



College Station, TX

Meeting Agenda City Council

1101 Texas Ave, College Station, TX 77840

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

Meeting ID: 223 427 023 174 | Passcode: MvPmTr

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

July 11, 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 & Geoffry 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. Legal advice related to police report case number 2023-009963.

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. **Economic Incentive Negotiations {Gov't Code Section 551.087};**

Possible action. The City Council may deliberate on commercial or financial information that the City Council has received from a business prospect that the City Council seeks to have locate, stay or expand in or near the city which the City Council in conducting economic development negotiations may deliberate on an offer of financial or other incentives for a business prospect. After executive session discussion, any final action or vote taken will be in public. The following subject(s) maybe discussed:

- a. Economic development agreement for a development generally located at the intersection of University Drive East and Tarrow Street.

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

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

Speaker Protocol

An individual who desires to address the City Council regarding any agenda item other than those items posted for Executive Session must register with the City Secretary two (2) hours before the meeting being called to order. Individuals shall register to speak or provide written comments at <https://forms.cstx.gov/Forms/CSCouncil> or provide a name and phone number by calling 979-764-3500. Upon being called to speak an individual must state their name and city of residence, including the state of residence if the city is located out of state. Speakers are encouraged to identify their College Station neighborhood or geographic location. Please do not carry purses, briefcases, backpacks, liquids, foods or any other object other than papers or personal electronic communication devices to the lectern, nor advance past the lectern unless you are invited to do so. Comments should not personally attack other speakers, Council or staff. Each speaker's remarks are limited to three (3) minutes. Any speaker addressing the Council using a translator may speak for six (6) minutes. The speaker's microphone will mute when the allotted time expires and the speaker must leave the podium.

5. **Presentation - Proclamations, Awards, and Recognitions.**

5.1. Presentation of a proclamation recognizing July as Parks and Recreation month.

Sponsors: Kelsey Heiden

Attachments: 1. 2024 Parks and Recreation Month Proclamation

6. **Hear Visitors.**

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

7. **Consent Agenda.**

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

- 7.1. Presentation, discussion, and possible action of minutes for:
 - June 27, 2024 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM062724 DRAFT Minutes
- 7.2. Presentation, discussion, and possible action on ratifying an emergency contract with Brazos Paving, Inc. for \$122,469.50 for emergency repairs to Foxfire Drive and Rock Prairie Road.

Sponsors: Emily Fisher

Attachments: 1. 24300553--BW (CC 07.11.24)
- 7.3. 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.

Sponsors: Emily Fisher

Attachments: 1. Organix Recycling, LLC Franchise Agreement
- 7.4. Presentation, discussion, and possible action regarding an extraterritorial jurisdiction (ETJ) release petition for approximately 96.52 acres of land generally located at 5445 Stousland Road.

Sponsors: Anthony Armstrong

Attachments: 1. Wade ETJ Denial Resolution 7-11-24
- 7.5. Presentation, discussion, and possible action on a contract with USA Track & Field regarding hosting the 2024 USATF National Junior Olympic Track & Field Championships on July 22-28, 2024.

Sponsors: Jeremiah Cook

Attachments: 1. Contract is on file in the City Secretary's Office

2. Texas Event Trust Fund

3. Economic Impact Study
- 7.6. Presentation, discussion, and possible action on a Memorandum of Agreement between the City of College Station and Texas A&M University regarding event oversight of the 2024 USATF National Junior Olympic Track & Field Championships, on the campus of Texas A&M University, in an amount not to exceed \$950,000.

Sponsors: Jeremiah Cook

Attachments: 1. Agreement is on file in the City Secretary's Office
- 7.7. Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Lott Brothers Construction Co., Inc. for the Fire Station No.7 Project. The budget for this Project is \$18,000,000.

Sponsors: Jennifer Cain

Attachments: 1. Fire Station No. 7 Project Location Map

2. Fire Station No. 7 CMAR Contract_24300545-v2

8. Regular Agenda.

- 8.1. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A "Unified Development Ordinance," Article 4 "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundary from PDD Planned Development District to MH Middle Housing with a HOO High Occupancy Overlay for approximately 2 acres being The Barracks II Subdivision, Phase 400, Block 36, Lot 27, generally located at the south corner of Tang Cake Drive and Old Wellborn Road.

Sponsors: Jesse Dimeolo

Attachments:

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

- 8.2. Public Hearing, presentation, discussion, and possible action regarding the Program Year 2024 Annual Action Plan and the FY2025 Community Development budget.

Sponsors: Debbie Eller

Attachments:

1. Attachment 1-FY 2025 Proposed Community Development Budget
2. Attachment 2 - FY 2025 Plan Development Process Summary
3. Attachment 3-FY 2025 Public Service Funding
4. Attachment 4 - FY 2025 Income Limits
5. Attachment 5 - 2020-2024 Community Development Goals
6. Attachment 6- Community Development Project Descriptions
7. Attachment 7- LMI Area map

- 8.3. Presentation, discussion, and possible action regarding an ordinance amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," of the Code of Ordinances of the City of College Station, Texas, by prohibiting parking on the northwest side of Richards Street from Texas Avenue to Crest Street and by repealing a prior parking prohibition on the southeast side of Richards Street from Lassie Lane to Crest Street.

Sponsors: Emily Fisher

Attachments:

1. Ordinance - Richards St No Parking - Texas Ave to Crest St
2. EXHIBIT - Richards St No Parking - Texas Ave to Crest St

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 July 5, 2024 at 5:00 p.m.



Deputy City Secretary

This building is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need accommodations, auxiliary aids, or services such as interpreters, readers, or large print are asked to contact the City Secretary's Office at (979) 764-3541, TDD at 1-800-735-2989, or email adaassistance@cstx.gov at least two business days prior to the meeting so that appropriate arrangements can be made. If the City does not receive notification at least two business days prior to the meeting, the City will make a reasonable attempt to provide the necessary accommodations.

Penal Code § 30.07. Trespass by License Holder with an Openly Carried Handgun.

"Pursuant to Section 30.07, Penal Code (Trespass by License Holder with an Openly Carried Handgun) A Person Licensed under Subchapter H, Chapter 411, Government Code (Handgun Licensing Law), may not enter this Property with a Handgun that is Carried Openly."

Codigo Penal § 30.07. Traspasar Portando Armas de Mano al Aire Libre con Licencia.

"Conforme a la Seccion 30.07 del codigo penal (traspasar portando armas de mano al aire libre con licencia), personas con licencia bajo del Sub-Capitulo H, Capitulo 411, Codigo de Gobierno (Ley de licencias de arma de mano), no deben entrar a esta propiedad portando arma de mano al aire libre."

July 11, 2024

Item No. 5.1.

Presentation of a proclamation recognizing July as Parks and Recreation month.

Sponsor: Kelsey Heiden

Reviewed By CBC: City Council

Agenda Caption: Presentation of a proclamation recognizing July as Parks and Recreation month.

Relationship to Strategic Goals:

Core Services & Infrastructure, Sustainably City

Recommendation(s):

Summary:

For nearly 40 years, the nation has celebrated Park and Recreation Month in July to promote building strong, vibrant and resilient communities through the power of parks and recreation.

This year's Park and Recreation Month theme — "Where You Belong" — celebrates the many ways park and recreation services foster a sense of belonging by providing welcoming and inclusive programs, essential services for all ages and abilities, and safe, accessible spaces to build meaningful connection.

This July let's unite and share the many reasons why local parks and recreation truly embodies the essence of belonging. Together, we can demonstrate why these spaces are Where You Belong.

Budget & Financial Summary: N/A

Attachments:

1. 2024 Parks and Recreation Month Proclamation



Proclamation

WHEREAS, parks and recreation is an integral part of communities throughout this country, including the City of College Station; and

WHEREAS, parks and recreation promotes health and wellness, improving the physical and mental health of people who live near parks; and

WHEREAS, parks and recreation encourages physical activities by providing space for popular sports, trails, swimming pools and many other activities designed to promote active lifestyles; and

WHEREAS, park and recreation programming and education activities, such as out-of-school time programming, youth sports and environmental education, are critical to childhood development; and

WHEREAS, parks and recreation increases a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

WHEREAS, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and

WHEREAS, the City of College Station recognizes the benefits derived from parks and recreation resources.

NOW, THEREFORE, be it resolved that by virtue of the authority vested in me, John P. Nichols, Mayor of College Station, do hereby proclaim that July is recognized as

"Parks and Recreation Month" in College Station, Texas.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of College Station to be affixed this July 11, 2024.

John P. Nichols
Mayor

Attest:

Tanya Smith
City Secretary

July 11, 2024
Item No. 7.1.
June 27, 2024 Minutes

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action of minutes for:
• June 27, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM062724 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
JUNE 27, 2024

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

John Nichols, Mayor

Council:

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

City Staff:

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

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

With a quorum present, the meeting of the College Station City Council was called to order by Mayor Nichols via In-Person and Teleconference at 4:00 pm p.m. on June 27, 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, §551.074-Personnel and §551.086-Competitive Matters, and the College Station City Council convened into Executive Session at 4:00 p.m. on June 27, 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.

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

- City Manager
- Council Self-Evaluation

2.3. Deliberation on a competitive matter as that term is defined in Gov't Code Section 552.133; to wit:

- 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.

Executive Session recessed at 6:05 p.m. No action was taken.

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

5. Hear Visitors Comments.

No one signed up to speak at this time.

6. CONSENT ITEMS

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

Item 6.3 and 6.10 was pulled from Consent for clarification.

(6.3) Mary Ellen Leonard, Finance Director, explained that 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. 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.

(6.10) Jennifer Cain, Capital Projects Director, explained that this item is for a construction contract for drainage improvements at the 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.

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

- **June 13, 2024 Council Meeting**

6.2. Presentation, discussion, and possible action on Ordinance No. 2024-4524 amending the City of College Station's Texas Municipal Retirement System Benefits Plan calculation.

6.3. Presentation, discussion, and possible action regarding Resolution No. 06-27-24-6.3 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.

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.

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

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.

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.

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.

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.

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.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve the Consent agenda, with the exception of Items 6.3 and 6.5. The motion carried unanimously.

(6.3) MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith, with Councilmember Cunha and Yancy voting against, the City Council voted five (5) for and two (2) opposed, to approve the Consent Item 6.3 a Resolution No. 06-27-24-6.3 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. The motion carried.

Item 6.5 was pulled from the agenda.

7. WORKSHOP ITEMS

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

Bryan Woods, City Manager, stated that this item was requested by the Council to consider composing an official City response to the FAA. The FAA has opened a comment period to gather input regarding Amazon Prime Air and the comment period was extended.

At approximately 6:27 p.m., Mayor Nichols opened for Citizen Comments.

Kimberly McAdams, stated she is a representative for the Foxfire neighborhood and came before to explain that the Foxfire neighborhood finds issue with the proximity of the Amazon drone site to their residences and the frequency of drone trips over our homes, parks, churches, and recreational areas. The neighborhood is requesting that the council send a letter to the FAA to request the changes be denied and that Amazon move the hub to a larger larger property to create a buffer between any noise sensitive areas.

Claudia Smith, College Station, came before Council to express her concerns regarding the Amazon Prime Air and Federal Aviation Administration (FAA) regulation of drone flights in her vicinity.

Timothy Gade, College Station, came before Council to give his opinion regarding the recent Amazon request to expand air delivery. He stated that the original re-zoning for “small scale, aerial distribution,” has expanded to full commercial scale without assessing impact on neighborhoods and the expansion does not address community concerns related to noise in the area near the facility.

Ralph T. Moore, College Station, presented a sound simulation video of a saw that he says is equivalent to the Amazon Drones. Based on this he believes expansion of drone flight operations is a disturbance to the community.

Kathy Penny, College Station, came before Council to provide a video of the sound of drones from her home. She believes this noise is in violation of the city’s noise ordinance.

Peter A. Bastian, College Station, came before Council to express his concerns about the operations of the Amazon drone facility near is home. He would like to see the facility moved to a more appropriate location, away from residential homes.

Amina Alikhan, College Station, came to speak on the sound issues of the Amazon Drones and the process for having these operations approved. She believes that regulations were ignored in the implementation of this project and asked the council to work on enforcement of the noise ordinance.

Bill Stockton, College Station, gave a presentation on the noise levels he believes are incompatible with residential areas. He stated that data supplied to the FAA from Amazon shows every flight exceeds city noise ordinance and asks the Council to encourage the FAA to deny approval until location problem is solved.

Katherine Thomas, College Station, would like the Council to make a statement to the FAA requesting denial of the Amazon initiated request for expansion.

Shilah Geishauser, College Station, stated that the noise created by drones is a problem for residents in the community and is she is against the expansion of operations.

There being no further comments, Citizen Comments was closed at 6:54 p.m.

The Council expressed support for quieter drones and increased delivery range but does not support Amazon Prime Air's application to expand drone delivery until a more appropriate location or sound mitigation is established due to the impact on nearby residents. Additionally, Council directed staff to compose an official City response to the FAA stating the City would not support increased frequency of flights or expanded range of drone flights at this time.

8. REGULAR ITEMS

8.1. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4525 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.

Regular Items 8.1 and 8.2 were presented together.

8.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4526 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.

Jesse Dimeolo, Planning and Development, stated that 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.

Mr. Dimeolo also present the request 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.

Staff recommends approval of the Comprehensive Plan Future Land Use, the Character Map amendment, and the rezoning request. These items were heard at the June 20th Planning and Zoning Commission meeting and voted unanimously.

At approximately 8:03 p.m., Mayor Nichols opened both Public Hearings.

There being no further comments, both Public Hearings were closed at 8:04 p.m.

(8.1) MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4525, as it appears on the dais, 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. The motion carried unanimously.

(8.2) MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4526, 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. The motion carried unanimously.

8.3. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4527 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.

Jesse Dimeolo, Planning and Development, stated that 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.

Staff recommends approval of the rezoning request. This item was heard at the June 20th Planning and Zoning Commission meeting.

At approximately 8:12 p.m., Mayor Nichols opened the Public Hearing.

Thomas Bonezek, College Station, came before Council to state his concerns regarding the increase in traffic and people using their subdivision as a cut through.

Lisa Sieber, College Station, stated that there are already traffic issues, now with adding Town Homes traffic will increase even more and people will use this area as a cut through.

There being no further comments, the Public Hearing was closed at 8:17 p.m.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4527, 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. The motion carried unanimously.

8.4. Public Hearing, presentation, discussion, and possible action regarding Resolution No. 06-27-24-8.4 to approve a substantial amendment to the 2020-2024 Consolidated Plan to add Homeowner Acquisition Rehabilitation as a goal and project.

Raney Whitwell, Community Development Analyst, stated that 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.

Ms. Whitwell went on to state that 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.

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

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

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Smith, the City Council voted seven (7) for and none (0) opposed, to approve Resolution No. 06-27-24-8.4, a substantial amendment to the 2020-2024 Consolidated Plan to add Homeowner Acquisition Rehabilitation as a goal and project. The motion carried unanimously.

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.

Jennifer Cain, Capital Projects Director, stated that the rehabilitation of water and wastewater lines in the Southside area, in the vicinity of Arizona Street, Phoenix Street, Carolina Street, and Georgia Street. The wastewater lines need replacement due to an increase in service disruptions caused by shallow, deteriorating lines and poor access to mains located near back lot lines. The water distribution lines need replacement due to an increase in service disruptions caused by deteriorating lines and inadequate fire protection as a result of small line sizes in the system. 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. A combined budget of \$9,527,000 was included in the Water and Wastewater Capital Improvement Projects Funds, and 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 and construction costs will be covered by these funds.

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 approve 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. The motion carried unanimously.

9. Council Calendar

Council reviewed the calendar.

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

Councilmember Harvell recognized 2024 Travel & Tourism College holding an event in College Station.

Councilmember Maloney recognized the representing the Mayor at a naturalization ceremony at the Annenberg Conference Center and the L.E.A.D Program ribbon cutting.

City Manager Bryan Woods recognized all the staff, business, and the community who participated in the Mexico vs. Brazil soccer match and the George Straight concert which set the record for the

largest ticket concert in United States history at 110,905 attendees.

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

Councilmember Cunha reported on the Bicycle, Pedestrians and Greenways Advisory Board and recognizing Dennis Jansen for his service.

Councilmember Smith reported on BVSWMA.

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

Councilmember Harvell requested a future item on architecture building standards and review processes.

13. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 8:59 p.m. on Thursday, June 27, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

July 11, 2024

Item No. 7.2.

Emergency Contract for Repairs to Foxfire Drive and Rock Prairie Road

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on ratifying an emergency contract with Brazos Paving, Inc. for \$122,469.50 for emergency repairs to Foxfire Drive and Rock Prairie Road.

Relationship to Strategic Goals:

1. Core Services and Infrastructure

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

Summary: After the recent storms, the corrugated metal pipes crossing Foxfire Drive near Fields Circle and Rock Prairie Road west of Holleman Drive south sustained significant damage and, in the case of Foxfire Drive, caused the road to collapse. City crews immediately closed Foxfire Drive and acquired quotes to perform an emergency repair on both roads. Brazos Paving, Inc. submitted a quote in the amount of \$122,469.50 and began work as soon as contracts were routed. Work on Foxfire Drive will occur first, followed by Rock Prairie Road.

Budget & Financial Summary: Funds for the repair of both pipe crossings are available in the Drainage Utility Fund.

Attachments:

1. 24300553--BW (CC 07.11.24)



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300553 PROJECT#: _____ BID#: _____ RFP#: _____

Project Name / Contract Description: Foxfire Drive 36" Culvert Replacement and Rock Prairie Road Culvert Replacement.

Name of Contractor: Brazos Paving, Inc.

CONTRACT TOTAL VALUE: \$ 122,469.50

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

6/17/2024
DATE

John A. Haislet
LEGAL DEPARTMENT

6/18/2024
DATE

Jim Carter
ASST CITY MGR – CFO

6/17/2024
DATE

APPROVED & EXECUTED

Bryan C. Woods
CITY MANAGER

6/20/2024
DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

**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:
For Emergency Repairs at Fox Fire Drive and Rock Prairie Road.

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: None 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 Twenty-Two Thousand Four Hundred Sixty-Nine and 50 /100 Dollars (\$122,469.50).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

12. MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

OR:

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

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

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

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

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

16.09 Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

OR:

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

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

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

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

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

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

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

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

27. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

27.07 Additional Insured.

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

27.08 Builder's Risk

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

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

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

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

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

employee are required.

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

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

"A. Definitions:

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

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

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

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

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

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

extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

of coverage ends during the duration of the project;

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

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

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

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

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

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

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

28. BOND PROVISIONS

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

(a) The Contractor shall execute performance and payment bonds for the full Contract Amount and, if required by Contractor's surety to cover increases in the dollar amounts or amount of Work that is increased by a duly authorized change order, Contractor shall secure performance and payment bond riders to increase the dollar amounts and coverages of the performance and payment bonds.

(b) The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.

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

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

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

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

29. SURETY

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

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

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

shall be and remain bound therefor. However, should the cost to complete such new agreement prove to be less than that which would have been the cost to complete the Work under this Agreement, the Contractor shall be credited therewith after all deductions are made in accordance with this Agreement.

29.02 Should the cost to complete the Work exceed the Contract Amount and the Contractor fails to pay the amount due to the City within the time designated and there remains any machinery, equipment, tools, materials, or supplies on the Project site, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City's Representative to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, City's Representative may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City's Representative may elect. City's Representative shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

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

30. COMPLIANCE WITH LAW

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

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

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

31. SAFETY PRECAUTIONS

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

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

31.03 The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential

hazards created by the performance of the Work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

31.04 Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in this Agreement, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as defined in this Agreement). **In the event Contractor engages in any of the activities prohibited in this Section 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this section 31.04.**

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

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

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

32. TRENCH SAFETY

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

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

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

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

32.04 The Contractor must provide the City the name of the “competent person” required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

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

33. INDEMNITY

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

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

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

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

33.04 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Section 33.01, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

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

33.06 The indemnification obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers compensation acts, disability benefit acts or other employee benefit acts. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

34. RELEASE

34.01 The Contractor assumes full responsibility for the Work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Contractor's Work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

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

- (e) If the Contractor fails for any reason other than the failure by City's Representative to make payments called upon when due; or
- (f) If the Contractor abandons the Work.
- (g) If the Contractor commits a material default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

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

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

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

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

(c) Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination;

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

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

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

42. TERMINATION CONVERSION

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

43. HIRING

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

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

46.01 Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace

the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Boycott Israel. If this Contract is for goods and services subject to § 2270.002 Texas Government Code, Contractor verifies that it (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract;
- (b) Boycott Firearms. If this Contract is for goods and services subject to § 2274.002 Texas Government Code, Contractor verifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and
- (c) Boycott Energy Companies. Subject to § 2274.002 Texas Government Code Contractor herein verifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Contract.

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

List of Exhibits

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

BRAOZS PAVING, INC

By: Billy Prewitt

Printed Name: Billy Prewitt

Title: Sr. Vice President

Date: 6/17/2024

CITY OF COLLEGE STATION

By: Bryan C. Woods

City Manager

Date: 6/20/2024

APPROVED:

John R. Haislet

City Attorney

Date: 6/18/2024

Jim Enos

Assistant City Manager/CFO

Date: 6/17/2024

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.

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additionalclassification and rate) ruling

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION"

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

EXHIBIT B
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Bond No. B-3307202

THE STATE OF TEXAS

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THE COUNTY OF BRAZOS

KNOW ALL MEN BY THESE PRESENTS:

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 Hundred Twenty-Two Thousand Four Hundred Sixty-Nine and 50 /100 Dollars (\$ 122,469.50) 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 Emergency Repairs to Fox Fire Drive and Rock Prairie

_____,
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.

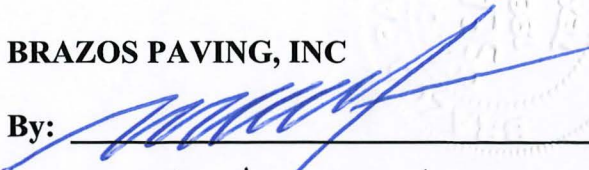
IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

Bond No. B-3307202

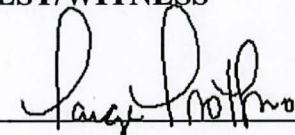
FOR THE CONTRACTOR:

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

By: 
Name: Billy Prewitt
Title: Sr. Vice President
Date: June 27, 2024

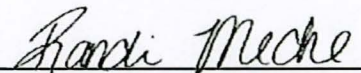
BRAZOS PAVING, INC
By: 
Name: Martin Jackson
Title: President
Date: June 27, 2024

FOR THE SURETY:
ATTEST/WITNESS

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:**

John A. Haislet 6/18/2024
City Attorney

Bryan C. Woods 6/20/2024
City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. B-3307202

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

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 Hundred Twenty-Two Thousand Four Hundred Sixty-Nine and 50 /100 Dollars (\$ 122,469.50) 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, 202024, for Emergency Repairs to Fox Fire Drive and Rock Prairie

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.

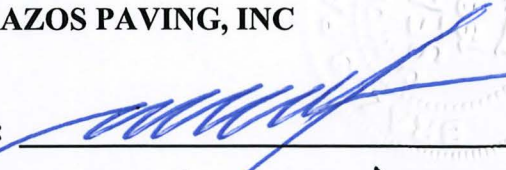
IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

FOR THE CONTRACTOR:

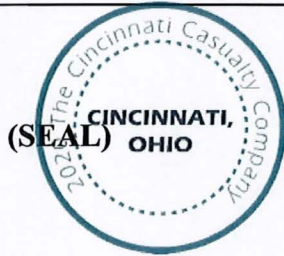
ATTEST & SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

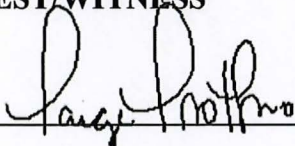
BRAZOS PAVING, INC

By: 
Name: Billy Prewitt
Title: Sr. Vice President
Date: June 27, 2024

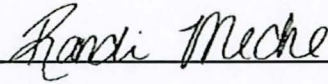
By: 
Name: Martin Jackson
Title: President
Date: June 27, 2024

FOR THE SURETY:
ATTEST/WITNESS



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:**

John A. Haislet 6/18/2024
City Attorney

Bryan C. Woods 6/20/2024
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:

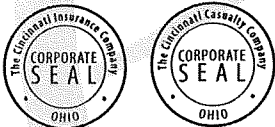
Any such obligations in the United States, up to
Fifty Million and No/100 Dollars (\$50,000,000.00).

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.

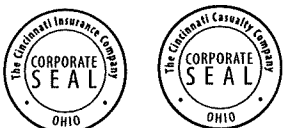


Keith Collett
Keith Collett, Attorney at Law
Notary Public – State of Ohio

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)

06/11/2024

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER 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
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS HIRED AUTOS ONLY ☐ 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) \$
A	☒ UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			85315640	11/01/2023	11/01/2024	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 ☒ 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 #: Contract #24300553 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
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

PROJECT: Emergency Repairs at FoxFire Drive and Rock Prairie Road



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

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.

**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

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

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

**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.

BUSINESS AUTO ULTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

COMMON POLICY CONDITIONS

COVERAGE INDEX

DESCRIPTION	PAGE
Temporary Substitute Auto Physical Damage	2
Broad Form Insured	2
Employee as Insureds	2
Additional Insured Status by Contract, Agreement or Permit	2
Bail Bond Coverage	3
Loss of Earnings Coverage	3
Amended Fellow Employee Coverage	3
Towing and Labor	3
Physical Damage Additional Transportation Expense Coverage	3
Extra Expense - Theft	3
Rental Reimbursement and Additional Transportation Expense	4
Personal Effects Coverage	4
Personal Property of Others	4
Locksmith Coverage	4
Vehicle Wrap Coverage	5
Airbag Accidental Discharge	5
Audio, Visual and Data Electronic Equipment Coverage	5
Auto Loan/Lease Total Loss Protection	5
Glass Repair – Deductible Amendment	5
Amended Duties in the Event of Accident, Claim, Suit or Loss	6
Waiver of Subrogation Required by Contract	6
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Mental Anguish	7
Extended Cancellation Condition	7

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 Trailers, Mobile Equipment and Temporary Substitute Autos is amended by adding the following at the end of the existing 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.

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".

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.	

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

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.

EXHIBIT E
CONSTRUCTION SCHEDULE

Substantial completion is 6 weeks from notice to proceed.

EXHIBIT F
SCHEDULE OF VALUES

**BPI****EMPLOYEE OWNED**

PHONE: 979-822-7605 - FAX 979-823-2659

MAILING ADDRESS:P.O. Box 714
BRYAN, TX 77807**PHYSICAL ADDRESS:**7601 HWY 21 WEST
BRYAN, TX 77807

Proposal

5/31/2024

Ronnie Loper
City Of College Station

RE: Replace Culvert on Fox Fire Drive.

Dear Ronnie,

The following scope of work includes all labor, equipment, materials, and trucking as qualified herein.

Scope Of Work	Qty	UM	Unit Price	Total Price
Mobilization	1	LS	\$6,850.00	\$6,850.00
P&P Bonds	1	LS	\$1,400.00	\$1,400.00
Traffic Control	1	LS	\$2,500.00	\$2,500.00
Remove Existing Base & Asphalt	38	SY	\$8.50	\$323.00
Remove Existing Culvert	41	LF	\$45.00	\$1,845.00
Remove Post	14	EA	\$65.00	\$910.00
Install 1- 36" HDPE Pipe W/ Structural Backfill	41	LF	\$164.00	\$6,724.00
Install Double Barrell Headwall W/ Wings	2	EA	\$13,500.00	\$27,000.00
Install 8"-12" Rip Rap 18" Thick	18	SY	\$165.00	\$2,970.00
Install 8" Thick Cement Stabilized Base	32	SY	\$78.50	\$2,512.00
3" HMA Type D	38	SY	\$65.00	\$2,470.00
			Total:	\$55,504.00

Notes:

- Tax on materials has been excluded from the above pricing.
- Proposal is good for 30 days.
- Proposal is figured with 1 Mobilization. Any additional mobilizations will be an additional cost of \$2,400/Each.

Exclusions:

- Testing or Permit Fees
- Striping or Pavement Markings
- Damage To Unmarked Utilities

If you have any questions on this proposal please contact me at (979) 822-7605 or b.prewitt@bpitx.com.

Respectfully submitted,
Billy Prewitt
Sr. V.P.

**BPI****EMPLOYEE OWNED**

PHONE: 979-822-7605 - FAX 979-823-2659

MAILING ADDRESS:P.O. Box 714
BRYAN, TX 77807**PHYSICAL ADDRESS:**7601 HWY 21 WEST
BRYAN, TX 77807

Proposal

5/31/2024

Ronnie Loper
City Of College Station

RE: Replace Culvert on Rock Prairie Road.

Dear Ronnie,

The following scope of work includes all labor, equipment, materials, and trucking as qualified herein.

Scope Of Work	Qty	UM	UP	TP
Mobilization	1	LS	\$7,500.00	\$7,500.00
P&P Bonds	1	LS	\$1,700.00	\$1,700.00
Traffic Control	1	LS	\$5,500.00	\$5,500.00
Remove Existing Base & Asphalt	36	SY	\$8.50	\$306.00
Remove Existing Culvert	41	LF	\$48.00	\$1,968.00
Install 1- 48" HDPE Pipe W/ Structural Backfill	41	LF	\$210.50	\$8,630.50
Install Single Barrell Headwall W/ Wings	2	EA	\$16,500.00	\$33,000.00
Install 8"-12" Rip Rap 18" Thick	17	SY	\$165.00	\$2,805.00
Install 8" Thick Cement Stabilized Base	36	SY	\$78.50	\$2,826.00
3" HMA Type D	42	SY	\$65.00	\$2,730.00
			Total:	\$66,965.50

Notes:

- Tax on materials has been excluded from the above pricing.
- Proposal is good for 30 days.
- Proposal is figured with 1 Mobilization. Any additional mobilizations will be an additional cost of \$2,400/Each.

Exclusions:

- Testing or Permit Fees
- Striping or Pavement Markings
- Damage To Unmarked Utilities

If you have any questions on this proposal please contact me at (979) 822-7605 or b.prewitt@bpitx.com.

Respectfully submitted,
Billy Prewitt
Sr. V.P.

July 11, 2024

Item No. 7.3.

Organix Recycling, LLC Franchise Agreement Ordinance First Reading

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

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

Relationship to Strategic Goals:

1. Core Services and Infrastructure

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

Summary: This item is an ordinance granting Organix Recycling, LLC a non-exclusive franchise for the use of public streets, alleys, and public rights-of-ways within the city for the purpose of providing collection of demolition and construction debris, recyclables, and organic waste from commercial, industrial, and multi-family sites.

This franchise agreement allows Organix Recycling, LLC to collect and haul recyclables and construction and demolition debris from commercial, industrial, and multi-family sites. This standard agreement sets the franchise fee based on the contractors' monthly gross revenues, delivery revenues, and hauling revenues, as well as the percentage of aggregate recycling and composting. Contractors must provide the total number of customers and total tons landfilled quarterly but are not required to disclose specific sites that are utilizing recycling services. The term of this agreement is five years.

If the second reading of this franchise agreement ordinance is approved, the city will have a total of eighteen (18) franchised haulers. This list can be found on the city's website under Public Works.

