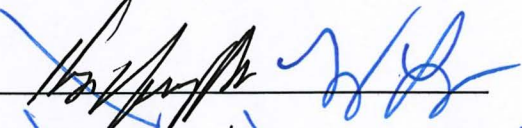
Bond No. 4469498

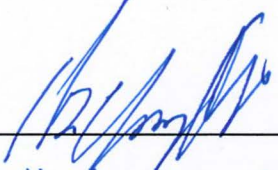
FOR THE CONTRACTOR:

LARRY YOUNG PAVING, INC.

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

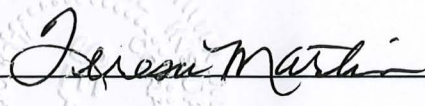
WITNESS: (if not a corporation)

By: 
Name: Herbert L. Young, Jr. Tracy Lang
Title: President WITNESS
Date: June 13, 2024

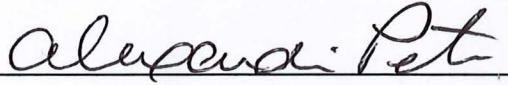
By: 
Name: Herbert L. Young, Jr.
Title: President
Date: June 13, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: 
Name: Teresa Martin
Title: Witness
Date: June 13, 2024

Markel Insurance Company
(Full Name of Surety)
9500 Arboretum Blvd, Suite 400
Austin, TX 78759
(Address of Surety for Notice)

By: 
Name: Alexandria Petroski
Title: Attorney-In-Fact
Date: June 13, 2024

FOR THE CITY:

REVIEWED:

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

John A. Haislet 6/11/2024
City Attorney

City Manager

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

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:

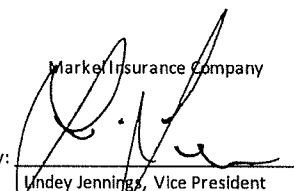
"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which 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

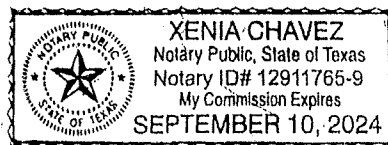


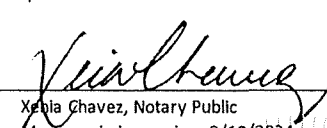
Markel Insurance Company
By: 
Undey Jennings, Vice President

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.

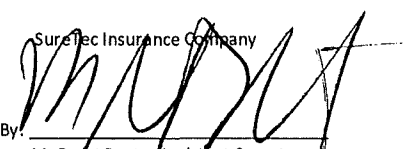
IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.

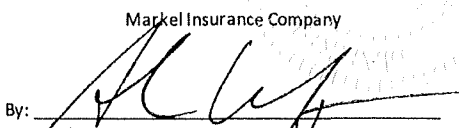


By: 
Xenia Chavez, Notary Public
My commission expires 9/10/2024

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 5th day of June, 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.

TEXAS STATUTORY PAYMENT BOND

Bond No. 4469498

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 one hundred sixty-eight thousand eight and 74 /100 Dollars (\$ 168,008.74) 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 13th day of June, 20 24, for South Dowling Road 72" CMP Replacement, referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

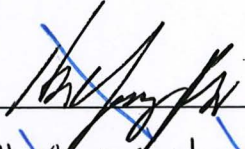
Bond No. 4469498

FOR THE CONTRACTOR:

LARRY YOUNG PAVING, INC.

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

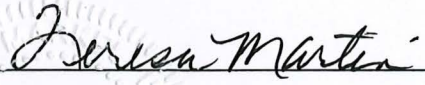
WITNESS: (if not a corporation)

By: 
Name: Herbert L. Young, Jr. Tracy Lang
Title: President Witness
Date: June 13, 2024

By: 
Name: Herbert L. Young, Jr.
Title: President
Date: June 13, 2024

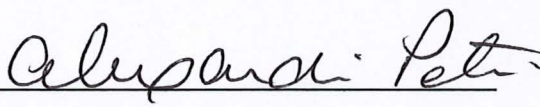
FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: 
Name: Teresa Martin
Title: Witness
Date: June 13, 2024

Markel Insurance Company
(Full Name of Surety)

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

By: 
Name: Alexandria Petroski
Title: Attorney-In-Fact
Date: June 13, 2024

FOR THE CITY:

REVIEWED:

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

John A. Haislet 6/11/2024
City Attorney

City Manager

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

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.

Markel Insurance Company

4521 Highwoods Parkway
Glen Allen, VA 23060
(800) 446-6671

CHANGE RIDER

To be attached to and form a part of:

Bond Number: 4469498

Principal: Larry Young Paving, Inc.

Obligee: City of College Station

Said bond, issued by Markel Insurance Company, as Surety, is hereby amended as follows:

Bond Number From: 4469498

To: 4469497

Effective date of rider: June 13, 2024

All other terms and conditions shall remain the same.

Signed and sealed this 6th day of June, 2024.

Markel Insurance Company
Surety

By: Alexandria Petroski
Alexandria Petroski, Attorney-in-fact

JOINT LIMITED POWER OF ATTORNEY

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

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."

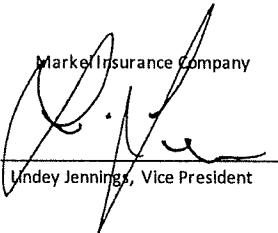
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 20th day of January, 2023.

SureTec Insurance Company

By: 
Michael C. Keimig, President



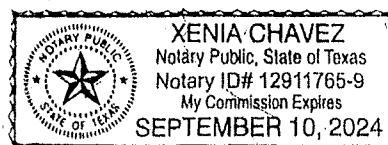
Markel Insurance Company

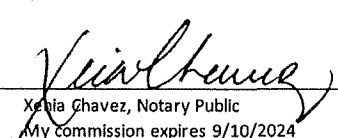
By: 
Lindsey Jennings, Vice President

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.

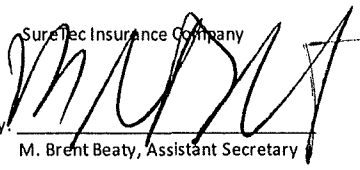


By: 
Xenia Chavez, Notary Public
My commission expires 9/10/2024

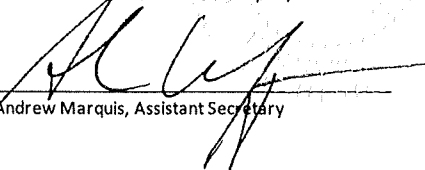
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 6th day of June, 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)

5/20/2024

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 1500 Earl Rudder Freeway S College Station, TX 77840	CONTACT NAME: PHONE (A/C, No, Ext): (979) 307-7700 FAX (A/C, No): E-MAIL ADDRESS: jon.ellison@rolloinsurance.com
	INSURER(S) AFFORDING COVERAGE INSURER A: United Fire & Casualty Co INSURER B: United Fire & Ind Co INSURER C: Texas Mutual Insurance Company INSURER D: Endurance American Specialty Insurance Company INSURER E: INSURER F:
INSURED Larry Young Paving, Inc. Silver Hill Equipment Co., LLC PO Box 11779 College Station, TX 77842	NAIC # 13021 19496 22945 41718

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☒ PROJECT ☐ LOC OTHER:			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
B	Equipment Floater			85327666	8/23/2023	8/23/2024	Excess Liab \$4M X \$1 4,000,000
D	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)
Contract No. 24300507

An emergency repair for 72" CMP South Dowling

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

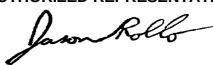
City of College Station P.O. Box 9960 College Station, TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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EXHIBIT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

If the plans and specifications from the RFP/CSP are not physically inserted here, then they are fully incorporated into this contract by reference.

P.O. Box 11779
College Station, Texas 77842
(P)(979) 823-4888
(F) (979) 823-4884

Proposal

Date: May 20, 2024

TO:
Ronnie Loper
City of College Station

Project:
South Dowling 72" CMP Replacement

[illegible]









EXHIBIT E
CONSTRUCTION SCHEDULE

Work scheduled to be complete by July 30, 2024

EXHIBIT F
SCHEDULE OF VALUES

See scope of work for schedule of values.

June 27, 2024
Item No. 6.10.
Milliff/Redmond Drainage Improvements

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Brazos Paving, Inc. in the amount of \$1,289,729.59, plus the City's contingency in the amount of \$128,972.96 for a total appropriation of \$1,418,702.55 drainage improvements at Milliff Road and Redmond Drive. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Relationship to Strategic Goals:

Core Services and Infrastructure, Neighborhood Integrity

Recommendation(s): Staff recommends approval.

Summary: This item is the construction contract for Drainage improvements at Milliff Road and Redmond Drive creek crossings. The work includes removing the existing asphalt pavement, pulverizing the subbase and subgrade, constructing asphalt pavement with curbs and subgrade, storm sewer inlets, culverts and headwall installations, water and wastewater work. Installing traffic control, SW3P, block-sodding disturbed areas and all other related work required to complete the construction.

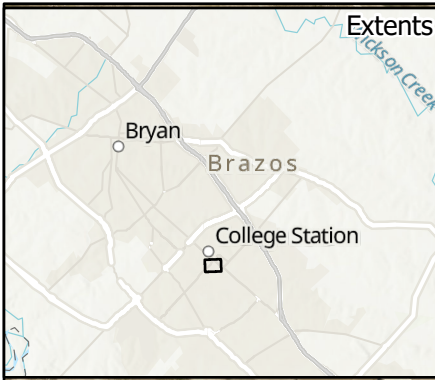
This project was procured using the Invitation to Bid (ITB) Method. Four proposals were received and reviewed and the proposal by Brazos Paving, Inc. was the lowest responsible bidder.

Budget & Financial Summary: A combined budget in the amount of \$2,550,150 is included for this project in the Drainage Utility, Water Capital Projects, and Wastewater Capital Projects Funds. A combined total of \$161,436 has been expended or committed to date, leaving a combined balance of \$2,388,714 for the contract and future expenses.

Attachments:

1. Project Map Milliff and Redmond
2. Milliff and Redmond Vendor Signed Contract 23300534

Drainage Improvements @ Milliff and Redmond



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



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300534 PROJECT #: SD1604, WA2304, WW2307 BID/RFP/RFQ#: ITB24-055

Project Name / Contract Description: Drainage Improvements @ Milliff & Redmond

Name of Contractor: Brazos Paving, Inc.

CONTRACT TOTAL VALUE: \$ \$1,289,729.59

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 # ☐ CHANGE ORDER # ☐ OTHER

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

4 bids received, construction budget: \$1,737,000, actual cost: \$1,289,729.59

(If required)*

CRC Approval Date*: Council Approval Date*: 6/27/24 Agenda Item No*:

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

6/17/2024
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 BRAZOS PAVING, INC. (the "Contractor") for the construction and/or installation of the following:
as described in ITB 24-055 Drainage Improvements at Milliff Road and Redmond Drive.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: One Hundred Twenty-Eight Thousand Nine Hundred Seventy - Two and 96 /100 Dollars (\$ 128,972.96).

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: _____
and 59 /100 Dollars (\$ 1,289,729.59).

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 NO /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

BRAZOS PAVING, INC.

CITY OF COLLEGE STATION

By: Billy Prewitt

By: _____

Printed Name: Billy Prewitt

City Manager

Date: _____

Title: Sr. Vice President

Date: 6/13/2024

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.

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** 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.

=====

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. B-3307201

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

THE COUNTY OF BRAZOS

§

THAT WE, Brazos Paving, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto The Cincinnati Casualty 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 Million Two Hundred Eighty-Nine Thousand Seven Hundred Twenty-Nine and 59 /100 Dollars (\$ 1,289,729.59) 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 ITB 24-055 Drainage Improvements at Millif Rd. and Redmond Dr.

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. B-3307201

FOR THE CONTRACTOR:

BRAZOS PAVING, INC

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

By: [Signature]
Name: Billy Trewitt
Title: Sr. V.P.
Date: June 27, 2024

By: [Signature]
Name: Martin Jackson
Title: President
Date: June 27, 2024

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: [Signature]
Name: Paige Prothro
Title: Account Manager
Date: June 27, 2024



The Cincinnati Casualty Company
(Full Name of Surety)
6200 South Gilmore Road
Fairfield, Ohio 45014
(Address of Surety for Notice)

By: [Signature]
Name: Randi Meche
Title: Attorney-in-Fact
Date: June 27, 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. B-3307201

THE STATE OF TEXAS

§

§

THE COUNTY OF BRAZOS

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Brazos Paving, Inc, as Principal, hereinafter called "Principal" and the other subscriber hereto The Cincinnati Casualty Company, a corporation organized and existing under the laws of the State of Ohio, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of One Million Two Hundred Eighty-Nine Thousand Seven Hundred Twenty-Nine and 59 /100 Dollars (\$ 1,289,789.59) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 27th day of June, 20 24, for ITB 24-055 Drainage Improvements at Millif Rd. and Redmond Dr., 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.

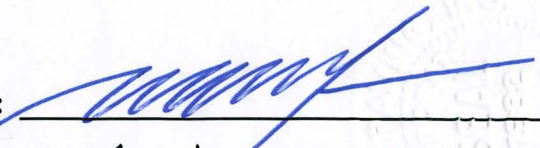
Bond No. B-3307201

FOR THE CONTRACTOR:

BRAZOS PAVING, INC

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

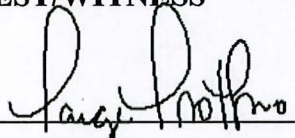
By: 
Name: Billy Prewitt
Title: Sr. V.P.
Date: June 27, 2024

By: 
Name: Martin Jackson
Title: President
Date: June 27, 2024

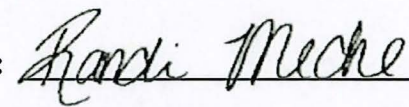
FOR THE SURETY:
ATTEST/WITNESS

(SEAL)



By: 
Name: Paige Prothro
Title: Account Manager
Date: June 27, 2024

The Cincinnati Casualty Company
(Full Name of Surety)
6200 South Gilmore Road
Fairfield, Ohio 45014
(Address of Surety for Notice)

By: 
Name: Randi Meche
Title: Attorney-in-Fact
Date: June 27, 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.

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint

Vladimir Chemadurov; Rob Eppers; Michelle McCall; Russell Gourgues; Lauren Wood; Randi Meche; Lisa Marroquin and/or James R. Jackson

of Houston, Texas

their true and legal Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and deliver on behalf of the Companies as Surety, any and all bonds, policies, undertakings or other like instruments, as follows:

Any such obligations in the United States, up to
Fifty Million and No/100 Dollars (\$50,000,000.00).

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Senior Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or any Senior Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Vice-President and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or any Senior Vice President this 16th day of March, 2021.

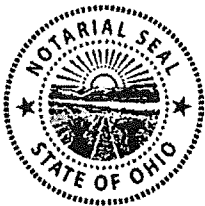


STATE OF OHIO)SS:
COUNTY OF BUTLER)

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Stephen A. Ventre

On this 16th day of March, 2021 before me came the above-named President or Senior Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



Keith Collett

Keith Collett, Attorney at Law
Notary Public - State of Ohio

My commission has no expiration date.
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Vice-President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 27th day of June, 2024



Ed H.

TEXAS IMPORTANT NOTICE

To obtain information or make a complaint:

You may call our toll-free telephone number for information or to make a complaint at:

1-800-635-7521

You may also write to us at:

The Cincinnati Insurance Companies
6200 South Gilmore Road
Fairfield, Ohio 45014 - 5141

or

The Cincinnati Insurance Companies
P.O. Box 145496
Cincinnati, Ohio 45250-5496

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104

Austin, TX 78714-9104

FAX# (512) 475-1771

Web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

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

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

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/30/2024

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 Risk Services - Leavitt Insurance Agencies 510 N Valley Mills Dr, Ste 701 Waco TX 76710		CONTACT NAME: Lisa Marroquin PHONE (A/C, No, Ext): (254) 741-2882 E-MAIL ADDRESS: lisa-marroquin@leavitt.com FAX (A/C, No): (866) 728-9498	
INSURED Brazos Paving, Inc. BPI Materials, LLC PO Box 714 Bryan TX 77806		INSURER(S) AFFORDING COVERAGE INSURER A: United Fire & Casualty Company INSURER B: Texas Mutual Insurance Company INSURER C: Westchester Surplus Lines Insurance INSURER D: INSURER E: INSURER F:	
		NAIC # 13021 22945 10172	

COVERAGES**CERTIFICATE NUMBER:** 23-24 LIAB**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:			85315640	11/01/2023	11/01/2024	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
	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			85315640	11/01/2023	11/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☐ RETENTION \$			85315640	11/01/2023	11/01/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	☒ 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	0001207539	11/01/2023	11/01/2024	☒ 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
C	Pollution Liability			G71755423 005	11/01/2023	11/01/2024	Each Poll Condition 1,000,000 Aggregate 2,000,000

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

[Job #: 24-055 Job Type:]

General Liability, Automobile, Umbrella Policies include a blanket Additional Insured with Primary and Non Contributory wording, Waiver of Subrogation and 10 day Notice of Cancellation, as required by written contract.

Workers Compensation Policy includes a Blanket Waiver of Subrogation, as required by written contract.

Umbrella is follow form

CERTIFICATE HOLDER**CANCELLATION**

City of College Station Purchasing Division PO Box 9960 College Station TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Lisa Marroquin
--	---

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AGENCY CUSTOMER ID: 00004899

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Risk Services - Leavitt Insurance Agencies		NAMED INSURED Brazos Paving, Inc.
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: Notes

Re: 24-055 Drainage Improvements at Millliff Rd. and Redmond Drive

Contract No: 24300534



AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Risk Services - Leavitt Insurance Agencies		NAMED INSURED Brazos Paving, Inc.
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: Notes

Inland Marine coverage - United Fire and Casualty Co
Policy period: 11/01/2023 - 11/01/2024
Policy #85315640
Lease / Rented equipment - \$600,000 limit

TEXAS CANCELLATION PROVISION OR COVERAGE CHANGE ENDORSEMENT

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

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

Endorsement Effective:	Countersigned By: _____ (Authorized Representative)
Named Insured:	

Number of Days' Notice

30

Name Of Person Or Organization

PER SCHEDULE ON FILE

Address

CANCELLATION FOR NONPAYMENT OF PREMIUM 10 DAYS

If this policy is canceled or materially changed to reduce or restrict coverage, we will mail notice of cancellation or change to the person or organization named in the Schedule. We will give the number of day's notice indicated in the Schedule.

POLICY NUMBER:

85315640

FORMS SUPPLEMENTAL DECLARATIONS

The following coverage form(s) govern coverage that is not limited to any specific state even though they are specifically listed in only one state in the declarations.

Premium

Applicable to the state of Texas

*CA2070(10-13)	COVG FOR CERTAIN OPS IN CONNECTION W/RAILROADS	100
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Other Forms

Applicable to the state of Texas

*CA0001(11-20)	BUSINESS AUTO COVG FORM
*CA0196(11-20)	TX-CHGS
CA0243(11-13)	TX-CHGS-CANCEL & NONRENEW
CA0449(11-16)	PRIMARY & NONCONTRIBUTORY OTHER INSURANCE
*CA0506(11-20)	TX-PUBLIC/LIVERY PASSENGER CONVEYANCE TRANSPORT
*CA2264(10-13)	TX-PIP END
CA2394(10-13)	SILICA/SILICA-RELATED DUST EXCL FOR COVERED AUTOS
*CA7039(12-21)	COMM AUTO COVG PART SCHEDULE OF COVERED AUTOS
*CA7040(03-93)	SUPPLEMENTAL DECS
*CA7041(03-23)	COMM AUTO COVG PART
CA7109(01-17)	BUSINESS AUTO ULTRA END
CA7121(02-08)	TX-LIMITED MEXICO COVG
*CA7133(12-10)	TX-CANCEL PROVISION OR COVG CHG
CA7382(01-21)	COMMUNICABLE DISEASE EXCLUSION
CA9995(10-13)	TX-SUPPLEMENTARY DEATH BENEFIT
IL0017(11-98)	COMMON POLICY CONDITIONS
IL0021(09-08)	NUCLEAR ENERGY LIAB EXCL
IL7068(01-10)	EXCL-LEAD-HAZARDOUS PROPERTIES
IL7069(01-10)	EXCL-UNDERGROUND STORAGE TANKS
IL7070(09-12)	ABSOLUTE ASBESTOS EXCL
IL7083(08-10)	PAYMENT OF LOSSES
*IL7177(08-22)	ABSOLUTE PFAS EXCLUSION
*MCS90(01-17)	END FOR MOTOR CARRIER POLICIES OF INSURANCE
PL5(04-96)	TX-REJECTION OF PIP
*ST1435(08-04)	TX-NOTICE GENL LIAB EXCL ASBESTOS
*ST1436(08-04)	TX-NOTICE GENERAL LIAB EXCL LEAD
*ST1544-(08-04)	TX-NOTICE EXCL UNDERGROUND STORAGE TANKS
*ST1644-(01-12)	POLICY WEBSITE STUFFER
*ST1681(06-22)	TX-NOTICE-RISK CONTROL INFORMATION
*ST1709(06-22)	TX-NOTICE OF MOTOR VEHICLE REPAIRS
*ST1715(06-20)	TX-UM/UIM COVG SELECTION/REJECTION
*ST1882(06-16)	NOTICE-LOCATION & PREMISES CLARIFICATION
*ST1947(11-19)	TX-NOTICE-HAVE A COMPLAINT OR NEED HELP?
*ST1953(09-19)	TX-AUTO BURGLARY & THEFT PREVENTION AUTHORITY FEE
*ST1965(01-21)	NOTICE TO POLICYHOLDERS-COMMUNICABLE DISEASE EXCL
*ST2003(11-21)	NOTICE OF PREM AUDIT NONCOMPLIANCE CHARGE
*ST2111(05-21)	TX-NOTICE TO POLICYHOLDERS 2021 COMM AUTO FORM REV
*UW7009(01-15)	CONTINUATION OF NAMED INSURED'S SHOWN ON THE DEC
*UW7024(06-15)	OTHER CHARGES SUMMARY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

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

- A.** The following is added to the **Other Insurance Condition** in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

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

- B.** The following is added to the **Other Insurance Condition** in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO ULTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

COMMON POLICY CONDITIONS

COVERAGE INDEX

DESCRIPTION	PAGE
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Personal Effects Coverage	4
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The COVERAGE INDEX set forth above is informational only and grants no coverage.

Terms set forth in *(Bold Italics)* are likewise for information only and by themselves shall be deemed to grant no coverage.

(Temporary Substitute Auto Physical Damage)

A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

SECTION I – COVERED AUTOS, paragraph C. Certain Trallers, Moblle Equipment and Temporary Substitute Autos Is amended by adding the following at the end of the existng language:

If Physical Damage Coverage is provided under this Coverage form for an "auto" you own, the Physical Damage coverages provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of its breakdown, repair, servicing, "loss", or destruction

B. BROADENED LIABILITY COVERAGES

SECTION II – LIABILITY COVERAGE in Paragraph A. Coverage at 1. Who Is An Insured is amended to include the following:

(Broad Form Insured)

- d. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- e. Any organization that is acquired or formed by you, during the term of this policy and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (1) That is a joint venture or partnership,
 - (2) That is an "insured" under any other policy,
 - (3) That has exhausted its Limits of Insurance under any other policy, or
 - (4) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation

Coverage does not apply to "bodily injury" or "property damage" that results from an accident that occurred before you formed or acquired the organization.

(Employee as Insureds)

- f. Any employee of yours while acting in the course of your business or your personal affairs while using a covered "auto" you do not own, hire or borrow.

(Additional Insured Status by Contract, Agreement or Permit)

- g. Any person or organization whom you are required to add as an additional insured on this policy under a written contract or agreement; but the written contract or agreement must be:
 - (1) Currently in effect or becoming effective during the term of this policy; and
 - (2) Executed prior to the "bodily injury" or "property damage."

The additional insured status will apply only with respect to your liability for "bodily injury" or "property damage" which may be imputed to that person(s) or organization(s) directly arising out of the ownership, maintenance or use of the covered "autos" at the location(s) designated, if any.

Coverage provided by this endorsement will not exceed the limits of liability required by the written contract or written agreement even if the limits of liability stated in the policy exceed those limits. This endorsement shall not increase the limits stated in **Section II. C. Limits of Insurance.**

For any covered "auto" you own this Coverage Form provides primary coverage.

C. BROADENED SUPPLEMENTARY PAYMENTS

SECTION II. LIABILITY A. Coverage 2. Coverage Extensions a. Supplementary Payments (2) and (4) are replaced by the following:

(Bail Bond Coverage)

- (2) Up to \$5,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(Loss of Earnings Coverage)

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earning up to \$500 a day because of time off from work.

(Amended Fellow Employee Exclusion)

D. AMENDED FELLOW EMPLOYEE EXCLUSION

Only with respect to your "employees" who occupy positions which are supervisory in nature, **SECTION II. LIABILITY B. Exclusion 5. Fellow Employee** is replaced by:

5. Fellow Employee

"Bodily Injury":

- a. To you, or your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
- b. To your "executive officers" and directors (if you are an organization other than a partnership, joint venture, or limited liability company) but only with respect to performance of their duties as your officers or directors;
- c. For which there is an obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph a and b above; or
- d. Arising out of his or her providing or failing to provide professional health care services.

For purposes of this endorsement, a position is deemed to be supervisory in nature if that person performs principle work which is substantially different from that of his or her subordinates and has authority to hire, transfer, direct, discipline or discharge.

E. BROADENED PHYSICAL DAMAGE COVERAGES

SECTION III – PHYSICAL DAMAGE COVERAGE A. Coverage is amended as follows:

(Towing and Labor)

2. Towing is deleted and replaced with the following:

2. Towing and Labor

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" is disabled:

- a. For private passenger type vehicles we will pay up to \$100 per disablement.
- b. For all other covered "auto's" we will pay up to \$500 per disablement

However, the labor must be performed at the place of disablement.

(Physical Damage Additional Transportation Expense Coverage)

4. Coverage Extensions

a. Transportation Expenses is amended to provide the following limits:

We will pay up to \$60 per day to a maximum of \$1,800. All other terms and provisions of this section remain applicable.

The following language is added to **4. Coverage Extensions**:

(Extra Expense – Theft)

c. Theft Recovery Expense

If you have purchased Comprehensive Coverage on an "auto" that is stolen, we will pay the expense of returning that stolen auto to you. The limit for this coverage extension is \$5,000.

(Rental Reimbursement and Additional Transportation Expense)

d. Rental Reimbursement

We will provide Rental Reimbursement and Additional Expense coverage only for those Physical Damage coverages for which a premium is shown in the Declarations or schedule pages. Coverage applies only to a covered "auto".

- (1) We will pay for auto rental expense and the expense incurred by you because of "loss" to remove and transfer your materials and equipment from a covered "auto" to a covered "auto." Payment applies in addition to the otherwise applicable coverage you have on a covered "auto." No deductible applies to this coverage.
- (2) We will pay only for expenses incurred during the policy period and beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
 - (a) The number of days reasonably required to repair or replace the covered "auto." If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you, or
 - (b) 30 days.
- (3) Our payment is limited to the lesser of the following amounts:
 - (a) Necessary and actual expenses incurred; or
 - (b) \$75 per day.
 - (c) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
 - (d) If "loss" results from the total theft of a covered "auto" of the private passenger or light truck type, we will pay under this coverage only that amount of your rental reimbursement expense which is not already provided for under the **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, a. Transportation Expenses.**

(Personal Effects Coverage)

e. Personal Effects

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$500 for Personal Effects stolen with the "auto". The insurance provided under this provision is excess over any other collectible insurance. For this coverage extension, Personal Effects means tangible property that is worn or carried by an "insured".

(Personal Property of Others)

f. Personal Property of Others

We will pay up to \$500 for loss to personal property of others in or on your covered "auto." This coverage applies only in the event of "loss" to your covered "auto" caused by fire, lightning, explosion, theft, mischief or vandalism, the covered "auto's" collision with another object, or the covered "auto's" overturn. No deductibles apply to this coverage.

(Locksmith Coverage)

g. Locksmith Coverage

We will pay up to \$250 per occurrence for necessary locksmith services for keys locked inside a covered private passenger "auto". The deductible is waived for these services.

(Vehicle Wrap Coverage)

h. Vehicle Wrap Coverage

If you have Comprehensive or Collision coverage on an "auto" that is a total loss, in addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

(Airbag Accidental Discharge)

F. SECTION III – PHYSICAL DAMAGE COVERAGE, B. Exclusions is amended at **3.** to include the following language:

If you have purchased Comprehensive or Collision Coverage under this policy, this exclusion does not apply to mechanical breakdown relating to the accidental discharge of an air bag. This coverage applies only to a covered auto you own and is excess of any other collectible insurance or warranty. No deductible applies to this coverage.

G. BROADENED LIMITS OF INSURANCE

(Audio, Visual and Data Electronic Equipment Coverage)

SECTION III – PHYSICAL DAMAGE COVERAGE – C. Limit of Insurance at **1.b.** is amended to provide the following limits:

- b.** Limits of \$1,000 per "loss" is increased to \$5,000 per "loss". All other terms and provisions of this section remain applicable.

(Auto Loan/Lease Total Loss Protection)

SECTION III – PHYSICAL DAMAGE COVERAGE – C. Limit of Insurance is amended by adding the following language:

- 4.** In the event of a total "loss" to a covered "auto" shown in the Schedule pages, subject at the time of the "loss" to a loan or lease, we will pay any unpaid amount due including up to a maximum of \$500 for early termination fees or penalties on the lease or loan for a covered "auto" less:
 - a.** The amount paid under the Physical Damage Coverage Section of the policy; and
 - b.** Any:
 - (1) Overdue lease / loan payments at the time of the "loss";
 - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (3) Security deposits not returned by the lessor;
 - (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - (5) Carry-over balances from previous loans or leases.

(Glass Repair – Deductible Amendment)

H. GLASS REPAIR – DEDUCTIBLE

SECTION III – PHYSICAL DAMAGE COVERAGE – D. Deductible is amended by adding the following:

Any deductible shown in the Declarations as applicable to the covered "auto" will not apply to glass breakage if the damaged glass is repaired, rather than replaced.

(Amended Duties in the Event of Accident, Claim, Suit or Loss)

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

Under **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions**, the following is added to paragraph **2. Duties In The Event of Accident, Suit or Loss**:

- d. Knowledge of any "accident", "claim", "suit" or "loss" will be deemed knowledge by you when notice of such "accident", "claim", "suit" or "loss" has been received by:
 - (1) You, if you are an individual;
 - (2) Any partner or insurance manager if you are a partnership;
 - (3) An executive officer or insurance manager, if you are a corporation;
 - (4) Your members, managers or insurance manager, if you are a limited liability company; or
 - (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization.

(Waiver of Subrogation by Contract)

J. WAIVER OF SUBROGATION REQUIRED BY CONTRACT

Under **SECTION IV, BUSINESS AUTO CONDITIONS, A. Loss Conditions 5. Transfer of Rights of Recovery Against Others to Us** the following language is added:

However, we waive any rights of recovery we may have against the person or organization with whom you have agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under the policy to which this endorsement is attached. This provision does not apply unless the written contract or written agreement has been executed, or permit has been issued, prior to the "bodily injury" or "property damage."

(Unintentional Failure to Disclose)

K. UNINTENTIONAL FAILURE TO DISCLOSE

Under **SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions**, the following is added to **2. Concealment, Misrepresentation Or Fraud**:

Your unintentional error in disclosing, or failing to disclose, any material fact existing at the effective date of this Coverage Form, or during the policy period in connection with any additional hazards, will not prejudice your rights under this Coverage Form.

(Hired, Leased, Rented or Borrowed Auto Physical Damage)

L. HIRED, LEASED, RENTED OR BORROWED AUTO PHYSICAL DAMAGE

Under **SECTION IV – BUSINESS AUTO CONDITIONS B. General Conditions 5. Other Insurance** Paragraph 5.b. is replaced by the following:

- b. (1) For "Comprehensive" and "Collision" Auto Physical Damage coverage provided by this endorsement, the following are deemed to be covered "autos" you own:
 - (a) Any Covered "auto" you lease, hire, rent or borrow; and
 - (b) Any Covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto"

(2) Limit of Insurance For This Section

The most we will pay for any one "loss" is the lesser of the following:

- (a) \$75,000 per accident, or
- (b) actual cash value at the time of loss, or
- (c) cost of repair.

Minus a \$500 deductible. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss. No deductible applies to "loss" caused by fire or lightning.

(3) This Hired Auto Physical Damage coverage is excess over any other collectible insurance.

(4) Definitions For This Section

- (a) Comprehensive Coverage: from any cause except the covered "auto's" collision with another object or the covered "auto's" overturn. We will pay glass breakage, "loss" caused by hitting a bird or animal and, "loss" caused by falling objects or missiles.
- (b) Collision Coverage: caused by the covered "auto's" collision with another object or by the covered "auto's" overturn.

(Mental Anguish)

M. MENTAL ANGUISH

Under **SECTION V – DEFINITIONS**, **C.** is replaced by the following:

C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including mental anguish or death resulting from bodily injury, sickness, or disease.

(Extended Cancellation Condition)

N. EXTENDED CANCELLATION CONDITION

Under **CANCELLATION**, of the **COMMON POLICY CONDITIONS** form, item **2.b.** is replaced by the following:

- b.** 60 days before the effective date of cancellation if we cancel for any other reason.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

PREMIUM 400

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured described in Paragraph 1. or 2. above.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

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

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

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

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. 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 is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

PREMIUM 1,100

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION WHOM YOU HAVE AGREED TO NAME	LOCATIONS DESIGNATED AND DESCRIBED IN THE ABOVE
AS ADDITIONAL INSURED BY WRITTEN CONTRACT OR AGREEMENT	MENTIONED WRITTEN CONTRACT OR AGREEMENT
IF THE CONTRACT OR AGREEMENT IS EXECUTED PRIOR TO LOSS	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

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

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

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

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

ANY PERSON OR ORGANIZATION YOU HAVE AGREED TO NAME AS ADDI-
TIONAL INSURED BY WRITTEN CONTRACT OR AGREEMENT IF THE CON-
TRACT OR AGREEMENT IS EXECUTED PRIOR TO LOSS.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

PREMIUM 200

LIMITED EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT**COMMERCIAL GENERAL LIABILITY EXTENSION ENDORSEMENT SUMMARY OF COVERAGES**

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary.

- * Extended Property Damage
- * Expanded Fire Legal Liability to include Explosion, Lightning and Sprinkler Leakage
- * Coverage for non-owned watercraft is extended to 51 feet in length
- * Property Damage - Borrowed Equipment PREMIUM 200
- * Property Damage Liability - Elevators
- * Coverage D - Voluntary Property Damage Coverage
\$5,000 Occurrence with a \$10,000 Aggregate
- * Coverage E - Care, Custody and Control Property Damage Coverage
\$25,000 Occurrence with a \$100,000 Aggregate - \$500 Deductible
- * Coverage F - Electronic Data Liability Coverage - \$50,000
- * Coverage G - Product Recall Expense
\$25,000 Each Recall Limit with a \$50,000 Aggregate - \$1,000 Deductible
- * Coverage H - Water Damage Legal Liability - \$25,000
- * Coverage I - Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program - Limited Coverage
- * Increase in Supplementary Payments: Bail Bonds to \$1,000
- * Increase in Supplementary Payments: Loss of Earnings to \$500
- * For newly formed or acquired organizations - extend the reporting requirement to 180 days
- * Broadened Named Insured
- * Automatic Additional Insured - Vendors
- * Automatic Additional Insured - Lessor of Leased Equipment Automatic Status When Required in Lease Agreement With You
- * Automatic Additional Insured - Managers or Lessor of Premises
- * Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured
- * Additional Insured - State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations
- * Additional Insured - Consolidated Insurance Program (Wrap-Up) Off-Premises Operations Only - Owners, Lessees or Contractors Automatic Status When Required in Construction Agreement With You
- * Additional Insured - Employee Injury to Another Employee
- * Automatically included - Aggregate Limits of Insurance (per location)
- * Automatically included - Aggregate Limits of Insurance (per project)
- * Knowledge of occurrence - Knowledge of an "occurrence", "claim or suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee
- * Blanket Waiver of Subrogation
- * Liberalization Condition
- * Unintentional failure to disclose all hazards. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.
- * "Insured Contract" redefined for Limited Railroad Contractual Liability
- * Mobile equipment to include snow removal, road maintenance and street cleaning equipment less than 1,000 lbs GVW
- * Bodily Injury Redefined

REFER TO THE ACTUAL ENDORSEMENT FOLLOWING ON PAGES 2 THROUGH 12 FOR CHANGES AFFECTING YOUR INSURANCE PROTECTION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I - COVERAGES

A. The following changes are made at **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

1. Extended Property Damage

At **2. Exclusions** exclusion **a. Expected or Intended Injury** is replaced with the following:

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

2. Expanded Fire Legal Liability

At **2. Exclusions** the last paragraph is deleted and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of this owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE.**

3. Non-Owned Watercraft

At **2. Exclusions** exclusion **g. Aircraft, Auto Or Watercraft (2)(a)** is deleted and replaced by the following:

(a) Less than 51 feet long;

4. Property Damage – Borrowed Equipment

At **2. Exclusions** the following is added to paragraph **(4)** of exclusion **j. Damage To Property:**

This exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and while not being used to perform operations. The most we will pay for "property damage" to any one piece of borrowed equipment under this coverage is \$25,000 per occurrence. The insurance afforded under this provision is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

5. Property Damage Liability – Elevators

At **2. Exclusions** the following is added to paragraphs **(3), (4)** and **(6)** of exclusion **j. Damage To Property:**

This exclusion does not apply to "property damage" resulting from the use of elevators. However, any insurance provided for such "property damage" is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

B. The following coverages are added:

1. COVERAGE D - VOLUNTARY PROPERTY DAMAGE COVERAGE

"Property damage" to property of others caused by the insured:

- a.** While in your possession; or
- b.** Arising out of "your work".

