



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: 287 987 474 175 | Passcode: gZw5cS

Phone: 469-480-7460 | Phone Conference: 168 564 318#

September 12, 2024

3:00 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. The City of College Station v. The Public Utility Commission of Texas, Cause No. D-1-GN-24-005680 in the 200th District Court, Travis County, Texas.
- d. Cynthia Hopkins & Geoffrey Hopkins v. City of College Station, Cause No. 23-002880-CV-85 in the 85th District Court, Brazos County Texas.
- e. Legal advice regarding an interlocal agreement with the City of Bryan for sewer service.
- f. Legal advice regarding an ordinance amending the Comprehensive Plan by amending the Thoroughfare Plan and Bicycle, Pedestrian, and Greenways Master Plan to remove the future extension of Balcones Drive.
- g. Legal advice related to the City's extraterritorial jurisdiction and SB 2038.

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

Possible action. The City Council may deliberate the purchase, exchange, lease or value of real

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

- a. Approximately 28 acres of land generally located at Midtown Drive and Corporate Pkwy in the Midtown Business Park.
- b. Property generally located in the area of FM 60, Boyett Street, Church Ave. and College Main Street.

2.3. 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. City Attorney
- c. City Judge
- d. City Secretary
- e. City Auditor
- f. Council Self-Evaluation

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

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

Speaker Protocol

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

5. Presentation - Proclamations, Awards, and Recognitions.

5.1. Presentation proclaiming September 12, 2024, as Puppy Mill Awareness Day.

Sponsors: Tanya Smith

Attachments: 1. 24 Puppy Mill Awareness Day

5.2. Presentation proclaiming September 17th through 23rd as Constitution Week.

Sponsors: Tanya Smith

Attachments: 1. 24 Constitution Week

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:

- August 22, 2024 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM082224 DRAFT Minutes

7.2. Presentation, discussion, and possible action regarding a resolution authorizing the City Manager to approve and execute all insurance policy documents and to approve policy related expenditures provided that such expenditures are appropriated from available funds approved from the annual budget and consistent with state and local laws for Fiscal Year 2025 in an amount not to exceed \$1,349,924.04.

Sponsors: Alison Pond

Attachments: 1. RESOLUTION_Risk Program

7.3. Presentation, discussion, and possible action on a construction contract with Aria Signs and Design for City Gateway Sign 3 (West) for \$270,000, plus the City's contingency of \$21,600 for a total appropriation of \$291,600, and a Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Sponsors: Jennifer Cain

Attachments: 1. City Gateway Sign 3 Project Location Map
2. City Gateway Sign 3 DRR
3. City Gateway Sign 3 Vendor Signed Contract

7.4. Presentation, discussion, and possible action on a Construction Contract with Dudley Construction, LLC. in the amount of \$196,000 for construction services for the American Pavilion Renovation at Veterans Park Project, plus the City's contingency in the amount of \$34,000 for a total appropriation of \$230,000. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Sponsors: Jennifer Cain

Attachments: 1. American Pavilion at VPAC Rehab Vendor Contract
2. American Pavilion at VPAC Location Map

7.5. Presentation, discussion, and possible action on the second reading of a franchise agreement ordinance with 2906 Holdings, LLC (dba Waste Falcon) for the collection of recyclables from commercial businesses and multi-family locations.

Sponsors: Emily Fisher

Attachments: 1. 24300572 2906 Holdings LLC Franchise Agreement Ordinance

7.6. Presentation, discussion, and possible action regarding a contract for marketing and advertising services with The Zimmerman Agency, LLC in an amount not to exceed \$625,000.

Sponsors: Brian Piscacek

Attachments: 1. 24300597 Zimmerman Agency CRC 82624

- 7.7. Presentation, discussion, and possible action on an ordinance amending Section 3 of Ordinance 2024-4530 ordering a General Election to be held November 5, 2024 for the purpose of electing City Councilmember Place 3, City Councilmember Place 4, City Councilmember Place 5 and City Councilmember Place 6, to the voters, by amending a vote center location as prescribed by Brazos County. (Presentación, discusión y posible acción sobre una ordenanza que enmienda la seccion 3 de la Ordenanza 2024-4530 que ordena una Eleccion General a celebrarse el 5 de noviembre de 2024 con el proposito de elegir un miembro de consejo puesto numero 3, miembro de consejo puesto numero 4, miembro de consejo puesto numero 5, y miembro de consejo puesto numero 6, a los votantes, enmienda la ubicacion de un centro de votacion segun lo prescrito por el Condado de Brazos.)

Sponsors: Tanya Smith

Attachments: 1. Amended Nov 2024 Election Order (English) 0903
2. Enmendado Noviembre 2024 orden electoral (española) 0903

8. Workshop Agenda.

- 8.1. Presentation, discussion, and possible action regarding a partnership agreement for services from Plug and Play.

Sponsors: Michael Ostrowski

Attachments: None

- 8.2. Presentation, discussion, and possible action regarding an update on library services.

Sponsors: Ross Brady

Attachments: None

- 8.3. Presentation, discussion, and possible action regarding a summary of the June Special Event Paid Parking Pilot Program.

Sponsors: Bryan Woods

Attachments: None

9. Regular Agenda.

- 9.1. 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 boundaries from GS General Suburban or PDD Planned Development District to MH Middle Housing and HOO High Occupancy Overlay or MH Middle Housing and HOO High Occupancy Overlay and NAP Natural Areas Protected for approximately 18.66 acres being all of that certain tract or parcel of land lying and being situated in the J.E. Scott league, abstract no. 50 and Crawford Burnett league, abstract no. 7, in College Station, Brazos County, Texas, including portions of the F.S. Kapchinski Subdivision as described by a plat reconstructed from deed records recorded in volume Y, page 618-A of the Mechanics & Materialman's Lien Records of Brazos County, Texas, and subsequent replats of portions of it, generally for the properties located along Park Place and Boardwalk Court.

Sponsors: Jeff Howell

Attachments: 1. Area K Rezoning Ordinance
2. Aerial and Small Area Map
3. Background Information
4. Future Land Use Map
5. Rezoning Map

- 9.2. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban or D Duplex to MH Middle Housing and HOO High Occupancy Overlay for approximately 1.10 acres being all of that certain tract or parcel of land lying and being situated in the Richard Carter league, abstract no. 8, in College Station, Brazos County, Texas, being a portion of Lot 12 of the D.A. Smith Subdivision as described by plat recorded in volume 49, page 106 of the Deed Records of Brazos County, Texas, and the northeast half (approximate) of the adjoining right-of-way of Turner Street, generally for the properties located along Gilbert Street and Turner Street.

Sponsors: Jeff Howell

Attachments:

1. Area SS Rezoning Ordinance
2. Aerial and Small Area Map
3. Background Information
4. Future Land Use Map
5. Rezoning Map

- 9.3. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan by amending the Thoroughfare Plan and Bicycle, Pedestrian, and Greenways Master Plan to remove the future extension of Balcones Drive, a Minor Collector, between the Jones Crossing Development and Welsh Avenue including associated future bike lanes and sidewalks.

Sponsors: Jason Schubert

Attachments:

1. Ordinance
2. Amendment Exhibit
3. Applicants Supporting Information
4. Letter of Support - First Baptist Church of College Station

10. Council Calendar - Council May Discuss Upcoming Events.

11. Items of Community Interest.

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

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

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

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

recitation of existing policy in response to the request or inquiry. Any deliberation of or decision about the subject of a request will be limited to a proposal to place the subject on the agenda for a subsequent meeting.

14. Adjourn.

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

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on, September 6, 2024 at 5:00 p.m.



City Secretary

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

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

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

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

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

September 12, 2024
Item No. 5.1.
Puppy Mill Awareness Day

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming September 12, 2024, as Puppy Mill Awareness Day.

Relationship to Strategic Goals:

Recommendation(s): Receive the proclamation.

Summary:

Budget & Financial Summary:

Attachments:

1. 24 Puppy Mill Awareness Day



Proclamation

WHEREAS: the City of College Station is one of 18 cities in the State of Texas to pass a Humane Retail Pet Store Ordinance which makes it illegal for Pet Stores in College to sell puppies and kittens, still puppy mill breeders exist locally and backyards breeders with puppies living under distressing conditions and causing them to experience severe stress, health issues, and a high risk of disease transmission; and

WHEREAS: the citizens of College Station must be informed about the grim realities of puppy mills and the impact of supporting such practices on animal welfare and public health, and must be encouraged to adopt pets from shelters and rescue organizations instead; and

WHEREAS: supporting local animal shelters, rescue partners and the City of College Station's partnership with Aggieland Humane Society, is essential in reducing animal homelessness and overpopulation, as well as decreasing the frequency of euthanasia in overcrowded shelters; and

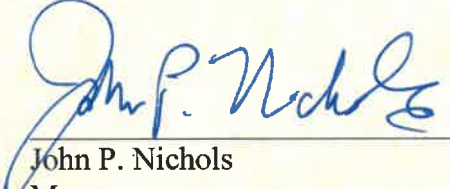
WHEREAS: by adopting pets from local shelters and rescue partners, citizens not only save lives but also contribute to the well-being of the community by reducing the demand for unethically sourced animals and promoting sustainable and humane practices in pet ownership.

NOW, THEREFORE, I, John P. Nichols, as Mayor of the City of College Station, Texas, and on behalf of the entire College Station City Council, do hereby proclaim September 12, 2024, as

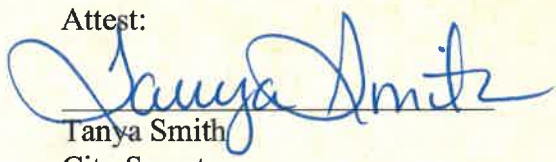
Puppy Mill Awareness Day

and we urge all citizens of the City of College Station to support and celebrate local shelters and other local animal rescues, by adopting pets, volunteering, and advocating for the humane treatment of all animals.

IN WITNESS THEREOF, I have hereunto set my hand and caused the SEAL of the City of College Station, Texas to be affixed this 12th day of September 2024.


John P. Nichols
Mayor

Attest:


Tanya Smith
City Secretary



September 12, 2024

Item No. 5.2.

Proclaiming September 17th through 23rd as Constitution Week

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming September 17th through 23rd as Constitution Week.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Receive the proclamation.

Summary: The United States Constitution, America's most important document, stands as a testament to the tenacity of Americans throughout history to maintain their liberties, freedoms and inalienable rights. And, Constitution Week is celebrated annually during the week of September 17-23 to commemorate its history, importance, and bring attention to how it still serves today.

This celebration of the Constitution was started by the Daughters of the American Revolution. In 1955, DAR petitioned Congress to set aside September 17-23 annually to be dedicated for the observance of Constitution Week. The resolution was later adopted by the U.S. Congress and signed into public law on August 2, 1956, by President Dwight D. Eisenhower.

The DAR has also erected a structure that is built in tribute to the Constitution of the United States. DAR Constitution Hall, which is a performing arts center, opened in 1929.

The aims of the Constitution Week celebration are to:

- Emphasize citizens' responsibilities for protecting and defending the Constitution.
- Inform people that the Constitution is the basis for America's great heritage and the foundation for our way of life.
- Encourage the study of the historical events which led to the framing of the Constitution in September 1787.

Budget & Financial Summary: None.

Attachments:

1. 24 Constitution Week



Proclamation

Whereas: September 17, 2024, marks the two hundred and thirty-seventh anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

Whereas: It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebrations which will commemorate the occasion; and

Whereas: Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week,

NOW, THEREFORE I, John P. Nichols, by virtue of the authority vested in me as Mayor of College Station, Texas do hereby proclaim the week of September 17 through 23 as

“CONSTITUTION WEEK”

and ask our citizens to reaffirm the ideals of the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of College Station, Texas to be affixed this 12th day of September of the year of our Lord two thousand twenty-four.

John P. Nichols
Mayor

Attest:

Tanya Smith
City Secretary

September 12, 2024
Item No. 7.1.
August 22nd Council Meeting

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action of minutes for:
• August 22, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM082224 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
AUGUST 22, 2024

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

John Nichols, Mayor

Council:

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

City Staff:

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

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

With a quorum present, the meeting of the College Station City Council was called to order by Mayor Nichols via In-Person and Teleconference at 4:00 p.m. on August 22, 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 August 22, 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.

- Legal advice related to an interlocal agreement with the City of Bryan for sewer service.
- Legal advice related to the 2014 and 2022 Economic Development Agreements with Fujifilm
- Diosynth.
- g. Legal advice related to College Station's water permits issued or pending from the Brazos Valley Groundwater Conservation District and export permits pending or issued from the Brazos Valley Groundwater Conservation District.

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

- City Manager
- Council Self-Evaluation

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

Executive Session recessed at 6:22 p.m. No action was taken.

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

5. Hear Visitors Comments.

No one signed up to speak.

6. CONSENT ITEMS

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

Items 6.2, 6.6, 6.9, and 6.10 were pulled from Consent for clarification.

(6.2) Mary Ellen Leonard, Finance Director, explained that every fiscal year there are several expenditures incorporated in the approved budget that are not subject to competitive bidding or proposals. These expenditures are for sole source purchases; expenditures for personal, professional or planning services; captive replacement parts for equipment, and other exemptions more fully described in LGC 252.022 and other expenditures for interlocal contracts or fees mandated by state law. Mrs. Leonard stated that the City of College Station is paying actuals with the whole number being a limit to the authorization for the City Manager.

(6.6) Michael Ostrowski, Chief Development Officer, explained that BV Southern Pointe Development, Inc., has filed a petition requesting consent to annexation of 19.44 acres of land in Rock Prairie Management District No. 2. Pursuant to Sect. 3909.110 and 3909.111 Texas Special District Local Laws Code and Subchapter J, Chapter 49 Texas Water Code, the District must obtain City approval for the annexation of land and subsequent issuance of bond indebtedness; therefore, the District has come to the City for consent.

(6.9) Ross Brady, Chief of Staff, explained the City, along with 181 other Texas cities served by Atmos, is a member of the Atmos Cities Steering Committee (ACSC). This committee reviews changes made to the rates Atmos charges its customers. In April 2024, Atmos proposed an increase to

its rates which, across their entire service area, would generate an additional \$196 million. The ACSC objected to this amount but acknowledged some increase was necessary for the company to cover costs. After negotiations, the two entities agreed to a system-wide increase amounting to an additional \$164 million. The impact to an average residential customer in College Station will be an additional \$5.52 per month, or 6.84%. The increase for an average commercial customer will be \$13.39 per month, or 3.44%.

(6.10) Kelsey Heiden, Parks and Recreation Director, explained that this emergency repair contract only covers the unexpected damage a pack of feral hogs caused at Veterans Park. The incident significantly impacted Fields 4, 5, 6, 9, and 10, rendering them unusable. Parks is working to address striping and other usability issues.

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

- **August 8, 2024 Council Meeting**

6.2. Presentation, discussion, and possible action to authorize expenditure of funds for Fiscal Year 2025 for items exempt from competitive bidding as described more fully in Texas Local Government Code, Chapter 252.022 and other expenditures for interlocal contracts or fees mandated by state law that are greater than \$100,000; and to authorize the City Manager to approve contracts and expenditures that are on the exemption list.

6.3. Presentation, discussion, and possible action on a contract for Professional Auditing Services with Weaver and Tidwell, LLP. for an amount not to exceed \$135,960.

6.4. Presentation, discussion, and possible action regarding Ordinance No. 2024-4537 amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1007 "Traffic Schedule VII, one-way streets and alleyways," of the Code of Ordinances of the City of College Station, Texas, to designate Cathedral Pines Drive as a one-way street.

6.5. Presentation, discussion, and possible action on the first reading of a franchise agreement ordinance with 2906 Holdings, LLC (dba Waste Falcon) for the collection of recyclables from commercial businesses and multi-family locations.

6.6. Presentation, discussion, and possible action regarding Resolution No. 08-22-24-6.6 granting consent to the Rock Prairie Management District No. 2 to annex approximately 19.44 acres of land into the district.

6.7. Presentation, discussion, and possible action regarding a general services contract with Buyers Barricades Houston, LLC in a not to exceed amount of \$128,800 for the 2024 TAMU Football Post Game Day Traffic Control.

6.8. Presentation, discussion, and possible action regarding an Interlocal Agreement between the City of College Station and Texas A&M University to equally share in the cost to deploy traffic control devices according to the Texas A&M Football Post Game Traffic Control Plan.

6.9. Presentation, discussion, and possible action on the Atmos Mid-Tex 2024 Rate Review Mechanism (RRM) Ordinance No. 2024-4538.

6.10. Presentation, discussion, and possible action to ratify a general services contract with Paragon Sports Constructors, LLC for emergency repairs to the fields at Veterans Park and Athletic Complex for an amount not to exceed \$148,395.90.

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

7. WORKSHOP ITEMS

7.1. Presentation, discussion, and possible action on a presentation and update on the Recreation Center Market Analysis and Survey.

Jennifer Cain, Capital Projects Director, presented a brief update on the Recreation Center Market Analysis and then turned it over to Stephen Springs with Brinkley, Sargent, Wiginton and Lisa Paradis with BerryDunn to provide an overview on the Survey.

Lisa Paradis, BerryDunn, gave a summary on the Survey Findings.

The College Station community needs more indoor recreation opportunities.

Top needs related to indoor spaces:

- Multi-purpose/family oriented
- Walking track
- Swimming pools
- City-operated

College Station offers fewer facilities than benchmarked communities.

- College Station's Parks and Recreation Department offers very limited indoor recreational opportunities.
- As the community grows, City-provided indoor facilities could expand service offerings to meet increased demand.

Texas A&M recreation facilities are student-focused and are not widely used by public.

- Annual Visits: Estimated 1.2 million visits to the Texas A&M Rec Sports facility annually.
- Target Demographic: A significant portion of the target demographic is well-served.
- Membership Usage: Does not offer non-affiliate memberships; not widely used by the general public.

Next Steps

- Option 1: Proceed with Phase 2 of study, which is to start space program options and rough costing.
- Option 2: Pause or stop the process.

Majority of Council directed staff to proceed with Phase 2 of study, which defines space and programing options along with rough costing.

8. REGULAR ITEMS

8.1. Public Hearing, presentation, possible action, and discussion on the City of College Station 2025 advertised ad valorem tax rate of \$0.513086 per \$100 valuation resulting in an increase in tax revenues.

Mary Ellen Leonard, Finance Director, stated that this public hearing is on a rate of \$0.513086 per \$100 assessed valuation. This is the same tax rate as the 2024 tax rate. The notice of this public hearing was placed in the Eagle, as well as on the City's internet site, and the City's television channel. The City Council will vote on the tax rate at this August 22nd meeting at 6:00 pm. The public hearing tax rate of \$0.513086 per \$100 assessed valuation will generate \$73.1M in taxes. The property taxes are used to fund the general debt service of the City as well as a portion of the operations and maintenance costs of the General Fund.

	Proposed Rates @ Workshop		Tax Office Certified Rates
Proposed Debt Service Fund	\$21.1442		\$21.1441
Proposed General Fund	\$30.1644		\$30.1645
Total Proposed Tax Rate	\$51.3086		\$51.3086
No-New Revenue Rate	\$50.0202		\$49.9960
Voter-Approval Rate	\$52.4914		\$52.1442

At approximately 7:33 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 7:33 p.m.

8.2. Presentation, discussion, and possible action on Ordinance No. 2024-4539 adopting the City of College Station 2024-2025 Budget; and presentation, possible action and discussion ratifying the property tax revenue increase reflected in the budget.

Mary Ellen Leonard, Finance Director, stated that there are two actions requested of Council in this agenda item.

First is the consideration of the 2024-2025 proposed budget. The City Council received the proposed budget on July 8, 2024 and held budget workshops on July 15th and 16th. The City Council held a public hearing on the proposed budget on July 25th. The City Council will need to include any proposed revisions to the budget in the motion to adopt the budget.

FY25 NET BUDGET SUMMARY			
	FY25 Proposed Net Budget	Changes	FY25 Approved Net Budget
Governmental Funds	\$151,754,058	\$909,230	\$152,663,288
Enterprise Funds	186,207,217		186,207,217
Special Revenue Funds	28,198,756	\$29,781	28,228,537
Subtotal O&M	\$366,160,031	\$939,011	\$367,099,042
Net Capital	\$174,351,642		\$174,351,642
Total Net Budget	\$540,511,673	\$939,011	\$541,450,684

The second action is ratification of the property tax revenue increase reflected in the budget. This action is required due to recently enacted legislation. House Bill 3195 amends the local government code to say the following: "(c) Adoption of a budget that will require raising more revenue from property taxes than in the previous year requires a separate vote of the governing body to ratify the property tax increase reflected in the budget. A vote under this subsection is in addition to and separate from the vote to adopt the budget or a vote to set the tax rate as required by Chapter 26, Tax Code, or other law."

The proposed budget will result in additional property tax revenues over last year of approximately \$3M. The proposed tax rate is \$0.513086 per \$100 assessed valuation is the same rate as in FY24. The following is an overall summary of the proposed budget with workshop revisions. Subtotal Operation and Maintenance: \$367,099,042; Net Capital: \$174,351,642; Total Net Budget: \$541,450,684.

MOTION: Upon a motion made by Councilmember Wright and a second by Mayor Nichols, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4539, the proposed FY25 budget for the City of College Station including proposed revisions of an increase of \$939,011 for a total proposed budget with revisions of \$541,450,684.” The motion carried unanimously.

MOTION: Upon a motion made by Mayor Nichols and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to ratify the property tax increase reflected in the FY25 budget.” The motion carried unanimously.

8.3. Presentation, discussion, and possible action on approval of Ordinance No. 2024-4540 adopting the City of College Station 2024-2025 ad valorem tax rate of \$0.513086 per \$100 assessed valuation, the debt service portion being \$0.211441 per \$100 assessed valuation and the operations and maintenance portion being \$0.301645 per \$100 assessed valuation.

Mary Ellen Leonard, Finance Director, stated that on August 8th, the City Council discussed the tax rate and called a public hearing on a tax rate of \$0.513086. This is the same tax rate as 2024. The tax rate must be adopted as two separate components – one for Operations and Maintenance, \$0.301645, and one for Debt Service, \$0.211441, for a Total Tax Rate of \$0.513086.

This is the tax rate that was used to prepare the proposed budget. If the City Council adopts a tax rate lower than the proposed rate, the budget will have to be amended and reduced.

Current Tax Rate: \$0.513086
No New Revenue Tax Rate: \$0.499960
Voter Approved Tax Rate: \$0.521442
Proposed Tax Rate: \$0.513086

	Proposed Rates @ Workshop		Tax Office Certified Rates
Proposed Debt Service Fund	\$.211442		\$.211441
Proposed General Fund	\$.301644		\$.301645
Total Proposed Tax Rate	\$.513086		\$.513086
No-New Revenue Rate	\$.500202		\$.499960
Voter-Approval Rate	\$.524914		\$.521442

MOTION: Upon a motion made by Councilmember Smith and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4540, that the property tax rate be increased by the adoption of a tax rate of 51.3086 cents per \$100 assessed valuation, which is effectively a 4.73 percent increase in the tax rate. Also move to approve the Maintenance and Operations rate be 30.1645 cents per \$100 assessed valuation; and the Debt Service rate be 21.1441 cents per \$100 assessed valuation. The motion carried unanimously.

8.4. Public Hearing, presentation, possible action, and discussion on Resolution No. 08-22-24-8.4 adopting fees, rates, and charges as provided by Chapter 2 “Administration”, Article V “Finance” Division 2 “Fees, Rates and Charges” of the Code of Ordinances, City of College Station, Texas.

Mary Ellen Leonard, Finance Director, stated that all fees, rates and charges in the Code of Ordinances are adopted by resolution of the City Council as provided in Sec. 2-117 of the Code. Each year with the budget the Council adopts a new resolution to keep the fees, rates, and charges current.

At approximately 8:15 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 8:15 p.m.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, with Councilmember Yancy abstaining, to approve Resolution No. 08-22-24-8.4, for the adoption of the FY25 Fee Resolution with the following changes. The motion carried unanimously.

8.5. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4541 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 or PDD Planned Development District to GS General Suburban and ROO Restricted Occupancy Overlay or PDD Planned Development District and ROO Restricted Occupancy Overlay, on approximately 32.26 acres being 130 lots and common area within Woodcreek Section One Subdivision, generally located between Lake Forest Court S and Stonebrook Drive, excluding Woodcreek Drive from State Highway 6 S to Lake Forest Court S.

Jeff Howell, Planning and Development, stated that this request is to add the ROO, which is a single-family overlay zoning district, to the existing base zonings within the Woodcreek Section One subdivision boundaries. The ROO is intended to provide subdivision-specific occupancy regulations – not to exceed two unrelated persons per single-family dwelling or accessory living quarter. The ROO Petition Committee, comprised of Woodcreek Section One property owners, has met all requirements of the ROO application process. The Petition Committee submitted the application materials including the ROO petition for the subdivision. When submitting an application, the fifty (50) percent plus one (1) petition signature threshold of property owners in support of the overlay must be met. City staff were able to verify that the petition met the signature threshold in support of the requested ROO.

The Planning and Zoning Commission heard this item at their August 1, 2024 meeting and recommended unanimous approval of the request.

At approximately 8:30 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 8:30 p.m.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Yancy, the City Council voted five (5) for and one (1) opposed, with Councilmember Cunha voting against and the recusal of Councilmember Maloney, to adopt Ordinance No. 2024-4541, 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 or PDD Planned Development District to GS General Suburban and ROO Restricted Occupancy Overlay or PDD Planned Development District and ROO Restricted Occupancy Overlay, on approximately 32.26 acres being 130 lots and common area within Woodcreek Section One Subdivision, generally located between Lake Forest Court S and Stonebrook Drive, excluding Woodcreek Drive from State Highway 6 S to Lake Forest Court S. The motion carried.

8.6. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4542 amending Appendix A, Unified Development Ordinance, Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban to MH Middle Housing and HOO High Occupancy Overlay for approximately 28 acres being all of that certain tract or parcel of land lying and being situated in the Morgan Rector league, abstract no. 46, in College Station, Brazos County, Texas, including portions of the Richards Subdivision as described by plat recorded in volume 137, page 25 of the Deed Records of Brazos County, Texas, and subsequent replats of portions of it, and generally being the majority of the properties which front on Richards Street, Crest Street and Sterling Street.

Regular Items 8.6 and 8.7 were opened and presented together.

8.7. Public Hearing, presentation, discussion, and possible action regarding Ordinance 2024-4543 amending Appendix A, Unified Development Ordinance, Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban to MH Middle Housing and HOO High Occupancy Overlay for approximately 28 acres being all of that certain tract or parcel of land lying and being situated in the Morgan Rector league, abstract no. 46, in College Station, Brazos County, Texas, including portions of the Richards Subdivision as described by plat recorded in volume 137, page 25 of the Deed Records of Brazos County, Texas, and subsequent replats of portions of it, and generally being the majority of the properties which front on Richards Street, Crest Street and Sterling Street.

Jeff Howell, Planning and Development, stated that as part of the second phase of the city-initiated rezonings to middle housing, this area was identified as appropriate for MH Middle Housing and HOO High Occupancy Overlay but needed to be surveyed prior to moving forward. This is due to the area not being subdivided and/or the need to be resurveyed. This area was also previously considered and determined to be appropriate for rezoning to MH Middle Housing by a working group of neighborhood and development community representatives, the Planning and Zoning Commission, and the City Council. Public engagement sessions were held earlier this year in February and March to receive additional feedback prior to moving forward with the survey work necessary. Mr. Schrum explained that after receiving the completed survey and considering the rezoning criteria, City staff has determined that this area is appropriate for rezoning to MH Middle Housing and HOO High

Occupancy Overlay and are recommending approval. The HOO High Occupancy Overlay would allow the shared housing use as long as the property met the requirements for that use.

The Planning and Zoning Commission heard the 8.6 Item at their August 1, 2024 meeting, where they voted unanimously in recommendation of approval of this request conditioned on the construction of an approved access drive or turnaround, that meets Fire Department standards, be provided within 100 feet of the terminus of Avenue A. This can also be achieved by the extension of Avenue A to Eisenhower Street, Nimitz Street, or Ash Street. These conditions are necessary to ensure adequate Fire and Sanitation access with the potential increase in density allowed by the proposed zoning. The Planning and Zoning Commission also heard the 8.7 Item at their August 1, 2024 meeting and voted unanimously to recommend support. City staff also recommends approval of both items.

At approximately 8:48 p.m., Mayor Nichols opened both 8.6 and 8.7 Public Hearings.

There being no further comments, both Public Hearings were closed at 8:48 p.m.

(8.6) MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4542, amending Appendix A, Unified Development Ordinance, Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban to MH Middle Housing and HOO High Occupancy Overlay for approximately 28 acres being all of that certain tract or parcel of land lying and being situated in the Morgan Rector league, abstract no. 46, in College Station, Brazos County, Texas, including portions of the Richards Subdivision as described by plat recorded in volume 137, page 25 of the Deed Records of Brazos County, Texas, and subsequent replats of portions of it, and generally being the majority of the properties which front on Richards Street, Crest Street and Sterling Street. The motion carried unanimously.

(8.7) MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Smith, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4543, amending Appendix A, Unified Development Ordinance, Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban to MH Middle Housing and HOO High Occupancy Overlay for approximately 28 acres being all of that certain tract or parcel of land lying and being situated in the Morgan Rector league, abstract no. 46, in College Station, Brazos County, Texas, including portions of the Richards Subdivision as described by plat recorded in volume 137, page 25 of the Deed Records of Brazos County, Texas, and subsequent replats of portions of it, and generally being the majority of the properties which front on Richards Street, Crest Street and Sterling Street. The motion carried unanimously.

8.8. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4544 vacating and abandoning a 0.034-acre portion of Public Utility Easement located in Lot 1R-4, Block 7 of the Midtown Reserve subdivision Phase 106, according to the plat recorded in Volume 19243, Page 165, of the Official Public Records of Brazos County, Texas.

Anthony Armstrong, Planning and Development Director, stated that the public utility easement abandonment is being requested by the applicant because of a desired development in this area. This originally platted easement is no longer needed in this location because the lot configuration is changing. Furthermore, there are no existing utilities here, and all utilities providers have approved this request.

At approximately 9:01 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 9:02 p.m.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4544, vacating and abandoning a 0.034-acre portion of Public Utility Easement located in Lot 1R-4, Block 7 of the Midtown Reserve subdivision Phase 106, according to the plat recorded in Volume 19243, Page 165, of the Official Public Records of Brazos County, Texas. The motion carried unanimously.

8.9. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4545 vacating and abandoning a 0.103-acre portion of right-of-way located on the southbound side of Midtown Drive, East of Durham Loop in the Midtown Reserve Subdivision Phase 601, according to the deed recorded in Volume 14147, Page 149, of the Official Public Records of Brazos County, Texas.

Anthony Armstrong, Planning and Development Director, stated that the right-of-way abandonment is being requested by the applicant as they desire to develop closer to the ROW. The originally dedicated right-of-way is no longer needed for future expansion of Midtown Drive. The 0.103-acre portion of right-of-way is undeveloped and is not connected to any other right-of-way. This portion was also deeded to the city, at no cost, by the developer as part of the City's CIP project that built Midtown Drive through this area.

At approximately 9:03 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 9:03 p.m.

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. 2024-4545, vacating and abandoning a 0.103-acre portion of right-of-way located on the southbound side of Midtown Drive, East of Durham Loop in the Midtown Reserve Subdivision Phase 601, according to the deed recorded in Volume 14147, Page 149, of the Official Public Records of Brazos County, Texas. The motion carried unanimously.

8.10. Presentation, discussion, and possible action on a construction contract with C. A. Walker Construction, in the amount of \$6,037,073 for the construction of two new restroom and concession buildings at Bachmann Park, plus the City's contingency in the amount of \$750,000 for a total appropriation of \$6,787,073. 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 proposed construction project includes the demolition and reconstruction of the restroom and concession buildings located near the Little League and Senior League fields. This project is part of the approved 2022 Bond Program and is the first building located within the four (4) Little League fields. The new facility will include a new concession area, an increase in the number of restroom stalls, a dedicated family restroom, storage rooms, drinking fountains and an official's room. In addition to the new building, users will also see new bleachers, covered seating, and new dugouts. The second building, located near the Senior League baseball fields and soccer fields, will include the same features as the new Little League building: a concession area, larger restrooms, storage rooms and drinking fountains. The area around the baseball

fields will also receive new bleachers and added shade. Competitive sealed bids were used to obtain this project (CSP) and there were six submissions with C.A. Walker Construction determined to be the greatest value to the city after staff evaluation.

A future budget amendment item in FY24 will be necessary to cover the additional contingency that was sought in order to get at the total amount of \$6,787,073. If there are any additional contingency expenses, these will be covered by investment earnings in the Parks Capital Improvement Projects Fund.