Budget & Financial Summary: N/A

Attachments:

1. Organix Recycling, LLC Franchise Agreement

ORDINANCE NO. _____

RECYCLABLES COLLECTION FRANCHISE AGREEMENT

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

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

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

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

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

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ARTICLE I. DEFINITIONS

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

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

ARTICLE II. GRANT OF AUTHORITY AND ACCEPTANCE

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

ARTICLE III. PAYMENT AND TERM

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

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

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

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

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

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

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

ARTICLE IV. ACCESS TO RECORDS & REPORTING

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

ARTICLE V. RATES TO BE CHARGED BY CONTRACTOR

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

ARTICLE VI. APPEARANCE OF PERSONNEL AND EQUIPMENT

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

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

ARTICLE VII. COLLECTION AND TRANSPORT

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

ARTICLE VIII. PLACEMENT OF RECEPTACLES

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

ARTICLE IX. SERVICE COMPLAINTS

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

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

ARTICLE X. DISPOSAL AND PROCESSING

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

ARTICLE XI. VIOLATION AND PENALTY

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

ARTICLE XII. INSURANCE

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

ARTICLE XIII. INDEMNIFICATION AND RELEASE

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

ARTICLE XIV. DISPUTES AND MEDIATION

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

ARTICLE XV. GENERAL TERMS

- 15.1 Performance.** Contractor, its employees, associates, or subcontractors shall perform all the services in a professional manner and be fully qualified and competent to perform those services.
- 15.2 Termination.**
- a. For Convenience.** At any time, the City or Contractor may terminate this Agreement for convenience, in writing with thirty (30) days' written notice. City shall be compensated for outstanding Franchise Fees.
 - b. For Cause.** City may terminate this Agreement if Contractor materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Agreement, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) days of City providing Contractor written notice, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time upon which the parties may agree.
 - c. Hearing.** This Agreement shall not be terminated except upon a majority vote of the City Council, after giving reasonable notice to Contractor. The Contractor will have an opportunity to be heard, provided if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.
- 15.3 Venue.** This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.
- 15.4 Amendment.** This Agreement may only be amended by written instrument approved and executed by the parties.
- 15.5 Taxes.** The City is tax exempt and is not responsible for the payment of any taxes.
- 15.6 Compliance with Laws.** The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA.
- 15.7 Waiver of Terms.** No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver of deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.

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

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

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

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

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

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

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

ORGANIX RECYCLING LLC
Attn: Julia Gustafson
3308 Bernice Ave
Russellville AR 72802
safety@organixrecycling.com

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

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

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

- a. First Consideration & Approval on the 13th day of June, 2024.
- b. Second Consideration & Approval on the 27th day of June, 2024.

ORGANIX RECYCLING LLC

CITY OF COLLEGE STATION

By: _____

Printed Name: _____

Title: **Owner/Member**

Date: _____

By: _____
Mayor

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A. SCHEDULE OF RATES

- I. Contractor's base rate is \$100 per pull, and may increase, depending on a variety of conditions, including but not limited to:
 - a. Location of Customer
 - b. Impact on Existing Routes
 - c. Ingress and Egress Capabilities
 - d. Special Requests by Customers
 - e. Frequency of Collections
 - f. Volume of Materials
 - g. Type of Materials
 - h. External Contributing Conditions of Market Costs

EXHIBIT B. INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

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

IV. Business Automobile Liability

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

V. Workers' Compensation Insurance

- a. Workers compensation insurance shall include the following terms:
 - i. Employer's Liability minimum limits of liability not less than \$500,000 for each accident/each disease/each employee are required
 - ii. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy
 - iii. TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY"

EXHIBIT C. CERTIFICATES OF INSURANCE



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 Arthur J. Gallagher Risk Management Services, LLC 1490 Market Street Suite 3 Lake Charles LA 70601	CONTACT NAME: Lynn Erpelding, CIC, CISR PHONE (A/C, No, Ext): 337-475-7442 E-MAIL ADDRESS: lynn_erpelding@ajg.com FAX (A/C, No):
INSURED Dispatch Parent, LLC; Denali Water Solutions, LLC 220 South Commerce Avenue 1st Floor Russellville AR 72801	INSURER(S) AFFORDING COVERAGE INSURER A: Colony Insurance Company INSURER B: National Union Fire Insurance Company of Pittsburg INSURER C: Granite State Insurance Company INSURER D: Gemini Insurance Company INSURER E: AXIS Surplus Insurance Company INSURER F: National Fire & Marine Insurance Co
License#: BR-724491 DENAWAT-03	NAIC # 39993 19445 23809 10833 26620 20079

COVERAGES**CERTIFICATE NUMBER:** 1677969126**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:	Y	Y	PACE4279461	6/30/2023	6/30/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$25,000 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 ☒ MCS-90	Y	Y	5717880	6/30/2023	6/30/2024	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A D U M	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	EXC4279462 GVE100272503 P-001-001126335-01 42-XSF-316137-03	6/30/2023 6/30/2023 6/30/2023 6/30/2023	6/30/2024 6/30/2024 6/30/2024 6/30/2024	EACH OCCURRENCE \$15,000,000 AGGREGATE \$15,000,000 \$
C 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 N	Y	014195820 014195821	6/30/2023 6/30/2023	6/30/2024 6/30/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Pollution Liability and Professional Liability	Y	Y	PACE4279461	6/30/2023	6/30/2024	Pollution - Per Occur \$1,000,000 Professional - Claim \$1,000,000

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

Certificate Holder is included as Additional Insured on the General Liability policy pursuant to and subject to the policy's terms, definitions, conditions and exclusions as per endorsement #EPACE101-0721. Certificate Holder is included as Additional Insured on the Automobile policy as per endorsement #87950, edition date 09/14. Waiver of Subrogation applies to Certificate Holder as respects the General Liability, Automobile, Workers Compensation and Excess Liability policies pursuant to and subject to the policy's terms, definitions, conditions and exclusions. General Liability and Automobile policies are primary and noncontributory pursuant to the policy's term, definitions, conditions and exclusions. Pollution Liability is on Occurrence Basis while Professional Liability is on Claims Made Basis. Policies listed above contain a 30 day Notice of Cancellation, except 10 days in the event of nonpayment.

Workers Compensation Policy #: 014195820 covers State of California only.
See Attached...

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
Public Works
P.O. Box 9960
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Arthur J. Gallagher Risk Management Services, LLC		NAMED INSURED Dispatch Parent, LLC; Denali Water Solutions, LLC 220 South Commerce Avenue 1st Floor Russellville AR 72801
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

Workers Compensation Policy #: 014195821 covers all other States.

Excess Liability policies follow form of underlying policies as listed below:

Policy #: EXC4279462 - Colony Insurance Company - \$5,000,000 limit and is excess over General Liability, Pollution Liability and Professional Liability only.

Policy #: GVE100272503 - Gemini Insurance Company - \$3,000,000 limit and is excess over Automobile and Employer's Liability only.

Policy #: P-001-001126335-01 - AXIS Surplus Insurance Company - \$2,000,000 xs \$3,000,000 limit and is excess over Automobile and Employer's Liability only.

Policy #: 42-XSF-316137-03 - National Fire & Marine Insurance Company - \$5,000,000 xs \$2,000,000 xs \$3,000,000 limit and is excess over Automobile and Employer's Liability only.

Policy #ENVX000044823 - Certain Underwriters at Lloyds, London - \$15,000,000 xs \$5,000,000 over General Liability, Pollution Liability and Professional Liability only. NAIC # 15792, Policy term 11/01/2023-11/01/2024

Equipment Coverage:

Policy No: IMP 4001324-00

Carrier: Transguard Insurance Company

Policy Dates: 06/30/23 - 06/30/24

Cargo Limit: \$100,000

Trailer Interchange Limit: \$85,000

Rented/Leased Equipment Limit: \$1,000,000 Scheduled Equipment: \$68,662,540

Deductible: \$50,000 each occurrence

Complete list of Named Insureds: Dispatch Parent, LLC; Terra Renewal Services, Inc.; Denali Water Solutions, LLC; Organix Recycling, LLC; NuTerra SE FL Organics, LLC; WeCare Denali, LLC; New Earth, LLC; Denali ROI, LLC; OR Processing, LLC; OR Composting, LLC; Ramco, Environmental, LLC; Solid Solutions, LLC; Nebo Services, LLC; Veris Environmental, LLC; AWS Dredge, LLC; Intermountain Dredge Equipment and Supply, L.C.; TerraGro Farms, LLC; Viridiun Equipment, Inc.; Organix Composting of Texas, LLC; Viridiun, LLC; Viridiun Products, LLC; Swanson Bark & Wood Products, Inc., Imperial Western Products, Inc.

July 11, 2024
Item No. 7.4.
ETJ Release Petition

Sponsor: Anthony Armstrong, Director of Planning and Development

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an extraterritorial jurisdiction (ETJ) release petition for approximately 96.52 acres of land generally located at 5445 Stousland Road.

Relationship to Strategic Goals:

- Good Governance
- Sustainable City

Recommendation(s): The purpose of the extraterritorial jurisdiction (ETJ) of municipalities is to promote and protect the general health, safety, and welfare of people residing in and adjacent to the city. After review, 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. Mainly, the removal would cause negative impacts to the health, safety, and welfare in administering emergency services to these areas, as well as impacting the orderly subdivision and development of land. Staff recommends denial of the ETJ release petition.

Summary: Texas Senate Bill 2038 (SB 2038), which is a new statute which conflicts with current statutory law, allows property owners in the extraterritorial jurisdiction (ETJ) to leave the City's ETJ through a petition or election. The ETJ is a set area outside the city limits (College Station's ETJ is 5 miles from the city limits) in which the city can exercise certain legal powers, such as regulating subdivisions. SB 2038 has since been codified under Chapter 42 Subchapter D of the Texas Local Government Code.

SUBCHAPTER D. RELEASE OF AREA BY PETITION OF LANDOWNER OR RESIDENT FROM EXTRATERRITORIAL JURISDICTION

Sec. 42.101. APPLICABILITY. This subchapter does not apply to an area located:

(1) within five miles of the boundary of a military base, as defined by Section [43.0117](#), at which an active training program is conducted;

(2) in an area that was voluntarily annexed into the extraterritorial jurisdiction that is located in a county:

(A) in which the population grew by more than 50 percent from the previous federal decennial census in the federal decennial census conducted in 2020; and

(B) that has a population greater than 240,000;

(3) within the portion of the extraterritorial jurisdiction of a municipality with a population of more than 1.4 million that is:

(A) within 15 miles of the boundary of a military base, as defined by Section [43.0117](#), at which an active training program is conducted; and

(B) in a county with a population of more than two million;

(4) in an area designated as an industrial district under Section [42.044](#); or

(5) in an area subject to a strategic partnership agreement entered into under Section [43.0751](#).

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. [2038](#)), Sec. 1, eff. September 1, 2023.

Sec. 42.102. AUTHORITY TO FILE PETITION FOR RELEASE. (a) A resident of an area in a municipality's extraterritorial jurisdiction may file a petition with the municipality in accordance with this subchapter for the area to be released from the extraterritorial jurisdiction.

(b) The owner or owners of the majority in value of an area consisting of one or more parcels of land in a municipality's extraterritorial jurisdiction may file a petition with the municipality in accordance with this subchapter for the area to be released from the extraterritorial jurisdiction.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. [2038](#)), Sec. 1, eff. September 1, 2023.

Sec. 42.103. APPLICABILITY OF OTHER LAW. Chapter [277](#), Election Code, applies to a petition requesting removal under this subchapter. Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. [2038](#)), Sec. 1, eff. September 1, 2023.

Sec. 42.104. PETITION REQUIREMENTS. (a) A petition requesting release under this subchapter must be signed by:

(1) more than 50 percent of the registered voters of the area described by the petition as of the date of the preceding uniform election date; or

(2) a majority in value of the holders of title of land in the area described by the petition, as indicated by the tax rolls of the applicable central appraisal district.

(b) A person filing a petition under this subchapter must satisfy the signature requirement described by Subsection (a) not later than the 180th day after the date the first signature for the petition is obtained.

(c) A signature collected under this section must be in writing.

(d) The petition must include a map of the land to be released and describe the boundaries of the land to be released by:

(1) metes and bounds; or

(2) lot and block number, if there is a recorded map or plat.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. [2038](#)), Sec. 1, eff. September 1, 2023.

Sec. 42.105. RESULTS OF PETITION. (a) A petition requesting removal under this subchapter shall be verified by the municipal secretary or other person responsible for verifying signatures.

(b) The municipality shall notify the residents and landowners of the area described by the petition of the results of the petition. The municipality may satisfy this requirement by notifying the person who filed the petition under Section [42.102](#).

(c) If a resident or landowner obtains the number of signatures on the petition required under Section [42.104](#) to release the area from the

municipality's extraterritorial jurisdiction, the municipality shall immediately release the area from the municipality's extraterritorial jurisdiction.

(d) If a municipality fails to take action to release the area under Subsection (c) by the later of the 45th day after the date the municipality receives the petition or the next meeting of the municipality's governing body that occurs after the 30th day after the date the municipality receives the petition, the area is released by operation of law.

(e) Notwithstanding any other law, an area released from a municipality's extraterritorial jurisdiction under this section may not be included in the extraterritorial jurisdiction or the corporate boundaries of a municipality, unless the owner or owners of the area subsequently request that the area be included in the municipality's extraterritorial jurisdiction or corporate boundaries.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. [2038](#)), Sec. 1, eff. September 1, 2023.

In addition to the above statute, 42.023 of the Texas Local Government Code requires the governing body of the municipality to give its written consent by ordinance or resolution if it desires to reduce its ETJ area:

Sec. 42.023. REDUCTION OF EXTRATERRITORIAL JURISDICTION. The extraterritorial jurisdiction of a municipality may not be reduced unless the governing body of the municipality gives its written consent by ordinance or resolution, except:

(1) in cases of judicial apportionment of overlapping extraterritorial jurisdictions under Section [42.901](#);

(2) in accordance with an agreement under Section [42.022](#) (d);
or

(3) as necessary to comply with Section [42.0235](#).

Under this item, the owner has petitioned the City to release them from the City's ETJ.

Budget & Financial Summary:

Attachments:

1. Wade ETJ Denial Resolution 7-11-24

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, DENYING BRADLEY CAMILLUS WADE’S PETITION FOR REMOVAL OF PROPERTY FROM THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF COLLEGE STATION AND DENYING THE CITY’S CONSENT TO THE REDUCTION OF THE CITY’S EXTRATERRITORIAL JURISDICTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 17, 2024, Bradley Camillus Wade (“Petitioner”) submitted a petition attached as **Exhibit “A”** (“Petition”) for releasing property from the City of College Station’s extraterritorial jurisdiction (“ETJ”); and

WHEREAS, the property sought to be released is approximately 96.52 acres in the James C. Stuteville Survey, Abstract 216, in Brazos County, Texas, generally located at 5445 Stousland Road and described by metes and bounds in **Exhibit “A”** (“Property”); and

WHEREAS, pursuant to Texas Local Government Code Section 42.023, the City’s ETJ may only be reduced if the City Council has exercised its legislative authority consenting to reducing the City’s ETJ by ordinance or resolution; and

WHEREAS, pursuant to Texas Constitution, Article II, Section 1, landowners may not be delegated legislative authority to remove their property from the City’s ETJ without the City Council’s consent by ordinance or resolution; and

WHEREAS, Texas Local Government Code Chapter 42 Subchapter D. (SB 2038) is an unconstitutional delegation of the City’s legislative authority and conflicts with the City’s grant of legislative discretion under Local Government Code Section 42.023; and

WHEREAS, it is in the best interest of the City to deny the Petition and the removal of the Property from the City’s ETJ, and to any reduction in size of the City’s ETJ; and deny any action under Texas Local Government Code Chapter 42 Subchapter D. (SB 2038); now therefore,

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

PART 1: The above recitals are adopted as findings of the City Council.

PART 2: The Petition for Release of the Property in **Exhibit “A”** from the City’s ETJ is denied and the Property remains in the City’s ETJ.

PART 3: The City denies any written consent by ordinance or resolution or action under Texas Local Government Code Chapter 42 Subchapter D. (SB 2038) to remove the Property from the City’s ETJ and any reduction in size of the City’s ETJ.

PART 4: That this resolution shall become effective immediately after passage and approval.

ADOPTED this 11th day of July 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

Approximately 96.52 acre tract, in the James C Stuteville Survey, Abstract 216 in Brazos County, Texas, generally located at 5445 Stousland Road.

JUN 17 2024

Bradley C. Wade
5179 Wade Road
College Station, TX 77845

April 29, 2024

Tanya D. Smith
City Secretary – City of College Station
1101 Texas Avenue
College Station, Texas 77840

RE: Petition to Remove Property from City's ETJ

Ms. Smith,

The ownership of the property known as a 96.52 Acre Tract in the James C. Stuteville Survey, Abstract 216, who has signed below, in accordance with Senate Bill 2038, hereby petitions that said property be removed from the City of College Station's Extra Territorial Jurisdiction (ETJ). Said property is further defined by Exhibit A, attached hereto and containing a certified survey of the property with metes and bounds description.

Sincerely,



Bradley Camillus Wade
Independent Executor of the
Estate of Annie Belle Wade, and as Agent for
Laura Audnette Wade Crenshaw, Richard
Eugene Wade, and Steven Ray Wade

Address: 5179 Wade Rd
College Station, TX 77845
Date
Signed: April 29, 2024
DOB: May 02, 1966

**CLARK
ISENHOOR**
Real Estate Services, LLC



Scott Lovett

Scott@ClarkIsenhour.com

979.268.6840 **o**

979.224.3721 **c**

979.268.6841 **f**

3828 S College Ave.
Bryan, TX 77801



**FIELD NOTES DESCRIPTION
OF A
96.52 ACRE TRACT
JAMES C. STUTEVILLE SURVEY, ABSTRACT 216
BRAZOS COUNTY, TEXAS**

A FIELD NOTES DESCRIPTION OF 96.52 ACRES IN THE JAMES C STUTEVILLE SURVEY, ABSTRACT 216, IN BRAZOS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF A CALLED 183.88 ACRE TRACT OF LAND DESCRIBED IN AN ESTATE PARTITION DEED TO BRADLEY CAMILLUS WADE, STEVEN RAY WADE, RICHARD E. WADE AND LAURA AUDNETTE WADE CRENSHAW RECORDED IN VOLUME 14045, PAGE 286 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT); SAID 96.52 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod found at an interior angle point in the southwest line of said 183.88 acre tract, same being the east corner of Lot 19, Block 5 of Saddle Creek Subdivision Phase 4 filed in Volume 11331, Page 114 (OPRBCT);

THENCE, with the northeast line of said subdivision, **N 59° 40' 27" W**, for a distance of **1,398.98 feet** to a 1/2 inch iron rod set (all rods set with blue plastic cap stamped 'KERR SURVEYING') for an angle point in said line, same being the northeast corner of Lot 14 of said Block 5;

THENCE, with the north line of said subdivision and the north line of Saddle Creek Subdivision Phase 2, filed in Volume 8758, Page 113 (OPRBCT), **N 84° 18' 37" W**, at a distance of 558.12 feet passing a 1/2 inch iron rod found at the north common corner of Lots 11 and 12, Block 1 of said Phase 2 and continuing for a total distance of **857.58 feet** to a 1/2 inch iron rod set for the southwest corner hereof, from which the City of College Station Geodetic Control Station (monument) 'MON 4" bears N 49° 07' 12" W, a distance of 3,906.75 feet;

THENCE, severing said 183.88 acre tract, the following three (3) courses and distances:

- 1) N 05° 41' 23" E**, for a distance of **90.00 feet** to a 1/2 inch iron rod set;
- 2) S 84° 18' 37" E**, for a distance of **191.99 feet** to a 1/2 inch iron rod set; and
- 3) N 21° 58' 53" E**, for a distance of **1,234.44 feet** to a 1/2 inch iron rod set in the southwest line of the Union Pacific Railroad (a 200' wide railroad right-of-way, less 50' on the northeast side for the FM

2154 highway right-of-way), being 100 feet from the centerline of the main railroad tracks, for the northwest corner hereof;

THENCE, with said railroad right-of-way, being 100 feet from and parallel to said tracks, **S 55° 47' 48" E**, for a distance of **3,929.40 feet** to a 1/2 inch iron rod set in the northwest line of a called 3.000 acre tract of land described in a deed to Millican Royalty and Living Trust recorded in Volume 7538, Page 18 (OPRBCT), for the east corner hereof;

THENCE, with the northwest line of said 3.000 acre tract and the northwest line of Duck Haven Subdivision Phase Nine, filed in Volume 13990, Page 12 (OPRBCT), along the southeast line of James C. Stuteville Survey, **S 41° 54' 50" W**, at a distance of 332.43 feet passing a 1/2 inch iron rod with yellow plastic cap stamped 'K MCCLURE RPLS 5650' found at the north corner of Lot 8, Block 10 of said Phase Nine and continuing for a total distance of **1,048.89 feet** to a 1/2 inch iron rod with yellow plastic cap stamped 'KERR 4502' found at the east corner of Lot 136, Block 6 of Saddle Creek Subdivision Phase 6 filed in Volume 11640, Page 98 (OPRBCT) and the southeast corner hereof;

THENCE, with the north line of said Saddle Creek Subdivision Phase 6, the following three (3) courses and distances:

- 1) **N 55° 49' 36" W**, at a distance of 303.86 feet passing a 1/2 inch iron rod with yellow plastic cap stamped 'KERR 4502' found at the north corner of said Lot 136 and the east corner of Lot 137 and continuing for a total distance of **661.66 feet** to a point at the north corner of Lots 137 and 138 of said Block 6, from which a 1/2 inch iron rod with yellow plastic cap stamped 'KERR 4502' found bears S 30° 08' 41" W, a distance of 1.19 feet;
- 2) **S 43° 47' 05" W**, a distance of **689.20 feet** to a 1/2 inch iron rod with yellow plastic cap stamped 'KERR 4502' found at the northwest corner of Lot 141 and the northeast corner Lot 142 of said Block 6;
- 3) **N 76° 35' 11" W**, at a distance of 300.06 feet passing a 1/2 inch iron rod with yellow plastic cap stamped 'KERR 4502' found at the northwest corner of Lot 143 of said Block 6, same being the northwest corner of said Saddle Creek Phase 6 and the southeast corner of Lot 24, Block 6 of Saddle Creek Subdivision Phase 3 filed in Volume 9311, Page 252 (OPRBCT), and continuing with the northeast line of said Phase 3 for a total distance of **336.27 feet** to a point in an 8 inch fence corner post found at the south corner of Lot 23, Block 6 of said Phase 3, for the southwest corner hereof;

THENCE, with the southeast line of said Phase 3, **N 12° 49' 38" E**, for a distance of **384.45 feet** to a 1/2 inch iron rod set for an angle point in said line;

THENCE, continuing with the southeast line of said Phase 3, **N 10° 00' 53" E**, at a distance of 109.51 feet passing a 1/2 inch iron rod with yellow plastic cap stamped 'KERR 4502' found at the east common corner of Lots 21 and 22 of said Block 6, same being the common corner of Saddle Creek Subdivision Phases 3 and 4, and continuing with the southeast line of said Phase 4 for a total distance of **665.95 feet** to the **POINT OF BEGINNING** hereof and containing **96.52 acres**, more or less.

Surveyed on the ground February 2023 under my supervision. See plat prepared February 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 (MYC52). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.00008850284655 (calculated using GEOID12B). Reference drawing: 24-164-5.


Michael Konetski
Registered Professional Land Surveyor No. 6531
Revised 04-12-2024



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

July 11, 2024

Item No. 7.5.

Contract with USA Track & Field to host the 2024 USATF National Junior Olympic Track & Field Championships.

Sponsor: Jeremiah Cook

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on a contract with USA Track & Field regarding hosting the 2024 USATF National Junior Olympic Track & Field Championships on July 22-28, 2024.

Relationship to Strategic Goals:

Diverse & Growing Economy

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

Summary: In 2020, staff bid on the 2024 USATF National Junior Olympic Track & Field Championships to be held in College Station to encourage economic growth through tourism. Staff worked with USATF, Texas A&M University, Destination Bryan, and USATF Gulf Association to ensure the premier execution of the event. Revenues are expected from the event to offset a significant portion of expenses. The event is expected to bring an estimated economic impact to the community of \$10,000,000 in direct visitor spending.

Budget & Financial Summary: To execute this event, the City anticipates costs will be approximately \$950,000, along with \$35,000 for the bid fee for this event. Revenues for the event will include athlete registrations, ticket sales, and partial reimbursement through the Texas Event Trust Fund (up to \$644,443).

Attachments:

1. Contract is on file in the City Secretary's Office
2. Texas Event Trust Fund
3. Economic Impact Study

Contract is on file in the City Secretary's Office.



**GOVERNOR GREG ABBOTT
ECONOMIC DEVELOPMENT & TOURISM**

April 5, 2024

Mr. Jeremiah Cook
Tourism Manager
Visit College Station
1207 Texas Avenue S
College Station, Texas 77840

Dear Mr. Cook:

Thank you for your interest in the establishment of an Event Trust Fund. The Office of the Governor has completed its review of the application and economic information submitted by Visit College Station for the establishment of an Event Trust Fund under Texas Government Code Chapter 480. Events Trust Fund relating to the 2024 USATF National Junior Olympic Track & Field Championships (the "event"). Based on the representations and the information submitted and certified in the application, the event meets the eligibility requirements set by the Texas Legislature. Establishment of an Event Trust Fund is therefore required by law, and upon receipt of the local share, a fund will be established as follows:

Event:	2024 USATF National Junior Olympic Track & Field Championships
Project Code:	240740
Location:	College Station, TX
Market Area:	Brazos County
Venue:	EB Cushing Stadium, Texas A&M University
Dates:	July 22 – 28, 2024

The estimated incremental increase in tax revenue to the State of Texas is \$644,443.00 or 6.25 times the amount of local revenue retained or remitted to the Texas Comptroller of Public Accounts as local funds from eligible endorsing municipalities.

Local funds required:	\$103,111.00
Total contribution to the Event Trust Fund established for this event:	\$747,554.00

Attendance metric used to estimate the incremental increase in tax revenue: 7,401 daily average of all attendees (July 22 – 28, 2024)

Page Two
Mr. Cook
April 5, 2024

Following the event, you will need to complete and submit the Attendance Certification Form, which is enclosed for your convenience. The Attendance Certification Form and supporting documentation must be submitted no later than 45 calendar days after the conclusion of the event.

The local funds must be submitted no later than 90 calendar days after the conclusion of the event. If the funds for the local share amount are not submitted by the 90-day deadline, the Event Trust Fund will not be available for disbursement.

To initiate a disbursement from an Event Trust Fund, a Disbursement Request Form, Disbursement Request Worksheet and all supporting documentation must be submitted no later than 180 calendar days after the conclusion of the event. The establishment of an Event Trust Fund does not entitle or guarantee that disbursements from the fund will be available for the reimbursement of any particular expenditure relating to the event. All disbursements will be subject to the requirements of Chapter 480. Events Trust Fund, the Event Fund Program Administrative Rules under Title 10, Chapter 184 of the Texas Administrative Code, and the policies and guidelines of the Office of Economic Development & Tourism within the Office of the Governor, including timely submittal of the Event Support Contract, Attendance Certification Form, local funds, Disbursement Request Form, and other documentation as required.

This letter addresses only the establishment of an Event Trust Fund under Chapter 480. Events Trust Fund and does not constitute approval of the event for any other purpose or supersede any applicable laws, including executive orders.

If you have any questions or need further assistance, please contact Cody Cruz at cody.cruz@gov.texas.gov or (512) 936-0248. If you'd like to reach another member of the program staff, they can be reached at eventsfund@gov.texas.gov or (512) 936-0100.

Thank you for all that your organization does to support the Texas economy.

Sincerely,



Terry Zrubek
Executive Deputy Director
Economic Development & Tourism

TZ: cc

Economic Impact Study
**2024 USATF National Junior Olympic Track &
Field Championships**
College Station, TX
July 22 – 28, 2024

Submitted for consideration under the Events Trust Fund by the

City of College Station

March 4th, 2024

Event Background

The 2024 USATF National Junior Olympic Track & Field Championships is the premier tournament for junior track and field athletes in the United States. This event, put on by the National Governing Body for Track and Field, requires qualifying in one of the 50+ associations across the United States. After a competitive bid process, College Station and Texas A&M were selected due to the high-quality facilities at Texas A&M University, namely E.B. Cushing Stadium. Previous locations include Eugene, OR in 2023, Sacramento, CA in 2022 and 2019, Jacksonville, FL in 2021, and Greensboro, NC in 2018. The event was canceled in 2020 due to the COVID-19 pandemic.

Table 1 outlines the expected schedule of events and the attendance of players, coaches, staff, college scouts, media/tv crews, friends, family, and spectators.

Table 1
Expected Schedule of Events and Total Attendance¹

Date	Schedule	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators	Total
7/19/2024	Staff Report and Load In			50				50
7/20/2024	Load In			50				50
7/21/2024	Athletes Report	500	50	100	20	20	300	990
7/22/2024	Events 8AM-3:30PM & 6:30PM-9:30PM	500	50	300	20	25	1300	2195
7/23/2024	Events 8AM-3:30PM & 6:30PM-9:30PM	500	100	300	20	25	1300	2245
7/24/2024	Events 8AM-3:30PM & 6:30PM-9:30PM	3500	100	300	20	25	7500	11445
7/25/2024	Events 8AM-3:30PM & 6:30PM-9:30PM	3500	100	300	20	25	7500	11445
7/26/2024	Events 8AM-3:30PM & 6:30PM-9:30PM	3500	100	300	20	25	7500	11445
7/27/2024	Events 8AM-3:30PM & 6:30PM-9:30PM	1750	50	300	20	20	4375	6515
7/28/2024	Events 8AM-3:30PM & 6:30PM-9:30PM	1750	50	300	20	20	4375	6515
7/29/2024	Load Out			50				50
								52945

¹ Total attendance is determined based on historical attendance and estimates provided by the event organizer.

Total Economic Gain

The economic gain from events such as the 2024 USATF National Junior Olympic Track & Field Championships, which is expected to bring in more than 9,000 athletes from around Texas and the United States to Texas is significant for the state and local economy. Events of this magnitude help generate state economic contributions by keeping expenditures in Texas that otherwise had left the state and bringing in outside expenditures from outside the state.

As is detailed in Table 2, the 2024 USATF National Junior Olympic Track & Field Championships should fill more than 18,912 hotel room nights and generate an estimated total spending by teams, media, staff, scouts, and fans of \$9,810,606. This gain is comprised of \$2,672,112 in lodging expenditures, \$2,915,721 in food and non-alcoholic beverage expenditures, \$3,162,816 in entertainment and shopping expenditures \$102,179 in alcoholic beverage expenditures, and \$957,779 in vehicle rental expenditures.

Table 2
Expenditure and Impact Summary
USA Track and Field Junior Olympics 2024

Total Hotel Room Nights	18912
Hotel Expenditure	\$2,672,112
Food and Non-Alcoholic Beverage	\$2,915,721
Entertainment & Shopping	\$3,162,816
Alcoholic Beverage	\$102,179
Vehicle Rental	\$957,779
Total Economic Impact	\$9,810,606

Event Trust Fund Gain

In 2009, the Texas legislature established the Events Trust Fund to assist in attracting to Texas or retaining in Texas sporting and other events that could be moved or held outside the state. The provisions of this law allow the Comptroller to deposit into a trust fund established for a qualifying event by the Governor's Office of Economic Development and Tourism the amount of state hotel, sales, and use, motor vehicle rental, and alcohol taxes that can be attributed to the incremental gain in economic activity to the state from hosting the event. To qualify for reimbursement from the Trust Fund, the local sponsoring municipality or county must contribute matching tax revenues received from hosting the event at the rate of \$1 local tax dollar for every \$6.25 in state tax contributions.

Based on the attendance and schedule of events presented in Table 1, Appendix A estimates the incremental tax gain to the state and the City of College Station, as well as the surrounding area, from *out-of-state visitors* of USA Track and Field Junior Olympics 2024. In addition, Appendix B estimates the incremental tax gain to the state and the City of College Station, as well as the surrounding area, from *Texas visitors originating from more than 50 miles away* from College Station, Texas. In total, this event is estimated to generate a total of \$644,443 in state tax revenues which could be deposited into a trust fund supporting this event. Appendices A and B also note the total local tax gain to the City of College Station, and the surrounding areas, is estimated to reach \$103,111, which is required by the city to fully match the state funds for a maximum total trust fund level of \$747,554 for this event.