Coverage applies at the request of the insured, whether or not the insured is legally obligated to pay.

For the purposes of this **Voluntary Property Damage Coverage** only:

Exclusion j. Damage to Property is deleted and replaced by the following:

j. **Damage to Property**

"Property damage" to:

- (1) Property held by the insured for servicing, repair, storage or sale at premises you own, rent, lease, operate or use;
- (2) Property transported by or damage caused by any "automobile", "watercraft" or "aircraft" you own, hire or lease;
- (3) Property you own, rent, lease, borrow or use.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

For the purposes of this Voluntary Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.

2. COVERAGE E - CARE, CUSTODY AND CONTROL PROPERTY DAMAGE COVERAGE

For the purpose of this **Care, Custody and Control Property Damage Coverage** only:

- a. Item (4) of **Exclusion j.** does not apply.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

For the purposes of this Care, Custody and Control Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.

3. COVERAGE F - ELECTRONIC DATA LIABILITY COVERAGE

For the purposes of this **Electronic Data Liability Coverage** only:

- a. **Exclusion p. of Coverage A – Bodily Injury And Property Damage Liability** in **Section I – Coverages** is replaced by the following:

2. Exclusions

This insurance does not apply to:

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

However, this exclusion does not apply to liability for damages because of "bodily injury".

- b. **"Property Damage"** means:

- (1) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- (2) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or
- (3) Loss of, loss of use of, damage to, corruption of, inability to access or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this **Electronic Data Liability Coverage**, "electronic data" is not tangible property.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

4. COVERAGE G - PRODUCT RECALL EXPENSE

- a. **Insuring Agreement**

- (1) We will pay 90% of "product recall expense" you incur as a result of a "product recall" you initiate during the coverage period.
- (2) We will only pay for "product recall expense" arising out of "your products" which have been physically relinquished to others.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

b. Exclusions

This insurance does not apply to "product recall expense" arising out of:

- (1) Any fact, circumstance or situation which existed at the inception date of the policy and which you were aware of, or could reasonably have foreseen that would have resulted in a "product recall".
- (2) Deterioration, decomposition or transformation of a chemical nature, except if caused by an error in the manufacture, design, processing, storage, or transportation of "your product".
- (3) The withdrawal of similar products or batches that are not defective, when a defect in another product or batch has been found.
- (4) Acts, errors or omissions of any of your employees, done with prior knowledge of any of your officers or directors.
- (5) Inherent vice, meaning a natural condition of property that causes it to deteriorate or become damaged.
- (6) "Bodily Injury" or "Property Damage".
- (7) Failure of "your product" to accomplish its intended purpose, including any breach of warranty of fitness, quality, efficacy or efficiency, whether written or implied.
- (8) Loss of reputation, customer faith or approval, or any costs incurred to regain customer market, or any other consequential damages.
- (9) Legal fees or expenses.
- (10) Damages claimed for any loss, cost or expense incurred by you or others for the loss of use of "your product".
- (11) "Product recall expense" arising from the "product recall" of any of "your products" for which coverage is excluded by endorsement.
- (12) Any "product recall" initiated due to the expiration of the designated shelf life of "your product".

5. COVERAGE H - WATER DAMAGE LEGAL LIABILITY

The Insurance provided under Coverage H (Section I) applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

The Limit under this coverage shall not be in addition to the Damage To Premises Rented To You Limit. The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

6. COVERAGE I – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

The following exclusion is added to Paragraph 2. **Exclusions** of **SECTION I – COVERAGES COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

- r. This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" for any "consolidated (Wrap-up) insurance program" which has been provided by the prime contractor / project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not a consolidated (Wrap-up) insurance program:

- a. Provides coverage identical to that provided by this Coverage Part; or
- b. Has limits adequate to cover all claims.

This exclusion does not apply if a "consolidated (Wrap-up) insurance program" covering your operations has been cancelled, non-renewed or otherwise no longer applies for reasons other than exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

For purposes of this exclusion a "consolidated (wrap-up) insurance program" is a program providing insurance coverage to all parties for exposures involved with a particular (typically major) construction project.

C. SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is amended:**1. To read SUPPLEMENTARY PAYMENTS****2. Bail Bonds**

Item 1.b. is amended as follows:

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

3. Loss of Earnings

Item 1.d. is amended as follows:

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

4. The following language is added to Item 1.

However, we shall have none of the duties set forth above when this insurance applies only for **Voluntary Property Damage Coverage** and/or **Care, Custody or Control Property Damage Coverage** and we have paid the Limit of Liability or the Aggregate Limit for these coverages.

SECTION II - WHO IS AN INSURED**A. The following change is made:****Extended Reporting Requirements**

Item 3.a. is deleted and replaced by the following:

- a.** Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. The following provisions are added:**4. BROAD FORM NAMED INSURED**

Item 1.f. is added as follows:

- f.** Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period only if there is no other similar insurance available to that entity. However:
 - (1)** Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired more than 50 percent of the voting stock; and
 - (2)** Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired more than 50 percent of the voting stock.

5. Additional Insured - Vendors

- a.** Any person(s) or organization(s) (referred to throughout this additional coverage as vendor), but only with respect to "bodily injury" or "property damage", which may be imputed to that person(s) or organization(s) arising out of "your products" shown with the Schedule which are distributed or sold in the regular course of the vendor's business is an insured.

However:

- (1)** The insurance afforded to such vendor only applies to the extent permitted by law; and
- (2)** If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.
- b.** With respect to the insurance afforded to these vendors, the following additional exclusions apply:
 - (1)** This insurance afforded the vendor does not apply to:
 - (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b)** Any express warranty unauthorized by you;

- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of products.
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product.
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - i. The exceptions contained in Sub-paragraphs d. or f.; or
 - ii. Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

6. Additional Insured – Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You

- a. Any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to your liability for "bodily injury", "property damage" or "personal and advertising injury" directly arising out of the maintenance, operation or use of equipment leased to you, which may be imputed to such person or organization as the lessor of equipment.

However, the insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

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

7. Additional Insured – Managers or Lessors of Premises

- a. Any person(s) or organization(s), but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

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

8. Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured

- a. Any architects, engineers or surveyors who are not engaged by you are insureds, but only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" which may be imputed to that architect, engineer or surveyor arising out of:

(1) Your acts or omissions; or

(2) Your acts or omissions of those acting on your behalf;

in the performance of your ongoing operations performed by you or on your behalf.

But only if such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

However, the insurance afforded to such additional insured:

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

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

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies: This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

(2) Supervisory, inspection or engineering services.

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

9. Additional Insured - State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations

Any state or governmental agency or subdivision or political subdivision is an insured, subject to the following provisions:

- a. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

(1) The insurance afforded to such additional insured only applies to the extent permitted by law; and

(2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- b. This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or

(2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

10. Additional Insured Consolidated Insurance Program (Wrap-Up) Off-Premises Operations Only - Owners, Lessees or Contractors

- a. Any persons or organizations for whom you are performing operations, for which you have elected to seek coverage under a Consolidated Insurance Program, when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy is an insured. Such person or organization is an additional insured only with respect to your liability which may be imputed to that person or organization directly arising out of your ongoing operations performed for that person or organization at a premises other than any project or location that is designated as covered under a Consolidated Insurance Program. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies.

This insurance does not apply to:

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

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

11. Additional Insured - Employee Injury to Another Employee

With respect to your "employees" who occupy positions which are supervisory in nature:

Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED** is amended to read:

- a. "Bodily injury" or "personal and advertising injury"
 - (1) To you, to your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
 - (2) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph **(1)(a)** above; or
 - (3) Arising out of his or her providing or failing to provide professional healthcare services. Paragraph **3.a.** is deleted.

For the purpose of this Item **11** only, a position is deemed to be supervisory in nature if that person performs principle work which is substantially different from that of his or her subordinates and has authority to hire, direct, discipline or discharge.

SECTION III - LIMITS OF INSURANCE

A. The following Items are deleted and replaced by the following:

2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage **C**;
 - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage **B**; and
 - d. Damages under Coverage **H**.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" and Coverage **G**.
6. Subject to **5.** above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage while rented to you or temporarily occupied by you with permission of the owner.

B. The following are added:

8. Subject to Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE** \$25,000 is the most we will pay under Coverage **H** for **Water Damage Legal Liability**.
9. **Coverage G - Product Recall Expense**
 Aggregate Limit \$50,000
 Each Product Recall Limit \$25,000
 - a. The Aggregate Limit shown above is the most we will pay for the sum of all "product recall expense" you incur as a result of all "product recalls" you initiate during the endorsement period.

- b. The Each Product Recall Limit shown above is the most we will pay, subject to the Aggregate and \$1,000 deductible, for "product recall expense" you incur for any one "product recall" you initiate during the endorsement period.

We will only pay for the amount of Product Recall Expenses which are in excess of the deductible amount. The deductible applies separately to each Product Recall. The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount. Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

10. Aggregate Limits of Insurance (Per Location)

The General Aggregate Limit applies separately to each of your "locations" owned by or rented to you or temporarily occupied by you with the permission of the owner.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

11. Aggregate Limits of Insurance (Per Project)

The General Aggregate Limit applies separately to each of your projects away from premises owned by or rented to you.

- 12. With respects to the insurance afforded to additional insureds afforded coverage by items 5 through 11 of **SECTION II – WHO IS AN INSURED** above, the following is added:

The most we will pay on behalf of the additional insured is the amount of insurance:

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

Whichever is less.

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

- 13. Subject to 5. of **SECTION III – LIMITS OF INSURANCE**, a \$5,000 "occurrence" limit and a \$10,000 "aggregate" limit is the most we will pay under Coverage A for damages because of "property damage" covered under **Coverage D - Voluntary Property Damage Coverage**.

For the purposes of this Voluntary Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.

- 14. Subject to 5. of **SECTION III – LIMITS OF INSURANCE**, a \$25,000 "occurrence" limit and a \$100,000 "aggregate" limit is the most we will pay under **Coverage E - Care, Custody and Control Coverage** regardless of the number of:

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

Deductible - Our obligation to pay damages on your behalf applies only to the amount of damages in excess of \$500.

This deductible applies to all damages because of "property damage" as the result of any one "occurrence" regardless of the number of persons or organizations who sustain damages because of that "occurrence".

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

As respects this coverage "Aggregate" is the maximum amount we will pay for all covered "occurrences" during one policy period.

For the purposes of this Care, Custody and Control Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.

15. Subject to 5. of **SECTION III – LIMITS OF INSURANCE**, the most we will pay for “property damage” under **Coverage F - Electronic Data Liability Coverage** for loss of “electronic data” is \$50,000 without regard to the number of “occurrences”.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

A. The following conditions are amended:

1. Knowledge of Occurrence

a. Condition 2., Items a. and b. are deleted and replaced by the following:

(1) Duties In The Event Of Occurrence, Offense, Claim Or Suit

(a) You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. Knowledge of an "occurrence" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee. To the extent possible, notice should include:

- i. How, when and where the "occurrence" took place;
- ii. The names and addresses of any injured persons and witnesses, and
- iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

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

- i. Immediately record the specifics of the claim or "suit" and the date received; and
- ii. Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable. Knowledge of a claim or "suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee.

2. Where **Broad Form Named Insured** is added in **SECTION II – WHO IS AN INSURED** of this endorsement, Condition 4. **Other Insurance b. Excess Insurance (1).(a)** is replaced by the following:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to an insured solely by reason of ownership by you of more than 50 percent of the voting stock, and not withstanding any other language in any other policy. This provision does not apply to a policy written to apply specifically in excess of this policy.

B. The following are added:

10. Condition (5) of 2.c.

(5) Upon our request, replace or repair the property covered under Voluntary Property Damage Coverage at your actual cost, excluding profit or overhead.

11. Blanket Waiver Of Subrogation

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of: premises owned or occupied by or rented or loaned to you, ongoing operations performed by you or on your behalf, done under a contract with that person or organization, “your work”, or “your products”. We waive this right where you have agreed to do so as part of a written contract, executed by you before the “bodily injury” or “property damage” occurs or the “personal and advertising injury” offense is committed.

12. Liberalization

If a revision to this Coverage Part, which would provide more coverage with no additional premium becomes effective during the policy period in the state designated for the first Named Insured shown in the Declarations, your policy will automatically provide this additional coverage on the effective date of the revision.

13. Unintentional Failure to Disclose All Hazards

Based on our reliance on your representations as to existing hazards, if you unintentionally should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

14. The following conditions are added in regard to Coverage G - Product Recall Expense

In event of a "product recall", you must

- a. See to it that we are notified as soon as practicable of a "product recall". To the extent possible, notice should include how, when and where the "product recall" took place and estimated "product recall expense".
- b. Take all reasonable steps to minimize "product recall expense". This will not increase the limits of insurance.
- c. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. Your answers must be signed.
- d. Permit us to inspect and obtain other information proving the loss. You must send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request.
- e. Cooperate with us in the investigation or settlement of any claim.
- f. Assist us upon our request, in the enforcement of any rights against any person or organization which may be liable to you because of loss to which this insurance applies.

15. Limited Railroad Contractual Liability

The following conditions are applicable only to coverage afforded by reason of the redefining of an "insured contract" in the **DEFINITIONS** section of this endorsement:

- a. Railroad Protective Liability coverage provided by ISO form CG 0035 with minimum limits of \$2,000,000 per occurrence and a \$6,000,000 general aggregate limit must be in place for the entire duration of any project.
- b. Any amendment to the Other Insurance condition of form CG 0035 alters the primacy of the coverage or which impairs our right to contribution will rescind any coverage afforded by the redefined "insured contract" language.
- c. For the purposes of the Other Insurance condition of form CG 0035 you, the named insured, will be deemed to be the designated contractor.

SECTION V – DEFINITIONS

A. At item 12. Mobile Equipment the wording at **f.(1)** is deleted and replaced by the following:

f.(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

except for such vehicles that have a gross vehicle weight less than 1,000 lbs which are not designed for highway use.

B. Item 3. "bodily injury" is deleted and replaced with the following:

3. "bodily injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

C. Item 9. "Insured Contract" c. is deleted and replaced with the following:

- c. Any easement or license agreement;

D. Item 9. "Insured Contract" f.(1) is deleted

E. The following definitions are added for this endorsement only:

23. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tape drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

24. "Product recall" means a withdrawal or removal from the market of "your product" based on the determination by you or any regulatory or governmental agency that:

- a. The use or consumption of "your product" has caused or will cause actual or alleged "bodily injury" or "property damage"; and
- b. Such determination requires you to recover possession or control of "your product" from any distributor, purchaser or user, to repair or replace "your product", but only if "your product" is unfit for use or consumption, or is hazardous as a result of:
 - (1) An error or omission by an insured in the design, manufacturing, processing, labeling, storage, or transportation of "your product"; or
 - (2) Actual or alleged intentional, malicious or wrongful alteration or contamination of "your product" by someone other than you.

25. "Product recall expense" means reasonable and necessary expenses for:

- a. Telephone, radio and television communication and printed advertisements, including stationery, envelopes and postage.
- b. Transporting recalled products from any purchaser, distributor or user, to locations designated by you.
- c. Remuneration paid to your employees for overtime, as well as remuneration paid to additional employees or independent contractors you hire.
- d. Transportation and accommodation expense incurred by your employees.
- e. Rental expense incurred for temporary locations used to store recalled products.
- f. Expense incurred to properly dispose of recalled products, including packaging that cannot be reused.
- g. Transportation expenses incurred to replace recalled products.
- h. Repairing, redistributing or replacing covered recalled products with like products or substitutes, not to exceed your original cost of manufacturing, processing, acquisition and/or distribution.

These expenses must be incurred as a result of a "product recall".

POLICY NUMBER:

85315640

FORMS SUPPLEMENTAL DECLARATIONS

The following coverage form(s) govern coverage that is not limited to any specific state even though they are specifically listed in only one state in the declarations.

Premium

Applicable to the state of Texas

*CG2010(12-19)	ADDL INSURED-OWNERS LESSEES/CONTRACTORS-SCHEDULED	100
*CG2010(12-19)	ADDL INSURED-OWNERS LESSEES/CONTRACTORS-SCHEDULED	100
*CG2010.(07-04)	ADDL INSURED-OWNER/LESSEE/CONTRACTOR-SCHEDULED	150
CG2010(10-01)	ADDL INSD-OWNERS/LESSEES/CONTRACTORS/SCHEDULED	200
*CG2037(12-19)	ADDL INSURED-OWNER/LESSEE/CONTRACTOR-COMPLETED OPR	100
*CG2037(12-19)	ADDL INSURED-OWNER/LESSEE/CONTRACTOR-COMPLETED OPR	1,100
*CG2037.(07-04)	ADDL INSURED-OWNER/LESSEE/CONTRACTOR-COMPLETED OPR	250
CG2037(10-01)	ADDL INSURED-OWNER/LESSEE/CONTRACTOR-COMPLETED OPR	300
*CG2038(12-19)	ADDL INSURED-OWNERS LESSEES/CONTRACTORS-AUTOMATIC	400
*CG2417(10-01)	CONTRACTUAL LIAB-RAILROADS	350
*CG7280(07-17)	LIMITED EXTENDED ULTRA LIAB PLUS END	200

Other Forms

Applicable to the state of Texas

CG0001(04-13)	COMM GENERAL LIAB COVG FORM
CG0103(06-06)	TX-CHGS
*CG0205(12-04)	TX-CHGS AMENDMENT OF CANCEL PROVISIONS/COVG CHG
CG2001(12-19)	PRIMARY & NONCONTRIBUTORY-OTHER INSURANCE
CG2106(05-14)	EXCL-ACCESS/DISCLOSURE OF CONFIDENTIAL/PERSONAL
CG2132-(05-09)	COMMUNICABLE DISEASE EXCL
CG2167(12-04)	FUNGI/BACTERIA EXCL
CG2175(01-15)	EXCL OF CERTIFIED ACTS OF TERRORISM & EXCL OF
CG2196(03-05)	SILICA/SILICA-RELATED DUST EXCL
CG2234(04-13)	EXCL-CONST MANAGEMENT E&O
CG2279(04-13)	EXCL-CONTRACTORS-PROFESSIONAL LIAB
CG2639(12-07)	TX-CHGS EMPLOYMENT RELATED PRACTICES EXCL
CG2856(11-13)	TX-CHGS-CANCEL & NONRENEW
*CG4010(12-19)	EXCLUSION-CROSS SUITS LIAB
CG4015(12-20)	CANNABIS EXCL WITH HEMP EXCEPTION
*CG7001(03-23)	COMMERCIAL GENERAL LIABILITY COVERAGE PART
*CG7004(02-05)	COMM GENERAL LIABILITY SUPPLEMENTAL DECLARATIONS
CG7012(07-10)	SPECIAL EVENTS EXCL END
CG7110(04-05)	LIMITED POLLUTION COVERAGE-WORK SITES-TEXAS
CG7115(09-01)	EXCL-EXTERIOR INSULATION & FINISH SYSTEMS
CG7125(02-12)	PROPERTY DAMAGE DEDUCTIBLE LIABILITY INSURANCE
IL0017(11-98)	COMMON POLICY CONDITIONS
IL0021(09-08)	NUCLEAR ENERGY LIAB EXCL END
IL0168(03-12)	TX-CHGS DUTIES
IL0275(11-13)	TX-CHGS-CANCEL & NONRENEW PROVISIONS FOR CASUALTY
IL7068(01-10)	EXCL-LEAD-HAZARDOUS PROPERTIES
IL7069(01-10)	EXCL-UNDERGROUND STORAGE TANKS
IL7070(09-12)	ABSOLUTE ASBESTOS EXCL
IL7095(01-20)	INTERNET SECURITY & PRIVACY INSURANCE END

POLICY NUMBER:

85315640

FORMS SUPPLEMENTAL DECLARATIONS

Other Forms

IL7147(01-20)	ONLINE BANKING THEFT INSURANCE END
*IL7177(08-22)	ABSOLUTE PFAS EXCLUSION
*SPECEND(00-00)	SPECIAL END
*ST-1403(09-01)	EXTERIOR INSULATION & FINISH SYSTEMS EXCLUSION
*ST1347(08-06)	WORK PERFORMED BY SUBCONTRACTORS NOTICE
*ST1435-(08-04)	TX-NOTICE GL EXCL ASBESTOS
*ST1436-(08-04)	TX-NOTICE GL EXCL LEAD
*ST1544(01-10)	TX-EXCL UNDERGROUND STORAGE TANKS
*ST1644-(01-12)	POLICY WEBSITE STUFFER
*ST1681(06-22)	TX-NOTICE-RISK CONTROL INFORMATION
*ST1813(01-20)	IMPORTANT NOTICE-INTERNET SECURITY & PRIVACY
*ST1882(06-16)	NOTICE-LOCATION & PREMISES CLARIFICATION
*ST1947(11-19)	TX-NOTICE-HAVE A COMPLAINT OR NEED HELP?
*ST1965(01-21)	NOTICE TO POLICYHOLDERS-COMMUNICABLE DISEASE EXCL
*ST2003(11-21)	NOTICE OF PREM AUDIT NONCOMPLIANCE CHARGE
*UW7009(01-15)	CONTINUATION OF NAMED INSUREDS SHOWN ON THE DEC

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

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

2. Operations: All Texas operations

3. Premium:

The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
This endorsement, effective on 11/1/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001207539 of Texas Mutual Insurance Company effective on 11/1/23

Issued to: BRAZOS PAVING INC

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

10/27/23

Workers' Compensation and Employer's Liability Policy

Extension of Information Page

Item 3: Endorsement Schedule

Agent copy

Policy number 0001207539
Issue date 10/27/23
Policy period 11/1/23 to 11/1/24

State	Endorsement	Description
42	TM LRC 2008	Limited Reimbursement for Texas Employees Injured in Other Jurisdictions
42	TM MV 2011	Mutuals - Membership and Voting Notice
42	TM PC 2003	Policy Conditions Endorsement
42	WC 00 00 00 C	Policy Conditions Form
42	WC 00 00 01 B	Policy Coverage Document (Declarations Page)
42	WC 00 03 01	Alternate Employer Endorsement
42	WC 00 03 02	Designated Workplaces Exclusion Endorsement
42	WC 00 04 06	Premium Discount Endorsement
42	WC 00 04 14 A	Notification of Change in Ownership Endorsement
42	WC 00 04 22 C	Terrorism Risk Insurance Act Coverage Endorsement
42	WC 00 04 25	Experience Rating Modification Factor Revision Endorsement
42	WC 42 03 01 L	Texas Amendatory Endorsement
42	WC 42 03 04 B	Blanket Texas Waiver of Our Right To Recover from Others Endorsement
42	WC 42 04 04 A	Group Purchase of Workers' Compensation Insurance Endorsement
42	WC 42 04 08 A	Network Discount Endorsement
42	WC 42 06 01	Specific Texas Notice of Material Change Endorsement

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
 (The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
 This endorsement, effective on 11/1/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001207539 of Texas Mutual Insurance Company effective on 11/1/23

Issued to: BRAZOS PAVING INC



This is not a bill

Authorized representative

NCCI Carrier Code: 29939

10/27/23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CHANGES - AMENDMENT OF CANCELLATION PROVISIONS OR COVERAGE CHANGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

In the event of cancellation or material change that reduces or restricts the insurance afforded by this Coverage Part, we agree to mail prior written notice of cancellation or material change to:

SCHEDULE

1.	Name: PER SCHEDULE ON FILE
2.	Address: CANCELLATION FOR NONPAYMENT OF PREMIUM 10 DAYS
3.	Number of days advance notice: 30 DAYS
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

EXHIBIT D
PLANS AND SPECIFICATIONS

If the plans and specifications from the RFP/CSP are not physically inserted here, then they are fully incorporated into this contract by reference.

INVITATION TO BID 24-055 IS INCORPORATED IN THIS CONTRACT BY REFERENCE

EXHIBIT E
CONSTRUCTION SCHEDULE

Substantial completion is 180 days from notice to proceed.

CONTRACTOR'S PROPOSAL

Date: 05/21/2024

PROPOSAL FROM: Brazos 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 construction of the Drainage Improvements at Milliff Road and Redmond Drive and to perform the work required for the construction of said Drainage Improvements at Milliff Road and Redmond Drive at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

Please type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Please initial all corrections and do not round totals.

In submitting this Proposal, it is understood that this Proposal may not be altered or withdrawn for ninety (90) days, and that the Owner has reserved the right to reject any and all Proposals.

The Undersigned certifies that this Proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering Proposals on this work, for the following sum or prices to wit:

BASE PROPOSAL: Stipulated Total Bid of: (\$ 1,289,729.59)

CALENDAR DAYS: Total number of calendar days to substantial completion is 180 days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: 1

CONTRACTOR NAME: Brazos Paving Inc.

CONTRACTOR SIGNATURE: 
Billy Hewitt Sr. V.P.

City of College Station
ITB 24-055 Drainage Improvements @ Milliff Rd Redmond Dr
Bid Opening Tuesday, May 21, 2024 at 2:00p.m. CT

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
GENERAL ITEMS					
1	1	LS	Mobilization, construction staking, bonds and insurance as required in the specifications.	\$80,000.00	\$ 80,000.00

Subtotal: General Items \$ 80,000.00

REMOVALS					
2	374	SY	Remove asphalt pavement and stabilized base as shown on plans & specifications and dispose offsite, to include all material, labor and equipment to complete the work.	\$13.65	\$ 5,105.10
3	113	SY	Remove and haul various concrete pavements per plans & specifications and dispose offsite, to include all material, labor and equipment to complete the work.	\$32.25	\$ 3,644.25
4	30	SY	Remove sidewalks as shown on plans & specifications and dispose offsite, to include all material, labor and equipment to complete the work.	\$60.00	\$ 1,800.00
5	174	LF	Remove pedestrian rail as shown on plans & specifications and dispose offsite, to include all material, labor and equipment to complete the work.	\$21.25	\$ 3,697.50
6	236	LF	Remove and haul curb and gutter per plans & specifications and dispose offsite, to include all material, labor and equipment to complete the work.	\$17.75	\$ 4,189.00
7	4	EA	Remove inlet as shown on plans & specifications and dispose offsite to include all material, labor and equipment to complete the work.	\$1,590.00	\$ 6,360.00
8	267	LF	Remove 60" reinforced concrete culvert pipe as shown on plans & specifications and dispose offsite to include all material, labor and equipment to complete the work.	\$45.00	\$ 12,015.00
9	4	EA	Remove headwall and wingwalls as shown on plans & specifications and dispose offsite to include all material, labor and equipment to complete the work.	\$6,000.00	\$ 24,000.00
10	1	LS	Clearing and grubbing in ROW and drainage easement per plans & specifications and dispose offsite, all material, labor and equipment to complete the work.	\$5,150.00	\$ 5,150.00
11	61	LF	Remove 6" cast iron water line as shown on plans & specifications and dispose offsite, to include all material, labor and equipment to complete the work.	\$22.50	\$ 1,372.50
12	88	LF	Remove 16" ductile iron water line as shown on plans & specifications and dispose offsite, to include all material, labor and equipment to complete the work.	\$40.00	\$ 3,520.00
13	39	LF	Remove 6" ductile iron sewer line as shown on plans & specifications to include all material, labor and equipment to complete the work.	\$26.74	\$ 1,042.86

Subtotal: Removals \$ 71,896.21

ROADWAY & EARTHWORK					
14	374	SY	Install 2" thick HMA, Type D, as shown on plans & specifications, including all material, labor and equipment to complete the work, complete in-place.	\$25.00	\$ 9,350.00
15	374	SY	Install 4" thick HMA, Type B, as shown on plans & specifications, including all material, labor and equipment to complete the work, complete in-place.	\$40.00	\$ 14,960.00
16	478	SY	Install 6" thick chemically stabilized subgrade treatment to be determined by the testing firm, to include proof-rolling, sprinkling, rolling, and stabilization material, all material, labor and equipment to complete the work, complete in-place.	\$18.00	\$ 8,604.00
17	155	LF	Install typical combined curb & gutter (ST1-01) as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$35.00	\$ 5,425.00

Subtotal: Roadway and Earthwork \$ 38,339.00

DRAINAGE					
18	88	CY	Excavation (in situ) of material to meet design grades of drainage channel, including hauling, stockpiling, and disposing of excess, to include all material, labor and equipment to complete the work.	\$36.50	\$ 3,212.00
19	157	CY	Haul in and place select fill material (in situ) for drainage channel, condition and compact to design standards, to include all material, labor and equipment to complete the work.	\$50.00	\$ 7,850.00
20	258	LF	Furnish and Install 7' x 6' reinforced concrete box, precast including rubber gasket joints, with structural backfill as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$1,850.00	\$ 477,300.00
21	1	EA	Furnish and Install concrete headwall with flared wingwall assemblies, 9.5' headwall height, as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$52,240.00	\$ 52,240.00
22	1	EA	Furnish and Install concrete headwall with flared wingwall assemblies, 10' headwall height, as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$50,810.00	\$ 50,810.00
23	2	EA	Furnish and Install concrete headwall with flared wingwall assemblies, 11' headwall height, as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$49,720.00	\$ 99,440.00
24	118	LF	Furnish and Install pedestrian rail (SW1-01) with black powder coating as shown on plans & specifications, in include all materials, labor and equipment to complete the work, complete in-place.	\$325.00	\$ 38,350.00
25	88	SY	Furnish and Install 6" thick concrete riprap as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place per (D2-00).	\$103.50	\$ 9,108.00

City of College Station
ITB 24-055 Drainage Improvements @ Milliff Rd Redmond Dr
Bid Opening Tuesday, May 21, 2024 at 2:00p.m. CT

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
26	291	SY	Furnish and Install 18" grouted riprap as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place per (TxDOT SRR).	\$168.00	\$ 48,888.00
27	8	EA	Furnish and Install 5' curb inlet structures, all depths, ring & cover, and plate, with structural backfill, as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$8,520.00	\$ 68,160.00
28	4	EA	Furnish and Install 10' curb inlet structures, all depths, including (4) extension(s), ring & cover, and plate, with structural backfill, as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$13,360.00	\$ 53,440.00
29	87	LF	Trench Safety for Drainage Structures	\$2.25	\$ 195.75

Subtotal: Drainage \$ 908,993.75

WATER					
30	63	LF	Furnish and Install 6" diameter DR14 C-900 PVC water pipe by open cut with structural backfill, as shown on plans & specifications, to include all materials (including restrained joints, tracer wire, and snake pit access), testing, disinfection, labor and equipment to complete the work, complete in-place.	\$111.35	\$ 7,015.05
31	92	LF	Furnish and Install 16" diameter DR14 C-905 PVC water pipe by open cut with structural backfill, as shown on plans & specifications, to include all materials (including restrained joints, tracer wire, and snake pit access), testing, disinfection, labor and equipment to complete the work, complete in-place.	\$274.24	\$ 25,230.08
32	36	LF	Furnish and install 14" steel casing, 3/8" thick, (excluding carrier pipe) as shown on plans & specifications, to include spacers, neoprene seal, and all materials, labor and equipment to complete the work, complete in-place.	\$240.00	\$ 8,640.00
33	36	LF	Furnish and install 24" steel casing, 3/8" thick, (excluding carrier pipe) as shown on plans & specifications, to include spacers, neoprene seal, and all materials, labor and equipment to complete the work, complete in-place.	\$340.00	\$ 12,240.00
34	6	EA	Furnish and Install 6"- 45° MJ Bend with thrust blocking as shown on plans & specifications to include all material, labor and equipment to complete the work, complete in-place.	\$1,230.00	\$ 7,380.00
35	4	EA	Furnish and Install 16"- 45° MJ Bend with thrust blocking as shown on plans & specifications to include all material, labor and equipment to complete the work, complete in-place.	\$2,750.00	\$ 11,000.00
36	2	EA	Furnish and Install 6" MJ Gate Valve, extensions, and box with thrust blocking, per plans & specifications to include all material, labor and equipment to complete the work, complete and in place, complete in-place.	\$2,970.00	\$ 5,940.00
37	2	EA	Furnish and Install 16" MJ Gate Valve, extensions, and box with thrust blocking, per plans & specifications to include all material, labor and equipment to complete the work, complete and in place, complete in-place.	\$18,285.00	\$ 36,570.00
38	155	LF	Trench Safety for Water line	\$2.25	\$ 348.75
39	4	EA	Connect to existing waterline, all sizes, as shown on plans & specifications to include all required fittings, adapters, etc., all material, labor and equipment to complete the work.	\$2,500.00	\$ 10,000.00

Subtotal: Water \$ 124,363.88

SEWER					
40	39	LF	Furnish and Install 6" diameter ductile iron sewer pipe by aerial installation with restrained joints and pipe support bracket (1 EA), as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$194.75	\$ 7,595.25
41	2	EA	Connect to existing sewer as shown on plans & specifications to include all required fittings, adapters, etc., all material, labor and equipment to complete the work.	\$3,712.00	\$ 7,424.00
42	1	LS	Furnish and provide all by-pass pumping during the installation of the sanitary sewer system including temporary fittings, plugs, boots, and wet well pumping. To include all materials, labor and equipment to complete the work, complete in-place.	\$6,765.00	\$ 6,765.00
43	185	LF	TV Sewer Inspection per 33 01 30.13	\$8.50	\$ 1,572.50

Subtotal: Sewer \$ 23,356.75

EROSION CONTROL					
44	1	LS	File notice of intent and storm water pollution prevention plan with TCEQ, maintain and post all project information and keep records and report to inspector and engineer. Furnish, install, maintain and remove all sediment control devices including inlet protection (100 LF), construction entrance and exits (2 EA), rock filter dams (90 LF), and sediment control fencing (187 LF).	\$9,500.00	\$ 9,500.00
45	1	LS	Hydro mulch disturbed areas (estimated 231 SY) including smoothing, 4" topsoil, grading, fertilizer, watering, maintenance and clean-up as shown on plans & specifications, complete in-place.	\$4,500.00	\$ 4,500.00
46	1	LS	Block sod disturbed areas (estimated 136 SY) including smoothing, 4" topsoil, fertilizer, watering, maintenance and clean-up as shown on plans & specifications, complete in-place.	\$3,500.00	\$ 3,500.00

City of College Station
 ITB 24-055 Drainage Improvements @ Milliff Rd Redmond Dr
 Bid Opening Tuesday, May 21, 2024 at 2:00p.m. CT

ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
<i>Subtotal: Erosion Control</i>					\$ 17,500.00
TCP					
47	1	LS	Furnish and Install and Remove all traffic control devices (TCP) to incl: all striping, barricades, and temporary signage required for the TCP as shown on plans & specifications, to include all materials, labor and equipment to complete the work, complete in-place.	\$25,280.00	\$ 25,280.00

Subtotal: TCP \$ 25,280.00

Per addendum #1

Total Bid \$1,289,729.59

June 27, 2024
Item No. 7.1.

Sponsor: Bryan Woods, City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding Amazon Prime Air and Federal Aviation Administration (FAA) regulations.

Relationship to Strategic Goals:

Neighborhood Integrity

Diverse and Growing Economy

Good Governance

Recommendation(s): It is recommended Council consider the item.

Summary: The FAA has opened a comment period to gather input regarding Amazon Prime Air. This item was requested by the Council to consider composing an official City response to the FAA. The comment period closes June 28th.

Budget & Financial Summary:

Attachments:

None

June 27, 2024
Item No. 8.1.
Morgan's Lane CPA

Sponsor: Jesse Dimeolo

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan Future Land Use and Character Map from Urban Residential to General Commercial for approximately three acres, generally located at 116 and 120 Morgan's Lane.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): Staff recommends approval of the Comprehensive Plan Future Land Use and Character Map amendment. This item was heard at the June 20th Planning and Zoning Commission meeting.

Summary: The applicant is requesting an amendment to the Comprehensive Plan Future Land Use and Character Map from Urban Residential to General Commercial for approximately three acres located east of Morgan's Lane. The subject property and properties immediately adjacent to the north are primarily designated as Urban Residential on the Comprehensive Plan Future Land Use and Character Map, while the properties to the south and west are General Commercial. This Comprehensive Plan Amendment is in preparation for a rezoning of the property to allow for additional commercial options in the area. It is the applicant's intent to develop offices and self-storage on the subject property.

REVIEW CRITERIA

1. Changed or changing conditions in the subject area of the City:

The subject property and properties immediately adjacent to the north are designated as Urban Residential. The Urban Residential land use designation is generally for areas that are appropriate for a range of high-density multifamily and attached residential development in various forms including townhomes, apartment buildings, mixed-use buildings, and limited non-residential uses that are compatible with the surrounding area.

The properties to the south and west are designated as General Commercial. These properties General Commercial areas are concentrated areas of commercial activities that cater to both nearby residents and to the larger community or region. Generally, these areas tend to be large and located along regionally significant roads. Due to their context, these areas tend to prioritize automobile mobility. This request to change the land use designation of the subject property to General Commercial would allow for the development of a largely undeveloped property with close proximity to Texas Avenue South and Harvey Mitchell Parkway.

2. Compatibility with the existing uses, development patterns, and character of the immediate area concerned, the general area, and the City as a whole:

The applicant is requesting an amendment to the Future Land Use & Character Map to General Commercial and has also requested a rezoning to General Commercial. The intent of General

Commercial is to accommodate a wide range of commercial uses and concentrate commercial development near major intersections and thoroughfares. The subject property is located at the end of Morgan's Lane, about 500 feet northeast of Texas Avenue. This area continues to experience a high amount of infill development as owners look to develop the remainder of the land between Texas Avenue and the Bee Creek Tributary to the east. This property would be compatible with existing uses, development patterns, and character of General Commercial zoned properties in the area.