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 a construction contract with C. A. Walker Construction, in the amount of \$6,037,073 for the construction of two new restroom and concession buildings at Bachmann Park, plus the City's contingency in the amount of \$750,000 for a total appropriation of \$6,787,073. 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 Wright stated that the Fall Guide was excellent and thanked the Parks Department for promoting Wolf Pen. In addition, he attended the grand opening of Aggieland Scuba.

Councilmember Cunha reported on the Sunday evening and thanked staff for putting on a great event.

Councilmember Yancy congratulated Charlie Lima on the 15 years of the BCS Classic Fitness Competition and recognized Amazon for working with the community on Prime Air Delivery concerns.

Councilmember Maloney reported on the grand opening of PopShot and BCS Sister Cities event on September 6th at the Bush Museum.

Councilmember Havell reported on a partnership with Aggieland Outfitters.

City Manager Bryan Woods recognized the Community Development Department for their recent award for the Best Project of the Year from Housing and Urban Development (HUD).

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 appointment made to the BPG.

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

No future items at this time.

13. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 9:24 p.m. on Thursday, August 22, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

September 12, 2024

Item No. 7.2.

**Property Casualty, Excess General Liability and Excess Workers' Compensation policies for
Fiscal Year 2025 & Resolution**

Sponsor: Alison Pond, Director of Human Resources

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a resolution authorizing the City Manager to approve and execute all insurance policy documents and to approve policy related expenditures provided that such expenditures are appropriated from available funds approved from the annual budget and consistent with state and local laws for Fiscal Year 2025 in an amount not to exceed \$1,349,924.04.

Relationship to Strategic Goals:

Good Governance

Financially Sustainable City

Recommendation(s): The City of College Station Human Resources and Risk Management Department recommends adoption of the resolution and approval of the above referenced insurance policies for the period October 1, 2024 to October 1, 2025.

Summary: Risk Management completed applications to solicit proposals for Property/Boiler & Machinery, Sabotage & Terrorism, Auto Physical Damage, Excess Liability, Cyber Liability, Commercial Crime, Excess Workers' Compensation, UAV Liability and Deadly Weapons coverage. Sole Broker of Record Alliant Insurance Services, Inc. submitted the City's applications to the appropriate carriers and evaluated all proposals submitted.

The Alliant team, through in-depth discussions with the City, policy audits of the City's current program, and an intimate knowledge of the current insurance market were able to accomplish negotiations that resulted in many policy enhancements, additional coverage and rate decreases for the City's Property & Casualty insurance program.

Overall, FY25 insurance premiums decreased \$10,239.96 from FY24, or approximately 1 percent.

Budget & Financial Summary: Funds are available in the FY25 budget in the Property/Casualty Fund and the Workers' Compensation Fund.

Attachments:

1. RESOLUTION_Risk Program

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS (CITY), AUTHORIZING THE CITY MANAGER TO EXECUTE AND APPROVE ALL CONTRACT DOCUMENTS AND APPROVE ALL EXPENDITURES FOR EXPENSES RELATED TO THE CITY'S RISK MANAGEMENT PROGRAM FOR WHICH FUNDS HAVE BEEN APPROVED BY THE CITY COUNCIL.

WHEREAS, the City of College Station is self-insured and maintains a comprehensive risk management program to mitigate and shift risk and liability and protect the assets and financial well-being of the City; and

WHEREAS, the City of College Station's risk management program evaluates claims against the City including workers' compensation, personal injury and property damage; and

WHEREAS, the City of College Station contracts with a third party risk management consultant and broker and Third-Party Claims Administrator; and

WHEREAS, the City of College Station's risk management program, under the leadership of the Human Resources & Risk Management Department, provides worker safety programs and safety equipment for use at City facilities, such as AEDs and Stop the Bleed kits maximizing public and employee safety; and

WHEREAS, the City of College Station works with the risk management consultant and broker to stay current with best practices, and maintain compliance with local, state and federal regulations and laws. The annual risk management plan review process involves the City of College Station's Human Resources Department working with the risk management consultant and broker and the City's Fiscal Services Department to fiscally align City needs with available budgeted funds; and

WHEREAS, the City Council of the City of College Station desires to make risk management more efficient by authorizing the City Manager or his designee to approve and execute risk management contracts, and related purchases by authorizing the City Manager to approve subsequent budgeted expenditures related to the above referenced expenditures; now, therefore,

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

PART 1: That the City Council hereby authorizes the City Manager or his designee to approve and execute the expenditures directly related to the risk management program and approve including, but not limited to, consultant contracts, insurance premiums, third party service contracts, safety equipment and any and all other expenses directly related to the administration of the risk management program that may be required, on behalf of the City.

PART 2: That the City Council hereby authorizes the City Manager to approve those expenditures related to the risk management program provided that such expenditures are appropriated from available funds, approved from the annual budget and are consistent with state and local laws.

PART 3: That the City Council hereby finds that the above-described authorization will make risk management program administration more efficient for the City.

PART 4: That the City Council hereby finds that granting such authority to the City Manager in no way precludes City Council's authority or the Mayor from executing risk management program documents and contracts on behalf of the City if required by law or as a condition of the risk management program or as otherwise determined by the City Council in its discretion.

PART 5: That the City Council further finds that granting such authority to the City Manager shall not otherwise modify or change the City procedures for processing contracts.

PART 6: That this resolution shall take effect immediately from and after its passage.

ADOPTED this ____th day of September, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

September 12, 2024
Item No. 7.3.
City Gateway Sign #3 (West)

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Aria Signs and Design for City Gateway Sign 3 (West) for \$270,000, plus the City's contingency of \$21,600 for a total appropriation of \$291,600, and a Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval of this item and approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: This project includes the construction of a third City of College Station Gateway Sign within the TxDOT ROW near the FM60 and SH47 interchange at the western city limits. The work includes constructing the new gateway sign, including site grading, solar lighting, and all other related work required to complete the construction.

This project was procured using the Invitation to Bid (ITB) Method. Two proposals were received and reviewed and the proposal by Aria Signs and Design was found to be the lowest responsible bidder.

Budget & Financial Summary: A budget in the amount of \$325,000 is included for this project in the Facilities and IT Capital Improvement Projects Fund. A total of \$32,665 has been expended or committed to date, leaving a balance of \$292,335 for the contract and future expenses.

The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this project because all of the long-term debt projected to be issued for this project has not yet been issued. The debt for the project is scheduled to be issued at a later date.

Attachments:

1. City Gateway Sign 3 Project Location Map
2. City Gateway Sign 3 DRR
3. City Gateway Sign 3 Vendor Signed Contract



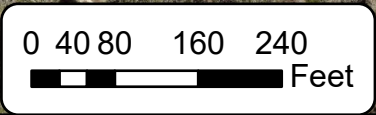
City Gateway Sign #3 (West)

FM60 and SH47



 Project Location

 Streets



RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

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

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$325,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 12th DAY OF September, 2024.

John Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

(Seal)

APPROVED:

A handwritten signature in blue ink, appearing to be 'J. K.', is written over a horizontal line.

McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The project to be financed that are the subject of this Statement is:

City Gateway Sign #3 (West) (\$325,000)

This project includes the construction of a third City of College Station Gateway Sign within the TxDOT right of way (ROW) near the FM60 and SH47 interchange at the western city limits. The work includes constructing the new gateway sign including site grading, solar lighting, and all other related work required to complete the construction.



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300617 PROJECT#: GG1901 BID/RFP/RFQ#: 24-039

Project Name / Contract Description: City Gateway Sign #3 WEst

Name of Contractor: Aria Signs and Design

CONTRACT TOTAL VALUE: \$ 270,000.00

Grant Funded Yes ☐ No ☒

If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☐ N/A

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

Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Buy America Required ☐ Yes ☐ No ☒ N/A

Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

Lowest responsible bidder meeting specifications from ITB 24-039 was chosen.

Funding from account 41379971-6560

CRC Approval Date*: N/A (If required)* Council Approval Date*: 9/12/2024 Agenda Item No*: TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on

Scanned into Laserfiche on

Original(s) sent to Fiscal on

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

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and ARIA SIGNS AND DESIGN (the "Contractor") for the construction and/or installation of the following:
per ITB 24-039 City Gateway Sign #3 West.

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: Twenty-One Thousand Six Hundred and NO /100 Dollars (\$21,600.00).

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: Two Hundred Seventy Thousand and NO /100 Dollars (\$270,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

12. MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

OR:

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

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

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

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

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

16.09 Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

OR:

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

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

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

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

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

23.02 As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of Two Hundred Fifty and NO /100 DOLLARS (\$ 250.00) 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

ARIA SIGNS & DESIGN

By: Nancy Le

Printed Name: Nancy Le

Title: Business Development Manager

Date: 8/21/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20230007

State: Texas

Construction Types: Heavy and Highway

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

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

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

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

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Rates

Fringes

CEMENT MASON/CONCRETE
FINISHER (Paving and
Structures).....\$ 12.56 **

ELECTRICIAN.....\$ 26.35

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 12.94 **

Structures.....\$ 12.87 **

LABORER

Asphalt Raker.....\$ 12.12 **

Flagger.....\$ 9.45 **

Laborer, Common.....\$ 10.50 **

Laborer, Utility.....\$ 12.27 **

Pipelayer.....\$ 12.79 **

Work Zone Barricade

Servicer.....\$ 11.85 **

PAINTER (Structures).....\$ 18.34

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....\$ 12.69 **

Asphalt Distributor.....\$ 15.55 **

Asphalt Paving Machine.....\$ 14.36 **

Boom Truck.....\$ 18.36

Broom or Sweeper.....\$ 11.04 **

Concrete Pavement

Finishing Machine.....\$ 15.48 **

Crane, Hydraulic 80 tons

or less.....\$ 18.36

Crane, Lattice Boom 80

tons or less.....\$ 15.87 **

Crane, Lattice Boom over

80 tons.....\$ 19.38

Crawler Tractor.....\$ 15.67 **

Directional Drilling

Locator.....\$ 11.67 **

Directional Drilling

Operator.....\$ 17.24

Excavator 50,000 lbs or

Less.....\$ 12.88 **

Excavator over 50,000 lbs...\$ 17.71

Foundation Drill, Truck

Mounted.....\$ 16.93 **

Front End Loader, 3 CY or

Less.....\$ 13.04 **

Front End Loader, Over 3 CY.\$ 13.21 **

Loader/Backhoe.....\$ 14.12 **

Mechanic.....\$ 17.10 **

Milling Machine.....\$ 14.18 **

Motor Grader, Fine Grade...\$ 18.51

Motor Grader, Rough.....\$ 14.63 **

Pavement Marking Machine...\$ 19.17

Reclaimer/Pulverizer.....\$ 12.88 **

Roller, Asphalt.....\$ 12.78 **

Roller, Other.....\$ 10.50 **

Scraper.....\$ 12.27 **

Spreader Box.....\$ 14.04 **

Trenching Machine, Heavy...\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....\$ 14.00 **

Structural.....\$ 19.29

TRAFFIC SIGNALIZATION:

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

TRUCK DRIVER

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

WELDER.....\$ 15.97 **

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

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

* a conformance (additionalclassification and rate) ruling

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION"

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified 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



Liberty Mutual Surety: National Bond Center
350 E. 96th Street
Indianapolis, IN 46240
(888) 844-2663 Fax: (866) 547-4883

Bond Number **999348010**

Bond Form Notice

You are receiving this notice because the contract bond form required by the Obligee (Owner) is not in the eBonding system. The contract bond must be issued manually on the form provided by the Obligee (Owner) using the generated bond number and Power of Attorney (POA) in this package. Be sure to add the surety company seal to the bond form before filing the bond. If you are unable to issue the bond manually and need assistance, please contact your local field office listed above.



Figure: 28 TAC § 1.601(a)(2)(B)

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

The Ohio Casualty Insurance Company

To get information or file a complaint with your insurance company or HMO:

Call: Liberty Mutual Surety Claims **at** 206-473-6210

Online: www.LibertyMutualSuretyClaims.com

Email: HOSCL@libertymutual.com

Mail: P.O. Box 34526 Seattle, WA 98124

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439

File a complaint: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

¿Tiene una queja o necesita ayuda?

Si tiene, un problema con una reclamación o con su prima de seguro, llame primero a su compañía de seguros o HMO. Si no puede resolver el problema, es posible que el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) pueda ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja a través del proceso de quejas o de apelaciones de su compañía de seguros o HMO. Si no lo hace, podría perder su derecho para apelar.

The Ohio Casualty Insurance Company

Para obtener información o para presentar una queja ante su compañía de seguros o HMO:

Llame a: Liberty Mutual Surety Claims

al 206-473-6210

En línea: www.LibertyMutualSuretyClaims.com

Correo electrónico: HOSCL@libertymutual.com

Dirección postal: P.O. Box 34526 Seattle, WA 98124

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros o para presentar una queja ante el estado:

Llame con sus preguntas al: 1-800-252-3439

Presente una queja en: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

PERFORMANCE BOND

Bond No. 999348010

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Aria Signs & Design LLC, as Principal, hereinafter called "Contractor" and the other subscriber hereto The Ohio Casualty Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Hundred Seventy Thousand and NO /100 Dollars (\$ 270,000.00) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for per ITB 24-039 City Gateway Sign #3 West

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

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

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

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

Contract No. 24300617

Construction Agreement Over \$50,000

Form 04-20-2023

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

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

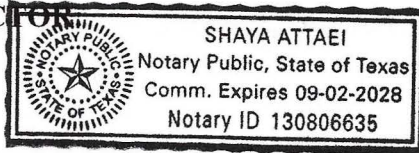
This bond and all obligations created hereunder shall be performable in Brazos County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall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

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

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

Bond No. 999348010

FOR THE CONTRACTOR



ARIA SIGNS AND DESIGN

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

WITNESS: (if not a corporation)

By: [Signature]

Name: Nancy Le

Title: Business Development Manager

Date: September 12, 2024

By: [Signature] / [Signature]

Name: Shaya Attaie / Mustafa Kamel

Title: President / PM

Date: September 12, 2024

FOR THE SURETY:
ATTEST/WITNESS



By: Kim Townsend

Name: Kim Townsend

Title: Underwriting Assistant

Date: September 12, 2024

The Ohio Casualty Insurance Company
(Full Name of Surety)

175 Berkeley St. Boston, MA 02116
(Address of Surety for Notice)

By: Timothy A. Mikolajewski

Name: Timothy A. Mikolajewski

Title: Attorney In Fact

Date: September 12, 2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. 999348010

THE STATE OF TEXAS

§

§

THE COUNTY OF BRAZOS

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Aria Signs & Design LLC, as Principal, hereinafter called "Principal" and the other subscriber hereto The Ohio Casualty Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Hundred Seventy Thousand and NO /100 Dollars (\$ 270,000.00) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 12th day of September, 20 24, for per ITB 24-039 City Gateway Sign #3 West, referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

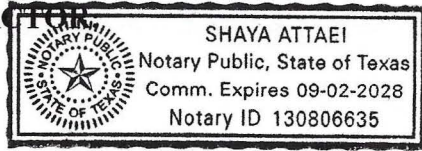
PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

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

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

Bond No. 999348010

FOR THE CONTRACTOR



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

WITNESS: (if not a corporation)

By: [Signature]

Name: Nancy Le

Title: Business Development Manager

Date: September 12, 2024

ARIA SIGNS AND DESIGN

By: [Signature] / [Signature]

Name: Shaya Attaei / Mustafa Kamil

Title: President / PM

Date: September 12, 2024

FOR THE SURETY:
ATTEST/WITNESS



By: Kim Townsend

Name: Kim Townsend

Title: Underwriting Assistant

Date: September 12, 2024

The Ohio Casualty Insurance Company
(Full Name of Surety)

175 Berkeley St. Boston, MA 02116
(Address of Surety for Notice)

By: Timothy A. Mikolajewski

Name: Timothy A. Mikolajewski

Title: Attorney In Fact

Date: September 12, 2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

The Ohio Casualty Insurance Company

POWER OF ATTORNEY

Principal: Aria Signs & Design LLC

Agency Name: ABBASI INSURANCE GROUP INC

Bond Number: 999348010

Obligee: City of College Station

Bond Amount: (\$270,000.00) Two Hundred Seventy Thousand Dollars And Zero Cents

Contract Amount: (\$270,000.00) Two Hundred Seventy Thousand Dollars And Zero Cents

Bid Bond Amount: (5% of Bid Amount) Five Percent of Bid Amount

KNOW ALL PERSONS BY THESE PRESENTS: that The Ohio Casualty Insurance Company, a corporation duly organized under the laws of the State of New Hampshire (herein collectively called the "Company"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint **Timothy A. Mikolajewski** in the city and state of **Seattle, WA**, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Company in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of the Company has been affixed thereto this 1st day of August, 2024.



The Ohio Casualty Insurance Company

By:

Nathan J. Zangerle, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 1st day of August, 2024, before me personally appeared Nathan J. Zangerle, who acknowledged himself to be the Assistant Secretary of The Ohio Casualty Insurance Company and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-law and Authorizations of The Ohio Casualty Insurance Company, which is now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Nathan J. Zangerle, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature or electronic signatures of any assistant secretary of the Company or facsimile or mechanically reproduced or electronic seal of the Company, wherever appearing upon a certified copy of any power of attorney or bond issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of The Ohio Casualty Insurance Company do hereby certify that this power of attorney executed by said Company is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Company this 6th day of August, 2024.



By:

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

SIGNATURE CERTIFICATE



REFERENCE NUMBER

8F6C284B-212A-4B6A-97CA-F016DEB4F2B6

TRANSACTION DETAILS

Reference Number

8F6C284B-212A-4B6A-97CA-F016DEB4F2B6

Transaction Type

Signature Request

Sent At

08/13/2024 17:49 EDT

Executed At

08/14/2024 16:22 EDT

Identity Method

email

Distribution Method

email

Signed Checksum

b6a2e7c2698c73e1e4ea1fc33d87d76cd3b4f5d1df5eb8cc7b5812cd22d58271

Signer Sequencing

Disabled

Document Passcode

Disabled

DOCUMENT DETAILS

Document Name

Liberty Bond Docs - Aria Signs College Station

Filename

Liberty_Bond_Docs_-_Aria_Signs_College_Station.pdf

Pages

10 pages

Content Type

application/pdf

File Size

2.33 MB

Original Checksum

0ffb6c6b8f6f2897bf759ce3fe467aa6ad73d1eb41bc3a9dec4c9f1bd3b48eb7

SIGNERS

SIGNER	E-SIGNATURE	EVENTS
Name Shaya Attaei	Status signed	Viewed At 08/14/2024 16:21 EDT
Email shaya@ariasigns.com	Multi-factor Digital Fingerprint Checksum 725103eece57d465e3aeae9df7c88600526fcf84a88315a3efb44253c8a5192	Identity Authenticated At 08/14/2024 16:22 EDT
Components 2	IP Address 50.215.99.102	Signed At 08/14/2024 16:22 EDT
	Device Samsung Browser via Android	
	Drawn Signature 	
	Signature Reference ID 4604B2F5	
	Signature Biometric Count 5	
Name Nancy Le	Status signed	Viewed At 08/14/2024 16:20 EDT
Email nancy@ariasigns.com	Multi-factor Digital Fingerprint Checksum 0d1e99756ef607f614f29e0015c216519417b0045700d1874c0ae596fcf6a9d2	Identity Authenticated At 08/14/2024 16:21 EDT
Components 4	IP Address 50.215.99.102	Signed At 08/14/2024 16:21 EDT
	Device Chrome via Windows	
	Drawn Signature 	
	Signature Reference ID 41A59A16	
	Signature Biometric Count 1	

AUDITS

TIMESTAMP	AUDIT
08/13/2024 17:49 EDT	Abbasi Insurance Group (info@abbasigroup.com) created document 'Liberty_Bond_Docs_-_Aria_Signs_College_Station.pdf' on Chrome via Windows from 98.199.148.242.
08/13/2024 17:49 EDT	Nancy Le (nancy@ariasigns.com) was emailed a link to sign.
08/13/2024 17:49 EDT	Shaya Attaei (shaya@ariasigns.com) was emailed a link to sign.

TIMESTAMP	AUDIT
08/14/2024 16:20 EDT	Nancy Le (nancy@ariasigns.com) viewed the document on Chrome via Windows from 50.215.99.102.
08/14/2024 16:21 EDT	Shaya Attaei (shaya@ariasigns.com) viewed the document on Samsung Browser via Android from 50.215.99.102.
08/14/2024 16:21 EDT	Nancy Le (nancy@ariasigns.com) authenticated via email on Chrome via Windows from 50.215.99.102.
08/14/2024 16:21 EDT	Nancy Le (nancy@ariasigns.com) signed the document on Chrome via Windows from 50.215.99.102.
08/14/2024 16:21 EDT	Shaya Attaei (shaya@ariasigns.com) viewed the document on Samsung Browser via Android from 50.215.99.102.
08/14/2024 16:22 EDT	Shaya Attaei (shaya@ariasigns.com) authenticated via email on Samsung Browser via Android from 50.215.99.102.
08/14/2024 16:22 EDT	Shaya Attaei (shaya@ariasigns.com) signed the document on Samsung Browser via Android from 50.215.99.102.



Liberty Mutual Surety: National Bond Center
350 E. 96th Street
Indianapolis, IN 46240
(888) 844-2663 Fax: (866) 547-4883

SURETY BOND PACKAGE

Thank you for choosing Liberty Mutual Surety for your bonding business. The enclosed package is a complete set of bond documents. Please file the documents in this bond package that are required by the Obligee. Some documents may not need to be filed.

Please review the bond to ensure it is accurate - correct form, obligee, principal (contractor) details, etc. It is ultimately the responsibility of the agent and contractor to ensure the bond provided is the correct form and is properly completed. For immediate changes or corrections, please contact your Liberty Mutual Surety office listed above.

Use the following checklist to ensure the documents are properly signed and distributed.

- ☐ If applicable the principal must sign the bond as the name is printed on the bond form. If the principal is a company, any officer of the company may sign the bond.
- ☐ Timothy A. Mikolajewski must sign the bond on behalf of the Surety with the name as it is printed on the bond.
- ☐ A Power of Attorney form is included in the bond package. This form should be attached to the bond and filed with the obligee.
- ☐ Bond number provided will need to be manually added to obligee (owner) bond form.
- ☐ Add surety company seal to bond form before filing the bond with the obligee (owner).

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/30/2024

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

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

PRODUCER Abbasi Insurance Group 10701 Corporate Dr. Suite 120 Stafford TX 77477		CONTACT NAME: Asad Abbasi PHONE (A/C, No, Ext): (281) 710-7811 FAX (A/C, No): (281) 710-7812 E-MAIL ADDRESS: info@abbasigroup.com	
INSURED Aria Signs And Design, LLC 14409 Reeveston Rd Houston TX 77039		INSURER(S) AFFORDING COVERAGE INSURER A: OHIO SECURITY INS CO INSURER B: PROGRESSIVE COUNTY MUTUAL (MAIN) INSURER C: EVANSTON INS CO INSURER D: TEXAS MUTUAL INSURANCE COMPANY INSURER E: INSURER F:	
		NAIC # 24082 29203 35378	

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS												
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y	Y	BKS63055866	04/08/2024	04/08/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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 \$												
	B						☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y	Y	07689318	06/08/2024	06/08/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$						
							C						☒ UMBRELLA LIAB ☐ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	EZXS3110749	04/08/2024	04/08/2025	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
													D						WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☐ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below

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

CERTIFICATE HOLDER**CANCELLATION**

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

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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 5/29/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0002032483 of Texas Mutual Insurance Company effective on 5/29/23

Issued to: ARIA SIGN & DESIGN LLC

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

5/26/23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

INDEX

<u>SUBJECT</u>	<u>PAGE</u>
NON-OWNED AIRCRAFT	2
NON-OWNED WATERCRAFT	2
PROPERTY DAMAGE LIABILITY - ELEVATORS	2
EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)	2
MEDICAL PAYMENTS EXTENSION	3
EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B	3
ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT	3
PRIMARY AND NON-CONTRIBUTORY- ADDITIONAL INSURED EXTENSION	5
ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"	6
WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS/MALPRACTICE AND WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES	6
NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES	7
FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES	7
KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT	7
LIBERALIZATION CLAUSE	7
BODILY INJURY REDEFINED	7
EXTENDED PROPERTY DAMAGE	8
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU	8

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
 - (a) Less than 52 feet long; and
 - (b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:

- a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

- b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. Paragraph **6.** under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **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:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph **9.a.** of **Definitions** is replaced with the following:

- 9.a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I - Coverage C - Medical Payments**, Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

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

F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Under **Supplementary Payments - Coverages A and B**, Paragraph **1.b.** is replaced by the following:

- b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph **1.d.** is replaced by the following:

- 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.

G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph **2.** under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
- (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
 - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
 - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

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.

With respect to Paragraph **1.a.** above, a person's or organization's status as an additional insured under this endorsement ends when:

- (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 location 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.

With respect to Paragraph **1.b.** above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph **1.c.** above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph **b.** of Condition **2. Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions.**

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "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:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

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

- d. "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 location 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.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. 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:

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

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

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. **Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph b. Excess Insurance:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. Duties In The Event Of Occurrence, Offense, Claim or Suit:

An additional insured under this endorsement will as soon as practicable:

- a.** Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b.** Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c.** Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d.** We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

- 2.** The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

**J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1) (a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1) (a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph **(d)**) does not apply.

Paragraphs **(a)** and **(b)** above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and

advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision **J.** is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph **3.** of **Section II - Who Is An Insured** is replaced by the following:

- 3.** Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a.** Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
 - b.** Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c.** Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d.** Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition **6. Representations**:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition **2. Duties In The Event of Occurrence, Offense, Claim Or Suit**:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph **1.** of **Section II - Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under **Section V - Definitions**, Definition **3.** is replaced by 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.

P. EXTENDED PROPERTY DAMAGE

Exclusion a. of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

a. Expected Or Intended Injury

"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.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition **8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

PROGRESSIVE
PO BOX 94739
CLEVELAND, OH 44101

Policy Holder:
ARIA SIGN & DESIGN
14409 REEVESTON RD
HOUSTON, TX 77039

The attached endorsements listed below applies to policy number: 07689318

Form 2366 (02/11) Blanket Additional Insured Endorsement
Form 2367 (06/10) Blanket Waiver of Subrogation Endorsement

Endorsement effective: June 8, 2022

Endorsements listed above are effective until policy cancellation date. Fees will be waived on your current policy term.

Form 2366 (02/11) M_CL

Blanket Additional Insured Endorsement

This endorsement modifies insurance provided by the Commercial Auto Policy, Motor Truck Cargo Legal Liability Coverage Endorsement, and/or Commercial General Liability Coverage Endorsement, as appears on the **declarations page**. All terms and conditions of the policy apply unless modified by this endorsement.

If **you** pay the fee for this Blanket Additional Insured Endorsement, **we** agree with **you** that any person or organization with whom **you** have executed a written agreement prior to any **loss** is added as an additional **insured** with respect to such liability coverage as is afforded by the policy, but this insurance applies to such additional **insured** only as a person or organization liable for **your** operations and then only to the extent of that liability. This endorsement does not apply to acts, omissions, products, work, or operations of the additional **insured**.

Regardless of the provisions of paragraph a. and b. of the "Other Insurance" clause of this policy, if the person or organization with whom **you** have executed a written agreement has other insurance under which it is the first named **insured** and that insurance also applies, then this insurance is primary to and non-contributory with that other insurance when the written contract or agreement between **you** and that person or organization, signed and executed by **you** before the **bodily injury** or **property damage** occurs and in effect during the policy period, requires this insurance to be primary and non-contributory.

In no way does this endorsement waive the "Other Insurance" clause of the policy, nor make this policy primary to third parties hired by the **insured** to perform work for the **insured** or on the **insured's** behalf.

ALL OTHER TERMS, LIMITS, AND PROVISIONS OF THE POLICY REMAIN UNCHANGED.

Form 2367 (06/10)M_CL

Blanket Waiver of Subrogation Endorsement

This endorsement modifies insurance provided by the Commercial Auto Policy, Motor Truck Cargo Legal Liability Coverage Endorsement, and/or Commercial General Liability Coverage Endorsement, as appears on the **declarations page**. All terms and conditions of the policy apply unless modified by this endorsement.

If **you** pay the **fee** for this Blanket Waiver of Subrogation Endorsement, **we** agree to waive any and all subrogation claims against any person or organization with whom a written waiver agreement has been executed by the named insured, as required by written contract, prior to the occurrence of any **loss**.

ALL OTHER TERMS, LIMITS AND PROVISIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE**Designated Construction Project(s):****Description of Construction Project**

As required by written contract

Location of Construction Project

As required by written contract

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

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

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.

per ITB 24-039 City Gateway Sign #3 (West).

EXHIBIT E
CONSTRUCTION SCHEDULE

Total number of calendar days to substantial completion is 90 days from notice to proceed.

EXHIBIT F
SCHEDULE OF VALUES

CERTIFICATION OF BID

The undersigned affirms that they are duly authorized to execute this contract, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid have not been communicated to any other bidder prior to the official opening of this bid. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement without modifications.

Signed By: Shaya Attai Title: president

Typed Name: Shaya Attai Company Name: Aria Signs and Design

Phone No.: 713-259-3737 Fax No.: n/a

Email: nancy@ariasigns.com

Bid Address: 1101 Texas Ave. College Station, Tx 77840
P.O. Box or Street City State Zip

Order Address: 14409 Reeveston Rd, Houston, Tx 77039
P.O. Box or Street City State Zip

Remit Address: 14409 Reeveston, Rd, Houston, Tx 77039
P.O. Box or Street City State Zip

Federal Tax ID No.: 46-3682014

UEI (Unique Entity Identifier) No.: n/a

Date: 7-4-24

END OF BID #24-039

**CONTRACTOR'S PROPOSAL
AND
ALTERNATES (if applicable)
BID SUMMARY
BID No. 24-039**

Date: 7/4/2024

PROPOSAL FROM: Aria Signs and Design 14409 Reeveston Rd.
Houston, TX 77039

PROPOSAL TO: City Of College Station
1101 Texas Ave.
College Station, TX 77842

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for the construction/rehabilitation of the City Gateway Sign #3 and to perform the work required for the construction/rehabilitation of said City Gateway Sign #3 Project at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

Please type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Please initial all corrections and do not round totals.

In submitting this Proposal, it is understood that this Proposal may not be altered or withdrawn for ninety (90) days, and that the Owner has reserved the right to reject any and all Proposals.

The Undersigned certifies that this Proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering Proposals on this work, for the following sum or prices to wit:

BASE PROPOSAL: Stipulated Total Bid of: (\$ 270,000.00)

CALENDAR DAYS: Total number of calendar days to substantial completion is 90 days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: Shahaji Attai

CONTRACTOR NAME: Shaya Attai

CONTRACTOR SIGNATURE: Shahaji Attai

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

Name of Company: Aria Signs and Design

Company Years in Business: 10 years

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

Project	Municipality	\$ Amount	Type	Date
10 & Heights	Houston	\$180,000	Pylon	Nov 2023
Fort Bend Town Center	Missouri City	\$60,000	Pylon	Jun 2024
CIVE	Houston	\$90,000	Sign	Jan 2024
ALBI	Houston	\$80,000	Pylon	Oct 2023
Rafa Racing	Houston	\$40,000	Monument	Feb 2024
Harlow District	Houston	\$80,000	Pylon	Oct 2023

Superintendent & Project Manager Information

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

Superintendent	Years Experience	Projects
Oslay Hernandez Izquierdo	12	
Shahraz Attari	12	

Project Manager	Years Experience	Projects
Mustafa Kamil	8	

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

1. Blue Ox Group

Josh Jacobs

713-230-8882

2. New Quest

James Ngu

281 477 4304

3. Williamsburg

Travis Walla

713-804-1016

4. Arc Management

Bryan Riebel

713-290-0950

5. LaPadra

Saad Sawad

832-638-2305



Liberty Mutual Surety
Attention: LMS Claims
P.O. Box 34526
Seattle, WA 98124
Phone: 206-473-6210
Fax: 866-548-6837
Email: HOSCL@libertymutual.com
www.LibertyMutualSuretyClaims.com

The Ohio Casualty Insurance Company BID OR PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Aria Signs & Design LLC

of 14409 Reeveston Rd, Houston, TX 77039

(hereinafter called the Principal) as Principal, and The Ohio Casualty Insurance Company, with its principal office in the City of Boston, Massachusetts (hereinafter called the Surety), as Surety, are held and firmly bound unto City of College Station

of 1101 Texas Ave., College Station, TX 77842

(hereinafter called the Obligor) in the penal sum of Five Percent of Bid Amount

Dollars 5% of Bid Amount lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns.