The primary costs of presenting USA Track and Field Junior Olympics 2024 are estimated to be in excess of \$800,000 to include facility costs, water, volunteer meals, transportation, housing, and food for workers and athletes. Since expected expenditures on this event are above expected allowable state and local tax gains under the Event Trust Fund statutes and rules, this report requests that the Governor's Office of Economic Development and Tourism approve a trust fund for this event under Texas Government Code Chapter 480. Events Trust Fund to receive \$644,443 in state tax contributions that when matched by \$103,111 in tax contributions by the City of College Station account for a total Trust Fund level of \$747,554.

Appendix A

Out-of-State Participants Only Estimated Player, Coach, Fan and Other Attendance 2024 USATF National Junior Olympic Track & Field Championships, July 22-28, 2024

Date	Schedule	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators	Total
7/19/2024	Staff Report and Load In	0	0	50	0	0	0	50
7/20/2024	Load In	0	0	50	0	0	0	50
7/21/2024	Athletes Report	300	30	100	19	1	180	630
7/22/2024	Events 8AM-4PM	300	30	300	19	1	780	1430
7/23/2024	Events 8AM-4PM	300	60	300	19	1	780	1460
7/24/2024	Events 8AM-4PM	2100	60	300	19	1	4500	6980
7/25/2024	Events 8AM-4PM	2100	60	300	19	1	4500	6980
7/26/2024	Events 8AM-4PM	2100	60	300	19	1	4500	6980
7/27/2024	Events 8AM-4PM	1050	30	300	19	1	2625	4025
7/28/2024	Events 8AM-4PM	1050	30	300	19	1	2625	4025
7/29/2024	Load Out	0	0	50	0	0	0	50
		9300	360	2350	154	9	20490	32663

State & Local Tax and Expenditure Summary 2024 USATF National Junior Olympic Track & Field Championships, July 22-28, 2024

Hotel Expenditures	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators			
Persons/ hotel room	2.5	2	2	1	1	2.7			
Percent Staying in hotel	100%	100%	100%	90%	100%	90%			
Hotel Cost rm/night	\$141.29	\$141.29	\$141.29	\$141.29	\$141.29	\$141.29			
Day							Total Spending	State Tax	Room Nights
7/19/2024	\$0	\$0	\$3,532	\$0	\$0	\$0	\$3,532	\$212	25
7/20/2024	\$0	\$0	\$3,532	\$0	\$0	\$0	\$3,532	\$212	25
7/21/2024	\$16,955	\$2,119	\$7,065	\$2,441	\$141	\$8,477	\$37,199	\$2,232	263
7/22/2024	\$16,955	\$2,119	\$21,194	\$2,441	\$177	\$36,735	\$79,621	\$4,777	564
7/23/2024	\$16,955	\$4,239	\$21,194	\$2,441	\$177	\$36,735	\$81,741	\$4,904	579
7/24/2024	\$118,684	\$4,239	\$21,194	\$2,441	\$177	\$211,935	\$358,669	\$21,520	2539
7/25/2024	\$118,684	\$4,239	\$21,194	\$2,441	\$177	\$211,935	\$358,669	\$21,520	2539
7/26/2024	\$118,684	\$4,239	\$21,194	\$2,441	\$177	\$211,935	\$358,669	\$21,520	2539
7/27/2024	\$59,342	\$2,119	\$21,194	\$2,441	\$141	\$123,629	\$208,866	\$12,532	1478
7/28/2024	\$59,342	\$2,119	\$21,194	\$2,441	\$141	\$123,629	\$208,866	\$12,532	1478
7/29/2024	\$0	\$0	\$3,532	\$0	\$0	\$0	\$3,532	\$212	25
							\$1,812,290	\$108,737	12,827

Spending Rate for Food & Non-Alcoholic Beverages:	\$59.00	\$59.00	\$59.00	\$59.00	\$59.00	\$59.00		
	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$2,950	\$0	\$0	\$0	\$2,950	\$184
7/20/2024	\$0	\$0	\$2,950	\$0	\$0	\$0	\$2,950	\$184
7/21/2024	\$17,700	\$1,770	\$5,900	\$1,133	\$59	\$10,620	\$37,182	\$2,324
7/22/2024	\$17,700	\$1,770	\$17,700	\$1,133	\$74	\$46,020	\$84,397	\$5,275
7/23/2024	\$17,700	\$3,540	\$17,700	\$1,133	\$74	\$46,020	\$86,167	\$5,385
7/24/2024	\$123,900	\$3,540	\$17,700	\$1,133	\$74	\$265,500	\$411,847	\$25,740
7/25/2024	\$123,900	\$3,540	\$17,700	\$1,133	\$74	\$265,500	\$411,847	\$25,740
7/26/2024	\$123,900	\$3,540	\$17,700	\$1,133	\$74	\$265,500	\$411,847	\$25,740
7/27/2024	\$61,950	\$1,770	\$17,700	\$1,133	\$59	\$154,875	\$237,487	\$14,843
7/28/2024	\$61,950	\$1,770	\$17,700	\$1,133	\$59	\$154,875	\$237,487	\$14,843
7/29/2024	\$0	\$0	\$2,950	\$0	\$0	\$0	\$2,950	\$184
							\$1,927,108	\$120,444

Spending Rate for Shopping and Entertainment:	\$64.00	\$64.00	\$64.00	\$64.00	\$64.00	\$64.00		
	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$3,200	\$0	\$0	\$0	\$3,200	\$200
7/20/2024	\$0	\$0	\$3,200	\$0	\$0	\$0	\$3,200	\$200
7/21/2024	\$19,200	\$1,920	\$6,400	\$1,229	\$64	\$11,520	\$40,333	\$2,521
7/22/2024	\$19,200	\$1,920	\$19,200	\$1,229	\$80	\$49,920	\$91,549	\$5,722
7/23/2024	\$19,200	\$3,840	\$19,200	\$1,229	\$80	\$49,920	\$93,469	\$5,842
7/24/2024	\$134,400	\$3,840	\$19,200	\$1,229	\$80	\$288,000	\$446,749	\$27,922
7/25/2024	\$134,400	\$3,840	\$19,200	\$1,229	\$80	\$288,000	\$446,749	\$27,922
7/26/2024	\$134,400	\$3,840	\$19,200	\$1,229	\$80	\$288,000	\$446,749	\$27,922
7/27/2024	\$67,200	\$1,920	\$19,200	\$1,229	\$64	\$168,000	\$257,613	\$16,101
7/28/2024	\$67,200	\$1,920	\$19,200	\$1,229	\$64	\$168,000	\$257,613	\$16,101
7/29/2024	\$0	\$0	\$3,200	\$0	\$0	\$0	\$3,200	\$200
							\$2,090,422	\$130,651

State Mixed Beverage Tax								
Spending Rate for Alcoholic Beverages	\$14.00	\$14.00	\$14.00	\$14.00	\$14.00	\$14.00		
Percent Consuming Alcoholic Beverages	0%	10%	20%	50%	50%	20%		
	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$140	\$0	\$0	\$0	\$140	\$12
7/20/2024	\$0	\$0	\$140	\$0	\$0	\$0	\$140	\$12
7/21/2024	\$0	\$42	\$280	\$134	\$7	\$504	\$967	\$80
7/22/2024	\$0	\$42	\$840	\$134	\$9	\$2,184	\$3,209	\$265
7/23/2024	\$0	\$84	\$840	\$134	\$9	\$2,184	\$3,251	\$268
7/24/2024	\$0	\$84	\$840	\$134	\$9	\$12,600	\$13,667	\$1,128
7/25/2024	\$0	\$84	\$840	\$134	\$9	\$12,600	\$13,667	\$1,128
7/26/2024	\$0	\$84	\$840	\$134	\$9	\$12,600	\$13,667	\$1,128
7/27/2024	\$0	\$42	\$840	\$134	\$7	\$7,350	\$8,373	\$691
7/28/2024	\$0	\$42	\$840	\$134	\$7	\$7,350	\$8,373	\$691
7/29/2024	\$0	\$0	\$140	\$0	\$0	\$0	\$140	\$12
							\$65,596	\$5,412

Vehicle Rental Tax ²	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Percent Renting	7%	10%	50%	50%	10%	30%		
Cost per Day	\$146	\$76	\$76	\$76	\$76	\$76		
Average People per Rental Car	8.00	2.00	1.50	1.50	1.50	2.50		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$1,895	\$0	\$0	\$0	\$1,895	\$190
7/20/2024	\$0	\$0	\$1,895	\$0	\$0	\$0	\$1,895	\$190
7/21/2024	\$3,070	\$227	\$3,790	\$728	\$8	\$4,093	\$11,916	\$1,192
7/22/2024	\$3,070	\$227	\$11,370	\$728	\$9	\$17,737	\$33,142	\$3,314
7/23/2024	\$3,070	\$455	\$11,370	\$728	\$9	\$17,737	\$33,369	\$3,337
7/24/2024	\$21,491	\$455	\$11,370	\$728	\$9	\$102,330	\$136,383	\$13,638
7/25/2024	\$21,491	\$455	\$11,370	\$728	\$9	\$102,330	\$136,383	\$13,638
7/26/2024	\$21,491	\$455	\$11,370	\$728	\$9	\$102,330	\$136,383	\$13,638
7/27/2024	\$10,746	\$227	\$11,370	\$728	\$8	\$59,693	\$82,771	\$8,277
7/28/2024	\$10,746	\$227	\$11,370	\$728	\$8	\$59,693	\$82,771	\$8,277
7/29/2024	\$0	\$0	\$1,895	\$0	\$0	\$0	\$1,895	\$190
							\$658,804	\$65,880

² Based on average pre-tax prices of Expedia search (first page of search) at rental car companies at Bush International Airport on February 26, 2024 from July 22-26, 2024. Standard size car, paid at pick up, no additional charges. Rental cost for 'Players' is based on a similar search for passenger vans to transport entire team.

Appendix B

Texas Visitors (outside of 50 miles of College Station) Participants Only
Estimated Player, Coach, Fan and Other Attendance
2024 USATF National Junior Olympic Track & Field Championships, July 22-28, 2024

Date	Schedule	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators	Total
7/19/2024	Staff Report and Load In	0	0	0	0	0	0	0
7/20/2024	Load In	0	0	0	0	0	0	0
7/21/2024	Athletes Report	200	20	0	1	7	90	318
7/22/2024	Events 8AM-4PM	200	20	0	1	9	390	620
7/23/2024	Events 8AM-4PM	200	40	0	1	9	390	640
7/24/2024	Events 8AM-4PM	1400	40	0	1	9	2250	3700
7/25/2024	Events 8AM-4PM	1400	40	0	1	9	2250	3700
7/26/2024	Events 8AM-4PM	1400	40	0	1	9	2250	3700
7/27/2024	Events 8AM-4PM	700	20	0	1	7	1313	2040
7/28/2024	Events 8AM-4PM	700	20	0	1	7	1313	2040
7/29/2024	Load Out	0	0	0	0	0	0	0
		6200	240	0	6	65	10245	16756

State & Local Tax and Expenditure Summary
2024 USATF National Junior Olympic Track & Field Championships, July 22-28, 2024

Hotel Expenditures	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators			
Persons/ hotel room	2.5	2	2	1	1	2.7			
Percent Staying in hotel	100%	100%	100%	90%	100%	90%			
Hotel Cost rm/night	\$141.29	\$141.29	\$141.29	\$141.29	\$141.29	\$141.29			
Day							Total Spending	State Tax	Room Nights
7/19/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0
7/20/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0
7/21/2024	\$11,303	\$1,413	\$0	\$102	\$989	\$4,239	\$18,046	\$1,083	128
7/22/2024	\$11,303	\$1,413	\$0	\$102	\$1,236	\$18,368	\$32,422	\$1,945	229
7/23/2024	\$11,303	\$2,826	\$0	\$102	\$1,236	\$18,368	\$33,835	\$2,030	239
7/24/2024	\$79,122	\$2,826	\$0	\$102	\$1,236	\$105,968	\$189,254	\$11,355	1339
7/25/2024	\$79,122	\$2,826	\$0	\$102	\$1,236	\$105,968	\$189,254	\$11,355	1339
7/26/2024	\$79,122	\$2,826	\$0	\$102	\$1,236	\$105,968	\$189,254	\$11,355	1339
7/27/2024	\$39,561	\$1,413	\$0	\$102	\$989	\$61,814	\$103,879	\$6,233	735
7/28/2024	\$39,561	\$1,413	\$0	\$102	\$989	\$61,814	\$103,879	\$6,233	735
7/29/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0
							\$859,822	\$51,589	6086

Spending Rate for Food & Non-Alcoholic Beverages:								
	\$ 59.00	\$ 59.00	\$ 59.00	\$ 59.00	\$ 59.00	\$ 59.00		
	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/20/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/21/2024	\$11,800	\$1,180	\$0	\$47	\$413	\$5,310	\$18,750	\$1,172
7/22/2024	\$11,800	\$1,180	\$0	\$47	\$516	\$23,010	\$36,553	\$2,285
7/23/2024	\$11,800	\$2,360	\$0	\$47	\$516	\$23,010	\$37,733	\$2,358
7/24/2024	\$82,600	\$2,360	\$0	\$47	\$516	\$132,750	\$218,273	\$13,642
7/25/2024	\$82,600	\$2,360	\$0	\$47	\$516	\$132,750	\$218,273	\$13,642
7/26/2024	\$82,600	\$2,360	\$0	\$47	\$516	\$132,750	\$218,273	\$13,642
7/27/2024	\$41,300	\$1,180	\$0	\$47	\$413	\$77,438	\$120,378	\$7,524
7/28/2024	\$41,300	\$1,180	\$0	\$47	\$413	\$77,438	\$120,378	\$7,524
7/29/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
							\$988,613	\$61,788

Spending Rate for Shopping and Entertainment:								
	\$64.00	\$64.00	\$64.00	\$64.00	\$64.00	\$64.00		
	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/20/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/21/2024	\$12,800	\$1,280	\$0	\$51	\$448	\$5,760	\$20,339	\$1,271
7/22/2024	\$12,800	\$1,280	\$0	\$51	\$560	\$24,960	\$39,651	\$2,478
7/23/2024	\$12,800	\$2,560	\$0	\$51	\$560	\$24,960	\$40,931	\$2,558
7/24/2024	\$89,600	\$2,560	\$0	\$51	\$560	\$144,000	\$236,771	\$14,798
7/25/2024	\$89,600	\$2,560	\$0	\$51	\$560	\$144,000	\$236,771	\$14,798
7/26/2024	\$89,600	\$2,560	\$0	\$51	\$560	\$144,000	\$236,771	\$14,798
7/27/2024	\$44,800	\$1,280	\$0	\$51	\$448	\$84,000	\$130,579	\$8,161
7/28/2024	\$44,800	\$1,280	\$0	\$51	\$448	\$84,000	\$130,579	\$8,161
7/29/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
							\$1,072,394	\$67,025

State Mixed Beverage Tax:								
Spending Rate for Alcoholic Beverages:	\$14.00	\$14.00	\$14.00	\$14.00	\$14.00	\$14.00		
Percent Consuming Alcoholic Beverages	0%	10%	20%	30%	40%	25%		
	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/20/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/21/2024	\$0	\$28	\$0	\$3	\$39	\$315	\$386	\$32
7/22/2024	\$0	\$28	\$0	\$3	\$49	\$1,365	\$1,445	\$119
7/23/2024	\$0	\$56	\$0	\$3	\$49	\$1,365	\$1,473	\$122
7/24/2024	\$0	\$56	\$0	\$3	\$49	\$7,875	\$7,983	\$659
7/25/2024	\$0	\$56	\$0	\$3	\$49	\$7,875	\$7,983	\$659
7/26/2024	\$0	\$56	\$0	\$3	\$49	\$7,875	\$7,983	\$659
7/27/2024	\$0	\$28	\$0	\$3	\$39	\$4,594	\$4,664	\$385
7/28/2024	\$0	\$28	\$0	\$3	\$39	\$4,594	\$4,664	\$385
7/29/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
							\$36,583	\$3,018

Vehicle Rental Tax³:	Competitors	Coaches	Staff	Scouts	Media / TV Crew	Friends, Family, Spectators		
Percent Renting	7%	10%	50%	50%	10%	30%		
Cost per Day	\$146	\$76	\$76	\$76	\$76	\$76		
Average People per Rental Car	8.00	2.00	1.50	1.50	1.50	2.50		
Day							Total Spending	State Tax
7/19/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/20/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7/21/2024	\$2,047	\$152	\$0	\$30	\$53	\$2,047	\$4,328	\$433
7/22/2024	\$2,047	\$152	\$0	\$30	\$66	\$8,869	\$11,164	\$1,116
7/23/2024	\$2,047	\$303	\$0	\$30	\$66	\$8,869	\$11,315	\$1,132
7/24/2024	\$14,328	\$303	\$0	\$30	\$66	\$51,165	\$65,892	\$6,589
7/25/2024	\$14,328	\$303	\$0	\$30	\$66	\$51,165	\$65,892	\$6,589
7/26/2024	\$14,328	\$303	\$0	\$30	\$66	\$51,165	\$65,892	\$6,589
7/27/2024	\$7,164	\$152	\$0	\$30	\$53	\$29,846	\$37,245	\$3,725
7/28/2024	\$7,164	\$152	\$0	\$30	\$53	\$29,846	\$37,245	\$3,725
7/29/2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
							\$298,975	\$29,897

³ Based on average pre-tax prices of Expedia search (first page of search) at rental car companies at Bush International Airport on February 26, 2024 from July 22-26, 2024. Standard size car, paid at pick up, no additional charges. Rental cost for 'Players' is based on a similar search for passenger vans to transport entire team.

July 11, 2024

Item No. 7.6.

Memorandum of Agreement with Texas A&M University regarding the 2024 USATF National Junior Olympic Track & Field Championships

Sponsor: Jeremiah Cook

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on a Memorandum of Agreement between the City of College Station and Texas A&M University regarding event oversight of the 2024 USATF National Junior Olympic Track & Field Championships, on the campus of Texas A&M University, in an amount not to exceed \$950,000.

Relationship to Strategic Goals:

Diverse & Growing Economy

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

Summary: In 2020, staff bid on the 2024 USATF National Junior Olympic Track & Field Championships to be held in College Station to encourage economic growth through tourism. Staff has worked with USATF, Texas A&M University, Destination Bryan, and USATF Gulf Association to ensure the premier execution of the event. Revenues are expected from the event to offset a significant portion of expenses. The event is expected to bring an estimated economic impact to the community of \$10,000,000 in direct visitor spending.

Budget & Financial Summary: To execute this event, the City anticipates costs will be approximately \$950,000. Revenues for the event will include athlete registrations, ticket sales, and partial reimbursement through the Texas Event Trust Fund (up to \$644,443).

Attachments:

1. Agreement is on file in the City Secretary's Office

Contract is on file in the City Secretary's Office.

July 11, 2024
Item No. 7.7.
Fire Station No. 7 CMAR Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Lott Brothers Construction Co., Inc. for the Fire Station No.7 Project. The budget for this Project is \$18,000,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project involves the land acquisition, design, and construction of a new Fire Station (No. 7) located at 2981 Greens Prairie Road. Fire Station No.7 will be designed as a four-bay fire station that is equipped with a fire engine, ambulance, and command vehicle. The station will have a community room available for use by the public. The station will be approximately 19,000 square feet and will utilize approximately 4 acres of land. Fire Station No.7 is strategically located to improve response capabilities to the Wellborn area and southern portions of the city limits.

The Construction Manager at Risk (CMAR) for pre-construction and construction phase services was solicited via Request for Qualifications (RFQ) on March 27, 2024, RFQ #24-035 and RFP #24-035. Three (3) responses were submitted to RFQ #24-035 and two (2) were invited to submit for the RFP #24-035. Both respondents to the RFP were interviewed. After evaluation and interviews, Lott Brothers Construction, Inc. was selected as the most qualified, best value to the city based on the published selection criteria.

Lott Brothers Construction will provide pre-construction services (construction reviews, materials coordination, cost estimating, etc.) during the design phase, in coordination with the design team. Lott will also provide construction phase services. Construction will be bid out through the CMAR, following all applicable procurement laws, and presented to the City Council for approval as a Guaranteed Maximum Price (GMP) for each construction phase(s) of the project. The project is proposed to begin construction in early 2025 and is anticipated to take 12-18 months to complete.

Budget & Financial Summary: \$18,000,000 is currently budgeted for this project in the Facilities and IT Capital Improvement Projects Fund. A total of \$3,126,998 has been expended or committed to date, leaving a balance of \$14,870,002 for this CMAR Contract and any remaining project expenses. Funding for this project was approved via the City of College Station's November 2022 General Obligation Bond Election.

Attachments:

1. Fire Station No. 7 Project Location Map
2. Fire Station No. 7 CMAR Contract_24300545-v2

Project Location Map

Fire Station #7

GG2306

Legend

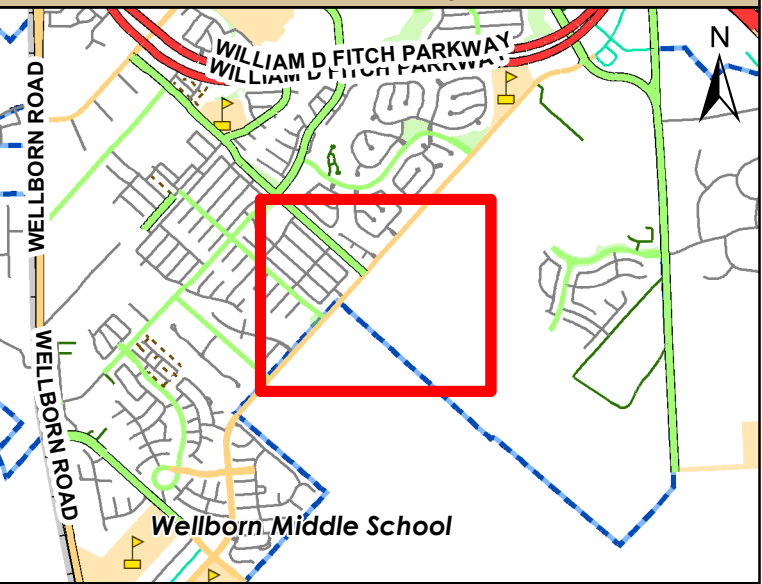
Streets

Functional Classification

- MAJOR COLLECTOR
- MINOR ARTERIAL
- MINOR COLLECTOR
- LOCAL STREET
- Rivers
- Water Features

Project Location
2981 Greens Prairie Road

Overview Map



DISCLAIMER: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. No warranty is made by the City of College Station regarding specific accuracy or completeness.



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300545 PROJECT #: GG2306 BID/RFP/RFQ#: RFQ/RFP24-03

Project Name / Contract Description: CMAR for Fire Station No. 7

Name of Contractor: Lott Brothers Construction Company, Ltd

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

If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☒ N/A

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

Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Buy America Required ☐ Yes ☐ No ☒ N/A

Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

Two (2) proposals were received. A \$18,000,000 is included in the General Government Capital Improvement Projects Fund.

A total of \$1,778,662 has been expended or committed to date, leaving a balance of \$16,221,338 for this contract and related costs.

(If required)*

CRC Approval Date*: Council Approval Date*: 7/11/2024 Agenda Item No*: TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION
STANDARD FORM OF AGREEMENT
BETWEEN CITY AND CONSTRUCTION MANAGER AT RISK**

This Agreement is entered into by and between the **City of College Station**, a Texas home-rule municipal corporation (the “City”) and Lott Brothers Construction Co., Inc., a Texas Corporation (the “Construction Manager” or Contractor”) for the construction and/or installation of the following City Project: Fire Station No. 7, as more particularly described in Paragraph 2.17 of this Agreement.

**ARTICLE I.
GENERAL CONDITIONS**

1. GENERAL PROVISIONS

1.01 Relationship of the Parties. The Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Construction Manager’s reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the City for the Project. The Construction Manager shall furnish construction administration and management services and use the Construction Manager’s best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the City. The City shall endeavor to promote harmony and cooperation among the City, Architect, Construction Manager and other persons or entities employed by the City for the Project.

2. DEFINITIONS

2.01 Unless specifically defined, words used in this Agreement shall be interpreted according to their common usage or meaning to result in the most reasonable application. Unless otherwise designated, the following specific definitions (and others specifically defined in other paragraphs of this Agreement) shall apply whether a term or phrase appears in capital letters or in bolded, italicized, or underlined print.

2.02 Addenda. Addenda are written or graphic instruments issued prior to or at the execution of the Contract, which modify or interpret the proposal documents, including Drawings and Specifications, by additions, deletion, clarification, or corrections. Addenda will become part of the Agreement Documents when the Agreement is executed.

2.03 Approved, Approved Equal and Approved Equivalent, or Equal relate to the substitution of materials, equipment or procedure approved in writing by the Architect prior to receipt of proposals. The substitution procedure process to be followed prior to receipt of competitive sealed proposals is described in the instruction to proposers.

2.04 Calendar Day or Day. A “calendar day” or “day” is any day of the week or month, no days being excepted, and further, unless specifically designated as a “working day,” a day described in this Agreement is a calendar day.

2.05 City or Owner. Whenever the word “City” is used, it shall mean and be understood as referring to the City of College Station, Texas, acting by and through its City Council or

Representative. The terms “Owner” and “City” are synonymous as used in this Agreement.

2.06 City’s Representative. Whenever the words “City’s Representative” or “Representative” are used, it shall mean and be understood as referring to the City Manager or their delegate, who shall act as the City’s agent. The City’s Representative may inspect and issue instructions but shall not directly supervise the Contractor. The City’s inspector has authority to reject the Work for failure to comply with the Agreement Documents and/or applicable laws.

2.07 Agreement Documents. The term “Agreement Documents” shall mean those documents listed in Paragraph 3. The Agreement Documents form the Agreement for Construction. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement may be amended or modified only by a written Modification. The Agreement Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the City and a Subcontractor or Sub-subcontractor, (3) between the City and Architect or (4) between any persons or entities other than the City and Contractor. The Architect shall be entitled, however, to performance and enforcement of obligations of the Contractor under the Agreement intended to facilitate performance of the Architect’s duties.

2.08 Contractor. Whenever the word “Contractor” is used, it shall mean the person(s), partnership, or corporation or other business entity executing this Agreement with the City and that has agreed to perform the work described in this Agreement and the Agreement Documents; specifically, it shall mean the Construction Manager. Contractor and Construction Manager are synonymous as used in this Agreement.

2.09 Agreement Time. The “Agreement Time” is the period of time which is established in the Agreement Documents for Substantial Completion of the Work. This period of time is not subject to adjustment or extension without the written permission of the City.

2.10 Drawings. The Drawings are the graphic and pictorial portions of the Agreement Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

2.11 Extra Work. The term “Extra Work” shall mean and include work that is **not** covered or contemplated by the Agreement Documents but that may be required by the City’s Representative and approved by the City in writing **before** the work being done by the Contractor.

2.12 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.

2.13 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 the 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 the City's Representative. In the interest of brevity, the Agreement Documents may omit modifying words such as "all" or "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

2.15 Notice to Proceed. A notice that may be given by the Owner to the Contractor that directs the Contractor to start the Work.

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

2.17 Project. The term "Project" shall mean and include: (a) the City's Fire Station No. 7 project; and (b) all that is required to obtain a final product that is acceptable to the City for said project. The term "Work" shall have like meaning. The Project is the total construction of which the Work performed under the Agreement and Agreement Documents may be the whole or a part and which may include construction by the City or by separate contractors. All provisions of this Agreement pertain and relate to the successful completion of the Project herein described and no other development or construction project (past or present) of the City or Contractor.

2.18 Punch List. A comprehensive list prepared by the Contractor before Substantial Completion to establish all items to be completed or corrected; this list may be supplemented by the Architect or the City.

2.19 Specifications. The Specifications are that portion of the Agreement Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Organization of the Specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Specifications are attached hereto as **Exhibit D** and are incorporated herein for all purposes.

2.20 Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact 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.

2.21 Substantial Completion. The terms "Substantial Completion" and "Substantially Completed" mean that in the opinion of the City's Representative the Project (communicated through the procedure described in this section 2.21), including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Substantial Completion notice shall be given in writing by the City Manager or the City's Director of Capital Projects stating the existence of the requirements of this section 2.21 and the date Substantial Completion was accomplished. 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.

2.22 Work. The term “Work” means the construction and services required by the Agreement Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Agreement Documents and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Agreement Documents.

2.23 Working Day. A “working day” means any day not including Saturdays, Sundays, or legal holidays recognized by the City, and further, unless designated as a “working day,” a day described in this Agreement is a calendar day.

2.24 Other Specifically Defined Terms. The parties agree as follows:

(a) “**Agreement Sum,**” as described in Paragraph 15.01, is the total amount payable by the City to the Contractor for performance of the Work under the Agreement Documents, including authorized adjustments.

(b) “**Application for Payment,**” as described in Paragraph 15.03, means an itemized application for payment made by the Contractor and submitted to the Architect for operations completed in accordance with the Schedule of Values and an updated project schedule for the Work.

(c) “**Change Order,**” as described in Paragraphs 13.02, means a written instrument prepared by the City and reviewed by the Architect, which, when finalized, is signed by the City, Contractor and Architect, stating their agreement upon all of the following: (i) a Change in the Work; (ii) the amount of the adjustment, if any, in the Agreement Sum; and (iii) the extent of the adjustment, if any, in the Agreement Time.

(d) “**Change in Work,**” as described in Paragraphs 13.01-13.03, means an authorized change in the Work made the basis of a Change Order, Construction Change Directive, or order for a minor change in the Work.

(f) “**Construction Change Directive,**” as described in Paragraph 13.03, means a written order prepared by the Architect and signed by the City and Architect, directing a Change in the Work before an agreement on adjustment, if any, in the Agreement Sum or Agreement Time, or both.

(g) “**Guaranteed Maximum Price,**” as described in Paragraphs 23.03 and 26.02, means the sum of the estimated Cost of the Work and the Contractor’s Fee.

(h) “**Milestone Dates**,” as described in Paragraph 5.11, mean the dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Agreement Documents.

(i) “**Product Data**,” as described in Paragraph 5.13, means 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.

(j) “**Samples**,” as described in Paragraph 5.13, mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

(k) “**Schedule of Values**,” as described in Paragraph 15.02, means a written submission by the Contractor to the Architect for approval (to be submitted by the Contractor before the first Application for Payment), which submitted schedule fairly allocates the various portions of the Work, and is prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Architect.

(l) “**Shop Drawings**,” as described by Paragraph 5.13, mean 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.

2.25 General Interpretation. Unless otherwise stated in the Agreement Documents, words which have well-known technical, or construction industry meanings are used in the Agreement Documents in accordance with such recognized meanings. Unless otherwise designated in this Agreement, the past, present, or future tense shall each include the other, the masculine or feminine gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning. Unless otherwise designated, the numbered paragraph and subparagraph provisions of this Agreement will be referred to as numbered “paragraphs” or “subparagraphs,” however, it shall be understood that should “section” and “subsection” be used as a descriptive term to identify a specific provision of this Agreement, those terms are synonymous with “paragraph” and “subparagraph” in this Agreement.

3. THE AGREEMENT DOCUMENTS

3.01 The Agreement Documents and their priority shall be as follows:

- (a) This signed Agreement.
- (b) Addendum to this Agreement.
- (c) General Conditions.
- (d) Special Conditions.
- (e) Technical specifications.
- (f) Drawings.
- (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.

3.02 Distribution of Agreement Documents. 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.

3.03 Prohibition of Re-Use. 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 Agreement 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 Agreement Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Agreement Documents, the Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirement, either or both in accordance with the City's interpretation.

4. OWNER

4.01 Owner or City. The Owner is the person or entity identified as such in the Agreement. The term "Owner" means the City of College Station acting by and through its City Council or the City's Representative. The terms "Owner" and "City" are synonymous as used in this Agreement.

4.02 Presence of Owner or Architect. The presence of the City or Architect at the Work site does not imply acceptance or approval of Work.