The applicant held a neighborhood meeting on March 19, 2024. All property owners within 200 feet of the subject property were notified of the neighborhood meeting, and approximately four people were in attendance. Attendees expressed no concerns regarding the land use change and only had general inquiries about the project. The proposal is compatible with the character of the area as it allows for commercial development that is compatible with the surrounding area.

3. Impact on environmentally sensitive and natural areas:

A small portion in the eastern corner of the subject property is designated as FEMA floodplain. The applicant is proposing to rezone the portion to NAP Natural Areas Protected to protect the potential flood area from building development.

4. Impacts on infrastructure including water, wastewater, drainage, and the transportation network:

Water and wastewater services will be provided by the City of College Station. There is adequate water and sanitary sewer capacity to support the proposed amendment. The subject property is in the Bee Creek Drainage Basin and drains to Bee Creek Tributary A. Drainage and any other infrastructure required with the site development shall be designed and constructed in accordance with the BCS Unified Design Guidelines.

The subject property has frontage to Morgan's Lane, which is a local street. A Traffic Impact Analysis (TIA) was provided with the rezoning request and more information can be found in the rezoning staff report. The rezoning TIA determined that until the Dartmouth Street connection from Texas Avenue to Harvey Mitchell Parkway is built, the development will be limited at the site plan stage to 85% of the trips assumed to be generated by the GC General Commercial zoning district on the basis of adequate infrastructure, but the infrastructure is otherwise adequate to serve the land use change.

5. Consistency with the goals and strategies set forth in the Comprehensive Plan:

The intent of College Station's Comprehensive Plan is to create distinctive places, vibrant districts, attractive neighborhoods, revitalized gateways and corridors, and conserved natural areas. The proposed amendment to General Commercial, defined as areas that accommodate a wide range of commercial uses, is appropriate for this property as it provides infill development along a major commercial corridor of the city.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Vicinity, Aerial, and Small Area Maps
3. Background Information
4. Applicants Supporting Information
5. Comprehensive Plan Exhibit
6. Comprehensive Plan Amendment Map

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF COLLEGE STATION, TEXAS, AMENDING THE OFFICIAL CITY OF COLLEGE STATION COMPREHENSIVE PLAN BY AMENDING THE COMPREHENSIVE PLAN – FUTURE LAND USE & CHARACTER MAP FROM URBAN RESIDENTIAL TO GENERAL COMMERCIAL FOR APPROXIMATELY 3 ACRES OF LAND, GENERALLY LOCATED AT 116 AND 120 MORGANS LANE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATED THERETO.

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

PART 1: That the “Official City of College Station Comprehensive Plan” is hereby amended by adding new Subsection “E.1.e” of Exhibit “A” thereto as set out in Exhibit “A” attached hereto and made a part hereof; as set out in Exhibit “B” attached hereto and made a part hereof.

PART 2: That if any provisions of any section of this Ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.

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

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Ordinance No.4303 adopting the “Official City of College Station Comprehensive Plan” as amended, is hereby amended by adding Subsection “E.1.e” to Exhibit “A” of said plan for Exhibit “A” to read in its entirety as follows:

A. Comprehensive Plan

The Official City of College Station Comprehensive Plan (Ordinance 4303) is hereby adopted and consists of the following:

1. Plan Foundation;
2. Distinctive Places;
3. Strong Neighborhoods;
4. A Prosperous Economy;
5. Engaging Spaces;
6. Integrated Mobility;
7. Exceptional Services;
8. Managed Growth;
9. Collaborative Partnerships; and
10. Plan Implementation

B. Master Plans

The following Master Plans are hereby adopted and made a part of the Official City of College Station Comprehensive Plan:

1. The Northgate Redevelopment Plan dated November 1996;
2. The Revised Wolf Pen Creek Master Plan dated 1998;
3. Northgate Redevelopment Implementation Plan dated July 2003;
4. Bicycle, Pedestrian, and Greenways Master Plan dated January 2010;
5. Parks, Recreation, and Open Spaces Master Plan dated July 2011;
6. Medical District Master Plan dated October 2012;
7. Wellborn Community Plan dated April 2013;
8. Economic Development Master Plan dated May 2020;
9. The Water System Master Plan dated April 2017; and
10. The Wastewater System Master Plan dated April 2017.

C. Master Plan Amendments

The following Master Plan Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Expiring the East College Station Transportation Study dated May 2005 – Ordinance 4404, dated November 10, 2022.
2. Expiring the Central College Station Neighborhood Plan dated June 2010 – Ordinance 4404, dated November 10, 2022.
3. Expiring the Eastgate Neighborhood Plan dated June 2011 – Ordinance 4404, dated November 10, 2022.
4. Expiring the Southside Area Neighborhood Plan dated August 2012 – Ordinance 4404, dated November 10, 2022.
5. Expiring the South Knoll Neighborhood Plan dated September 2013 – Ordinance 4404, dated November 10, 2022.

D. Text Amendments

The following Text Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Text Amendments:
 - a. *Chapter 2. Distinctive Places* by amending the text regarding the Neighborhood Center future land use description, intent, and generally appropriate zoning districts – Ordinance 4351, dated April 28, 2022.
 - b. *Chapter 2. Distinctive Places* by amending the text regarding the Planning Areas description to remove expired plans – Ordinance 4404, dated November 10, 2022.

E. Map Amendments

The following Map Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Future Land Use & Character Map:
 - a. Approximately 5 acres of land generally located at 2354 Barron Road from Suburban Residential to Neighborhood Commercial – Ordinance 4365, dated June 23, 2022.

- b. Approximately 17 acres of land generally located at 400 Double Mountain Road from Medical to Urban Residential – Ordinance 4378, dated August 11, 2022.
 - c. Approximately 0.19 acres of land generally located at 106 Southland Street from Suburban Residential to Neighborhood Commercial – Ordinance 4388, dated September 8, 2022
 - d. Approximately 3.25 acres of land generally located west of the intersection of Nantucket Drive and State Highway 6 S from Suburban Residential and Natural and Open Areas to Neighborhood Commercial and Natural and Open Areas – Ordinance 4520, dated May 23, 2024
 - e. Approximately 3 acres of land generally located at located at 116 and 120 Morgans Lane from Urban Residential to General Commercial.
2. Planning Areas Map:
- a. Removing the Central College Station Neighborhood Plan, Eastgate Neighborhood Plan, Southside Area Neighborhood Plan, and South Knoll Neighborhood Plan – Ordinance 4404, dated November 10, 2022.

F. General

1. **Conflict.** All parts of the Comprehensive Plan and any amendments thereto shall be harmonized where possible to give effect to all. Only in the event of an irreconcilable conflict shall the later adopted ordinance prevail and then only to the extent necessary to avoid such conflict. Ordinances adopted at the same city council meeting without reference to another such ordinance shall be harmonized, if possible, so that effect may be given to each.
2. **Purpose.** The Comprehensive Plan is to be used as a guide for growth and development for the entire City and its Extraterritorial Jurisdiction (“ETJ”). The Comprehensive Plan depicts generalized locations of proposed future land uses, including thoroughfares, bicycle and pedestrian ways, parks, greenways, and waterlines, and sewer lines that are subject to modification by the City to fit local conditions and budget constraints.
3. **General nature of Future Land Use.** The Comprehensive Plan, in particular the Future Land Use & Character Map and any adopted amendments thereto, shall not be, nor be considered, a zoning map, shall not constitute zoning regulations or establish zoning boundaries, and shall not be site or parcel specific but shall be used to illustrate generalized locations.
4. **General nature of College Station Comprehensive Plan.** The Comprehensive Plan and any additions, amendments, master plans and subcategories thereto depict same in

generalized terms including future locations; and are subject to modifications by the City to fit local conditions, budget constraints, cost participation, and right-of-way availability that warrant further refinement as development occurs. Linear routes such as thoroughfares, bikeways, pedestrian ways, greenways, waterlines, and sewer lines that are a part of the Comprehensive Plan may be relocated by the City 1,000 feet from the locations shown in the Comprehensive Plan without being considered an amendment thereto.

5. **Reference.** The term College Station Comprehensive Plan includes all of the above in its entirety as if presented in full herein, and as same may from time to time be amended.

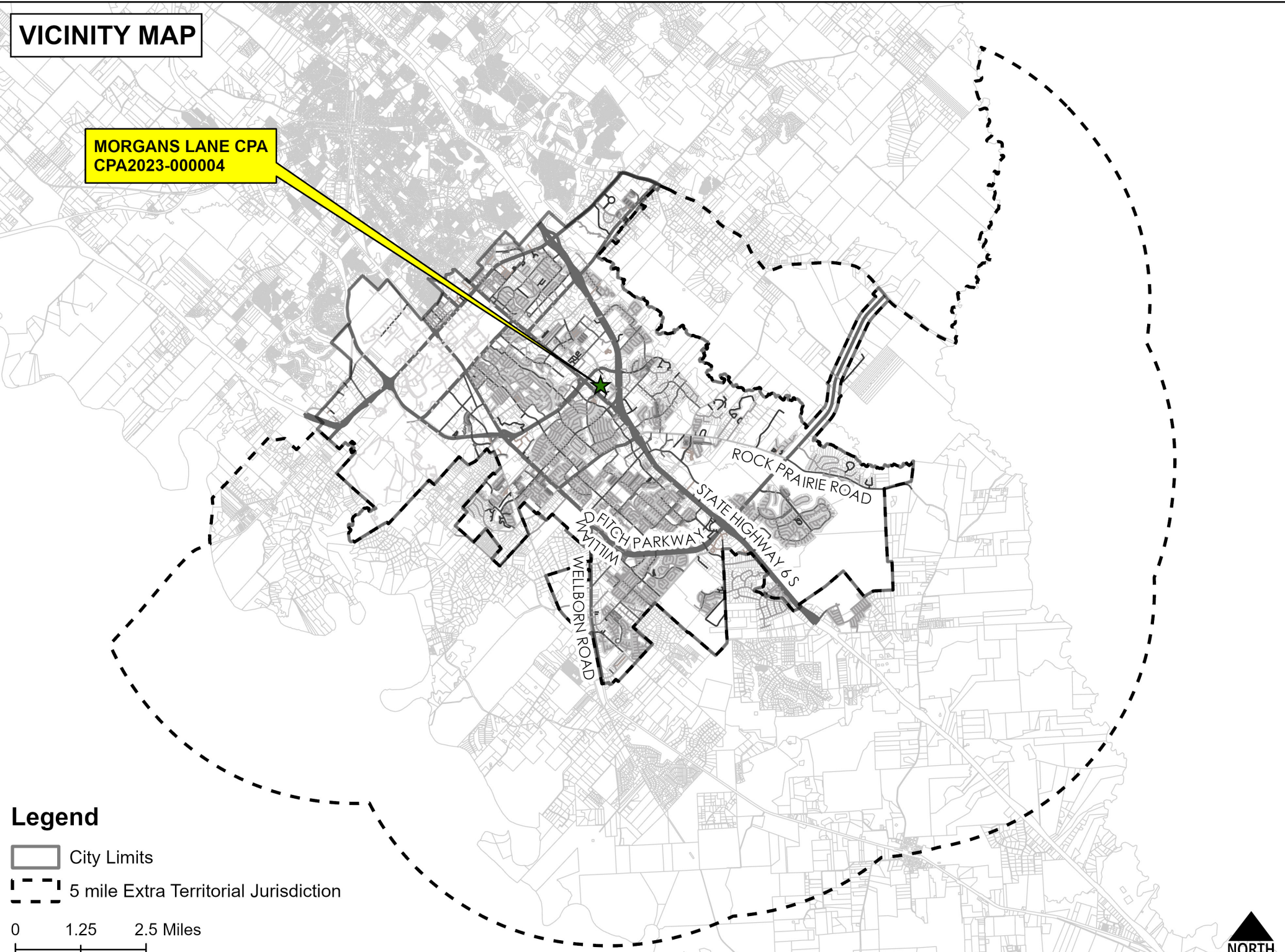
EXHIBIT B

That the “Official City of College Station Comprehensive Plan” is hereby amended by amending a portion of the map titled “Future Land Use & Character” from Urban Residential to General Commercial for the following property:



VICINITY MAP

MORGANS LANE CPA
CPA2023-000004

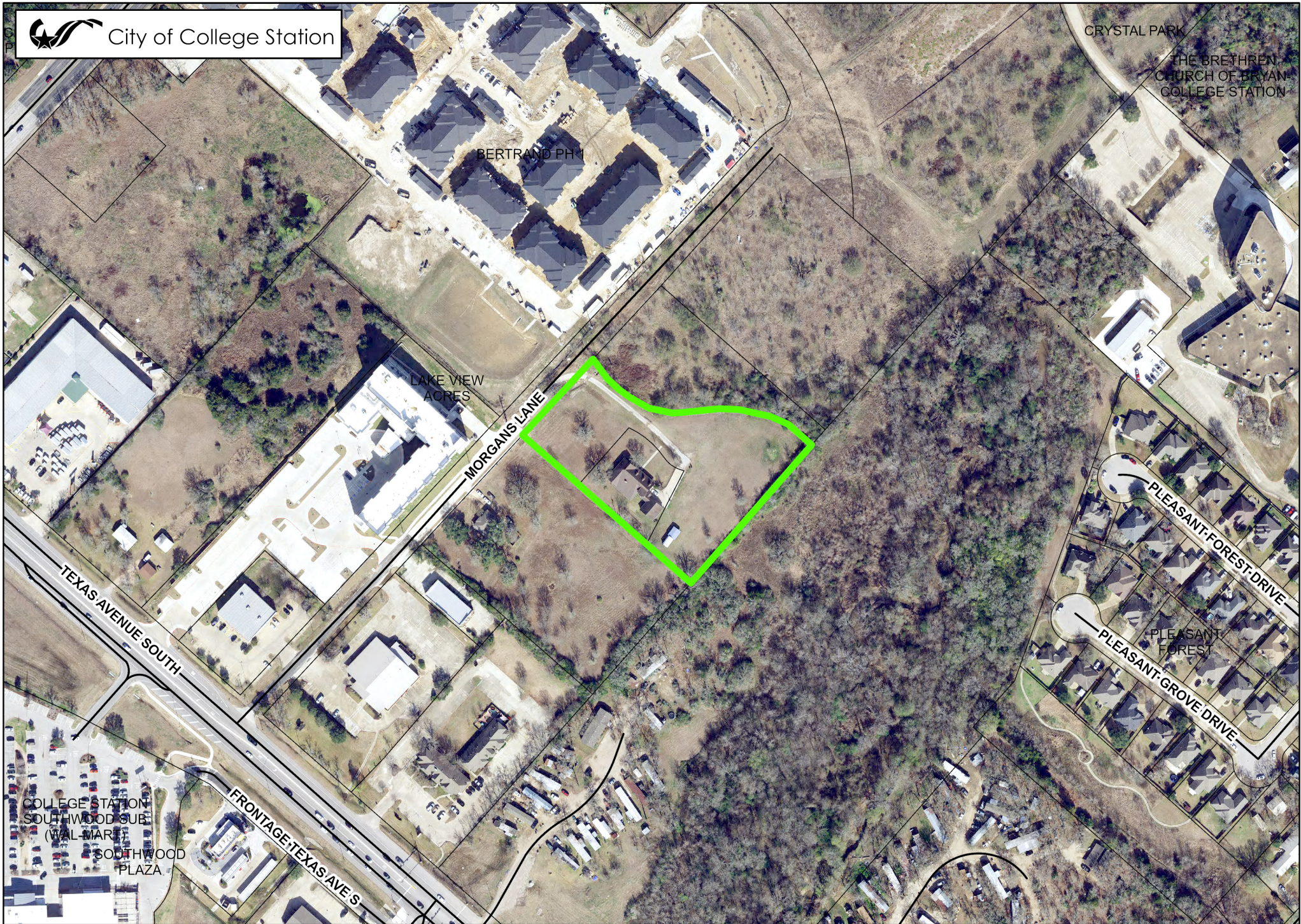


Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction

0 1.25 2.5 Miles



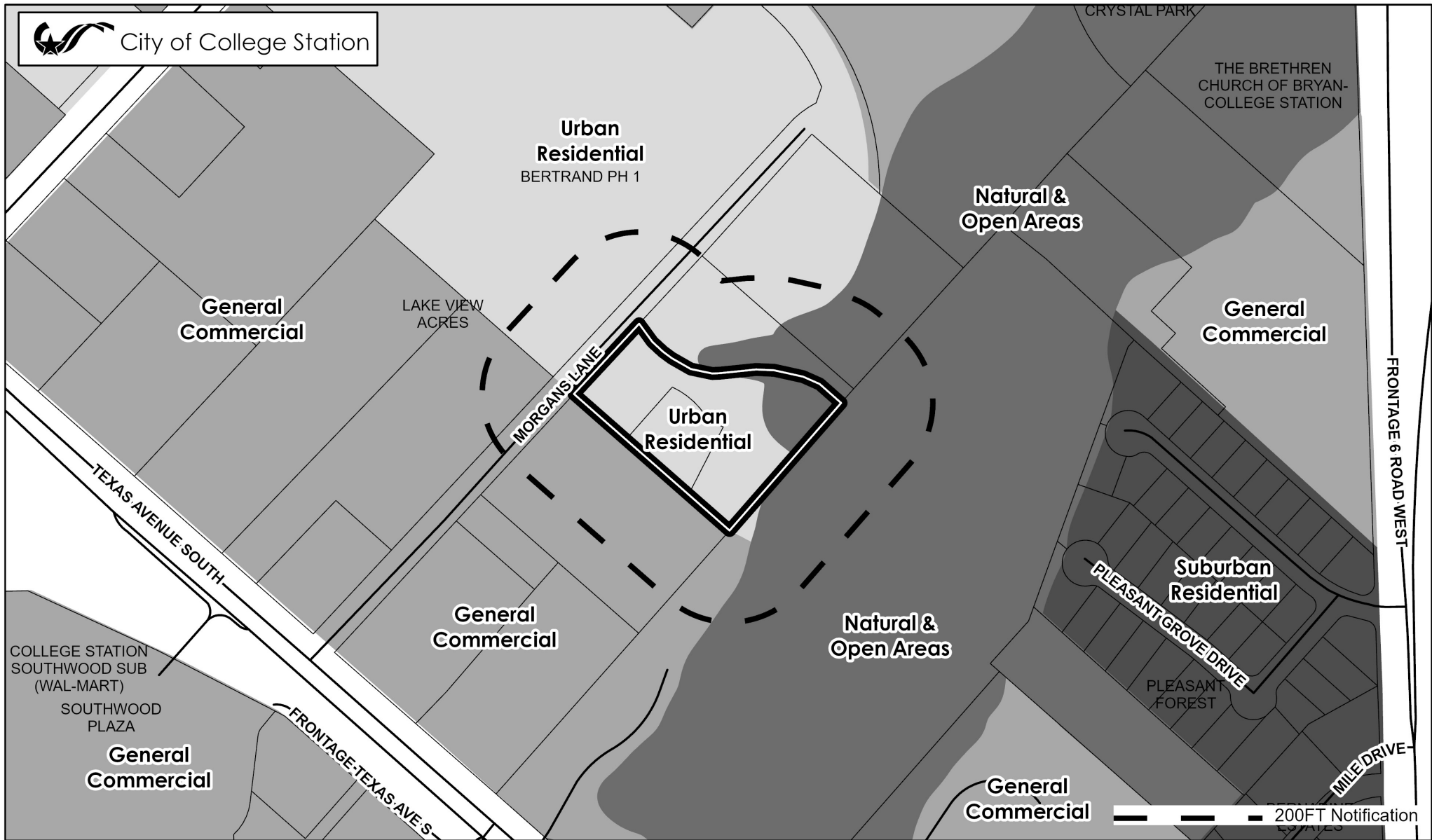


0 245 490 Feet

MORGANS LANE CPA

Case:
CPA2023-000004

**COMPREHENSIVE PLAN
AMENDMENT**



FUTURE LAND USE DISTRICTS (In Grayscale)

<u>Residential</u>	<u>Non-Residential</u>	<u>Combined Centers</u>	<u>Other</u>	<u>Wellborn</u>	
Urban Residential	General Commercial	Urban Center	Institutional/Public	Wellborn Commercial	Wellborn Estate
Mixed Residential	Neighborhood Commercial	Neighborhood Center	TAMU	Wellborn Business Park	Wellborn Estate - Open
Suburban Residential	Business Center		Parks & Greenways	Wellborn Suburban	Wellborn Preserve
Estate Residential	Medical		Natural & Open Areas	Wellborn Restricted Suburban	Wellborn Preserve - Open
Rural			Redevelopment Areas		
Neighborhood Conservation					



0 295 590 Feet

MORGANS LANE CPA

Case:
CPA2023-000004

**COMPREHENSIVE PLAN
AMENDMENT**

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: May 16, 2024

Advertised Council Hearing Date: June 13, 2024

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

None

Property owner notices mailed: 7
Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Urban Residential	MF Multi-Family	City Heights Multi-Family Apartments
South	General Commercial	O Office	Offices
East	General Commercial Natural & Open Areas	GC General Commercial	Undeveloped
West	General Commercial	GC General Commercial	Wyndham Garden Hotel

DEVELOPMENT HISTORY

Annexation: 1969
Zoning: R-1 Single Family Residential upon annexation
R-1 renamed GS General Suburban
Final Plat: Lake View Acres (1945)
Site development: Existing single-family structure



COMP PLAN APPLICATION SUPPORTING INFORMATION

Name of Project: MORGANS LANE (CPA2023-000004)

Address: 116 AND 120 MORGANS LN

Legal Description: LAKE VIEW ACRES, LOT 15 (FRONT 209' OF)

Total Acreage: 2.841

Applicant: MITCHELL & MORGAN

Property Owner: MORGANS SCOB LLC

What element of the Comprehensive Plan and at what location is requested to be amended?

Comprehensive Plan Amendment at 116 and 120 Morgans Lane

What is the amendment requested?

We request to amend the Comprehensive Land Use Plan for this property from Urban Residential to General Commercial.

What is the reason for the amendment?

We are seeking to amend College Station's Comprehensive Plan and rezone a portion of the property from Urban Residential to General Commercial to accommodate the growing demand for commercial services and foster economic development in the area. This change aligns with the city's vision for balanced urban growth and aims to provide a diverse range of businesses and services for residents and visitors alike.

How will this change be compatible with the existing uses, development patterns, and character of the immediate area concerned, the general area, and the city as a whole?

In response to the growing demand for commercial development in the area, numerous properties are undergoing transformation into commercial spaces. The decision to pursue commercial development for this specific property is influenced by its location, just off of Texas Avenue and the future extension of Dartmouth Drive, which is highly suitable and compatible for such land use.

Explain the impact on environmentally sensitive and natural areas and infrastructure, including water, wastewater, drainage and transportation network.

We recognize that a portion of this property is in an environmentally sensitive area, and we will accommodate for this area in the design of our plans and in future rezoning requests.

The infrastructure in the area, water, wastewater, electrical, drainage, and thoroughfares have been designed in anticipation of this area being developed as high-density residential uses. This general commercial use has a lower utility demand than high density residential. Dartmouth Drive is a thoroughfare that is planned to accommodate the traffic loads from commercial traffic at this location.

Explain how this change will be consistent with the goals and strategies set forth in the Comprehensive Plan.

The proposed amendment to College Station's Comprehensive Land Use Plan seeks to align the zoning of a particular property with its surrounding context. Given that the adjacent properties are already designated as General Commercial, it is appropriate to amend the land use plan on this property to commercial as well. This approach ensures consistency and compatibility with the existing commercial zone and maintains a cohesive and distinct commercial area without integrating residential elements into it.

List any other reasons to support this zone change.

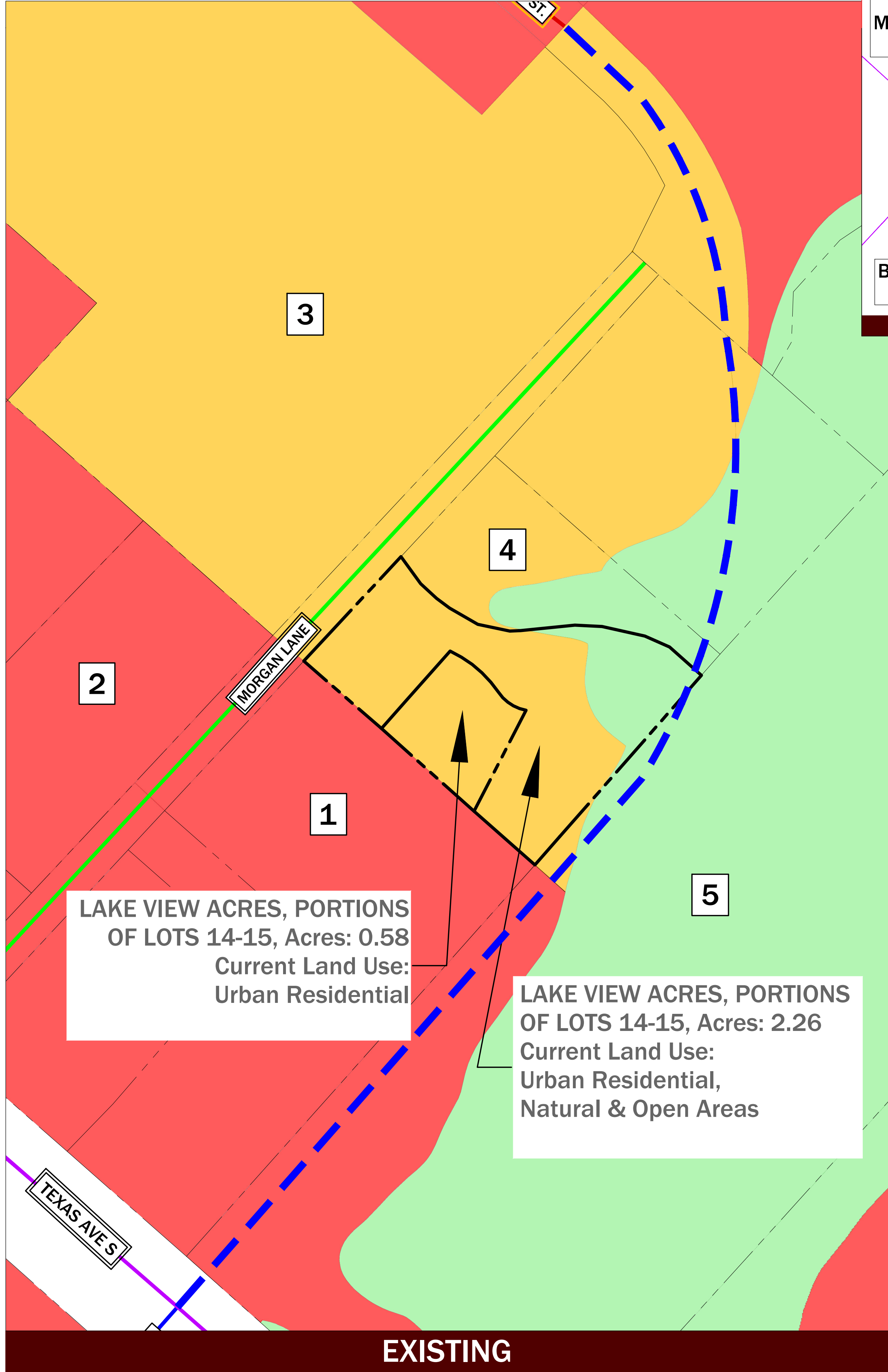
College Station's Comprehensive Plan states that their goal is "to serve as an example of a vibrant, forward-thinking, knowledge-based community that promotes the highest quality of life". One of the strategies for accomplishing this goal is to preserve the existing development pattern, while allowing opportunities for development and growth to accommodate the increasing number of people moving to the community. Allowing a commercial development at this location is contextually appropriate to the surrounding developments and will provide a much-needed supply for commercial development and retail. This development is consistent with the goals and strategies set forth in the Comprehensive Plan.

List any other additional properties.

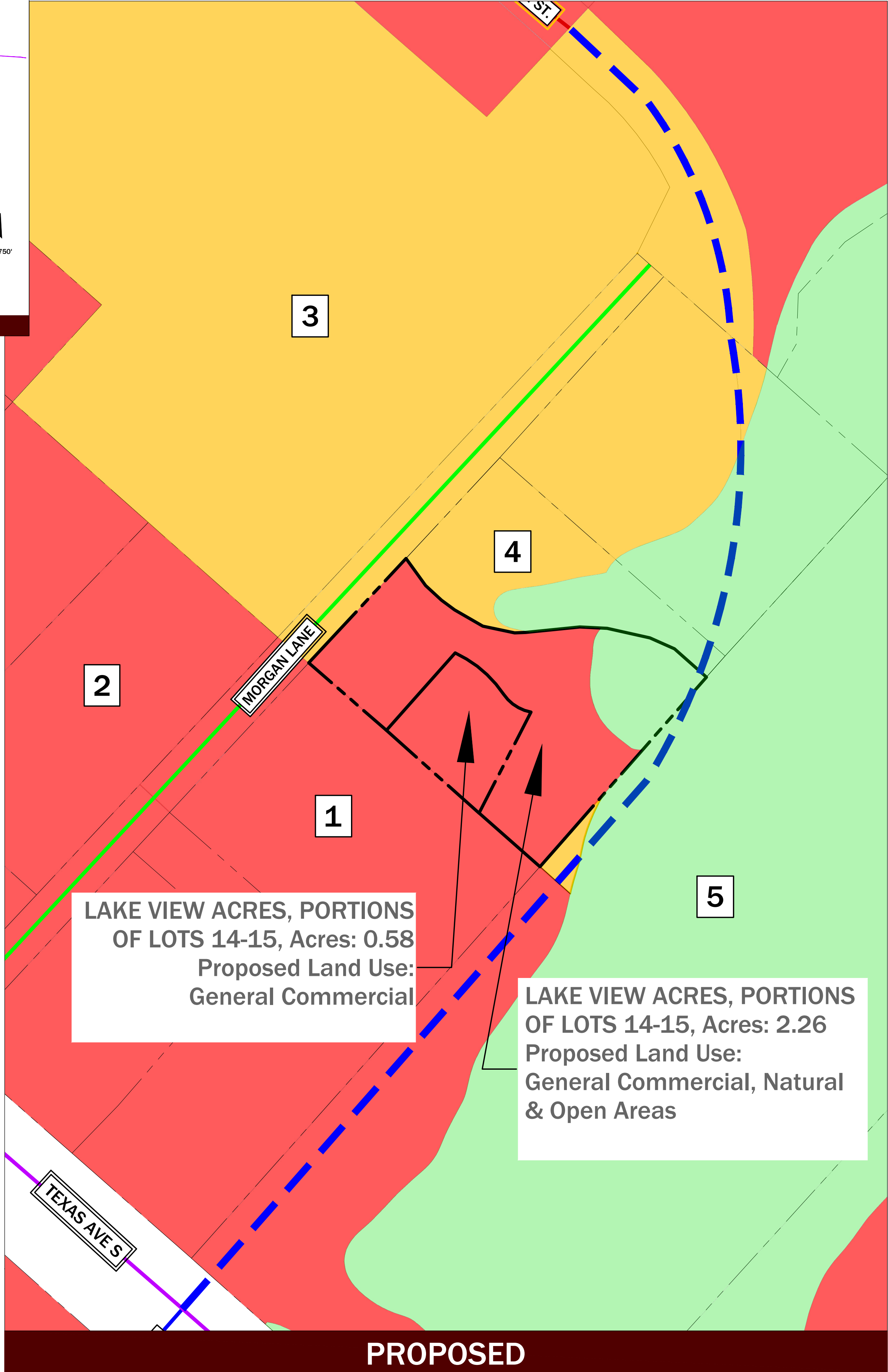
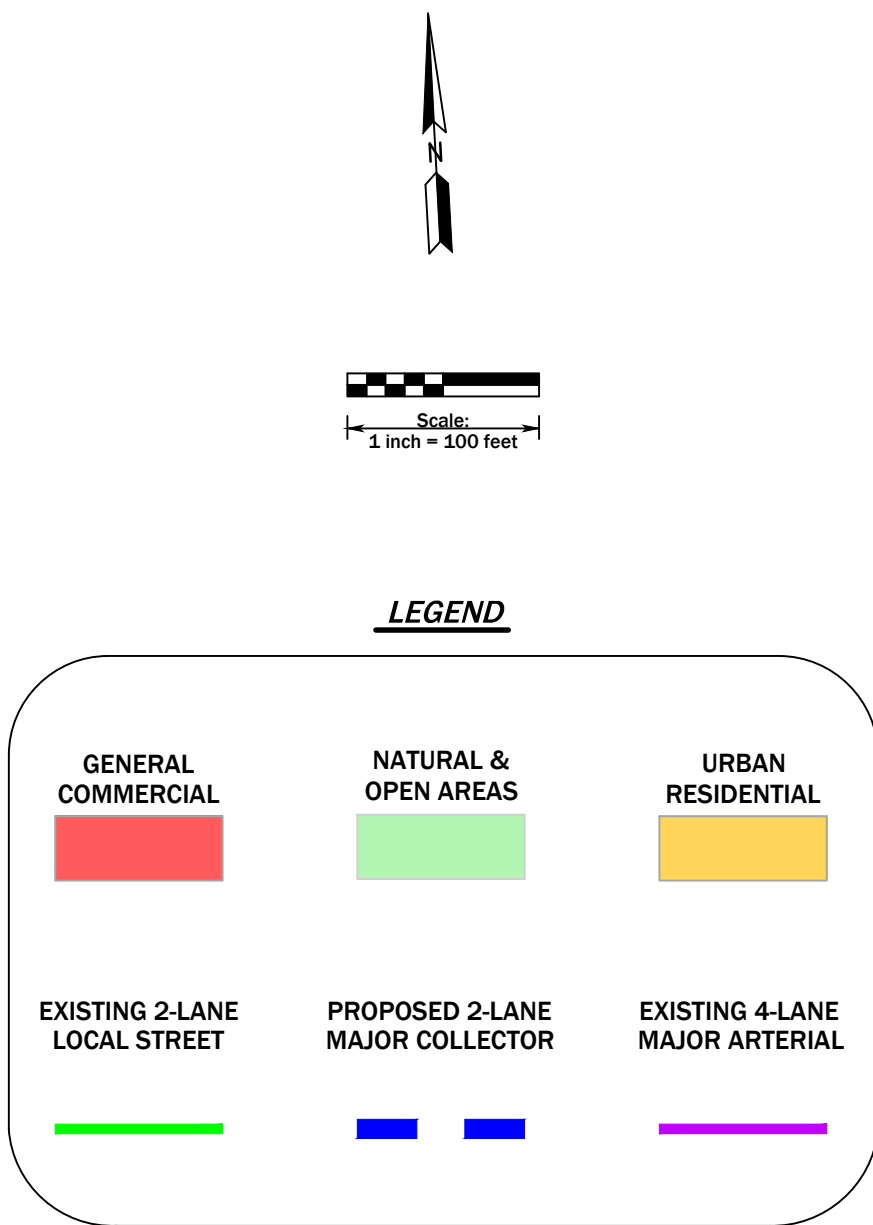
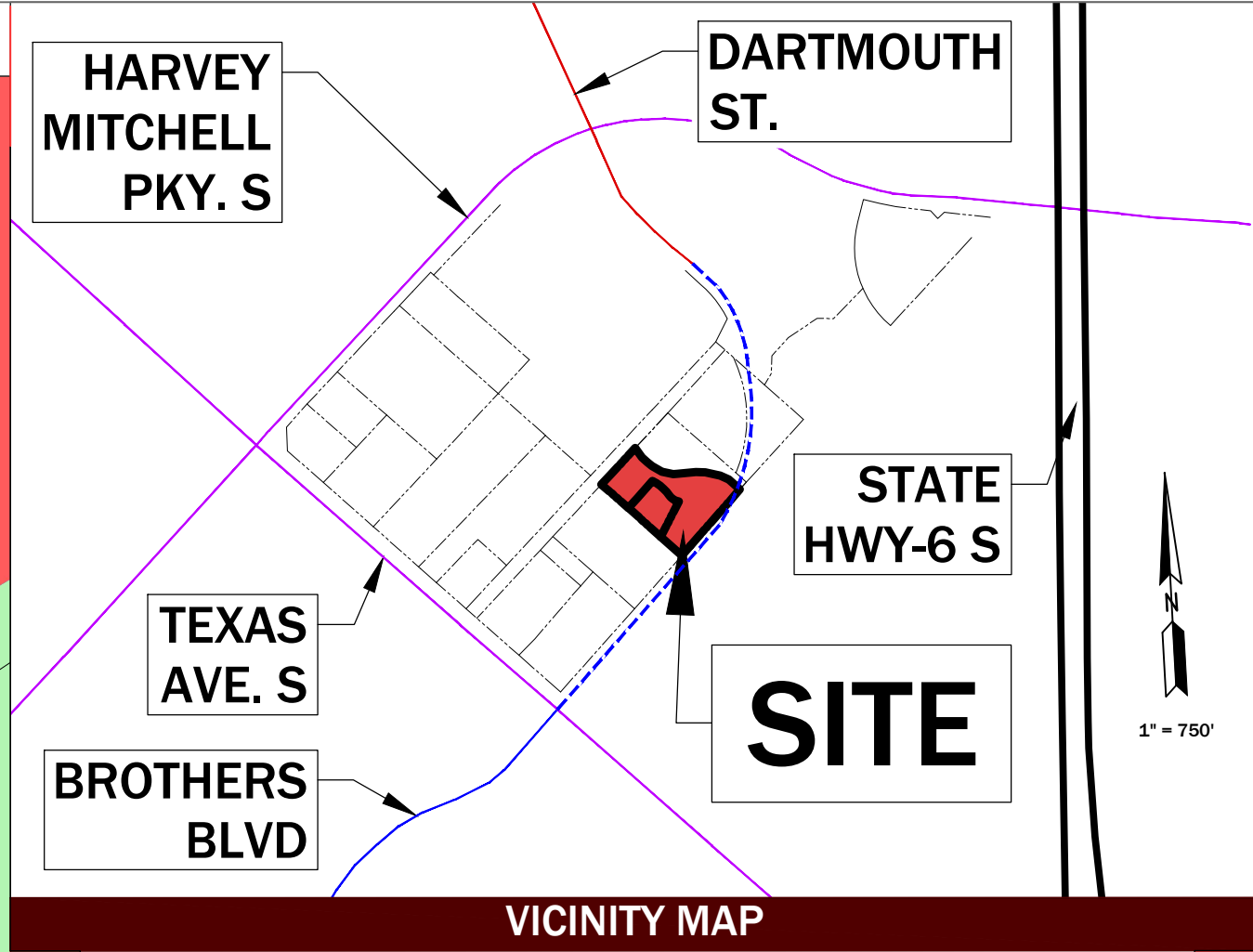
N/A