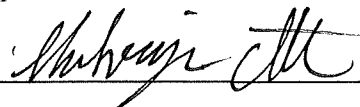
THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas, the Principal has submitted the accompanying bid dated July 11, 2024 for New City Marker for the City of College Station

NOW, THEREFORE, if the Obligor shall make any award according to the terms of said bid and the Principal shall enter into a contract with said Obligor in accordance with the terms of said bid and provide a bond for the faithful performance thereof within the time specified; or if no time is specified within thirty days after the date of said award; or if the Principal shall, in the case of failure so to do, indemnify the Obligor against any loss the Obligor may suffer directly arising by reason of such failure, not exceeding the penalty of this bond, then this obligation shall be null and void; otherwise to remain in full force and virtue.

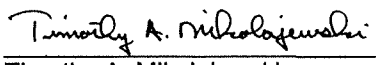
Signed, sealed and dated: July 3, 2024

Aria Signs & Design LLC

Principal

By: 

The Ohio Casualty Insurance Company

By: 

Timothy A. Mikolajewski

(Attorney-in-fact)





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

The Ohio Casualty Insurance Company

POWER OF ATTORNEY

Principal: Aria Signs & Design LLC

Agency Name: ABBASI INSURANCE GROUP INC

Bond Number: BID-0025095

Obligee: City of College Station

Bid Bond Amount: (5% of Bid Amount) Five Percent of Bid Amount

KNOW ALL PERSONS BY THESE PRESENTS: that The Ohio Casualty Insurance Company, a corporation duly organized under the laws of the State of New Hampshire (herein collectively called the "Company"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint **Timothy A. Mikolajewski** in the city and state of **Seattle, WA**, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Company in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of the Company has been affixed thereto this 28th day of March, 2021.



The Ohio Casualty Insurance Company

By:

David M. Carey

David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 28th day of March, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of The Ohio Casualty Insurance Company and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella

Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-law and Authorizations of The Ohio Casualty Insurance Company, which is now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature or electronic signatures of any assistant secretary of the Company or facsimile or mechanically reproduced or electronic seal of the Company, wherever appearing upon a certified copy of any power of attorney or bond issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of The Ohio Casualty Insurance Company do hereby certify that this power of attorney executed by said Company is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Company this 3rd day of July, 2024.



By:

Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



Liberty Mutual Surety: National Bond Center
350 E. 96th Street
Indianapolis, IN 46240
(888) 844-2663 Fax: (866) 547-4883

BID BOND RESULTS

You have received a bid bond for the project listed below. Once bid results are in, please complete the Bid Results Section and return this to your agent or Liberty Mutual Surety underwriter or underwriting assistant at the office listed above. If you do not know the results other than your own, please indicate in the Comments.

Reference #: **BID-0025095**
Contractor Name: **Aria Signs & Design LLC**
Bid Date: **July 11, 2024**
Bid Amount: **5% of Bid Amount**
Est. Contract Amount: **\$270,000.00**
Obligee: **City of College Station**
Project Description: **New City Marker for the City of College Station**

----- BID RESULTS SECTION -----

Contractor Name _____ 1st low bid \$ _____
Contractor Name _____ 2nd low bid \$ _____
Contractor Name _____ 3rd low bid \$ _____

If you are the low bid and the spread between your bid and the 2nd low bid is more than 10% please explain: _____

If you are not in the top 3 low bids, what is your bid price? \$ _____

Comments: _____

September 12, 2024
Item No. 7.4.
American Pavilion Renovation at Veterans Park

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a Construction Contract with Dudley Construction, LLC. in the amount of \$196,000 for construction services for the American Pavilion Renovation at Veterans Park Project, plus the City's contingency in the amount of \$34,000 for a total appropriation of \$230,000. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project is to remediate and maintain the structure at the American Pavilion at Veterans Park. The American Pavilion is a single-story glued laminated timber (or glulam) framed pavilion located in the Veterans Park and Athletic Complex in College Station, Texas. Based on discussions with structural and forensic engineers, previous assessment reports, and the results of the structural condition assessment, the decision was made to remediate and maintain the structure. This will be accomplished by developing a proper maintenance plan that includes application of a wood sealer to the entire structure as well as structural remediation to two columns within the footprint of the structure.

Budget & Financial Summary: Funds in the amount of \$1,200,000 is currently budgeted for this project in the Parks Fund. A total of \$99,152 has been expended or committed to date, leaving a balance of \$1,100,848 for this construction contract and remaining project expenses.

Attachments:

1. American Pavilion at VPAC Rehab Vendor Contract
2. American Pavilion at VPAC Location Map



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300659 PROJECT #: PK1910 BID/RFP/RFQ#: BID 24-070

Project Name / Contract Description: American Pavilion Renovation at Veterans Park

Name of Contractor: Dudley Construction, LLC

CONTRACT TOTAL VALUE: \$ 196,000 Grant Funded Yes ☐ No ☐
If yes, what is the grant number:

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

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

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

Project advertised as Invitation to Bid 24-070 and opened on August 6, 2024. One (1) bid was submitted. Dudley Construction selected as responsible bidder.

Funds in the amount of \$1,200,000 is currently budgeted for this project in the Parks Fund. A total of \$99,152 has been expended or committed to date,

leaving a balance of \$1,100,848 for this construction contract and remaining project expenses.

CRC Approval Date*: N/A (If required)* Council Approval Date*: 9/12/24 Agenda Item No*:

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain 9/3/2024
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

Jim East 9/5/2024
ASST CITY MGR – CFO DATE

John D. Haislet 9/5/2024
LEGAL DEPARTMENT DATE

APPROVED & EXECUTED

CITY MANAGER DATE

N/A
MAYOR (if applicable) DATE

N/A
CITY SECRETARY (if applicable) DATE

9.12.23 UPDATED

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

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Dudley Construction, LLC (the "Contractor") for the construction and/or installation of the following:
Remediation Plan of the American Pavilion at Veterans Park; as described in ITB 24-070 **+**.

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: Thirty-Four Thousand and 00 /100 Dollars (\$ 34,000.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: One Hundred Ninety-Six Thousand and 00 /100 Dollars (\$ 196,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

12. MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

OR:

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

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

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

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

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

16.09 Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

OR:

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

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

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

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

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

23.02 As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of Two Hundred Fifty and 00 /**100 DOLLARS (\$ 250.00**) 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

DUDLEY CONSTRUCTION, LLC

By: Mark Dudley

Printed Name: Mark Dudley

Title: President

Date: 9/3/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

John R. Haislet

City Attorney

Date: 9/5/2024

Jim Costa

Assistant City Manager/CFO

Date: 9/5/2024

EXHIBIT A
DAVIS BACON WAGE RATES

"General Decision Number: TX20240234 06/14/2024

Superseded General Decision Number: TX20230234

State: Texas

Construction Type: Building

County: Brazos County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

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>.

Modification Number	Publication Date
0	01/05/2024
1	06/14/2024

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

* ELEV0031-003 01/01/2024		

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 51.32	37.885+a+b

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0084-011 06/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 27.51	8.13

PLUM0068-002 10/01/2023

	Rates	Fringes
PLUMBER.....	\$ 34.86	11.68

PLUM0211-002 10/01/2023

	Rates	Fringes
PIPEFITTER (HVAC Pipe Installation Only).....	\$ 38.31	12.61

PLUM0286-011 06/05/2023

	Rates	Fringes
PIPEFITTER (Excludes HVAC Pipe Installation).....	\$ 34.15	15.77

SHEE0054-002 04/01/2020

	Rates	Fringes
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 29.70	13.85

* SUTX2014-009 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER, Excludes Form Work....	\$ 14.56 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 14.68 **	0.00
ELECTRICIAN.....	\$ 22.96	4.83
FORM WORKER.....	\$ 11.83 **	0.00
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13

IRONWORKER, REINFORCING.....	\$ 13.35 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 20.74	5.25
LABORER: Common or General.....	\$ 11.57 **	0.00
LABORER: Mason Tender - Brick...	\$ 10.96 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 9.93 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.33 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22 **	0.34
OPERATOR: Forklift.....	\$ 15.00 **	0.00
OPERATOR: Grader/Blade.....	\$ 14.34 **	1.68
OPERATOR: Loader.....	\$ 14.01 **	0.44
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03 **	0.00
OPERATOR: Roller.....	\$ 13.11 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 13.14 **	0.00
ROOFER.....	\$ 13.75 **	0.00
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 14.62 **	0.00
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.74 **	0.00

TRUCK DRIVER: Dump Truck.....	\$ 11.97 **	1.23
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

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

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

Survey wage rates are not updated and remain in effect until a

new survey is conducted.

Union Average Rate Identifiers

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

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

State Adopted Rate Identifiers

Classifications listed under the ""SA"" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this

initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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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

Bond No. 4478107

202

202

20

Page 172 of 341

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. 4478107

FOR THE CONTRACTOR:

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

By: Alisyn Hargett
Name: ALISYN HARGETT
Title: PROJECT ADMINISTRATOR
Date: 9/12/24

Dudley Construction, LLC
(Name of Contractor)
By: Mark Dudley
Name: MARK DUDLEY
Title: PRESIDENT
Date: 9/12/24

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Monica L. Jenkins
Name: Monica L. Jenkins
Title: Account Manager
Date: 9/12/24

SureTec Insurance Company
(Full Name of Surety)
9500 Arboretum Boulevard, Suite 400
Austin, Texas 78759
(Address of Surety for Notice)
By: Dennis M. Descant, Jr.
Name: Dennis M. Descant, Jr.
Title: Attorney-in-Fact
Date: 9/12/24

FOR THE CITY:

REVIEWED:

John A. Haislet 9/5/2024
City Attorney

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

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. 4478107

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Dudley Construction, LLC, as Principal, hereinafter called "Principal" and the other subscriber hereto SureTec Insurance Company, a corporation organized and existing under the laws of the State of Texas, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of One Hundred Ninety-Six Thousand and 00 /100 Dollars (\$ 196,000.00) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 12 day of September, 20 24, for Remediation Plan of the American Pavilion at Veterans Park; as described in ITB 24-070, referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

Bond No. 4478107

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

Dudley Construction, LLC

(Name of Contractor)

By: Alisyn Hargett

Name: ALISYN HARGETT

Title: PROJECT ADMINISTRATOR

Date: 9/12/24

By: Mark Dudley

Name: MARK DUDLEY

Title: PRESIDENT

Date: 9/12/24

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Monica L. Jenkins

Name: Monica L. Jenkins

Title: Account Manager

Date: 9/12/24

SureTec Insurance Company

(Full Name of Surety)

9500 Arboretum Boulevard, Suite 400

Austin, Texas 78759

(Address of Surety for Notice)

By: Dennis M. Descant, Jr.

Name: Dennis M. Descant, Jr.

Title: Attorney-in-Fact

Date: 9/12/24

FOR THE CITY:

REVIEWED:

John A. Haislet 9/5/2024
City Attorney

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

City Manager

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

JOINT LIMITED POWER OF ATTORNEY

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

Jeffrey L. Brady, Dennis M. Descant, Jr., Cheryl A. Sanders, Michael Inman, Timothy John Brady

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

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

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

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

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 17th day of September, 2021.

SureTec Insurance Company

By: 
Michael C. Keimig, President



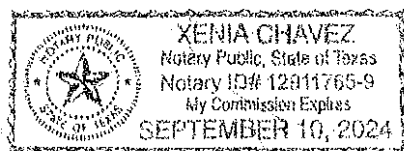
Markel Insurance Company

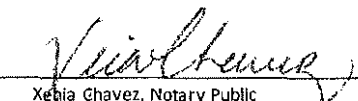
By: 
Lindsey Jennings, Vice President

State of Texas
County of Harris:

On this 17th day of September, 2021 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

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

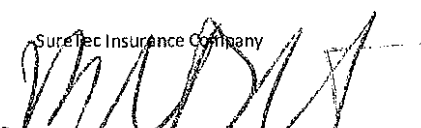


By: 
Xenia Chavez, Notary Public
My Commission expires 9/10/2024

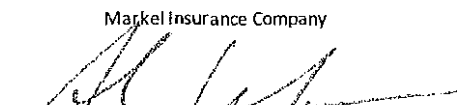
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 12th day of September, 2024.

SureTec Insurance Company

By: 
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: 
Andrew Marquis, Assistant Secretary

Any Instrument Issued in excess of the penalty stated above is totally void and without any validity. 4221073
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.

SureTec Insurance Company

IMPORTANT NOTICE

Statutory Complaint Notice/Filing of Claims

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

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

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

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

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

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/16/2024

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 ANCO Insurance PO Box 3889 Bryan TX 77805	CONTACT NAME: Juanice Smith PHONE (A/C, No, Ext): 979-774-6504 E-MAIL: smithj@anco.com FAX (A/C, No): 979-774-5372
INSURED Dudley Construction, LLC Attn: Mark Dudley 11370 State Hwy. 30 College Station TX 77845	INSURER(S) AFFORDING COVERAGE INSURER A : Valley Forge Insurance Co. 20508 INSURER B : Continental Insurance Co. 35289 INSURER C : American Casualty Company Of R 20427 INSURER D : Westchester Surplus Lines Ins. 10172 INSURER E : Continental Casualty Co. 20443 INSURER F :

COVERAGES**CERTIFICATE NUMBER:** 946101591**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:			6072186638	8/1/2024	8/1/2025	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 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			6072186655	8/1/2024	8/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			6072186686	8/1/2024	8/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ Y ☐ N	N/A	7040323263	8/1/2024	8/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D E E	Pollution Liability Installation/Builder Risk Equipment Floater			G71798847005 6081395658 6081495565	8/1/2024 8/1/2024 8/1/2024	8/1/2025 8/1/2025 8/1/2025	Aggregate \$1,000,000 See attached Leased/Rented \$1,000,000

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

Re: Contract 24300659 Remediation Plan of the American Pavilion at Veterans Park

GENERAL LIABILITY

Blanket Additional Insured for On Going Operations, Waiver of Subrogation, Primary Non-Contributory applies per form CNA74705XX 1-15; Blanket Additional Insured for Completed Operations per form CNA75079XX 10-16; 30 Day Notice of Cancellation, except 10 days for non payment of premium; All when required by written contract in accordance with policy terms and See Attached...

CERTIFICATE HOLDER

City of College Station, its agents, officials, employees & volunteers
Attention: Risk Management
PO Box 9960
College Station TX 77842
USA

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY ANCO Insurance		NAMED INSURED Dudley Construction, LLC Attn: Mark Dudley 11370 State Hwy. 30 College Station TX 77845
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

provisions. GL Form CG0001.

Policy includes Employee Theft \$25,000 Each Occurrence.

AUTOMOBILE LIABILITY

Blanket Additional Insured, Waiver of Subrogation, Primary Non-Contributory apply per form CNA633599XX; 30 Day Notice of Cancellation, except 10 days for non payment of premium; All when required by written contract in accordance with policy terms and provisions.

WORKERS COMPENSATION

Waiver of Subrogation per policy form WC420304B.

UMBRELLA/EXCESS LIABILITY

Follow form policy in accordance with policy terms and as per policy provisions.

BUILDERS RISK

\$30,000,000 Construction: Fire Resistive, Masonry NC Public Protection Class 1-7

\$25,000,000 Metal NC; Public Protection Class: 1-7

\$ 5,000,000 Construction: Jointed Masonry, Public Protection Class 1-7

\$ 1,000,000 Construction: Frame, Public Protection Class 1-7

Named Storm Sub-Limit \$15,000,000 with 2% Deductible

FLOOD SUB-LIMIT

Jobsite Limit up to \$1,000,000

DEDUCTIBLES

All other perils: \$5,000

Named Storm Deductible: 2% completed value; minimum deductible \$5,000

Wind or Hail Deductible: \$5,000

Flood \$25,000

INSTALLATION FLOATER

\$500,000 Limit

\$1,000 Deductible

EQUIPMENT FLOATER

\$1,000 Deductible

**Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

- | |
|---|
| 1. Additional Insureds |
| 2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance |
| 3. Bodily Injury – Expanded Definition |
| 4. Broad Knowledge of Occurrence/ Notice of Occurrence |
| 5. Broad Named Insured |
| 6. Broadened Liability Coverage For Damage To Your Product And Your Work |
| 7. Contractual Liability - Railroads |
| 8. Electronic Data Liability |
| 9. Estates, Legal Representatives and Spouses |
| 10. Expected Or Intended Injury – Exception for Reasonable Force |
| 11. General Aggregate Limits of Insurance – Per Project |
| 12. In Rem Actions |
| 13. Incidental Health Care Malpractice Coverage |
| 14. Joint Ventures/Partnership/Limited Liability Companies |
| 15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control |
| 16. Liquor Liability |
| 17. Medical Payments |
| 18. Non-owned Aircraft Coverage |
| 19. Non-owned Watercraft |
| 20. Personal And Advertising Injury – Discrimination or Humiliation |
| 21. Personal And Advertising Injury - Contractual Liability |
| 22. Property Damage - Elevators |
| 23. Supplementary Payments |
| 24. Unintentional Failure To Disclose Hazards |
| 25. Waiver of Subrogation – Blanket |
| 26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs |

CNA74705XX (1-15)

Page 1 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 7

Effective Date: 08/01/2024

Contractors' General Liability Extension Endorsement**1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:



Contractors' General Liability Extension Endorsement

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

(a) any partnership, limited liability company or joint venture; or

(b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or

B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.

4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:

a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor

b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions k. and l. and replace them with the following:

This insurance does not apply to:

k. Damage to Your Product

Property damage to your product arising out of it, or any part of it except when caused by or resulting from:

(1) fire;

(2) smoke;

(3) collapse; or

(4) explosion.

l. Damage to Your Work

Property damage to your work arising out of it, or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

(1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or



Contractors' General Liability Extension Endorsement

(2) If the cause of loss to the damaged work arises as a result of:

- (a) fire;
- (b) smoke;
- (c) collapse; or
- (d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage to your product and your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage to your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

8. ELECTRONIC DATA LIABILITY

CNA74705XX (1-15)

Page 6 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 7

Effective Date: 08/01/2024

Contractors' General Liability Extension Endorsement

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **p. Electronic Data** and replace it with the following:

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph (1) above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph (1) or (2) above.

- B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

- C. The following definition is added to **DEFINITIONS**:

Electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

Property damage means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

- E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the \$100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for

CNA74705XX (1-15)

Page 7 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 7

Effective Date: 08/01/2024



Contractors' General Liability Extension Endorsement

claims arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

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.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury or property damage** included in the **products-completed operations hazard**; and
2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;
2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury or property damage** included in the **products-completed operations hazard**; and
3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury or property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

Contractors' General Liability Extension Endorsement

- E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:

- b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

- (1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.
- (2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

- i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

- ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

- iii. add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

CNA74705XX (1-15)

Page 9 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 7

Effective Date: 08/01/2024



Contractors' General Liability Extension Endorsement

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:**i.** add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

- a. professional health care services** on behalf of the **Named Insured** or
- b.** Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a.** Physician;
- b.** Nurse;
- c.** Nurse practitioner;
- d.** Emergency medical technician;
- e.** Paramedic;
- f.** Dentist;
- g.** Physical therapist;
- h.** Psychologist;
- i.** Speech therapist;
- j.** Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **Insured** to:**a.** add the following:

the **Named Insured's employees** are **Insureds** with respect to:

- (1) bodily injury** to a co-employee while in the course of the co-employee's employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

**Contractors' General Liability Extension Endorsement**

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

the **Named Insured's** **volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance

b. **Excess Insurance**

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion j. **Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:

CNA74705XX (1-15)

Page 11 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 7

Effective Date: 08/01/2024



Contractors' General Liability Extension Endorsement**j. Damage to Property****Property damage to:**

- (1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- i. tools, or equipment the **Named Insured** borrows from others, nor
- ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;
- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

**Contractors' General Liability Extension Endorsement**

- B.** Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

- C.** The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, \$25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

- D.** Paragraph **6.**, Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

- a.** \$500,000; or
- b.** The Damage To Premises Rented To You Limit shown in the Declarations.

- E.** Paragraph **4.b.(1)(a)(ii)** of the **Other Insurance** Condition is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

17. MEDICAL PAYMENTS

- A. LIMITS OF INSURANCE** is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1)** \$15,000 unless a different amount is shown here: \$N,NNN,NNN,NNN; or
- (2)** the amount shown in the Declarations for Medical Expense Limit.



Contractors' General Liability Extension Endorsement

- B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph 1.a.(3)(b) with the following:

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

18. NON-OWNED AIRCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a) less than 75 feet long; and
- (b) not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

- A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

- B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
 - (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.
2. add the following exclusions:

**Contractors' General Liability Extension Endorsement**

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

Provision 1. **ADDITIONAL INSURED** of this endorsement; or

attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.

B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. PROPERTY DAMAGE – ELEVATORS

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

CNA74705XX (1-15)

Page 15 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 7

Effective Date: 08/01/2024



Contractors' General Liability Extension Endorsement

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor

**Contractors' General Liability Extension Endorsement**

2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

B. Condition 4. Other Insurance is amended to add the following subparagraph **4.b.(1)(c)**:

This insurance is excess over:

- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

C. DEFINITIONS is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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**Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
- A.** in the performance of your ongoing operations subject to such **written contract**; or
 - B.** in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
 - 1. the **written contract** requires you to provide the additional insured such coverage; and
 - 2. this **coverage part** provides such coverage.
- II.** But if the **written contract** requires:
- A.** additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
 - B.** additional insured coverage with "arising out of" language; or
 - C.** additional insured coverage to the greatest extent permissible by law;
- then paragraph I. above is deleted in its entirety and replaced by the following:
- WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.
- III.** Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
- A.** coverage broader than required by the **written contract**; or
 - B.** a higher limit of insurance than required by the **written contract**.
- IV.** The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
- A.** the rendering of, or the 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, architectural or engineering activities; or
 - B.** any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V.** Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

CNA75079XX (10-16)

Page 1 of 2

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 9

Effective Date: 08/01/2024



**Blanket Additional Insured - Owners, Lessees or
Contractors - with Products-Completed
Operations Coverage Endorsement****Primary and Noncontributory Insurance**

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled DEFINITIONS is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
 1. the **bodily injury or property damage**; or
 2. the offense that caused the **personal and advertising injury**;for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75079XX (10-16)

Page 2 of 2

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC

Policy No: 6072186638

Endorsement No: 9

Effective Date: 08/01/2024

**CNA PARAMOUNT****Changes - Notice of Cancellation or Material
Restriction Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
EMPLOYEE BENEFITS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
STOP GAP LIABILITY COVERAGE PART
TECHNOLOGY ERRORS AND OMISSIONS LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY – NEW YORK DEPARTMENT OF TRANSPORTATION

SCHEDULE	
Number of days notice (other than for nonpayment of premium):	030
Number of days notice for nonpayment of premium:	N/A
Name of person or organization to whom notice will be sent:	PER SCHEDULE ON FILE.
Address:	PER SCHEDULE ON FILE COLLEGE STATION TX 77845-7893

If no entry appears above, the number of days notice for nonpayment of premium will be 10 days.

It is understood and agreed that in the event of cancellation or any material restrictions in coverage during the **policy period**, the Insurer also agrees to mail prior written notice of cancellation or material restriction to the person or organization listed in the above Schedule. Such notice will be sent prior to such cancellation in the manner prescribed in the above Schedule.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA74702XX (1-15)

Page 1 of 1

VALLEY FORGE INSURANCE COMPANY

Insured Name: DUDLEY CONSTRUCTION LLC**Policy No:** 6072186638**Endorsement No:** 36**Effective Date:** 08/01/2024



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured**:

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.**:

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement No: 9; Page: 1 of 4

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Endorsement Expiration Date:

Policy No: BUA 6072186655

Policy Effective Date: 08/01/2024

Policy Page: 57 of 193



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to Section III, Paragraph A.3.:

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to Section III. Paragraph A.:

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to Section III, Paragraph B.3.:

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 9; Page: 2 of 4

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 6072186655

Policy Effective Date: 08/01/2024

Policy Page: 58 of 193



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement No: 9; Page: 3 of 4

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Endorsement Expiration Date:

Policy No: BUA 6072186655

Policy Effective Date: 08/01/2024

Policy Page: 59 of 193



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 9; Page: 4 of 4

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 6072186655

Policy Effective Date: 08/01/2024

Policy Page: 60 of 193



NOTICE OF CANCELLATION TO CERTIFICATEHOLDERS

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificateholders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificateholder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.

All other terms and conditions of the policy remain unchanged

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

Form No: CNA68021XX (02-2013)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 10; Page: 1 of 1

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 6072186655

Policy Effective Date: 08/01/2024

Policy Page: 61 of 193



TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ **Specific Waiver**

Name of person or organization

☒ **Blanket Waiver**

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

2. **Operations: All Texas Operations**

3. **Premium:**

The premium charge for this endorsement shall be 2% percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. **Advance Premium: Refer to Schedule of Operations**

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC 42 03 04 B (08-2014)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: B; Page: 1 of 1

Underwriting Company: American Casualty Company of Reading, Pennsylvania, 151 N Franklin St,
Chicago, IL 60606

Policy No: WC 7 40323283

Policy Effective Date: 08/01/2024

Policy Page: 45 of 48

EXHIBIT D
PLANS AND SPECIFICATIONS

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

INVITATION TO BID 24-070 IS INCORPORATED IN THIS CONTRACT BY REFERENCE

EXHIBIT E
CONSTRUCTION SCHEDULE

Construction project will consist of Base Bid and Alternate 1 only due to available budget. Substantial completion is 60 days for base bid plus 15 days for alternate 1, a total of 75 days from notice to proceed.

EXHIBIT F
SCHEDULE OF VALUES

CONTRACTOR'S PROPOSAL

Tech Specs and the Excel Bid Response have been uploaded as separate attachments.

CONTRACTOR'S PROPOSAL

BID SUMMARY

BID NO. 24-070

Date: August 6, 2024

PROPOSAL FROM: Dudley Construction, LLC

PROPOSAL TO: City of College Station
1101 Texas Ave.
College Station, TX 77842

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for the structural repair of the American Pavilion at Veterans Park Athletic Complex and to perform the work required for the construction of said project at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

Please type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Please initial all corrections and do not round totals.

In submitting this Proposal, it is understood that this Proposal may not be altered or withdrawn for ninety (90) days, and that the Owner has reserved the right to reject any and all Proposals.

The Undersigned certifies that this Proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering Proposals on this work, for the following sum or prices to wit:

Structural Repair of the American Pavilion at Veterans Park Athletic Complex

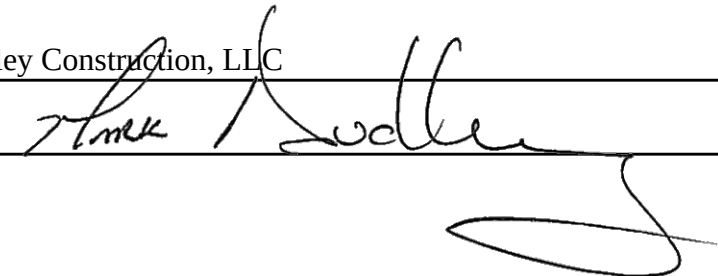
BASE PROPOSAL: Stipulated Total Base Bid (\$ 126,000)

Total Base Bid + Alternates: (\$ 239,000)

CALENDAR DAYS: TOTAL number of calendar days to substantial completion is 60 days.

Number of Addenda is hereby acknowledged 1

CONTRACTOR NAME: Dudley Construction, LLC

CONTRACTOR SIGNATURE: 

CITY OF COLLEGE STATION
BID #24-070
REMEDATION OF AMERICAN PAVILION AT VETERANS PARK
Bid Opening: Tuesday, August 6, 2024 @ 2:00 pm CT

The undersigned proposes to furnish all labor, services, materials, tools, and necessary equipment for the Work. Type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Initial all corrections and do not round totals.

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	
BASE BID SCHEDULE					
1	Mobilization	1	LS	\$ 10,000.00	\$ 10,000.00
2	Demobilization	1	LS	\$ 10,000.00	\$ 10,000.00
3	Temporary fencing (Refer to S1.0)	1	LS	\$ 5,000.00	\$ 5,000.00
4	Item A per S0.0 - Structural remediation to base of columns F/1 and F/5 (refer to sheet S2.0).	1	LS	\$ 61,000.00	\$ 61,000.00
5	Temporary shoring of glulam frame on Grid 5 (2/S2.0)	1	LS	\$ 19,000.00	\$ 19,000.00
6	Item D per S0.0 - Fire damage remediation (refer to sheet S4.0). Includes cleaning, restoration and finish treatment to the fire damaged zone (reference 3/S1.1)	1	LS	\$ 18,000.00	\$ 18,000.00
7	Item C per S0.0 - Topical preservative treatment to indicated portions of the glulam rigid frame along grid F (Refer to sheet S1.1). Includes cleaning, restoration and finish treatment to the topical preservative treatment zone of these columns (reference 3/S1.1)	1	SF	\$ 3,000.00	\$ 3,000.00
TOTAL BASE BID SCHEDULES					\$ 126,000.00
ALTERNATES					
Alt 1	Item B per S0.0 - Cleaning, restoration and finish treatment (refer to sheet S1.1). Applies to all exterior wood with the exception of the Preservative Treatment Zone of columns F/1 and F/5 (include in Bid Item 7) and fire damaged zone (Bid Item 6)	1	LS	\$ 70,000.00	\$ 70,000.00
Alt 2	Item E per S0.0 - Internal borate rod treatment to all roof overhang outriggers, exposed end-grain conditions (refer to sheet S3.0)	1	LS	\$ 11,000.00	\$ 11,000.00
Alt 3	Item E per S0.0 - Internal borate rod treatment to all connections at the clerestory (refer to sheet S3.0)	1	LS	\$ 14,000.00	\$ 14,000.00
Alt 4	Item F per S0.0 - Apply the borate rod treatment to the base of all exterior glulam rigid frame columns (borate rod application would match step 1 from sheet S2.0)	1	LS	\$ 18,000.00	\$ 18,000.00
TOTAL ALTERNATES					\$ 113,000.00

CITY OF COLLEGE STATION

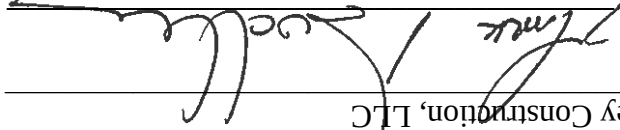
BID #24-070

REMEDICATION OF AMERICAN PAVILION AT VETERANS PARK

Bid Opening: Tuesday, August 6, 2024 @ 2:00 pm CT

TOTAL BASE BID + ALTERNATES		\$ 239,000.00
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CONTRACTOR NAME: Dudley Construction, LLC

CONTRACTOR SIGNATURE: 

Total Number of Addenda is hereby acknowledged 1 

CONTRACTOR DATA SHEET

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

Name of Company: Dudley Construction, LLC

Company Years in Business: 32

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

Project	Municipality	\$ Amount	Type	Date
Veteran's Park Structural Repairs to American Pavilion	College Station	\$62,400	Repairs	2019
Rehabilitation of Stone Arch Bridge at Fireman's Park	Brenham	\$100,000	Repairs	2020
Veteran's Park and Athletic Complex Build-Out Phase 1	College Station	\$4.6 million	Park Development	2019
Crompton Park Basketball Pavilion	College Station	\$327,000	Park Development	2019
Veteran's Park Synthetic Fields	College Station	\$4 million	Repairs	2019
Stone Hollow Lift Station Replacement	Brenham	\$1.2M	Lift Station	2024

Superintendent & Project Manager Information

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

Superintendent	Years Experience	Projects
See Resume for Ricky Greer		

Project Manager	Years Experience	Projects
See Resume for Mark Dudley		



MARK DUDLEY

President / Project Executive

11370 State Highway 30—College Station, Texas 77845 (979) 776-2135

Profile

Mark is a 7th generation Texan who still operates a working ranch along the Navasota River in Brazos and Grimes Counties. The ranch has been in his family for over 100 years. Mark is a great visionary for Dudley Construction, actively involved in each project. His strong leadership and management skills have been key factors in the firm's continued success. Mark has developed and strengthened Dudley Construction into the largest General Contractor in the Bryan/ College Station area.

Experience

Dudley Construction LLC.—College Station, Texas, President 1992-Present
President and Owner of General Contracting Company in Brazos County with gross annual revenue in the range of \$20-30 million per year.

Pepper-Lawson Construction, Inc.—Houston, Texas, Project Manager 1988-1992
Responsible for on-site project management.

Completed Projects:
Blinn College Student Center—Brenham, Texas (\$6 million)
Neiman Marcos Houston Galleria—Houston, Texas (\$4.3 million)

Lebco Constructors, Inc.—Houston, Texas, Branch Manager 1986-1988
Manager of Central Texas Branch office located in College Station, Texas. Responsibilities included preparation of estimates for bidding purposes, negotiation of major subcontracts and purchase orders, overview of construction techniques implemented by the Project Superintendent to ensure maximum productivity, preparation of schedules and cost projections and other activities associated with the management of commercial construction projects.