4.03 Information and Services Required of the Owner. Information or services reasonably necessary for the Work and under the City's control shall be furnished by the City with reasonable promptness when requested in writing by the Contractor. In any instance where information or services from the City or Architect is required, Contractor shall promptly notify the Architect in writing, with a copy to the City, of the particular need. **Absent such notification, any claim based upon lack of such information or services shall be waived.**

4.04 Owner's Right to Stop the Work. If the Contractor fails to correct Work which is not in accordance with the requirements of the Agreement Documents as required by Paragraph 20.2 or fails to carry out Work in accordance with the Agreement Documents, the City may: (a) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity; (b) terminate this Agreement; and/or (c) seek authorized remedies for a default of this Agreement.

4.05 Owner's Right to Carry out the Work.

(a) If the Contractor defaults or neglects to carry out the Work in accordance with the Agreement Documents and fails within a seven-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 cost of correcting such deficiencies, including compensation for the Architect'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.

(b) After the Work is complete, the City may make emergency repairs to the Work, if necessary, to prevent further damage, or if the Contractor does not promptly respond to a notice of condition requiring repairs. Contractor shall be responsible to City for this cost if the repairs are due to the Contractor's defective Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the City.

4.06 Owner's Right to Use or Occupy.

(a) The City shall have the right to occupy or use without prejudice to the right of either party, any completed or largely completed portions of the Project, notwithstanding the time for completing the entire Work or such portions may not have expired. Such occupancy and use shall not constitute Substantial Completion or Final Completion of the Work, and shall not constitute acceptance of any Work not in accordance with the Agreement Documents.

(b) If such prior use delays the completion of the Project, the Contractor shall be entitled to extension of time, which claim shall be in writing with supporting data attached.

(c) Insurance and Bonds regarding property insurance requirements are required in the event of such occupancy pursuant to Paragraph 19.

5. CONTRACTOR

5.01 Contractor. The Contractor (also called Construction Manager) is the person or entity identified as such in the Agreement. The term "Contractor" means the Contractor or the Contractor's authorized representative.

5.02 Contractor to Perform the Work. The Contractor shall perform the Work in accordance with the requirements of the Agreement Documents and Sections 2269.255 through 2269.258 of the Texas Government Code regarding the conduct and activities of a Construction Manager at Risk.

5.03 Architect Activities and Tests. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Agreement Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

5.04 Review of Agreement Documents and Field Conditions by Contractor.

(a) The Contractor shall carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications, Addenda, and Modifications and shall at once report to the Architect any error, inconsistency, or omission the Contractor discovers. 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 Agreement Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. If the Contractor performs, authorizes, or directs any construction activity knowing it involves a recognized error, inconsistency or omission in the Agreement Documents without such notice to the Architect, the Contractor shall assume responsibility for such activity and shall pay the total amount of the attributable costs for correction. Contractor shall not be liable to City or Architect for any damage resulting from such error, inconsistency or omission which Contractor should not have discovered, or which Contractor did discover and at once so reported. Contractor shall not authorize or perform Work without approved Drawings and Specifications.

(b) If the Contractor fails to perform the obligations of Paragraph 5.4(a), the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations.

(c) The Contractor shall not be entitled to additional compensation for the “rework portion” of any additional work caused by its failure to carefully study and compare the Agreement Documents prior to execution of the Work.

(d) The Contractor shall make a reasonable attempt to interpret the Agreement Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observance of work prior to the Contractor’s field superintendent’s personal inspection of the Work and their determination that the Work complies with the Agreement Documents. The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractor(s) to ask for any interpretation it may require.

(e) If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Agreement Documents and this causes the Architect or its Consultants to expend an unreasonable amount of time in the discharge of the duties imposed on the Architect by the Agreement Documents, then the Contractor shall bear the cost of compensation for the Architect’s additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to above requirements before additional services are performed.

(f) If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor’s ability to satisfactorily perform with Work or to honor Contractor’s Warranty, Contractor shall promptly notify the Architect, in writing, providing substantiation for Contractor’s position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification.

5.05 Supervision And Construction Procedures.

(a) The Contractor shall perform, supervise, and direct the Work for the Project, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Agreement Documents give other specific instructions concerning these matters. If the Agreement Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the City and Architect, and the Contractor shall not proceed with that portion of the Work without further written instructions from the Architect.

(b) The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors for the Project. It is understood and agreed that the relationship of the Contractor to City shall be that of an independent contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the agent, servant or employee of the City, or (2) to create any partnership, joint venture, or other association between City and Contractor. Any direction or instruction by City or any of its authorized representatives in respect of the Work shall relate to the results the City desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status described herein.

(c) The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

(d) Contractor shall execute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted industry standards of construction management and practice for construction of projects similar to the Project, using qualified, careful and efficient workers and in conformity with the provisions of this Agreement and the other Agreement Documents.

5.06 Labor And Materials.

(a) Unless otherwise provided in the Agreement Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities, goods, fixtures, and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

(b) The Contractor may make substitutions only with the consent of the City, after evaluation by the Architect and in accordance with a Change Order.

(c) The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.07 Warranty.

(a) The Contractor warrants to the City and Architect that facilities, materials, goods, fixtures, and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Agreement Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Agreement Documents and recognized industry standards. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials, goods, and equipment. The warranties set out in this Paragraph are not exclusive of any other warranties or guarantees set out in other places in the Agreement Documents or implied under applicable law.

(b) Before final payment, Contractor shall furnish any manufacturer warranties required by the Agreement Documents.

(c) When deemed necessary by the City, and prior to installation of any items specifically made subject to a performance standard or regulatory agency standard under any provision of the Agreement Documents, Contractor shall furnish proof of conformance to the Architect. Proof of Conformance shall be in the form of (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standard, (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the appreciated standard, or (3) such further reasonable proof as required by the Architect.

(d) The warranties of Contractor provided in Subparagraph 5.7(a) shall in no way limit or abridge the warranties of the suppliers of equipment and system which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Agreement Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of City under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby the City shall have a direct right, but not a duty, of enforcement of such warranty obligations.

(e) In the event of failure of materials, goods, fixtures, equipment, products, services, or workmanship, either during construction or the warranty period (which shall be two (2) years from the Date of Final Completion, except where a longer period is specified), the

Contractor shall take appropriate measures to assure correction or replacement of the defective items, whether notified by the City or Architect.

(f) Approximately eleven (11) months after Substantial Completion, the Contractor shall accompany the City and Architect on a complete inspection of the Project and be responsible for correcting any observed or reported deficiencies within thirty (30) calendar days.

5.08 Permits, Fees and Notices.

(a) Unless otherwise provided in the Agreement Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are secured after execution of the Agreement, and which are legally required when bids are received or negotiations concluded. All connection charges, assessments or inspection fees as may be imposed by any city or utility company are included in the Agreement Sum and shall be the Contractor's responsibility.

(b) The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds (including without limitation performance and payment bonds) required of the City or the Contractor by the Agreement Documents. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material, and furnish the surety with any required information. The Contractor shall also obtain and pay all charges for all approvals for street closing and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

(c) It is not the Contractor's responsibility to ascertain that the Agreement Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes or should have observed that portions of the Agreement Documents are contrary therewith, the Contractor shall promptly notify the Architect and City in writing, and necessary changes shall be accomplished by appropriate Modification.

(d) If the Contractor performs Work which it knows or should have known to be contrary to applicable laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and City, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

(e) The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Architect at once when the City's participation is required. Connections for temporary and permanent utilities required for the Work are the responsibility of the Contractor. Payment for temporary and/or permanent utility services through Final Completion of the Work shall be the responsibility of the Contractor.

5.09 Allowances.

(a) The Contractor shall include in the Agreement Sum all allowances stated in the Agreement Documents. These stated allowances represent the cost estimate of the materials, goods, fixtures, and equipment delivered and unloaded at the Project site. The Contractor's installation, labor, overhead, profit, and other expenses contemplated for the allowance for material, goods, fixtures, and equipment shall be included in an allowance only when called for in the Agreement Documents. The Contractor shall purchase the allowance for materials, goods, fixtures, and equipment as directed by the Architect based on the lowest responsive bids of at least three (3) competitive bids. If the actual cost of the materials, goods, fixtures, and equipment delivered and unloaded at the Project site is more or less than all the allowance estimates, upon City approval, the Agreement Sum will be adjusted accordingly by Change Order.

(b) The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 5.9(a), and (2) changes in Contractor's costs, subject to the limitations set forth at Paragraph 13.1(a)(1).

(c) Materials, goods, fixtures, and equipment under an allowance shall be selected with reasonable promptness by the City to avoid delays in the Work (provided that if a decision is needed by a certain date to avoid delay, Contractor shall notify Architect in writing sufficiently in advance of the needed date to allow reasonable time for selections).

5.10 Superintendent. The Contractor shall employ a competent superintendent (approved by the City) and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing by e-mail or by communication with a secure electronic signature. Other communications shall be similarly confirmed on written request in each case. Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by City who shall not be transferred from the Project without City's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed (1) to preclude the promotion within Contractor's organization of any person assigned to the Project or (2) to give rise to any liability of Contractor if any person assigned to the Project leaves Contractor's employ. If City reasonably determines that any employee of Contractor or of its Subcontractors is careless or not qualified to perform the Work assigned to him, and City and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employee, the Contractor shall promptly remove such employee from the Project and replace such employee. At all times while procurement activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by City, acting reasonably) authorized to act on behalf of Contractor and with whom City may consult at all reasonable times, and who shall be authorized to receive the instructions, requests, and decisions of City. All of Contractor's and Subcontractor's personnel shall comply with all applicable health, safety, risk management, and loss prevention rules and policies of applicable industry and regulatory standards. Contractor shall, at its own expense, remove from the Project any person who fails to comply with such rules and instructions in any material respect.

5.11 Contractor's Construction Schedules.

(a) The Contractor shall, promptly after executing the Contract, develop a construction schedule reasonably defining a plan for completing the Work within the required time. The format and detail of the schedule shall be in keeping with the size and complexity of the Project, and the schedule and all updates shall be subject to approval of the City and Architect. The schedule and any updates shall not exceed time limits current under the Agreement Documents including granted time extensions, and shall be revised at appropriate intervals as reasonably required by the City and Architect, shall be related to the entire Project (if more than one Agreement is involved in the Project), and shall provide for expeditious and practicable execution of the Work. All updated schedules shall address the subject of how the Contractor intends to overcome any delays previously encountered. The Contractor shall submit to the Architect with each monthly Application for Payment, a copy of the updated construction schedule as a prerequisite for approval of Applications for Payment.

(b) The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

(c) The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the City and Architect.

(d) The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a Contractor's schedule does not constitute a commitment by the City to furnish any Owner-furnished information or material any earlier than City would otherwise be obligated to furnish that information or material under the Agreement 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 to a minimum. The construction schedules shall be in a detailed format satisfactory to the City and the Architect and shall also: (1) provide a graphic representation of all activities and events that will occur during performance of Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Agreement Documents (hereinafter referred to as Milestone Dates). If not accepted, the construction schedules shall be promptly revised by the Contractor in accordance with the recommendations of the City and Architect and re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. The accepted construction schedules shall be updated to reflect actual conditions as set forth in Paragraph 5.11(a), if requested, by either the City or Architect. In the event any schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any schedule constitute an

adjustment in the Agreement Time, any Milestone Date, or the Agreement Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

5.12 Documents And Samples at The Site. The Contractor shall maintain at the site for the City one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the City upon completion of the Work.

5.13 Shop Drawings, Product Data and Samples.

(a) 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.

(b) Product Data means 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.

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

(d) Shop Drawings, Product Data, Samples, and similar submittals are not Agreement Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Agreement Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Agreement Documents. Review by the Architect is subject to the limitations of Paragraph 9.2(g). Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Agreement Documents. Submittals which are not required by the Agreement Documents may be returned by the Architect without action.

(e) The Contractor shall review for compliance with the Agreement Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Agreement Documents 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. Submittals which are not marked as reviewed for compliance with the Agreement Documents and approved by the Contractor may be returned by the Architect without action.

(f) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Agreement Documents. If, in the opinion of the Architect, the shop drawings indicate a lack of study and the review by the Contractor is incomplete or indicate an inadequate understanding of the Work covered by the shop

drawings, prior to submittal to the Architect, the shop drawings will be returned, unchecked, to the Contractor for correction of any/all of these deficiencies for subsequent resubmittal.

(g) The Contractor shall perform no portion of the Work for which the Agreement Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

(h) 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 Agreement Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect 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 Architect's approval thereof.

(i) 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 Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

(j) The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Agreement Documents for a portion of the Work or unless the Contractor needs to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional (including a licensed architect or engineer) related to systems, materials, goods, fixtures, or equipment are specifically required of the Contractor by the Agreement Documents, the City and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by such a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The City and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the City and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Paragraph 5.13(j), the Architect will review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Agreement Documents. The

Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Agreement Documents.

(k) Adequate copies of Shop Drawings for architectural, structural, mechanical, and electrical work shall be submitted to the Architect for review.

(l) The Contractor shall submit complete Drawings, Data and Samples to the Architect at least thirty (30) days prior to the date the Contractor needs the reviewed submittals returned. The Contractor shall be prepared to submit color samples on any key items within sixty (60) days of the execution of the Contract. Once samples of all key items are received, the Architect will finalize color selections.

(m) The Contractor shall submit the number of hard/physical copies of Samples which the Contractor and its Subcontractor(s) need for their use PLUS two (2) additional sets for the Architect, one (1) additional set for the City. Product data submittals shall be made digitally to Subcontractor(s), the Architect, and the City. Where Shop Drawings are involved, the Contractor shall submit digital versions to Subcontractor(s), the Architect, and City. After final review and correction of the submittal, Contractor shall send a corrected digital set to the Subcontractor(s), Architect and City.

(n) The Contractor shall provide composite drawings within three (3) months of Agreement signing showing how all piping, ductwork, lights, conduit, equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by code, or in keeping with good construction industry standards and practice. Space for all trade elements must be considered on the same drawing. Drawings shall be at ¼ inch per foot minimum scale and shall include invert elevations and sections required to meet the intended purpose.

5.14 Use of Project Site.

(a) The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Agreement Documents and shall not unreasonably encumber the site with materials or equipment.

(b) The Contractor's access to the Project site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the City before the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without prior consent by the Owner.

5.15 Cutting And Patching.

(a) The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or

otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

5.16 Cleaning Up.

(a) The Contractor shall keep the premises and surrounding area mowed and free from accumulation of weeds and waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall be responsible for protection of the Work and shall repair or replace damaged work at Substantial Completion of the Work. The Contractor shall remove all temporary protections at the completion of the Work.

(b) If the Contractor fails to clean up as provided in the Agreement Documents, the City may do so, and the cost thereof shall be charged to the Contractor.

(c) Prior to the Architect's inspection for Substantial Completion, the Contractor shall: clean exterior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean goods, equipment, and fixtures to a sanitary condition; clean roofs; clean the Project site; sweep paved areas and rake clean other surfaces; and remove trash and surplus materials from the Project site.

5.17 Access To Work. The Contractor shall provide the City and Architect access to the Work in preparation and progress wherever located.

5.18 Royalties, Patents and Copyrights. The Contractor shall pay all royalties and license fees required for the Project. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City and Architect harmless from loss on account thereof (as described in Paragraph 6), but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Agreement Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City or Architect. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

6. INDEMNIFICATION AND RELEASE

6.01 Contractor Not Providing Architectural or Engineering Services. When the Contractor is not providing architectural or engineering services for the Project (such as when such services are not required by the Agreement Documents for a portion of the Work, or when the Contractor does not need to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions apply:

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 AGREEMENT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY. 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.

The indemnification contained above 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.**
- (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.**

Contractor's indemnification obligations in this Paragraph 6.01 shall survive termination, completion, abandonment and final payment.

REGARDING THIS RELEASE, 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 INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

6.02 Contractor Providing Architectural or Engineering Services. When the Contractor is providing architectural or engineering services for the Project (such as when those services are required by the Agreement Documents for a portion of the Work, or when the Contractor needs to provide those services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions shall apply pursuant to section 271.904 of the Texas Local Government Code, as amended, and other authority.

THE CONTRACTOR, AS THE INDEMNITOR, SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ALL DAMAGE OR LIABILITY (INCLUDING ALL MONETARY DAMAGES AND JUDGMENTS, LEGAL OR EQUITABLE RELIEF, COSTS, EXPENSES, COURT COSTS, INTEREST, REASONABLE ATTORNEY'S FEES, AND JUST AND LAWFUL OFFSETS AND CREDITS) REGARDING THE PROJECT TO THE EXTENT THAT SAID DAMAGE OR LIABILITY IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, AND COMMITTED BY SAID INDEMNITOR OR SAID INDEMNITOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH SAID INDEMNITOR EXERCISES CONTROL; HOWEVER, THIS INDEMNITOR OBLIGATION EXPRESSLY DOES NOT APPLY WHEN THE DAMAGE, LIABILITY, CLAIM OR JUDGMENT IS BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, THE CITY'S EMPLOYEE OR AGENT, OR OTHER PERSON OR ENTITY OVER WHICH THE CITY EXERCISES CONTROL.

REGARDING THIS RELEASE, 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 WORK ON THE PROJECT PERFORMED 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 SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE. IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE 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 NOT APPLY WHEN SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

Notwithstanding anything stated to the contrary in this Paragraph 6.02, it is required that: (a) the City shall be included as an additional insured under the Contractor's general liability, business automobile liability, and excess/umbrella liability insurance policies, and the Contractor shall provide any and all defenses to the City as provided by those policies; and (b) a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Contractor, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

Contractor's indemnification obligations in this Paragraph 6.02 shall survive termination, completion, abandonment and final payment.

7. REPRODUCIBLE RECORD DRAWINGS

7.01 Drawings. Required as part of Final Completion of the Project, the Contractor shall submit one (1) complete set of drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

8. ANTITRUST VIOLATIONS

8.01 Antitrust Violations. To permit the City to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Agreement which are under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et. seq. (1973). The Contractor shall include this provision in its agreements with each Subcontractor and

supplier. Each Subcontractor shall include such provision in agreements with sub-subcontractors and suppliers.

9. ADMINISTRATION OF THE CONTRACT

9.01 Architect.

(a) The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement. The term “Architect” means the Architect or the Architect’s authorized representative, or such successor Architect as City may appoint by written notice to Contractor from time to time.

(b) City shall notify Contractor when the duties, responsibilities, or limitations of authority of the Architect have been modified.

(c) If the employment of the Architect is terminated, the City may elect to appoint a replacement Architect, or at its option, elect to complete the Project using another consultant or representative to perform the balance of the Architect’s functions on the Work.

(d) Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Agreement Documents by the activities or duties of the Architect.

9.02 Architect’s Administration of the Contract.

(a) Certain portions of the administration of the Agreement will be performed by the Architect. The Architect shall not have the authority to act on behalf of the City unless such authority is expressly granted in the Agreement Documents or the City’s engagement agreement with the Architect, nor shall such authority be implied from any act or representation of the Architect. The City is free to elect to have some of the administration duties set out for the Architect to perform under the Agreement Documents performed by a Construction Manager or by employees of the City.

(b) The Architect, as a representative of the City, will visit the site at intervals appropriate to the stage of the Contractor’s operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Agreement Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Agreement Documents, except as provided in Paragraph 5.05(a) In no event shall City or any other party have control over, be in charge of, or be responsible for construction

means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibilities. City will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement Documents. City will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

(c) The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Agreement Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

(d) Communications Facilitating Agreement Administration. Except as otherwise provided in the Agreement Documents or when direct communications have been specially authorized, the City and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the City.

(e) Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect and the City (the City in consultation with the Architect), both have the authority to reject Work that does not conform to the Agreement Documents. Whenever the City or Architect considers it necessary or advisable for implementation of the intent of the Agreement Documents, the City or Architect will have authority to require additional inspection or testing of the Work in accordance with Paragraph 21.1 whether or not such Work is fabricated, installed or completed. However, neither this authority of the City or Architect, nor a decision made reasonably and in good faith either to exercise or not to exercise such authority, shall give rise to create or imply the existence of a duty or responsibility of the City or Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

(g) The Architect will review and approve or take other appropriate action upon the Contractor's submittals regarding this Agreement for the Project, including Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Agreement Documents. The Architect's action will be taken with such reasonable promptness, but no longer than fifteen (15) business days, as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other

details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Agreement Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of its obligations. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) Upon direction of the City, the Architect will prepare Change Proposal Requests, Change Orders, and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 13.04.

(i) The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the City, for the City's review and records, written warranties and related documents required by the Agreement and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Agreement Documents.

(j) If the City and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Agreement Documents.

(k) The Architect will interpret and decide matters concerning performance under, and requirements of, the Agreement Documents on written request of either the City or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 9.02(k), then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until thirty (30) days after written request is made for them.

(l) Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Agreement Documents and will be in writing or in the form of drawings.

10. CLAIMS AND DISPUTES

10.01 Definition. A Claim is any demand or assertion by the Contractor that it should be paid more money than the Agreement Sum, as adjusted under the Change Order provisions herein, by the City because of action or inaction on the part of City, Architect, or any party for whom City is responsible, or any party with whom City has separately contracted for other portions of the Project, including but not limited to any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that the Agreement Documents have been misinterpreted, that there has been a failure

of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that there are problems with the Agreement Documents, or the timing of Architectural approvals or decisions, that action of the City have been intentionally wrongful or deceptive in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Agreement Documents or Work. Nothing contained in this subparagraph shall be construed as creating any Contractor right to make a claim, where no such right otherwise exists.

10.02 Notice Requirement. Within fourteen (14) calendar days of the first occurrence of an event that Contractor has any reason to believe might result in a Claim, or within fourteen (14) calendar days of Contractor's discovery of the first occurrence of the event that Contractor has any reason to believe might result in a Claim (if the first occurrence of the event was willfully hidden from the Contractor), the Contractor shall file a written document clearly captioned "Notice of Claim" with City and Architect. The notice shall clearly set out the specific matter of complaint, and the impact of damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date that is reasonably possible. Furthermore, the following matters are required:

- (a) Any Claim or portion of a Claim that has not been made the specific subject of a notice strictly in accordance with the requirements of this Paragraph shall be waived. It is imperative that City have timely, specific notice of any subject, the impact of which City may be in a position to mitigate.
- (b) No course of conduct or dealings between the parties, nor implied acceptance of alteration or additions to the Agreement Documents or Work, or changes to the Agreement Documents or Work schedule, shall be the basis for any claim for an increase in the Agreement Sum or change in the Agreement Time.

10.03 Claims Handling During Construction. After receipt of a Notice of Claim, the City may elect to refer the matter to the Architect or another party for review. Contractor will attend meetings called to review and discuss the Claim and mitigation of the problem and shall furnish any reasonable factual backup of 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 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 Work during the pendency of any claim, except in the event of termination or Work stoppage directed by City. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, as follows regarding the alternative dispute resolution requirements of this Agreement:

No suit shall be filed by a Party regarding a dispute arising under or related to this Agreement unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Agreement, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509 (800-733-9529 telephone).

10.04 Claims Handling Following Construction. The acceptance of final payment shall constitute a waiver of Claims by the Contractor which have not previously been identified in a timely Notice of Claim and specifically reserved in the final Application for Payment.

10.05 Claims for Concealed or Unknown Conditions. Only if conditions are encountered at the Project site which are (a) subsurface and not revealed or otherwise generally documented in a geotechnical report or other engineering or professional report or document, or otherwise concealed physical conditions which differ materially from those indicated in the Agreement Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement Documents, then Contractor shall be entitled to make a Claim if it can satisfy all of the other requirements of Paragraph 9.

10.06 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Agreement Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 18.04.

10.07 Calculating Claim Amount. In calculating the amount of any Claim, the following standards will apply:

- (a) No indirect or consequential damages will be allowed.
- (b) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of profits, or materials or labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

(c) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

(d) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the Schedule of Values, divided by the total number of calendar days of Agreement Time called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by the Contractor for job overhead costs shall be used.

(e) The maximum amount of all Claims proven by the facts to be due to the Contractor against the City under this Agreement is expressly agreed by the parties not to exceed in any event or set of circumstances an aggregate total of five percent (5%) of the Agreement Sum.

10.08 Liquidated and Other Damages.

(a) The amount of liquidated damages (as hereafter described) for the Construction Manager's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the parties 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. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Construction Manager to achieve timely completion of the Work, if the Construction Manager 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 the Agreement Documents, then the Construction Manager does hereby agree as part of the consideration for the awarding of this Agreement that the Owner may permanently withhold from the Construction Manager's total compensation the sum of Two Thousand Five Hundred and No /100 DOLLARS (\$2,500.00) for each and every calendar day that the Construction Manager shall be in default after the time stipulated for Substantial 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 deadlines specified for Substantial Completion and/or Final Completion.

(b) Regarding all other conduct, acts, or omissions of the Contractor (being separate and distinct from the liquidated damage authorizing conduct of the Contractor described in Subparagraph (a) above) which constitute a breach or default of this Agreement, the City may pursue the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages allowed by law, including without limitation: Agreement termination; the recovery of all actual and consequential damages; and the recovery of its incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

(c) Notwithstanding anything to the contrary stated in this Agreement, any conduct, act, or omission committed by the Contractor which constitutes a breach or default of this Agreement shall survive the: (1) City's acceptance of the Work performed under this Agreement; and (2) termination of the Agreement.

11. SUBCONTRACTORS

11.01 Definitions.

(a) A Subcontractor is a person or entity who has a direct agreement with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect agreement with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

11.02 Award of Subcontracts and Other Contracts for Portions of the Work.

(a) Unless otherwise stated in the Agreement Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the City through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) and copies of all executed subcontract(s) proposed for each principal portion of the Work of the Project. The Architect will promptly reply (but in no event longer than 30 days from said written notice) to the Contractor in writing stating whether or not the City or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the City or Architect to reply promptly shall constitute notice of no reasonable objection.

(b) The Contractor shall not have a contractual agreement for the Project with a proposed person or entity to whom the City or Architect has made reasonable and timely objection. The Contractor shall not be required to have a contractual agreement with anyone to whom the Contractor has made reasonable objection.

(c) If the City or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the City or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Agreement Sum and Agreement Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Agreement Sum or Agreement Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

(d) The Contractor shall not change an approved Subcontractor, person or entity previously selected if the City or Architect makes reasonable objection to such substitute.

(e) The Contractor shall submit the list of proposed Subcontractors on a form approved by the City.

(f) The Contractor and Subcontractors are required to visit the site and completely familiarize themselves with the existing conditions prior to the submission of Proposal(s). No additional increase in the Agreement amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Agreement Documents.

11.03 Subcontractual Relations. By appropriate written agreement with the Subcontractor, the Contractor shall require each Subcontractor, to the extent of the Work for the Project to be performed by the Subcontractor, to be bound by the terms of the Agreement Documents, and to assume all obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the City and Architect. Each subcontract agreement shall preserve and protect the rights of the City and Architect under the Agreement Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Agreement Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Agreement Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

11.04 Contingent Assignment of Subcontracts.

(a) Each subcontract agreement for a portion of the Work for the Project shall be assigned in writing by the Contractor to the City provided that the:

1. assignment is effective only after termination of the Agreement by the City for cause pursuant to Paragraph 22.02 and only for those subcontract agreements which the City accepts by notifying the Subcontractor and Contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

(b) City shall only be responsible for compensating Subcontractor for Work done or materials furnished after the date City gives written notice of its acceptance of the assigned subcontract agreement.

(c) Each Subcontract and assignment shall provide that the City shall only be responsible to the Subcontractor for those services and materials furnished by the

Subcontractor subsequent to the City's exercise of any rights under this contingent assignment.

11.05 Responsibility. Contractor shall be fully responsible for the performance of its Subcontractor, including those selected or approved by the City.

12. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

12.01 Owner's Right to Perform Construction and to Award Separate Contracts.

(a) The City reserves the right to perform other construction work, maintenance, and repair work near or adjacent to the Project site during the time period of the Work. Owner may perform other Work with separate contractors. City shall have access to the site at all times.

(b) When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Agreement Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

12.02 Mutual Responsibility.

(a) The Contractor shall afford the City and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Agreement Documents.

(b) If part of the Contractor's Work depends for proper execution or results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the City's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

(c) The City shall be reimbursed by the Contractor for costs incurred by the City which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

(d) The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors as provided in Paragraph 18.02(e).

(e) The City and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 5.15.

12.03 Owner's Right to Clean Up. If a dispute arises among the Contractor, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the Architect will allocate the cost among those responsible.

13. CHANGES IN THE WORK

13.01 General.

(a) Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Construction Change Directive or order for a minor change in the Work. The Agreement Sum and/or Agreement Time may be increased for changes in the Work if the provisions of this Paragraph have been met.

1. No change in the Agreement Sum and/or Agreement Time will be allowed for a change in the Work unless prior to performing the changed Work, the Contractor has provided the City in writing a proposal for any change in price and/or change in Agreement Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall not be recognized as having any impact upon the Agreement Sum or the Agreement Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within fourteen (14) calendar days of receiving the directive, submit a change proposal to the City, and a Change Order is subsequently executed, or Contractor satisfies the requirements of Paragraph 10. Contractor's proposal shall be subject to City's acceptance and remain irrevocable for a period of sixty (60) calendar days after receipt by City. Thereafter, Contractor reserves the right to resubmit such change proposal upon different pricing and time of performance terms.

(b) A Change Order shall be based upon agreement among the City, Contractor, and Architect. A Construction Change Directive requires agreement by the City and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

(c) Changes in the Work shall be performed under applicable provisions of the Agreement Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 13.03, a change in the Agreement Sum or the Agreement Time shall be accomplished only by Change Order.

(d) The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the City. The parties further agree as follows:

1. Each separate Change Proposal shall be numbered consecutively and shall include material costs, labor costs, fees, overhead and profit. The Change Proposal

shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.

2. The Subcontractor's itemized accounting shall be included with the Change Proposal.

3. If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the City and Architect.

4. A revised Change Proposal shall bear the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.

5. Upon written approval of a Change Proposal by the City, the City will prepare a Change Order authorizing such Change in Work.

6. The Contractor shall request extensions of the Agreement Time due to changes in the Work only at the time of submitting its Change Proposal. **Contractor's failure to do so shall represent a waiver of any right to request a time extension.**

13.02 Change Orders.

(a) The Contractor makes a written request for a Change Order by submitting a written Change Proposal. A Change Order is a written instrument prepared by the City and reviewed by the Architect. When finalized, a Change Order is signed by the City, Contractor and Architect, stating their agreement upon all of the following:

1. change in the Work; and
2. the amount of the adjustment, if any, in the Agreement Sum; and
3. the extent of the adjustment, if any, in the Agreement Time.

(b) Pursuant to Section 252.048(d) of the Texas Local Government Code:

1. The Guaranteed Maximum Price ("GMP") 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 agreement amount may be made or approved by the City Manager or their delegate if the change order is 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.

2. For construction contracts funded in whole or in part by Certificates of Obligations, an Agreement with a GMP of \$1 million or more may not be increased by more than twenty-five percent (25%). If a change order for a construction Agreement funded in whole or in part with certificates of obligation that has a GMP of less than \$1 million increases the Agreement amount to \$1 million or more, subsequent change orders may not increase the revised Agreement amount by more than twenty-five percent (25%). Written change orders may be made or approved by the City Manager or their delegate if the change order is 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.

(c) Methods used in determining adjustments to the Agreement Sum may include those named below:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in Agreement Documents or subsequently agreed upon;
3. a determination in a manner agreed upon by the parties and a mutually acceptable fixed fee, or the percentage fee established at Subparagraph 13.3(f), or
4. as provided in Subparagraph 13.3(g).

(d) Agreement on any Change Order shall constitute a final settlement of all Claims by the Contractor directly or indirectly arising out of or relating to the Change in Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs and impact costs associated with such change and any and all adjustments to the Agreement Sum and the Agreement Time.

13.03 Construction Change Directives.

(a) A Construction Change Directive is a written order prepared by the Architect and signed by the City and Architect, directing a change in the Work prior to an agreement on adjustment, if any, in the Agreement Sum or Agreement Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Agreement Sum and Agreement Time being adjusted accordingly.

(b) A Construction Change Directive shall be used in the absence of a total agreement on the terms of a Change Order.