\\192.168.0.2\projects\22092- Robert Young Morgans lane property\22092 - CPA.dwg, Layout1, 10/25/2023 2:56:06 PM

PROJECT BENCHMARK:



EXISTING



PROPOSED

Number	Owner	Legal Description	Existing Land Use	Existing Zoning
1	MORGANS SCOB LLC	LAKE VIEW ACRES, LOT 15 (300' OF)	General Commercial	GS General Suburban
2	ESPANTMAN INVESTMENTS LLC	LAKE VIEW ACRES, LOT 10A1	General Commercial	GC General Commercial
3	CITY HEIGHTS ENCINO #1 LLC ET AL	BERTRAND PH 1, BLOCK 1, LOT 1R	Urban Residential	MF Multi Family
4	AGGIELAND PREGNANCY OUTREACH % SCHAMS KIM C	LAKE VIEW ACRES, LOT 14 (NE 200' OF)	Urban Residential, Natural & Open Areas	GS General Suburban
5	TAYLOR-SMARTT LLC	A004601, M RECTOR (ICL), TRACT 16, PLEASANT FOREST MHP	General Commercial, Natural & Open Areas, Urban Residential	GC General Commercial



T.979.260.6963
F.979.260.3564
TX. FIRM # F-1443

3204 EARL RUDDER FWY. S.
COLLEGE STATION, TX 77845

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For Interim Review Only
These documents are not
to be used for permit
bidding, or permit purposes.
Veronica J. Morgan, P.E.
No. 7108

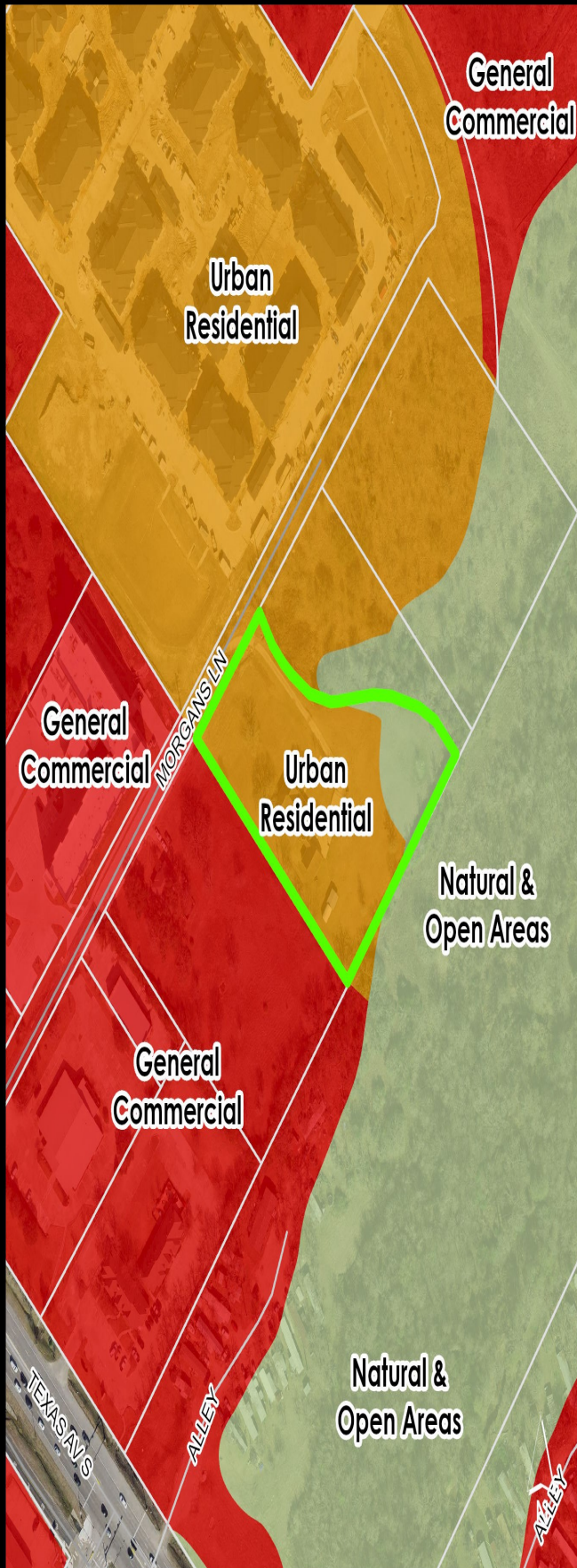
October 2023
Drawn By: TAM
Checked By: VJBM

Revisions

Comprehensive Plan
Amendment Map
Shiva Basavanna – Morgan's Lane

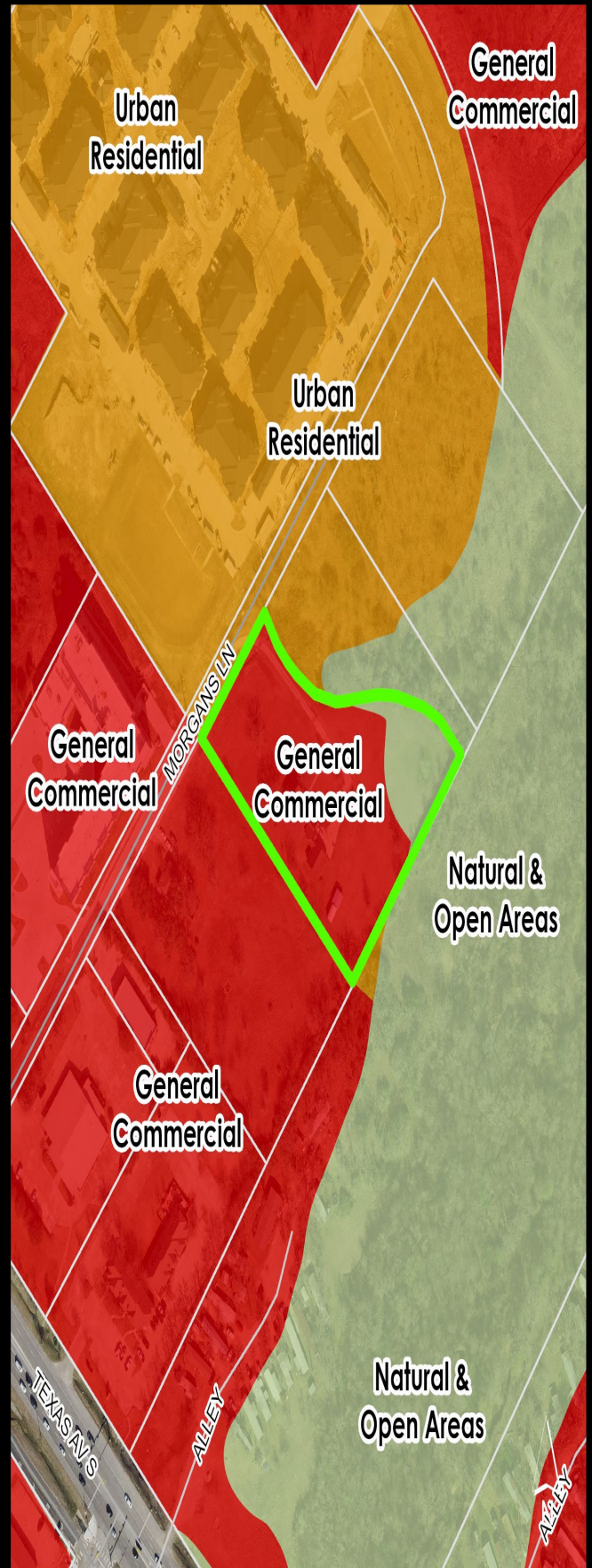
EXISTING

Future Land Use



PROPOSED

Future Land Use



June 27, 2024
Item No. 8.2.
Morgan's Lane Rezoning

Sponsor: Jesse Dimeolo

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4 "Zoning Districts," Section 4.2 "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from GS General Suburban to GC General Commercial and NAP Natural Areas Protected on approximately six acres located in the Morgan Rector League Survey, Abstract 46, generally located at 110, 116, and 120 Morgan's Lane.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): Staff recommends approval of the rezoning request. This item was heard at the June 20th Planning and Zoning Commission meeting.

Summary: This request is to rezone approximately six acres of land located on Morgan's Lane, north of Texas Avenue South, from GS General Suburban to GC General Commercial and NAP Natural Areas Protected. This zoning request is in effort to provide more retail sales and services opportunities to the area to serve the growing population of College Station. The Morgan's Lane rezoning is in conjunction with a request to amend the Comprehensive Plan Future Land Use Map from Urban Residential to General Commercial for the subject property which will need to be approved first.

REZONING REVIEW CRITERIA

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject tract is designated on the Comprehensive Plan Future Land Use and Character Map as Urban Residential and Natural and Open Areas. Urban Residential areas are appropriate for a range of high-density multifamily and attached residential development in various forms including townhomes, apartment buildings, mixed use buildings, and limited non-residential uses that are compatible with the surrounding area. Natural and Open Areas are generally areas that represent a constraint to development and that should be conserved for their natural function or open space qualities. These areas include floodplains, riparian buffers, common areas, and open space.

The applicant has submitted an amendment request for a land use change from the Urban Residential portion of the property to General Commercial. The proposed General Commercial land use designation is appropriate for concentrated areas of commercial activities that cater to both nearby residents and to the larger community or region. Generally, these areas tend to be large and located along regionally significant roads. Due to their context, these areas tend to prioritize automobile mobility. The proposed rezoning request to GC General Commercial is consistent with the amendment to the Comprehensive Plan. The proposed rezoning request to NAP Natural Areas Protected is consistent with Comprehensive Plan, existing and proposed.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is currently bordered by properties zoned GC General Commercial that have

frontage on Texas Avenue. To the north is a MF Multi-Family zoned apartment complex and an undeveloped property with three different zoning designations: R Rural, GS General Suburban, and PDD Planned Development District. Future plans for this property are limited to a list of restricted office-related uses in the PDD ordinance, the future Dartmouth Street extension over a large portion of the R Rural zoned area, and floodplain. As there is significant floodplain in the area that affects the subject tract and tracts to the north and east, NAP Natural Areas Protected is an appropriate zoning district that helps conserve the natural functions of the floodplain.

To the south is a small pocket of O Office-zoned property between larger amounts of GC General Commercial. The subject property is bordered to the north by Morgan's Lane, a small local street that currently dead ends. On the southeast border there is a future thoroughfare projection of Dartmouth Street that will project up north towards the existing, improved Dartmouth right-of-way, which starts at the secondary entrance of the multifamily development. Commercial development in this area is appropriate for the high classification of the roads in the area and the surrounding transition to commercial and higher density residential developments. Amending the zoning to GC General Commercial and NAP Natural Areas Protected is consistent with the anticipated land uses for this area.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the majority of the subject property is suitable for commercial uses. The site has adequate space to meet the minimal dimensional standards for GC General Commercial. The subject property has frontage and takes access from Morgan's Lane. Additionally, the adjacent property to the south includes the future extension of Dartmouth Street that will eventually connect Texas Avenue to Harvey Mitchell Parkway. The proposed rezoning to GC General Commercial is suitable for more intense land uses. The eastern corner of the subject property located in the FEMA flood hazard area will be rezoned to NAP Natural Areas Protected and no commercial development will occur there.

4. Whether there is available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

Domestic water and fire flow for this tract will be provided by the City of College Station. Wastewater service for this tract will also be provided by the City. There is adequate water and sanitary sewer capacity to support the proposed rezoning request. The subject property is in the Bee Creek Drainage Basin and drains to Bee Creek Tributary A. Drainage and any other infrastructure required with the site development shall be designed and constructed in accordance with the BCS Unified Design Guidelines.

The subject property has frontage to Morgan's Lane, which is a local street. A Traffic Impact Analysis (TIA) was provided with the rezoning request. The Dartmouth Street proposed thoroughfare is immediately adjacent to the subject property and runs along the southeastern border. Dartmouth Street is proposed to be a two-lane major collector. The TIA determined that until the Dartmouth Street connection from Texas Avenue to Harvey Mitchell Parkway is built, the development will be limited to 85% of the trips assumed to be generated by the GC General Commercial zoning district on the basis of adequate infrastructure. At the site planning stage, the development will also be required to construct a right turn deceleration lane at the northbound Texas Avenue approach to the Morgan's Lane intersection, regardless of if the Dartmouth Street connection is built or not.

5. The marketability of the property:

The applicant has stated that single-family uses are not marketable at this location. Single-family residential zoning was placed on the property as a placeholder following annexation in 1969. Since that time, the surrounding area has developed with higher intensity commercial, office and multi-family uses. Rezoning to allow commercial uses is anticipated to increase the marketability of the property.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Vicinity, Aerial, and Small Area Maps
3. Background Information
4. Applicants Supporting Information
5. Rezoning Exhibit
6. Future Land Use Map
7. Rezoning Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A “UNIFIED DEVELOPMENT ORDINANCE,” ARTICLE 4 “ZONING DISTRICTS,” SECTION 4.2, “OFFICIAL ZONING MAP” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING APPROXIMATELY 6 ACRES LOCATED IN THE MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, GENERALLY LOCATED AT 110, 116, AND 120 MORGAN’S LANE, AS DESCRIBED BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A” and Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2, “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from GS General Suburban to GC General Commercial and NAP Natural Areas Protected:

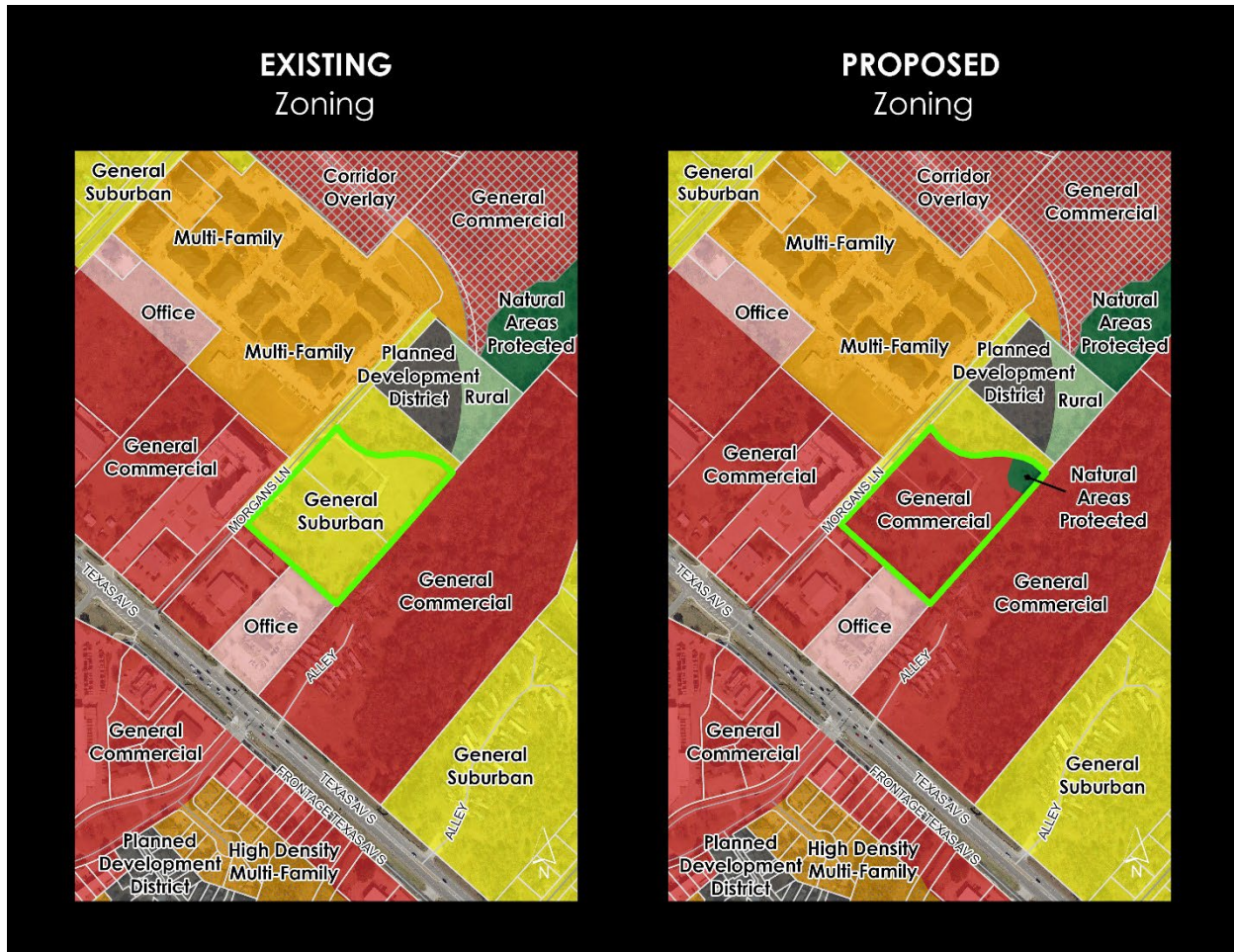
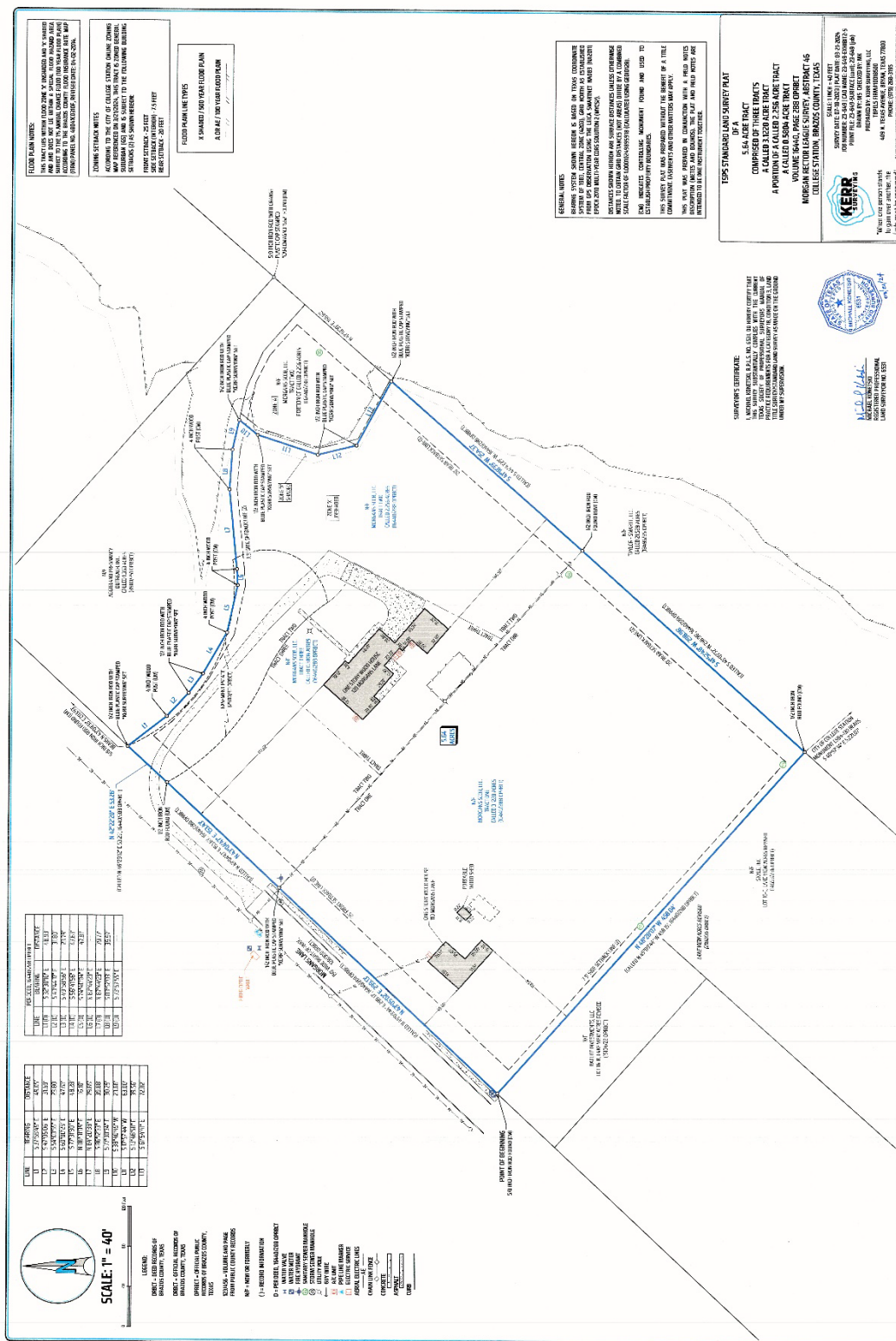


Exhibit B





5.64 Acres

**FIELD NOTES DESCRIPTION
OF A
5.64 ACRE TRACT
MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

A FIELD NOTES DESCRIPTION OF 5.64 ACRES IN THE MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, BEING ALL OF A CALLED 3.1220 ACRE TRACT OF LAND, A PORTION OF A CALLED 2.256 ACRE TRACT OF LAND AND ALL OF A CALLED 0.5804 ACRE TRACT OF LAND, ALL DESCRIBED IN A DEED TO MORGANS SCOB, LLC. RECORDED IN VOLUME 16440, PAGE 288 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT); SAID 5.64 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8 inch iron rod found on the southeast line of Morgans Lane (50' wide right-of-way, 125/300 of the Deed Records of Brazos County, Texas; DRBCT), for the north corner of Lot 16-B of Lake View Acres Revised, plat filed in Volume 2182, Page 35 of the Official Records of Brazos County, Texas (ORBCT) and being the west corner of said 3.1220 acres and the west corner hereof;

THENCE, with the common line of said Morgans Lane and said 3.1220 acres, **N 43° 05' 02" E**, for a distance of **299.13 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the north corner of said 3.1220 acres and being the west corner of said 2.256 acres;

THENCE, with the common line of Morgans Lane and said 2.256 acres for the following two (2) courses and distances;

- 1) **N 43° 04' 47" E**, for a distance of **153.43 feet** to a 1/2 inch iron rod found;
- 2) **N 42° 22' 20" E**, for a distance of **53.26 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the west corner of a called 1.363 acre tract of land described in a deed to Aggieland Pregnancy Outreach, Inc. recorded in Volume, 8900, Page 251 (OPRBCT) and being the north corner of said 2.256 acres and the north corner hereof, from which a 5/8 inch iron rod found bears **N 43° 08' 33" E**, a distance of 203.93 feet;

THENCE, with the common line of said 1.363 acres and said 2.256 acres for the following nine (9) courses and distances:

- 1) **S 37° 55' 49" E**, for a distance of **49.05 feet** to a 4 inch wood post found;
- 2) **S 47° 05' 06" E**, for a distance of **31.69 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 3) **S 54° 03' 55" E**, for a distance of **23.80 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 4) **S 60° 00' 25" E**, for a distance of **47.63 feet** to a 4 inch wood post found;
- 5) **S 77° 31' 30" E**, for a distance of **48.28 feet** to a 4 inch wood post found;
- 6) **N 86° 31' 09" E**, for a distance of **16.10 feet** to a 4 inch wood post found;
- 7) **N 84° 20' 38" E**, for a distance of **79.85 feet** to a 4 inch wood post found;
- 8) **S 86° 12' 33" E**, for a distance of **39.88 feet** to a 4 inch wood post found;
- 9) **S 77° 30' 34" E**, for a distance of **30.29 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for an easterly corner hereof;

THENCE, through said 2.256 acres for the following four (4) courses and distances:

- 1) **S 38° 40' 49" W**, for a distance of **23.66 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 2) **S 17° 57' 44" W**, for a distance of **63.00 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 3) **S 13° 46' 58" E**, for a distance of **39.56 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 4) **S 61° 54' 41" E**, for a distance of **72.82 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set on the northwest line of a called 21.529 acres described in a deed to Taylor – Smartt, LLC recorded in Volume 18496, Page 35 (OPRBCT) and being on the southeast line of said 2.256 acres and being an easterly corner hereof, from which a 5/8 inch iron rod with an orange plastic cap stamped "CARLOMAGNO 1562" found bears N 41° 18' 39" E, a distance of 156.62 feet;

THENCE, with the common line of said 2.256 acres and said 21.529 acres, **S 41° 18' 39" W**, for a distance of **254.37 feet** to 1/2 inch iron rod found bent for the south corner of said 2.256 acres and being the east corner of said 3.1220 acres;

THENCE, with the common line of said 21.529 acres and said 3.1220 acres, **S 41° 52' 48" W**, for a distance of **298.96 feet** to a 1/2 inch iron rod found for the east corner of Lot 16-C of said Lake View Acres Revised and being the south corner of said 3.1220 acres and the south corner hereof, from which the City of College Station Monument C594-130 bears S 40° 57' 34" E, a distance of 5,221.07 feet;

THENCE, with the common lines of said 3.1220 acres, said Lot 16-C and said Lot 16-B, **N 48° 28' 07" W**, for a distance of **458.04 feet** to the **POINT OF BEGINNING** hereof and containing **5.64 acres**, more or less.

Surveyed on the ground July 2023 under my supervision. See plat prepared March 2024 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.00010249895918 (calculated using GEOID12B). Reference drawing: 23-649-EXHIBIT2-S.



3/21/24

Michael Konetski

Registered Professional Land Surveyor No. 6531

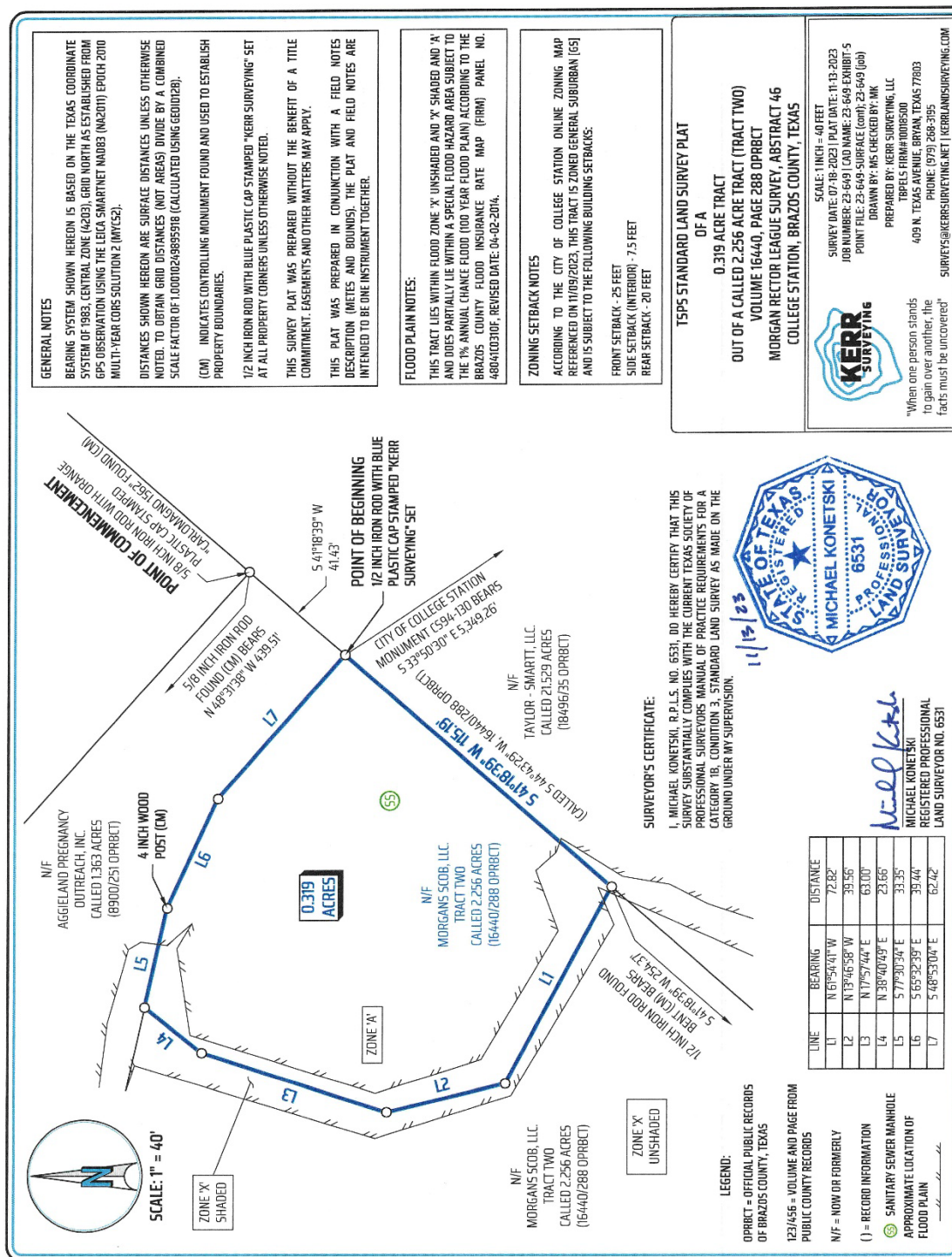


**KERR
SURVEYING**

Kerr Surveying, LLC | 409 N. Texas Ave. Bryan, TX 77803

Office: (979) 268-3195 | Web: www.kerrlandsurveying.com

Surveys@kerrsurveying.net | TBPELS Firm No. 10018500





**FIELD NOTES DESCRIPTION
OF A
0.319 ACRE TRACT
MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

A FIELD NOTES DESCRIPTION OF 0.319 ACRES IN THE MORGAN RECTOR LEAGUE SURVEY, ABSTRACT 46, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, BEING A PORTION OF A CALLED 2.256 ACRE TRACT OF LAND DESCRIBED IN A DEED TO MORGANS SCOB, LLC. RECORDED IN VOLUME 16440, PAGE 288 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT); SAID 0.319 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 5/8 inch iron rod with an orange plastic cap stamped "CARLOMAGNO 1562" found on the northwest line of a called 21.529 acre tract of land described in a deed to Taylor - Smartt, LLC. recorded in Volume 18496, Page 35 (OPRBCT), for the east corner of a called 1.363 acre tract of land described in a deed to Aggieland Pregnancy Outreach, Inc. recorded in Volume 8900, Page 251 (OPRBCT), from which a 5/8 inch iron rod found for the north corner of said 1.363 acres bears N 48° 31' 38" W, a distance of 439.51 feet;

THENCE, with the common line of said 21.529 acres and said 1.363 acres, **S 41° 18' 39" W**, for a distance of **41.43 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the east corner of said 2.256 acres and being the **POINT OF BEGINNING** hereof;

THENCE, with the common line of said 21.529 acres and said 2.256 acres, **S 41° 18' 39" W**, for a distance of **115.19 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the south corner hereof, from which a 1/2 inch iron rod found bent for the south corner of said 2.256 acres bears S 41° 18' 39" W, a distance of 254.37 feet;

THENCE, through said 2.256 acres for the following four (4) courses and distances:

- 1) N 61° 54' 41" W**, for a distance of **72.82 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 2) N 13° 46' 58" W**, for a distance of **39.56 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 3) N 17° 57' 44" E**, for a distance of **63.00 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 4) N 38° 40' 49" E**, for a distance of **23.66 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set on the common line of said 2.256 acres and said 1.363 acres;

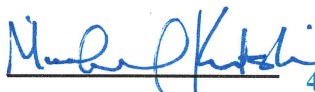
THENCE, with the common line of said 2.256 acres and said 1.363 acres for the following three (3) courses and distances:

- 1) **S 77° 30' 34" E**, for a distance of **33.35 feet** to 4 inch wood fence post found;
- 2) **S 65° 32' 39" E**, for a distance of **39.44 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set
- 3) **S 48° 53' 04" E**, for a distance of **62.42 feet** to the **POINT OF BEGINNING** hereof and containing **0.319 acres**, more or less.

Surveyed on the ground July 2023 under my supervision. See plat prepared November 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.00010249895918 (calculated using GEOID12B). Reference drawing: 23-649-EXHIBIT-S.

Revised: 4-09-24 to correct typos on previous description.