Completed Projects:
Texas Diagnostic Center—Huntsville, Texas (\$6.3 million) Texas A&M University Chemistry Building (\$5 million)
Bryan Municipal Building—Bryan, Texas (\$3.2 million) Texas A&M University Physics Building (\$2.5 million)
Wal-Mart Store—Bellmead, Texas (\$2.1 million)

David F. Gray Construction Co., Inc.—Houston, Texas, Superintendent/Project Manager 1983-1986
Responsible for Owner/Architect relations, subcontract negotiations, preparation of cost projects and schedules, approval of submittals and expedition of material.

Completed Projects:
Bridgepark Office Park—Austin, Texas (\$6.9 million) Sheppard Mountain Plaza—Austin, Texas (\$6.2 million)
Houston Eye Association Medical Bldg.—Houston, Texas (\$2.4 million) Southpark II Building—Houston, Texas (\$1 million)
Herman Zoo Animal Hospital—Houston, Texas (\$1 million) East Texas Center—Houston, Texas (\$340,000)

Education

Texas A&M University—Building Construction—Graduate, May 1983 **Bryan High School**—Graduate, May 1979

Awards

Awards and Accomplishments
2010 Texas Conservation Alliance
Conservation Hero of the Year
Arts Council of the Brazos Valley Business Arts Patron Award
Four-Time Recipient of the Newman 10 Award for the Top 10 Fastest Growing Companies in the Brazos Valley
Two-Time Recipient of the Aggie 100 Award, given annually to the fastest growing Aggie-owned businesses in the world.
2024 Recipient of the Anco Lifetime Business Achievement Award



RICKY GREER

Project Superintendent

11370 State Highway 30—College Station, Texas 77845 (979) 776-2135

Profile

Ricky has 50 years of construction experience. He has the vision of where to go and has the ability to lead others to the common goal everyone has in mind—a completed project, on time and within budget. Ricky's exceptional interpersonal and communication skills coupled with his unparalleled work ethic help to make him an exceptional Project Superintendent.

Experience

Dudley Construction LLC—College Station, Texas, Project Superintendent

1997-Present

Responsibilities included the overall day-to-day supervision of field construction activities, directing personnel and subcontracts, scheduling and sequencing the day-to-day activities of work; interfacing with the client to insure their satisfaction; overseeing individual projects to assure compliance with scope and quality as established by the contract documents; enforcing site cleanliness and safety programs; proactively anticipating and solving problems that could delay construction; promoting and installing values into the workforce; managing the permit and inspection process, inspecting projects to monitor progress and compliance with project standards; updating as-built drawings and attending scheduled progress meetings.

Projects:

Bryan ISD Rayburn, Long and Mitchell Additions and Renovations (\$9 million)

TAMU Gilchrist Building Renovations (\$5.5 million)

Meadows Point Apartments Renovations (\$4.5 million)

Bryan ISD Crockett Elementary School Additions and Renovations (\$4.5 million)

City of Bryan University Ranch Contract Six (\$4 million)

A&M UMC Christian Life Center Renovation (\$3.2 million)

TAMU TVMDL Procedure Rooms (Vivarium) (\$3 million)

O.I. Analytical (\$2.1 million)

TAMU TTI Building Renovation (\$2 million)

Blinn College Central Administration Offices Relocation (\$1.4 million)

Horse Haven Estates, Phases II and III (\$640,000)

City of Huntsville Westridge Sewer Line (\$550,000)

First Baptist Church Huntsville Waterproofing (\$411,000)

USDA Cagle Park (\$400,000)

TAMU Vivarium Additions and Renovations (\$375,000)

City of College Station Tarrow Park (\$250,000)

TAMU MSC Dining Facility Renovation (\$2 million)

TAMU Childcare Center (\$1 million)

City of Bryan University Ranch Contract Three (\$600,000)

Brazos County Courthouse Renovations (\$500,000)

First National Bank Renovations (\$400,000)

Wickson Creek SUD Water Improvements (\$350,000)

R&S Renovations—College Station, Texas, Owner

Personnel and Payroll; accounts payable and receivable; inventory and sales; job cost estimates, construction remodeling and repair.

Austin Commercial—San Antonio, Texas, Superintendent

Supervision of field activities

Completed Projects:

Hyatt Hotel—37 stories (\$337 million)

Constructors—Houston, Texas, Superintendent

Supervision of field activities

Completed Projects:

Texas A&M Clayton Williams Alumni Center Building Renovation (\$1.5 million)

C.F. Jordan, Inc.—College Station, Texas, Superintendent

Supervision of field activities

Completed Projects:

Complete Remodel of Bryan ISD's Sul Ross Elementary School

References:

Mark Knepley: 267-909-3056

Campus Apartments

Ralph Davila: 979-845-1225

Texas A&M University

Ed Ramirez: 713-825-5762

PBK Architects



RICKY GREER

Project Superintendent

11370 State Highway 30—College Station, Texas 77845 (979) 776-2135

Experience

Ricky Greer Construction—Millican, Texas, Owner 1996-1997

Personnel and Payroll; accounts payable and receivable; inventory and sales; job cost estimates, construction remodeling and repair.

Completed Projects:

Renovations of Various Dorms on the campus of Texas A&M University
Remodel of the Texas A&M Bookstore

Remodel of Side Pockets Billiards
Remodel of Paint N More

W.T.C. Construction, Inc.—Bryan, Texas, Superintendent

1990-1995

Complete supervision of all field operations

C. Barbu Company—Bryan, Texas, Superintendent

1988-1989

Complete supervision of all field operations

R&R Construction—Millican, Texas, Owner

1986-1987

Personnel and Payroll; accounts payable and receivable; inventory and sales; job cost estimates, construction remodeling and repair.

Texcon General Contractors—Bryan, Texas, Superintendent

1980-1985

Installation of underground utilities and gas service

Arnold Brothers Construction—College Station, Texas, Superintendent

1972-1979

Complete supervision of all field operations

Skills/ Certifications

OSHA 1000, OSHA 16– Hour Construction, Heavy Equipment, Aerial Lift, Forklift and First Aid/CPR/AED

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

1. City of College Station Veteran's Park and Athletic Complex Build-Out

Owner: City of College Station

Owner Contact: Emily Fisher

Owner Phone: 979-764-3816

Engineer: HALFF Associates, Inc.

Engineer Contact: Brian Binkowski

Engineer Phone: 512-777-4592

2. Texas A&M University Penberthy Parking Addition - Package 3

Owner: Texas A&M University

Owner Contact: David Ritter

Owner Phone: 979-219-0774

Engineer: PBK Architects

Engineer Contact: Trace Cryer

Engineer Phone: 713-965-0608

3. Brenham State Supported Living Center Restroom Renovations and Kitchen Building

Owner: Texas Health and Human Services

Owner Contact: Lisa Valdivia

Owner Phone: 512-420-6483

Architect: Upchurch Architects

Engineer Contact: Elizabeth Price

Engineer Phone: 979-525-1915

4. Texas A&M University A.I. & Manet Schepps Hillel Center Renovations

Owner: A.I. & Manet Schepps Hillel Center

Owner Contact: Leslie Feigenbaum

Owner Phone: 979-845-1222

Engineer: WJE Engineers

Engineer Contact: Steven Solka

Engineer Email: steven.solka@vanir.com

5. City of Brenham Stone Hollow Lift Station Replacement

Owner: City of Brenham

Owner Contact: Dane Rau

Owner Phone: 979-337-7407

Engineer: Strand Associates

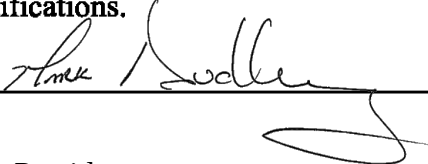
Engineer Contact: Logan Andrepont

Engineer Phone: 979-836-7937

CERTIFICATION

CERTIFICATION OF BID

The undersigned affirms that they are duly authorized to execute this contract, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid have not been communicated to any other bidder prior to the official opening of this bid. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement without modifications.

Signed By:  Title: President

Typed Name: President Company Name: Dudley Construction, LLC

Phone No.: 979-776-2135 Fax No.: _____

Email: bids@rmdudleyconstruction.com

Bid Address: 11370 State Highway 30 - College Station, Texas 77845
P.O. Box or Street City State Zip

Order Address: 11370 State Highway 30 - College Station, Texas 77845
P.O. Box or Street City State Zip

Remit Address: 11370 State Highway 30 - College Station, Texas 77845
P.O. Box or Street City State Zip

Federal Tax ID No.: 81-0569654

DUNS No.: 142420723

Date: August 6, 2024

END OF BID #24-070



BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we Dudley Construction, LLC as principal, hereinafter called the "Principal," and **SURETEC INSURANCE COMPANY, 2103 CityWest Boulevard, Suite 1300, Houston, TX 77042**, as surety, hereinafter called the "Surety," are held and firmly bound unto City of College Station, Texas as obligee, hereinafter called the Obligee, in the sum of Five Percent (5%) of the Amount Bid by Principal for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a bid for Remediation Plan of American Pavilion at Veterans Park.

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

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

SIGNED, sealed and dated this 6th day of August, 2024.

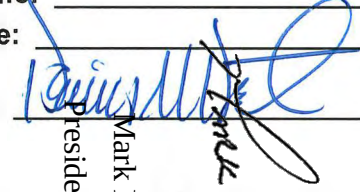
Principal: Dudley Construction, LLC

By: _____
Signature

Name: _____

Title: _____

SureTec Insurance Company

By:  _____
Signature

Name: **Dennis M. Descant, Jr.**
Attorney-in-fact

The Rider(s) Attached Hereto Is/Are Incorporated in the Bond and Contains Important Coverage Information and Limitations

JOINT LIMITED POWER OF ATTORNEY

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

Jeffrey L. Brady, Dennis M. Descant, Jr., Cheryl A. Sanders, Michael Inman, Timothy John Brady

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

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

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

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

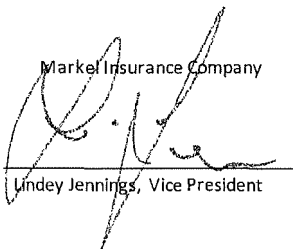
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 17th day of September, 2021.

SureTec Insurance Company

By: 
Michael C. Keimig, President



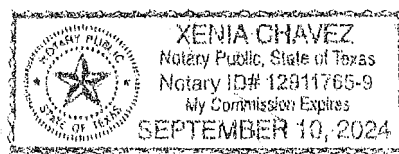
Markel Insurance Company

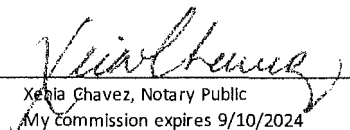
By: 
Lindsey Jennings, Vice President

State of Texas
County of Harris:

On this 17th day of September, 2021 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

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

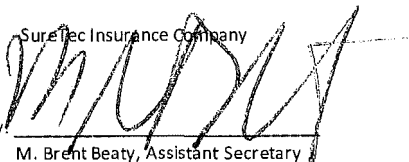


By: 
Xenia Chavez, Notary Public
My commission expires 9/10/2024

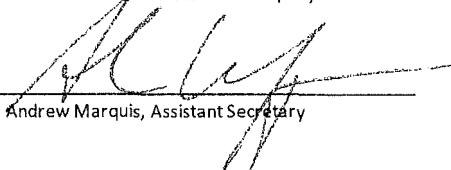
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 6th day of August, 2024.

SureTec Insurance Company

By: 
M. Brent Beatty, Assistant Secretary

Markel Insurance Company

By: 
Andrew Marquis, Assistant Secretary

Any Instrument Issued in excess of the penalty stated above is totally void and without any validity. 4221073
For verification of the authority of this Power you may call (713) 812-0800 on any business day between 8:30 AM and 5:00 PM CST.

SureTec Insurance Company

IMPORTANT NOTICE

Statutory Complaint Notice/Filing of Claims

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

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

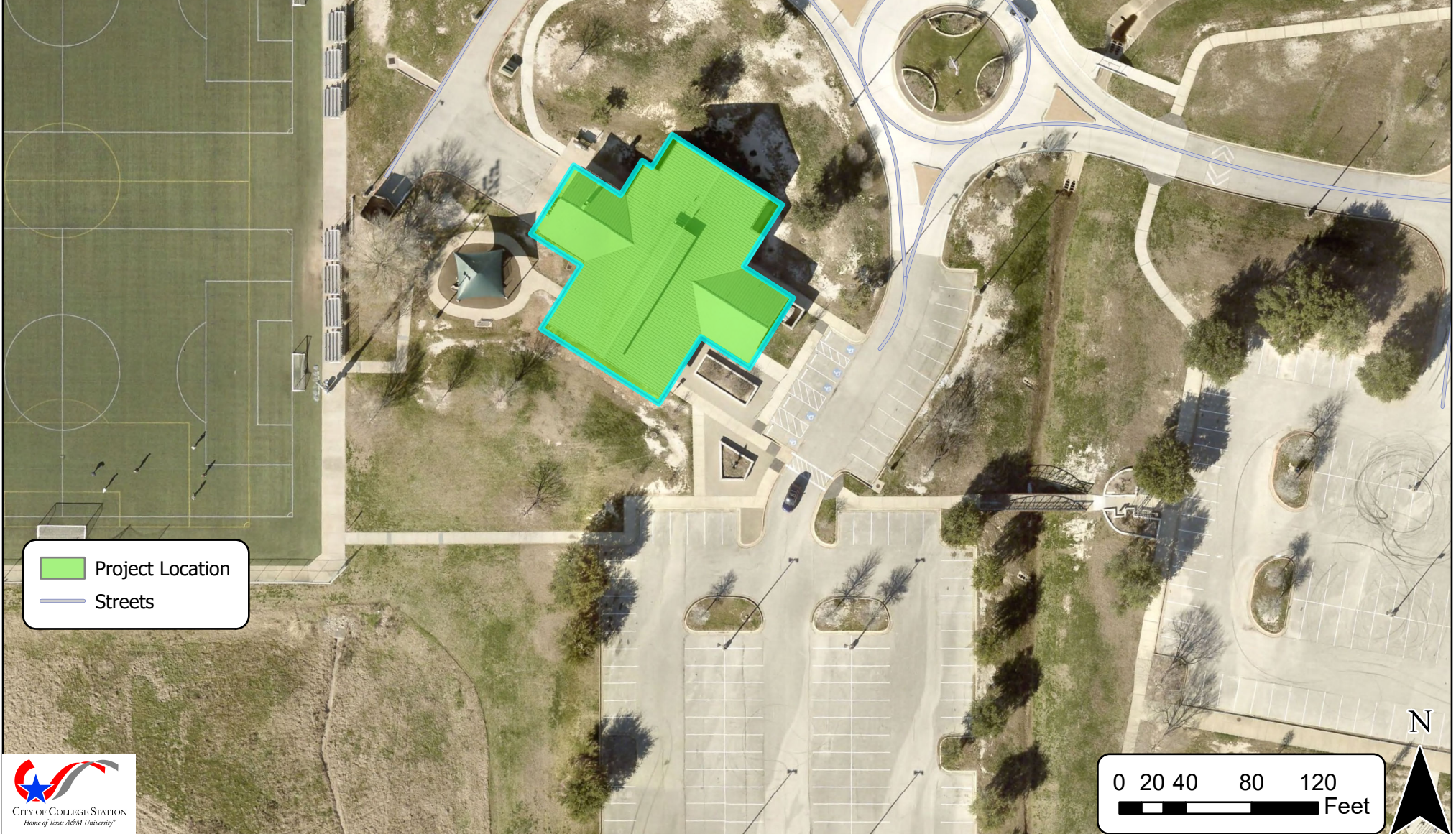
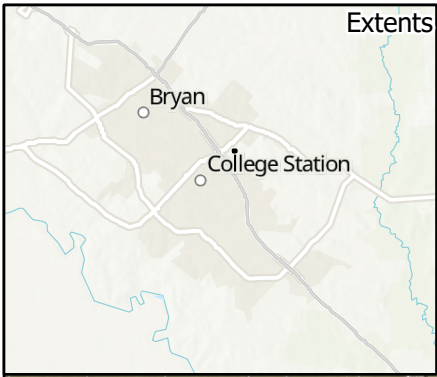
You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252- 3439. You may write the Texas Department of Insurance at:

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

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

American Pavilion Renovation

3101 Harvey Rd



Project Location

Streets

September 12, 2024

Item No. 7.5.

Second Reading of Franchise Agreement Ordinance for 2906 Holdings, LLC (dba Waste Falcon)

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on the second reading of a franchise agreement ordinance with 2906 Holdings, LLC (dba Waste Falcon) 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 2906 Holdings, LLC (dba Waste Falcon) 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 Waste Falcon 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.

A franchise agreement for Waste Falcon was approved by City Council on July 22, 2022. The company has changed names to 2906 Holdings, LLC but is continuing doing business as Waste Falcon.

Counting Waste Falcon, the city has 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. 24300572 2906 Holdings LLC Franchise Agreement Ordinance



CONTRACT#: 24300572 PROJECT#: N/A BID/RFP/RFQ#: N/A

Page 228 of 341

ORDINANCE NO. _____

RECYCLABLES COLLECTION FRANCHISE AGREEMENT

AN ORDINANCE GRANTING CONTRACTOR, 2906 HOLDINGS, LLC, (DBA WASTE FALCON) 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,

Table of Contents

Article I. Definitions	3
Article II. Grant of Authority and Acceptance	4
Article III. Payment and Term	4
Article IV. Access to Records & Reporting	6
Article V. Rates to be Charged by Contractor	6
Article VI. Appearance of Personnel and Equipment	6
Article VII. Collection and Transport of Recyclables	7
Article VIII. Placement of Receptacles	7
Article IX. Service Complaints	7
Article X. Disposal and Processing	8
Article XI. Violation and Penalty	8
Article XII. Insurance	8
Article XIII. Indemnification and Release	9
Article XIV. Disputes and Mediation	9
Article XV. General Terms	10
Exhibit A. Schedule of Rates	13
Exhibit B. Insurance Requirements	14
I) Standard Insurance Policies Required:	14
II) General Requirements Applicable to All Policies:	14
III) Commercial General Liability	14
IV) Business Automobile Liability	15
V) Workers' Compensation Insurance	15
Exhibit C. Certificates of Insurance	16

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

2906 Holdings, LLC (dba Waste Falcon)
Attn: Caleb Barnett
5544 Caroline Drive
Bryan, TX 77807
bcsjunkremoval@gmail.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 22nd day of August, 2024.
- b. Second Consideration & Approval on the 12th day of September 2024.

**2906 HOLDINGS, LLC
DBA WASTE FALCON**

By: C. Barnett

Printed Name: Caleb Barnett

Title: **Owner/Member**

Date: 8/8/2024

CITY OF COLLEGE STATION

By: _____
Mayor

Date: _____

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____

John A. Haislet

City Attorney
Date: 8/12/2024

Jim (Crista)

Assistant City Manager/CFO
Date: 8/12/2024

EXHIBIT A. SCHEDULE OF RATES

- **20-yard dumpster:** \$425 rental fee (7 days included, no tonnage included, 25 mi delivery radius)
- **30-yard dumpster (subcontracted):** \$565 rental fee (7 days included, no tonnage included, 25 mi delivery radius)
- **Junk removal** (custom quote)
- **Mileage:** \$4.25/mi after 25 miles
- **Days:** \$8/day after 7 days
- **Tonnage:** \$42/ton
- **Overweight fee:** additional \$50/ton over 3 tons in 20-yd or 10 tons in 30-yd (driver instructed to call for a second dumpster rather than haul it)
- **Same-day service fee:** \$50

· A **dry run** charge can range from **\$150** to **\$500** per occurrence. Blocking or impeding retrieval of a roll-off on the agreed delivery or collection date will result in a dry run charge.

· **Tires:** <19" (\$5/tire). 19"-24.5" (\$13/tire). >24.5" (\$33/tire)

· **Items with refrigerant:** \$25 each.

· **Special items (\$56/ton):** dead animals, non-friable asbestos-containing material, sludge, grit, grease, contaminated soils, food.

· **Other:** Cleaning due to loading restricted or hazardous materials may be billed at a 3rd party rate plus a reasonable markup.

Contractor's base rate 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)
07/31/2024

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 Next First Insurance Agency, Inc. PO Box 60787 Palo Alto, CA 94306	CONTACT NAME: PHONE (A/C, No, Ext): (855) 222-5919 E-MAIL ADDRESS: support@nextinsurance.com FAX (A/C, No):																					
INSURED 2906 Holdings, LLC DBA Waste Falcon 5544 Caroline Dr Bryan, TX 77807	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A :</td><td>State National Insurance Company, Inc.</td><td>12831</td></tr><tr><td>INSURER B :</td><td></td><td></td></tr><tr><td>INSURER C :</td><td></td><td></td></tr><tr><td>INSURER D :</td><td></td><td></td></tr><tr><td>INSURER E :</td><td></td><td></td></tr><tr><td>INSURER F :</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	State National Insurance Company, Inc.	12831	INSURER B :			INSURER C :			INSURER D :			INSURER E :			INSURER F :		
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INSURER B :																						
INSURER C :																						
INSURER D :																						
INSURER E :																						
INSURER F :																						

COVERAGES

CERTIFICATE NUMBER: 512120032

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:	X	NXTWCDD3R-00-GL	06/07/2024	06/07/2025	EACH OCCURRENCE \$1,000,000.00 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000.00 MED EXP (Any one person) \$15,000.00 PERSONAL & ADV INJURY \$1,000,000.00 GENERAL AGGREGATE \$2,000,000.00 PRODUCTS - COMP/OP AGG \$2,000,000.00 \$
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$1,000,000.00 AGGREGATE \$1,000,000.00 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below					☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

The Certificate Holder is City of College Station. This Certificate Holder is an Additional Insured on the General Liability policy and Umbrella/Excess Liability policy on a primary and non-contributory basis. This Certificate Holder is an Additional Insured on the General Liability policy and Umbrella/Excess Liability policy with respect to ongoing operations. All Certificate Holder privileges apply only if required by written agreement between the Certificate Holder and the insured, and are subject to policy terms and conditions.

CERTIFICATE HOLDER

City of College Station
PO Box 9960
College Station, TX 77842

LIVE CERTIFICATE



[Click or scan to view](#)

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Ann Ryan

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/1/2024

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 Wisdom Insurance Agency Inc. 2309 Silvernail Rd Pewaukee WI 53072	CONTACT NAME: Toby Stubbs PHONE (A/C, No, Ext): (262) 408-5019 FAX (A/C, No): (262) 661-7475 E-MAIL: toby@wisdominsurance.com ADDRESS: toby@wisdominsurance.com
INSURED 2906 Holdings, LLC DBA Waste Falcon 5544 Caroline Drive Bryan TX 77807-7806	INSURER(S) AFFORDING COVERAGE INSURER A : Progressive County Mutual Ins Co INSURER B : Biberk INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES

CERTIFICATE NUMBER: 2024-2025

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG \$ \$ \$ \$ \$ \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☒ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY	Y		982168297	06/07/2024	06/07/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) \$ \$ \$ \$ 1,000,000
	UMBRELLA LIAB EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	N9WC170633	06/07/2024	06/07/2025	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT \$ 1,000,000 \$ 1,000,000 \$ 1,000,000

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

Additional Insured: City of College Station

CERTIFICATE HOLDER**CANCELLATION**

City of College Station

RM PO Box 9960

College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

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Figure: 28 TAC §1.601(a)(2)(B)

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

State National Insurance Company, Inc.

To get information or file a complaint with your insurance company or HMO:

Call: Next First Insurance Agency, Inc.

Toll-free: 1-855-222-5919

Email: support@nextinsurance.com

Mail: P.O. Box 60787

Palo Alto, CA 94306

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439

File a complaint: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

¿Tiene una queja o necesita ayuda?

Si tiene un problema con una reclamación o con su prima de seguro, llame primero a su compañía de seguros o HMO. Si no puede resolver el problema, es posible que el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) pueda ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja a través del proceso de quejas o de apelaciones de su compañía de seguros o HMO. Si no lo hace, podría perder su derecho para apelar.

LIVE CERTIFICATE



[Click or scan to view](#)

State National Insurance Company, Inc.

Para obtener información o para presentar una queja ante su compañía de seguros o HMO:

Llame a: Next First Insurance Agency, Inc.

Teléfono gratuito: 1-855-222-5919

Correo electrónico: support@nextinsurance.com

Dirección postal: P.O. Box 60787
Palo Alto, CA 94306

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros o para presentar una queja ante el estado:

Llame con sus preguntas al: 1-800-252-3439

Presente una queja en: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

LIVE CERTIFICATE



[Click or scan to view](#)

September 12, 2024

Item No. 7.6.

Marketing and Advertising Services for Visit College Station

Sponsor: Brian Piscacek, Assistant Director of Economic Development

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a contract for marketing and advertising services with The Zimmerman Agency, LLC in an amount not to exceed \$625,000.

Relationship to Strategic Goals:

- Diverse & Growing Economy

Recommendation(s): Staff recommends approval.

Summary: A Request for Proposals was released in April 2024, for marketing and advertising services on behalf of Visit College Station. Nine (9) responses were received. Based on the evaluation criteria, The Zimmerman Agency provided the most comprehensive proposal to address tourism advertising planning, media placement, and creative services. The initial term of this contract is one (1) year for an amount not to exceed \$625,000 with the option to renew for three (3) additional one-year terms.

While this is a contract with a new agency, Visit College Station has had a marketing agency in the past to perform marketing and advertising services. The FY24 contract was for \$400,000.

Budget & Financial Summary: The total cost for the term is not to exceed \$625,000. This is broken down into the following categories:

- Agency Fee: \$144,000
- Paid Media: \$380,000
- Production: \$85,000
- Out-of-Pocket: \$16,000

This is an annually budgeted amount in the Tourism budget utilizing Hotel Occupancy Tax (HOT) funds.

Attachments:

1. 24300597 Zimmerman Agency CRC 82624



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300597 PROJECT #: _____ BID/RFP/RFQ#: 24-047

Project Name / Contract Description: Marketing and Advertising Services for Economic Development/
City of College Station

Name of Contractor: The Zimmerman Agency, Inc.

CONTRACT TOTAL VALUE: \$ 625,000.00 **Grant Funded** Yes ☐ No ☒
If yes, what is the grant number:

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

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

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)
Funds are budgeted and available in the Economic Development Fund.

Org 31210173 Object 5541

(If required)*
CRC Approval Date*: 8/26/2024 **Council Approval Date*:** 09/12/2024 **Agenda Item No*:** 7.7

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

CITY OF COLLEGE STATION GENERAL SERVICES CONTRACT

This **General Services Contract** (“Contract”) is executed by and between the **City of College Station, Texas**, a Texas-Home-Rule Municipal Corporation (“City”) and **The Zimmerman Agency, Inc.** (“Contractor”), collectively referred as the Parties, for the following project, **Marketing and Advertising Services for the City of College Station**, and pursuant to the promises, representations, warranties, obligations, and consideration herein described, including monetary and non-monetary consideration, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE I PAYMENT, TERM, SPECIAL DEFINITIONS, AND INTERPRETATION

1.1 Consideration. In consideration for the services and work performed in the Scope of Services/Work see **Exhibit A** (Scope of Services or Work) and Contractor’s Completion of work in conformity with this Contract, as well as the non-monetary consideration in the form of the Contractor’s representations, warranties, promises, and obligations contained in this Contract, the City shall pay the Contractor an amount not to exceed **Six Hundred Twenty-Five Thousand and 00/100 Dollars (\$625,000.00)**.

1.2 Payment Application. Within **seven (7)** calendar days of completion of the services the Contractor will submit its payment application to the City.

1.3 City’s Payment and Approval. The City will pay Contractor as shown in **Exhibit B** (Payment Schedule), for the services performed no later than **thirty (30)** calendar days from the date of the City’s receipt of the payment application and the City’s approval of the services.

1.4 Term. The initial term of the Contract is for twelve (12) months beginning October 1, 2024 and expiring September 30, 2025, with the potential option to renew for three (3) additional one (1) year terms, for a total of four (4) possible years; however, it is expressly required that the Parties must mutually agree in writing (through the execution of a subsequent amendment or other revision of this Contract) to approve any renewal of this Contract.

1.5 Executed Contract. The “Notice to Proceed” will not be given nor shall any work commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to the Contract.

1.6 Special Definitions. Unless specially defined in this Contract, words used in this Contract shall be interpreted according to their common usage or meaning to result in the most reasonable application. Unless otherwise designated, the following special definitions shall apply whether a term or phrase appears in capital letters or in bolded, italicized, or underlined print:

- (a) **“Business Day”** means a day other than a Saturday, Sunday, or holiday recognized by the City, and unless described by this Contract as a “Business Day,” a “day” herein described shall mean a calendar day.

- (b) **“City”** means the City of College Station, Texas, a signing Party to this Contract, including its elected officials, appointed officials, officers, employees, representatives, agents, successors and permitted assigns.
- (c) **“City Council” or “Council”** means the City Council of the City of College Station, Texas, the governing body of the City.
- (d) **“City Manager”** means the City Manager of the City of College Station, Texas.
- (e) **“Contract” or “Agreement”** means this General Services Contract including all attached exhibits approved and executed by the signing Parties.
- (f) **“Contractor”** means the Contractor as described above, a signing Party to this Contract, including its directors, officers, members, managers, partners, employees, representatives, agents, subcontractors, successors, and permitted assigns.
- (g) **“Contractor Business Records”** means the business records created or maintained by the Contractor (or on its behalf) regarding the performance of this Contract that the City reasonably needs to inspect, copy, and review to determine Contractor compliance with this Contract.
- (h) **“Default”** means the conduct, act, or omission by a Party which constitutes a breach or violation of a duty, obligation, representation, or responsibility imposed on that Party by this Contract. Default is synonymous with material default as used in this Contract.
- (i) **“Insurance Coverage”** includes not only commercial insurance coverage but also risk pool coverage as allowed by law.
- (j) **“Party”** means a signing Party to this Agreement. The signing Parties to this Contract collectively are the City and the Contractor.
- (k) **“Project”** means the City’s project made the subject of this Contract, as defined by the Scope of Work or Services described in this Contract in **Exhibit A**.
- (l) **“Scope of Services or Work”** means the services, goods, and work described in this Contract for the City’s Project, as described in **Exhibit A**.

1.7 Interpretation.

- (a) Unless otherwise designated in this Contract, 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.
- (b) All statements made in the preamble and preliminary recitals of this Contract and all attached documents are incorporated by reference. The following documents

are attached to this Contract as exhibits: **Exhibit A** – Scope of Services/Work; **Exhibit B** – Payment Schedule; and **Exhibit C** – Certificates of Insurance.

ARTICLE II CHANGE ORDER

2.1 Changes will not be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid, except upon the prior written order from authorized personnel of the City. The Contractor will not execute change orders on behalf of the City or otherwise alter the financial scope of the services except in the event of a duly authorized change order approved by the City as provided in this Contract.

- (a) **City Manager Approval.** When the original Contract amount plus all change orders is \$50,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$50,000. A change order resulting in a revised Contract amount exceeding \$50,000 may be subject to additional statutory requirements as applicable; and

When the original Contract plus all change orders is greater than \$50,000 but less than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total Contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work. The sum of all change orders may not exceed 25% of the original contract amount; and

- (b) **City Council Approval.** When the original contract amount plus all change orders is greater than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000. For such contracts, when a change order exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work. The sum of all change orders may not exceed 25% of the original contract amount.
- (c) **Increase in Scope.** Any request by the Contractor for an increase in the Scope of Services/Work and an increase in the amount listed in Article I of this Contract shall be made and approved by the City prior to the Contractor providing such services or work or the right to payment for such additional services or work shall be waived.
- (d) **Dispute.** If there is a dispute between the Contractor and the City respecting any service or work provided or to be provided hereunder by the Contractor, including a dispute as to whether such service or work is additional to the Scope of Services or Work included in this Contract, the Contractor agrees to continue providing on

a timely basis all services or work to be provided by the Contractor hereunder, including any service as to which there is a dispute.

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

3.1 Independent Contractor. It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services or Work. The Contractor shall be solely responsible for and have control over the means, methods, techniques and procedures, and for coordination of all portions of the work or services. Unless otherwise provided in the Contract, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work or services. In addition, at the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the work or services required by the Contract or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The City will not control the manner or the means of the Contractor's performance but shall be entitled to a work product as in the Scope of Services or Work. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.

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

ARTICLE IV INSURANCE

4.1 The Contractor shall procure and maintain, at its sole cost and expense for the duration of this Contract, sufficient insurance coverage, as herein described, 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 officers, agents, volunteers, and employees.

4.2 The Contractor's insurance shall list the City of College Station, its officers, agents, volunteers, and employees as additional insureds. More specifically, the following shall be required. Certificates of insurance evidencing the required insurance coverage policies are attached in **Exhibit C**. During the term of this Contract, Contractor's insurance policies shall meet the minimum requirements of this section.

4.3 Types. Contractor shall acquire and maintain for Contract duration the following types of insurance:

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

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

- (a) Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and delivered to the City in a timely manner according to this instrument.
- (b) Certificates of Insurance and endorsements shall be furnished and delivered to the City on the most current State of Texas Department of Insurance-approved forms to the City's Representative no later than 3 days before this instrument is submitted for final approval and execution by the City; shall be attached to this Contract 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.