(c) The Construction Change Directive shall include a unilateral change in the Agreement Sum and/or Agreement Time reflecting the City's view of the appropriate change in the Agreement Sum and/or Agreement Time for the Change in Work covered by the Construction Change Directive. Until an agreement is reached by the City and

Contractor on these issues for a Change Order, the changes in Agreement Sum and Agreement Time set out in the Construction Change Directive shall be used for Schedule of Values, payment and scheduling purposes.

(d) Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Agreement Sum or Agreement Time.

(e) A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Agreement Sum and Agreement Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(f) In the absence of an agreement between City and Contractor on the proper change to the Agreement Sum or Agreement Time because of a change in the Work, Contractor may treat the matter as a Claim under Paragraph 10. In such event, the Contractor shall be entitled to recover only the amount by which the Cost of the Work has been reasonably increased over the Cost of Work without the change in the Work, plus five percent (5%).

(g) Pending final determination of the cost of a Construction Change Directive to the City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the City for a deletion or change which results in a net decrease in the Agreement Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

13.04 Minor Changes in the Work. The Architect will have authority to order minor changes in the Work not involving adjustment in the Agreement Sum or extension of the Agreement Time and not inconsistent with the intent of the Agreement Documents. Such changes shall be effected by written order and shall be binding on the City and Contractor. The Contractor shall carry out such written orders promptly.

13.05 Changes Funded by Allowances. Allowances balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead and profit mark-up when changes in the Work are funded by one of the Allowances.

14. TIME

14.01 Definitions.

(a) Unless otherwise provided, Agreement Time is the period of time, including authorized adjustments, allotted in the Agreement Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons, or entities for whom the Contractor is responsible.

(c) The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 16.

14.02 Progress and Completion.

(a) Time limits stated in the Agreement Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Agreement Time is a reasonable period for performing the Work.

(b) The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Project site or elsewhere prior to Contractor obtaining all bonds required by the Agreement and before the effective date of insurance required by Paragraph 19 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Agreement Documents or a Notice to Proceed given by the City, the Contractor shall notify the City in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

(c) The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Agreement Time.

14.03 Delays and Extensions of Time.

(a) If the Contractor is delayed in performing Work that is critical to the overall completion of the Work by an act or neglect of the City or Architect, or a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, unavoidable casualties, including fire, or by unusually adverse weather conditions, as defined below, then the Agreement Time shall be extended for a reasonable time to reflect the impact of the delay on Work critical to achieve Substantial Completion within the Agreement Time, provided the performance of the Work was not delayed by any other cause for which the Contractor is not entitled to an extension in the Agreement Time under the Agreement Documents. Adjustments in the Agreement Time will be permitted for a delay only to the extent such delay is not caused or could not have been anticipated by the Contractor and could not be limited or avoided by the Contractor's timely notice to the City of the delay, and only if Contractor satisfies the conditions of Paragraph 14.03(b). Contractor has the burden to prove that any of the foregoing alleged causes of delay significantly impacted construction progress on the critical path, as a condition precedent to any extension of Agreement Time.

(b) Weather delays include "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).

(c) On or before the fifteenth (15) day of each month of the Work, Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled for the preceding month, other than time extensions for changes in Work, which are to be submitted in accordance with the requirements of Paragraph 13. If Contractor's request for time extension for changes in the Work is denied and Contractor wishes to pursue the matter, Contractor shall submit in writing a request for that extension by the fifteenth (15) day of the month following the denial. **Any claim for time extension not submitted under the terms of this Subparagraph shall be waived.**

(d) City, after consultation with the Architect, may grant time extensions to the extent it believes them to be proper. Time extensions granted by the City may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extensions beyond those granted by the City, it may make a claim for them provided it can meet the requirements of Paragraph 10.

15. PAYMENTS AND COMPLETION

15.01 Agreement Sum. The Agreement Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the City to the Contractor for performance of the Work under the Agreement Documents

15.02 Schedule of Values. Before the first Application for Payment, the Contractor shall submit to the Architect a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Architect. Once approved by the Architect and updated for changes in the Work, the Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule of Values shall not overvalue early job activities. The Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall follow the trade divisions of the Specification so far as practicable.

In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on forms approved by the Owner, and shall include the following:

(a) Contractor's costs for Contractor's Fee, bonds and insurance, mobilization, etc., shall be named as individual line items.

(b) Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

(c) On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule of Values shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation of fixtures, start up, etc.)

(d) Costs for subcontract Work shall be named without any addition of Contractor's costs for overhead, profit or supervisions.

(e) Where payment for stored materials may be requested prior to installation, material and labor shall be named as separate line items.

(f) Sample pages from an approved Schedule of Values are included following this document.

15.03 Applications for Payment.

(a) At the time specified in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values and an updated project schedule for the Work. Such application shall be notarized and supported by such data fully evidencing and substantiating the Contractor's right to payment. The City requires the submission of copies of requisitions, billings, and invoices from the Contractor, Subcontractor(s) and material suppliers, all self-performed billings and invoices, all applicable payrolls, etc. Applications for Payment should also reflect retainage (if applicable). Unless otherwise agreed, the Contractor shall submit requests for payment in quadruplicate originals using for the "top sheets", originals of APPLICATION AND CERTIFICATE FOR PAYMENT; continuation sheets showing in detail the amounts requested, etc., may be submitted on CONTINUATION SHEET(S) in a format approved by the Architect. All blank spaces must be completed, and the signatures of the Contractor and Notary Public shall be original on each form. By submitting its Application for Payment, the Contractor certifies that the individual signing the application is authorized to do so. Additionally, if the Contractor prepares its Application for Payment utilizing "Excel" spreadsheet software, it shall submit a "thumb drive" or otherwise make such spreadsheet available electronically with each application for payment to facilitate the City's and Architect's review of the application.

1. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

(b) Unless otherwise provided in the Agreement Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, so long as such location, materials, and equipment also have bond and insurance coverage on Contractor's bonds and insurance policies. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site. Upon payment by the City of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the City. The Contractor warrants

that title to all materials and equipment covered by an Application for Payment will pass to City upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No work, materials or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained, or encumbrance is attached by the seller, the Contractor, or other party.

(c) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

15.04 Certificates for Payment.

(a) The Application for Payment will be reviewed first by the Architect who will certify to the City that portion, if any, of the Application for Payment it has determined is properly due. In the event that the Architect believes that payment should be withheld, in whole or in part, it will notify the City and Contractor of the basis of this view as provided in Subparagraph 15.05(a).

(b) The issuance of a Certificate for Payment will constitute a representation by the Architect to the City, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Agreement Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Agreement Sum.

(c) The issuance of a Certificate of Payment shall constitute a recommendation to the City in respect to the amount to be paid. This recommendation is not binding on the City if City knows of other reasons under the Agreement why payment should be withheld.

(d) The Architect will affix their signature to the same form described in Paragraph 15.04(a). to signify their certification of payment provided the application is otherwise satisfactory.

15.05 Decisions to Withhold Certification.

(a) The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Architect's opinion the representations to the City required by Paragraph 15.04(b) cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and City as provided in Paragraph 15.04(a). If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the City. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the City from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 5.05(b), because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum;
5. damage to the City or another contractor;
6. reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. persistent failure to carry out the Work in accordance with the Agreement Documents.

(b) When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

15.06 Progress Payments.

(a) After the Architect has issued a Certificate for Payment, the City, upon the City's review and written approval of the Certificate for Payment, shall endeavor to make payment in the manner and within the time provided in the Agreement Documents, and

shall so notify the Architect. If the City believes the Contractor is not current in its legitimate obligations to suppliers, laborers and/or Subcontractors on the Project, City may (but is not obligated to) withhold payment until it receives partial or final releases, or other reasonable proof from the Contractor that this situation does not exist.

(b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. City is not obligated to monitor payments to Subcontractors or Sub-subcontractors, and nothing in this paragraph shall create any right on the part of a Subcontractor or Sub-subcontractor against City.

(c) The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and City on account of portions of the Work done by such Subcontractor.

(d) Neither the City nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 15.06(b), 15.06(c) and 15.06(d).

(f) A Certificate for Payment, a progress payment, the issuance of Substantial or Final Completion, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Agreement Documents.

15.07 Failure of Payment. If the City incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the City shall have an absolute right to offset such amount against the Agreement Sum under this Contract, and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the Owner is entitled, or (2) issue a written notice to the Contractor reducing the GMP by an amount equal to that to which the Owner is entitled.

16. SUBSTANTIAL COMPLETION

16.01 General. When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Architect and City shall review the punch list prepared by Contractor and supplement the list as necessary. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement Documents.

(a) The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and City for supplementation. Upon receipt, the Architect and City shall perform a spot review to determine the adequacy

and completeness of the Contractor's punch list. Should the Architect or City determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done.

(b) Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent shall accompany the Architect, its Consultants, and the City (at its discretion) during their inspections and the preparation of their supplements to the Contractor's punch list. The superintendent shall record or otherwise take note of all supplementary items. The Architect shall endeavor to furnish to the Contractor typed, hand written or recorded supplements to the punch list in a prompt manner; however, any delay in the Contractor's receiving said supplements from the Architect shall not be cause for a claim for additional cost or extension of time.

16.02 Inspection. When the Contractor notifies Architect and City that it has completed or corrected items on the punch list, the Architect and City at its discretion will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and City's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Agreement Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect and City to determine Substantial Completion. Any further inspections by the Architect and City for the purpose of determining the Project is Substantially Complete shall be at Contractor's cost and the City may deduct such cost from any amount payable to Contractor hereunder.

16.03 Certificate of Substantial Completion. When the Work or designated portion thereof is substantially complete, and upon the City's concurrence of the same, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Agreement Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

16.04 Approval of Certificate. The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the City, in its sole discretion, may, but is not required to, make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Agreement Documents. If retainage is not released at Substantial Completion, applicable retainage amounts will be released by City upon Contractor obtaining Final Completion.

16.05 Insurance. The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued, and accepted by the City in writing, regardless of the stated date of Substantial Completion. Acceptance shall not be unreasonably withheld.

16.06 Partial Occupancy or Use.

(a) The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 19.03(a) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Agreement Documents.

(b) Immediately prior to such partial occupancy or use, the City, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Agreement Documents.

17. FINAL COMPLETION AND FINAL PAYMENT

17.01 General. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City and Architect shall endeavor to promptly make such inspection and, when the City and Architect finds the Work acceptable under the Agreement Documents and the Agreement fully performed, the Architect shall endeavor to promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Agreement Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 17.02 as precedent to the Contractor's being entitled to final payment have been fulfilled.

Prior to final payment, the Contractor shall submit digitally (mylars for all Water/Wastewater projects as specified in project specifications and bid documents) to the Architect the following completed forms:

1. Contractor's Affidavit of Payment of Debts and Claims;
2. Contractor's Affidavit of Release of Liens;

3. Consent of Surety to Final Payment (if applicable);
4. Subcontractor's Unconditional Releases – each signed and notarized on a single piece of paper;
5. Maintenance and inspection manuals – three (3) sets of each bound in a 3 inch “D-slant” ring binder;
6. Final list of subcontractors;
7. one (1) complete set of marked-up copies of the Drawings and Specifications accurately showing the Project as constructed. Such Specifications and Drawings shall be marked to show all changes and modifications that have been incorporated into the Work as performed;
8. other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; and
9. any other “Closeout Documents” required under the Agreement Documents.

17.02 Format. Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment, constituting the entire unpaid balance of the Agreement Sum shall be endeavored to be paid by the City to the Contractor within sixty (60) days after Substantial Completion of the Work, unless otherwise stipulated in the Certificate of Completion, provided the Agreement is fully performed, and Final Certificate of Payment has been issued by the Architect. The City may accept certain portions of the Work as being complete prior to the acceptance of the entire Project. If certain areas are accepted by the City as being completed, and if the Contractor has completed all of the requirements for final payment of the portion of Work, the City may, but is not required to, release retainage for that area/portion of Work. Amounts of retainage shall be agreed upon by both City and Contractor prior to final acceptance of these areas.

17.03 Delay. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the City shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Agreement Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

17.04 Acceptance of Payment. Acceptance of final payment by the Contractor shall constitute a waiver of claims by Contractor except for any Claims then pending that comply with the requirements of Paragraph 10.

17.05 Time for Final Completion. Contractor shall achieve Final Completion within 30 calendar days of the date of Substantial Completion, failing which, Contractor shall provide a full-time on-site superintendent until Final Completion at its own cost and not as a cost of the Work.

18. Protection of Persons and Property.

18.01 Safety Precautions and Programs. The Contractor shall be responsible for initiating, maintaining, and supervising all necessary safety precautions and programs in connection with the performance of the Contract.

18.02 Safety of Persons and Property.

(a) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work, Project site, and other persons who may be affected thereby including but not limited to the City's employees, invitees and the general public;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (including without limitation all State, federal, and local governmental authorities or agencies with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual

construction methods are necessary, the Contractor shall give the City and Architect reasonable advance notice of the presence or use of such materials, equipment, or methods.

(e) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Agreement Documents) to property referred to in Paragraphs 18.02(a)(2) and 18.02(a)(3) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 18.02(a), except damage or loss attributable to acts or omissions of the City or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 6.06.

(f) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

(g) The Contractor shall not load or permit any part of the construction, Work or site to be loaded so as to endanger its safety.

(h) Suspension of all or a portion of the Work, for any reason, shall not relieve the Contractor of its obligations under Paragraph 18.02.

(i) The Contractor shall promptly report in writing to the City and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to City and Architect.

(j) The Contractor shall be responsible for the protection and security of the Work and the Project, until it receives written notification that the Substantial Completion of the Work has been accepted by the City unless otherwise provided in the Certificate of Substantial Completion.

18.03 Hazardous Materials. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in 18.03(c)), 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 hereafter defined at Paragraph 18.03(c)). In the event Contractor engages in any of the activities prohibited in this Paragraph 18.03. **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Architect and all of their respective officers, 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 Paragraph 18.03.

(a) 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 (see special definition below), Contractor shall immediately stop work in the area affected and report the condition to City and Architect 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, Architect and all of their respective officers, 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.

(b) 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.

(c) For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element constituent, chemical, substance, compound, or mixture, which are 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 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), 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"). It is the Contractor's responsibility to comply with Paragraph 18 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.

18.04 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional

compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 10 and Paragraph 13.

19. INSURANCE AND BONDS

19.01 General. 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.

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

- (a) Commercial General Liability ("CGL").
- (b) Business Automobile Liability.
- (c) Excess Liability – required for Agreement 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.
- (f) Professional Liability
- (g) Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions coverage.
- (h) Surety bonds as required and described in this Agreement.

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

- (a) Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.
- (b) Self-insured retentions must be declared to and approved by the City in writing. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention ("SIR") or

deductible that exceeds \$25,000 unless approved in writing by City. All deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements.

- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.
- (e) For any claims related to this project, the Contractor's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.
- (f) Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents, and subcontractors.
- (g) Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (h) Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

- (i) CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.
- (j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.
- (k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, at least as broad as ISO Form:
 - a. CG 20 10 and CG 11 85; **or**
 - b. **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms (if later revisions used).
- (l) Contractor shall provide the following Surety Bonds:
 - a. Bid Bond
 - b. Performance Bond
 - c. Payment Bond
 - d. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the Guaranteed Maximum Price (GMP) or the final total dollar value of the Project, whichever is greater, and shall be increased by rider if Project value increases. If the Performance Bond provides for a two-year warranty and provides coverage for other warranty terms as required by the Agreement, then a separate Maintenance Bond is not necessary. If the warranty period specified in the Agreement is for longer than two years, a Maintenance Bond equal to 10% of the final total dollar value of the Project is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of Texas, secured through an authorized agent with an office in Texas, and approved by the City.

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

- (a) Limit of \$5,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$10,000,000.00 which limits shall be endorsed to be

per Project.

- (b) Coverage shall be at least as broad as ISO form GC 00 01.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.
- (d) 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.

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

- (a) Business Automobile Liability insurance shall be written by a carrier rated "A: VII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$5,000,000.00 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 and \$2,000,000.00 policy aggregate where such exposures exist.

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

- (a) The Contractor may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.
- (b) The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

19.07 Additional Insured.

Those policies set forth in Paragraphs 19.04 Commercial (General) Liability, 19.05 Business Automobile Liability and 19.06 Excess Liability 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.

19.08 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. The Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. 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.

The insurance policy and related Certificate of Insurance must specifically state that the: (a) Contractor is a named insured party for the insurance coverage described; and (b) City is an additional and named insured party for the insurance coverage described. The deductible under the policy, including that for flood shall not exceed \$100,000.00 without the written approval of the City.

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the Project does not involve new or major reconstruction, at the option of the City, an Installation Floater insurance policy coverage, and/or an endorsement for such coverage, may be acceptable.

For such projects, a Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, and the related Certificate of Insurance, shall: (a) provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site; and (b) comply with the above provision in this Paragraph 19.08 which require that the: (i) Contractor is a named insured party for the insurance coverage described; and (ii) City is an additional and named insured party for the insurance coverage described.

19.09 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 their 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 paragraphs (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 agreement 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."

19.10 Professional Liability.

Professional liability with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.11 Contractors' Pollution Legal Liability.

Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions liability coverage with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.12 Property Insurance.

(a) Partial occupancy or use in accordance with Paragraph 16.06 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City and the Contractor

shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

(b) The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused.

(c) If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the City shall, at City's option, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

(d) If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the City shall waive all rights for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

(e) A loss insured under City's property insurance shall be adjusted by the City and made payable to the City for the insureds, as their interests may appear, subject to requirements of Paragraph 19.03. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

(f) If after such loss no other special agreement is made and unless the City terminates the Agreement for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Paragraph 13.

(g) The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the City's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraph 10.

(h) If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

19.12 Performance Bond and Payment Bond.

(a) Pursuant to applicable provisions of Chapters, 2253, 2254, and 2269 of the Texas Government Code, for all public works contracts with governmental entities: a payment

bond is required if the Agreement Amount exceeds \$50,000, a performance bond is required if the Agreement Amount exceeds \$100,000, and below those amounts, the City may require payment and/or performance bonds for the Project in the exercise of its lawful discretion and best business judgment. The City and Contractor agree that, both a performance and payment bond are required to be properly obtained by the Contractor and timely delivered to the City as described by this Agreement, and such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, as amended, the authority described in this Agreement, and all other applicable law, and furthermore, the following is required regarding said bonds:

1. The Contractor shall execute the required performance and payment bonds: (a) for the full Agreement Amount in the form and scope described in the bond forms attached hereto as **Exhibit B**; or (b) pursuant to Section 2269.258(a) of the Texas Government Code, if a fixed Agreed Amount or Guaranteed Maximum Price has not been determined at the time the Agreement is awarded, the penal sums of said performance and payment bonds delivered to the City must each be in an amount equal to the construction budget for the Project, as specified in the City's request for proposals or qualifications.
2. The bond surety on said bonds shall be authorized under the laws of the State of Texas to provide a performance and payment bond, and each bond shall have attached proof of authorization of the surety to act regarding all obligations described in each respective bond.
3. The Contractor shall provide original, sealed, and complete counterparts of said executed bonds in the forms required by the Agreement Documents, which are attached as **Exhibit B**, together with valid original powers of attorney, at the time of execution of this Agreement and prior to the commencement of Work. Copies of said executed bonds shall be attached hereto as **Exhibit B**.
4. The required performance and payment bonds shall remain in effect for a minimum period of two (2) years after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.
5. If at any time during the performance of this Agreement in the required period thereafter, either or both of said bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days of such invalidity or ineffectiveness a full and complete replacement bond or bonds as the case may be, that shall assure performance or payment as required by this Agreement.
6. Regarding the delivery of said bonds by the Contractor to the City, and pursuant to Section 2269.258(b) of the Texas Government Code: (a) the Contractor shall deliver said bonds not later than the 10th day after the date the Contractor executes the Agreement; or (b) alternatively and subject to the lawful discretion and best business judgment of the City, the Contractor may be allowed by the City to furnish and deliver to the City a bid bond or other financial security which is acceptable to the City to ensure that the Contractor will furnish the required

performance and payment bonds when a guaranteed maximum price is established under this Agreement.

(b) 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 or quality 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, provided that said compensation does not constitute additional compensation to that which has been already paid by the City to the Contractor for any Work associated with said changes or alterations.

20. UNCOVERING AND CORRECTION OF WORK

20.01 Uncovering of Work.

(a) If a portion of the Work is covered contrary to the City's or Architect's request or to requirements specifically expressed in the Agreement Documents, it must, if required in writing by the City or Architect, be uncovered for the City's and Architect's examination and be replaced at the Contractor's expense without change in the Agreement Time.

(b) If a portion of the Work has been covered which the City or Architect has not specifically requested to examine prior to its being covered, the City or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Agreement Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Agreement Documents, correction shall be at the Contractor's expense.

20.02 Correction of Work.

(a) Before or After Substantial Completion. The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Agreement Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

(b) After Substantial Completion. In addition to the Contractor's obligations under Paragraph 5.07, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 16.06(a), or by terms of an applicable special warranty required by the Agreement Documents, any of the Work is found to be not in accordance with the requirements of the Agreement Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously

given the Contractor a written acceptance of such specific condition. The City shall endeavor to give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City or Architect, the City may correct it in accordance with Paragraph 4.05. The “prompt” correction of defective work by the Contractor after receipt of notification from the City as described above shall be defined as follows:

1. The Contractor shall make written response to the City within twenty-four (24) hours of receipt of the City’s notice acknowledging receipt of the notice and providing the proposed schedule to conduct corrective work. Corrective work shall not interfere with the City’s normal operation and use of the Project, unless expressly approved by the City;
 2. For corrective work which is not a life safety issue, or which will not, by the nature of the defect, cause subsequent damage to the Project, corrective work shall be completed within fourteen (14) calendar days;
 3. For corrective work which by its nature may cause subsequent damage to the Project, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days. The Contractor shall also correct all subsequent damage caused by such corrective work;
 4. For corrective work which affects services to, and ordinary use of the Project, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days; and
 5. The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor’s direct control.
 6. The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.
 7. These obligations under Subparagraph 20.02(b) shall survive acceptance of the Work under the Agreement and termination of the Contract. The period for any Work corrected pursuant to Paragraph 20.02 shall be extended for a period of two years after the date said corrective work is completed.
- (c) The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Agreement Documents and are neither corrected by the Contractor nor accepted by the City.

(d) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Agreement Documents.

1. Where non-conforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Architect's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming Work shall be at the Contractor's expense, and performed by the City's testing laboratory if such services are reasonably required by the Architect. All corrected Work shall be retested at the Contractor's expense. Extra architectural or other services required to analyze non-conforming Work shall be paid for by the Contractor.

(e) Nothing contained in Paragraph 20.02 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Agreement Documents. Nothing contained in Paragraph 20.02 is intended to limit or modify any obligations under the law or under the Agreement Documents, including any warranty obligations, expressed or implied.

20.03 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Agreement Documents, the City may do so instead of requiring its removal and correction, in which case the Agreement Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

21. TEST AND INSPECTIONS

21.01 Tests and Inspections.

(a) Tests, inspections, and approvals of portions of the Work required by the Agreement Documents (or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdictional, regulatory, or supervisory authority regarding the land or activities of the Project) shall be made at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory employed by the City for this purpose, or with the appropriate public authority. City shall bear the normal costs of these services, but not any excess costs attributable to Contractor-caused scheduling problems, or other Contractor error. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures.

(b) If the Architect, City or said public authorities determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 21.1, the Architect will, upon written authorization from the City, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such

procedures. Such costs, except as provided in this Paragraph 21.01, shall be at the City's expense.

(c) If such procedures for testing, inspection, or approval under this Paragraph 21 reveal failure of the portions of the Work to comply with requirements established by the Agreement Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Agreement Documents, be secured by the Contractor, and promptly delivered to the Architect.

(e) If the Architect is to observe tests, inspections or approvals required by the Agreement Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

(f) Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the Work.

22. TERMINATION OR SUSPENSION OF THE CONTRACT

22.01 Termination by the Contractor.

(a) The Contractor may terminate the Agreement if the Work is stopped for a period of one hundred-twenty (120) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, for any of the following reasons:

1. issuance of an order or decision of a court or other public authority (including without limitation any State, federal, or local governmental authority or agency with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) having jurisdiction which requires all Work to be stopped;
2. an act of government, such as a declaration of national emergency which requires all Work to be stopped; or
3. because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 15.04(a), or because the City has not made payment on a Certificate for Payment within the time stated in the Agreement Documents, provided notice is given as required under Subparagraph 15.04(a).

(b) The Contractor may terminate the Agreement if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other

persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the City as described in Paragraph 22.03 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

(c) If the Work is stopped for one hundred-twenty (120) consecutive days for any reason described in Paragraph 22.01(a) or 22.01(b), the Contractor may, upon sixty (60) days' written notice to the City and Architect, terminate the Agreement and recover from the City payment for Work already satisfactorily performed by Contractor.

(d) Notwithstanding anything to the contrary contained herein or in the other Agreement Documents, the City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 22.01(a), 22.01(b) and 22.01(c).

22.02 Termination by the City with or without Cause.

(a) The City may terminate the Agreement if the Contractor:

1. refuses or fails to timely supply enough properly skilled workers, or proper materials or equipment, to perform the Work of the Project;
2. fails to make a payment to Subcontractors for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the Subcontractors for the Work of the Project;
3. disregards or fails to comply with any law, ordinance, rule, regulation, decision, or order regarding the Project that is issued by a court or other public authority (including without limitation a State, federal, or local governmental authority or agency, including the City) with regulatory, supervisory, or jurisdictional authority regarding the land or activities of the Project;
4. commits conduct, an act, or omission which constitutes a breach or default of the Agreement or the Agreement Documents;
5. fails to furnish the City, upon request, with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Agreement or Agreement Documents;
6. fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Agreement or Agreement Documents; or
7. fails to provide all policies of insurance, permits, and/or bonds required to be obtained by the Contractor for the Project pursuant to the Agreement or Agreement Documents.

(b) When any of the above Paragraph 22.02(a) reasons exist, the City may, without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any and applicable, seven (7) days' written notice, terminate the engagement and appointment of the Contractor under this Agreement, and may, subject to any prior rights of an applicable surety:

1. take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned or possessed by the Contractor;
2. accept assignment of subcontracts pursuant to Paragraph 11.04;
3. make demand upon Contractor's applicable surety, if any, to complete the Work;
4. finish the Work by whatever reasonable method the City may deem, in its sole discretion and best business judgment, to be expedient or advisable; and/or
5. initiate and complete litigation against the Contractor, and against all other necessary or desired parties (including Contractor's sureties and insurance carriers), for the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Agreement, including without limitation: Agreement termination; the recovery of all actual and consequential damages; the recovery of certain liquidated damages under this Agreement; and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits

(c) When the City terminates the Agreement for a reason stated in Paragraph 22.02(a), the Contractor shall not be entitled to receive further payment until the Work is finished.

(d) If the unpaid balance of the Agreement Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, including attorney's fees, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Contract.

(e) If a Performance Bond has been furnished and the Contractor is declared by the City to be in default under the Agreement, the Surety shall promptly, and in no event more than 30 days, remedy the default by commencing and continuing to perform the remaining work of the Agreement in accordance with its terms and conditions, or by obtaining a bid or bids for the Work in accordance with the Agreement's terms and conditions. At City's election, upon determination by the City and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for an Agreement between such bidder and the City, and make available sufficient funds to pay the cost of completion less the balance of the Agreement Sum, but not exceeding the Penal Sum of the bond. The phrase "balance of the Agreement Sum" as used herein shall mean the total amount payable by

the City to the Contractor under the Agreement, including any adjustments thereto made in accordance with the terms and conditions of this Agreement, and amendments thereto less the amount previously paid by the City to the Contractor.

(f) Also, notwithstanding anything to the contrary herein stated, the City may terminate this Agreement pursuant to one or more of the circumstances and procedures stated in Paragraph 30 for City termination of this Agreement.

22.03 Suspension by the City for Convenience.

(a) The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

(b) If City suspends the Contractor's performance for convenience, an adjustment shall be made to the Agreement Sum as calculated under Paragraph 13 and shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Agreement.

22.04 Termination by the City for Convenience.

(a) The City may, at any time, terminate the Agreement, in whole or in part, for the City's convenience and without cause.

(b) Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. cease operations as directed by the City in the notice;
2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. except for Work not so terminated and/or directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts, and purchase orders and enter into no further subcontracts and purchase orders.

(c) In the event of a termination under Paragraph 22.04, the Contractor shall be paid the value of its Work to the date of termination plus such sums as are reasonably required to cover the cost to Contractor, its Subcontractors, and suppliers, to shut down the Project. City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.

(d) Upon determination by a court of competent jurisdiction that termination of the Contract, pursuant to Paragraph 22.02 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 22.04, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 22.04.

23. GENERAL CONSTRUCTION MANAGER'S RESPONSIBILITIES.

23.01 General. The Contractor (or Construction Manager) shall perform all services described in this Agreement to be performed by the Contractor. The services to be provided under Paragraphs 23.02 and 23.03 constitute the Preconstruction Phase services. If the City and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

23.02 Preconstruction Phase.

(a) **Preliminary Evaluation.** The Contractor shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other.

(b) **Consultation.** The Contractor with the Architect shall jointly schedule and attend regular meetings with the City. The Contractor shall consult with the City and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Contractor shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

(c) **Preliminary Project Schedule.** When Project requirements described in Paragraph 24.01(a) have been sufficiently identified, the Contractor shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the City's approval. The Contractor shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Architect and Contractor. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, Milestone Dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Contractor shall make appropriate recommendations to the City and Architect.

(d) **Phased Construction.** The Contractor shall make recommendations to the City and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking

into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

(e) Preliminary Cost Estimates. When the City has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Contractor shall prepare, for the review of the Architect and approval of the City, a preliminary cost estimate utilizing area, volume, or similar conceptual estimating techniques.

1. When Schematic Design Documents have been prepared by the Architect and approved by the City, the Contractor shall prepare, for the review of the Architect and approval of the City, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Contractor shall update and refine this estimate at appropriate intervals agreed to by the City, Architect and Contractor.

2. When Design Development Documents have been prepared by the Architect and approved by the City, the Contractor shall prepare a detailed estimate with supporting data for review by the Architect and approval by the City. During the preparation of the Construction Documents, the Contractor shall update and refine this estimate when the Construction Documents are fifty percent (50%) complete, ninety percent (90%) complete (unless the Guaranteed Maximum Price has been established), and at any other appropriate intervals agreed to by the City, Architect and Contractor.

3. If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Contractor shall make appropriate recommendations to the City and Architect.

(f) Subcontractors and Suppliers. The Contractor shall seek to develop subcontractor interest in the Project and shall furnish to the City and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Contractor if the Architect or City know of any objection to such subcontractor or supplier. The receipt of such list shall not require the City or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City or Architect later to object to or reject any proposed subcontractor or supplier.

(g) Long-Lead-Time Items. The Contractor shall recommend to the City and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the City, they shall be procured on terms and conditions acceptable to the Contractor. Upon the City's acceptance of the Contractor's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the City to the Contractor, who shall accept responsibility for such items as if procured by the Contractor. The Contractor shall expedite the delivery of long-lead-time items.

(h) Extent of Responsibility. The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. It is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Architect and City in writing.

(i) Equal Employment Opportunity and Affirmative Action. The Contractor shall comply with applicable laws, regulations, and special requirements of the Agreement Documents regarding equal employment opportunity and affirmative action programs.

23.03 Guaranteed Maximum Price Proposal and Agreement Time.

(a) When the Drawings and Specifications are sufficiently complete, the Contractor shall propose a Guaranteed Maximum Price (depending on Project requirements, at the City's request, multiple Guaranteed Maximum Price packages may be provided to phase or group the work, however, all packages shall be totaled together to arrive at the final Guaranteed Maximum Price), which shall be the sum of the estimated Cost of the Work and the Contractor's Fee. Provided, however, Contractor understands such estimates are relied upon by the City in making various Project determinations, and, therefore, should Contractor's Guaranteed Maximum Price proposal exceed the City's applicable budget by more than 10%, all pre-construction services rendered thereafter to render the Project within 10% of the budget by Contractor shall be at the sole cost of the Contractor.