 4/9/24

Michael Konetski

Registered Professional Land Surveyor No. 6531

KERR
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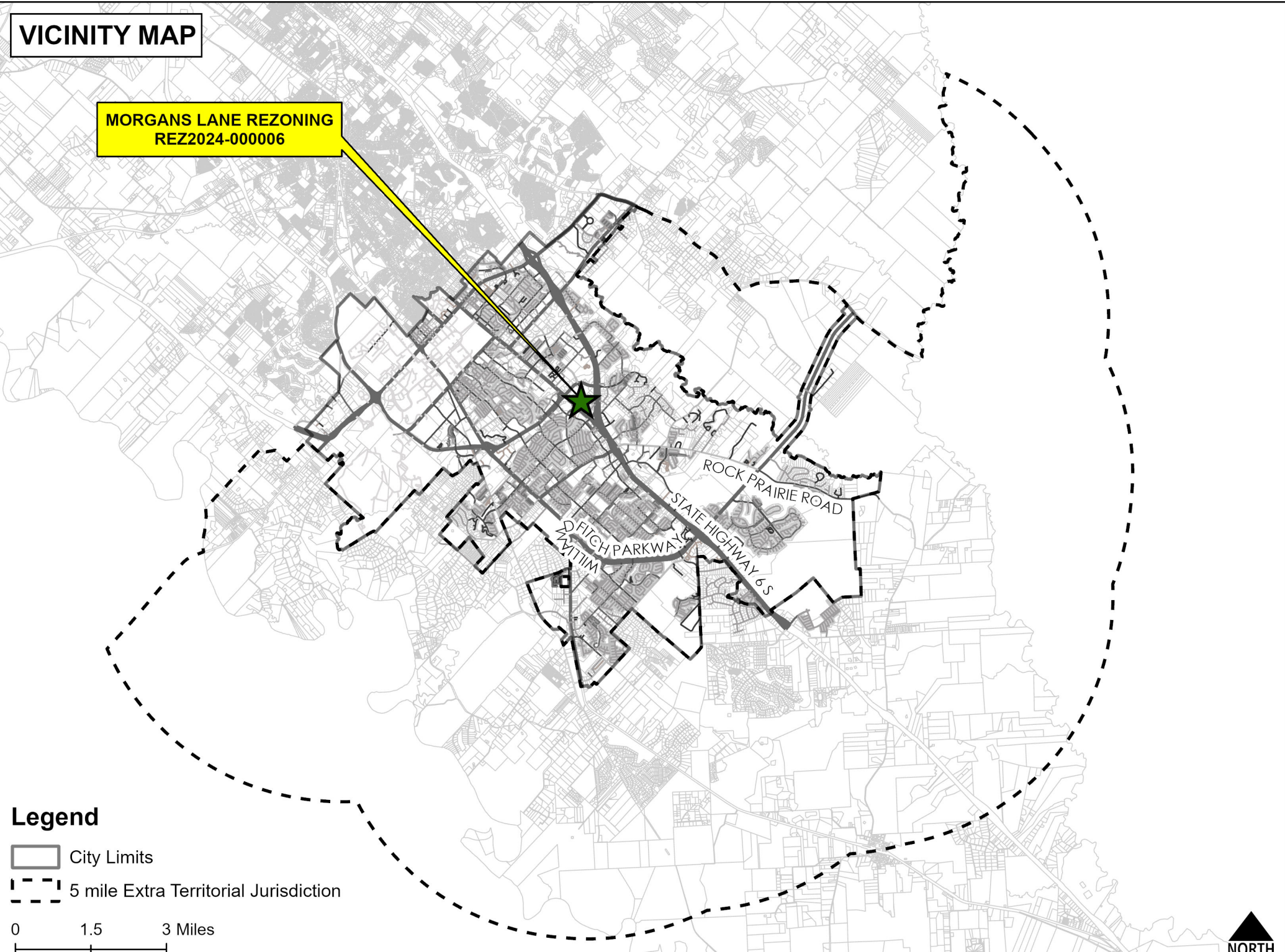
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VICINITY MAP

MORGANS LANE REZONING
REZ2024-000006

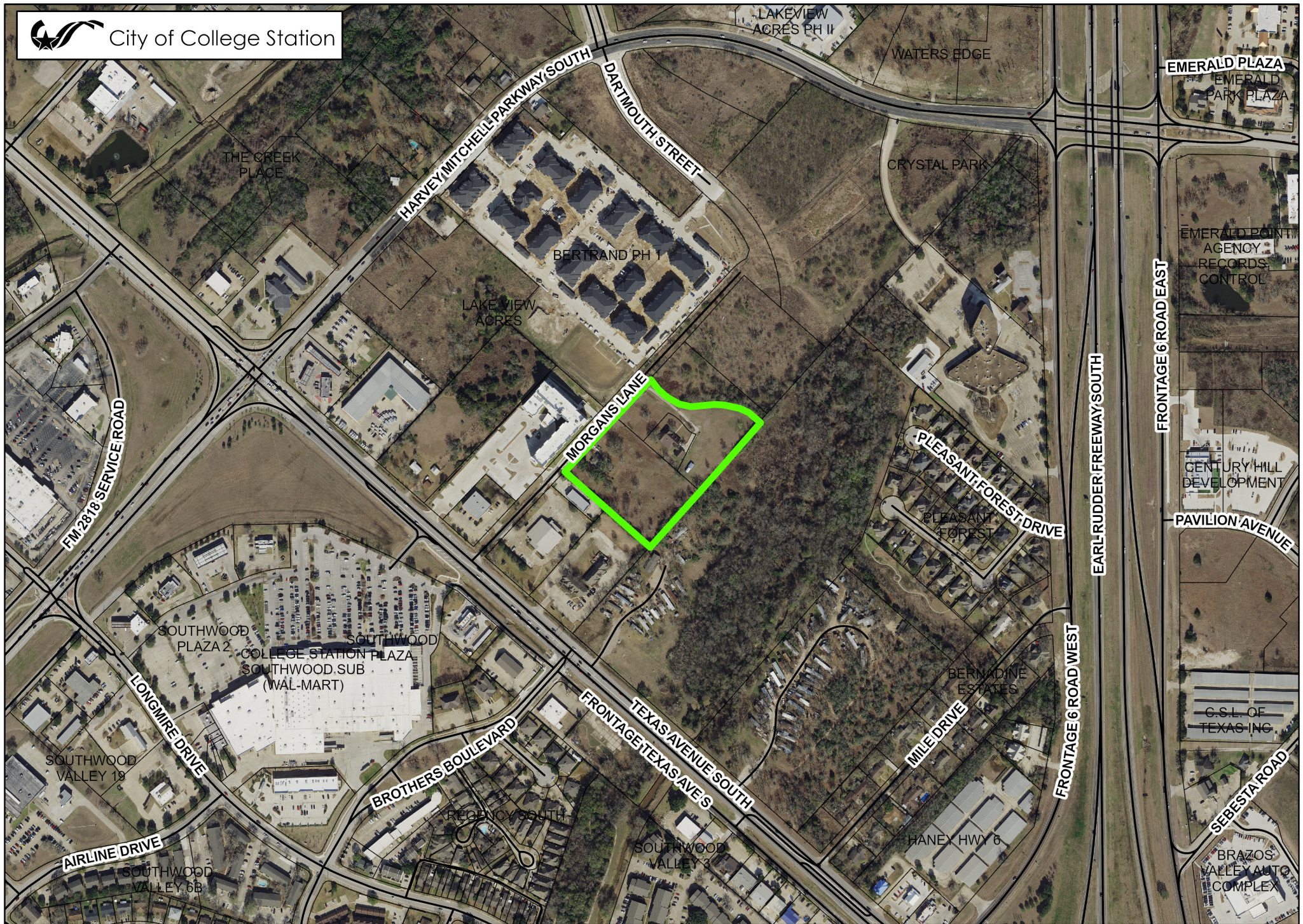


Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction

0 1.5 3 Miles



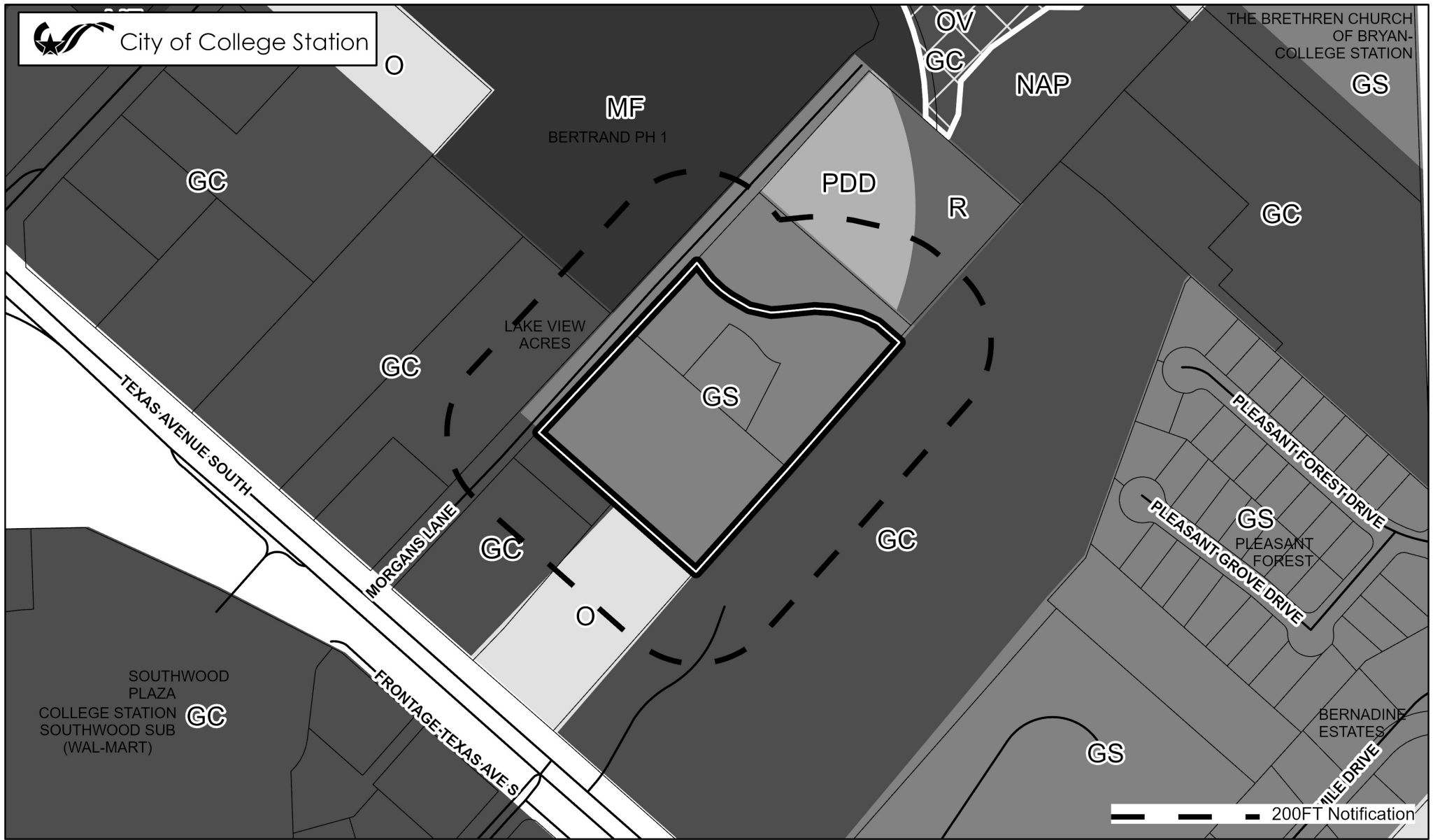


0 495 990 Feet

MORGANS LANE REZONING

Case:
REZ2024-000006

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
R	Rural	MF	Multi-Family
WE	Wellborn Estate	MU	Mixed-Use
E	Estate	MHP	Manufactured Home Pk.
WRS	Wellborn Restricted Suburban		
RS	Restricted Suburban		
GS	General Suburban		
D	Duplex		
T	Townhome		

Non-Residential

NAP	Natural Area Protected
O	Office
SC	Suburban Commercial
WC	Wellborn Commercial
GC	General Commercial
CI	Commercial Industrial
BP	Business Park
BPI	Business Park Industrial
C-U	College and University

Planned Districts

P-MUD	Planned Mixed-Use Dist.
PDD	Planned Develop. Dist.

Design Districts

WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts

OV	Corridor Ovr.
RDD	Redevelopment District
HOO	High Occupancy Ovr.
ROO	Restricted Occupancy Ovr.
NPO	Nbrhd. Prevailing Ovr.
NCO	Nbrhd. Conservation Ovr.
HP	Historic Preservation Ovr.

Retired Districts

R-1B	Single Family Residential
R-4	Multi-Family
R-6	High Density Multi-Family
C-3	Light Commercial
RD	Research and Dev.
M-1	Light Industrial
M-2	Heavy Industrial



0 295 590 Feet

MORGANS LANE REZONING

Case:
REZ2024-000006

REZONING

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: May 16, 2024

Advertised Council Hearing Date: June 13, 2024

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

None

Property owner notices mailed: 18
Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Urban Residential	MF Multi-Family	City Heights Multi-Family Apartments
South	General Commercial	O Office	Offices
East	General Commercial Natural & Open Areas	GC General Commercial	Undeveloped
West	General Commercial	GC General Commercial	Wyndham Garden Hotel

DEVELOPMENT HISTORY

Annexation: 1969
Zoning: R-1 Single Family Residential upon annexation
R-1 renamed GS General Suburban
Final Plat: Lake View Acres (1945)
Site development: Existing single-family structure



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: MORGANS LANE REZONING (REZ2024-000006)

Address: 110, 116 AND 120 MORGANS LN

Legal Description: LAKE VIEW ACRES, LOT 15 (300' OF) & PORTION OF LOT 14

Total Acreage: 5.96 acres

Applicant: MITCHELL & MORGAN

Property Owner: MORGANS SCOB LLC

List the changed or changing conditions in the area or in the City which make this zone change necessary.

Several new developments in this area of College Station have been a catalyst for continued new developments and redevelopments. As College Station continues to grow, retail sales and services become more necessary to serve the growing population. Infill properties are very valuable as they do not contribute to urban sprawl and necessary infrastructure is widely available. However, commercial uses are not permitted under the existing GS General Suburban zoning district; therefore, a rezoning to GC General Commercial and NAP Natural Areas Protected to protect environmentally sensitive areas, is necessary.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan designates these properties as General Commercial and Urban land uses. We've requested a Comprehensive Plan Amendment from Urban to General Commercial to bring all properties to the same land use designation. If the Comprehensive Plan Amendment is approved, this rezoning request will be in compliance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

Because most of the property in the immediate area is zoned and developed for commercial and high-density multi-family uses, the current zoning for GS General Suburban is an island on the zoning map. Single-family zoning at this location is no longer appropriate and would be undesirable. GS General Suburban is not suitable for this property.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Much of the property in the vicinity has been recently developed or redeveloped with general commercial multi-family uses. The request to rezone the property to GC General Commercial and NAP Natural Areas Protected, to protect the floodplain on the property, is suitable for this property. This infill development is a priority stated in the Comprehensive Plan making this development and rezoning request even more suitable for this property.

Explain the suitability of the property for uses permitted by the current zoning district.

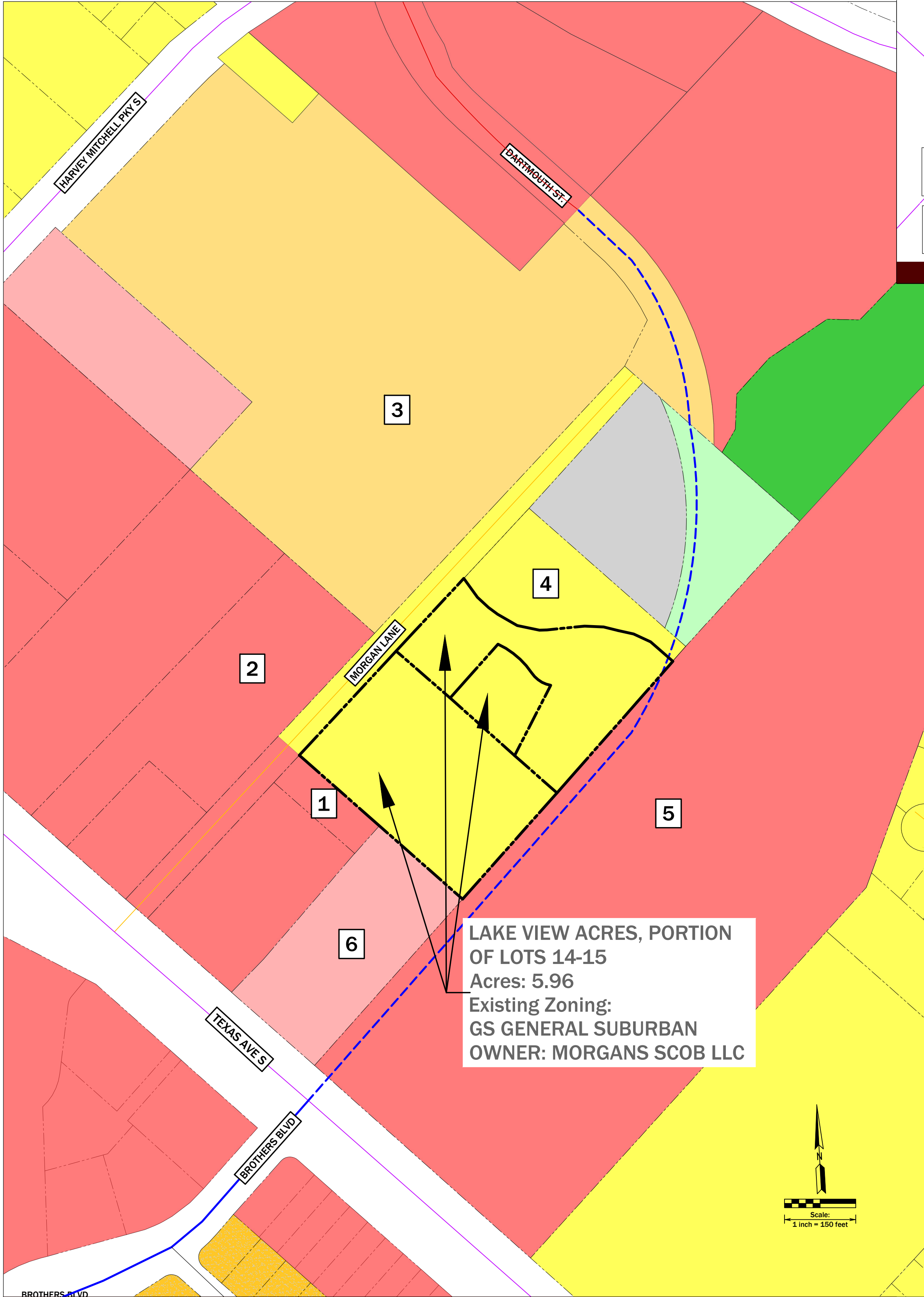
Much of the property in the vicinity has been recently developed or redeveloped with general commercial multi-family uses. The request to rezone the property to GC General Commercial and NAP Natural Areas Protected, to protect the floodplain on the property, is suitable for this property. This infill development is a priority stated in the Comprehensive Plan making this development and rezoning request even more suitable for this property.

Explain the marketability of the property for uses permitted by the current zoning district.

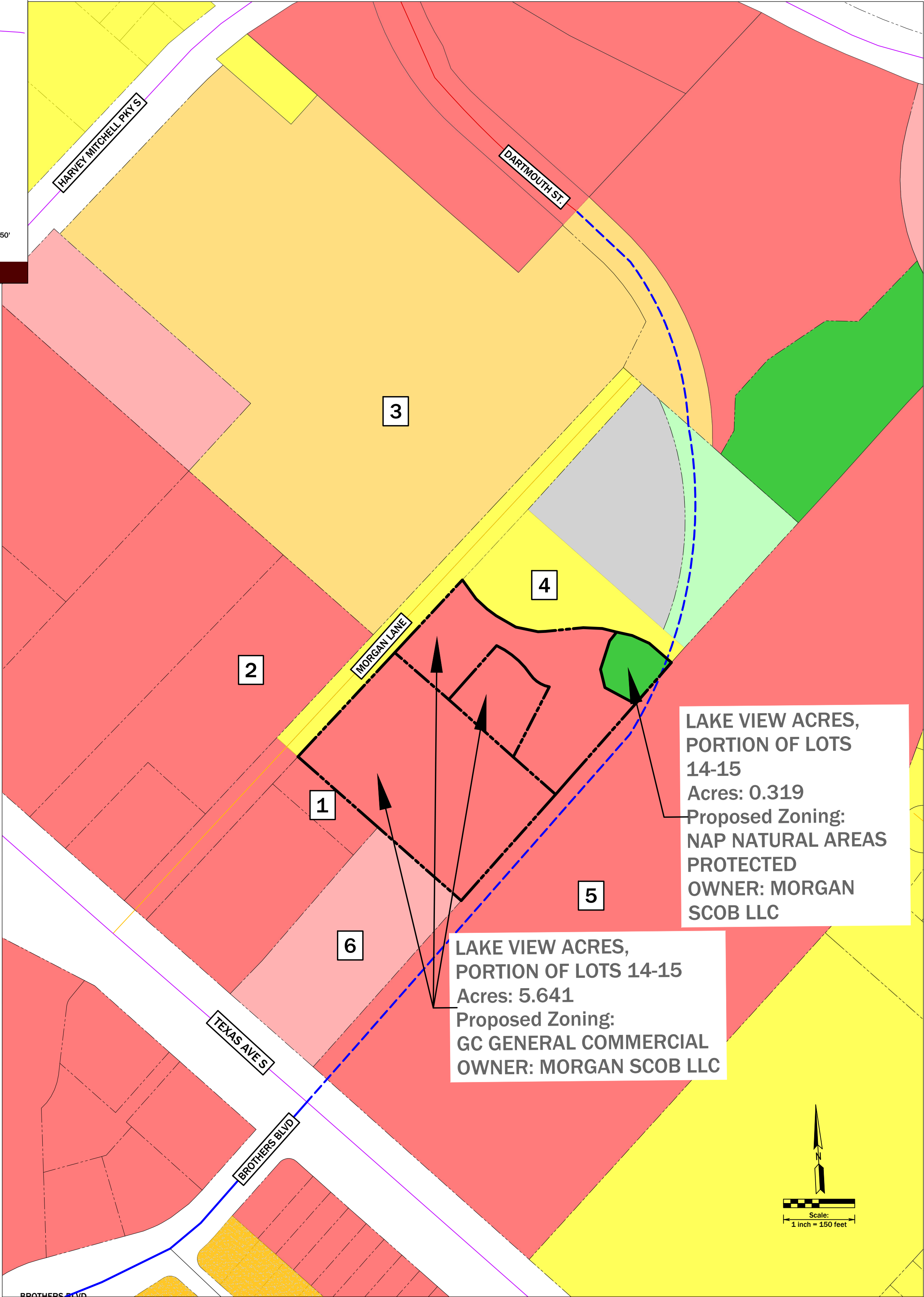
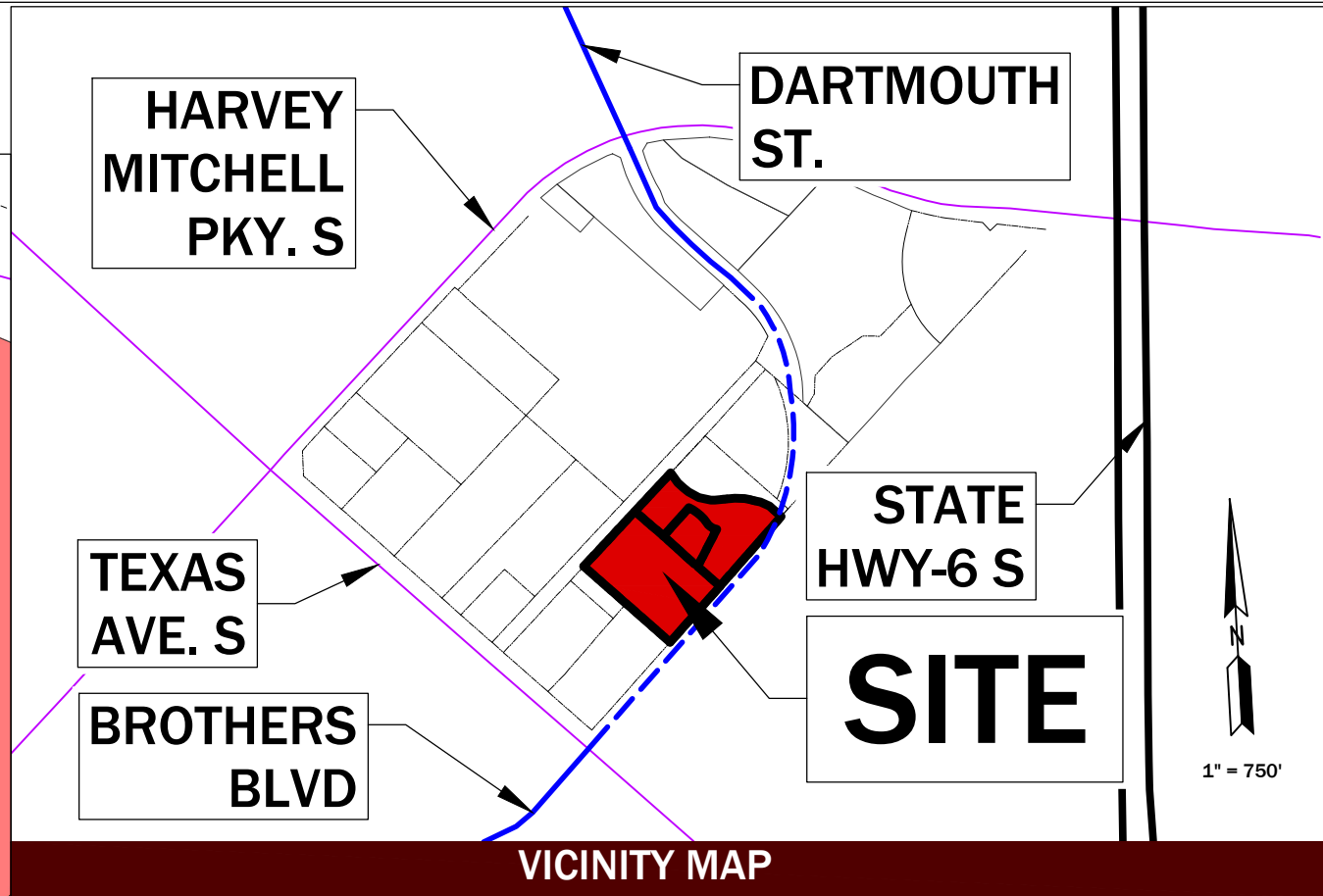
Single-family uses are not marketable at this location. Single-family residential zoning was placed on the property as a placeholder following annexation in 1969. Since that time, the surrounding area has developed with higher intensity commercial, office and multi-family uses. Single-family uses are no longer appropriate for this property, nor marketable.

List any other reasons to support this zone change.

N/A



EXISTING



PROPOSED

GC GENERAL COMMERCIAL	GS GENERAL SUBURBAN	MF MULTI FAMILY	R RURAL
NAP NATURAL AREAS PROTECTED	O OFFICE	PDD PLANNED DEVP. DISTRICT	R-6 HIGH DENSITY MULTI-FAMILY
EXISTING 2-LANE LOCAL STREET	PROPOSED 2-LANE MAJOR COLLECTOR	EXISTING 2-LANE MINOR COLLECTOR	EXISTING 4-LANE MAJOR ARTERIAL

LEGEND

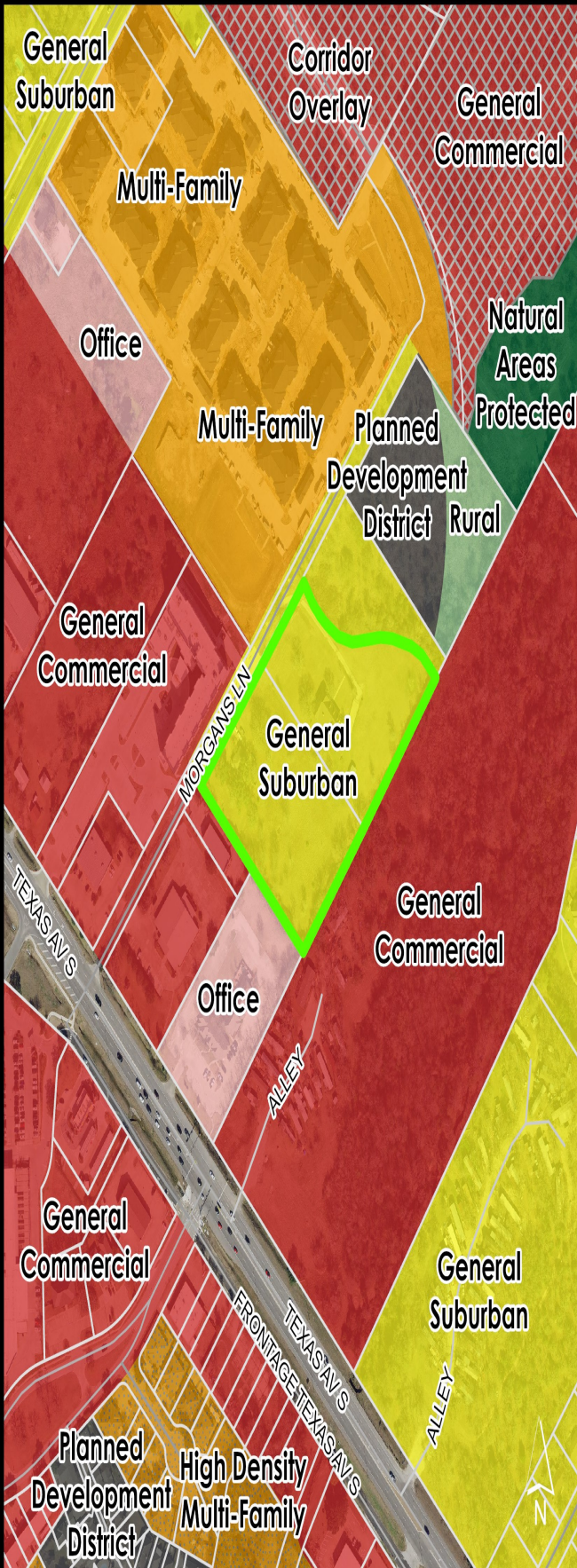
Number	Owner	Legal Description	Existing Zoning
1	JBA PROPERTY INVESTMENTS LLC	LAKE VIEW ACRES, LOT 16B	GC General Commercial
2	ESPANTMAN INVESTMENTS LLC	LAKE VIEW ACRES, LOT 10A1	GC General Commercial
3	CITY HEIGHTS ENCINO #1 LLC	BERTRAND PH 1, BLOCK 1, LOT 1R	MF Multi Family
4	AGGIELAND PREGNANCY OUTREACH	LAKE VIEW ACRES, LOT 14 (NE 200' OF)	GC General Commercial
5	TAYLOR SMARTT LLC	A004601, M RECTOR (ICL), TRACT 16, PLEASANT FOREST MHP	GC General Commercial
6	UNKNOWN	LAKE VIEW ACRES, LOT 16C	O Office

NOTES:
1. In accordance with FEMA'S FLOOD INSURANCE RATE MAP panel 48041C0310F, the site lies within the 100-year floodplain boundary, Effective Date : 4/2/2014

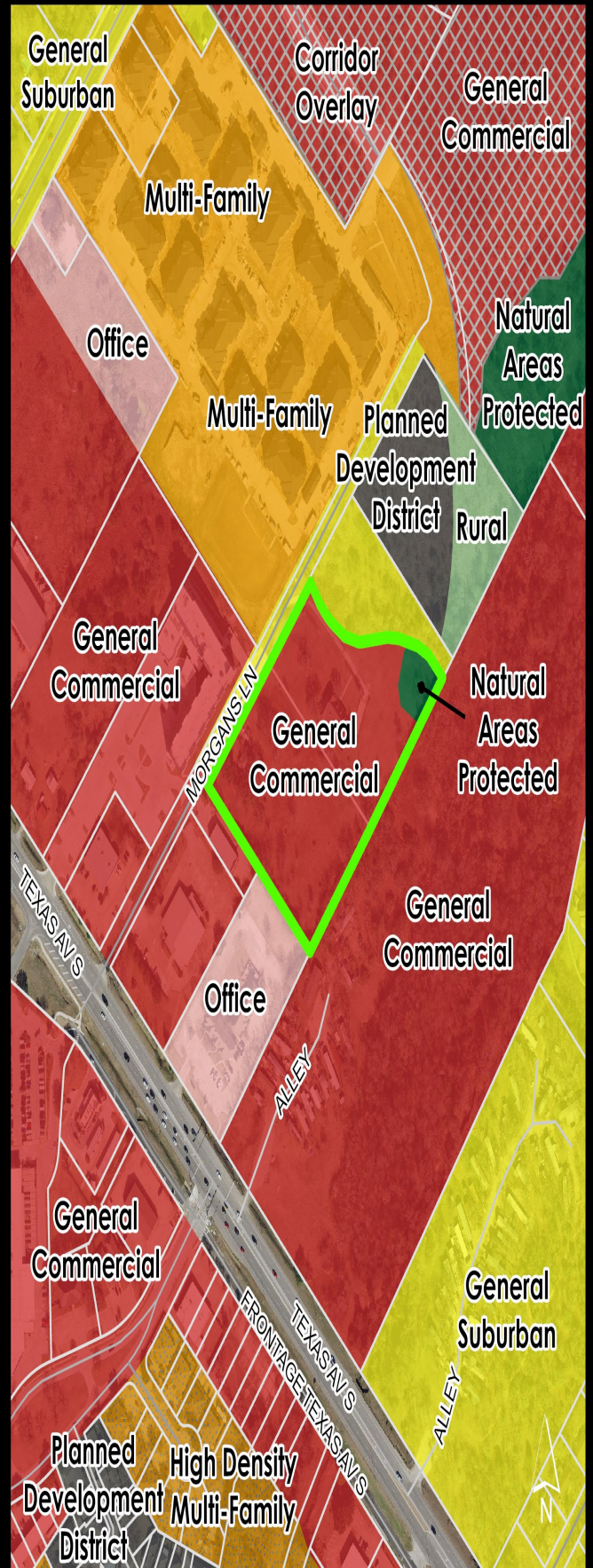
Future Land Use



EXISTING Zoning



PROPOSED Zoning



June 27, 2024
Item No. 8.3.
Leyla Heights Rezoning

Sponsor: Jesse Dimeolo

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4 "Zoning Districts," Section 4.2 "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to GS General Suburban and T Townhouse on approximately seven acres located in the Robert Stevenson Survey, A-54, and Needham Estates, Block 1, Lots 1-7, generally located at 2542 and 2522 Barron Road.

Relationship to Strategic Goals:

Neighborhood Integrity

Recommendation(s): Staff recommends approval of the rezoning request. This item was heard at the June 20th Planning and Zoning Commission meeting.

Summary: This request is to rezone approximately seven acres of land located on Barron Road, across from the College Station High School, from R Rural to GS General Suburban and T Townhouse. The tract was originally zoned R Rural upon annexation into the City in 1995. Prior to annexation, the easternmost portion of this property was platted into one block and seven lots of the Needham Estates Subdivision. Public right-of-way was also dedicated for the extension of Jamey Lane from Leyla Lane to Barron Road. The proposed GS portion of the rezoning request is in an effort to continue the same style of single-family development along Crestmont Drive up until the point where Leyla Lane will bend southeast to continue towards Barron Road. The remainder of the tract of land is being proposed as T Townhouse to help utilize a denser single-family product closer to the school and main thoroughfare of Barron Road.

Rezoning Review Criteria

1. Whether the proposal is consistent with the Comprehensive Plan: The subject tract is designated on the Comprehensive Plan Future Land Use and Character Map as Suburban Residential. These areas are primarily single-family residential areas that consist of low to moderate density single-family lots. This may also include limited townhomes, duplexes, other housing types, and some non-residential uses that are compatible with surrounding single-family areas. Development types tend to be highly consistent within a subdivision or neighborhood. The rezoning request is consistent with the Comprehensive Plan and promotes a mixture of single-family housing types that are appropriate for the area.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area: The existing R Rural zoning allows for a mix of large acreages and large-lot residential developments, which is incompatible with the development in this area. Given the property's proximity to Barron Road and the College Station High School, a rezoning to denser single family housing types will help promote growth as outlined in the Comprehensive Plan. GS General Suburban developments permit a maximum of 8 dwelling units per acre whereas T Townhouse has a permitted maximum of up to 14 dwelling units per acre. Since townhomes can have 3-12 attached single-family units, more homes can be built on the subject tract. Increased

density near the school will create improved accessibility to the school by walking, bicycling and other alternative modes of transportation.

3. Whether the property to be rezoned is physically suitable for the proposed zoning

district: The size and location of the subject property is suitable for residential uses. The site has adequate space to meet the minimal dimensional standards for both GS General Suburban and T Townhouse districts. Each lot will require public street frontage on any of the proposed local streets that will connect through the property. There is no floodplain on the property.

4. Whether there is available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure is adequate to support the needs of this development. Detention is required in accordance with the BCS guidelines. Drainage and any other infrastructure required with the site development shall be designed and constructed in accordance with the BCS Unified Design Guidelines.

The subject property has frontage to Barron Road and right-of-way dedicated for Jamey Lane. Barron Road is classified as a 4-lane Minor Arterial on the City's Thoroughfare Plan. Jamey Lane is a local street. A Traffic Impact Analysis (TIA) was not required for the rezoning request as the applicant showed the anticipated trip generation to be less than the threshold of 150 trips in the peak hour. At this time, infrastructure is adequate for the uses permitted by the proposed GS General Suburban and T Townhouse zoning districts.

5. The marketability of the property: The applicant has stated that the current R Rural zoning is not the highest and best use for the property. Rezoning the property from R Rural to GS General Suburban and T Townhouse can provide additional development opportunity by allowing more density on the property. This opportunity for additional lots and density should increase the marketability of the property.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Vicinity, Aerial, and Small Area Maps
3. Background Information
4. Applicants Supporting Information
5. Rezoning Exhibit
6. Future Land Use Map
7. Rezoning Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A “UNIFIED DEVELOPMENT ORDINANCE,” ARTICLE 4 “ZONING DISTRICTS,” SECTION 4.2, “OFFICIAL ZONING MAP” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING APPROXIMATELY 7 ACRES LOCATED IN THE ROBERT STEVENSON SURVEY, A-54, BRAZOS COUNTY, TEXAS AND NEEDHAM ESTATES BLOCK 1, LOTS 1-7, GENERALLY LOCATED AT 2542 AND 2522 BARRON ROAD, AS DESCRIBED BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A” and Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2, “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from R Rural to GS General Suburban and T Townhouse:



Exhibit B**METES AND BOUNDS DESCRIPTION
5.955 ACRES**

All that certain tract or parcel containing 5.955 acres of land in the Robert Stevenson Survey, A-54, Brazos County, Texas, being a portion of a tract which was called 4.89 acres and conveyed from Eugene Bernard Savage, et al, to Grace Lynn Savage, Trustee, by an instrument of record in Volume 16669, Page 95, of the Brazos County Official Public Records, (BCOPR), and all of Lots 1-7, Block 1, Needham Estates, a subdivision of record in Volume 276, Page 301, BCOPR, said 5.955 acres being more particularly described by metes and bounds as follows, basing bearings on the Texas Coordinate System of 1983, (NAD 83) Central Zone, to wit:

COMMENCING FOR REFERENCE from a 1/2" iron rod found for west corner of said 4.89 acre tract and north corner of a tract which was called Lot 20, Block 1, Barron Crest Subdivision, a subdivision of record in Volume 13019, Page 194, BCOPR, lying in the southeast right-of-way (R-O-W) line of Hofburg Drive;

THENCE N44°51'14"E, 173.59 feet, along the common line of said 4.89 acre tract and southeast right of way (R-O-W) line of Hofburg Drive to a point for westernmost corner and PLACE OF BEGINNING of the tract described herein;

THENCE departing Hofburg Drive, N44°51'14"E, crossing Leyla Lane and along the common line of said 4.89 acre tract and a tract which was called Lot 1, Block 1, Edelweiss Ridge, a subdivision of record in Volume 10065, Page 244, BCOPR, at 112.62 feet pass a 1/2" iron rod found for common corner of Lot 1, Block 1 and Lot 2, Block 1, and continuing along the common line of said 4.89 acre tract and Block 1, at 163.83 feet pass a 1/2" iron rod found for common corner of Lot 2, Block 1 and Lot 3, Block 1, and continuing along said common line at 176.24 feet pass a 1/2" iron rod found for the north corner of said 4.89 acre tract and west corner of Lot 7, Block 1, Needham Estates, and continuing along said common line for a distance in all of 325.03 feet to a 1/2" iron rod found for north corner, being the north corner of Lot 7, Block 1, lying in the southwest R-O-W line of Jamey Lane, a public road;

THENCE S48°00'18"E, along the northeast line of Block 1, Needham Estates and southwest R-O-W line of Jamey Lane, at 93.82 feet pass a 5/8" iron rod found for common corner of Lot 7, Block 1 and Lot 6, Block 1, and continuing along said common line at 179.81 feet pass a 5/8" iron rod found for common corner of Lot 6, Block 1 and Lot 5, Block 1, and continuing along said common line, at 265.73 feet pass a 5/8" iron rod found for common corner of Lot 5, Block 1 and Lot 4, Block 1, and continuing along said common line, at 351.75 feet pass a 5/8" iron rod found for common corner of Lot 4, Block 1 and Lot 3, Block 1, and continuing along said common line, at 437.87 feet pass a 5/8" iron rod found for common corner of Lot 3, Block 1 and Lot 2, Block 1, and continuing along said common line for distance in all of 584.73 feet to a 1/2" iron rod found for angle point, being an angle point of Lot 1, Block 1 and beginning of a curve;

THENCE 39.26 feet, along Block 1, Needham Estates, southwest R-O-W line of Jamey Lane, northwest R-O-W line of Barron Road, and along the arc of a curve to the right, (Delta= 89°23'12", Radius= 25.16 feet, Chord= S03°05'29"E, 35.40 feet), to a 1/2" iron rod found at the end of curve for east corner, being an east corner of Lot 1, Block 1;

THENCE departing Jamey Lane, S42°25'53"W, 123.69 feet, along the common line of Block 1, Needham Estates and northwest R-O-W line of Barron Road to a 1/2" iron rod found for angle point, being the south corner of Lot 1, Block 1 and east corner of said 4.89 acre tract;

THENCE S42°38'41"W, 347.54 feet, along the common line of said 4.89 acre tract and northwest R-O-W line of Barron Road to a 1/2" iron rod found for south corner, being the south corner of said 4.89 acre tract and east corner of Lot 11, Block 2, Barron Crest Subdivision, from which a 5/8" iron rod found bears: S03°02'41"W, 0.28 feet;

THENCE N48°10'05"W, 348.59 feet, along the common line of said 4.89 acre tract and Lot 11, Block 2 to a 1/2" iron rod found for west corner, being the common corner of Lot 10, Block 2 and Lot 11, Block 2, Barron Crest Subdivision;

THENCE N44°55'38"E, 171.76 feet, crossing said 4.89 acre tract to a point for interior corner, from which a 1/2" iron rod found for east corner of said 4.89 acre tract bears: S75°14'49"E, 386.63 feet;

THENCE N47°11'56"W, 90.64 feet, continuing across said 4.89 acre tract to an angle point;

THENCE N47°48'10"W, 100.13 feet, continuing across said 4.89 acre tract to an angle point;

THENCE N48°22'43"W, 90.56 feet, continuing across said 4.89 acre tract to the PLACE OF BEGINNING, containing 5.955 acres of land, more or less. As a part of this professional service, a certified plat has been prepared by Johnson & Pace Incorporated under Job # 5624-001.