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

- (a) General Liability insurance shall be written by a carrier rated "A:VIII" or better under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement 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 \$1,000,000 per occurrence for death, bodily injury, and property damage, with an annual aggregate limit of \$2,000,000.00. Limits shall be endorsed to be per project.
- (d) No coverage shall be excluded from the standard policy without notification of individual exclusions being submitted for the City's review and acceptance before the execution of this contract by the City.
- (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, and Personal & Advertising Liability.

4.6 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 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 death, 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 operated by the Contractor on (i) City property, (ii) the job or work site associated with or related to the business purpose or Scope of Services/Work described by this Contract, (iii) any other property or road in performance of this contract.

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

- (a) Employer’s Liability minimum limits of liability not less than \$1,000,000 for each accident/each disease/each employee are required;
- (b) “Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04” shall be included in this policy; and
- (c) TEXAS must appear in Item 3A of the Workers’ Compensation coverage or Item 3C must contain the following: “All States except those named in Item 3A and the States of NV, ND, OH, WA, WV, and WY”.

ARTICLE V INDEMNIFICATION AND RELEASE

5.1 Indemnification. The Contractor shall indemnify, hold harmless, and defend the City, its Council members, officials, 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 attorneys’ fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work or services done by the Contractor under this Contract. 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. 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.

5.2 Release. The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its Council members,

officials, 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 that is caused by, 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 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. There shall be no additional release other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

ARTICLE VI GENERAL TERMS

6.1 Performance. Contractor, its officers, employees, associates, representatives, agents, subcontractors, successors, permitted assigns and other representatives expressly warrant and represent that they shall perform all the work and services described in the Scope of Services or Work in a good, workmanlike, and professional manner and in accordance with this Contract, and all applicable laws, codes, and regulations. Contractor and its aforesaid representatives shall be fully qualified and competent to perform the work or services. Contractor shall undertake and complete the work or services in a timely manner.

6.2 Termination.

(a) Termination for Convenience. The City may terminate the Project and this Contract, at any time, for convenience by notifying Contractor in writing at sixty (60) days prior. In the event of such termination the City will notify the Contractor in writing and the Contractor shall cease work immediately. Contractor shall be compensated for the work and services performed provided Contractor is not in default of this Contract. Should the City terminate this Contract for convenience, the City shall pay Contractor for the work and services performed and expenses incurred before the date of termination, provided the Contractor is not in default of this contract.

(b) This **Contract** also may be terminated: **(a)** by the City upon a default committed by the Contractor; **(b)** by a subsequent written termination Contract executed with the mutual consent of the contracting Parties; and **(c)** at the conclusion of the Contract term, unless the Contract term is extended by a written amended Contract executed with the mutual consent of the contracting Parties as herein required.

6.3 Choice of Law and 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.

6.4 Amendment. This Contract may only be amended by written instrument approved and executed by the Parties.

6.5 Taxes. The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project made the basis of this Contract. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

6.6 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 Act (IRCA) regarding the Contractor's performance, operations and activities pursuant to this Contract. 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. Nothing in this Contract shall be construed to alter or affect the obligation of the Contractor to comply with any applicable federal or Texas statute, rule, or regulation, and any applicable local ordinance, rule, or regulation regarding the performance of this Contract or the Contractor's operations and activities regarding the project made the subject of this Contract, and further, the parties would show that prior to the approval of this Contract by the City, the Contractor has submitted to the City: (a) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code; and (b) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

6.7 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 or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition. Also, no waiver of a default occurs if a non-defaulting Party fails to immediately declare a default or delays in taking any action regarding a default committed by a defaulting Party.

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

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

6.10 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 Contract 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 Contract excluding such conflicting addition by Contractor shall prevail. The parties understand this section comprises part of this Contract without necessity of additional consideration.

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

6.12 Agree to Terms. The parties state that they have read the terms and conditions of this Contract and agree to the terms and conditions contained in this Contract.

6.13 Effective Date. This Contract goes into effect when duly approved by all the parties hereto. The Effective Date is the date the last signing Party executes this Contract.

6.14 Notice. Any official notice under this Contract will be sent to the following addresses:

CITY OF COLLEGE STATION

Attn: Brian Piscacek
PO BOX 9960
1101 Texas Ave
College Station, TX 77842
bpiscacek@cstx.gov

THE ZIMMERMAN AGENCY, INC.

Attn: Dawn Ridge
1821 Miccosukee Commons Dr
Tallahassee, FL 32308
dridge@zimmerman.com

6.15 Governmental Immunity. This Contract is subject to the proper application of the doctrine of governmental immunity.

6.16 Duplicate Originals. The parties may execute this Contract in duplicate originals, each of equal dignity, and further, copies of this complete and fully executed Contract (including copies of signatures) shall have the same force and effect as an original.

6.17 Exhibits. All exhibits to this Contract are incorporated and made part of this Contract for all purposes.

6.18 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.

6.19 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.

6.20 Default.

- (a) The City may declare a Default of this Contract if the Contractor commits a Default of this Contract and fails to cure the default during an authorized cure period as herein described.
- (b) If the City declares a Default of this Contract, it is agreed that the City may modify or terminate this Contract, and the City, in such event, shall be entitled to pursue all remedies allowed or authorized by law, equity, or this Contract.
- (c) The City shall notify the Contractor of a Default in writing, and the Parties agree as follows: (i) the default notice shall specify and reasonably explain the basis for the declaration of default; (ii) regarding an authorized opportunity to cure, the Contractor shall have 10 days from the receipt of the default notice to cure the default; (iii) where fulfillment of any obligation requires more than 10 days, the Contractor's performance shall be commenced within 10 days after the default notice receipt and such performance shall be diligently continued until the default is cured; and (iv) however, if such default cannot be cured, or cannot be cured within 45 days from the date of the default notice receipt, the Contractor shall be liable for and will promptly perform under this Contract and pay to the City within 60 days from receipt of the default notice all amounts due the City for the default as described in this Contract.
- (d) Should a Default be committed by the Contractor, the City may pursue and recover all remedies authorized by law, equity or this Contract, including: (i) termination of this Contract; (ii) litigation (with or without a trial by jury) including all authorized causes of action, claims, and damages; (iii) equitable relief or extraordinary relief, including all authorized injunction, specific performance, and mandamus relief; and (iv) all authorized remedies for the (a) recovery of all accrued monetary amounts due the City but not paid by the Contractor to the City under this Contract, and (b) recovery of the City's reasonably incurred attorney's fees, reimbursement amounts, and other expenses, costs, interest, offsets, and credits due the City as allowed by law.
- (e) Should a Default be committed by the City, the Contractor may pursue and recover all remedies authorized by law, equity, or this Contract, including: (i) termination of this Contract; (ii) litigation (with or without a trial by jury) including all authorized causes of action, claims, and damages; (iii) equitable relief, specific performance, or extraordinary relief, including all authorized injunction and mandamus relief; and (iv) recovery of the reasonably incurred attorney's fees, reimbursement amounts, and other expenses, costs, interest, offsets, and credits due the Contractor as allowed by law.

6.21 Alternative Dispute Resolution. No suit shall be filed by a Party regarding a dispute arising under or related to this Contract unless the Parties first attempt to submit the dispute to

mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Contract, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas, within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509, (800) 733-9529.

List of Exhibits

- A.** Scope of Services/Work
- B.** Payment Schedule
- C.** Certificates of Insurance

THE ZIMMERMAN AGENCY, INC.

CITY OF COLLEGE STATION

By: _____
Title: _____

Printed Name: _____
Date: _____

By: _____
City Manager
Date: _____

APPROVED:

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

EXHIBIT A
SCOPE OF SERVICES/WORK

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services/Work that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

Attached is Scope of Services/Work.



Scope of Services

Agency of Record: The Zimmerman Agency, LLC ("Agency") will serve in the capacity of Agency of Record for Visit College Station ("Client"). The Agency shall provide comprehensive marketing and communication services to promote Visit College Station across multiple target audiences. These audiences include, but are not limited to, leisure travelers, group meeting planners and attendees, sports organizing groups and attendees, and other audiences as directed by the Client, including those specific to the Christmas in College Station event.

Services Provided: The Agency's scope of services includes the following:

1. **Momentum Planning:** Strategic development to guide and optimize marketing efforts, ensuring alignment with Client objectives and market trends.
2. **Account Management:** Comprehensive oversight and coordination of all Agency activities to ensure timely and effective delivery of services.
3. **Media Planning and Buying:** Development and execution of media strategies, including the planning, negotiation, and purchase of media across various platforms to maximize reach and impact.
4. **Creative and Content Development:** Creation and production of compelling advertising and promotional content across traditional and digital channels. Traditional channels may include print, out-of-home, television/streaming TV, video, collateral like brochures, rack cards, event and expo materials, etc. Digital channels may include things like digital display, SEM, and digital/social creative assets. Creative and content development will cover other promotional materials as required. Within content development, all manpower copy, design, script writing services are included.
5. **Digital Channel Strategy:** Formulation and execution of digital marketing strategies to enhance the Client's online presence and engagement with target audiences.
6. **Project Management:** Coordination and management of all project activities to ensure alignment with timelines, budgets, and objectives.
7. **Production Management Services:** Overseeing the production of all marketing materials, including but not limited to photography, videography, and other multimedia assets.

8. **Brand Development and Stewardship:** Ongoing development, refinement, and management of the Visit College Station brand to ensure consistency and effectiveness across all communications.
9. **Accounting and Administrative Support:** Providing financial and administrative services necessary for the smooth execution of Agency activities.
10. **Management of Reporting:** Monthly reporting on the performance of marketing activities, including detailed analytics and recommendations for future actions.

Creative Assignments: Specific creative assignments under this agreement may include, but are not limited to:

- Development of traditional and digital advertising campaigns, including copy, design, script writing. Traditional channels may include print, out-of-home, television/streaming TV, video, collateral like brochures, rack cards, event and expo materials, etc. Digital channels may include things like digital display, SEM, and digital/social creative templates/assets. Creative and content development will cover other promotional materials as required. Within content development, all manpower copy, design, script writing services are included.
- Creation of collateral materials such as brochures, rack cards, and other promotional tools.
- Design and production of brand elements, trade show materials, merchandise, and signage.
- Oversight and production of photography and videography projects.

The Agency will ensure that all creative and production efforts align with the strategic objectives of Visit College Station and resonate with the intended audiences.

Budget and Projected Spending

Total Budget: The total budget for the services provided under this agreement shall not exceed six hundred twenty-five thousand dollars (\$625,000).

Budget Line Items for \$625K total:

1. **Agency Fees:** The Agency will charge a fixed monthly fee of twelve thousand dollars (\$12,000) for its services, totaling one hundred forty-four thousand dollars (\$144,000) over the contract period. This fee encompasses all services outlined in the Scope of Services section, except for in-house video production and editing, and the development of websites, microsites, or other non-recurring digital assignments.

- **Additional Services:** For services that fall outside the scope of the monthly fee, the Agency will apply a "blended hourly rate" of one hundred fifty dollars (\$150) per hour. The time required for these additional projects will be estimated and presented to the Client for approval prior to the commencement of work.
- 2. **Paid Media:** The budget allocated for paid media is three hundred eighty thousand dollars (\$380,000). The distribution of this budget is as follows:
 - **Digital Media:** Sixty-five percent (65%), amounting to two hundred forty-seven thousand dollars (\$247,000), will be allocated to digital channel
 - **Traditional Media:** Twenty-five percent (25%), amounting to ninety-five thousand dollars (\$95,000), will be allocated to traditional media channels, including print, broadcast, and out-of-home.
 - **Contingency:** Ten percent (10%), amounting to thirty-eight thousand dollars (\$38,000), will be reserved for contingency media buying as directed by the Client.
 - **Commissions:** On all media planned, purchased and/or negotiated by the agency the media shall include an amount that will yield the agency a 7.5% commission on the gross cost of the media.
- 3. **Production:** The budget to produce marketing assets, including photography and videography (sizzle reels video assets, commercials etc.), editing, music sourcing, is eighty-five thousand dollars (\$85,000). Printing costs will be incremental to this budget and estimated per project as needed. All third party production shall be billed at the net cost.
- 4. **Out-of-Pocket Expenses:** The budget for out-of-pocket expenses, which includes travel, shipping, and other material costs, is sixteen thousand dollars (\$16,000).

BUDGET SUMMARY:

Agency Fee:	\$144,000
Paid Media:	\$380,000 (traditional: \$95K, digital: \$247K, contingency: \$38K)
Production:	\$85,000
Out-of-Pocket:	<u>\$16,000</u>
TOTAL	\$625,000

Budget Compliance: The Agency shall manage all expenditures in accordance with the allocated budget and will seek prior approval from the Client for any expenditures that may exceed the outlined amounts. The Agency will provide regular budget tracking reports to ensure transparency and budget adherence.

PROPOSED TENTATIVE TIMELINE

OCTOBER	Onboarding, Ignition, Momentum Day(s), Picking up existing media/creative projects/commitments. Review of existing assets. Creative development/ideation for holiday campaign.
NOVEMBER	Momentum Strategy complete, Team immersion, Continue existing projects/commitment, Begin development of 2025 Marketing Communications Plan, Begin brand analysis and creative development (based on Momentum Strategy).
DECEMBER	Creative development continues, photography/videography of Campaign creative assets, creative approvals. Continue existing projects/commitments. 2025 communications plan approved.
JANUARY 2025	Campaign launch and ongoing new marketing activities for Leisure, Sports, Meetings/Events and other promotional projects commence.
FEB – SEPT. 2025	Ongoing creative development, production activities against Marketing communications plan and other promotional opportunities as they arise, Monthly analytics/reporting on Marketing performance.

EXHIBIT B
PAYMENT SCHEDULE

The Contractor must submit *monthly* invoices to the City, accompanied by an explanation of charges, fees, services, and expenses. The City will pay such invoices in compliance with the Texas Prompt Payment Act. Furthermore, upon monthly invoice, the City will pay Contractor for Agency Fees, Paid Media, Production and Out-of-Pocket Expenses in accordance with the terms in Exhibit A, "Scope of Services/Work". Contractor expenditures, including but not limited to expenditures for Paid Media, Production, Travel and Out-of-Pocket expenses, must be approved by City prior to the expenditures being made.

Annual Not to Exceed Budget:

Agency Fee*	\$144,000
Media & Production	465,000
Out of Pocket	16,000
Total NTE	\$625,000

*Agency Fee billed monthly @ \$12,000

EXHIBIT C
CERTIFICATES OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/05/2024

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

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

PRODUCER MARSH USA, LLC. 1166 Avenue of the Americas New York, NY 10036 Attn: EMAIL: OMNCOM.REQUEST@MARSH.COM	CONTACT NAME: PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL ADDRESS:														
CN102105620-ALL-GAU-24-25 ZIMM	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : Zurich American Insurance Company</td><td>16535</td></tr><tr><td>INSURER B : N/A</td><td>N/A</td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Zurich American Insurance Company	16535	INSURER B : N/A	N/A	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : Zurich American Insurance Company	16535														
INSURER B : N/A	N/A														
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															
INSURED OMNICON GROUP INC. (THE ZIMMERMAN AGENCY LLC) 437 MADISON AVENUE NEW YORK, NY 10022															

COVERAGES **CERTIFICATE NUMBER:** NYC-012038174-01 **REVISION NUMBER:** 4

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ CONTRACTUAL LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:		GLO 5096224 09	07/01/2024	07/01/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		BAP 5096225 09	07/01/2024	07/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 4,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ COMP / COLL DED: \$ 1,000
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
the City of College Station, its officers, agents, volunteers, and employees included as additional insured on all policies where required by written contract. Coverage is Primary and Non-Contributory where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

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

© 1988-2016 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

ONLY THOSE WHERE REQUIRED BY WRITTEN CONTRACT AND NOT OTHERWISE
EXCLUDED.

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", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations;
or
2. In connection with your premises owned by or rented to you.

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.

Other Insurance Amendment – Primary And Non-Contributory



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO-5096224-09	07/01/2024	07/01/2025	07/01/2024	18232000	INCL	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Omnicom Group Inc.

Address (Including ZIP Code): 280 Park Ave FL 31, New York, NY, 10017-1216.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

1. The following paragraph is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:

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

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by a written contract or written agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

All other terms and conditions of this policy remain unchanged.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/4/2024

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 Commercial Lines - (248) 353-5800 USI Insurance Services LLC 4000 Town Center, Suite 800 Southfield, MI 48075	CONTACT NAME: Jim Wagner PHONE (A/C, No, Ext): 249-621-9828 FAX (A/C, No): 610-537-2371 E-MAIL ADDRESS: GMBAAAACERT@usi.com														
INSURED Omnicom Group Inc. The Zimmerman Agency LLC 1821 Miccosukee Commons Tallahassee, FL 32308	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: XL Specialty Insurance Company	37885	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER:** 15895199**REVISION NUMBER:** See below

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	X RWC6200002	01/01/2024	01/01/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Waiver of Subrogation applies in favor of Certificate Holder when required by written contract and where permitted by law.
 Coverage is provided in the State of Texas and it is listed in item 3A of the Workers' Compensation coverage.

CERTIFICATE HOLDER

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

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

The ACORD name and logo are registered marks of ACORD © 1988-2015 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03)

(This certificate replaces certificate 15895199 of 9/4/2024)
 C#24300597 The Zimmerman Agency, Inc.

Page 272 of 341

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: Included
The premium charge for this endorsement shall be 2.000 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: \$3,945

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured
Omnicom Group Inc.
Insurance Company
XL Specialty Insurance Company

Policy No.
RWC6200002-19

Endorsement No.
Premium Included

Countersigned by _____

WC 42 03 04 B
(Ed. 6-14)

September 12, 2024

Item No. 7.7.

Ordinance Amendment (*Enmienda de la Ordenanza*)

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an ordinance amending Section 3 of Ordinance 2024-4530 ordering a General Election to be held November 5, 2024 for the purpose of electing City Councilmember Place 3, City Councilmember Place 4, City Councilmember Place 5 and City Councilmember Place 6, to the voters, by amending a vote center location as prescribed by Brazos County. (Presentación, discusión y posible acción sobre una ordenanza que enmienda la seccion 3 de la Ordenanza 2024-4530 que ordena una Eleccion General a celebrarse el 5 de noviembre de 2024 con el proposito de elegir un miembro de consejo puesto numero 3, miembro de consejo puesto numero 4, miembro de consejo puesto numero 5, y miembro de consejo puesto numero 6, a los votantes, enmienda la ubicacion de un centro de votacion segun lo prescrito por el Condado de Brazos.)

Relationship to Strategic Goals:

- Good Governance (*Buena Gobernanza*)

Recommendation(s): Recommend for approval. (*Recomienda su aprobacion.*)

Summary: On Monday, August 19, the CSO was notified by the Brazos County Election Administrator that a polling location (vote center) had changed. The Millican Fire Department at 3030 Wingfall Street, Millican, TX had pulled out of the election due to dorms being built in the area where they were using for voting. The location has changed to the Millican United Methodist Church located at 22029 Kathy Fleming Rd. Millican, Tx. just 2 miles down the road. Since joint elections in November are required by law, the City is required to use the polling locations established by the County Commissioners. (*El lunes, 19 de agosto, la CSO fue notificada por el Administrador de Elecciones del Condado de Brazos que un lugar de votación (centro de votación) había cambiado. El Departamento de Bomberos de Millican en 3030 Wingfall Street, Millican, TX se había retirado de la elección debido a que se estaban construyendo dormitorios en el área que estaban usando para votar. El lugar ha cambiado a la Iglesia Metodista Unida de Millican ubicada en 22029 Kathy Fleming Rd. Millican, Tx. a sólo 2 millas por la carretera. Dado que las elecciones conjuntas en noviembre son requeridas por la ley, la Ciudad está obligada a utilizar los lugares de votación establecidos por los Comisionados del Condado.*)

Budget & Financial Summary: N/A

Attachments:

1. Amended Nov 2024 Election Order (English) 0903
2. Enmendado Noviembre 2024 orden electoral (española) 0903

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, AMENDING SECTION 3 OF ORDINANCE NO. 2024-4530 ORDERING A GENERAL ELECTION TO BE HELD ON NOVEMBER 5, 2024 FOR THE PURPOSE OF ELECTING CITY COUNCILMEMBER PLACE 3, CITY COUNCILMEMBER PLACE 4, CITY COUNCILMEMBER PLACE 5 AND CITY COUNCILMEMBER PLACE 6, BY THE QUALIFIED VOTERS OF THE CITY OF COLLEGE STATION; PROVIDING FOR CHANGES IN VOTE CENTER LOCATIONS AS PRESCRIBED BY BRAZOS COUNTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 3 of Ordinance No. 2024-4530 is hereby amended to read as follows:

(amended text is **bolded** and underlined)

SECTION 3. The polling places for each precinct for this election shall be as follows:

Vote Centers	Vote Centers
<u>Millican United Methodist Church</u> <u>22029 Kathy Fleming Rd.</u> <u>Millican, Texas</u>	Castle Heights Baptist Church 4504 E. Hwy 21 Bryan, Texas
College Station Meeting & Training Facility 1603 Graham Road College Station, Texas	St. Francis Episcopal Church 1101 Rock Prairie Road College Station, Texas
Galilee Baptist Church 804 N. Logan Street Bryan, Texas	A&M Church of Christ 2475 Earl Rudder Freeway College Station, Texas
Zion Church of Kurten 977 N. FM 2038 Kurten, Texas	Arena Hall 2906 Tabor Road Bryan, Texas
Parkway Baptist Church 1501 Southwest Parkway College Station, Texas	Legends Event Center 2533 Midtown Park Blvd Bryan, Texas
College Heights Assembly of God 4100 Old College Road Bryan, Texas	Brazos Center 3232 Briarcrest Drive Bryan, Texas
First Baptist Church - Bryan 3100 Cambridge Drive Bryan, Texas	Wellborn Baptist Church 14575 FM 2154 Road College Station, Texas
Beacon Baptist Church 2001 East Villa Maria Road Bryan, Texas	Living Hope Baptist Church 4170 State Highway 6 South College Station, Texas

Bryan Ballroom 703 Palasota Drive Bryan, Texas	Church of the Nazarene 2122 E William J Bryan Pkwy Bryan, Texas
Brazos County Election Admin Office Ruth McLeod Training Room 300 East Wm J. Bryan Pkwy, Suite 100 Bryan, Texas	Justice of the Peace Pct 1 412 William D Fitch Pkwy College Station, Texas
Memorial Student Center Room 2400 (MSC) Texas A&M Campus, Joe Routt Blvd. College Station, Texas	Rellis Campus - Chapel & Assembly Hall 1555 Avenue D Bryan, Texas
Lincoln Center 1000 Eleanor Street College Station, Texas	Christ Church 4201 SH 6 South College Station, Texas
College Station City Hall (Bush 4141) 1101 Texas Avenue College Station, Texas	Castlegate II (Event Center) 4205 Norwich Dr College Station, Texas
College Station ISD Administration Building 1812 Welsh Avenue College Station, Texas	Crestview at Arbor Oaks 2505 E Villa Maria Road Bryan, Texas

SECTION 2. If any portion of this Ordinance is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect.

SECTION 3. All other terms and conditions of Ordinance No. 2024-4530 remain in full force and effect.

SECTION 4. That this ordinance shall be effective immediately upon adoption.

APPROVED AND ADOPTED by the City Council of the City of College Station this 12th day of September, 2024.

CITY OF COLLEGE STATION:

John P. Nichols, Mayor

ATTEST:

APPROVED AS TO FORM:

Tanya Smith, City Secretary

Adam C. Falco, City Attorney

ORDENANZA NUMERO. _____

UNA ORDENANZA DEL CONSEJO DE LA CIUDAD DE LA CIUDAD DE COLLEGE STATION, TEXAS, ENMIENDA SECCION 3 DE ORDENANZA NO. 2024-4530 SE ORDENA LA CELEBRACION DE ELECCIONES GENERALES EL 5 DE NOVIEMBRE DE 2024 CON EL FIN DE ELEGIR AL CONCEJAL DEL PUESTO 3, CONCEJAL DEL PUESTO 4, CONCEJAL DEL PUESTO 5, Y CONCEJAL DEL PUESTO 6 POR LOS VOTANTES CALIFICADOS DE LA CIUDAD DE COLLEGE STATION; PREVEA CAMBIOS EN LA UBICACION DE LOS CENTROS DE VOTACION SEGUN LO PRESCRITO POR EL CONDADO DE BRAZOS; ESTABLECER UNA CLAUSULA DE DIVISIBILIDAD; Y ESTABLECIENDO UNA FECHA DE ENTRADA EN VIGOR.

SEA DISPUESTO POR EL CONSEJO DE LA CIUDAD DE COLLEGE STATION, TEXAS:

SECCION 1. Que la Seccion 3 de la Ordenanza No. 2024-4530 Sea enmendada como sigue:

(el texto enmendado es **negrilla** y subrayado)

SECCION 3. Los lugares de votacion de cada Distrito electoral para estas elecciones searn los siguientes:

Centros de Votaciones	Centros de Votaciones
<u>Millican United Methodist Church</u> <u>[Iglesia Metodista Unida de Millican]</u> <u>22029 Kathy Fleming Rd.</u> <u>Millican, Texas</u>	Castle Heights Baptist Church <u>[Iglesia Bautista <i>Castle Heights</i>]</u> 4504 E. Hwy 21 Bryan, Texas
College Station Meeting & Training Facility <u>[Centro de Conferencias y de Capacitación de College Station]</u> 1603 Graham Road College Station, Texas	St. Francis Episcopal Church <u>[Iglesia Episcopal <i>St. Francis</i>]</u> 1101 Rock Prairie Road College Station, Texas
Galilee Baptist Church <u>[Iglesia Bautista <i>Galilee</i>]</u> 804 N. Logan Street Bryan, Texas	A&M Church of Christ <u>[Iglesia <i>A&M Church of Christ</i>]</u> 2475 Earl Rudder Freeway College Station, Texas
Zion Church of Kurten <u>[Iglesia <i>Zion</i> de Kurten]</u> 977 N. FM 2038 Kurten, Texas	Arena Hall <u>[Salón <i>Arena</i>]</u> 2906 Tabor Road Bryan, Texas
Parkway Baptist Church <u>[Iglesia Bautista <i>Parkway</i>]</u> 1501 Southwest Parkway College Station, Texas	Legends Event Center <u>[Legends Centro de Eventos]</u> 2533 Midtown Park Blvd Bryan, Texas
College Heights Assembly of God <u>[Iglesia <i>College Heights Assembly of God</i>]</u> 4100 Old College Road Bryan, Texas	Brazos Center <u>[Centro del Condado de Brazos]</u> 3232 Briarcrest Drive Bryan, Texas

First Baptist Church - Bryan [Iglesia <i>First Baptist</i> de Bryan] 3100 Cambridge Drive Bryan, Texas	Wellborn Baptist Church [Iglesia Bautista de Wellborn] 14575 FM 2154 Road College Station, Texas
Beacon Baptist Church [Iglesia Bautista <i>Beacon</i>] 2001 East Villa Maria Road Bryan, Texas	Living Hope Baptist Church [Iglesia Bautista <i>Living Hope</i>] 4170 State Highway 6 South College Station, Texas
Bryan Ballroom [Salon de Bryan] 703 Palasota Drive Bryan, Texas	Church of the Nazarene [Iglesia del Nazareno] 2122 E William J Bryan Pkwy Bryan, Texas
Brazos County Election Admin Office **Ruth McLeod Training Room** [Oficina Administrativa de Elecciones del Condado de Brazos **Salón de Capacitación Ruth McLeod**] 300 East Wm J. Bryan Pkwy, Suite 100 Bryan, Texas	Justice of the Peace Pct 1 [Juzgado de paz Distrito 1] 412 William D Fitch Pkwy College Station, Texas
Memorial Student Center Room 2400 (MSC) [Centro Conmemorativo de Estudiantes (MSC) Salón 2400] Texas A&M Campus, Joe Routt Blvd. College Station, Texas	Rellis Campus - Chapel & Assembly Hall [Campus de Rellis – Capilla y salón de actos] 1555 Avenue D Bryan, Texas
Lincoln Center [Centro <i>Lincoln</i>] 1000 Eleanor Street College Station, Texas	Christ Church [Iglesia de Cristo] 4201 SH 6 South College Station, Texas
College Station City Hall (Bush 4141) [Municipalidad de la Ciudad de College Station (Bush 4141)] 1101 Texas Avenue College Station, Texas	Castlegate II (Event Center) [Castlegate II (centro de eventos)] 4205 Norwich Dr College Station, Texas
College Station ISD Administration Building [Edificio Administrativo del Distrito Escolar Independiente de College Station] 1812 Welsh Avenue College Station, Texas	Crestview at Arbor Oaks [Crestview en Arbor Oaks] 2505 E Villa Maria Road Bryan, Texas

SECCION 2. Si alguna parte de esta Ordenanza es declarada invalida por un tribunal de jurisdiccion competente, las disposiciones restantes de esta Ordenanza permaneceran en plena vigencia y efecto.

SECCION 3. Todos los demas terminus y condiciones de la Ordenanza No. 2024-4530 permanecen en plena vigencia y efecto.

SECCION 4. Que esta ordenanza entrará en efecto inmediatamente después de ser adoptada.

APROBADO Y ADOPTADA por el Consejo de la Ciudad de College Station este día 12 de septiembre de 2024.

CIUDAD DE COLLEGE STATION:

John P. Nichols, Mayor

DOY FE:

APROBADA EN CUANTO A FORMA:

Tanya Smith, City Secretary

Adam C. Falco, City Attorney

September 12, 2024
Item No. 8.1.
Plug and Play

Sponsor: Michael Ostrowski, Chief Development Officer

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a partnership agreement for services from Plug and Play.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): To receive the presentation and provide direction to staff.

If City Council is supportive of the request, a formal agreement will be brought back at a later date.

Summary: The Brazos Valley Economic Development Corporation will provide a presentation on Plug and Play. Plug and Play is an innovation platform, connecting startups, corporations, venture capital firms, universities, and government agencies. Plug and Play helps governments with ecosystem building, job creation, tax revenue, accelerator programs, corporate attraction, and startup support. The intent of this presentation is to learn more about Plug and Play and the value that they can bring from an economic development perspective, as well as a possible partnership agreement between Texas A&M, the City of College Station, and the City of Bryan.

More information can be found at: <https://www.pluginandplaytechcenter.com/>

Budget & Financial Summary:

Attachments:

None

September 12, 2024
Item No. 8.2.
Library Update

Sponsor: Ross Brady, Assistant to the City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an update on library services.

Relationship to Strategic Goals:

Recommendation(s):

Summary: An update on library operations and programs will be presented to the Council.

Budget & Financial Summary:

Attachments:

None

September 12, 2024
Item No. 8.3.
June Special Event Paid Parking Pilot Program Summary

Sponsor: Bryan Woods, City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a summary of the June Special Event Paid Parking Pilot Program.

Relationship to Strategic Goals:

Good Governance, Financial Sustainability, Core Services & Infrastructure, Neighborhood Integrity, Diverse & Growing Economy, Improving Mobility

Recommendation(s): Staff recommends City Council receive the presentation and provide feedback.

Summary: Staff will present a summary regarding the June Special Event Paid Parking Pilot Program.

Budget & Financial Summary: Expense and revenue summary will be provided in the presentation.

Attachments:

None

September 12, 2024

Item No. 9.1.

Area K City Initiated Rezoning to MH – Middle Housing with a HOO – High Occupancy Overlay and NAP Natural Areas Protected

Sponsor: Jeff Howell

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban or PDD Planned Development District to MH Middle Housing and HOO High Occupancy Overlay or MH Middle Housing and HOO High Occupancy Overlay and NAP Natural Areas Protected for approximately 18.66 acres being all of that certain tract or parcel of land lying and being situated in the J.E. Scott league, abstract no. 50 and Crawford Burnett league, abstract no. 7, in College Station, Brazos County, Texas, including portions of the F.S. Kapchinski Subdivision as described by a plat reconstructed from deed records recorded in volume Y, page 618-A of the Mechanics & Materialman's Lien Records of Brazos County, Texas, and subsequent replats of portions of it, generally for the properties located along Park Place and Boardwalk Court.

Relationship to Strategic Goals:

- Good Governance
- Neighborhood Integrity
- Diverse & Growing Economy

Recommendation(s): This item was heard at the August 15th, 2024 Planning and Zoning Commission meeting where the Commission voted 6-0 to recommend approval.

Summary: As part of the second phase of the City-initiated rezoning to middle housing, this area was identified as appropriate for MH Middle Housing and HOO High Occupancy Overlay but needed to be surveyed prior to moving forward. This is due to the area not being subdivided and/or the need to be resurveyed. Additionally, Area K contains floodplain that also needed to be surveyed before a portion of the properties can be rezoned to NAP Natural Areas Protected. This area was also previously considered and determined to be appropriate for rezoning to MH Middle Housing by a working group of neighborhood and development community representatives, the Planning and Zoning Commission, and the City Council. Public engagement sessions were held earlier this year in February and March to receive additional feedback prior to moving forward with the survey work necessary.