(b) As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Agreement Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

(c) The estimated Cost of the Work shall include the Contractor's contingency, being a sum established by the Contractor for its exclusive use to cover costs arising under Paragraph 23.03(b) and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

(d) Basis of Guaranteed Maximum Price. The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- 1.** A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

2. A list of allowances and a statement of their basis.
 3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
 4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
 5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
 6. A list of any exclusions.
- (e) The Contractor shall meet with the City and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the City or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- (f) Unless the City accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Contractor and the City.
- (g) Prior to the City's acceptance of the Contractor's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.
- (h) Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Agreement Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Agreement Documents.
- (i) The City shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Contractor in accordance with schedules agreed to by the City, Architect and Contractor. The Contractor shall promptly notify the Architect and City if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

23.04 Construction Phase.

(a) General. The Construction Phase shall commence on:

1. the City's acceptance of the Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, and
2. the City's first authorization to the Contractor to:
 - (i) award a subcontract, or
 - (ii) undertake construction Work with the Contractor's own forces, or
 - (iii) issue a purchase order for materials or equipment required for the Work.

(b) Administration.

1. Notwithstanding anything to the contrary stated in this Agreement, and regarding any Contractor self-performed work authorized for the Project pursuant to this Agreement, it is expressly agreed by the parties that any Contractor self-performed work for the Project must be awarded, if at all, pursuant to the following procedure: (i) first, a written proposal must be submitted by the Contractor to the City for said work, before any competitive bid procedure is thereafter conducted for that proposed and subject work of the Project; (ii) next, a lawful competitive bid procedure shall be conducted to third-parties (not the Contractor) for that proposed and subject work of the Project; (iii) next, an analysis shall be conducted by the City and the Contractor regarding the Contractor's written proposal for the proposed self-performed work and the competitive bids received from third-parties for the proposed and subject Project work, in order for the City, using its discretion and best business judgment, to determine the lowest cost and best construction solution for said work; and (iv) finally and upon the aforesaid analysis conducted by the City, an award by the City in writing is made to the Contractor for the proposed Contractor self-performed work because that solution was determined by the City to represent the lowest cost and best construction solution for said proposed work for the Project.

2. Those portions of the Work that the Contractor does not customarily perform with its own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain public bids in accordance with the applicable requirements of Chapter 2269 of the Texas Government Code from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Architect. The City will then determine, with the non-binding advice and comment of the Contractor and Architect, which bids will be accepted. The City may designate specific persons or entities from whom the Contractor shall obtain bids;

however, if the Guaranteed Maximum Price has been established, the City may not prohibit the Contractor from obtaining bids from other qualified bidders.

3. If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the City and Architect (1) is recommended to the City by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Agreement Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Contractor may require that a change in the Work be issued to adjust the Agreement Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

4. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Paragraphs 28.01(h) and 28.01(i) and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

5. The Contractor shall schedule and conduct meetings with appropriate Subcontractors at which the City, Architect, Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

6. Promptly after the City's acceptance of the Guaranteed Maximum Price proposal, the Contractor shall prepare a schedule in accordance with Paragraph 5.11, General Conditions, including the City's occupancy requirements.

7. The Contractor shall provide monthly written reports to the City and Architect on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Architect. The Contractor shall promptly inform City in writing of any circumstance or development that is likely to delay Substantial Completion of the Project in accordance with the schedule.

8. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the City and Architect at regular intervals.

(c) Professional Services. Paragraph 5.013(j), General Conditions shall apply to both the Preconstruction and Construction Phase.

(d) Hazardous Materials. Paragraph 18.03, General Conditions shall apply to both the Preconstruction and Construction Phases.

END OF GENERAL CONDITIONS

ARTICLE II.
ADDITIONAL CONDITIONS

24. OWNER'S RESPONSIBILITIES

24.01 Information And Services

- (a) The City shall provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- (b) The City shall establish and update an overall budget for the Project, based on consultation with the Contractor and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.
- (c) Structural And Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Contractor knows of any inaccuracy, or should have reasonably discovered such error or inaccuracy, the Contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Paragraphs 24.01(d) through 24.01(g) but shall exercise customary precautions relating to the performance of the Work.
- (d) Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.
- (e) Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site.
- (f) The services of a geotechnical engineer when such services are requested by the Contractor and are reasonably required by the scope of the Project, as determined by the City or Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- (g) Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
- (h) The services of other consultants when such services are reasonably required by the scope of the Project, as determined by the City or Architect, and are requested by the Contractor.

24.02 Owner's Designated Representative. The City shall designate in writing City's Representative who shall have express authority, subject to the limitations set forth in the General Conditions, to bind the City with respect to all matters requiring the City's approval or authorization. This City's Representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. Except as otherwise provided in Paragraph 9.02(a), General Conditions, the Architect does not have such authority.

24.03 Architect. The City shall retain an Architect to provide basic services, including normal structural, mechanical, and electrical engineering services, and any other disciplines as required. The City must authorize, in writing, and cause the Architect to provide additional service, requested by the Contractor which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. The Contractor has no authority to request services from the Architect on the City's behalf. Such services shall be provided in accordance with time schedules agreed to by the City, Architect and Contractor. Upon request of the Contractor, the City shall furnish to the Contractor a copy of the City's Agreement with the Architect.

25. COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

The City shall compensate and make payments to the Contractor for Preconstruction Phase services as follows:

25.01 Compensation.

(a) For the services described in Paragraphs 23.02 and 23.03, the Contractor's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Stipulated lump sum of \$17,500.00

(b) If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Contractor's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

25.02 Payments.

(a) The City shall endeavor to make payments monthly (as described below) following presentation of the Contractor's invoice and supporting documents and, where applicable,

shall be in proportion to services performed and the amounts of Work substantiated by Contractor's supporting documentation.

(b) The City will endeavor to make payments no later than thirty (30) calendar days from the date the Contractor's invoice is approved by the City, unless otherwise agreed in writing by the parties.

(c) 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 Subcontractors and suppliers in lieu of said sales tax for all such materials and supplies, complying with all applicable State Comptroller's Rulings.

26. COMPENSATION FOR CONSTRUCTION PHASE SERVICES.

The City shall compensate the Contractor for Construction Phase services as follows:

26.01 Compensation. For the Contractor's performance of the Work as described in Paragraph 23.04, the City shall pay the Contractor in current funds the Agreement Sum consisting of the Cost of the Work as defined in Section 27 and the Contractor's Fee determined as follows:

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Contractor's Fee and explain how said Fee is to be adjusted for changes in the Work.)

3.75% of the Cost of the Work.

26.02 Guaranteed Maximum Price. The sum of the Cost of the Work and the Construction Manager's Fee for the Work are guaranteed by the Contractor not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Agreement Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Agreement Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement paid by the City. In the event the Cost of Work plus the Contractor's Fee is less than the Guaranteed Maximum Price ("GMP"), the savings shall accrue one hundred percent (100%) to the City.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

The Parties agree that any cost savings shall accrue one hundred percent (100%) to the City.

26.03 Changes in the Work.

(a) Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods named in Paragraph 13.01(b), General Conditions, subject to the limitations provided in the General Conditions.

(b) In calculating adjustments to subcontracts (except those awarded with the City's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Paragraph 13.01(b)(3), General Conditions and the term "costs" as used in Paragraph 13.03(f), General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by this Paragraph 26. Adjustments to subcontracts awarded with the City's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

(c) In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Paragraph 27 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 26.01 of this Agreement.

(d) If no specific provision is made in Paragraph 26.01 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 26.01 will cause substantial inequity to the City or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

27. COST OF THE WORK FOR CONSTRUCTION PHASE.

27.01 Costs to be Reimbursed. The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Paragraph 27.

27.02 Labor Costs.

(a) 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**.

(b) Statutory Penalty. Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of this section 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.

(c) Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

(d) Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the City's agreement.

Classification

Name

N/A

N/A

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified above)

(e) Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Further, the time for performance does not necessitate overtime work and the City shall not be required to reimburse the "premium time" portion of any overtime payments by Contractor, unless otherwise approved, in writing, in advance by the City.

(f) Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Paragraphs 27.02(a) through 27.02(d).

27.03 Subcontract Costs. Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

27.04 Costs of Materials and Equipment Incorporated in the Completed Construction.

(a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

(b) Costs of materials described in the preceding Paragraph 27.4(a) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

27.05 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

- (a) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.
- (b) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.
- (c) Costs of removal of debris from the site.
- (d) Reproduction costs, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- (e) That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

27.06 Miscellaneous Costs.

- (a) That portion directly attributable to this Agreement of premiums for insurance and bonds.

(If charges for self-insurance are to be included, specify the basis of reimbursement.)

- (b) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Agreement Documents to pay.
- (c) Fees of testing laboratories for tests required by the Agreement Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph 27.08.
- (d) Royalties and license fees paid for the use of a particular design, process or product required by the Agreement Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Agreement Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the City's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Paragraph 6.01, General Conditions or other provisions of the Agreement Documents.
- (e) Data processing costs related to the Work.

(f) Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

27.07 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

27.08 Included. The costs described in Paragraphs 27.01 through 27.07 shall be included in the Cost of the Work notwithstanding any provision of General Conditions of the Agreement which may require the Contractor to pay such costs, unless such costs are excluded by the provisions of Paragraph 27.09.

27.09 Costs not to be Reimbursed.

(a) The Cost of the Work shall not include:

1. Salaries and other compensation of the Contractor's personnel stationed at its principal office or offices other than the site office, except as specifically provided in Paragraphs 27.02(a) and 27.02(b).
2. Expenses of the Contractor's principal office and offices other than the site office, except as specifically provided in Paragraph 27.01.
3. Overhead and general expenses, except as may be expressly included in Paragraph 27.01.
4. The Contractor's capital expenses, including interest on the Construction Manager's capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided in Paragraph 27.05(b).
6. Costs due to the negligence of the Contractor or to its failure to fulfill a specific responsibility to the City set forth in this Agreement.
7. Costs incurred in the performance of Preconstruction Phase Services.
8. Except as provided in Paragraph 27.07, any cost not specifically and expressly described in Paragraph 27.01.
9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

27.10 Discounts, Rebates and Refunds.

(a) Cash discounts obtained on payments made by the Contractor shall accrue to the City if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the City, or (2) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of

surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be secured.

(b) Amounts which accrue to the City in accordance with the provisions of Paragraph 27.010(a) shall be credited to the City as a deduction from the Cost of the Work.

27.11 Accounting Records. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the Contractor shall preserve these for a period of four (4) years after final payment, or for such longer period as may be required by law.

28. CONSTRUCTION PHASE.

28.01 Progress Payments.

(a) Based upon Applications for Payment submitted to the Architect by the Contractor, in a form acceptable to City and the Architect, and Certificates for Payment approved by the City and issued by the Architect, the City shall endeavor to make progress payments on account of the Agreement Sum to the Contractor as provided below and elsewhere in the Agreement Documents.

(b) The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

(c) Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the City, upon approval of the Application for Payment, shall endeavor to make payment to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall endeavor to be made by the City not later than thirty (30) days after the Architect receives the Application for Payment and after the City approves the Application for Payment.

(d) With each Application for Payment, the Contractor shall submit detailed payrolls, detailed petty cash accounts, detailed receipted invoices or detailed invoices with check vouchers attached and any other evidence required by the City or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

(e) Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Agreement Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate

item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City and Architect may require. This schedule, unless objected to by the City or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

(f) Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which it has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

(g) Subject to other provisions of the Agreement Documents, the amount of each progress payment shall be computed as follows:

1. First, take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Next, pending final determination of cost to the City of changes in the Work, amounts not in dispute may be included as provided in Paragraph 13.03(g), General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order;
2. Next, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing;
3. Next, add the Construction Manager's Fee, less retainage of: (i) ten percent (10%) where the GMP is less than \$400,000; or (ii) five percent (5%) where the GMP is \$400,000 or more. Next, the Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Paragraphs at the rate stated in Paragraph 25.01(a) or, if said Fee is stated as a fixed sum in that Paragraph, said Fee shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Paragraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Next, subtract the aggregate of previous payments made by the City;
5. Next, subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 28.01(d) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation;

6. Next, subtract amounts, if any, for which the City or Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 15.05, General Conditions.

(h) Except with the City's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The City and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

(i) Except with the City's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(j) In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 28.01(d) or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

28.02 Final Payment.

(a) Final payment shall be made by the City to the Contractor when (1) the Agreement has been fully performed by the Contractor except for its responsibility to correct punch list items or nonconforming Work, as provided in Paragraph 20.02(b), General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the City's accountants; and (3) a final Certificate for Payment has then been approved by the City and issued by the Architect; such final payment shall endeavor to be made by the City not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

(b) The amount of the final payment shall be calculated as follows:

1. First, take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price;

2. Next, subtract amounts, if any, for which the Architect withholds or the City is entitled to withhold under this Agreement, in whole or in part, a final Certificate for Payment as provided in Paragraph 15.05(a), General Conditions or other provisions of the Agreement Documents;

3. Next, subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the City exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the City.

(c) The City's accountants will endeavor to review and report in writing on the Contractor's final accounting within sixty (60) days after delivery of the final accounting to the Architect by the Contractor, together with all backup documentation reasonably required by the City. Based upon such Cost of the Work as the City's accountants shall report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Paragraph 28.02(a) have been met, the Architect will endeavor within seven days after receipt of the written report of the City's accountants, either issue to the City a final Certificate for Payment with a copy to the Contractor or notify the Contractor and City in writing of the Architect's reasons for withholding a certificate as provided in Paragraph 15.05(a), General Conditions. The time periods stated in this Paragraph 28 supersede those stated in Paragraph 15.04(a), General Conditions.

(d) If the City's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Paragraph 29 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 30-day period shall result in the substantiated amount reported by the City's accountants becoming binding on the Contractor. Pending a final resolution of the disputed amount, the City shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

If, subsequent to final payment and at the City's request, the Contractor incurs costs described in Paragraph 27.01 and not excluded by Paragraph 27.09(a) to correct nonconforming Work or (2) arising from the resolution of disputes, the City shall reimburse the Contractor such costs and the Contractor's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings, the amount of such savings shall be recalculated, and appropriate credit given to the City in determining the net amount to be paid by the City to the Contractor.

29. DISPUTE RESOLUTION.

29.01 Dispute Resolution. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Paragraph 10, General Conditions, except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation.

30. TERMINATION OR SUSPENSION.

30.01 Termination Before Establishing Guaranteed Maximum Price.

(a) Before execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the City may terminate this Agreement at any time without cause, and the Contractor may terminate this Agreement for any of the reasons described in Paragraph 22.01(a), General Conditions.

(b) If the City or Contractor terminates this Agreement pursuant to Paragraph 9.01 prior to commencement of the Construction Phase, the Contractor shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Paragraph 25.01(a).

(c) If the City or Contractor terminates this Agreement pursuant to Paragraph 30.01 after commencement of the Construction Phase, the Contractor shall be paid, in addition to the compensation provided in Paragraph 30.1(b), an amount calculated as follows:

1. First, take the Cost of the Work incurred by the Contractor;
2. Next, add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 26.01 or, if said Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Next, subtract the aggregate of previous payments made by the City on account of the Construction Phase.

The City shall also pay the Contractor fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Contractor which the City elects to retain and which is not otherwise included in the Cost of the Work under Paragraph 30.01(c)(1). To the extent that the City elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Paragraph 30, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the City may require for the purpose of fully vesting in the City the rights and benefits of the Contractor under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Contractor with the City's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the City as described above. If the City accepts such assignment, the City shall reimburse the Contractor with respect to all valid and properly payable costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the agreement had not been terminated. If the City elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase

order or rental agreement and the City shall pay the Contractor the costs necessarily and reasonably incurred by the Contractor by reason of such termination, but in no event to include any overhead or profit on work not performed.

30.02 Termination Subsequent to Establishing Guaranteed Maximum Price. Subsequent to execution by both parties of Amendment No. 1, the Agreement may be terminated as provided in Paragraph 22, General Conditions.

(a) In the event of such termination by the City, the amount payable to the Contractor pursuant to Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive pursuant to Paragraphs 30.01(a) and 30.01(c) of this Agreement.

(b) In the event of such termination by the Contractor, the amount to be paid to it under Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive under Paragraphs 30.01(b) and 30.01(c) above. In no event shall Contractor nor any supplier or subcontractor be entitled to any fee or lost profits for work not performed.

30.03 Suspension. The Work may be suspended by the City as provided in Paragraph 22, General Conditions, and in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Paragraph 22.03(b), General Conditions, except that the term “cost of performance of the Contract” in that Paragraph shall be understood to mean the Cost of the Work and the term “profit” shall be understood to mean the Contractor’s Fee as described in Paragraphs 26.01 and 26.03(d) of this Agreement.

31. OTHER CONDITIONS AND SERVICES.

31.01 Licensing, Permits, Registrations, and Approvals. Contractor represents to the City that it has, and will keep in effect at all times during the term of this Agreement, any licenses, permits, registrations, and approvals which are legally required for the Contractor to practice its trade.

31.02 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.

31.03 Authority to Contract. Each party represents that it 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 entity. However, notwithstanding anything stated to the contrary in this Agreement, the parties acknowledge and agree that this Agreement is subject to the proper application of, and to all protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

31.04 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 of this Agreement shall not in any way be affected or impaired thereby.

31.05 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.

31.06 Presumption Against Waiver. No waiver by either party hereto of any one or more defaults by the other party hereto in the performance of this Agreement shall be construed as a waiver of any future defaults whether of a like or different character. No waiver of a default of this Agreement occurs if the non-defaulting party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting party of this Agreement.

31.07 Owner's Reserved Rights. The City shall have the rights by its officers, employees, or agents to examine and inspect the Contractor Work regarding the Project and the business records and financial records of the Contractor regarding the Project, at any time, to verify Contractor's compliance with the terms of this Agreement. Any approval by City or acceptance of the Contractor's Work shall not waive any obligation of the Contractor to correct defective work or to later provide additional business records or financial records regarding portions of the Project approved or accepted by the City.

31.08 Benefit. Subject to a proper application of the doctrine of governmental immunity under Texas law, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement. Nothing in this Paragraph shall be construed to waive the conditions elsewhere contained in this Agreement applicable to assignment by the Contractor. Nothing contained in this Agreement shall be construed to confer any benefit upon any subcontractor or any other third party.

31.09 Headings, Gender, Number. The 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.

31.10 Agreement Read. The parties acknowledge that they have had the opportunity to consult with counsel of their choice, have read, understand, and intend to be bound (subject to the proper application of the doctrine of governmental immunity under Texas Law) by the terms and conditions of this Agreement.

31.11 Written Notice. Written notice shall be deemed to have been served only if the writing is hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

City: City of College Station

Attn: Capital Projects - Raquel Gonzales, P.E.
P.O. Box 9960
College Station, TX 77842

Contractor: Lott Brothers Construction Co., Inc.
406 N Lee Street, Suite 201
Round Rock, Texas 78664

31.12 Extent of Contract. This Agreement (and its attached or incorporated documents and exhibits) represents the entire and integrated agreement between the City and the Contractor regarding the Project and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Contractor. If anything in any document or exhibit attached to or incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Ownership and Use of Documents. Paragraph 3.4, General Conditions, shall apply to both the Preconstruction and Construction Phases.

31.13 Governing Law. The parties expressly agree that: (a) this Agreement shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the Performance, Work, and all matters pertaining to this Agreement and the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue in any lawsuit or legal proceeding regarding or relating to this Agreement or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for Brazos County.

31.14 Assignment. Subject to a proper application of the doctrine of governmental immunity under Texas law, the City and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Agreement Documents. Neither party to the Agreement shall assign the Agreement in whole or in part without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

31.15 Effective Date. This Agreement goes into effect when duly approved by all the parties hereto and is contingent upon Contractor obtaining and maintaining the insurance and bonds required herein throughout the duration of the Project and applicable warranty periods.

31.16 Verification or Representations Regarding Certain Statutory Matters. To the extent applicable, this Agreement is subject to the following:

- (a) No Boycott of Israel. Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (1) does not boycott Israel, and (2) will not boycott Israel during the term of this Agreement;
- (b) No Boycott of Firearms. Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association;
- (c) No Boycott of Energy Companies. Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (1) does not boycott energy companies, and (2) will not boycott energy companies during the term of this Agreement; and
- (d) Conflicts Disclosure. Before the approval of this Agreement, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (1) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (2) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

31.17 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.

31.18 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.** Davis Bacon Wage Rates
- B.** Performance and Payment Bonds
- C.** Certificates of Insurance and Endorsements
- D.** Technical Specifications & Plans

LOTT BROTHERS CONSTRUCTION CO.

CITY OF COLLEGE STATION

By: _____

By: _____

Printed Name: _____

City Manager: _____

Title: _____

Date: _____

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20210007

State: Texas

Construction Types: Heavy and Highway

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

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

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

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022, Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022, Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

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

Additional information on contractor requirements and worker protections under the Executive Orders is available at www.dol.gov/whd/govcontracts.

* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	
Laborer, Utility.....	\$ 12.27	
Pipelayer.....	\$ 12.79	
Work Zone Barricade Servicer.....	\$ 11.85	
PAINTER (Structures).....	\$ 18.34	
POWER EQUIPMENT OPERATOR: Agricultural Tractor.....	\$ 12.69	
Asphalt Distributor.....	\$ 15.55	
Asphalt Paving Machine.....	\$ 14.36	
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	
Concrete Pavement Finishing Machine.....	\$ 15.48	
Crane, Hydraulic 80 tons or less.....	\$ 18.36	
Crane, Lattice Boom 80 tons or less.....	\$ 15.87	
Crane, Lattice Boom over 80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	
Directional Drilling Locator.....	\$ 11.67	
Directional Drilling Operator.....	\$ 17.24	
Excavator 50,000 lbs or Less.....	\$ 12.88	
Excavator over 50,000 lbs...	\$ 17.71	
Foundation Drill, Truck Mounted.....	\$ 16.93	
Front End Loader, 3 CY or Less.....	\$ 13.04	
Front End Loader, Over 3 CY.	\$ 13.21	
Loader/Backhoe.....	\$ 14.12	
Mechanic.....	\$ 17.10	
Milling Machine.....	\$ 14.18	
Motor Grader, Fine Grade....	\$ 18.51	
Motor Grader, Rough.....	\$ 14.63	
Pavement Marking Machine....	\$ 19.17	
Reclaimer/Pulverizer.....	\$ 12.88	
Roller, Asphalt.....	\$ 12.78	
Roller, Other.....	\$ 10.50	
Scraper.....	\$ 12.27	
Spreader Box.....	\$ 14.04	

Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51

Steel Worker

Reinforcing.....\$ 14.00

Structural.....\$ 19.29

TRAFFIC SIGNAL INSTALLER

Traffic Signal/Light Pole

Worker.....\$ 16.00

TRUCK DRIVER

Lowboy-Float.....\$ 15.66

Off Road Hauler.....\$ 11.88

Single Axle.....\$ 11.79

Single or Tandem Axle Dump

Truck.....\$ 11.68

Tandem Axle Tractor w/Semi

Trailer.....\$ 12.81

WELDER.....\$ 15.97

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

=====

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

----- WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Division National Office Branch of Wage Surveys. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

=====

END OF GENERAL DECISION"

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

EXHIBIT B

PERFORMANCE AND PAYMENT BONDS

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

PERFORMANCE BOND

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
THE COUNTY OF BRAZOS	§	

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do 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, Texas ("City"), a municipal corporation, in the sum of _____ (\$_____) 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 pursuant to the obligations and payment of this Performance Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed an Agreement (as used herein including the Agreement Documents) in writing with the City of College Station for the following City Project ("Project"):

_____,
with all of the work ("Work") for the Project to be done as set out in full in said Agreement therein referred to and adopted by the City Council of the City of College Station, Texas, all of which documents, as amended, are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the Contractor shall faithfully and strictly perform Agreement in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in

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CMAR- Construction
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accordance with the Agreement Documents described therein, and shall comply strictly with each and every provision of the Agreement, as amended, including all warranties and indemnities therein, and with this Bond, then this Bond obligation shall become null and void and shall have no further force and effect; otherwise this Bond obligation is to remain in full force and effect.

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

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom. Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this bond, and Surety does hereby waive notice of any such change in the Agreement Time or Agreement Sum.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 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 statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party. A copy of the Surety agent "Power of Attorney" also must be attached to this Bond instrument.

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 a current Power of Attorney as required by this Bond.

CONTRACTOR EXECUTION:

ATTEST, SEAL OF CONTRACTOR: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Contractor: _____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

(Name of Surety)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Surety: _____

**ACCEPTANCE BY CITY:
REVIEWED:**

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

City Attorney's Office

Date: _____

City Manager

Date: _____

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

TEXAS STATUTORY PAYMENT BOND

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
THE COUNTY OF BRAZOS	§	

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do business in the State of Texas and admitted to write bonds, as Surety, hereinafter called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, Texas ("City"), a municipal corporation, in the sum of _____

_____ (\$_____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, pursuant to the obligations and payment of this Texas Statutory Payment Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain Agreement ("Agreement" including the Agreement Documents, as amended) in writing with the City of College Station for the following City Project ("Project") dated the _____ day of _____, _____: with all of the work ("Work") for the Project to be done as set out in full in said Agreement, as amended, therein referred to and adopted by the City Council of the City of College Station, Texas, all of which documents are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, the condition of this Bond obligation is such that if Principal shall pay all claimants supplying labor, equipment, and/or material to Principal for the Project, or to a subcontractor for the Project, regarding he performance and prosecution of the Work of the Project provided for in the Agreement, as amended, then, this Bond obligation shall be null and void; otherwise this Bond obligation is to remain in full force and effect.

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PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapters 2253, 2254, and 2269 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.

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 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 statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this Bond, and Surety does hereby waive notice of any such change in the Agreement Time or Agreement Sum. A copy of the Surety agent "Power of Attorney" also must be attached to this Bond instrument.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached a current Power of Attorney as required by this Bond.

PRINCIPAL EXECUTION:

ATTEST, SEAL OF PRINCIPAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Principal)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Principal: _____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

(Name of Surety)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Surety: _____

**ACCEPTANCE BY CITY:
REVIEWED:**

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

City Attorney's Office

Date: _____

City Manager

Date: _____

EXHIBIT C

CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/1/2024

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 Brown & Brown of Austin 8000 Centre Park Dr., Ste.370 Austin TX 78754	CONTACT NAME: Afton Burns PHONE (A/C, No, Ext): 512-617-5832 E-MAIL ADDRESS: afton.burns@bbrown.com	FAX (A/C, No): 512-346-1736
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Continental Casualty Company		20443
INSURER B : The Continental Insurance Co		35289
INSURER C : Columbia Casualty Company		31127
INSURER D : Allianz Global Corporate &		
INSURER E :		
INSURER F :		

COVERAGES**CERTIFICATE NUMBER:** 158330493**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:			5082719926	12/1/2023	12/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 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			5082719926	12/1/2023	12/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			6045584247	12/1/2023	12/1/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 Prod/Comp Ops Agg \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N ☒ N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	5082719909	12/1/2023	12/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Contractors Professional			CZB 6023796573	12/1/2023	12/1/2024	Per Claim/Aggregate 5,000,000
C	Contractors Pollution			CZB 6023796573	12/1/2023	12/1/2024	Per Claim 5,000,000
D	Drone Liability			UAV0011072022	8/29/2023	8/29/2024	Per Occ \$10,000,000

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

The requested certificate has been issued in accordance with Texas Law. Some policies include blanket endorsements that provide status(es) to the certificate holder ONLY when there is a written contract between the named insured and the certificate holder requiring the status(es).

GENERAL LIABILITY

CNA75079XX (10-16) Blanket Additional Insured – Owners, Lessees, or Contractors – with Products-Completed Operations Coverage Endorsement

CNA74705XX 0115 Contractor's General Liability Extension Endorsement

Additional Insured: Lessor of Equipment

Additional Insured: State or Governmental Agency or Subdivision or Political Subdivisions Permits

See Attached...

CERTIFICATE HOLDER**CANCELLATION**

City Of College Station
1101 Texas Ave.
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

Page 1 of 1

AGENCY Brown & Brown of Austin		NAMED INSURED Lott Brothers Construction Co. PO Box 203594 Austin TX 78720-3594
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

Primary Non-Contributory for Additional Insured as required by written contract
 General Aggregate Per Project as required by written contract
 Waiver of Subrogation as required by written contract
 CNA74702KS (1-15) Notice of Cancellation or Material Restriction Endorsement
 30-Day Notice of Cancellation, Blanket, Per Schedule on File with the Carrier
 CG 00 01 04 13, General Liability Coverage Part, Section 2b.: Contractual Liability is not excluded
 XCU is not excluded

BUSINESS AUTO

CNA63359XX (04-2012) Contractors Extended Coverage Endorsement - Business Auto Plus
 Additional Insured as required by written contract
 Waiver of Subrogation as required by written contract
 Primary Non-Contributory as required by written contract
 CC68021A (02-2013) 30 Day Notice of Cancellation to Certificate Holders
 CA 20 01 10 13 Lessor - Additional Insured and Loss Payee, blanket, as their interest may appear

WORKERS COMPENSATION

WC 42 03 04 B (06-2014) Texas Waiver of Our Right to Recover from Others Endorsement (Waiver of Subrogation)
 Blanket, where required by written contract or agreement
 CC68021A (02-2013) 30 Day Notice of Cancellation to Certificate Holders

CONTRACTORS ERRORS & OMISSIONS / CONTRACTORS POLLUTION LIABILITY

\$5,000,00 per occurrence / \$5,000,000 Aggregate
 CLAIMS MADE - 12/1/2009 RETROACTIVE DATE

UMBRELLA

CUE 6045584247 CNA Paramount Excess and Umbrella Liability Policy Coverage Form
 Section VI. Conditions, Q. Other Insurance: Umbrella policy follows form with regard to primary & non-contributory additional insured and waiver of subrogation coverage grants;
 Blanket, where required by written contract or agreement

EXHIBIT D

TECHNICAL SPECIFICATIONS AND PLANS

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

OFFEROR'S PROPOSAL FORM

Date: 05/22/2024

PROPOSAL FROM: Lott Brothers Construction Company, Ltd.

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 Fire Station #7 and to perform the work required for the construction of said building at the location set out by the Plans and Specifications, in strict accordance with the Proposal/Contract Documents.

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 sums:

1. PRECONSTRUCTION FEE

List Offeror's proposed fee for all pre-construction phase services, including pre-planning, cost estimating, scheduling, value engineering, and constructability reviews, as a lump sum amount:

Dollars \$ 17,500

2. GENERAL CONDITIONS

List Offeror's proposed cost for General Conditions to accommodate the onsite staff as a lump sum amount. These items will include, but not be limited to, office trailers, phones, furniture, copiers, computers, software, supplies, cleaning, move in/move out, printing expenses, site personnel's radios, pagers, phones, etc., required equipment, insurance premiums, and other items specifically provided for in **Attachment 1**:

Dollars \$ 828,167

3. CONSTRUCTION MANAGER AT RISK FEE

List Offeror's proposed fee as a percentage of construction cost, including all overhead and profit:

Percent % 3.75

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: 01

BY SUBMITTING A PROPOSAL, EACH OFFEROR AUTHORIZES CITY TO PERFORM ALL INVESTIGATIONS INTO THE OFFEROR'S BACKGROUND, CAPABILITIES, PRIOR EXPERIENCE AND OTHER FACTORS PERTAINING TO OFFEROR'S PERFORMANCE OF THE WORK, AS CITY DEEMS NECESSARY IN ITS SOLE DISCRETION, AND FOR THAT PURPOSE, SUBMISSION OF A PROPOSAL SHALL ACT AS OFFEROR'S SPECIFIC AUTHORIZATION TO PERSONS AND ENTITIES CONTACTED BY CITY IN CONNECTION WITH SUCH INVESTIGATIONS ("EVALUATING PARTIES") TO PROVIDE CITY WITH THE INFORMATION REQUESTED BY CITY AND TO DISCUSS AND EXPRESS OPINIONS CONCERNING OFFEROR. FURTHER, BY SUBMISSION OF A PROPOSAL, OFFEROR AGREES TO FULLY AND FOREVER WAIVE AND RELEASE ANY CLAIM (KNOWN OR UNKNOWN) IT HAS OR MAY HAVE AGAINST CITY, ARCHITECT, THE EVALUATING PARTIES AND THEIR RESPECTIVE ATTORNEYS, EMPLOYEES, CONSULTANTS, REPRESENTATIVES, AND AGENTS WHICH IN ANY WAY ARISE OUT OF OR ARE CONNECTED TO THE: (I) ADMINISTRATION, EVALUATION, OR RECOMMENDATION (OR LACK THEREOF) OF ANY PROPOSAL; (II) WAIVER OF ANY REQUIREMENTS UNDER THE PROPOSAL/CONTRACT DOCUMENTS; AND (III) ACCEPTANCE OR REJECTION OF ANY PROPOSAL AND AWARD OF THE CONTRACT.