Troy Maxwell
Professional Land Surveyor
Texas Registration No. 5585



Compiled By:
Johnson & Pace Incorporated
1201 NW Loop 281 • Suite 100
Longview, Texas, 75604
TBPLS #10025400

Engineering • Architecture • Surveying
Job No. 5624-001
Date: March 11, 2024
Revised: April 5, 2024

METES AND BOUNDS DESCRIPTION
1.118 ACRES

All that certain tract or parcel containing 1.118 acres of land in the Robert Stevenson Survey, A-54, Brazos County, Texas, being a portion of a tract which was called 4.89 acres and conveyed from Eugene Bernard Savage, et al, to Grace Lynn Savage, Trustee, by an instrument of record in Volume 16669, Page 95, of the Brazos County Official Public Records, (BCOPR), said 1.118 acres being more particularly described by metes and bounds as follows, basing bearings on the Texas Coordinate System of 1983, (NAD 83) Central Zone, to wit:

BEGINNING at a 1/2" iron rod found for west corner, being the west corner of said 4.89 acre tract and north corner of a tract which was called Lot 20, Block 1, Barron Crest Subdivision, a subdivision of record in Volume 13019, Page 194, BCOPR, lying in the southeast right-of-way (R-O-W) line of Hofburg Drive;

THENCE N44°51'14"E, 173.59 feet, along the common line of said 4.89 acre tract and southeast right of way (R-O-W) line of Hofburg Drive to a point for north corner, from which the north corner of said 4.89 acre tract bears: N44°51'14"E, 176.24 feet;

THENCE departing Hofburg Drive, S48°22'43"E, 90.56 feet, crossing said 4.89 acre tract to an angle point;

THENCE S47°48'10"E, 100.13 feet, continuing across said 4.89 acre tract to an angle point;

THENCE S47°11'56"E, 90.64 feet, continuing across said 4.89 acre tract to a point for east corner, from which a 1/2" iron rod found for east corner of said 4.89 acre tract bears: S75°14'49"E, 386.63 feet;

THENCE S44°55'38"W, 171.76 feet, continuing across said 4.89 acre tract to a point for south corner, being a common corner of a tract which was called Lot 10, Block 2 and Lot 11, Block 2, Barron Crest Subdivision, a subdivision of record in Volume 13019, Page 194, BCOPR;

THENCE N48°10'05"W, along the common line of said 4.89 acre tract and Block 2, at 115.52 feet pass a 1/2" iron rod found for north corner of Lot 10, lying in the southeast R-O-W line of Crestmont Drive, and continuing along said common line, at 165.64 feet pass a 1/2" iron rod found for east corner of Lot 20, Block 1, lying in the northwest R-O-W line of Crestmont Drive, and continuing along the common line of said 4.89 acre tract and Block 1, for a distance in all of 281.19 feet to the PLACE OF BEGINNING, containing 1.118 acres of land, more or less. As a part of this professional service, a certified plat has been prepared by Johnson & Pace Incorporated under Job # 5624-002.


Troy Maxwell
Professional Land Surveyor
Texas Registration No. 5585



Compiled By:
Johnson & Pace Incorporated
1201 NW Loop 281 • Suite 100
Longview, Texas, 75604
TBPLS #10025400

Engineering • Architecture • Surveying
Job No. 5624-002
Date: March 11, 2024
Revised: April 5, 2024

DATE RECORDED 3-21-69

VOL 276 PAGE 301

STATE OF TEXAS
COUNTY OF BRAZOS

Before me, the undersigned authority, on this day personally appeared Don D. Hill, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein stated.

Given under my hand and seal on this 15th day of JANUARY, 1968.



Robert D. Hill
Notary Public, Brazos County,
Texas

OWNER'S ACKNOWLEDGMENT AND DEDICATIONS:

STATE OF TEXAS
COUNTY OF BRAZOS

I, Casper & Hill, owner and developer of the land shown on this plat, and designated herein as the Needham Estates, and whose name is subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, water courses, drains, easements and public places thereon shown for the purpose and consideration therein expressed.

Casper & Hill
by Don Hill

A CERTIFICATE BY THE ENGINEER:

STATE OF TEXAS
COUNTY OF BRAZOS

I, B. J. Kling, Registered Professional Engineer No. 24705 in the State of Texas, hereby certify that proper engineering consideration has been given this plat.

B. J. Kling
Registered Professional Engineer

CERTIFICATION OF THE SURVEYOR:

STATE OF TEXAS
COUNTY OF BRAZOS

I, B. J. Kling, Registered Public Surveyor No. 680 in the State of Texas, hereby certify that this plat is true and correct and was prepared from an actual survey of the property made under my supervision on the ground.

B. J. Kling
Registered Public Surveyor

Sworn and subscribed before me, the undersigned authority, on this the 14th day of January, 1968.

Mary E. O'Brien
Notary Public, Brazos County,
Texas

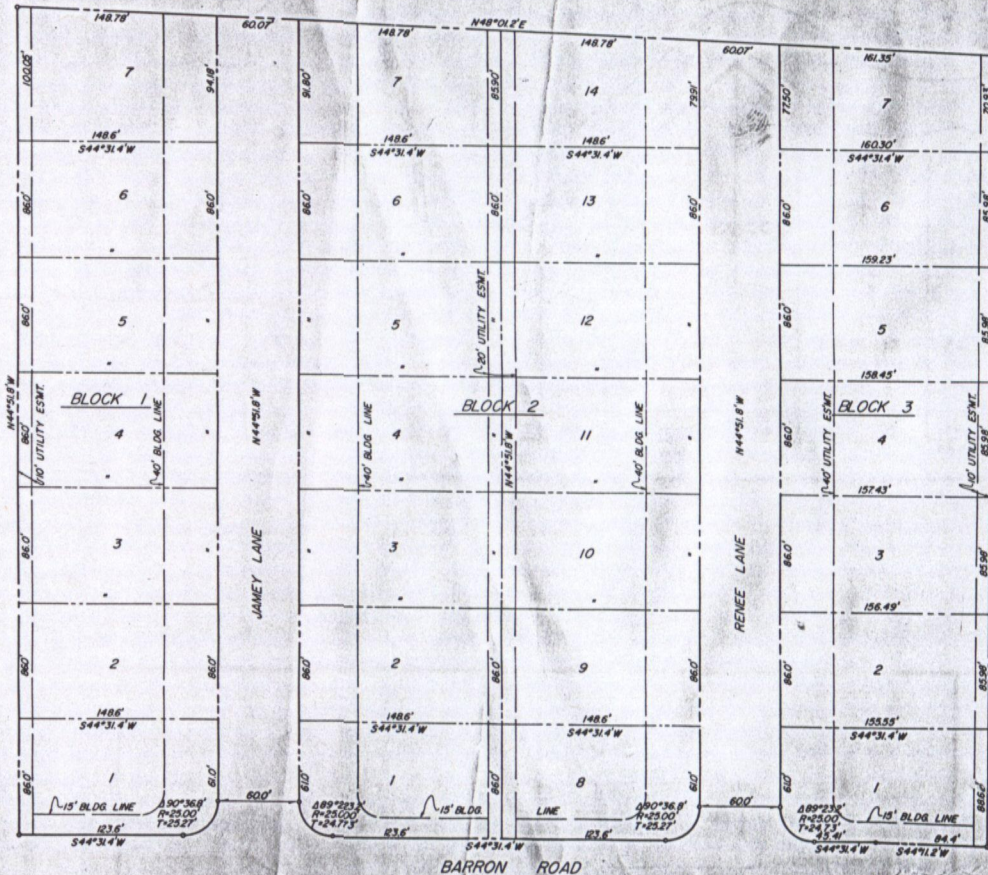
CERTIFICATION BY THE COUNTY CLERK:

STATE OF TEXAS
COUNTY OF BRAZOS

I, _____, County Clerk in and for said County, do hereby certify that this plat together with its certificate of authentication was filed for record in my office the _____ day of _____, 1968, in the Deed Records of Brazos County in Volume _____, Page _____.

County Clerk, Brazos County,
Texas

I, _____, Brazos County, do certify that the attached plat was duly approved by the Brazos County Commissioners Court on the _____ day of _____, 1968.



NOTE:
IRON RODS AT ALL RADIAL POINTS, ANGLE POINTS AND LOT CORNERS.
ALL BUILDING SET BACK LINES FOR SIDE TO BE MIN 5'.

44881

FILED
JAN 14 1969
BRYAN, TEXAS

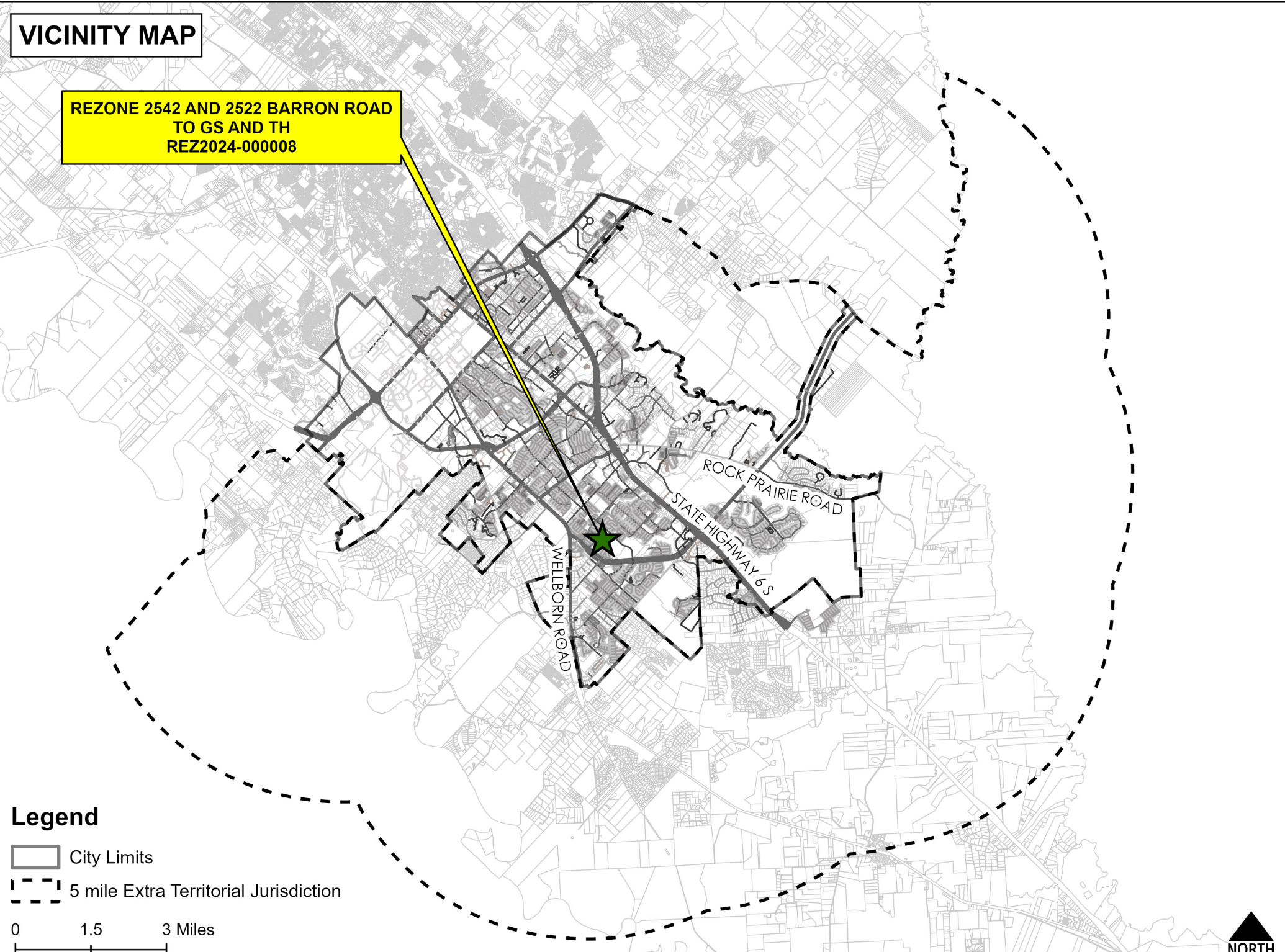
NEEDHAM ESTATES
ROBERT STEVENSON SURVEY
A-54
BRAZOS COUNTY, TEXAS

SPENCER J. BUCHANAN AND ASSOCIATES, INC.
CONSULTING ENGINEERS
BRYAN, TEXAS

SCALE: 1"=50'	JOB NO. 568-130	SH. OF
DRAWN BY: JMK	DATE: SEPT 1968	
DATE: SEPT 1968	APPROVED BY:	
NO.	REVISION	

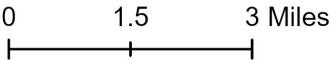
VICINITY MAP

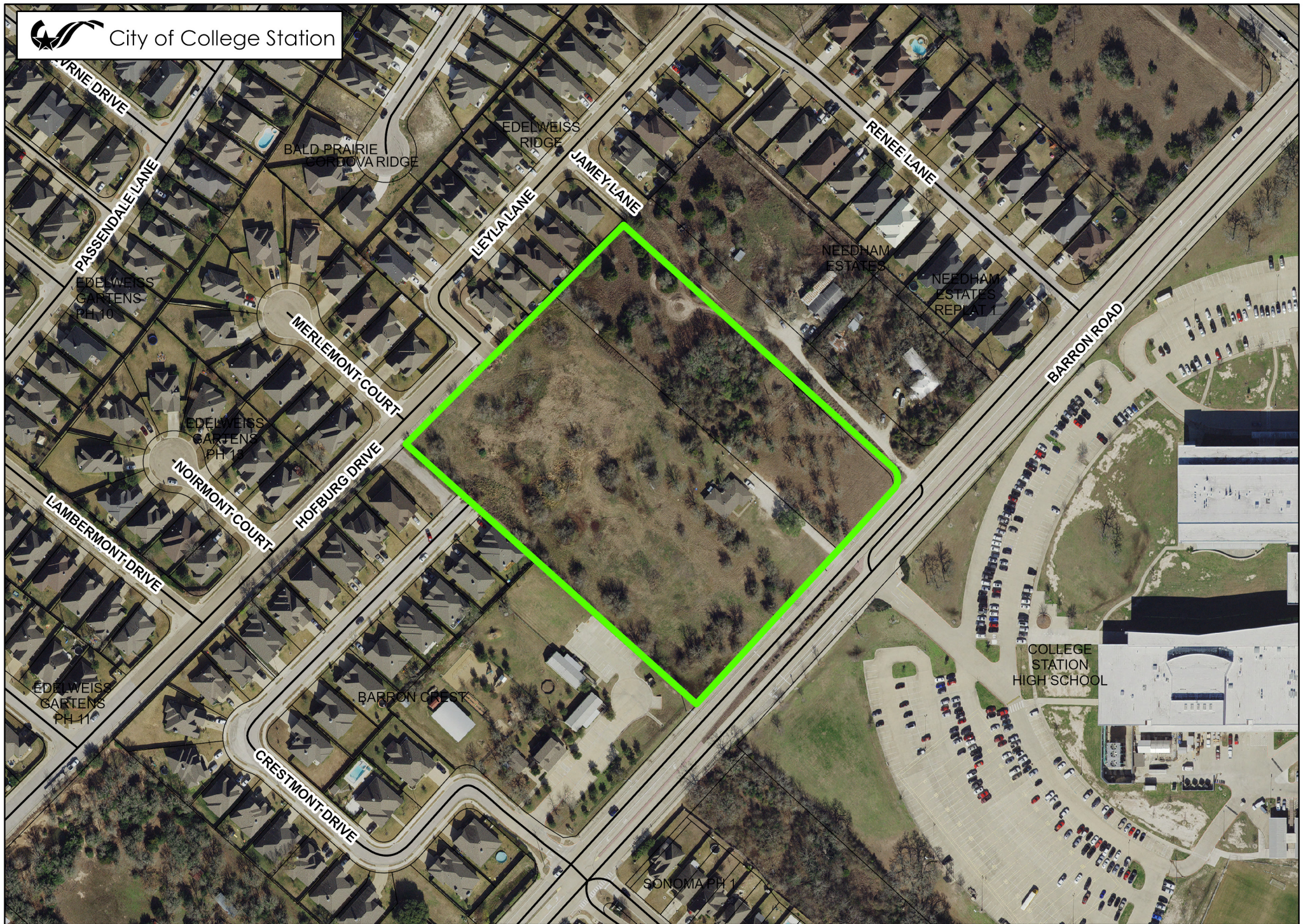
REZONE 2542 AND 2522 BARRON ROAD
TO GS AND TH
REZ2024-000008



Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction



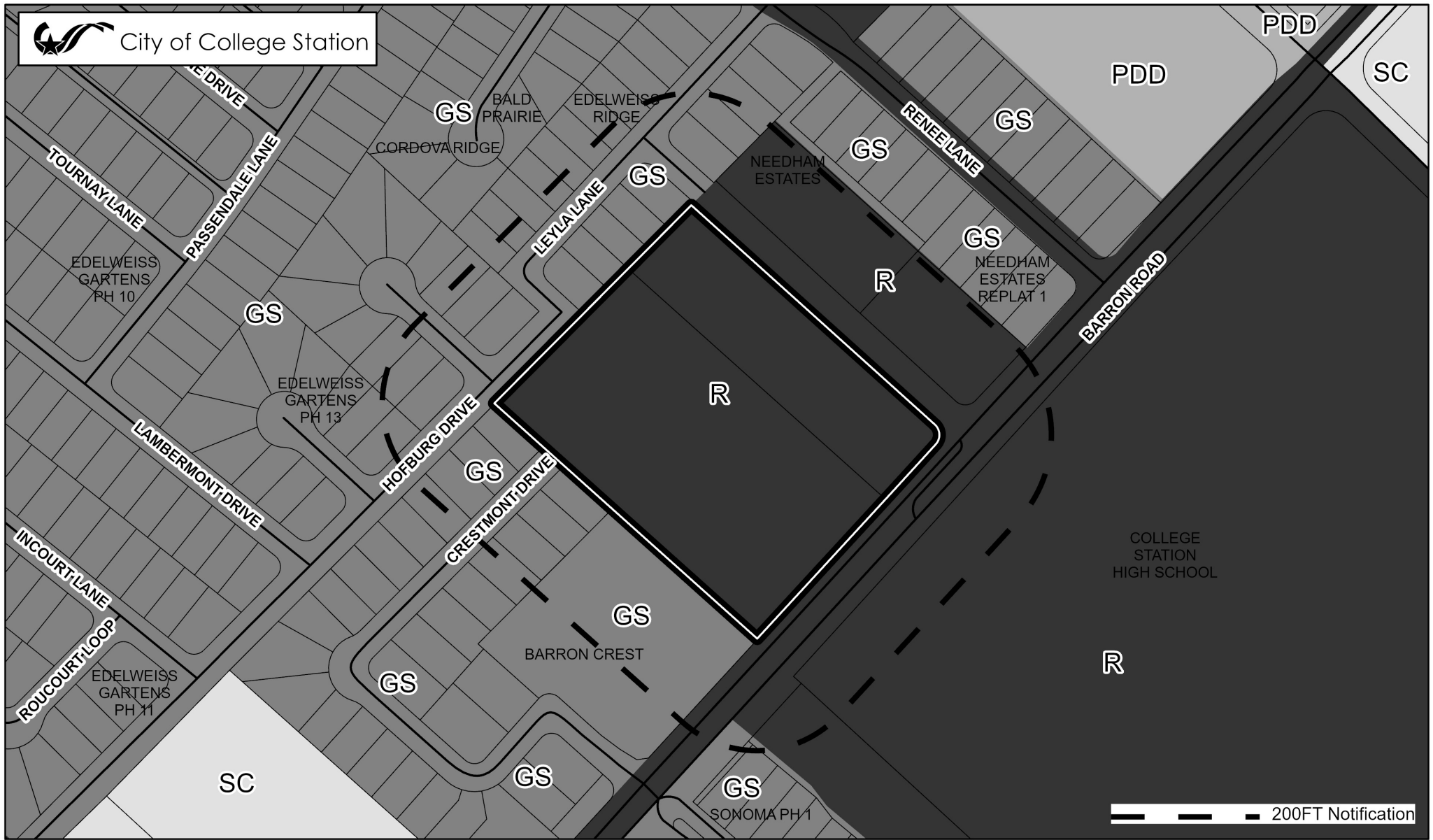


0 195 390 Feet

**REZONE 2542 AND 2522 BARRON ROAD
TO GS AND TH**

Case:
REZ2024-000008

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
R	Rural	MF	Multi-Family
WE	Wellborn Estate	MU	Mixed-Use
E	Estate	MHP	Manufactured Home Pk.
WRS	Wellborn Restricted Suburban		
RS	Restricted Suburban		
GS	General Suburban		
D	Duplex		
T	Townhome		

Non-Residential

NAP	Natural Area Protected
O	Office
SC	Suburban Commercial
WC	Wellborn Commercial
GC	General Commercial
CI	Commercial Industrial
BP	Business Park
BPI	Business Park Industrial
C-U	College and University

Planned Districts

P-MUD	Planned Mixed-Use Dist.
PDD	Planned Develop. Dist.

Design Districts

WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts

OV	Corridor Ovr.
RDD	Redevelopment District
HOO	High Occupancy Ovr.
ROO	Restricted Occupancy Ovr.
NPO	Nbrhd. Prevailing Ovr.
NCO	Nbrhd. Conservation Ovr.
HP	Historic Preservation Ovr.

Retired Districts

R-1B	Single Family Residential
R-4	Multi-Family
R-6	High Density Multi-Family
C-3	Light Commercial
RD	Research and Dev.
M-1	Light Industrial
M-2	Heavy Industrial



0 240 480 Feet

**REZONE 2542 AND 2522 BARRON ROAD
TO GS AND TH**

Case:
REZ2024-000008

REZONING

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: May 16, 2024

Advertised Council Hearing Date: June 13, 2024

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

Edelweiss Gartens HOA, Edelweiss Ridge HOA, Sonoma HOA

Property owner notices mailed: 49
Contacts in support: None at the time of this report
Contacts in opposition: Two against development in the area
Inquiry contacts: One

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Suburban Residential	GS General Suburban	Single Family Residential
South	Institutional/Public	R Rural	College Station High School
East	Suburban Residential	R Rural	Single Family Residential
West	Suburban Residential	GS General Suburban	Single Family Residential and a school/daycare

DEVELOPMENT HISTORY

Annexation: 1995
Zoning: A-O Agricultural Open upon annexation
A-O renamed R Rural (2013)
Final Plat: Portion platted as Needham Estates, Block 1, Lots 1-7
Site development: Undeveloped



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: REZONE 2542 AND 2522 BARRON ROAD TO GS AND TH (REZ2024-000008)

Address: 2542 BARRON RD

Legal Description: A005401, R STEVENSON (ICL), TRACT 90, 4.89 ACRES

Total Acreage: 7.07

Applicant:: BEAMON ENGINEERING, LLC

Property Owner: SAVAGE GRACE LYNN REVOCABLE TR

List the changed or changing conditions in the area or in the City which make this zone change necessary.

This is infill development surrounded by GS and College Station High School. The proposed use is consistent with the surrounding development.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan designation is Suburban Residential which allows for single family homes and townhomes in a limited setting, which is perfect for this infill.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

The current property is zoned rural which is not adequate for the highest and best use of this property.

Explain the suitability of the property for uses permitted by the rezoning district requested.

The requested zoning is well suited for the proposed use since proposed use exactly matches the zoning being requested.

Explain the suitability of the property for uses permitted by the current zoning district.

The requested zoning is well suited for the proposed use since proposed use exactly matches the zoning being requested.

Explain the marketability of the property for uses permitted by the current zoning district.

The property currently has one single family house with possible agricultural uses. For this location, the property is not marketable under the current use.

List any other reasons to support this zone change.

NA

LEGEND

PROPERTY BOUNDARY

PROPOSED GENERAL SUBURBAN ZONING

PROPOSED TOWNHOME ZONING

NOTES:

1. Bearings are Texas State Plane, Central Zone NAD83 datum, based on GPS observations checked to City of College Station GPS monuments no. 138.

2. No part of this property lies within a special flood hazard area, according to Flood Insurance Rate Map no. 48041C0325E, revised MAY 16, 2012.

3. No Single-Family access will be taken from Barron Road

VICINITY MAP

1" = 2000'

TBPE FIRM NO. F-21588
16172 BENCH LANE
BRYAN, TEXAS 77807

BEAMON

ENGINEERING

REZONING EXHIBIT
LEYLA HEIGHTS
COLLEGE STATION, TX

DRAWN BY: DPB

APPROVED BY: DPB

DATE: APRIL 22, 2024

JOB NUMBER: TBD

SCALE: 1"=100'

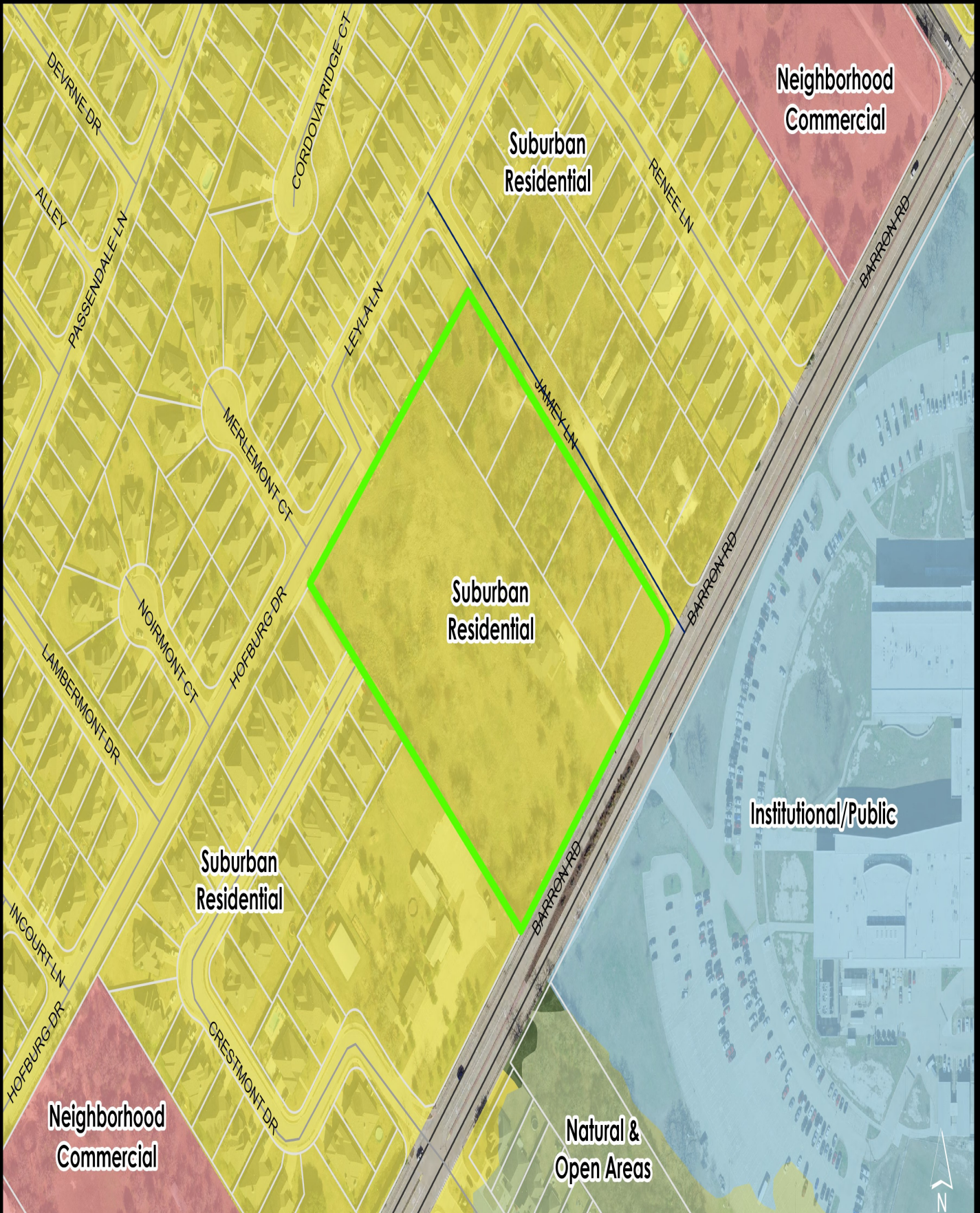
SHEET NO.: 1 OF 1

THIS EXHIBIT HAS BEEN PREPARED BY DANIEL BEAMON, P.E. #105876. THIS EXHIBIT SHALL BE USED FOR REFERENCE ONLY AND SHALL NOT BE USED FOR BIDDING OR CONSTRUCTION.

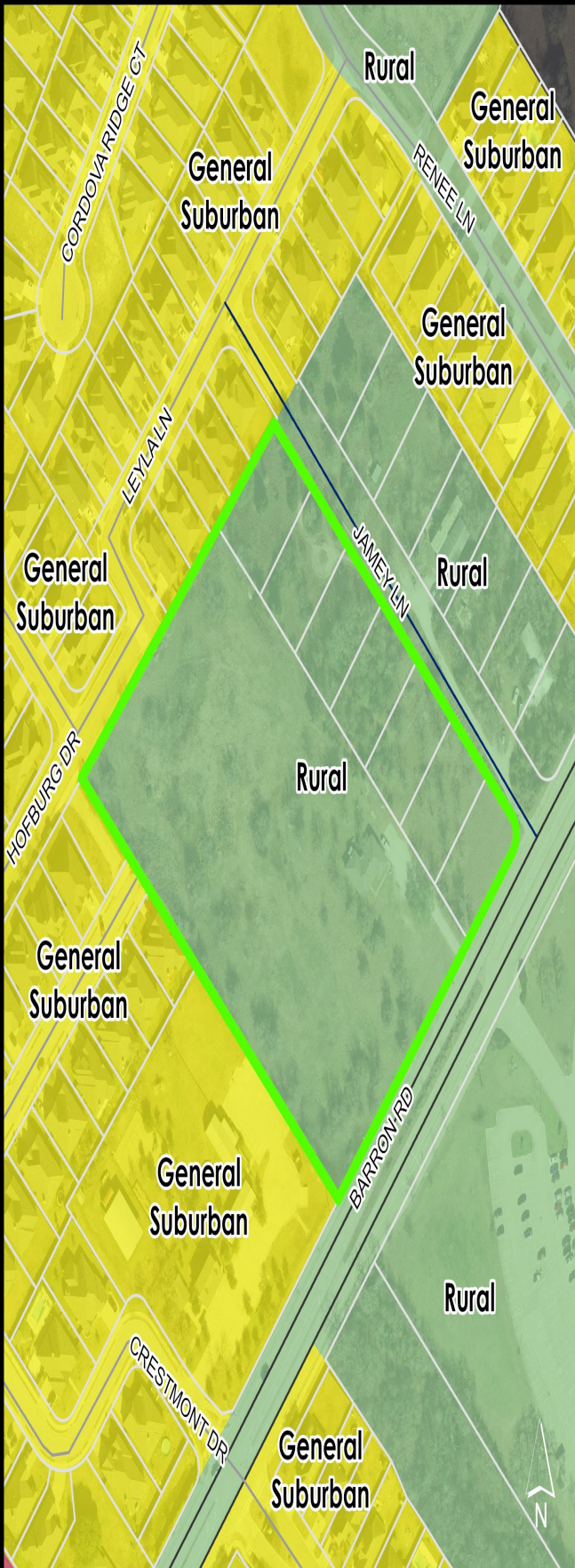
Page 329 of 439

EXISTING

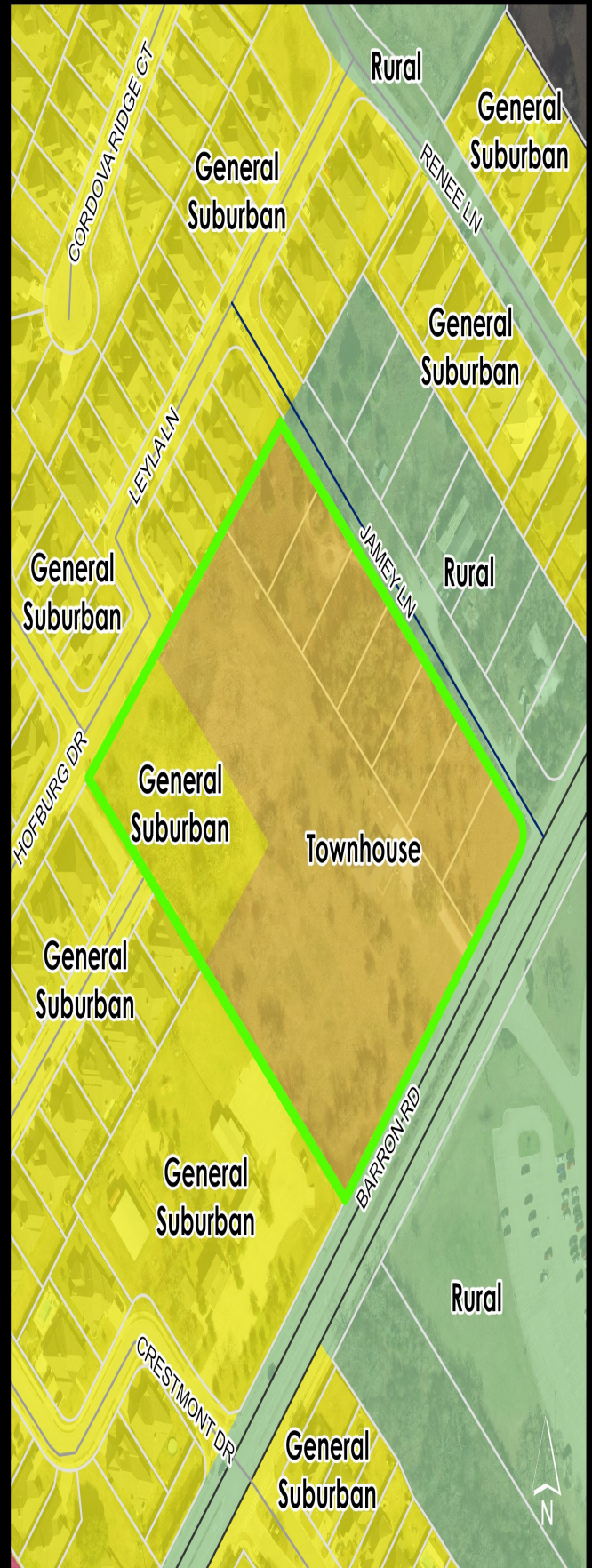
Future Land Use



EXISTING Zoning



PROPOSED Zoning



June 27, 2024

Item No. 8.4.

Consolidated Plan Substantial Amendment - Homeownership Acquisition and Rehabilitation

Sponsor: Raney Whitwell, Community Development Analyst

Reviewed By CBC: City Council

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding a resolution to approve a substantial amendment to the 2020-2024 Consolidated Plan to add Homeowner Acquisition Rehabilitation as a goal and project.

Relationship to Strategic Goals:

Core Services & Infrastructure, Neighborhood Integrity, Diverse & Growing Economy

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

Summary: This item will substantially amend the 2020-2024 Consolidated Plan to add Homeowner Acquisition Rehabilitation as a Goal and Project. This will allow Homeowner Acquisition Rehabilitation to be included in the Program Year 2024 (PY24) Annual Action Plan and Community Development budget, which is scheduled to be presented as a Workshop item to City Council on July 11, 2024.

Staff considers the implementation of the Homeowner Acquisition Rehabilitation project to be an important tool for neighborhood revitalization. This initiative involves the acquisition and rehabilitation of existing residential properties that are either in substandard or conservable condition. Following rehabilitation, the properties will be sold to income-eligible households at an amount that is determined to be affordable for the household. Funds received from the sale of each residential property will be utilized for future acquisitions. Deed restrictions will be placed on the property to ensure long-term affordability. If sold in the future, the residential property will be sold to an income-eligible household. Due to the current volatility and scarcity of affordable housing within the local real estate market, the inclusion of the Homeowner Acquisition Rehabilitation project in the Consolidated Plan and Annual Action Plan will facilitate homeownership opportunities for a more diverse spectrum of income brackets, thereby promoting economic diversity and stability in our community.