After receiving the completed survey and considering the rezoning criteria, City staff has determined that this area is appropriate for rezoning to MH Middle Housing and HOO High Occupancy Overlay and NAP Natural Areas Protected are recommending approval. The HOO High Occupancy Overlay would allow the shared housing use as long as the property met the requirements for that use.

REZONING REVIEW CRITERIA FOR AREA K

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject properties are designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential and Natural and Open Areas. 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 unit), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows original character to evolve. These areas may serve as buffers between more intense multi-family residential or mixed-use development and suburban residential or neighborhood conservation areas.

The intent of the Mixed Residential land use is to accommodate a walkable pattern of small lots, small blocks, and well-connected street pattern that supports surrounding neighborhoods. Developments in this district should prioritize a mix of housing types and scales located near community facilities or adjacent to commercial or neighborhood centers. The MH Middle Housing zoning district is aligned with that vision.

The zoning districts that are generally appropriate within Mixed Residential include: middle housing, duplex, townhouse, and limited-scale single-family zoning.

Finally, a portion of the area also contains the floodplain from the adjacent Wolf Pen Creek tributary, which is proposed to be covered by the portion zoned as NAP Natural Areas Protected. For Natural and Open Areas, the Comprehensive Plan provides the following:

This land use designation is generally for areas that represent a constraint to development and that should be conserved for their natural function or open space qualities. These areas include floodplains, riparian buffers, common areas, and open space. The boundaries of the Natural & Open Areas land use are illustrative, and the exact location of floodplains and other physical constraints are determined during the development process.

The zoning districts that are generally appropriate within Natural and Open Areas include: Natural Areas Protected

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is bordered by commercial and multifamily zoned properties to the north, multifamily development to the south and west, commercial uses to the east closer towards Texas Avenue. Development pressure continues to grow as new generations of students, young professionals, families, and seniors move to College Station; allowing and encouraging redevelopment opportunities helps alleviate some of the pressure in the market. The MH Middle Housing zoning district enables redevelopment of these lots at an appropriate scale, permitting the increase in residential density on these sites. The residential uses permitted in the MH Middle Housing zoning district are appropriate for this area, as it allows for additional residential density to meet market demand, while still fitting into the context of the surrounding areas.

Additionally, the HOO High Occupancy Overlay, which allows shared housing uses, was determined to be appropriate for the subject properties due to the proximity to Texas A&M University and/or a Texas A&M Transportation Services bus route and the development pattern of the properties within

the area.

The proposed zoning of a portion of the area to NAP Natural Areas Protected would be compatible with the area surrounding the Wolf Pen Creek Tributary as it provides the conservation of the natural feature and open space in that area. Development would not be allowed within the area proposed to be NAP, which was generated based on the 500 year floodplain boundary.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject properties are suitable for single-family, townhouse, duplex, and multiplex uses, although some uses would require replatting of the lots to fit the dimensional standards of the MH Middle Housing zoning district.

There is a small portion of the properties that has been identified as floodplain which is covered in the proposed NAP Natural Areas Protected zoning of the property. Development may still occur on the property, but it would be prohibited in portion that is proposed to be NAP.

4. Whether there is available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure is adequate to support the needs of the proposed zoning districts. Drainage and any other infrastructure required with the site development shall be designed and constructed in accordance with the BCS Unified Design Guidelines. Additionally, while there are no existing sidewalks on Park Place, future improvements and right-of-way dedications may be provided as properties are redevelopment and re-platted.

5. The marketability of the property:

The uses allowed by MH Middle Housing and the HOO High Occupancy Overlay provide for an increase in density that is marketable given the location of the property.

Budget & Financial Summary: N/A

Attachments:

1. Area K Rezoning Ordinance
2. Aerial and Small Area Map
3. Background Information
4. Future Land Use Map
5. Rezoning Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A “UNIFIED DEVELOPMENT ORDINANCE,” ARTICLE 4 “ZONING DISTRICTS,” SECTION 4.2, “OFFICIAL ZONING MAP” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING APPROXIMATELY 18.66 ACRES BEING ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE J.E. SCOTT LEAGUE, ABSTRACT NO. 50 AND CRAWFORD BURNETT LEAGUE, ABSTRACT NO. 7, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, INCLUDING PORTIONS OF THE F.S. KAPCHINSKI SUBDIVISION AS DESCRIBED BY A PLAT RECONSTRUCTED FROM DEED RECORDS RECORDED IN VOLUME Y, PAGE 618-A OF THE MECHANICS & MATERIALMAN'S LIEN RECORDS OF BRAZOS COUNTY, TEXAS, AND SUBSEQUENT REPLATS OF PORTIONS OF IT, GENERALLY FOR THE PROPERTIES LOCATED ALONG PARK PLACE AND BOARDWALK COURT AS DESCRIBED BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A” and Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2, “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from GS General Suburban or PDD Planned Development District to MH Middle Housing and HOO High Occupancy Overlay or MH Middle Housing and HOO High Occupancy Overlay and NAP Natural Areas Protected zoning:



City-Initiated Rezoning
 Proposed MH & HOO
 Area "K" (Park Place area)
 F.S. Kapchinski Subdivision
 College Station, Texas
 June 2024

All of that certain tract or parcel of land lying and being situated in the J.E. Scott league, abstract no. 50 and Crawford Burnett league, abstract no. 7, in College Station, Brazos County, Texas, including portions of the F.S. Kapchinski Subdivision as described by a plat reconstructed from deed records recorded in volume Y, page 618-A of the Mechanics & Materialman's Lien Records of Brazos County, Texas, and subsequent replats of portions of it, and being more particularly described as follows:

Beginning at a point in the southwest boundary of this described zoning tract at an "X" mark found in concrete in the northwest right-of-way boundary of Park Place (street), marking the south corner of Lot 1A, Block 1 of a replat of Lots 1A, 1B, 2A, 2B & 3A, Block 1 of F.S. Kapchinski's Subdivision as described by plat recorded in volume 5547, page 172 of the Official Public Records of Brazos County, Texas, from where City of College Station control monument no. 120 bears S 19° 59' 26" E – 3752.5 feet*;

Thence N 47° 37' 18" W – 205.00 feet*, along the southwest line of the said Lot 1A, to the most westerly corner of this described zoning tract, at a southwest corner of a proposed NAP (Natural Areas Protected) zoning tract also surveyed on this date.

Thence along the south boundary lines of the said proposed NAP zoning tract, generally along the current 0.2% flood hazard (500-year floodplain) boundary, as follows:

N 89° E – 9.0 feet*, N 29° E – 12.0 feet*, N 84° E – 12.0 feet*, S 37° E – 23.0 feet*, S 85° E – 17.0 feet*, N 14° W – 14.0 feet*, N 31° W – 18.0 feet*, N 8° E – 31.0 feet*, N 21° E – 46.0 feet*, N 36° E – 20.0 feet*, N 4° E – 21.0 feet*, N 51° E – 51.0 feet*, N 15° E – 33.0 feet*, N 61° E – 24.0 feet*, N 73° E – 60.0 feet*, N 49° E – 42.0 feet*, N 6° W – 19.0 feet*, N 38° E – 30.0 feet*, N 82° E – 50.0 feet*, N 69° E – 25.0 feet*, N 78° E – 43.0 feet*, N 55° E – 24.0 feet*, N 69° E – 40.0 feet*, S 49° E – 28.0 feet*, N 39° E – 9.0 feet*, N 5° E – 8.0 feet*, N 71° E – 10.0 feet*, S 80° E – 8.0 feet*, N 69° E – 34.0 feet*, N 81° E – 16.0 feet*, N 27° E – 50.0 feet*, N 17° W – 67.0 feet*, S 81° E – 85.0 feet*, S 70° E – 100.0 feet*, S 56° E – 40.0 feet*, S 79° E – 48.0 feet*, S 5° E – 24.0 feet*, N 77° E – 22.0 feet*, S 72° E – 54.0 feet*, S 80° E – 38.0 feet*, S 67° E – 47.0 feet*, N 42° E – 48.0 feet*, N 64° E – 34.0 feet*, S 34° E – 54.0 feet*, S 18° E – 37.0 feet*, S 63° E – 21.0 feet*, S 43° E – 26.0 feet*, S 77° E – 31.0 feet*, S 44° E – 88.0 feet*, N 43° E – 49.6 feet*, S 68° E – 46.0 feet*, N 51° E – 56.0 feet*, N 39° E – 50.0 feet* and N 10° E – 8.0 feet* to the most easterly corner of the proposed NAP zoning tract in the southwest line of Lot 6R1, Block 2 of F.S. Kapchinski's Subdivision as described by replat recorded in volume 10701, page 7 of the Official Public Records of Brazos County, Texas;

Thence S 24° 37' 56" E – 271.97 feet*, along the said common Lot line per current survey, passing at 252.0 feet a 5/8" iron rod with a yellow cap stamped "KERR 4502" found at their common corner in the northwest right-of-way boundary of Park Place (street), to a point in the middle of Park Place (street) for the most easterly corner of this described zoning tract;

Thence S 65° 21' 36" W – 114.03 feet* along the middle of Park Place (street) to a point for corner;



Thence S 24° 38' 24" E – 20.49 feet* to the north common corner of Lot 1 and Lot 4, Block 4 of Anderson Ridge Subdivision as described by plat recorded in volume 4090, page 277 of the Official Public Records of Brazos County, Texas;

Thence S 65° 21' 36" W – 235.49 feet*, along the northwest line of said Lot 4 and the southeast right-of-way boundary of Park Place (street), to a square-head bolt found marking the east corner of Lot 27 as described by said plat of the Kapchinski Subdivision recorded in volume Y, page 618A;

Thence S 65° 00' 19" W – 655.90 feet*, along the northwest line of Lot 4, Block 1 of Anderson Ridge Subdivision Section Two as described by plat recorded in volume 392, page 789 of the Deed Records of Brazos County, Texas, to its north common corner with Lot 3, Block 1 of Anderson Ridge Subdivision;

Thence S 63° 15' 27" W – 78.27 feet*, along the northwest boundary of said Lot 3, to the most southerly corner of this described zoning tract and south corner of Lot 32 of said Kapchinski Subdivision recorded in volume Y, page 618-A;

Thence N 47° 25' 19" W – 387.71 feet*, along the common line of said Lot 3 and the Kapchinski Subdivision, to the southwest right-of-way boundary of Park Place (street);

Thence N 47° 54' 06" W – 30.50 feet*, across said Park Place (street), to the Point of Beginning and containing 16.11 acres of land more or less.

Bearings and *distances are Texas State Plane, Central Zone NAD83 datum, determined by GPS and checked between City of College Station control monuments no. 120 and no. 122 (N 17° 03' 41" W). Approximate surface distances can be computed by multiplying these provided grid distances by an average combined scale factor of 1.000100.

This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

See survey exhibit plat dated June 2024.





City-Initiated Rezoning
Proposed NAP in Area "K"
(Bee Creek floodplain)
F.S. Kapchinski Subdivision
College Station, Texas
June 2024

All of that certain tract or parcel of land lying and being situated in the J.E. Scott league, abstract no. 50 and Crawford Burnett league, abstract no. 7, in College Station, Brazos County, Texas, including portions of the F.S. Kapchinski Subdivision as described by a plat reconstructed from deed records recorded in volume Y, page 618-A of the Mechanics & Materialman's Lien Records of Brazos County, Texas, and subsequent replats of portions of it, and being more particularly described as follows:

Beginning at a point in the southwest corner of this described zoning tract, also being the most westerly corner of proposed MH & HOO zoning tract also surveyed on this date, in the southwest boundary of the said Kapchinski Subdivision, N 47° 37' 18" W – 205.00 feet* from an "X" mark found in concrete in the northwest right-of-way boundary of Park Place (street), marking the south corner of Lot 1A, Block 1 of a replat of Lots 1A, 1B, 2A, 2B & 3A, Block 1 of F.S. Kapchinski's Subdivision as described by plat recorded in volume 5547, page 172 of the Official Public Records of Brazos County, Texas, from where City of College Station control monument no. 120 bears S 19° 59' 26" E – 3752.5 feet*;

Thence along the south boundary lines of this described zoning tract, generally along the current 0.2% flood hazard (500-year floodplain) boundary, as follows:

N 89° E – 9.0 feet*, N 29° E – 12.0 feet*, N 84° E – 12.0 feet*, S 37° E – 23.0 feet*, S 85° E – 17.0 feet*, N 14° W – 14.0 feet*, N 31° W – 18.0 feet*, N 8° E – 31.0 feet*, N 21° E – 46.0 feet*, N 36° E – 20.0 feet*, N 4° E – 21.0 feet*, N 51° E – 51.0 feet*, N 15° E – 33.0 feet*, N 61° E – 24.0 feet*, N 73° E – 60.0 feet*, N 49° E – 42.0 feet*, N 6° W – 19.0 feet*, N 38° E – 30.0 feet*, N 82° E – 50.0 feet*, N 69° E – 25.0 feet*, N 78° E – 43.0 feet*, N 55° E – 24.0 feet*, N 69° E – 40.0 feet*, S 49° E – 28.0 feet*, N 39° E – 9.0 feet*, N 5° E – 8.0 feet*, N 71° E – 10.0 feet*, S 80° E – 8.0 feet*, N 69° E – 34.0 feet*, N 81° E – 16.0 feet*, N 27° E – 50.0 feet*, N 17° W – 67.0 feet*, S 81° E – 85.0 feet*, S 70° E – 100.0 feet*, S 56° E – 40.0 feet*, S 79° E – 48.0 feet*, S 5° E – 24.0 feet*, N 77° E – 22.0 feet*, S 72° E – 54.0 feet*, S 80° E – 38.0 feet*, S 67° E – 47.0 feet*, N 42° E – 48.0 feet*, N 64° E – 34.0 feet*, S 34° E – 54.0 feet*, S 18° E – 37.0 feet*, S 63° E – 21.0 feet*, S 43° E – 26.0 feet*, S 77° E – 31.0 feet*, S 44° E – 88.0 feet*, N 43° E – 49.6 feet*, S 68° E – 46.0 feet*, N 51° E – 56.0 feet*, N 39° E – 50.0 feet* and N 10° E – 8.0 feet* to the most easterly corner of the proposed NAP zoning tract in the southwest line of Lot 6R1, Block 2 of F.S. Kapchinski's Subdivision as described by replat recorded in volume 10701, page 7 of the Official Public Records of Brazos County, Texas, from where a 5/8" iron rod with a yellow plastic cap stamped "KERR 4502" found at the common corner of Lot 6R1 and that 0.29 acre tract described in the deed to Al-Hambura, LLC recorded in volume 10558, page 113 of the Official Public Records of Brazos County, Texas, bears S 24° 37' 56" E – 271.97 feet*;

Thence N 24° 37' 56" W – 48.90 feet*, along the said Lot 6R1 line, to the most northerly corner of the said Al-Hambura 0.29 acre tract;



Thence S 41° 30' 07" W – 84.35 feet*, along the northwest line of said 0.29 acre tract and continuing along the common boundary of that 0.28 acre tract described in the deed to Olympus Realty LLC recorded in volume 17717, page 238 and that 2.714 acre Tract One described in the deed to LCP College Station II, LLC and LCP College Station III, LCP recorded in volume 17887, page 285 of the Official Public Records of Brazos County, Texas, to an angle point in said tracts;

Thence N 58° 49' 20" W – 129.58 feet* and N 22° 24' 23" W – 85.14 feet*, continuing along southwest lines of the said 2.714 acre Tract One, to a point for corner in the south boundary of that 3.550 acre tract described in the deed to Oak Hills Duplexes, LLC recorded in volume 15527, page 62 of the Official Public Records of Brazos County, Texas;

Thence along south boundary lines of the said 3.550 acre tract, being common with north boundary lines of that 0.602 acre tract described in the deed to Mark Farrar and Sylvia Farrar recorded in volume 10302, page 192 and Lot 19R, Block 1 of the F.S. Kapchinski Subdivision as described by plat recorded in volume 4136, page 133 of the Official Public Records of Brazos County, Texas, as follows:

N 89° 32' 29" W – 78.13 feet*, N 89° 27' 46" W – 141.98 feet*, N 87° 09' 48" W – 63.29 feet*, and N 72° 07' 45" W – 305.54 feet* to a 1" pipe found at an angle point;

Thence along north boundary lines of the Kapchinski Subdivision and replats, also being south boundary lines of the Redmond Terrace subdivision as follows:

S 81° 15' 52" W – 73.64 feet*, S 21° 06' 32" E – 49.00 feet*, S 47° 46' 55" W – 135.36 feet*, S 71° 08' 55" W – 38.62 feet*, S 65° 37' 05" W – 45.10 feet*, and S 72° 57' 58" W – 211.47 feet* to a 1/2" iron rod found at an angle point, also being in the east boundary of the Wolfpen Village Subdivision;

Thence along common boundary lines of the said Kapchinski Subdivision and replats, with the said Wolfpen Village Subdivision as follows:

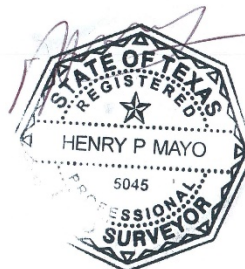
S 26° 35' 21" E – 47.94 feet*, S 36° 45' 45" W – 86.77 feet*, S 18° 06' 31" W – 94.82 feet*, and S 37° 02' 31" W – 84.34 feet* to the most westerly corner of the F.S. Kapchinski Subdivision, also being the west corner of said Lot 1A, Block 1;

Thence S 47° 37' 18" E – 26.99 feet*, along the southwest line of said Lot 1A, to the Point of Beginning and containing 2.55 acres of land more or less.

Bearings and *distances are Texas State Plane, Central Zone NAD83 datum, determined by GPS and checked between City of College Station control monuments no. 120 and no. 122 (N 17° 03' 41" W). Approximate surface distances can be computed by multiplying these provided grid distances by an average combined scale factor of 1.000100.

This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

See survey exhibit plat dated June 2024.



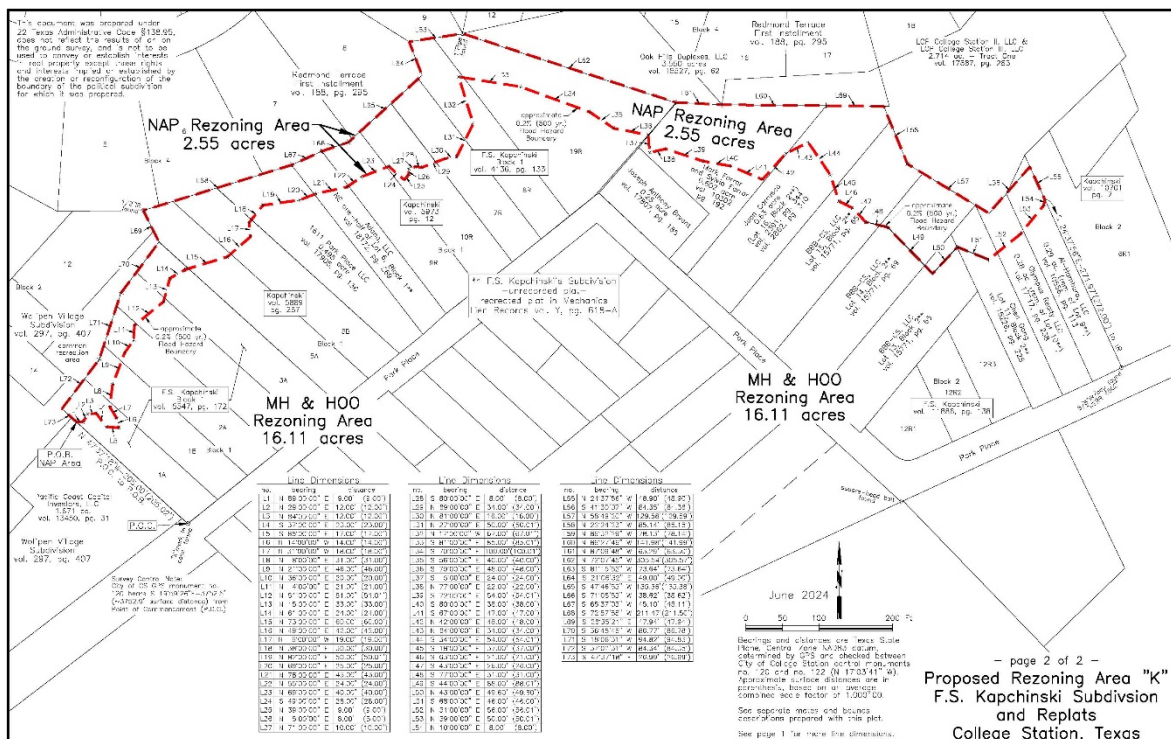
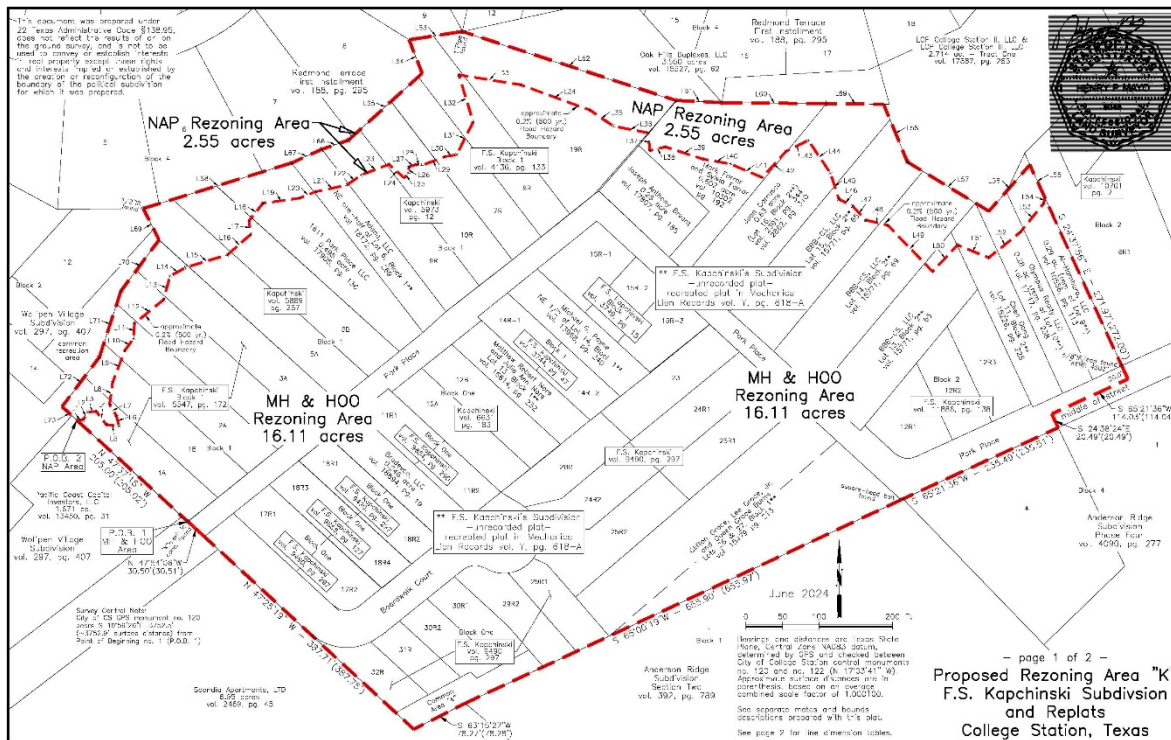
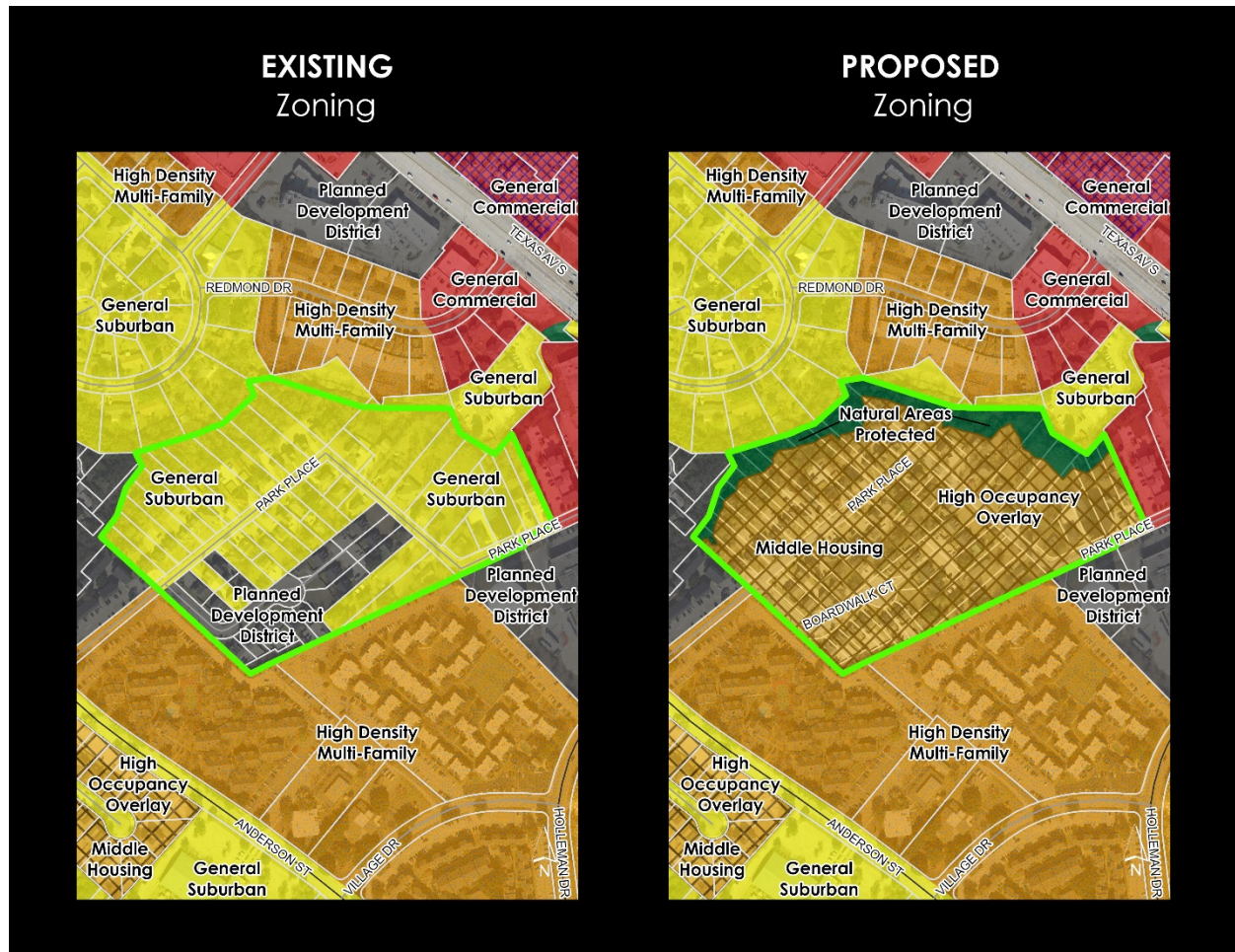
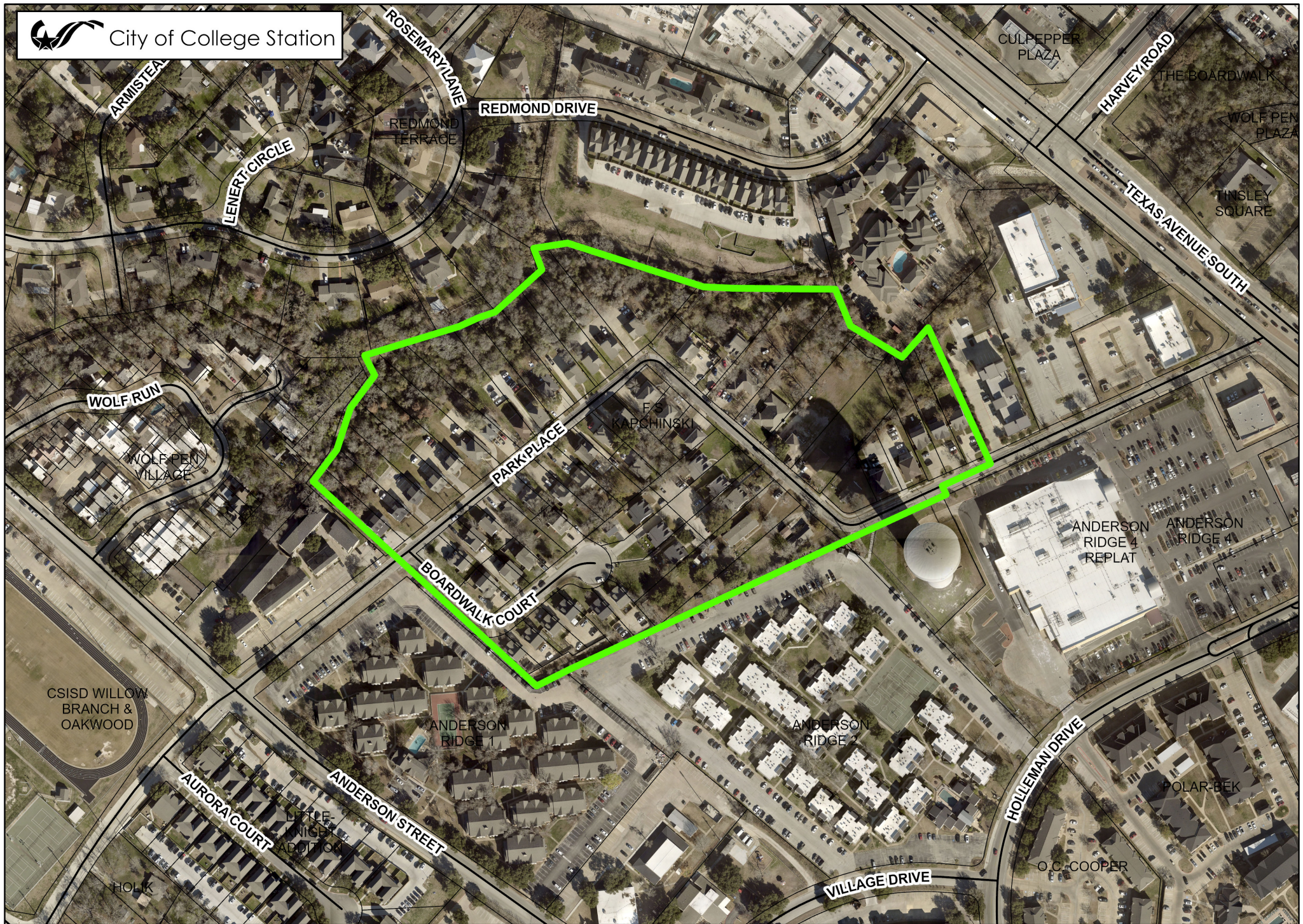