OFFEROR'S NAME: Michael White

OFFEROR'S SIGNATURE: 

CERTIFICATION

The undersigned affirms that they are duly authorized to execute the City of College Station Construction Agreement, that this Proposal has not been prepared in collusion with any other Offeror, and that the contents of this Proposal have not been communicated to any other Offeror prior to the official opening of this Proposal. Additionally, subject to Section 2269.254 of the Code, the undersigned affirms that the firm is willing to sign the enclosed City of College Station Construction Agreement.

Signed By:  Title: Lott Brothers Construction Company, Ltd.
by Lott Brothers GP, Inc., General Partner
by Michael White, Vice President

Typed Name: Michael White Company Name: Lott Brothers Construction Company, Ltd.

Phone No.: 512 401 8882 Fax No.: 512 401 8883

Email: mwhite@lottbrothers.com

Proposal	<u>406 N Lee Street, Suite 201</u>	<u>Round Rock</u>	<u>Texas</u>	<u>78664</u>	Address:
	P.O. Box or Street	City	State	Zip	

Order Address:	<u>406 N Lee Street, Suite 201</u>	<u>Round Rock</u>	<u>Texas</u>	<u>78664</u>
	P.O. Box or Street	City	State	Zip

Remit Address:	<u>406 N Lee Street, Suite 201</u>	<u>Round Rock</u>	<u>Texas</u>	<u>78664</u>
	P.O. Box or Street	City	State	Zip

Federal Tax ID No.: 42-1538213

Date: 05/14/2024

NOTE: This form and acknowledged addendums (*if applicable*) must be submitted with final proposals.

END OF RFP NO. 24-035 (part 2)

*****DO NOT MODIFY THIS FORM*****

ATTACHMENT 1
GENERAL CONDITIONS DETAIL

LABOR	TIME (WKS)		COST
Item			
1) Project Manager (on site, full time):	<u>10</u>	LS in Dollars	<u>38,358</u>
2) Assistant Project Manager (on site, full time):	<u>48</u>	LS in Dollars	<u>138,121</u>
3) Project Manager (off site):	<u></u>	LS in Dollars	<u></u>
4) Superintendent:	<u>48</u>	LS in Dollars	<u>194,980</u>
5) Assistant Superintendent:	<u>48</u>	LS in Dollars	<u>170,920</u>
6) Clerical Support:	<u>5</u>	LS in Dollars	<u>10,290</u>
7) Project Field Engineer:	<u></u>	LS in Dollars	<u></u>
8) Admin. Assistant:	<u>10</u>	LS in Dollars	<u>20,579</u>
9) General Superintendent:	<u>Included in fee</u>	LS in Dollars	<u></u>
10) Project Executive:	<u>Included in fee</u>	LS in Dollars	<u></u>
11) Project Scheduler:	<u>Included in fee</u>	LS in Dollars	<u></u>
12) Estimator:	<u>Included in Precon</u>	LS in Dollars	<u></u>
13) Safety Officer:	<u></u>	LS in Dollars	<u></u>
14) Clerk of the Works:	<u></u>	LS in Dollars	<u></u>
15) Surveyor:	<u></u>	LS in Dollars	<u></u>
16) Other :	<u></u>	LS in Dollars	<u></u>
17) Other :	<u></u>	LS in Dollars	<u></u>

*Indicate in weeks (40 hrs/week), the total amount of time the identified personnel will be involved in the project throughout the project duration.

FORM FOR GENERAL CONDITIONS FEES (CONTINUED)

MATERIALS

Item

- 1) Field Engineering Equip:
- 2) Field Project Office, with available conference space:
- 3) Temp. Fire Extinguishers & Safety Equipment:
- 4) Office Furniture:
- 5) Office Supplies:
- 6) Postage/Fed Ex/Courier:
- 7) Misc. Document Printing/Reproduction:
- 8) Copy Machine, Toner & Paper:
- 9) Computers/Printers/Networks/Software:
- 10) Telephone, Cell Phone, Internet & Fax Services:
- 11) Janitorial Services:
- 12) Misc. Small Tools & Consumables:
- 13) Equipment Rentals:
- 14) Temporary Site Fencing:
- 15) Project Signage:
- 16) All Risk Builders Risk Ins.:
- 17) GL Insurance:
- 18) Subcontractor Default Insurance
- 19) All other Ins. In addition to CGL:
- 20) Contractor's Performance and Payment Bonds:
- 21) Building Permit Fees:
- 22) Construction Equip. Freight & Ins.:
- 23) Ind. Testing & Inspection - By Owner:
- 24) Construction Clean-up:
- 25) Final Clean-up:
- 26) Dumpster Rental/dump fee; size () CY:
- 27) Special Testing Equip. Rentals:
- 28) Final Project Cost Certification:
- 29) Equipment Gas/Oil:
- 30) Security:
- 31) Lifting/Hoisting Equipment:
- 32) Temporary Toilets:
- 33) Temporary Storage Trailer/Container:
- 34) Ice & Water:
- 35) Vehicle Use, Mileage/Operation/Fuel:
- 36) Temporary Water & Power Utilities-By Owner:
- 37) Taxes:
- 38) SWPPP/Erosion Control Measures:
- 39) Lodging/Relocation Expenses:
- 40) Project Related Meals/Meetings:
- 41) Project Related Travel Expenses:
- 42) Computer Software as required to include web-based project management system:
- 43) Other (specify) [Safety Program](#)
- 44) Other (specify) [Drone](#)

COST

LS in Dollars	2,695
LS in Dollars	21,500
LS in Dollars	1,295
LS in Dollars	2,750
LS in Dollars	2,750
LS in Dollars	2,387
LS in Dollars	3,500
LS in Dollars	500
LS in Dollars	2,200
LS in Dollars	2,150
LS in Dollars	1,650
LS in Dollars	2,200
LS in Dollars	Cost of Work
LS in Dollars	Cost of Work
LS in Dollars	4,500
LS in Dollars	13,330
LS in Dollars	34,962
LS in Dollars	TBD
LS in Dollars	31,617
LS in Dollars	81,642
LS in Dollars	By Owner
LS in Dollars	Cost of Work
LS in Dollars	By Owner
LS in Dollars	Cost of Work
LS in Dollars	Cost of Work
LS in Dollars	Cost of Work
LS in Dollars	Excluded
LS in Dollars	Included
LS in Dollars	Included
LS in Dollars	8,250
LS in Dollars	Cost of Work
LS in Dollars	9,840
LS in Dollars	2,350
LS in Dollars	Included
LS in Dollars	Included
LS in Dollars	By Owner
LS in Dollars	Excluded
LS in Dollars	Cost of Work
LS in Dollars	Included
LS in Dollars	2,200
LS in Dollars	Included
LS in Dollars	9,375
LS in Dollars	8,250
LS in Dollars	3,025

July 11, 2024
Item No. 8.1.
Tang Cake 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 boundary from PDD Planned Development District to MH Middle Housing with a HOO High Occupancy Overlay for approximately 2 acres being The Barracks II Subdivision, Phase 400, Block 36, Lot 27, generally located at the south corner of Tang Cake Drive and Old Wellborn Road.

Relationship to Strategic Goals:

Neighborhood Integrity

Recommendation(s): This item was heard at the June 20th Planning and Zoning Commission meeting where the Commission voted 6-0 to recommend approval.

Summary: This request is to rezone approximately 2.01 acres of land being one platted lot located at 101 Tang Cake Drive from PDD Planned Development District to MH Middle Housing with a HOO High Occupancy Overlay. The subject property was platted in 2016 and is currently undeveloped. The property was originally zoned as a part of the Barracks PDD and according to the concept plan, listed as a commercial area. Up until this time, commercial has struggled to develop in this area due to its separation from nearby commercial corridors like Deacon Drive and Rock Prairie Road West. The lack of frontage on these streets lends it to being appropriate property for residential uses. Nearby properties to the northwest, west and southwest include townhomes that are a part of the Barracks Subdivision. The undeveloped property to the east, at the corner of Old Wellborn and Rock Prairie Road, has a future land use of General Commercial, which is more appropriate as it has direct frontage to a four-lane major arterial.

REZONING REVIEW CRITERIA

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject property is designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential. For the Mixed Residential land use, the Comprehensive Plan provides the following:

Areas appropriate for a mix of moderate density residential development including townhomes, duplexes, small multifamily buildings (3-12 units), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows the original character to evolve. These areas may serve as buffers between more intense multi-family residential or mixed-use development and suburban residential or neighborhood conservation areas.

The Mixed Residential land use intends to accommodate a walkable pattern of small lots, small blocks, and well-connected street pattern that supports surrounding neighborhoods. Developments in this district should prioritize a mix of housing types and scales located near community facilities or adjacent to commercial or neighborhood centers. The zoning districts that are generally appropriate

within this land use include middle housing, duplex, townhouse, and limited-scale single-family zoning. Rezoning to MH Middle Housing and HOO Occupancy Overlay is consistent with the Comprehensive Plan as it provides a variety of housing options and a good transition from the existing residential area of the Barracks to more intense urban developments along Rock Prairie Road and Wellborn Road.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is surrounded townhomes to the northwest, west, and southwest, and undeveloped commercial land to the east. Development pressure continues to grow as new generations of students, young professionals, families, and seniors move to College Station. Allowing and encouraging infill development opportunities helps alleviate some of the pressure in the market. The Middle Housing zoning district enables the development of this lot at an appropriate scale, enabling the increase in residential density to this site. The residential and shared housing uses permitted in the MH Middle Housing and HOO High Occupancy Overlay zoning districts are appropriate in the context of the surrounding areas.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The location of the subject property makes it suitable for single-family houses, townhouses, duplexes, and multiplex uses, although due to the unique shape of the lot not being a rectangle with equal sides, some uses may not exactly fit lengthwise when taking into consideration right of way needed for an internal street. At the replatting stage, the applicant will determine the use and housing type after fully examining the dedication of the right-of-way and how it may change the lot dimensions.

4. Whether there are available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure are adequate to support the needs of this development. Drainage and any other infrastructure required with the site development shall be designed and constructed following the BCS Unified Design Guidelines. The subject property fronts Old Wellborn Road and Tang Cake Drive. The lot is able to take access from either road although it may be preferred to utilize Tang Cake Drive as it is newer and in better condition. The proposed use is expected to generate less than 150 trips in any peak hour; therefore, a TIA was not required.

5. The marketability of the property:

The uses allowed by the proposed zoning district are generally marketable for the area. The applicant states that as this tract does not have access to attract nor sustain a commercial development, it is not marketable with the current zoning.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Vicinity, Aerial and Small Area Maps
3. Background Information
4. Rezoning Exhibit

5. Applicants Supporting Information
6. Existing 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 THE BARRACKS II SUBDIVISION, PHASE 400, BLOCK 36, LOT 27, MORE GENERALLY LOCATED AT 101 TANG CAKE DRIVE 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 PDD Planned Development District to MH Middle Housing with a HOO High Occupancy Overlay:

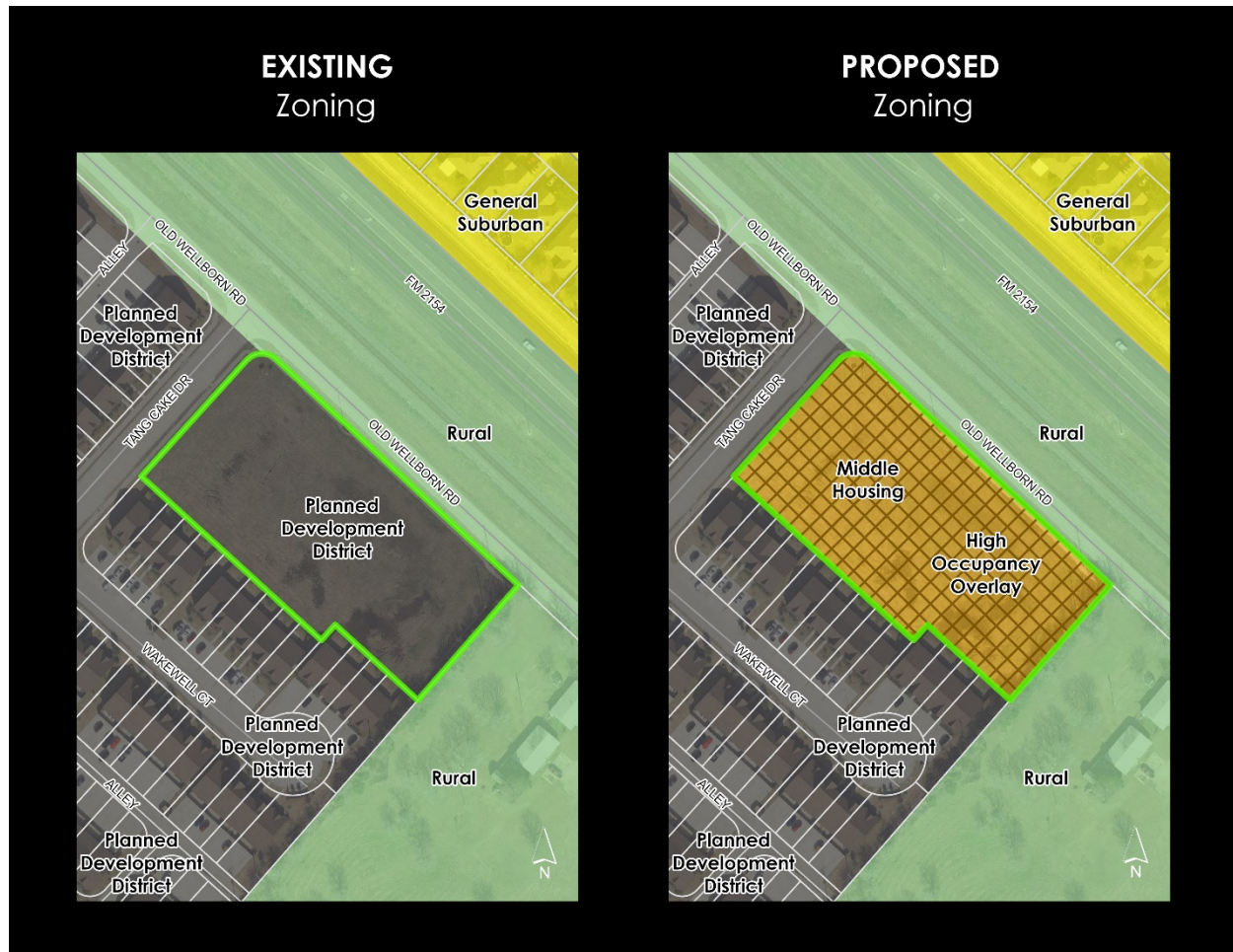
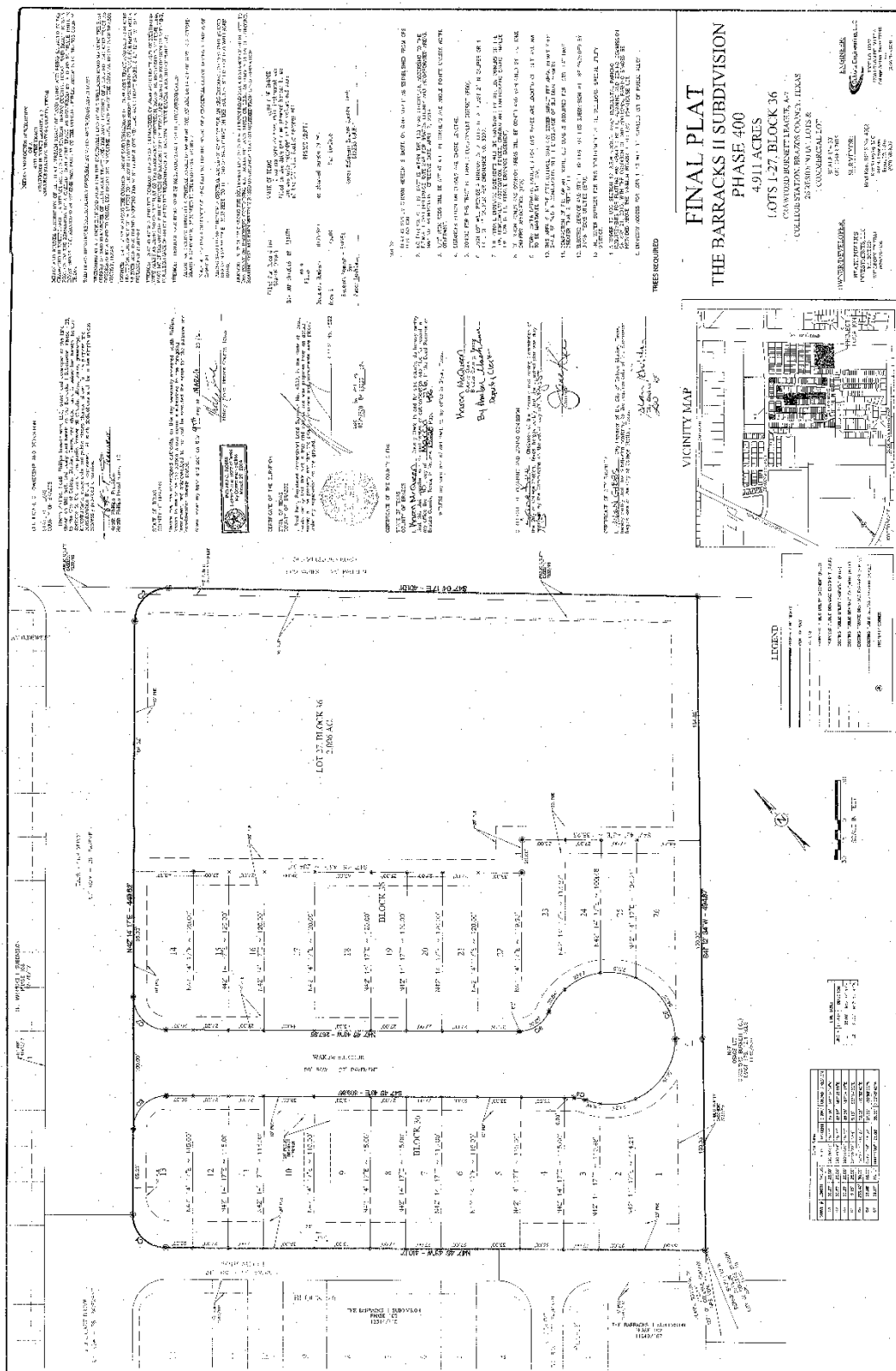
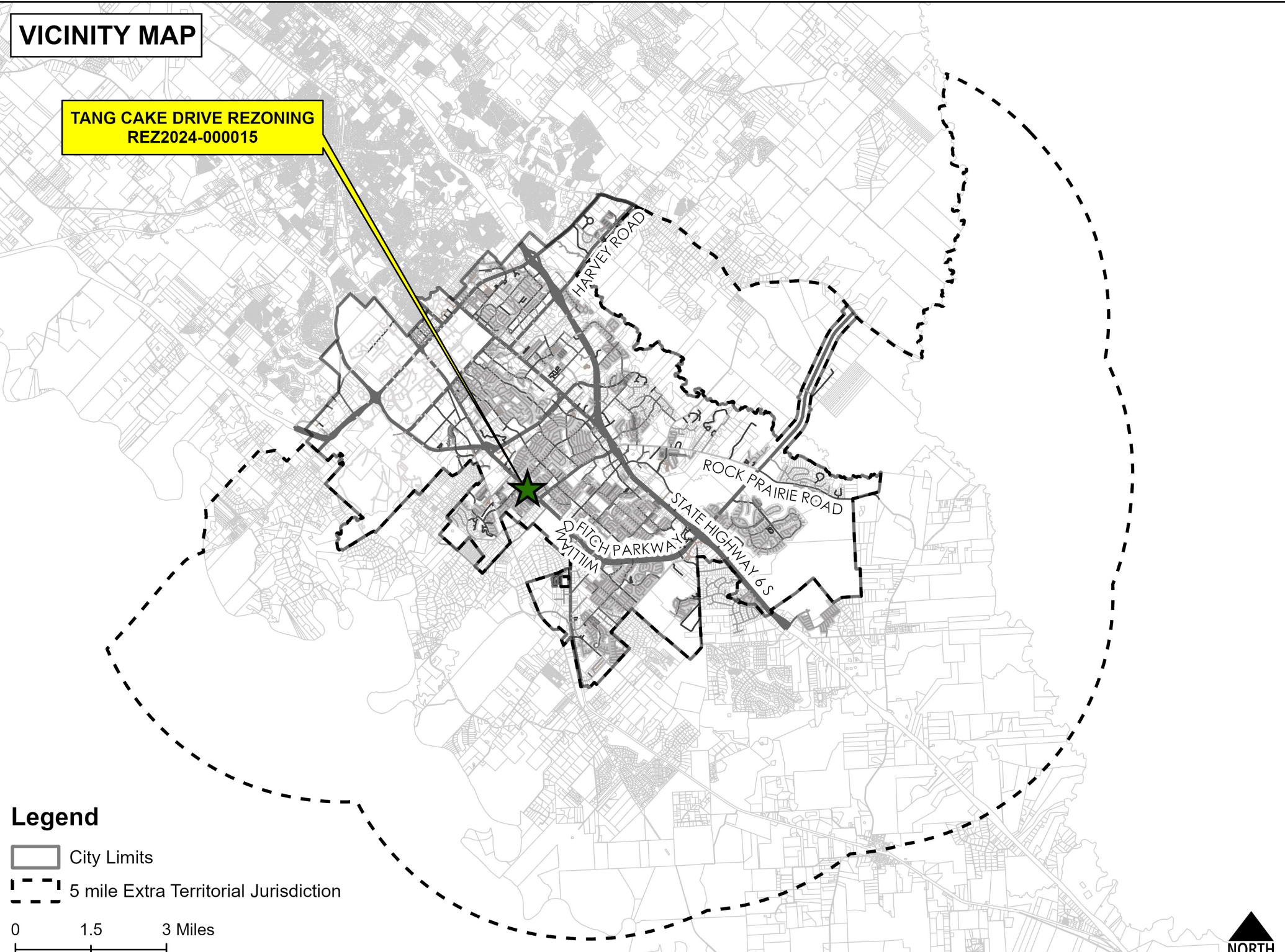


Exhibit B



VICINITY MAP

TANG CAKE DRIVE REZONING
REZ2024-000015



Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction

0 1.5 3 Miles





II PH 107

ARMORED AVENUE

BARRACKS II
II PH 108

TANG CAKE DRIVE

OLD WELLBORN ROAD

WELLBORN ROAD

NEUBURG COURT

EDELWEISS
ESTATES
PH 14

HANNOVER STREET

EDELWEISS
ESTATES
PH 16

WAKEWELL COURT

BARRACKS II
II PH 400

THE BARRACKS
II PH 105-106

GENERAL PARKWAY

THE BARRACKS
II PH 102



0 125 250 Feet

TANG CAKE DRIVE REZONING

Case:
REZ2024-000015

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
R	Rural	MF	Multi-Family
WE	Wellborn Estate	MU	Mixed-Use
E	Estate	MHP	Manufactured Home Pk.
WRS	Wellborn Restricted Suburban		
RS	Restricted Suburban		
GS	General Suburban		
D	Duplex		
T	Townhome		

Non-Residential

NAP	Natural Area Protected
O	Office
SC	Suburban Commercial
WC	Wellborn Commercial
GC	General Commercial
CI	Commercial Industrial
BP	Business Park
BPI	Business Park Industrial
C-U	College and University

Planned Districts

P-MUD	Planned Mixed-Use Dist.
PDD	Planned Develop. Dist.

Design Districts

WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts

OV	Corridor Ovr.
RDD	Redevelopment District
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



0 225 450 Feet

TANG CAKE DRIVE REZONING

Case:
REZ2024-000015

REZONING

BACKGROUND INFORMATION – REZ2024-000015

NOTIFICATIONS

Advertised Commission Hearing Date: June 20, 2024
Advertised Council Hearing Date: July 11, 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:

The Barracks Townhomes HOA

Property owner notices mailed: 46

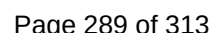
Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Major Arterial	R Rural	FM 2154 Wellborn Rd ROW (Old Wellborn Rd)
South	Mixed Residential	PDD Planned Development District	Townhomes
East	General Commercial	R Rural	Undeveloped
West	Mixed Residential	PDD Planned Development District	Townhomes

DEVELOPMENT HISTORY

Annexed: 2002
Zoning: A-O Agricultural Open (2002 upon annexation)
PDD Planned Development District (2011)
PDD Planned Development District (2012)
PDD Planned Development District (2013)
PDD Planned Development District (2014)
PDD Planned Development District (2015)
Final Plat: Barracks II Phase 400
Site Development: Undeveloped





REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: TANG CAKE DRIVE REZONING (REZ2024-000015)

Address: 101 Tang Cake Drive

Legal Description: THE BARRACKS II PH 400, BLOCK 36, LOT 27

Total Acreage: 2.01

Applicant: MITCHELL & MORGAN

Property Owner: YASMEEN NUZHAT & MIAN RIAZ

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The City of College Station recently created a use for medium density residential uses, or shared housing, that is permitted under the MH Middle Housing zoning district. The City has also created an overlay district called HOO High Occupancy Overlay which is intended to “accommodate increased residential occupancy through permitting of shared housing as a use.”

This lot has remained undeveloped as a commercial property for almost 10 years due to poor access, which cannot be improved due to the fully developed housing surrounding this property and proximity to the railroad. As housing continues to be in demand, this property is better suited to serve as medium density housing.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan indicates this property is designated for Mixed Residential. Mixed Residential is “appropriate for a mix of moderate density residential development including townhomes, duplexes, small multi-family buildings... These areas are appropriate for residential infill and redevelopment that allows original character to evolve.” There is a variety of housing densities and products in in this area of the city that the existing shared housing duplexes contributes toward, which is in accordance with the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

Most of the properties in the vicinity include medium density housing intended for student housing such as townhomes within the Barracks subdivision and various residential products zoned MH Middle Housing both with and without a HOO High Occupancy Overlay. The requested rezoning to MH Middle Housing with a HOO High Occupancy Overlay is compatible with the developing character of the neighborhood which supports medium density residential uses.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Middle housing uses, including shared housing, contribute to the desired mix of densities desired in the MH Middle Housing zoning district and Mixed Residential land use designation making this development very suitable for the property.

Explain the suitability of the property for uses permitted by the current zoning district.

Commercial uses are not suitable for this property as businesses depend on convenient vehicular access and sufficient traffic counts to support commercial development. This tract has poor access from Old Wellborn Road and Tang Cake Drive, which do not carry enough traffic to support any commercial uses at this location.

Explain the marketability of the property for uses permitted by the current zoning district.

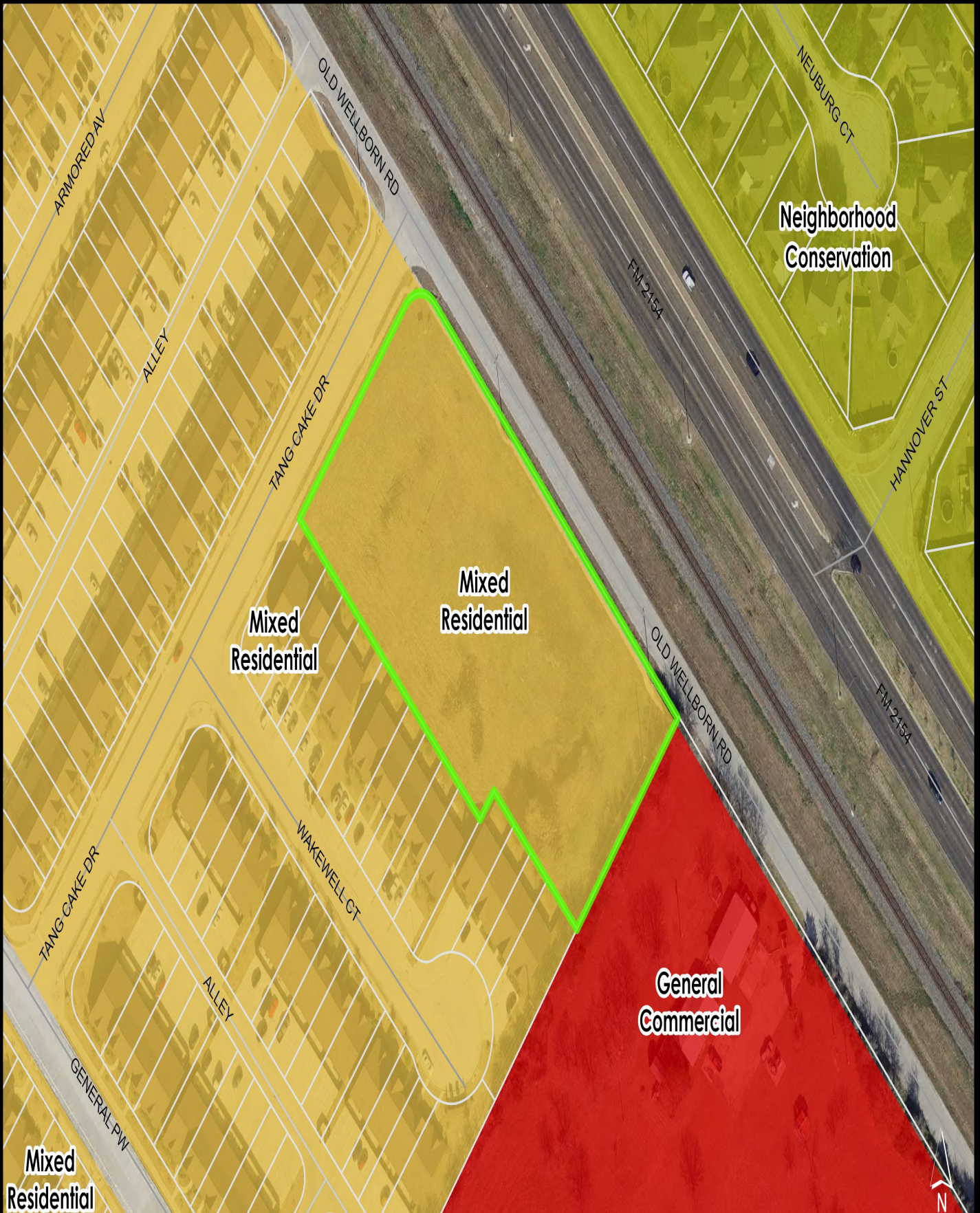
According to the PDD for the Barracks development, this tract is designated for commercial uses. This tract does not have access to attract nor sustain a commercial development. It is not marketable with the current zoning.

List any other reasons to support this zone change.