A 30-day public review and comment period was open from May 20, 2024, through June 21, 2024. The amendment was available for review on the City of College Station Community Development Publication web page. Citizens were encouraged to submit comments by mail, email, or by phone.

Budget & Financial Summary: Funds to address this goal will be included in the FY2025 (PY24) Annual Action Plan and Community Development Budget

Attachments:

1. Resolution- 2020-2024 Consolidated Plan Substantial Amendment

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS APPROVING A SUBSTANTIAL AMENDMENT OF THE 2020-2024 CONSOLIDATED PLAN TO ADD HOMEOWNER ACQUISITION REHABILITATION AS A GOAL AND PROJECT.

WHEREAS, the City of College Station, Texas, has a Five-Year Consolidated Plan that has been approved by City and HUD that guides the development of the Annual Action Plan and Budget; and

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

WHEREAS, the City of College Station has prepared a Substantial Amendment of the 2020-2024 Consolidated Plan that (1) adds Homeowner Acquisition Rehabilitation as a goal and project; and (2) allows staff to allocate funding for Homeowner Acquisition Rehabilitation in the Program Year (PY) 2024 Annual Action Plan; and

WHEREAS, the City of College Station has provided adequate information to the citizens and an opportunity to participate in the development of Substantial Amendment of the 2020-2024 Consolidated Plan; and

WHEREAS, the City of College Station acknowledges that the adoption of Substantial Amendment of the 2020-2024 Consolidated Plan is in the best interest of the City; now, therefore,

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

PART 1: That the City Council hereby approves the Substantial Amendment of the 2020-2024 Consolidated Plan that (1) adds Homeowner Acquisition Rehabilitation as a goal and project; (2) allows staff to allocate funding for Homeowner Acquisition Rehabilitation in the Program Year (PY) 2024 Annual Action Plan.

PART 2: That the City Council hereby designates and authorizes and the City Manager to sign all required applications, certifications, evaluations and other forms required by HUD for Substantial Amendment of the 2020-2024 Consolidated Plan.

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

ADOPTED this ____ day of _____ 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

June 27, 2024
Item No. 8.5.
McCulloch Water/Wastewater Rehab

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Kieschnick General Contractor, Inc, in the amount of \$7,777,493 for McCulloch Water and Wastewater Rehabilitation, plus the City's contingency in the amount of \$777,749 for a total appropriation of \$8,555,242. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project includes the rehabilitation of water and wastewater lines in the McCulloch area neighborhood in the vicinity of Arizona Street, Phoenix Street, Carolina Street, and Georgia Street. This project is needed as there has been an increase of service disruptions to both the wastewater and water lines, age of infrastructure, depth of lines, poor access, and inadequate fire protection. This project will replace approximately 1,600 linear feet of 12-inch, 440 linear feet of 10-inch, and 12,500 linear feet of 8-inch thru 6-inch sanitary sewer. Manholes and sewer services will also be rehabbed or replaced. This project will also replace approximately 4,500 linear feet of 12-inch and 9,700 linear of 8-inch thru 2-inch water line, include a directional drill along FM 2154. Water line services will also be replaced. Street, driveway, and curb repair will be required as needed.

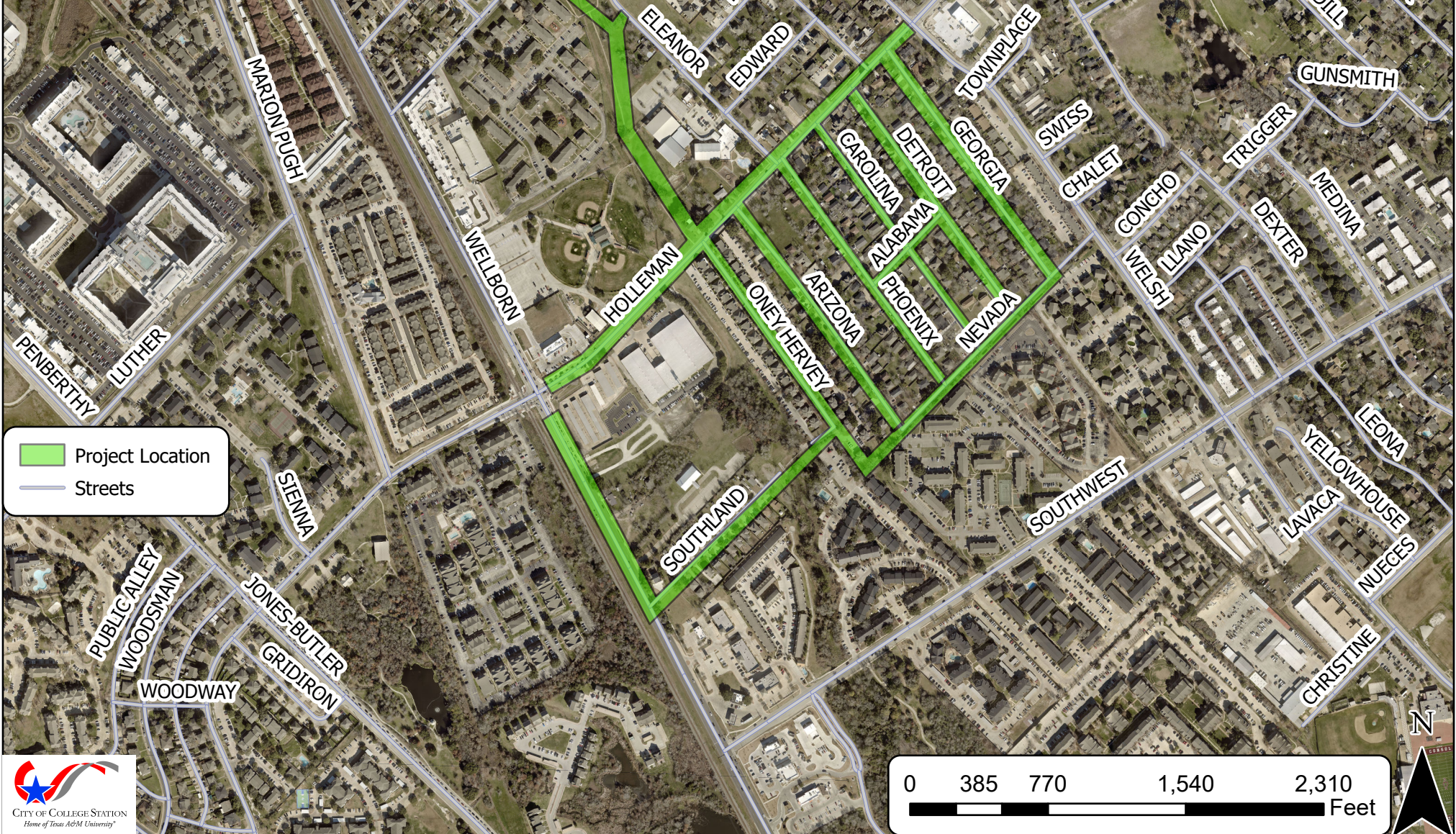
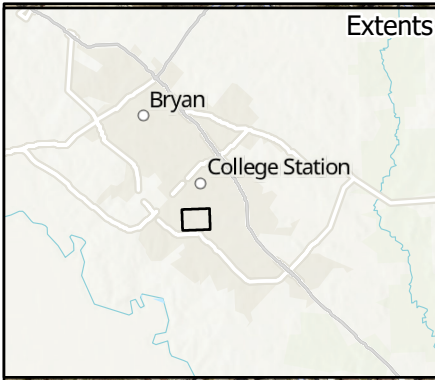
This project was procured using the Invitation to Bid (ITB) Method. Two bids were received and reviewed and the submission by Kieschnick General Contractor, Inc. was the lowest responsible bidder.

Budget & Financial Summary: A combined budget of \$9,527,000 is included in the Water and Wastewater Capital Improvement Projects Funds. A combined total of \$923,175 has been spent or committed to date, leaving a combined balance of \$8,603,825 for this contract and related costs. The Water portion of this project was identified as an eligible use for ARPA funds. The Water construction costs will be covered by these funds.

Attachments:

1. McCulloch Utility Rehab Project Map
2. Contract 24300504_--BW

McCulloch Utility Rehab





CONTRACT#: 24300504 PROJECT#: WA/WW1900001 BID#: _____ RFP#: _____

Rehabilitation of water and wastewater utilities in the McCulloch neighborhood

Debarment Check ☐ Yes ☐ No ☐ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ☐ N/A

Davis Bacon Wages Used ☒ Yes ☐ No ☐ N/A
Buy America Required ☒ Yes ☐ No ☐ N/A
Transparency Report ☐ Yes ☐ No ☐ N/A

Page 337 of 439

**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 KIESCHNICK GENERAL CONTRACTOR, INC. (the "Contractor") for the construction and/or installation of the following:
AS DESCRIBED IN 24-048 MCCULLOCH UTILITY REHABILITATION PROJECT.

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: Seven Hundred Seventy-Seven Thousand Four Hundred Ninety Three and NO /100 Dollars (\$ 777,493.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Seven Million Seven Hundred Seventy-Seven Thousand Four Hundred Ninety-Three and NO /100 Dollars (\$ 7,777,493.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

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

10.06 Work Stoppage. If in the judgment of either the City or City's Representative any of the Work or materials furnished is not in strict accordance with this Agreement or any portion of the Work is being performed

so as to create a hazardous condition, they may, in their sole discretion, order the Work of the Contractor or any subcontractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

access space to determine errors, inconsistencies or omissions. In all cases of interconnection of the Work with existing conditions, Contractor shall verify at the site all dimensions relating to such existing conditions.

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

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

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

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

12. MATERIALS

12.01 Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

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

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

(a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.

(b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.

(c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

(d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.

(e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

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

12.05 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

15.02 Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the Work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. Contractor's subcontract agreement shall provide that subcontractors shall assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which the Contractor, by these Documents, assumes toward the City and Consultant. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

16. PAYMENT

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

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

not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the Work.

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

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

OR:

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

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

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

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

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

16.09 Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

OR:

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

included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non-included cost.

17.04 The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the Work shall not excuse the Contractor from performing all the Work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the Work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the Work and the Contractor shall assume and pay the costs of the performance of the Work as contracted.

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

(g) Method C - Actual Field Costs. The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, workers' compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

21.03 No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance or delay in the progress of the Work, unless such delays (i) are caused by the actual interference, fraud, bad faith or misrepresentation by the City or its agents, (ii) extend for an unreasonable length of time; or (iii) were not contemplated by the parties at the time of contracting. In the event of any delay entitling Contractor to an

increase in Contract Amount, except when due to City's intentional interference or fraud, Contractor's recovery shall be limited as outlined in Section 21.04 below. The City's reasonable exercise of any of its rights or remedies under the Contract, regardless of the extent or frequency, shall not under any circumstances be construed as interference with the Contractor's performance of the Work.

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

23.01 The time for the Substantial and Final Completion of the Work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages

that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02 As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of TWO HUNDRED and NO /100 DOLLARS (\$200.00) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

25.06 Defective Work Discovered During Warranty Period. If any of the Work is found or determined to be either defective, including obvious defects under warranty as set forth in this Section 25, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the Work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly, upon receipt of written notice by the City, correct the defective work at no cost to the City.

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

25.08 If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the Work, the Contractor has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the Work to be done by a third party. The cost of the work shall be paid by the Contractor or its surety.

25.09 The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

25.10 The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all Work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the Work.

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

26.04 No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit

shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

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

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

27. INSURANCE

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

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

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

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

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

- (a) Only licensed Insurance Carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.

- (e) The City of College Station, its agents, officials, employees and volunteers, are to be named as “Additional Insured” to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents, officials, employees or volunteers.

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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, ^{type text here} 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

**KIESCHNICK, GENERAL
CONTRACTORS, INC.**

By: Dana Kieschnick

Printed Name: Dana Kieschnick

Title: President

Date: 6/10/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

John A. Haislet

City Attorney

Date: 6/11/2024

JM Castro

Assistant City Manager/CFO

Date: 6/10/2024

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.

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** 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 apprenticeship 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. 1089202

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

THAT WE, Kieschnick General Contractors, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Seven Million Seven Hundred Seventy-Seven Thousand Four Hundred Ninety-Three and NO /100 Dollars (\$ 7,777,493.00) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for as described in 24-048 McCulloch Utility Rehabilitation

,
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. Bond No. 1089202

FOR THE CONTRACTOR:

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

By: Carson Kieschnick
Name: Carson Kieschnick
Title: Project Manager
Date: June 27, 2024

KIESCHNICK GENERAL CONTRACTORS, INC
(Name of Contractor)
By: Dana Kieschnick
Name: DANA KIESCHNICK
Title: PRESIDENT
Date: June 27, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Haevyn Knobloch
Name: Haevyn Knobloch
Title: Client Service Manager
Date: June 27, 2024

The Hanover Insurance Company
(Full Name of Surety)
440 Lincoln Street
Worcester, MA 01653
(Address of Surety for Notice)

By: Tina McLelland
Name: Tina McLelland
Title: Attorney-in-Fact
Date: June 27, 2024

FOR THE CITY:

REVIEWED:

John A. Haislet
City Attorney

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

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. 1089202

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

THE COUNTY OF BRAZOS

§

THAT WE, Kieschnick General Contractors, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto The Hanover Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Seven Million Seven Hundred Seventy-Seven Thousand Four Hundred Ninety-Three and NO /100 Dollars (\$ 7,777,493.00) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 27th day of June, 2024, for as described in 24-048 McCulloch Utility Rehabilitation, 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. 1089202

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: Cara Kierstead

Name: Carson Kieschnick

Title: Project Manager

Date: June 27, 2024

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KIESCHNICK GENERAL CONTRACTORS, INC

(Name of Contractor)

By: Dana L. Kieschnick

Name: DANA KIESCHNICK

Title: PRESIDENT

Date: June 27, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Harvey Knobloch

Name: Haevyn Knobloch

Title: Client Service Manager

Date: June 27, 2024

The Hanover Insurance Company

(Full Name of Surety)

440 Lincoln Street

Worcester, MA 01653

(Address of Surety for Notice)

By: Amzeland

Name: Tina McLelland

Title: Attorney-in-Fact

Date: June 27, 2024

FOR THE CITY:

REVIEWED:

John R. Haislet
City Attorney

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

City Manager

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

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Tina McLelland, Robbie Martin, Josh Andrajack, and/or Haevyn Knobloch

Of **Boley Featherston Huffman & Deal Co. of Wichita Falls, TX** each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Any such obligations in the United States, not to exceed Thirty Million and No/100 (\$30,000,000) in any single instance

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America and affirmed by each Company on March 24, 2014)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 10th day of August, 2023



The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

James H. Kawiecki
James H. Kawiecki, Vice President

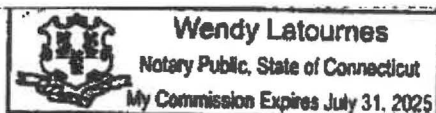
The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

Joellen M. Mendoza
Joellen M. Mendoza, Vice President

STATE OF CONNECTICUT)
COUNTY OF HARTFORD)

) ss.

On this 10th day of August, 2023 before me came the above named Executive Vice President and Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Wendy Latournes
Wendy Latournes, Notary Public
My commission expires July 31, 2025

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 27th day of June, 2024.

CERTIFIED COPY

The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

John Rowedder
John Rowedder, Vice President

Texas Complaint Notice

Commercial Lines

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call The Hanover Insurance Company/
Citizens Insurance Company of America's toll-free
telephone number for information or to make a
complaint at:

1-800-343-6044

You may also write to The Hanover Insurance Company/
Citizens Insurance Company of America at:

440 Lincoln Street
Worcester, MA 01653

You may contact the Texas Department of Insurance
to obtain information on companies, coverages,
rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium
or about a claim you should contact the agent or the
company first. If the dispute is not resolved, you may
contact the Texas Department of Insurance.

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

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de
The Hanover Insurance Company/Citizens Insurance
Company of America's para informacion o para
someter una queja al:

1-800-343-6044

Usted tambien puede escribir a The Hanover Insurance
Company/Citizens Insurance Company of America al:

440 Lincoln Street
Worcester, MA 01653

Puede comunicarse con el Departamento de Seguros
de Texas para obtener informacion acerca de
compañias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un
reclamo, debe comunicarse con el agente o la com-
pañia primero. Si no se resuelve la disputa, puede
entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo
para proposito de informacion y no se convierte en
parte o condicion del documento adjunto.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/21/2024

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 Higginbotham Insurance Agency, Inc. 11700 Katy Freeway Suite 1100 Houston TX 77079	CONTACT NAME: Bee Bigtacion PHONE (A/C, No, Ext): 713-888-3951 E-MAIL: bbigtacion@higginbotham.net ADDRESS:	FAX (A/C, No): 713-952-9939
INSURED Kieschnick General Contractors Inc. PO Box 200 Wellborn TX 77881	INSURER(S) AFFORDING COVERAGE INSURER A: State Auto Mutual Insurance INSURER B: Texas Mutual Insurance Company INSURER C: The Hanover American Insurance Company INSURER D: Westchester Surplus Lines Ins Co INSURER E: INSURER F:	NAIC # 11017 22945 36064 10172

COVERAGES**CERTIFICATE NUMBER:** 1767099357**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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:		SPP2505308 03	8/8/2023	8/8/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		10034425CA	8/8/2023	8/8/2024	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 \$ 0		SPP2505308 03	8/8/2023	8/8/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ Y ☐ N/A	0001145847	8/8/2023	8/8/2024	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	LEASED/RENTED EQUIPMENT		IHDH354853 03	8/8/2023	8/8/2024	MAX RENTED ITEM/DED \$450,000
D	POLLUTION LIABILITY		G28418450 004	8/8/2023	8/8/2024	AGGREGATE/EACH CONDIT \$2,000,000 POLLUTION DEDUCTIBLE \$2,500

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

Installation Floater: Policy Number: IHDH354853-03 (The Hanover American Insurance Company) - Effective: 08/08/2023 to 08/08/2024
Jobsite Limit: \$1,000,000
Catastrophe Limit: \$1,000,000

See Attached...

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
PO Box 9960
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY Higginbotham Insurance Agency, Inc.		NAMED INSURED Kieschnick General Contractors Inc. PO Box 200 Wellborn TX 77881	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

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

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

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

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

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

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

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

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

Excluded Officers: Dana Kieschnick and Jerry Kieschnick.

The Pollution policy includes blanket additional insured endorsement, a waiver of subrogation endorsement and primary and non-contributory provision to the certificate holder only when there is a written contract between the insured and the certificate holder that requires it.

Umbrella policy follows underlying coverage.

Project: 24-048 McCulloch Utility Rehabilitation

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO POLICY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO 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:

CONTENTS:

- A. ADDITIONAL INSURED – AUTOMATIC STATUS
- B. BROADENED INSURED
- C. DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS CONDITION
- D.. UNINTENTIONAL FAILURE TO DISCLOSE ALL HAZARDS
- E. RESULTANT MENTAL ANGUISH
- F. AMENDMENT OF FELLOW EMPLOYEE LIABILITY EXCLUSION
- G. EMPLOYEES AS INSURED
- H. EMPLOYEE HIRED AUTOS
- I. INCREASED BAIL BONDS AND LOSS OF EARNINGS
- J. INCREASED TRANSPORTATION EXPENSE – TOTAL THEFT OF A COVERED AUTO
- K. INCREASED LOSS OF USE EXPENSE
- L. ACCIDENTAL DISCHARGE OF AIRBAG COVERAGE
- M. GLASS REPAIR DEDUCTIBLE WAIVER
- N. COLLISION DEDUCTIBLE WAIVER
- O. INCREASED LIMIT FOR ELECTRONIC EQUIPMENT
- P. TOWING
- Q. AUTO LOAN/LEASE GAP COVERAGE
- R. PERSONAL EFFECTS COVERAGE
- S. LOCKSMITH SERVICES
- T. TAPES, RECORDS AND DISCS COVERAGE
- U. HIRED AUTO PHYSICAL DAMAGE
- V. HIRED PRIVATE PASSENGER AUTOS AND LIGHT TRUCKS – WORLDWIDE COVERAGE
- W. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

A. ADDITIONAL INSURED – AUTOMATIC STATUS

Item A.1.c. of SECTION II –COVERED AUTOS LIABILITY COVERAGE,WHO IS AN INSURED is deleted and replaced with the following:

- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability. This includes, but is not limited to, any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract or a written agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured under this policy only with respect to liability caused in whole or in part by your acts or omissions in the performance of your ongoing operations for the additional insured. A person or organization's status as an additional insured for ongoing operations under this policy ends when your operations for the additional insured are completed or when this policy is cancelled, whichever occurs first.

B. BROADENED INSURED

The following paragraph is added to SECTION II –A.1. WHO IS AN INSURED:

- d. Any organization of yours, other than a partnership or joint venture, of which you own a financial interest of more than 50% as of the effective date of this Coverage part, will qualify as an "insured". However, such organization will not qualify as an "insured" if it is also an "insured" under another policy, other than a policy written to apply specifically in excess of

this Coverage Part or would be an "insured" under such policy but for its termination or the exhaustion of its limits of insurance. Each such organization remains qualified as an "insured" only while you own a financial interest of more than 50% in the organization during the policy period.

- e. Any organization that is acquired or formed by you, other than a partnership or joint venture, of which you own a financial interest of more than 50% will qualify as an "insured". However, such organization will not qualify as an "insured" if it is also an "insured" under another policy, other than a policy written to apply specifically in excess of this Coverage Part or would be an "insured" under such policy but for its termination or the exhaustion of its limits of insurance. Each such organization remains qualified as an "insured" only while you own a financial interest of more than 50% in the organization during the policy period.

This provision does not include:

- (1) any organization 180 days or more after its acquisition or formation; or
- (2) "bodily injury", "property damage" or "covered pollution cost or expense" caused by an "accident" that occurred before you acquired or formed the organization.

C. DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS CONDITION

The following paragraph is added to the end of Paragraph A. 2., SECTION IV – BUSINESS AUTO CONDITIONS:

Your obligation to notify us promptly of an "accident", claim, "suit" or "loss" is

satisfied if you send us written notice as soon as practicable after any of your executive officers, directors, partners, insurance managers, legal representatives, or "employees" authorized by you to give or receive notices becomes aware of or should have become aware of such "accident", claim, "suit" or "loss".

If you report an "accident" or "loss" to your workers compensation insurer which later becomes a claim under this coverage part, failure to report such "accident" or "loss" to us at the time of the "accident" or "loss" will not be considered a violation of this Condition, if you notify us as soon as practicable when you become aware that the "accident" or "loss" has become a liability claim.

D. UNINTENTIONAL FAILURE TO DISCLOSE ALL HAZARDS

The following paragraph is added to Paragraph B. of SECTION IV – BUSINESS AUTO CONDITIONS:

Based on our reliance on your representations of existing hazards, if you unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

E. RESULTANT MENTAL ANGUISH

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

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

F. AMENDMENT OF FELLOW EMPLOYEE LIABILITY EXCLUSION

The Fellow Employee Exclusion contained in Section II – Covered Autos Liability Coverage does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire. The insurance granted under this provision is

excess over any other collectible insurance

G. EMPLOYEES AS INSURED

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

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

H. EMPLOYEES HIRED AUTOS

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

Any "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5.b. Other Insurance is replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

I. INCREASED BAIL BONDS AND LOSS OF EARNINGS

SECTION II – COVERED AUTOS LIABILITY COVERAGE, A.2. Coverage Extensions, a. Supplementary Payments is amended by:

1. Replace the \$2,000 limit for cost of bail bonds with \$5,000 in paragraph (2); and
2. Replace the \$250 a day limit for reasonable expenses including actual loss of earnings with \$500 a day in paragraph (4).

J. INCREASED TRANSPORTATION EXPENSE – TOTAL THEFT OF A COVERED AUTO

SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions, a. Transportation Expenses, is amended by replacing \$20 per day with \$60 per day, and the \$600 maximum with \$1,800 maximum.

This extension applies to all covered "autos" with a Gross Vehicle Weight of less than 10,001 pounds.

K. INCREASED LOSS OF USE EXPENSES

SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions, b. Loss Of Use Expenses, is amended by replacing \$20 per day with \$60 per day, and the \$600 maximum with \$1,800 maximum.

L. ACCIDENTAL DISCHARGE OF AIRBAG COVERAGE

The following is added to Exclusion B.3.a. of SECTION III – PHYSICAL DAMAGE COVERAGE:

However, this exclusion does not apply to the accidental discharge of an airbag.

M. GLASS REPAIR DEDUCTIBLE WAIVER

The following is added to paragraph D. of SECTION III – PHYSICAL DAMAGE COVERAGE:

No deductible applies to glass damage if the glass is repaired in a manner acceptable to us rather than replaced.

N. COLLISION DEDUCTIBLE WAIVER

The following is added to paragraph D. of SECTION III – PHYSICAL DAMAGE COVERAGE:

When a covered "auto" insured for Collision coverage under this policy collides with another "auto" we insure, the Collision deductible applicable to the covered "auto" or "autos" insured under this policy shall not apply.

O. INCREASED LIMIT FOR ELECTRONIC EQUIPMENT

Section III PHYSICAL DAMAGE COVERAGE C.1. b. is amended by replacing the \$1,000 with \$2,500.

P. TOWING

SECTION III – PHYSICAL DAMAGE COVERAGE, A.2. Towing, is replaced by replacing the following:

2. Towing

We will pay up to \$75 for towing and labor costs incurred each time an "auto" with a Gross Vehicle Weight of less than 10,001 pounds is disabled if the declarations indicate that either Comprehensive Coverage or Specified Causes of Loss Coverage and Collision Coverage are provided for that "auto".

Q. AUTO LOAN/LEASE GAP COVERAGE

The following is added to SECTION III – PHYSICAL DAMAGE COVERAGE:

In the event of a total "loss" to a covered "auto" shown in the Schedule or Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. Overdue payments and financial penalties associated with those payments as of the date of the "total loss";
2. The carryover, transfer or rollover of a previous outstanding lease or loan

balance from another vehicle to the original lease or loan for the scheduled "auto";

3. The dollar amount of any unrepaired damage which occurred prior to the total "loss" of the scheduled "auto";
4. All refunds paid or payable to you as a result of the early termination of the lease or loan agreement or, to the extent financed, as a result of the early termination of any warranty or extended service agreement on the scheduled "auto";
5. Financial penalties imposed under a lease agreement for high mileage, excessive use or abnormal wear and tear;
6. Nonrefundable security deposits; and
7. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease.

The following is added to paragraph A. Loss Conditions of SECTION IV – BUSINESS AUTO CONDITIONS:

Lease/Loan Gap Coverage shall apply to the remaining term of the original lease or loan agreement written on the scheduled "auto" at the time of total "loss".

R. PERSONAL EFFECTS COVERAGE

The following is added to SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions:

c. Personal Effects

We will pay up to \$500 for "loss" to personal effects which are:

- (1) owned by an "insured"; and
- (2) in or on a covered "auto".

This coverage applies only in the event of a total theft of a covered "auto". No deductible applies to this coverage. Tapes, records, discs or other similar

devices used with audio, visual or data electronic equipment are not considered personal effects.

S. LOCKSMITH SERVICES

The following is added to SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions:

d. Locksmith Services

We will pay up to \$100 for necessary locksmith services incurred because keys to a covered "auto" have been lost, stolen or damaged. No deductible applies to this coverage.

T. TAPES, RECORDS AND DISCS COVERAGE

Exclusion B.4.a. of SECTION III – PHYSICAL DAMAGE COVERAGE does not apply.

The following is added to SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions:

e. Tapes, Records And Discs Coverage

Under Comprehensive Coverage we will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (1) Are your property or that of a family member or employee
- (2) Are in a covered "auto" at the time of "loss".

The most we will pay for "loss" is \$200.

U. HIRED AUTO PHYSICAL DAMAGE

If hired "autos" are covered "autos" for Covered Autos Liability Coverage, then

Comprehensive and Collision coverages are extended to an "auto" you lease, hire, rent, or borrow subject to the following:

1. The most we will pay for "loss" to any leased, hired, rented, or borrowed "auto" is the Actual Cash Value or the cost to repair the "auto", whichever is smallest.
2. The deductible for Hired Auto Physical Damage will be equal to the largest deductible applicable to any owned "auto" scheduled on this policy for that coverage. No deductible applies to loss by fire or lightning.
3. If the "loss" to the leased, hired, rented, or borrowed "auto" is covered by Comprehensive Coverage, and if no owned "auto" scheduled on this policy is insured for Comprehensive Coverage, a \$100 deductible will apply to the "loss".
4. If the "loss" to the leased, hired, rented, or borrowed "auto" is covered by Collision Coverage, and if no owned "auto" scheduled on this policy is insured for Collision Coverage, a

\$1,000 deductible will apply for the "loss".

V. HIRED PRIVATE PASSENGER AUTOS AND LIGHT TRUCKS – WORLDWIDE COVERAGE

Paragraph b. 7.5.(1) of Section IV – BUSINESS AUTO CONDITIONS – Policy Period, Coverage Territory is replaced by the following:

Anywhere in the world if a covered "auto" of the private passenger type or a light truck with Gross Vehicle Weight less than 10,001 pounds is leased, hired, rented or borrowed without a driver for a period of 30 days or less.

W.TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

The following is added to Section IV – BUSINESS AUTO CONDITIONS A.5. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have against any person or organization to the extent required of you under a written contract executed prior to any "accident" or "loss", provided the "accident" or "loss" arises out of operations contemplated by such contract. This waiver applies only to the person or organization designated in such contract.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

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

2. Operations: All Texas operations

3. Premium:

The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
This endorsement, effective on 8/8/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001145847 of Texas Mutual Insurance Company effective on 8/8/23

Issued to: KIESCHNICK GENERAL CONTRACTORS INC

This is not a bill

NCCI Carrier Code: 29939



Authorized representative

8/2/23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS LIABILITY PLUS ENDORSEMENT

Unless otherwise amended by separate endorsement this endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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1. EXPECTED OR INTENDED PROPERTY DAMAGE

Exclusion 2.a. in SECTION I - COVERAGE A is replaced by the following:

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

2. BROADENED NON-OWNED WATERCRAFT

A. If Endorsement **CG 21 09, CG 21 10, CG 24 50** or **CG 24 51** is attached to the Policy, the following is added to Paragraph **2.g.(2)(b) - Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

Paragraph **2.g.(2)(b)** of **Section I - Coverages** is replaced by the following:

(b) A watercraft you do not own that is:

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

B. If Paragraph 2.A. does not apply, the following is added to Paragraph **2.g.(2) - Exclusions** under **SECTION I - COVERAGE** pertaining to non-owned watercraft, is changed to the following:
This exclusion does not apply to:

(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.

3. AMENDED SUPPLEMENTARY PAYMENTS

Paragraphs **b.** and **d.** of the **Supplementary Payments - Coverages A and B** section are changed as shown:

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

4. BROADENED DAMAGE TO PREMISES RENTED TO YOU

A. The paragraph immediately following **Exclusion 2.j.(6)** in **SECTION I - COVERAGE A**, is amended as follows:

Paragraph (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, smoke, lightning, explosion, water damage or sprinkler leakage) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

B. The last paragraph under **Exclusion 2** in **SECTION I - COVERAGE A**, is amended as follows:

Exclusions c. through n. do not apply to damage by fire, smoke, lightning, explosion, water damage or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

C. **SECTION III - LIMITS OF INSURANCE** is amended as follows:

Paragraph 6. is deleted and replaced with the following:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, smoke, lightning, explosion, water damage or sprinkler leakage, while rented to you or temporarily occupied by you, with permission of the owner.

Subject to all the terms of **SECTION III - LIMITS OF INSURANCE**, the Damage to Premises Rented To You Limit is the greater of:

a. \$500,000; or

b. The amount shown in the Declarations for Damage to Premises Rented To You Limit.

D. Paragraph **4.b.(1)(a)(ii)** in **Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is replaced with the following:

(ii) That is Fire, Smoke, Lightning, Explosion, Water Damage, or Sprinkler Leakage Insurance for premises while rented to you or temporarily occupied by you with the permission of the owner.

E. Paragraph **9.a.** in **Section V - DEFINITIONS** is amended to read:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, smoke, lightning, explosion, or water damage or sprinkler leakage to premises, while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".

5. ADDITIONAL INSURED - BROAD FORM VENDORS

A. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this section as vendor) with whom you agreed, because of a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However:

1. The insurance afforded to such vendor only applies to the extent permitted by law; and

2. If coverage provided to the vendor is required by contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

B. With respect to the insurance afforded to these vendors, the following additional exclusions apply:

1. The insurance afforded the vendor does not apply to:

a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

b. Any express warranty unauthorized by you;

c. Any physical or chemical change in the product made intentionally by the vendor;

d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) The exceptions contained in Sub-paragraphs d. or f.; or
 - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
3. Provision B.2. does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Coverage Part.
4. This insurance does not apply if "bodily injury" or "property damage" included within the "products completed operations hazard" is excluded either by the provisions of the Coverage Part or by endorsement.
- C. With respect to the insurance afforded to these vendors, the following is added to **Section III - Limits Of Insurance:**
 If coverage provided to the vendor is required by a contract or agreement, the most we will pay on behalf of the vendor is:
 1. The minimum amount of insurance required by the contract or agreement; or
 2. The amount of insurance available under the applicable Limits of Insurance shown in the Declarations;
 whichever is less.
 This provision shall not increase the applicable Limits of Insurance shown in the Declarations.
6. **ADDITIONAL INSURED - MANAGER OR LESSORS OF PREMISES**
 - A. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person(s) or organization(s) from whom you lease a building or premises when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by some negligent act or omissions by you, your employees, your agents, or your subcontractors as a result of your occupancy, maintenance or use of that part of the premises leased to you, provided that:
 1. The "bodily injury", "property damage" or "personal and advertising injury" giving rise to liability occurs subsequent to the execution of the agreement; and
 2. The written agreement is in effect at the time of the "bodily injury", "property damage", "personal and advertising injury" for which coverage was sought.
 However:
 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
 - B. Exclusions
 This insurance does not apply to:
 1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
 2. Any structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) from which you lease a building or premises.
 3. Any premise for which coverage is excluded by endorsement.
 4. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured.
 - C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**
 If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:
 1. The minimum amount of insurance required by the contract or agreement; or

2. The amount of insurance available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.
This provision shall not increase the applicable Limits of Insurance shown in the Declarations.
- 7. ADDITIONAL INSURED - LESSORS OF EQUIPMENT**
- A. SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
However, the insurance afforded to such additional insured:
1. Only applies to the extent permitted by law; and
 2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.
- B.** With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- C.** 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 is:
1. The minimum amount of insurance required by the contract or agreement; or
 2. The amount of insurance available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.
This provision shall not increase the applicable Limits of Insurance shown in the Declarations.
- 8. EXTENDED NEWLY FORMED OR ACQUIRED ORGANIZATIONS AS INSURED**
Paragraph 3. in **SECTION II - WHO IS AN INSURED** is deleted and replaced with the following:
- 3.** Any organization you newly acquire or form, other than a partnership, or joint venture, and over which you maintain ownership or majority interest, will qualify as an insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization. No person or organization is an insured with respect to the conduct of any current or past partnership, or joint venture that is not shown as an insured in the Declarations.
- 8. IMPROVED DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT CONDITION**
Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:
Paragraphs **e.** and **f.** are added to **2. Duties In the Event of Occurrence, Offense, Claim Or Suit**, as shown:
- e.** The requirement in Condition **2.a.** applies only when the "occurrence" or offense is known to:
- (1) You, if you are an individual;
 - (2) A partner, if you are a partnership; or
 - (3) An "executive officer" or insurance manager, if you are a corporation.
 - (4) A member or manager if the named insured is a limited liability company.
- f.** The requirement in Condition **2.b.** will not be breached unless the breach occurs after such claim or "suit" is known to:
- (1) You, if you are an individual;
 - (2) A partner, if you are a partnership; or
 - (3) An "executive officer" or insurance manager, if you are a corporation.
 - (4) A member or manager if the named insured is a limited liability company.

10. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

Condition 8. **Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization which, before the loss, you have agreed in writing to waive your right of recovery.

This provision does not apply to any written contract formed or executed after performance has begun.

11. PRIMARY AND NONCONTRIBUTORY

Subparagraph a. **Primary Insurance** of Paragraph 4. **Other Insurance** of **Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended by the following additional paragraph:

However, this insurance is primary to and will not seek contribution from any other insurance available to a person or organization added as an additional insured under the terms of this Coverage Form or amendatory endorsement provided that:

- a. The person or organization 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.

12. ELECTRONIC DATA LIABILITY

A. Exclusion 2.p. of **Coverage A - Bodily Injury And Property Damage Liability** in **Section I - Coverages** is replaced by the following:

2. Exclusions

This insurance does not apply to:

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

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

However, this exclusion does not apply to liability for damage because of "bodily injury".

B. The following is added to Paragraph 2. **Exclusions** of **Coverage B - Personal And Advertising Injury Liability** in **Section I - Coverages**:

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

Damages arising out of:

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

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

B. The following paragraph is added to **SECTION III - LIMITS OF INSURANCE**

Subject to 5. above, we will pay up to \$50,000 for the loss of "electronic data" under Coverage A for "property damage" because of all loss of "electronic data" arising out of any one "occurrence". The limit does not increase the "occurrence" limit stated in the Declarations.