Exhibit B



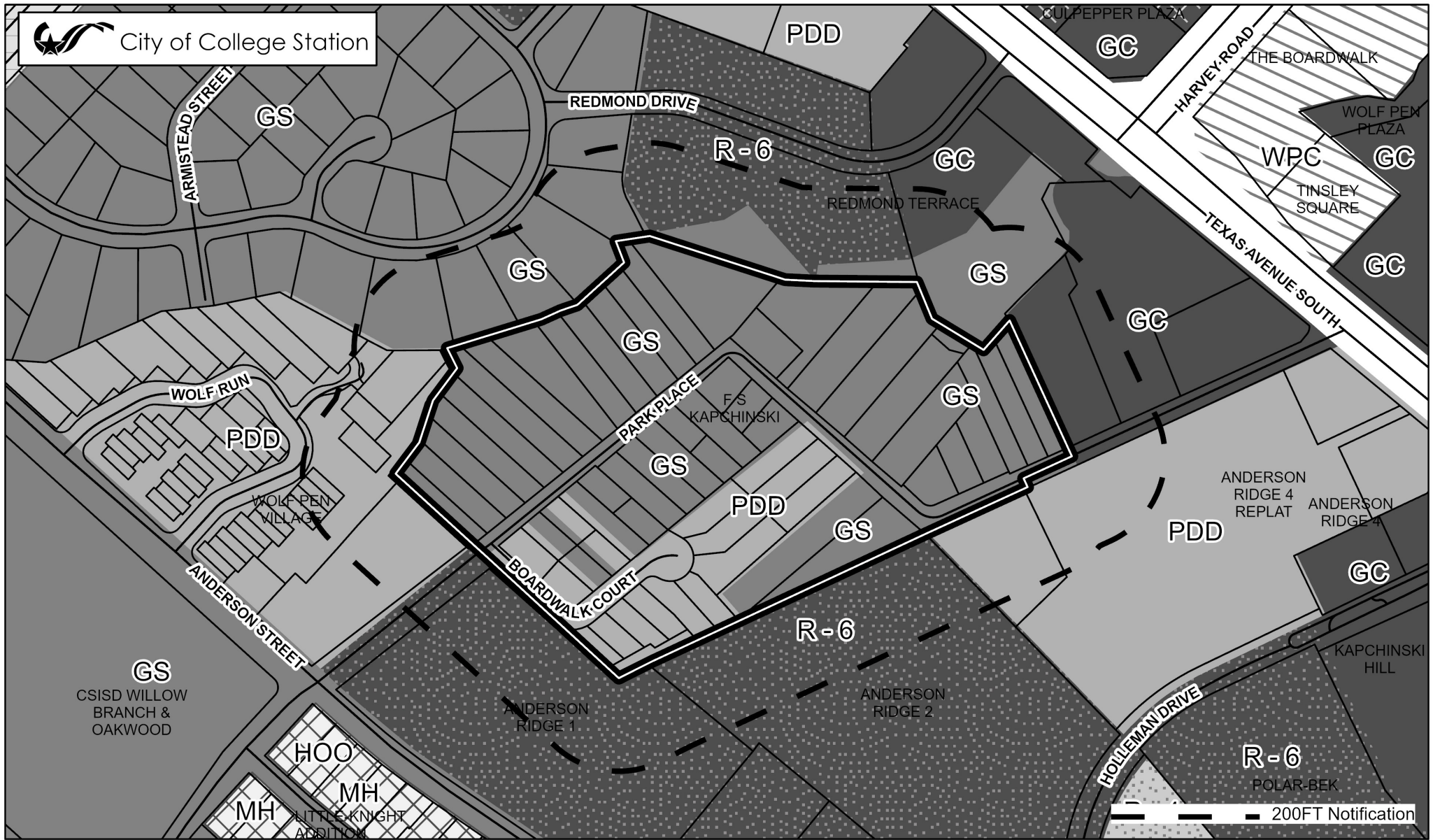


0 262.5 525 Feet

K - PARK PLACE AREA

Case:
REZ2023-000029

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



0 290 580 Feet

K - PARK PLACE AREA

Case:
REZ2023-000029

REZONING

BACKGROUND INFORMATION – REZ2023-000029

NOTIFICATIONS

Advertised Commission Hearing Date: August 15, 2024
Advertised Council Hearing Date: September 12, 2024

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

None

Property owner notices mailed: 103

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	Natural and Open Areas	R-6 High Density Multi-Family, GS General Suburban, GC General Commercial	Multi-Family Apartments, Single family detached dwellings
South	Urban Residential, Institutional/Public	R-6 High Density Multi-Family, PDD Planned Development District	Multi-Family Apartments
East	General Commercial, Natural and Open Areas	GS General Suburban, GC General Commercial	Retail Sales and Service
West	Suburban Residential, Urban Residential	PDD Planned Development District, R-6 High Density Multi-Family	Multi-Family Apartments, Townhomes

DEVELOPMENT HISTORY

Annexed: 1956

Zoning: R-1 Single-Family Residential (1956 upon annexation)

Properties north of Park Place

- R-1 Single-Family Residential renamed to GS General Suburban (2013)

Properties south of Park Place

- R-1 Single-Family Residential to R-3 Apartment Building District (1974)
- R-1 Single-Family Residential and R-3 Apartment Building District to PDD Planned Development District (2009)
- R-1 Single-Family Residential and PDD Planned Development District to PDD Planned Development District (2009)

Final Plat:

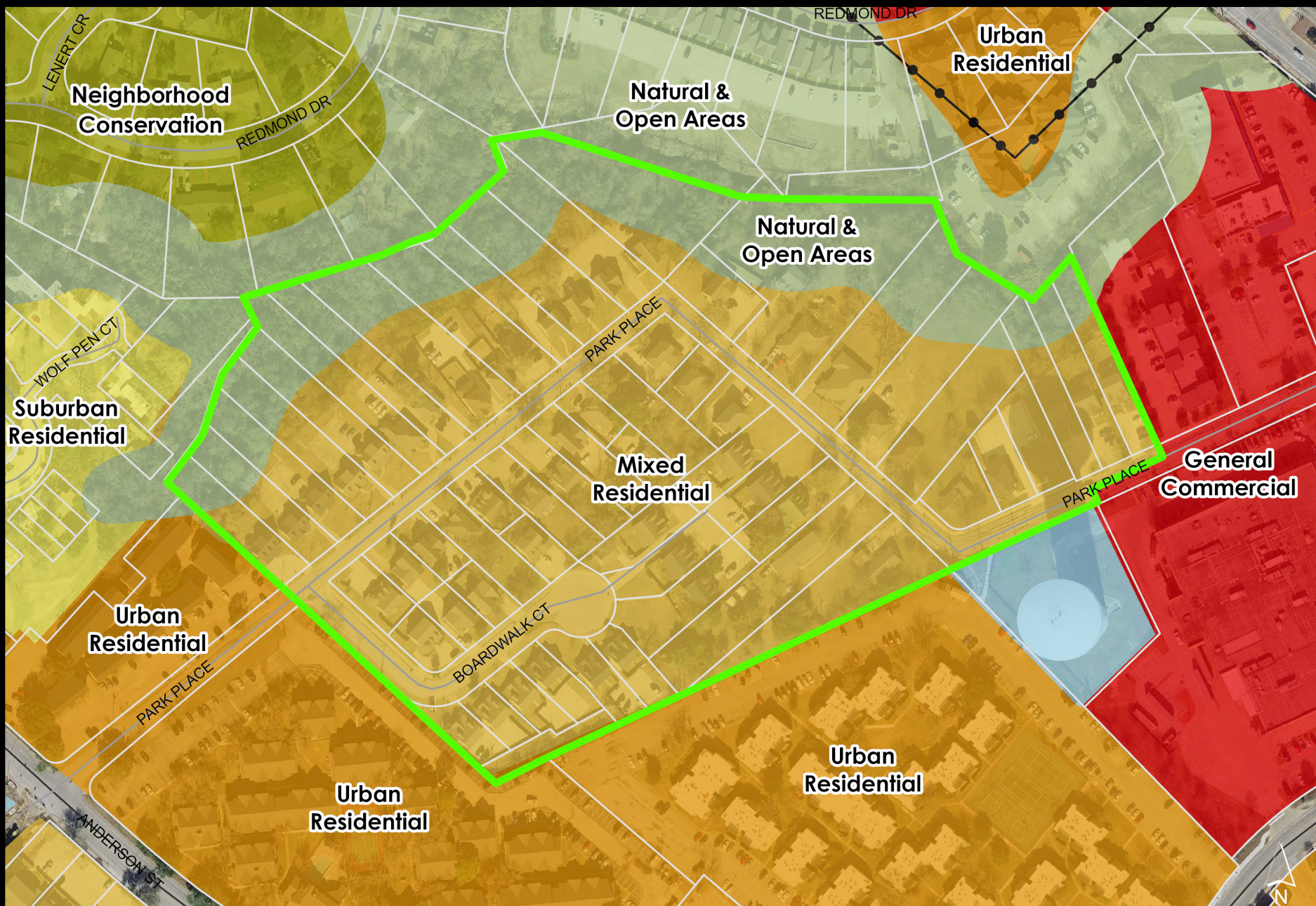
Unplatted areas and portions of F.S. Kapchinski Subdivision (1943)

Site Development:

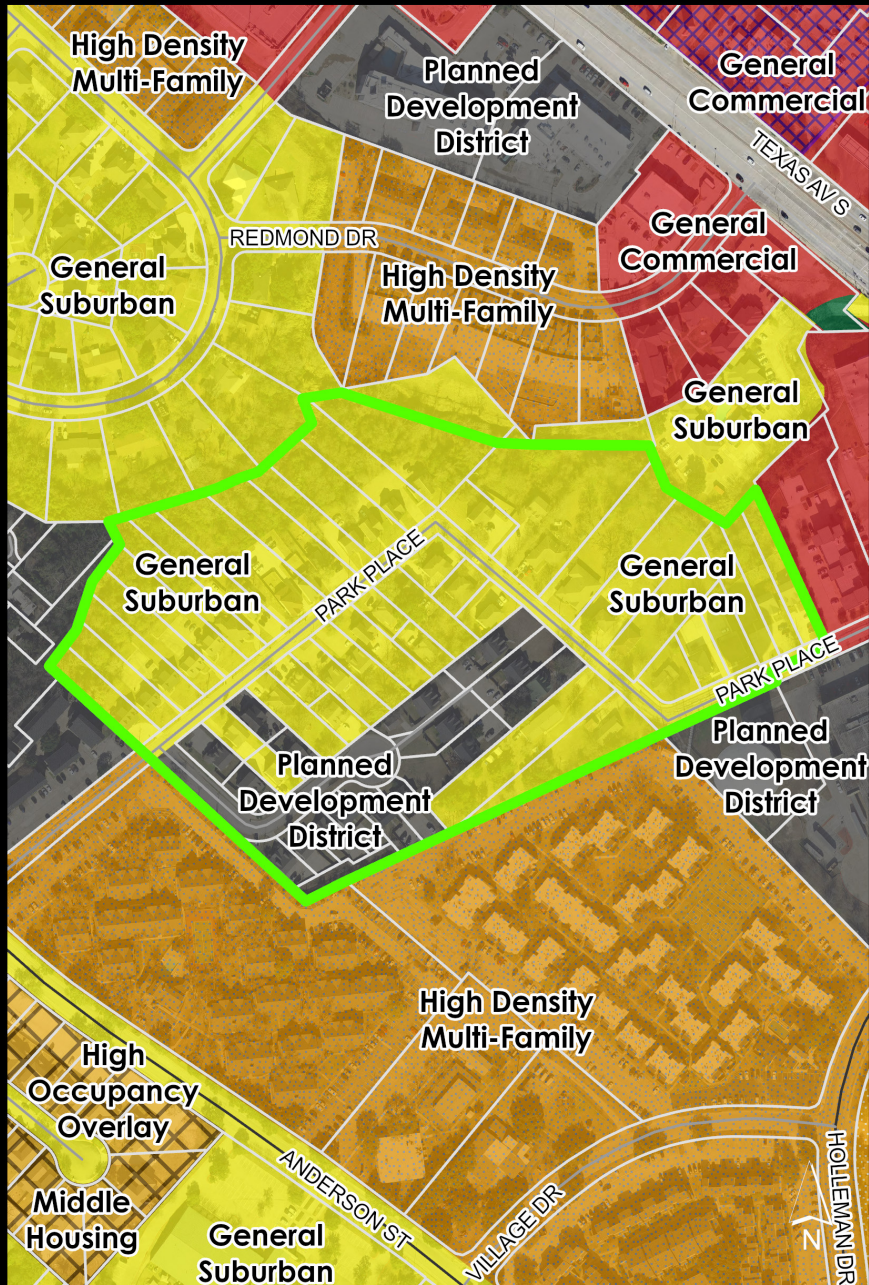
Single family dwellings and Wolf Pen Creek tributary

EXISTING

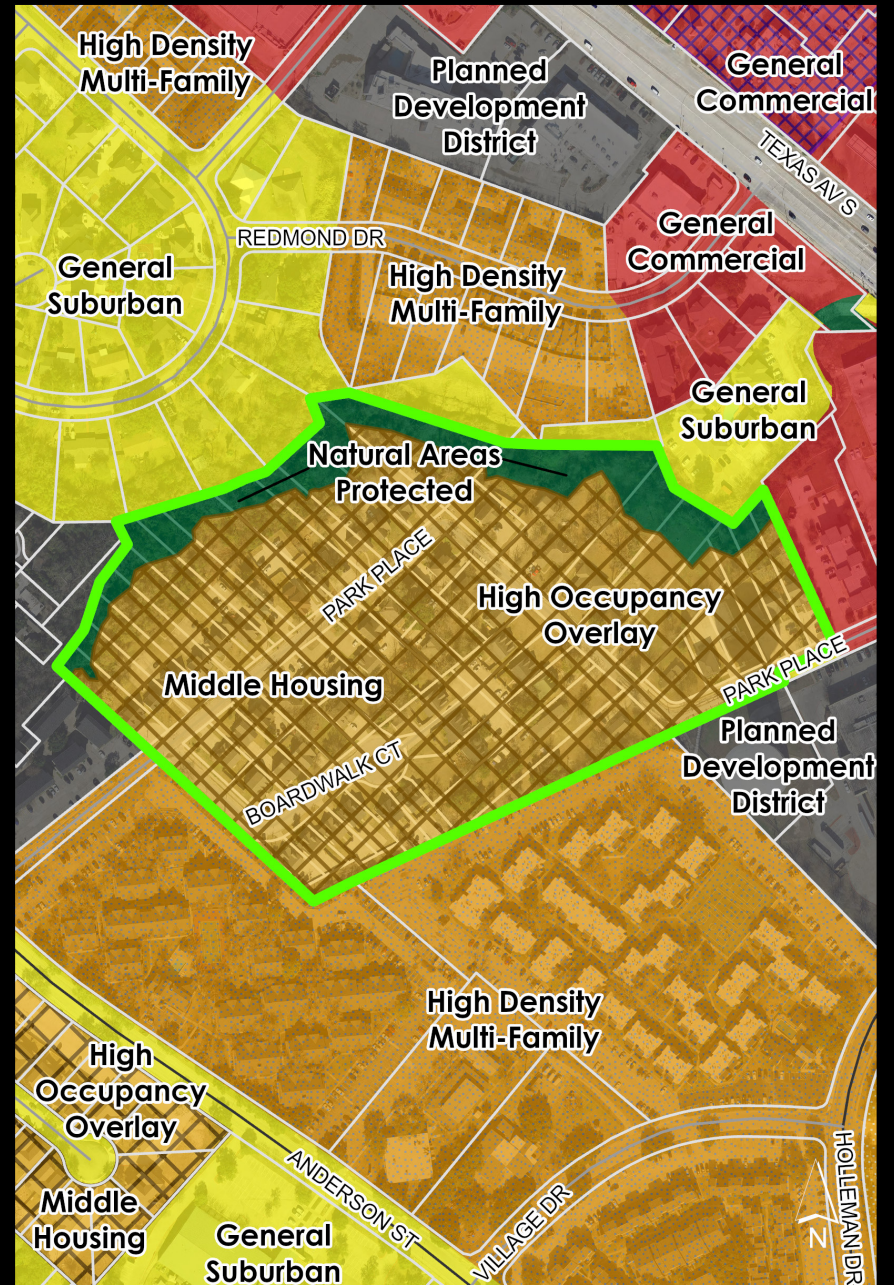
Future Land Use



EXISTING Zoning



PROPOSED Zoning



September 12, 2024

Item No. 9.2.

Area SS City Initiated Rezoning to MH – Middle Housing with a HOO – High Occupancy Overlay

Sponsor: Jeff Howell

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban or D Duplex to MH Middle Housing and HOO High Occupancy Overlay for approximately 1.10 acres being all of that certain tract or parcel of land lying and being situated in the Richard Carter league, abstract no. 8, in College Station, Brazos County, Texas, being a portion of Lot 12 of the D.A. Smith Subdivision as described by plat recorded in volume 49, page 106 of the Deed Records of Brazos County, Texas, and the northeast half (approximate) of the adjoining right-of-way of Turner Street, generally for the properties located along Gilbert Street and Turner Street.

Relationship to Strategic Goals:

- Good Governance
- Neighborhood Integrity
- Diverse & Growing Economy

Recommendation(s): This item was heard at the August 15th, 2024 Planning and Zoning Commission meeting where the Commission voted 6-0 to recommend approval.

Summary: As part of the second phase of the City-initiated rezonings to middle housing, this area was identified as appropriate for MH Middle Housing and HOO High Occupancy Overlay but needed to be surveyed prior to moving forward. This is due to the area not being subdivided and/or the need to be resurveyed. This area was also previously considered and determined to be appropriate for rezoning to MH Middle Housing by a working group of neighborhood and development community representatives, the Planning and Zoning Commission, and the City Council. Public engagement sessions were held earlier this year in February and March to receive additional feedback prior to moving forward with the survey work necessary.

After receiving the completed survey and considering the rezoning criteria, City staff has determined that this area is appropriate for rezoning to MH Middle Housing and HOO High Occupancy Overlay and are recommending approval. The HOO High Occupancy Overlay would allow the shared housing use as long as the property met the requirements for that use.

REZONING REVIEW CRITERIA FOR AREA SS

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject properties are designated on the Comprehensive Plan Future Land Use & Character Map as Mixed Residential and Natural and Open Areas. 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 unit), and limited small-lot single family. These areas are appropriate for residential infill and redevelopment that allows original character to evolve. These areas may serve as buffers between more intense multi-family residential or mixed-use development and suburban residential or neighborhood conservation areas.

The intent of the Mixed Residential land use is to accommodate a walkable pattern of small lots, small blocks, and well-connected street pattern that supports surrounding neighborhoods. Developments in this district should prioritize a mix of housing types and scales located near community facilities or adjacent to commercial or neighborhood centers. The MH Middle Housing zoning district is aligned with that vision.

The zoning districts that are generally appropriate within Mixed Residential include: middle housing, duplex, townhouse, and limited-scale single-family zoning.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is bordered by commercial and multifamily zoned properties to the north, multifamily development to the south and west, commercial uses to the east closer towards Texas Avenue. Development pressure continues to grow as new generations of students, young professionals, families, and seniors move to College Station; allowing and encouraging redevelopment opportunities helps alleviate some of the pressure in the market. The MH Middle Housing zoning district enables redevelopment of these lots at an appropriate scale, permitting the increase in residential density on these sites. The residential uses permitted in the MH Middle Housing zoning district are appropriate for this area, as it allows for additional residential density to meet market demand, while still fitting into the context of the surrounding areas.

Additionally, the HOO High Occupancy Overlay, which allows shared housing uses, was determined to be appropriate for the subject properties due to the proximity to Texas A&M University and a Texas A&M Transportation Services bus route and the development pattern of the properties within the area.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject properties are suitable for single-family, townhouse, duplex, and multiplex uses, although some uses would require replatting of the lots to fit the dimensional standards of the MH Middle Housing zoning district.

4. Whether there is available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure is adequate to support the needs of the proposed zoning districts. Drainage and any other infrastructure required with the site development shall be designed and constructed in accordance with the BCS Unified Design Guidelines. At the time of development, right of way dedication may be required as well as the removal of on-street parking

along Turner Street.

5. The marketability of the property:

The uses allowed by MH Middle Housing and the HOO High Occupancy Overlay provide for an increase in density that is marketable given the location of the property.

Budget & Financial Summary: N/A

Attachments:

1. Area SS Rezoning Ordinance
2. Aerial and Small Area Map
3. Background Information
4. Future Land Use Map
5. Rezoning Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A “UNIFIED DEVELOPMENT ORDINANCE,” ARTICLE 4 “ZONING DISTRICTS,” SECTION 4.2, “OFFICIAL ZONING MAP” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING APPROXIMATELY 1.10 ACRES BEING ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE RICHARD CARTER LEAGUE, ABSTRACT NO. 8, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, BEING A PORTION OF LOT 12 OF THE D.A. SMITH SUBDIVISION AS DESCRIBED BY PLAT RECORDED IN VOLUME 49, PAGE 106 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, AND THE NORTHEAST HALF (APPROXIMATE) OF THE ADJOINING RIGHT-OF-WAY OF TURNER STREET, GENERALLY FOR THE PROPERTIES LOCATED ALONG GILBERT STREET AND TURNER STREET AS DESCRIBED BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A” and Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.

PART 2: If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

PART 3: That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2, “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from GS General Suburban or D Duplex to MH Middle Housing and HOO High Occupancy Overlay zoning:

BASELINE | DCCM

City-Initiated Rezoning
 Proposed Area "SS"
 (along Turner Street)
 Portion of Lot 12, D.A. Smith Subdivision
 College Station, Texas
 June 2024

All of that certain tract or parcel of land lying and being situated in the Richard Carter league, abstract no. 8, in College Station, Brazos County, Texas, being a portion of Lot 12 of the D.A. Smith Subdivision as described by plat recorded in volume 49, page 106 of the Deed Records of Brazos County, Texas, and the northeast half (approximate) of the adjoining right-of-way of Turner Street, and being more particularly described as follows:

Beginning at the most northerly corner of this described zoning tract, at a 1/2" iron rod found at the north corner of that 0.1307 acre tract described in the deed to Vizu, LP recorded in volume 11166, page 270 of the Official Public Records of Brazos County, Texas, from where City of College Station control monument no. 122 bears N 5° 55' 09" E – 1053.8 feet*;

Thence S 49° 03' 25" E – 113.91 feet*, along the northeast line of the said Vizu tract, to a 1/2" iron rod found at its east corner on the northwest prescriptive right-of-way line of Gilbert Street;

Thence S 42° 44' 02" E – 30.12 feet*, across said Gilbert Street, to a 1/2" iron rod with a blue plastic cap stamped "KERR SURVEYING" found at the north corner of that 0.232 acre zoning tract described in the City of College Station Ordinance 2023-4481;

Thence S 41° 22' 48" W – 115.00 feet*, along the southeast boundary of said Gilbert Street, to a 1/2" iron rod with an orange plastic cap stamped "H.P.MAYO RPLS 5045" found (set in 2003) at the west corner of the said 0.232 acre zoning tract;

Thence S 48° 12' 57" E – 87.80 feet*, along the southwest line of the said 0.232 acre zoning tract, also being the northeast boundary of Turner Street, to a 1/2" iron rod with a blue plastic cap stamped "KERR SURVEYING" found at the south corner of the said 0.232 acre zoning tract;

Thence N 41° 22' 48" E – 115.00 feet*, along the southeast boundary of the said 0.232 acre zoning tract, to a 1/2" iron rod with a blue plastic cap stamped "KERR SURVEYING" found at its east corner;

Thence S 48° 11' 17" E – 207.94 feet*, along the northeast lines of that 0.198 acre tract described in the deed to Ali Jaffar recorded in volume 19079, page 239, that 0.66 acre tract described in the deed to Ali Jaffar recorded in volume 9225, page 145, and that 0.132 acre tract described in the deed to Sivas, LLC recorded in volume 19219, page 66 in the Official Public Records of Brazos County, Texas, and continuing to the most easterly corner of this described zoning tract in the northwest line of Lot 2 of a Part of Lots 7, 8, 9 & 10 of the D.A. Smith Subdivision as described by plat recorded in volume 516, page 717 of the Deed Records of Brazos County, Texas;

Thence S 41° 26' 42" W – 128.21 feet* along the said northwest line of Lot 2, to the most southerly corner of this described zoning tract;

Thence N 49° 00' 00" W – 440.05 feet*, approximately along the middle of the pavement of Turner Street, to the most westerly corner of this described zoning tract;

Rezoning Area "SS" (along Turner Street)

Page 1 of 2

1701 Southwest Parkway, Suite 104, College Station, Texas 77840 | 979.693.2777 | TxSurv F-10030200 | BaselineSurveyors.net

BASELINE DCCM

Thence N 41° 37' 42" E – 135.54 feet*, along the common boundary of the tracts conveyed to Ronnie Watson by deed recorded in volume 13805, page 86, and the said Vizu tract, with that tract conveyed to Arthur and Nancy Wright Family Limited Partnership by deed recorded in volume 2686, page 109 of the Official Public Records of Brazos County, Texas, to the Point of Beginning and containing 1.10 acres of land more or less.

Bearings and *distances are Texas State Plane, Central Zone NAD83 datum, determined by GPS and checked between City of College Station control monuments no. 120 and no. 122 (N 17° 03' 41" W). Approximate surface distances can be computed by multiplying these provided grid distances by an average combined scale factor of 1.000100.

This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

See survey exhibit plat dated June 2024.



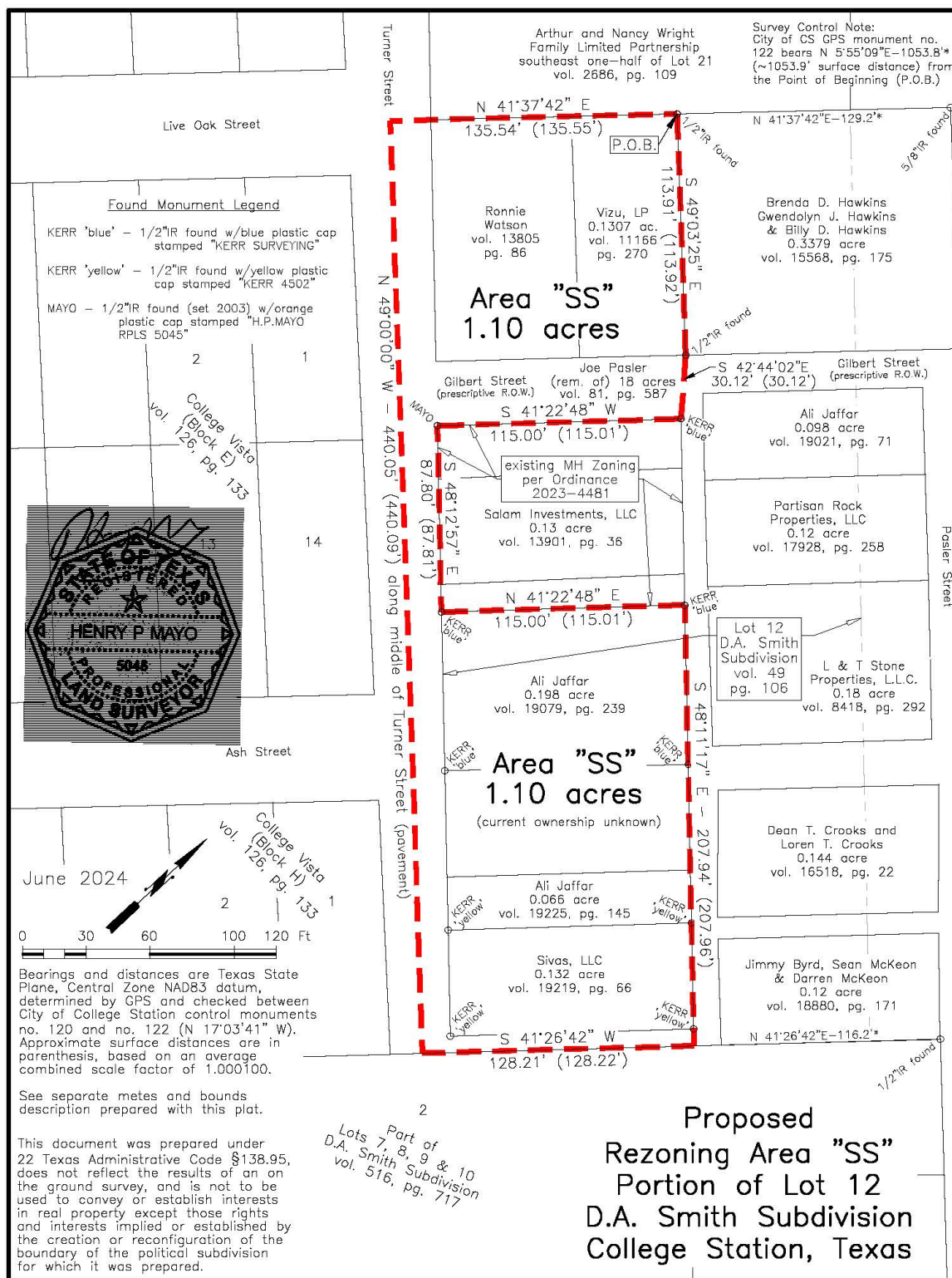
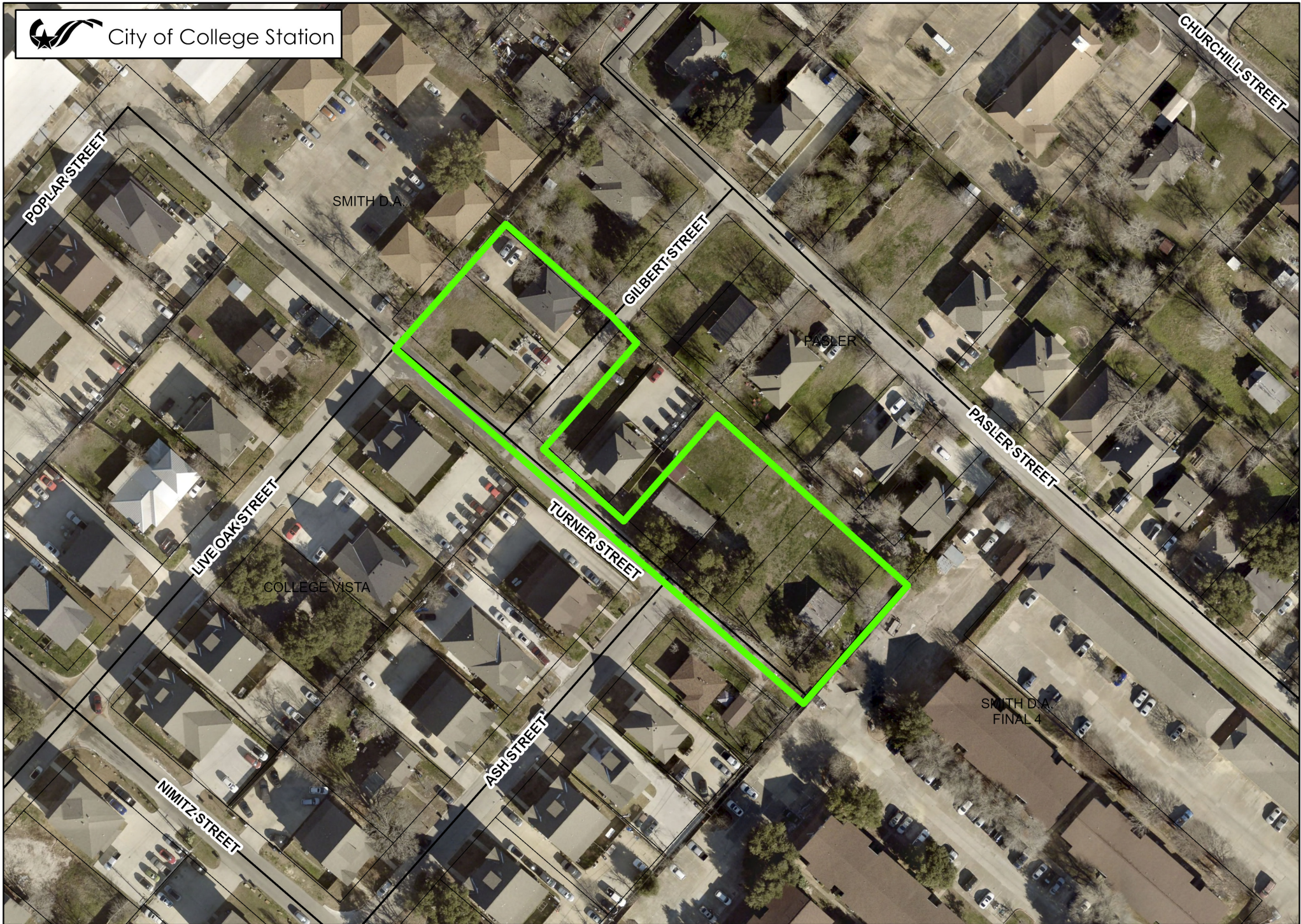


Exhibit B



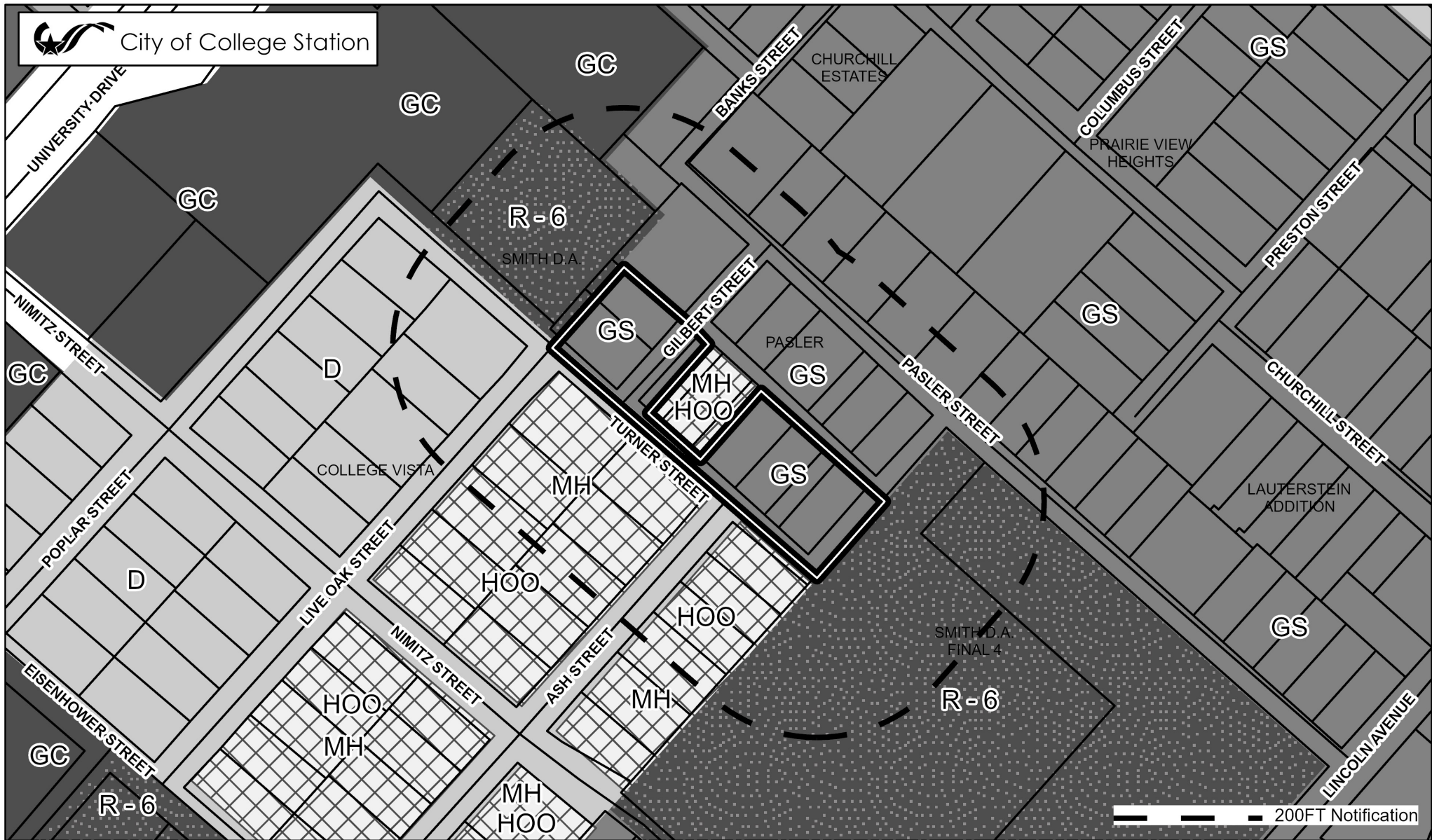


0 100 200 Feet

SS - TURNER ST.