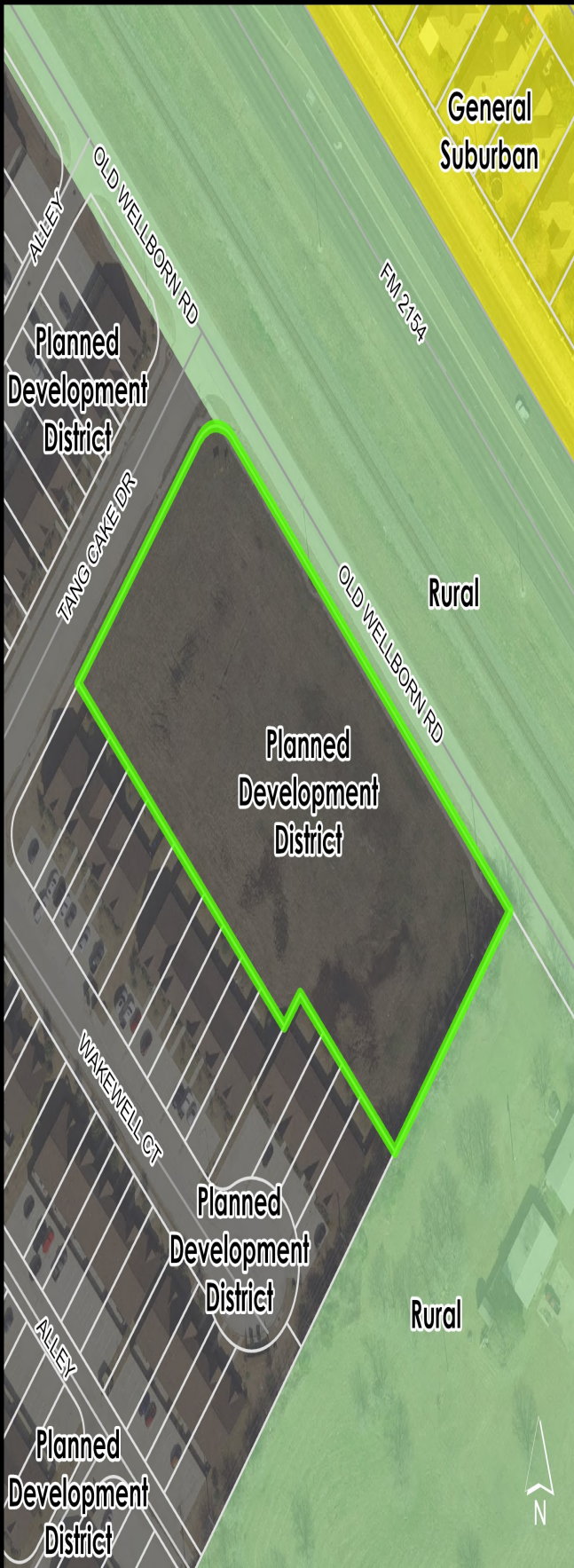
N/A

EXISTING

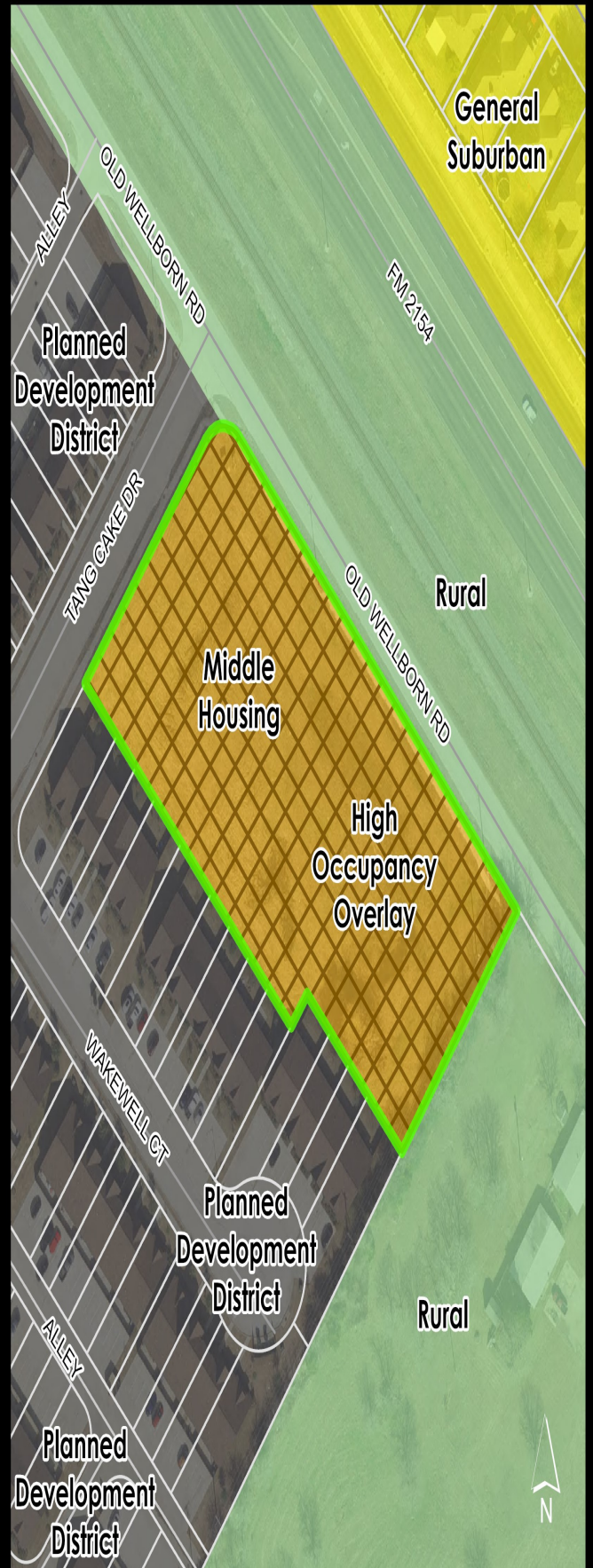
Future Land Use



EXISTING Zoning



PROPOSED Zoning



July 11, 2024

Item No. 8.2.

PY 2024 Annual Action Plan and FY2025 Community Development Budget

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding the Program Year 2024 Annual Action Plan and the FY2025 Community Development budget.

Relationship to Strategic Goals:

Core Services & Infrastructure, Neighborhood Integrity

Recommendation(s): Staff recommends City Council receive the presentation, provide feedback, and hold a public hearing.

Summary: This item includes a presentation of the proposed Program Year (PY) 2024 Annual Action Plan and Fiscal Year (FY) 2025 Community Development Budget. Community development programming for the City of College Station is currently directed by the 2020-2024 Consolidated Plan. The U.S. Department of Housing and Urban Development requires each grantee to develop a Consolidated plan that includes a community needs assessment, housing market analysis, housing conditions analysis, and specific goals and objectives to establish a unified vision for actions that will be carried out for the five years. The City is required to submit a one-year Annual Action Plan describing projects, activities, and budget to be funded with the community development grants received. Annual Action Plan activities must correspond to the 5-Year Consolidated Plan. The total grant funds available next year are \$3,170,063 and includes Community Development Block Grant (CDBG) funds in the amount of \$1,168,073 and HOME Investment Partnership Grant (HOME) funds in the amount of \$1,178,958 along with carry-over funds from previous years and recaptured funds. Program Year 2024 funding will be available on 10/1/2024.

CDBG funds must meet at least one National Objective: (1) benefit low-and moderate-income persons; (2) aid in the elimination of slum and blight influences; and/or (3) meet an urgent community need; and may be used to meet local needs through a wide range of community development activities. HOME funds may only be used for affordable housing activities. The PY 2024 Annual Action Plan, that includes the FY 2025 Community Development budget, must be delivered to HUD no later than August 16, 2023. Therefore, this information is a separate process from the Council's consideration of the overall City budget.

A Public Hearing was held on March 19, 2024 to obtain citizen input concerning goals and objectives, community needs, and fair housing to allow staff to develop the plan. This item includes a presentation of the proposed plan and budget to the City Council and a Public Hearing so that the public has the opportunity to provide comments regarding the proposed plan. Approval of the plan and budget will be considered by the Council at the August 08, 2024 meeting.

A public notice was included in The Eagle and La Voz advertising the meetings and the opportunity to review and comment on the plan and budget. The plan will be made available for review electronically on the Community Development web page and copies of the plan are located at the Community Services office, City Secretary's office, and at the Larry J. Ringer Public Library. A public comment period was available beginning July 1, 2024 through July 31, 2024.

Historically, the City has utilized these funds for a variety of programs and activities, including: affordable housing assistance programs (homeownership assistance, security deposit assistance, rehabilitation, and minor repair); funding for direct services to low-income families through non-profit programs; demolition; infrastructure improvements to parks, facilities, and streets; and grant administration.

Budget & Financial Summary:

Attachments:

1. Attachment 1-FY 2025 Proposed Community Development Budget
2. Attachment 2 - FY 2025 Plan Development Process Summary
3. Attachment 3-FY 2025 Public Service Funding
4. Attachment 4 - FY 2025 Income Limits
5. Attachment 5 - 2020-2024 Community Development Goals
6. Attachment 6- Community Development Project Descriptions
7. Attachment 7- LMI Area map

Attachment 1: FY 2025 Proposed Community Development Budget

Project	CDBG & HOME CARRY-OVER	CDBG & HOME NEW ALLOCATIONS	CDBG & HOME TOTAL PROPOSED
Owner-Occupied Rehabilitation (Minor Repair)	\$36,637	\$88,363	\$125,000
Rehabilitation Administration	\$36,637	\$88,363	\$125,000
Rental Housing Rehabilitation	\$959,279	\$325,456	\$1,284,735
Homebuyer Acquisition/Rehab	\$342,804	\$7,223	\$350,027
Homebuyer Assistance (DAP)	\$130,000	\$70,000	\$200,000
Tenant Based Rental Assistance	\$4,019*	\$22,836	\$26,855
Public Service Agency (See Attachment 3)	\$30,927	\$175,210	\$206,137
Public Facility	\$38,000	\$538,327	\$576,327
Grant Administration	\$0	\$275,982	\$275,982
Total Community Development Budget	\$1,578,303	\$1,591,760	\$3,170,063
*Includes \$1,855 Rehab Loan payment of Periods 7-12			

Attachment 2: Annual Action Plan and Budget Development Process Summary, FY 2025

Event	Date
Community Needs Survey	Feb- Apr. 2024
Pre-proposal workshop for agencies	Jan. 11, 2024
CDBG Public Service Funding proposals due	Feb. 5,2024
Public hearing on Annual Action Plan and Budget	March 19,2024
CDBG Public Service Review Committee Meetings	Feb. 19, 2024 Feb. 26, 2024 March 04,2024 March 11,2024 March 18,2024 March 25,2024 April 01, 2024 April 08, 2024
CDBG Public Service Review Committee Vendor Selection	April 11,2024
Public Notice	June 27, 2024
30-Day Public Comment Period begins	July 01, 2024
First presentation of Consolidated Plan and Budget to City Council / 2 nd public hearing regarding Proposed PY2024 (2025) Annual Action Plan	July 11, 2024
30-Day Public Comment Period ends	July 31, 2024
Request council approval by consent agenda of PY2024 (FY2025) Annual Action Plan, and FY2025 Community Development Budget	Aug. 08, 2024
Due to HUD no later than	Aug. 16, 2024

Attachment 3: FY 2025 CDBG Public Service Funding Summary & Recommendations

Agency	Program	Requested	Recommended Funding	Funded Items	Client #’s/ Cost per Client
Brazos Maternal & Child Health Clinic, Inc.	The Prenatal Clinic	\$40,000	\$39,567	Physician contract with TAMU College of Medicine	360
					\$110
Unlimited Potential	Case Management for Former Foster Youth	\$40,000	\$29,675	Case Manager	55
					\$540
The Salvation Army	Rental Deposit Program	\$25,000	\$24,729	Security Deposits	150
					\$165
Big Brothers Big Sisters of the Brazos Valley	Youth Mentoring	\$40,000	\$39,567	Program Director	240
					\$165
Catholic Charities of Central Texas	Case Manager/Direct Client Assistance	\$100,000	\$41,668	Financial Stability Case Manager/client	300
					\$139
Total			\$175,206		

Attachment 4: 2024 Median Income Limits

2024 MEDIAN INCOME LIMITS City of College Station Community Development

This list supersedes all other lists of prior dates.

Household	60%	80%
1	\$37,140	\$49,500
2	\$42,480	\$56,550
3	\$47,760	\$63,650
4	\$53,040	\$70,700
5	\$57,300	\$76,350
6	\$61,560	\$82,050
7	\$65,760	\$87,700
8	\$70,020	\$93,350

The left column (Household) refers to the number of people in the home. The two columns on the right refer to the maximum combined income allowed per year by HUD guidelines in order to qualify for a Community Development program at 60% and 80% of the Area Median Income (AMI). Effective 6/01/2024

Source: [Income Limits](#) | HUD USER

Attachment 6: PY 2020-2024 Community Development Goals

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Rental Housing - Rehabilitation	2020	2024	Affordable Housing	City-wide	Rental Housing Special Needs	CDBG: \$1,000,000 HOME: \$575,000	Rental units Acquired and Rehabilitated: 20 Household Housing Unit
2	Rental Housing - Construction	2020	2024	Affordable Housing	City-wide	Rental Housing Special Needs	HOME: \$500,000	Rental units constructed: 10 Household Housing Unit
3	Owner Housing - Rehabilitation/Reconstruction	2020	2024	Affordable Housing	City-wide	Owner-Occupied Housing	CDBG: \$500,000 HOME: \$250,000	Homeowner Housing Rehabilitated: 15 Household Housing Unit
4	Owner Housing - Demolition	2020	2024	Affordable Housing Non-Housing Community Development	City-wide	Owner-Occupied Housing Public Facilities & Infrastructure	CDBG: \$125,000	Buildings Demolished: 4 Buildings
5	Homeownership - Down Payment Assistance	2020	2024	Affordable Housing	City-wide	Homeownership	HOME: \$1,000,000	Direct Financial Assistance to Homebuyers: 25 Households Assisted
6	Homeownership - Financial Literacy	2020	2024	Affordable Housing	City-wide	Homeownership		Other: 375 Other
7	Homeownership - Construction	2020	2024	Affordable Housing	City-wide	Owner-Occupied Housing Homeownership	CDBG: \$500,000	Homeowner Housing Added: 4 Household Housing Unit
8	Homelessness - TBRA Security Deposits	2020	2024	Homeless	City-wide	Rental Housing Homelessness Special Needs	HOME: \$175,000	Tenant-based rental assistance / Rapid Rehousing: 375 Households Assisted

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
9	Homelessness - Outreach and Assessment	2020	2024	Homeless Non-Homeless Special Needs Non-Housing Community Development	City-wide	Homelessness Special Needs Public Services	CDBG: \$50,000	Other: 20 Other
10	Homelessness - Services	2020	2024	Homeless	City-wide	Homelessness Public Services	CDBG: \$100,000	Public service activities other than Low/Moderate Income Housing Benefit: 1200 Persons Assisted
11	Special Needs - Services	2020	2024	Non-Homeless Special Needs	City-wide	Special Needs Public Services	CDBG: \$100,000	Public service activities other than Low/Moderate Income Housing Benefit: 1100 Persons Assisted
12	Public Services	2020	2024	Non-Housing Community Development	City-wide	Public Services	CDBG: \$625,000	Public service activities other than Low/Moderate Income Housing Benefit: 10,000 Persons Assisted
13	Public Facilities	2020	2024	Non-Housing Community Development	City-wide	Public Facilities & Infrastructure	CDBG: \$1,500,000	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 10,000 Persons Assisted
14	Economic Development – Business & Job Development	2020	2024	Non-Housing Community Development	City-wide	Economic Development	CDBG: \$500,000	Jobs created/retained: 25 Jobs

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
15	Disaster Response	2020	2024	Rental Housing Special Needs Public Services Economic Development Program Administration and Compliance Homelessness	City-wide	Homelessness Special Needs Public Services	\$500,000	Public service activities other than Low/Moderate Income Housing Benefit: 600 Persons Assisted
16	Slum and Blight – Demolition	2020	2024	Affordable Housing Non-Housing Community Development	City-wide	Public Facilities & Infrastructure / Spot Slum and Blight	\$100,000	

Goal Descriptions

1	Goal Name	Rental Housing - Rehabilitation
	Goal Description	Encourage and facilitate the rehabilitation of rental units.
2	Goal Name	Rental Housing - Construction
	Goal Description	Encourage and facilitate the construction of new affordable rental units through nonprofit or for-profit partners. Additional sources of funds include tax credits through the State of Texas and private funds.
3	Goal Name	Owner Housing - Rehabilitation/Reconstruction
	Goal Description	Encourage and facilitate maintenance of residential units by low- and moderate-income homeowners through minor repair grants (CDBG) and residential rehabilitation or reconstruction loans (HOME).

4	Goal Name	Owner Housing - Demolition
	Goal Description	Encourage and facilitate the removal of dilapidated residential structures and/or address community emergencies.
5	Goal Name	Homeownership - Down Payment Assistance
	Goal Description	Encourage and support programs and projects that provide financial assistance to low- and moderate-income households purchasing existing or new affordable homes.
6	Goal Name	Homeownership - Financial Literacy
	Goal Description	Encourage and support programs and projects that provide education and counseling to lower-income homeowners and prospective homebuyers.
7	Goal Name	Homeownership - Construction
	Goal Description	Encourage and support programs and projects that construct new housing units for low-and moderate-income homebuyers.
8	Goal Name	Homelessness - TBRA Security Deposits
	Goal Description	Preventing homelessness through the provision of assistance for low-income households to secure and sustain safe, decent affordable housing. This is a coordinated effort among affordable housing providers and the City to provide security deposit assistance to eligible households.
9	Goal Name	Homelessness - Outreach and Assessment
	Goal Description	Fostering coordination, collaboration, and increased resources to assess community needs, available services, and service gaps. This information may be used to target and improve service provision.
10	Goal Name	Homelessness - Services
	Goal Description	Assist homeless persons in meeting health and human service needs; provide training and counseling opportunities to help with the transition to self-sufficiency. This goal will be met through public service provision.
11	Goal Name	Special Needs - Services
	Goal Description	Encourage and facilitate organizations that provide social and/or housing services to special needs populations.

12	Goal Name	Public Services
	Goal Description	Encourage and support nonprofit providers of homeless/AIDS patient programs, senior services, services for persons with disabilities, legal services, youth services, transportation services, substance abuse services, services for victims of domestic violence, employment training, crime awareness, fair housing, tenant/landlord counseling, child care services, health services, abused and neglected children services, mental health services, screening for lead based paint/lead hazards, subsistence payments, homebuyer downpayment assistance, rental housing subsidies, security deposits, housing counseling, neighborhood clean-ups, food banks, housing information and referral, housing counseling to support homebuyer downpayment assistance, or other public services to deliver programs to low- and moderate-income families and individuals.
13	Goal Name	Public Facilities
	Goal Description	Rehabilitation and expansion of street infrastructure, sidewalks, other infrastructure, including water and sewer lines and flood drain improvements, or park facilities including green space, neighborhood parks, and recreation facilities in primarily low- to moderate-income areas.
14	Goal Name	Economic Development – Business & Job Development
	Goal Description	Rehabilitate and/or develop new spaces for businesses to better realize job creation or support and expand community-wide training and employment activities targeting low-and moderate-income households.
15	Goal Name	Disaster Response
		Addressing the needs of families and individuals affected by the response or effect of a local, state, or federal disaster declaration, such as a pandemic or natural disaster.
16	Goal Name	Slum and Blight - Demolition
	Goal Description	Encourage and facilitate activities in an urban renewal area or the prevention or elimination of slum and blight on an area or spot basis.

Attachment 5: Community Development Project Descriptions

Owner-Occupied Rehabilitation:

CDBG funds will provide financial assistance to accomplish minor repair of eligible, qualified, owner-occupied dwellings. Staff will assist homeowners in planning, implementing, and managing the process to repair substandard features of their dwellings. This program seeks to impede the acceleration of slum and blighting influences through this activity, as well as preserve and enhance neighborhood quality and integrity.

Homebuyer Assistance:

Down payment and closing cost assistance provided to eligible, qualified homebuyers through deferred no interest loans, which include a shared equity component, with HOME funds.

Community Housing Development Organization:

HOME funds will be made available to an eligible CHDO for the acquisition, development and construction of affordable housing units or the rehabilitation of existing housing units.

Homeowner Acquisition Rehabilitation:

CDBG funds will be used to acquire, rehabilitate, and resale existing residential properties that are either in substandard condition or suitable for conservation, to households with low to moderate incomes. Projects will be selected based on the following priorities: bringing the unit up to City Codes and HUD standards, upgrade systems, energy conservation upgrades, exterior repairs, and other upgrades that will promote economic diversity and stability in our community.

Rental Housing Rehabilitation:

CDBG & HOME funds will be used to acquire and rehabilitate rental properties that will maintain affordable rents for low-income households for a specified period of time following the completion of the project. Projects will be selected based on the following priorities: bringing the unit up to City Codes and HUD standards, upgrade systems, energy conservation upgrades, exterior repairs, and other upgrades that increase marketability. Rehabilitated properties will be conveyed to nonprofit organizations through a competitive RFP process. Funds will also be used for interest payments for the Section 108 loan for the LULAC Oak Hill Apartment rehabilitation.

Tenant Based Rental Assistance:

Using HOME funds, CD staff will administer a security deposit assistance program for low-income individuals and families who will reside in housing units located in a HTC property located in College Station. Current properties include The Haven Apartments, The Heritage at Dartmouth, and Santour Court. Other eligible properties include Terrace Pines Apartments and Villas of Rock Prairie. CD staff will work with the Housing Choice Voucher Program to provide security deposit assistance to qualified voucher holders securing housing in College Station. CD Staff will also work with BVCAP, Twin City Mission, and Elder-Aid, which offers affordable rental units to lower-income households in College Station or assists homeless individual and families to secure housing.

Public Services:

15% of the City's CDBG fund allocation will be used to fund non-profit social service agencies in the community. The CDBG Public Service Review Committee, a Citizen Committee comprised of six members

from the City of College Station, will review program proposals from area nonprofits and recommend funding amounts based on their review. Funds are awarded to nonprofit programs who serve primarily low- and moderate-income residents of College Station and Bryan.

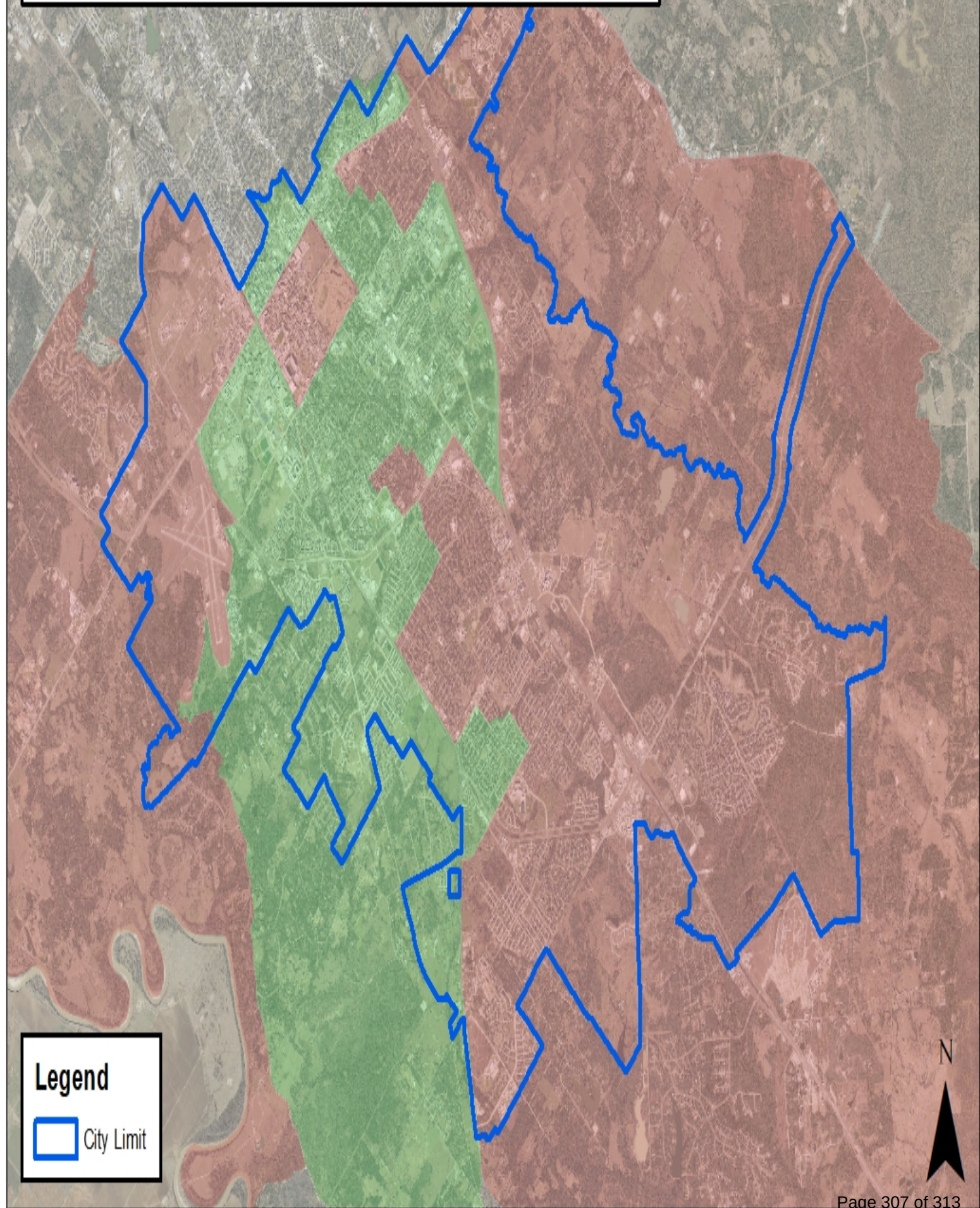
Public Facility:

Funds will be used to design, engineer, construct, or rehabilitate streets, sidewalks, parks, water and wastewater utilities, or other infrastructure improvements in College Station.

Program Administration:

HOME and CDBG funds will be used for management, planning and administration of the City's PY 2024 CDBG, HOME and other eligible grant programs for LMI citizens. Staff will provide capacity building and technical assistance as needed to citizens, builders, developers, and service providers. Funds from the administrative budget are made available to Project Unity to provide planning and reporting support to CD staff and coordinate a variety of community meetings to address the needs of low- and moderate-income residents, available services, and resources among local service providers. The City will utilize administrative funds to provide education to the community regarding Federal Fair Housing laws and affirmatively further fair housing in College Station.

LMI Qualifying Census Block Groups



Legend

 City Limit



July 11, 2024

Item No. 8.3.

Ordinance Removing Parking on Richards Street between Texas Avenue and Crest Street

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," of the Code of Ordinances of the City of College Station, Texas, by prohibiting parking on the northwest side of Richards Street from Texas Avenue to Crest Street and by repealing a prior parking prohibition on the southeast side of Richards Street from Lassie Lane to Crest Street.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

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

Summary: The proposed ordinance eliminates parking on the northwest side of Richards Street between Texas Avenue and Crest Street, while reestablishing parking on the southeast side between Lassie Lane and Crest Street. The overhead communication cable along the northwest side of Richards Street from Texas Avenue to Crest Street has multiple service drops that reduce clearance on the southeast side. Removing parking on the northwest side will facilitate the larger city vehicles and services, such as Solid Waste and Fire Services. Additionally, repealing the parking prohibition on the southeast side from Lassie Lane to Crest Street will add available parking. A public meeting was held at City Hall on May 14, 2024. Three residents attended from the nearby area. Negative feedback was not received concerning the removal of parking along the northwest side of Richards Street from Texas Avenue to Crest Street.

Budget & Financial Summary: The installation of the "NO PARKING" signs is accounted for in the Public Works Traffic Signs and Markings operations budget.

Attachments:

1. Ordinance - Richards St No Parking - Texas Ave to Crest St
2. EXHIBIT - Richards St No Parking - Texas Ave to Crest St

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 38, “TRAFFIC AND VEHICLES,” ARTICLE VI “TRAFFIC SCHEDULES,” SECTION 38-1014 “TRAFFIC SCHEDULE XIV, NO PARKING HERE TO CORNER AND NO PARKING AT ANY TIME,” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY PROHIBITING PARKING ON THE NORTHWEST SIDE OF RICHARDS STREET FROM TEXAS AVENUE TO CREST STREET AND BY REPEALING A PRIOR PARKING PROHIBITION ON THE SOUTHEAST SIDE OF RICHARDS STREET FROM LASSIE LANE TO CREST STREET, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

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

including the following entry:

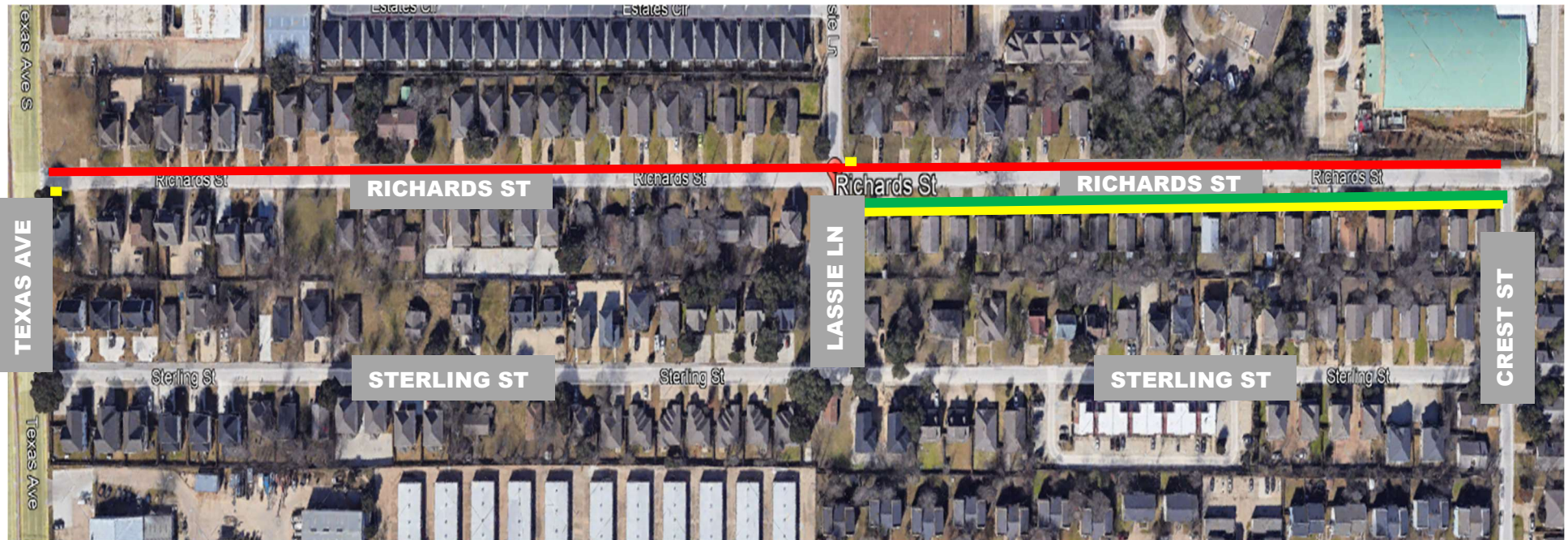
<i>Traveling on</i>	<i>Between</i>	<i>Travel Direction</i>	
Richards Street	Texas Avenue and Crest Street	Southwest	No parking any time

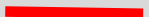
; and

removing the following entry:

<i>Traveling on</i>	<i>Between</i>	<i>Travel Direction</i>	
Richards Street	Crest Street and Lassie Lane	East	No parking any time

**RICHARDS ST EXHIBIT
CITY COUNCIL MEETING
JULY 11, 2024**



	PROPOSED NO PARKING
	CURRENT NO PARKING
	PROPOSED AREA TO REMOVE CURRENT NO PARKING

**RICHARDS ST PARKING PROHIBITION
FROM TEXAS AVE TO CREST ST

AND

RICHARDS ST NO PARKING REMOVAL
FROM LASSIE LN TO CREST ST**

July 11, 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