C. The following definition is added to the **Definitions** section:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

D. For the purposes of the coverage provided by this endorsement, the definition "property damage" in the **Definitions** section is replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data" resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

13. "MOBILE EQUIPMENT" REDEFINED

Section V - DEFINITIONS is amended as follows:

- a. Paragraph 12.f.(1)(a), (b), and (c) of the "mobile equipment" definition does not apply to self-propelled vehicles of less than 1,000 pounds gross vehicle weight.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS PREMIER LIABILITY PLUS ENDORSEMENT

SOME PROVISIONS WITHIN THIS ENDORSEMENT PROVIDE CLAIMS-MADE COVERAGE.
PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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- A. EXPECTED OR INTENDED PROPERTY DAMAGE
- B. FELLOW EMPLOYEE COVERAGE
- C. EXTENDED NON-OWNED AIRCRAFT AND WATERCRAFT
- D. EXPANDED DAMAGE TO PREMISES RENTED OR OCCUPIED BY YOU
- E. INCREASED SUPPLEMENTARY PAYMENTS
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- G. ENHANCED DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT CONDITION
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- L. LIMITED PRODUCT WITHDRAWAL EXPENSE
- M. EMPLOYEE BENEFITS LIABILITY COVERAGE (CLAIMS-MADE COVERAGE)

A. EXPECTED OR INTENDED PROPERTY DAMAGE

Unless otherwise amended by separate endorsement to this Coverage Form, Exclusion 2.a. in SECTION I

- **COVERAGE A** is deleted and replaced by the following:

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

B. FELLOW EMPLOYEE COVERAGE

Unless otherwise amended by separate endorsement to this Coverage Form, paragraph 2.a.(1), in Section II

- **Who is an Insured**, is replaced by the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or member (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business.
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.
However, this does not apply to "bodily injury" to a co-"employee" when caused by your "employee", except with respect to claims for "bodily injury" to:
 - (a) A person arising out of any:
 - (i) Refusal to employ that person;
 - (ii) Termination of that person's employment; or
 - (iii) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person;
 - (b) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a) (i), (ii), or (iii) above is directed; or

- (c) Any person due to alleged negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others.

C. EXTENDED NON-OWNED AIRCRAFT AND WATERCRAFT

Unless otherwise amended by separate endorsement to this Coverage Form, the following changes apply:

1. Exclusion 2. g. in SECTION I - COVERAGE A is replaced by the following:

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 76 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".
- (6) An aircraft that is hired, chartered or loaned with a paid and licensed crew and is not owned in whole or in part by any insured

2. The following paragraph is added to SECTION II - WHO IS AN INSURED:

With respect to watercraft that you do not own that is less than 76 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission.

D. EXPANDED DAMAGE TO PREMISES RENTED OR OCCUPIED BY YOU

Unless coverage for Damage To Premises Rented To You under Coverage A is amended or excluded from the Coverage Form by separate endorsement, the following changes apply:

1. The paragraph immediately following Exclusion 2.j. (6) in SECTION I - COVERAGE A, is replaced by the following:

Paragraph (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, vandalism, weight of snow, ice or sleet, sprinkler leakage, or accidental discharge or leakage of water or steam) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. The last paragraph under Exclusion 2. in SECTION I - COVERAGE A, is replaced by the following: Exclusions a. through n. do not apply to damage by fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, vandalism, weight of snow, ice or sleet, sprinkler leakage, or accidental discharge or leakage of water or steam to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage To Premises Rented To You Limit of Insurance applies to this coverage as described in **Section III - LIMITS OF INSURANCE**.

3. Paragraph 6. in SECTION III - LIMITS OF INSURANCE is deleted and replaced by the following:

- 6.** Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage", while rented to you, or in the case of damage by fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, vandalism, weight of snow, ice or sleet, sprinkler leakage, or accidental discharge or leakage of water or steam, while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence".

Subject to all the terms of **SECTION III - LIMITS OF INSURANCE**, the Damage to Premises Rented To You Limit is the greater of:

- a. \$750,000; or
 - b. The amount shown in the Declarations for Damage to Premises Rented To You Limit.
4. Paragraph **4.b.(1)(b)** in **Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is replaced with the following:
- (b) That is fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, vandalism, weight of snow, ice or sleet, sprinkler leakage, or accidental discharge or leakage of water or steam Insurance for premises while rented to you or temporarily occupied by you with the permission of the owner.
5. Paragraph **9.a.** in **Section V - DEFINITIONS** is amended to read:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, vandalism, weight of snow, ice or sleet, sprinkler leakage, or accidental discharge or leakage of water or steam to premises, while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".

E. INCREASED SUPPLEMENTARY PAYMENTS

Unless otherwise amended by separate endorsement to this Coverage Form, the following changes apply:

Paragraph **1.b.** and **1.d.** of **SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** are amended as follows:

- b. Up to \$3,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 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 \$750 a day because of time off from work.

F. BROADENED NAMED INSURED

1. Paragraph **3.** of **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

3. Any organization of yours, other than a partnership or joint venture, which is not shown in the Declarations, and of which you own a financial interest of more than 50% as of the effective date of this Coverage Form, will qualify as an insured subject to the following:

- a. Newly acquired or formed organizations:

- (1) Coverage A does not apply to "bodily injury" or "property damage" that occurred, and
- (2) Coverage B does not apply to "personal and advertising injury" arising out of an offense, before you acquired or formed the new organization.

- b. Existing and newly acquired or formed organizations will not qualify as an insured if it:

- (1) Is also an insured under another policy, other than a policy written to apply specifically in excess of this policy; or
- (2) Would be an insured under such policy but for its termination or exhaustion of its limits of insurance.

Each such organization remains qualified as an insured only while you own a financial interest of more than 50% in the organization during the policy period.

An additional premium will apply in accordance with our rules and rates in effect at the beginning of the policy period or on the date you acquired or formed the organization if subsequent to the inception date of the policy.

This provision does not apply if coverage for newly formed or acquired organizations is excluded either by the provisions of the Commercial General Liability Coverage Form or by any applicable endorsement.

2. Under **Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition **4.** Other Insurance, paragraph **b.** Excess Insurance.

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to an insured when this insurance is available solely by reason of your direct or indirect control of more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization.

G. ENHANCED DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT CONDITION

Unless otherwise amended by separate endorsement to this Coverage Form, the following paragraph is added to the end of Paragraph **2.** **Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

Your obligation to notify us as soon as practicable of an "occurrence", offense, claim or "suit" is satisfied if you send us written notice as soon as practicable after any of your "executive officers", directors, partners, insurance managers, legal representatives, "employees" or "volunteer workers" authorized by you to give or receive notices becomes aware of or should have become aware of such "occurrence", offense, claims or "suit".

If you report an "occurrence" or offense to your Workers Compensation insurer which later becomes a claim under this coverage form, failure to report such "occurrence" or offense to us at the time of the "occurrence" or offense will not be considered a violation of this Condition, if you notify us as soon as practicable when you become aware that the "occurrence" or offense has become a liability claim.

H. UNINTENTIONAL FAILURE TO DISCLOSE ALL HAZARDS

Unless otherwise amended by separate endorsement to this Coverage Form, the following paragraph is added to Paragraph 6. of **SECTION IV - CONDITIONS**:

Based on our reliance on your representations as to existing hazards, if you unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Form, we shall not deny coverage under this Coverage Form because of such failure.

I. LIBERALIZATION CONDITION

Unless otherwise amended by separate endorsement to this Coverage Form, the following paragraph is added to **SECTION IV - Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in you state.

J. BROADENED BODILY INJURY DEFINITION

Unless otherwise amended by separate endorsement to this Coverage Form, the following replaces paragraph 3. in **SECTION V - DEFINITIONS**:

3. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including death, shock, mental anguish or mental injury sustained by that person at any time resulting from the bodily injury, sickness or disease.

K. BROADENED COVERAGE TERRITORY

Unless otherwise amended by separate endorsement to this Coverage Form, paragraph 4.a. of "Coverage Territory" in **SECTION V - DEFINITIONS** is replaced with the following:

- a. The United States of America (including its territories and possessions), Canada, Bermuda, the Bahamas, the Cayman Islands, British Virgin Islands and Puerto Rico.

L. LIMITED PRODUCT WITHDRAWAL EXPENSE

THIS PROVISION ONLY PROVIDES REIMBURSEMENT TO YOU FOR EXPENSES INCURRED BECAUSE OF A COVERED "PRODUCT WITHDRAWAL". THIS ENDORSEMENT DOES NOT PROVIDE ANY LIABILITY COVERAGE OR COVERAGE FOR THE COST OR EXPENSE OF DEFENDING ANY CLAIM OR SUIT.

For the purpose of this coverage, the following is added to **Section I - Coverages**:

SECTION I - LIMITED PRODUCT WITHDRAWAL EXPENSE COVERAGE

1. Insuring Agreement

- a. We will reimburse you for "product withdrawal expenses" incurred by you because of a "product withdrawal" to which this insurance applies.
The amount of such reimbursement is limited as described in Section III - Limits Of Insurance. No other obligation or liability to pay sums or perform acts or services is covered.
- b. This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:
- (1) You determine that the "product withdrawal" is necessary; or
 - (2) An authorized government entity has ordered you to conduct a "product withdrawal".
- c. We will reimburse "product withdrawal expenses" only if:
- (1) The expenses are incurred within one year of the date the "product withdrawal" was initiated;
 - (2) The expenses are reported to us within one year of the date the expenses were incurred; and
 - (3) The product that is the subject of the "product withdrawal" was produced after the Cut-Off Date designated in the Schedule.
- d. The initiation of a "product withdrawal" will be deemed to have been made only at the earliest of the following times:

- (1) When you first announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct or participate in a "product withdrawal". This applies regardless of whether the determination to conduct a "product withdrawal" is made by you or is requested by a third party; or
 - (2) When you first received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal".
 - e. "Product withdrawal expenses" incurred to withdraw "your products" which contain the same or substantially similar "defects" will be deemed to have arisen out of the same "product withdrawal".
- 2. Exclusions**
- This insurance does not apply to "product withdrawal expenses" arising out of:
- a. **Breach Of Warranty And Failure To Conform To Intended Purpose**
Any "product withdrawal" initiated due to the failure of "your product" to accomplish their intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury" or physical damage to tangible property other than "your product".
 - b. **Infringement Of Copyright, Patent, Trade Secret, Trade Dress Or Trademark**
Any "product withdrawal" initiated due to copyright, patent, trade secret, trade dress or trademark infringements.
 - c. **Deterioration, Decomposition Or Chemical Transformation**
Any "product withdrawal" initiated due to transformation of a chemical nature, deterioration or decomposition of "your product". This exclusion does not apply if it is caused by:
 - (1) An error in manufacturing, design, or processing;
 - (2) Transportation of "your product"; or
 - (3) "Product tampering".
 - d. **Goodwill, Market Share, Revenue, Profit Or Redesign**
The costs of regaining goodwill, market share, revenue or "profit" or the costs of redesigning "your product".
 - e. **Expiration Of Shelf Life**
Any "product withdrawal" initiated due to expiration of the designated shelf life of "your product".
 - f. **Known Defect**
A "product withdrawal", initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers", prior to the date when this Coverage Part was first issued to you or prior to the time "your product" leaves your control or possession.
 - g. **Otherwise Excluded Products**
A recall of any specific products for which "bodily injury" or "property damage" is excluded under Coverage A - Bodily Injury And Property Damage Liability by endorsement.
 - h. **Governmental Ban**
A recall when "your product" or a component contained within "your product" has been:
 - (1) Banned from the market by an authorized government entity prior to the policy period; or
 - (2) Distributed or sold by you subsequent to any governmental ban.
 - i. **Defense Of Claim**
The defense of a claim or "suit" against you for liability arising out of a "product withdrawal".
 - j. **Third Party Damages, Fines And Penalties**
Any compensatory damages, fines, penalties, "punitive damages", exemplary or other non-compensatory damages imposed upon the insured.
 - k. **Pollution-Related Expenses**
Any loss, cost or expense due to any:
 - (1) Request, demand, order, statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

For the purposes of this coverage, **Section III - Limits Of Insurance** is replaced by the following:
SECTION III - LIMITS OF INSURANCE

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

- a. Insureds;
 - b. "Product withdrawals" initiated; or
 - c. Number of "your products" withdrawn.
2. The most we will reimburse you for "product withdrawal expenses" is \$100,000 aggregate limit for the sum of all "product withdrawal expenses" incurred for all "product withdrawals" initiated during the policy period, unless higher limits of insurance are purchased and specified elsewhere in the policy Declarations or by endorsement.
3. **Deductible**
We will only pay for the amount of "product withdrawal expenses" which are in excess of a \$1,000 deductible amount unless a higher deductible amount is specified elsewhere in the policy Declarations or by endorsement. The deductible applies separately to each "product withdrawal". The limits of insurance will not be reduced by the amount of this deductible.
We may, or will if required by law, pay all or any part of any deductible amount, if applicable, to effect settlement of any claim or "suit". Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

For the purposes of this coverage, the **Duties In The Event Of Occurrence, Claim Or Suit Condition under Section IV - Conditions** is replaced by the following:

2. Duties In The Event Of A "Defect" Or A "Product Withdrawal"

- a. You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your product", or any governmental investigation, that may result in a "product withdrawal". To the extent possible, notice should include:
 - (1) How, when and where the "defect" was discovered;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".
- b. If a "product withdrawal" is initiated, you must:
 - (1) Immediately record the specifics of the "product withdrawal" and the date it was initiated; and
 - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the "product withdrawal" as soon as practicable.
- c. You must promptly take all reasonable steps to mitigate the expenses associated with a "product withdrawal". Any "profit" that you receive from mitigating the expenses will be deducted from the amount of reimbursement that you will receive for "product withdrawal expenses".
- d. You and any other involved insured must:
 - (1) Immediately send us copies of pertinent correspondence received in connection with the "product withdrawal";
 - (2) Authorize us to obtain records and other information; and
 - (3) Cooperate with us in our investigation of the "product withdrawal".

For the purposes of this coverage the following condition is added to **Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

"Product Withdrawal" Concealment Or Fraud

We will not provide coverage under Section I of this endorsement to you, or any other insured, who at any time:

1. Engaged in fraudulent conduct; or
2. Intentionally concealed or misrepresented a material fact concerning a "product withdrawal" or "product withdrawal expenses" incurred by you under Section I of this endorsement.

The following definitions are added to the **Definitions** Section:

1. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
2. "Product tampering" is an act of intentional alteration of "your product" which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property other than "your product".

When "product tampering" is known, suspected or threatened, a "product withdrawal" will be limited to those batches of "your product" which are known or suspected to have been tampered with.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

3. "Product withdrawal" means the recall or withdrawal:
 - a. From the market; or
 - b. From use by any other person or organization;of "your products", or products which contain "your products", because of known or suspected "defects" in "your product", or known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property other than "your product".
For the purposes of this insurance, electronic data is not tangible property.
As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
4. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below, paid and directly related to a "product withdrawal":
 - a. Costs of notification;
 - b. Costs of stationery, envelopes, production of announcements and postage or facsimiles;
 - c. Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;
 - d. Costs of computer time;
 - e. Costs of hiring independent contractors and other temporary employees;
 - f. Costs of transportation, shipping or packaging;
 - g. Costs of warehouse or storage space; or
 - h. Costs of proper disposal of "your products", or products that contain "your products", that cannot be reused, not exceeding your purchase price or your cost to produce the products.
5. "Profit" means the positive gain from business operation after subtracting for all expenses.
6. "Punitive damages" means damages that may be imposed to punish a wrongdoer and to deter others from similar conduct.

M. EMPLOYEE BENEFITS LIABILITY COVERAGE

1. For the purpose of this coverage the following is added to **Section I - Coverages:**
Insuring Agreement
 - a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:
 - (1) The amount we will pay for damages is limited as described in Paragraph 4. of this coverage and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.
 - b. This insurance applies to damages only if:
 - (1) The act, error or omission, is negligently committed in the "administration" of your "employee benefit program";
 - (2) The act, error or omission, takes place before the end of the policy period; and
 - (3) A "claim" for damages, because of an act, error or omission, is first made against any insured, in accordance with Paragraph c. below, during the policy period or an Extended Reporting Period we provide under Paragraph 6. of this endorsement.
 - c. A "claim" seeking damages will be deemed to have been made at the earlier of the following times:
 - (1) When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or
 - (2) When we make settlement in accordance with Paragraph 1.a. above.

A "claim" received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the claim.

- d. All "claims" for damages made by an "employee" because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such "employee's" dependents and beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any insured.

Exclusions

This insurance does not apply to:

- a. **Dishonest, Fraudulent, Criminal Or Malicious Act**
Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.
 - b. **Bodily Injury, Property Damage, Or Personal And Advertising Injury**
"Bodily injury", "property damage" or "personal and advertising injury".
 - c. **Failure To Perform A Contract**
Damages arising out of failure of performance of contract by any insurer.
 - d. **Insufficiency Of Funds**
Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".
 - e. **Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation**
Any "claim" based upon:
 (1) Failure of any investment to perform;
 (2) Errors in providing information on past performance of investment vehicles; or
 (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".
 - f. **Workers' Compensation And Similar Laws**
Any "claim" arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.
 - g. **ERISA**
Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.
 - h. **Available Benefits**
Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.
 - i. **Taxes, Fines Or Penalties**
Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.
 - j. **Employment-Related Practices**
Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.
2. For the purposes of this coverage:
- a. All references to Supplementary Payments - Coverages A and B are replaced by Supplementary Payments - Coverages A, B and **Employee Benefits Liability**.
 - b. Paragraphs 1.b. and 2. of the Supplementary Payments provision do not apply.
3. For the purposes of the coverage provided by this endorsement, Paragraph 2. of **Section II - Who Is An Insured** is replaced by the following:
2. Each of the following is also an insured:
- a. Each of your "employees" who is or was authorized to administer your "employee benefit program".
 - b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
 - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.
4. For the purposes of this coverage, **Section III - Limits Of Insurance** is replaced by the following:
- Limits Of Insurance**
- a. The Limits of Insurance shown in paragraph d. below and the rules below fix the most we will pay regardless of the number of:

- (1) Insureds;
- (2) "Claims" made or "suits" brought;
- (3) Persons or organizations making "claims" or bringing "suits";
- (4) Acts, errors or omissions; or
- (5) Benefits included in your "employee benefit program".
- b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
 - (1) An act, error or omission; or
 - (2) A series of related acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
 However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".
- d. **Employee Benefits Liability Limits of Insurance**
 Each Employee Limit: \$1,000,000
 Aggregate Limit: \$2,000,000
 The Limits of Insurance of this endorsement apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the policy to which this endorsement is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.
- Deductible**
 - a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in paragraph e. below as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
 - b. The deductible amount stated in the Schedule applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
 - c. The terms of this insurance, including those with respect to:
 - (1) Our right and duty to defend any "suits" seeking those damages; and
 - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim"
 apply irrespective of the application of the deductible amount.
 - d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.
 - e. **Employee Benefits Liability Deductible**
 Each Employee Deductible: \$1,000
5. For the purposes of this coverage, Conditions 2. and 4. of **Section IV - Commercial General Liability Conditions** are replaced by the following:
 2. **Duties In The Event Of An Act, Error Or Omission, Or "Claim" Or "Suit"**
 - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim". To the extent possible, notice should include:
 - (1) What the act, error or omission was and when it occurred; and
 - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
 - b. If a "claim" is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
 - (2) Notify us as soon as practicable.
 You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
 - c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.
- 4. Other Insurance**
If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:
- a. Primary Insurance**
This insurance is primary except 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 that is effective prior to the beginning of the policy period shown in the Schedule of this insurance and that applies to an act, error or omission on other than a claims-made basis, if:
- (a) No Retroactive Date is shown in the Schedule of this insurance; or
- (b) The other insurance has a policy period which continues after the Retroactive Date shown in the Schedule of this insurance.
- (2) When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (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 the total amount that all such other insurance would pay for the loss in absence of this insurance; and the total of all deductible and self-insured amounts under all that other insurance.
- (4) 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 Schedule of this endorsement.
- 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 limits of insurance of all insurers.
- 6. For the purposes of this coverage, the following Extended Reporting Period provisions are added, EXTENDED REPORTING PERIOD**
- a. You will have the right to purchase an Extended Reporting Period, as described below, if:
- (1) This endorsement is canceled or not renewed; or
- (2) We renew or replace this endorsement with insurance that:
- (a) Has a Retroactive Date later than the date shown in the Schedule of this endorsement; or
- (b) Does not apply to an act, error or omission on a claims-made basis.
- b. The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to "claims" for acts, errors or omissions that were first committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Schedule. Once in effect, the Extended Reporting Period may not be canceled.
- c. An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.
You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.
We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:
- (1) The "employee benefit programs" insured;
- (2) Previous types and amounts of insurance;
- (3) Limits of insurance available under this endorsement for future payment of damages; and
- (4) Other related factors.

- The additional premium will not exceed 100% of the annual premium for this endorsement.
- The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period starts.
- d. If the Extended Reporting Period is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period.
- The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in the Schedule of this endorsement under Limits of Insurance.
- Paragraph 4.b. of this endorsement will be amended accordingly. The Each Employee Limit shown in the Schedule will then continue to apply as set forth in Paragraph 4.c.
7. For the purposes of this coverage, the following definitions are added to the **Definitions** Section:
- a. "Administration" means:
- (1) Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
 - (2) Handling records in connection with the "employee benefit program"; or
 - (3) Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".
- However, "administration" does not include handling payroll deductions.
- b. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
- c. "Claim" means any demand, or "suit", made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.
- d. "Employee benefit program" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- (1) Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
 - (2) Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
 - (3) Unemployment insurance, social security benefits, workers' compensation and disability benefits;
 - (4) Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and
 - (5) Any other similar benefits designated in the Schedule or added thereto by endorsement.
8. For the purposes of this coverage, Definitions 5. and 18. in the **Definitions** Section are replaced by the following:
5. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
18. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

EXHIBIT D
PLANS AND SPECIFICATIONS

If the plans and specifications from the RFP/CSP are not physically inserted here, then they are fully incorporated into this contract by reference.

Plans and Specifications are posted as separate documents on IONWave.net

EXHIBIT E
CONSTRUCTION SCHEDULE

Completion in 365 days from notice to proceed.

EXHIBIT F
SCHEDULE OF VALUES

**CONTRACTOR'S PROPOSAL
AND
ALTERNATES (if applicable)
BID# 24-048**

Date: 5/15/24

PROPOSAL FROM: Kieschnick General Contractors, Inc

PROPOSAL TO: City of College Station

1101 Texas Ave.

College Station, TX 77842

The Undersigned proposes to furnish all labor, services, materials, tools, and necessary equipment for the construction of the McCulloch Utility Rehabilitation Project and to perform the work required for the construction of said McCulloch Utility Rehabilitation Project at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

Please type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Please initial all corrections and do not round totals.

In submitting this Proposal, it is understood that this Proposal may not be altered or withdrawn for ninety (90) days, and that the Owner has reserved the right to reject any and all Proposals.

The Undersigned certifies that this Proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering Proposals on this work, for the following sum or prices to wit:

C.K.

BASE PROPOSAL: Stipulated Total Bid of w/o Alternates: \$ ~~7,899,028~~ 7,777,493.00

CALENDAR DAYS: Total number of calendar days to substantial completion is 365 days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: 3

CONTRACTOR NAME: Carson Kieschnick - Kieschnick General Contractors

CONTRACTOR SIGNATURE: Carson Kieschnick

City of College Station

ITB 24-048

**McCulloch Utility Rehabilitation (ARPA funding)
Bid Opening Wednesday, May 15, 2024 at 2PM CT**

Please type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Please initial all corrections and do not round totals.

Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
A. GENERAL CONSTRUCTION ITEMS					
1	Mobilization	1	LS	\$375,000	\$375,000
2	Traffic Control	1	LS	\$450,000	\$450,000
3	Erosion and Sedimentation Control	1	LS	\$20,000	\$20,000
4	Tree Protection	1	LS	\$10,000	\$10,000
5	Bypass Pumping	1	LS	\$35,000	\$35,000
6	Block Sodding	3,874	SY	\$9	\$34,866
7	Hydromulch Seeding	0.5	AC	\$3,000	\$1,500
8	Trench Safety	15,011	LF	\$1	\$15,011
9	Attend Resident Public Meeting	1	LS	\$5,000	\$5,000
Sub-total					\$1,036,377
B. CLEARING AND DEMOLITION ITEMS					
10	Grout Fill Existing 6" Water Line	7,500	LF	\$6	\$45,000
11	Grout Fill Existing 8" Water Line	110	LF	\$40	\$4,400
12	Grout Fill Existing 12" Water Line	2,980	LF	\$15	\$44,700
13	Grout Fill Existing 6" Sewer Line	640	LF	\$12	\$7,680
14	Grout Fill Existing 10" Sewer Line	910	LF	\$12	\$10,920
15	Grout Fill Existing 12" Sewer Line	70	LF	\$17	\$1,190
16	Remove Existing 6" Sewer Aerial Crossing	1	EA	\$2,500	\$2,500
17	Remove Existing 6" Water Line	250	LF	\$30	\$7,500
18	Remove Existing 12" Water Line	35	LF	\$30	\$1,050
19	Remove Existing 6" Sewer Line	860	LF	\$35	\$30,100
20	Remove Existing 12" Sewer Line	20	LF	\$40	\$800
21	Remove Existing Manhole	30	EA	\$2,000	\$60,000
22	Remove and Replace Existing Trench Drain	8	LF	\$300	\$2,400
23	Remove and Replace Existing 6" Wood Privacy Fence	240	LF	\$60	\$14,400
24	Remove and Replace Existing 36" RCP Storm Line and Concrete Headwall	1	LS	\$10,000	\$10,000
Sub-total					\$240,795
C. ROADWAY CONSTRUCTION ITEMS					
25	Remove & Replace 6" Curb and Gutter	6,800	LF	\$50	\$340,000
26	Remove & Replace 6" Curb and Gutter (Sewer Lines G & H)	900	LF	\$50	\$45,000
27	Remove & Replace Ex. Concrete Driveway	780	SY	\$132	\$102,960
28	Remove & Replace Ex. Concrete Driveway (Sewer Lines G & H)	1,190	SY	\$132	\$157,080
29	Remove & Replace Ex. Asphalt Driveway	40	SY	\$90	\$3,600
30	Remove & Replace Ex. Asphalt Pavement	4,600	SY	\$90	\$414,000
31	Remove & Replace Ex. Asphalt Pavement (Sewer Lines G & H)	11	SY	\$90	\$990
32	Remove & Replace Ex. Concrete Pavement	370	SY	\$132	\$48,840
33	Remove & Replace Ex. Concrete Pavement (Sewer Lines G & H)	23	SY	\$132	\$3,036
34	Remove & Replace Ex. Concrete Sidewalk	4,750	SF	\$12	\$57,000
35	Remove & Replace Ex. Retaining Wall	5	LF	\$200	\$1,000
36	Accessibility Curb Ramp	10	EA	\$2,000	\$20,000
37	Thermoplastic Striping	1	LS	\$5,000	\$5,000
Sub-total					\$1,198,506
D. SANITARY SEWER CONSTRUCTION ITEMS					
38	18" Steel Casing Pipe w/10" HDPE (DR-17) Sanitary Sewer Line and Casing Spacers	10	LF	\$225	\$2,250
39	12" HDPE (DR-17) Sanitary Sewer Line by Pipe Bursting	1530	LF	\$138	\$211,140
40	12" HDPE (DR-17) Sanitary Sewer Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	20	LF	\$200	\$4,000
41	12" HDPE (DR-17) Sanitary Sewer Line by Open Cut	80	LF	\$175	\$14,000
42	10" HDPE (DR-17) Sanitary Sewer Line by Pipe Bursting	440	LF	\$133	\$58,520
43	8" HDPE (DR-17) Sanitary Sewer Line by Pipe Bursting	1600	LF	\$100	\$160,000
44	8" HDPE (DR-11 or DR-13.5) Sanitary Sewer Line by Pipe Bursting	560	LF	\$107	\$59,920
45	8" SDR26-ASTM D3034 PVC Sanitary Sewer Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	740	LF	\$110	\$81,400
46	6" HDPE (DR-17) Sanitary Sewer Line by Pipe Bursting	4640	LF	\$92	\$426,880
47	6" HDPE (DR-11 or DR-13.5) Sanitary Sewer Line by Pipe Bursting	3800	LF	\$96	\$364,800
48	6" HDPE (DR-11 or DR-13.5) Sanitary Sewer Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	50	LF	\$90	\$4,500
49	6" SDR26-ASTM D3034 PVC Sanitary Sewer Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	300	LF	\$90	\$27,000
50	6" SDR26-ASTM D3034 PVC Sanitary Sewer Line by Open Cut	80	LF	\$75	\$6,000
51	6" SDR26-ASTM D2241 PVC Sanitary Sewer Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	50	LF	\$100	\$5,000
52	Rehabilitate Existing 6" VCP Sanitary Sewer with Cured In Place Pipe (CIPP)	432	LF	\$200	\$86,400
53	Remove Ex. Cleanout & Install Sanitary Sewer Access Device	3	EA	\$3,500	\$10,500
54	Field Verify & Remove Ex. End of Line Cleanout & Install Sanitary Sewer Access Device	10	EA	\$6,000	\$60,000
55	Standard 4' Dia. Sanitary Sewer Manhole (0' - 12' Depth)	33	EA	\$8,500	\$280,500
56	Standard 4' Dia. Watertight Sanitary Sewer Manhole (0' - 12' Depth)	1	EA	\$11,200	\$11,200
57	Standard 4' Dia. Sanitary Sewer Manhole w/6" Drop Connection (0' - 12' Depth)	6	EA	\$9,000	\$54,000
58	Standard 4' Dia. Sanitary Sewer Manhole w/10" Drop Connection (0' - 12' Depth)	1	EA	\$14,700	\$14,700
59	Standard 5' Dia. Storm Sewer Conflict Manhole	1	EA	\$6,000	\$6,000
60	Rehabilitate Existing Manhole	1	EA	\$12,000	\$12,000
61	Vacuum Test for Sanitary Sewer Manhole	43	EA	\$800	\$34,400
62	Post-Construction Television Inspection	14332	LF	\$5.00	\$71,660
63	Point Repairs	60	EA	\$1,250	\$75,000
64	Connect Existing Rear Sanitary Sewer Service Connections from Existing 10" Sanitary Sewer Line to Existing 15" Sanitary Sewer Line (1100-1208 Onev Harvey Dr) Reference Detail on Sheet MD2	13	EA	\$4,500	\$58,500
65	4" Sanitary Sewer Long Service Connection with Rectangular or Circular Concrete Box Enclosure at Cleanout	115	EA	\$3,600	\$414,000
66	4" Sanitary Sewer Short Service Connection with Rectangular or Circular Concrete Box Enclosure at Cleanout	126	EA	\$1,900	\$239,400
Sub-total					\$2,887,050

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City of College Station

ITB 24-048

McCulloch Utility Rehabilitation (ARPA funding)

Bid Opening Wednesday, May 15, 2024 at 2PM CT

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Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
E. WATER CONSTRUCTION ITEMS					
67	20" Steel Casing Pipe by Dry Mechanical Bore w/12" AWWA C-900 DR14 PVC Water Line and Casing Spacers	55	LF	\$555	\$30,525
68	16" Steel Casing Pipe by Dry Mechanical Bore w/ 8" AWWA C-900 DR14 PVC Water Line and Casing Spacers	130	LF	\$471	\$61,230
69	14" Steel Casing Pipe by Dry Mechanical Bore w/ 6" AWWA C-900 DR14 PVC Water Line and Casing Spacers	120	LF	\$400	\$48,000
70	12" AWWA C-900 DR14 PVC Water Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	4,210	LF	\$122	\$513,620
71	12" AWWA C-900 DR14 PVC Water Line by Open Cut	310	LF	\$110	\$34,100
72	12" DIP Water Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	45	LF	\$127	\$5,715
73	8" AWWA C-900 DR14 PVC Water Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	8,210	LF	\$63	\$517,230
74	8" AWWA C-900 DR14 PVC Water Line by Open Cut	440	LF	\$56	\$24,640
75	8" AWWA C-900 DR14 PVC Water Line by Other Than Open Cut	100	LF	\$150	\$15,000
76	8" DIP Water Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	330	LF	\$76	\$25,080
77	6" AWWA C-900 DR14 PVC Water Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	10	LF	\$60	\$600
78	6" AWWA C-900 DR14 PVC Water Line by Open Cut	30	LF	\$60	\$1,800
79	4" AWWA C-900 DR14 PVC Water Line by Open Cut	16	LF	\$60	\$960
80	2" HDPE Water Line by Open Cut with Full Depth Cement Stabilized Sand Backfill	90	LF	\$40	\$3,600
81	2" HDPE Water Line by Horizontal Directional Drilling	500	LF	\$40	\$20,000
82	12" Gate Valve	23	EA	\$4,350	\$100,050
83	8" Gate Valve	36	EA	\$2,500	\$90,000
84	6" Gate Valve	1	EA	\$1,800	\$1,800
85	4" Gate Valve	1	EA	\$1,500	\$1,500
86	12"x12" Tee	3	EA	\$1,500	\$4,500
87	12"x8" Tee	11	EA	\$1,400	\$15,400
88	12"x6" Tee	6	EA	\$1,500	\$9,000
89	8"x8" Tee	8	EA	\$1,400	\$11,200
90	8"x6" Tee	11	EA	\$1,000	\$11,000
91	8"x4" Tee	1	EA	\$1,000	\$1,000
92	6"x90° Bend	1	EA	\$600	\$600
93	12"x45° Bend	45	EA	\$1,000	\$45,000
94	8"x45° Bend	67	EA	\$700	\$46,900
95	6"x45° Bend	9	EA	\$600	\$5,400
96	12"x22.5° Bend	12	EA	\$1,000	\$12,000
97	8"x22.5° Bend	3	EA	\$700	\$2,100
98	6"x22.5° Bend	1	EA	\$600	\$600
99	12"x11.25° Bend	10	EA	\$1,000	\$10,000
100	8"x11.25° Bend	19	EA	\$700	\$13,300
101	12"x6" Reducer	1	EA	\$700	\$700
102	12"x2" Reducer	2	EA	\$700	\$1,400
103	8"x6" Reducer	1	EA	\$500	\$500
104	Reroute Service to Front	26	EA	\$800	\$20,800
105	Install 3/4" Type "K" Short Service	76	EA	\$1,000	\$76,000
106	Install 3/4" Type "K" Long Service	72	EA	\$1,800	\$129,600
107	Install 1 1/2" Type "K" Short Service	38	EA	\$2,150	\$81,700
108	Install 1 1/2" Type "K" Long Service	36	EA	\$3,000	\$108,000
109	Document Private Service Line Pipe Material (Estimated 60 Properties)	60	EA	\$100	\$6,000
110	Connect to Existing Water Line	10	EA	\$1,500	\$15,000
111	Temporary Water	5,650	LF	\$55	\$310,750
112	Standard Fire Hydrant Assembly including 6" Gate Valve and Box	16	EA	\$6,400	\$102,400
Sub-total					\$2,536,300
Total Base Bid					7,777,493.00
Per Addendum #3					365
Total Days of Completion					365

C.K.

ARPA FUNDS ADDENDUM TO CONSTRUCTION CONTRACT

This Addendum is attached to Contract No. 24300504, by and between the City of College Station ("City") and KIESCHNICK GENERAL CONTRACTORS, INC. ("Contractor"), and is incorporated into said Contract. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the City's terms and conditions, including any attachments, schedules, or exhibits to the City's Contract or purchase order, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract or purchase order applies. Hyperlinks and legal references are provided for convenience only; broken hyperlinks or typographical errors will not relieve Contractor from compliance with the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.03. Davis-Bacon Act (Prevailing Wage)

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

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

1.04. Compliance with Copeland "Anti-Kickback" Act.

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

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

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

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

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

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

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

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

1.06. Rights to Inventions Made Under a Contract or Agreement

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

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

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

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

A. Clean Air Act

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

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

B. Federal Water Pollution Control Act

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

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

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

1.08. Debarment and Suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

1.10. Domestic Preferences for Procurements.

A. § 200.322 of 2 CFR 200 requires a Contractor, as appropriate and to the extent consistent with law, and to the greatest extent practicable under a Contract involving a Federal award or Federal funds, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

B. For purposes of the above section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

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

1.11. Procurement of Recovered Materials.

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

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

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

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

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

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

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

1.14. Access to Records.

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

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

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

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

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

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

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

(Signature Page Immediately Follows)

**KIESCHNICK GENERAL
CONTRACTORS, INC.**

By: Dana Kieschnick

Printed Name: Dana Kieschnick

Title: President

Date: 6/10/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

John A. Haislet

City Attorney

Date: 6/11/2024

Jim Keister

Assistant City Manager / CFO

Date: 6/10/2024

June 27, 2024

Item No. 11.1.

Council Reports on Committees, Boards, and Commissions

Sponsor: City Council

Reviewed By CBC: City Council

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

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Review meetings attended.

Summary: Animal Shelter Board, Arts Council of Brazos Valley, Architectural Advisory Committee, Audit Committee, Bond Citizens Advisory Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Economic Development Corporation, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, Census Committee Group, Compensation and Benefits Committee, Experience Bryan-College Station, Design Review Board, Economic Development Committee, Gulf Coast Strategic Highway Coalition, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Metropolitan Planning Organization, Operation Restart, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Technology Council, Regional Transportation Committee for Council of Governments, Sister Cities Association, Spring Creek Local Government Corporation, Transportation and Mobility Committee, TAMU Student Senate, Texas Municipal League, Walk with the Mayor, YMCA, Zoning Board of Adjustments. (Notice of Agendas posted on City Hall bulletin board.)

Budget & Financial Summary: None.

Attachments:

None