Case:
REZ2023-000060

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		
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



0 170 340 Feet

SS - TURNER ST.

Case:
REZ2023-000060

REZONING

BACKGROUND INFORMATION – REZ2023-000060

NOTIFICATIONS

Advertised Commission Hearing Date: August 15, 2024
Advertised Council Hearing Date: September 12, 2024

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

None

Property owner notices mailed: 44

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	Neighborhood Conservation, Urban Center	R-6 High Density Multi-Family, GS General Suburban	Multi-Family Apartments, Single family detached dwellings
South	Mixed Residential	MH Middle Housing and HOO High Occupancy Overlay, R-6 High Density Multi-Family	Single family detached dwellings, Multi-Family Apartments
East	Mixed Residential, Neighborhood Conservation	GS General Suburban, R-6 High Density Multi-Family	Single family detached dwellings, Multi-Family Apartments
West	Urban Center, Mixed Residential	MH Middle Housing and HOO High Occupancy Overlay, D Duplex	Single family detached dwellings

DEVELOPMENT HISTORY

Annexed: 1951

Zoning: R-3 Apartment Building District, C-2 Commercial Industrial, R-2 Duplex District (1951 upon annexation)

Portion north of Turner Street

- R-3 Apartment Building District to R-1 Single-Family Residential (1976)

- C-2 Commercial Industrial to R-1 Single-Family Residential (2004)
- R-1 Single-Family Residential renamed to GS General Suburban (2013)

Portion south of Turner Street

- R-2 Duplex Residential renamed to D Duplex (2013)

Final Plat:

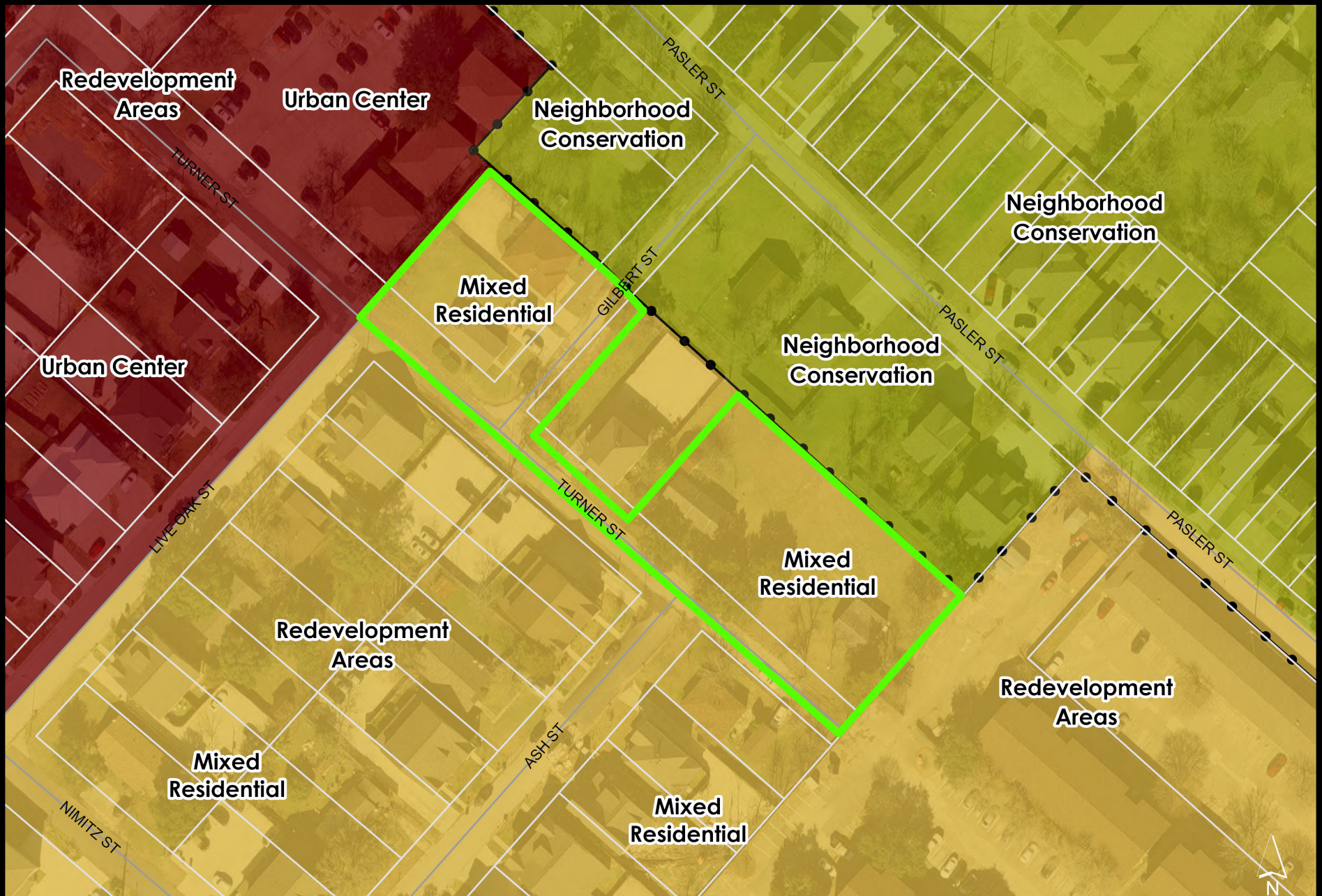
Unplatted areas and portions of D.A. Smith Subdivision (1919)

Site Development:

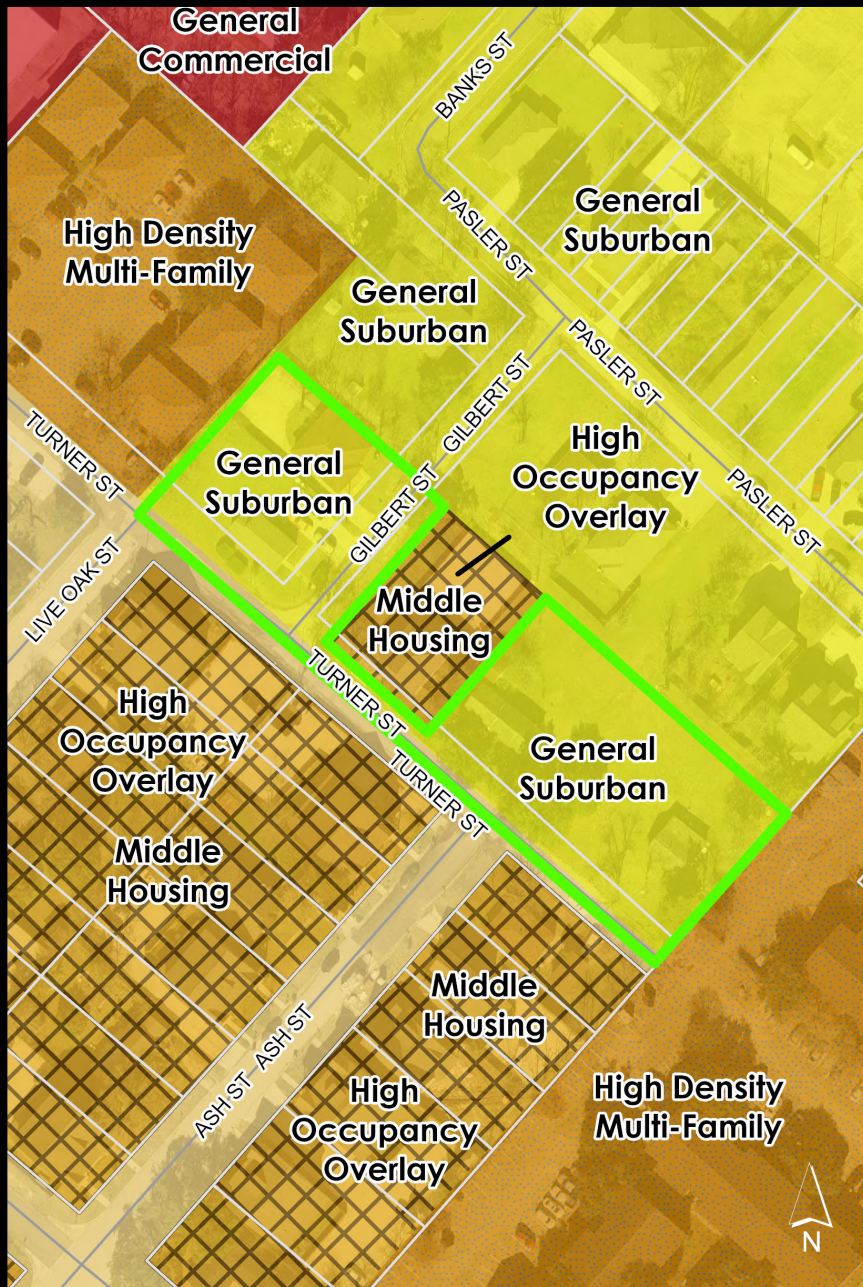
Single family dwellings and undeveloped

EXISTING

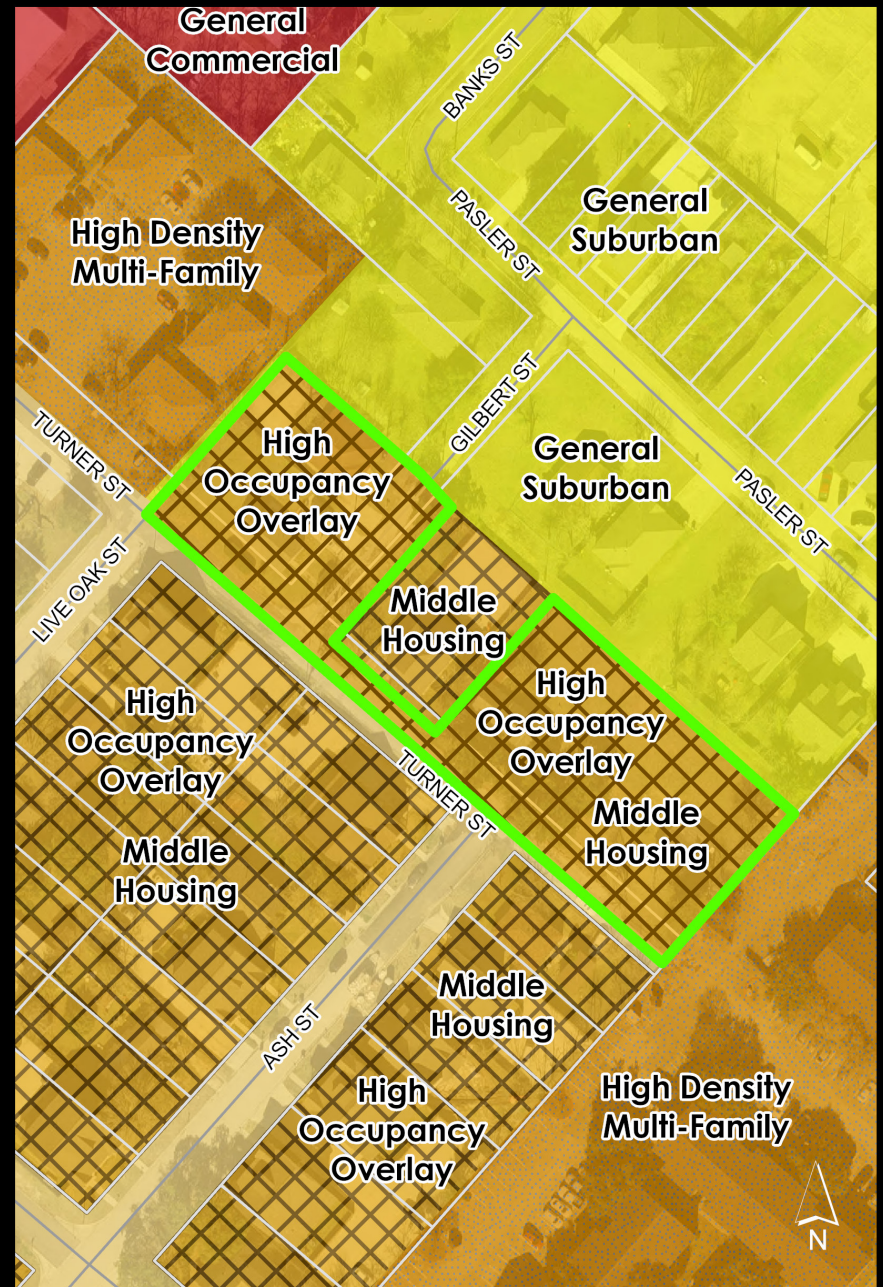
Future Land Use



EXISTING Zoning



PROPOSED Zoning



September 12, 2024

Item No. 9.3.

Comprehensive Plan Amendment to Remove the Future Extension of Balcones Drive

Sponsor: Jason Schubert

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan by amending the Thoroughfare Plan and Bicycle, Pedestrian, and Greenways Master Plan to remove the future extension of Balcones Drive, a Minor Collector, between the Jones Crossing Development and Welsh Avenue including associated future bike lanes and sidewalks.

Relationship to Strategic Goals:

- Improving Mobility

Recommendation(s): The Bicycle, Pedestrian, and Greenways Advisory Board considered only the request's affect on biking, walking and greenways and recommended approval (3-1-1) at their August 12, 2024 meeting. The Planning & Zoning Commission unanimously recommended denial (6-0) at their August 15, 2024 meeting. Staff recommends denial of the request.

Summary: The applicant is requesting to amend the Comprehensive Plan by amending the Thoroughfare Plan and Bicycle, Pedestrian, and Greenways Master Plan to remove the future extension of Balcones Drive, a Minor Collector, between the Jones Crossing Development and Welsh Avenue including associated future bike lanes and sidewalks. This section of future Minor Collector is approximately 1,675 feet in length, of which approximately 450 feet is located in existing right-of-way and approximately 1,225 feet is located on property owned by the First Baptist Church of College Station. The existing portion of Balcones Drive from Wellborn Road (FM 2154) into the Jones Cross Development is approximately 1,500 feet in length and was constructed in 2018 with the platting of the property and development of the HEB site. As described in the Review Criteria, removal of the Balcones Drive extension will have a negative impact to the transportation network serving this area of the City.

REVIEW CRITERIA:

1) Changed or changing conditions in the subject area of the City:

The future extension of Balcones Drive between Wellborn Road and Welsh Avenue was added to the Thoroughfare Plan with the adoption of the Comprehensive Plan in 2009. The land area it serves is designated on the Comprehensive Plan Future Land Use & Character Map for General Commercial, Urban Residential, and Natural & Open Areas. The Jones Crossing Development property has developed roughly half of its 71-acre land area since it started construction in 2017 and is developing in accordance with Comprehensive Plan. The property First Baptist Church of College Station is located platted in 1982 and the church site has expanded but has not had significant changes to the site in recent years.

The properties served by the Balcones Drive extension have frontage to other existing thoroughfares. These include Wellborn Road (FM 2154), a 6-lane Major Arterial, Harvey Mitchell Parkway (FM 2818), a 4-lane roadway designated as a future 6-lane Major Arterial, and Welsh Avenue, a Major

Collector. Traffic volumes from TxDOT for Wellborn Road adjacent to the Jones Crossing Development were estimated to be 24,000 vehicles per day in 2009 and have increased to over 40,000 vehicles per day in 2023. Traffic volumes from TxDOT for Harvey Mitchell Parkway were estimated to be 22,000 vehicles per day in 2009 and have increased to over 37,000 vehicles per day in 2023. Traffic volumes on Welsh Avenue adjacent to the First Baptist Church property have been estimated to be between 10,000 and 11,000 vehicles since 2012.

Since 2009, bicycle and pedestrian network changes in the area include the construction of a shared-use path connection near the existing terminus of Balcones Drive into Steeplechase Park to the south and from Balcones Drive to Harvey Mitchell Parkway. Also, TxDOT has received funding for a shared use path to be constructed along the south side of Harvey Mitchell Parkway that will be from the Jones Crossing Development east to Texas Avenue.

2) Compatibility with the existing uses, development patterns, and character of the immediate area concerned, the general area, and the City as a whole:

The planned extension of Balcones Drive is intended to provide added circulation and connectivity to the roadway network in this area of the City which serves developing commercial and multi-family uses. The subject properties largely have frontage to two Major Arterials and the proposed extension would provide a backage road and alternate routes for vehicles, bicycle, and pedestrian to access the Jones Crossing Development without needing to utilize high volume, high speed Major Arterial roadways. Removing the extension would negatively impact the access of the surrounding area that is envisioned to have as the City builds out.

The proposed thoroughfare extension crosses the existing First Baptist Church property which has an impact to their existing site and to the potential of the unplatted portion of their property. First Baptist Church has submitted a letter of support for removing the thoroughfare extension to remove this impact to their property. The extension, however, would be located largely along their existing drive aisle and driveway to Welsh Avenue. This configuration results in a lesser impact on their property than what most street extensions across developed property would have as much of the area being utilized for their drive aisle could be utilized for the street. The letter from First Baptist Church cites concerns with being able to fund the extension, the amount of right-of-way needed and site impacts if the extension were to occur. State law restricts cities from requiring more infrastructure than what is roughly proportionate to a proposed development. Unless the church site has substantial development activity or converts into other, more intense uses, the City would need to contribute funds or implement the project as the full construction could not be required. The amount of right-of-way needed and how bicycle and pedestrian facilities are provided can be evaluated with the design of the extension and adjusted as able to reduce the impact to the existing site and parking areas.

3) Impact on environmentally sensitive and natural areas:

The extension of Balcones Drive would cross Bee Creek Tributary B.3. Where the crossing would be located the creek is not identified on FEMA maps to be 100-year floodplain though a floodplain study by the applicant performed for the Jones Crossing development has identified that 100-year floodplain exists in this area. Thoroughfares are the larger roadway network of the City and crossing of creek and floodplain areas is done in appropriate locations to make valuable network connections. As creek and floodplain are environmentally sensitive natural areas it is important to be prudent to limit the impact to them.

Since the creek is located at the edge of the Jones Crossing property, staff requested that the developer stop the construction of Balcones Drive at the edge of the studied floodplain and not

continue to their property line since they would not be able to complete the full crossing to the other side of the creek on the adjacent First Baptist Church property. This was intended to limit the impact to the natural environment in the interim, not require a temporary turnaround in that natural area, and to allow the crossing to be constructed when the Balcones Drive was extended across the First Baptist Church property and a full design of the crossing could be determined with the appropriate street elevation and drainage structures. In doing so, the applicant provided funds to the City in the amount of \$734,704.36 which was the estimated amount for the construction of the approximately 450 feet of street. The right-of-way for this section was dedicated with the plat and is available for the street to be constructed.

4) Impacts on infrastructure including water, wastewater, drainage, and the transportation network:

The proposed amendment does not impact water or wastewater services. As stated in the proceeding Review Criteria, the Balcones Drive extension would cross Bee Creek Tributary B.3 and drainage and floodplain impacts would be determined through those studies and mitigated with the design of the roadway crossing.

A traffic impact analysis (TIA) was provided with the rezoning application submitted for Jones Crossing in 2016. As stated by the applicant, the TIA evaluated if the extension of Balcones Drive over to Welsh Avenue would be needed with the full build-out of the development and determined that the extension was not needed for that. A TIA is a snapshot that estimates traffic conditions for assumed uses developed over a specified timeline. The TIA that was performed utilized traffic counts from 2015 and assumed the full build-out would occur by 2018 so is no longer valid. The need for thoroughfare connections, like the Balcones Drive extension to Welsh Avenue, are not based on snapshots of specific timeframes but on the transportation needs and the benefits of those connections to the transportation network as the City builds-out. The City and Bryan/College Station Metropolitan Planning Organization (MPO) utilize travel demand models to estimate and assess the thoroughfare network needed to serve the City long-term. Staff requested MPO staff perform a run of the travel demand model in this area without the Balcones Drive extension to help determine what the impact may be on adjacent roadways. The analysis did not have conclusive results which is disappointing though not surprising. A travel demand model performs best in evaluating the larger regional highway and arterial roadway network and is more challenged to accurately assess smaller collector roadways due to the macro-nature of the model and the small intricacies of a particular location in the model and how the traffic analysis zones are configured and how the assumed uses interact with the surrounding thoroughfare network.

The applicant has cited various efforts to collaborate with the City and First Baptist Church to have the Balcones Drive extension completed and concludes that the unsuccessful efforts are a result of an apparent lack of interest by the City in completing the project. They thereby are requesting the extension be removed from the Thoroughfare Plan so it is no longer required and the \$734k in funds submitted for the remaining 450 feet on their tract be returned. While efforts to this point have not resulted in the extension being initiated, it does not indicate that the extension is not an important connection for this area. The Jones Crossing development is roughly half developed and traffic on the adjacent Major Arterials, which provide access from the growing City and beyond to Texas A&M University, are projected to increase making alternatives and redundancy in the network more critical over time. Funding for capital projects are prioritized as funds are available and based on the needs of the City at the time. A preliminary priority analysis performed in 2020 showed the Balcones Drive extension was ranked sixth in priority out of 17 potential roadway projects. Funding has not yet been identified for it though the project can be considered when a prioritization effort for roadway projects

is undertaken again. A future partnership of the City, Jones Crossing developer and First Baptist Church of College Station is likely the most successful course action to realize the extension.

The developer has indicated an interest to create a signalized access and median opening along Harvey Mitchell Parkway. Discussions have occurred with staff and TxDOT regarding the concept which have been favorable. There are design concerns though due to a potential traffic signal's proximity to the ramps and grade separation of Wellborn Road and Harvey Mitchell Parkway and the necessary relocation of the driveway and drive aisle on the property on the opposite side of Harvey Mitchell Parkway that would need to be resolved. While a signalized driveway on Harvey Mitchell Parkway would create more access to the Jones Crossing Development from that corridor, it does not replace the benefit to all users and adjacent area of having the Balcones Drive connection to Welsh Avenue.

5) Consistency with the goals and strategies set forth in the Comprehensive Plan:

The Thoroughfare Plan and Bicycle Plan, and Pedestrian Plan are established to meet the long-term transportation needs of the City's residents and its visitors. Removal of the Balcones Drive extension from the Thoroughfare Plan and the Bicycle, Pedestrian, and Greenways Master Plan would be in conflict with their goals and objectives by reducing future connectivity for all users and making the network more dependent on a smaller number of higher volume roadways.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Amendment Exhibit
3. Applicants Supporting Information
4. Letter of Support - First Baptist Church of College Station

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF COLLEGE STATION, TEXAS, AMENDING THE OFFICIAL CITY OF COLLEGE STATION COMPREHENSIVE PLAN BY AMENDING THE COMPREHENSIVE PLAN – FUNCTIONAL CLASSIFICATION AND CONTEXT CLASS MAP – TO AMEND ASSOCIATED MAPS IN THE BICYCLE, PEDESTRIAN, AND GREENWAYS MASTER PLAN INCLUDING THE PROPOSED BICYCLE FACILITIES MAP AND PROPOSED PEDESTRIAN FACILITIES MAP TO REMOVE THE FUTURE EXTENSION OF BALCONES DRIVE, A MINOR COLLECTOR, BETWEEN THE JONES CROSSING DEVELOPMENT AND WELSH AVENUE INCLUDING ASSOCIATED BIKE LANES AND SIDEWALKS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATED THERETO.

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

PART 1: That the “Official City of College Station Comprehensive Plan” is hereby amended by adding Subsections “C.8” and “E.3.c.” of Exhibit “A” thereto as set out in Exhibit “A” attached hereto and made a part hereof; as set out in Exhibit “B,” Exhibit “C,” and Exhibit “D” attached hereto and made a part hereof.

PART 2: That if any provisions of any section of this Ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.

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

PASSED, ADOPTED and APPROVED this 12th day of September, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Ordinance No.4303 adopting the “Official City of College Station Comprehensive Plan” as amended, is hereby amended by adding Subsections “C.8” and “E.3.c.” to Exhibit “A” of said plan for Exhibit “A” to read in its entirety as follows:

A. Comprehensive Plan

The Official City of College Station Comprehensive Plan (Ordinance 4303) is hereby adopted and consists of the following:

1. Plan Foundation;
2. Distinctive Places;
3. Strong Neighborhoods;
4. A Prosperous Economy;
5. Engaging Spaces;
6. Integrated Mobility;
7. Exceptional Services;
8. Managed Growth;
9. Collaborative Partnerships; and
10. Plan Implementation

B. Master Plans

The following Master Plans are hereby adopted and made a part of the Official City of College Station Comprehensive Plan:

1. The Northgate Redevelopment Plan dated November 1996;
2. The Revised Wolf Pen Creek Master Plan dated 1998;
3. Northgate Redevelopment Implementation Plan dated July 2003;
4. Bicycle, Pedestrian, and Greenways Master Plan dated January 2010;
5. Parks, Recreation, and Open Spaces Master Plan dated July 2011;
6. Medical District Master Plan dated October 2012;
7. Economic Development Master Plan dated May 2020;
8. The Water System Master Plan dated April 2017; and
9. The Wastewater System Master Plan dated April 2017; and
10. Northeast Gateway Redevelopment Plan dated September 2023; and
11. Wellborn District Plan dated October 2023.

C. Master Plan Amendments

The following Master Plan Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Expiring the East College Station Transportation Study dated May 2005 – Ordinance 4404, dated November 10, 2022.
2. Expiring the Central College Station Neighborhood Plan dated June 2010 – Ordinance 4404, dated November 10, 2022.
3. Expiring the Eastgate Neighborhood Plan dated June 2011 – Ordinance 4404, dated November 10, 2022.
4. Expiring the Southside Area Neighborhood Plan dated August 2012 – Ordinance 4404, dated November 10, 2022.
5. Expiring the South Knoll Neighborhood Plan dated September 2013 – Ordinance 4404, dated November 10, 2022.
6. Amended as shown in the Northeast Gateway Redevelopment Plan for Map 5.4 Proposed Bicycle Facilities and Map 5.5 Proposed Pedestrian Facilities within the Bicycle, Pedestrian, and Greenways Master Plan – Ordinance 4470, dated September 28, 2023.
7. Amended as shown in the Wellborn District Plan for Map 5.4 Proposed Bicycle Facilities and Map 5.5 Proposed Pedestrian Facilities within the Bicycle, Pedestrian, and Greenways Master Plan – Ordinance 4474, dated October 12, 2023.
8. Amended to remove the future bike lanes and sidewalks along the extension of Balcones Drive between the Jones Crossing development and Welsh Avenue as shown in Exhibit B for Map 5.4 Proposed Bicycle Facilities and Exhibit C for Map 5.5 Proposed Pedestrian Facilities within the Bicycle, Pedestrian, and Greenways Master Plan.

D. Text Amendments

The following Text Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Text Amendments:
 - a. *Chapter 2. Distinctive Places* by amending the text regarding the Neighborhood Center future land use description, intent, and generally appropriate zoning districts – Ordinance 4351, dated April 28, 2022.

- b. *Chapter 2. Distinctive Places* by amending the text regarding the Planning Areas description to remove expired plans – Ordinance 4404, dated November 10, 2022.
- c. *Chapter 2. Distinctive Places* by amending the text regarding the Planning Areas description to rename the Texas Avenue & University Drive (FM 60) Redevelopment Area to the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023.
- d. *Chapter 2. Distinctive Places* by amending the text regarding the Planning Areas description to update it to the Wellborn District Plan, to revise the Future Land Use & Character descriptions to remove the Wellborn future land use and incorporate it and the Wellborn-specific zoning districts into the Neighborhood Commercial, Suburban Residential, and Estate Residential future land use descriptions and generally appropriate zoning districts – Ordinance 4474, dated October 12, 2023.

E. Map Amendments

The following Map Amendments to the Official City of College Station Comprehensive Plan are as follows:

- 1. Future Land Use & Character Map:
 - a. Approximately 5 acres of land generally located at 2354 Barron Road from Suburban Residential to Neighborhood Commercial – Ordinance 4365, dated June 23, 2022.
 - b. Approximately 17 acres of land generally located at 400 Double Mountain Road from Medical to Urban Residential – Ordinance 4378, dated August 11, 2022.
 - c. Approximately 0.19 acres of land generally located at 106 Southland Street from Suburban Residential to Neighborhood Commercial – Ordinance 4388, dated September 8, 2022.
 - d. Approximately 2.611 acres of land, generally located at 100 - 170 Graham Road from Business Center to Neighborhood Commercial – Ordinance 4435, dated May 15, 2023.
 - e. Amended as shown in the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023..
 - f. Amended as shown in the Wellborn District Plan – Ordinance 4474, dated October 12, 2023.
 - g. Approximately 3.25 acres of land generally located west of the intersection of Nantucket Drive and State Highway 6 S from Suburban Residential and Natural and Open Areas to Neighborhood Commercial and Natural and Open Areas – Ordinance 4520, dated May 23, 2024.

- h. Approximately 3 acres of land generally located at located at 116 and 120 Morgans Lane from Urban Residential to General Commercial – Ordinance 4525, dated June 27, 2024.

2. Planning Areas Map:

- a. Removing the Central College Station Neighborhood Plan, Eastgate Neighborhood Plan, Southside Area Neighborhood Plan, and South Knoll Neighborhood Plan – Ordinance 4404, dated November 10, 2022.
- b. Renaming the Texas Avenue & University Drive (FM 60) Redevelopment Area to the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023.
- c. Renaming the Wellborn Community Plan to the Wellborn District Plan – Ordinance 4474, dated October 12, 2023.

3. Functional Classification & Context Class Map:

- a. Amended as shown in the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023.
- b. Amended as shown in the Wellborn District Plan – Ordinance 4474, dated October 12, 2023.
- c. Amended to remove the future extension of Balcones Drive, a Minor Collector, between the Jones Crossing development and Welsh Avenue as shown in Exhibit D.

F. General

- 1. **Conflict.** All parts of the Comprehensive Plan and any amendments thereto shall be harmonized where possible to give effect to all. Only in the event of an irreconcilable conflict shall the later adopted ordinance prevail and then only to the extent necessary to avoid such conflict. Ordinances adopted at the same city council meeting without reference to another such ordinance shall be harmonized, if possible, so that effect may be given to each.
- 2. **Purpose.** The Comprehensive Plan is to be used as a guide for growth and development for the entire City and its Extraterritorial Jurisdiction (“ETJ”). The Comprehensive Plan depicts generalized locations of proposed future land uses, including thoroughfares, bicycle and pedestrian ways, parks, greenways, and waterlines, and sewer lines that are subject to modification by the City to fit local conditions and budget constraints.
- 3. **General nature of Future Land Use.** The Comprehensive Plan, in particular the Future Land Use & Character Map and any adopted amendments thereto, shall not be,

nor be considered, a zoning map, shall not constitute zoning regulations or establish zoning boundaries, and shall not be site or parcel specific but shall be used to illustrate generalized locations.

4. **General nature of College Station Comprehensive Plan.** The Comprehensive Plan and any additions, amendments, master plans and subcategories thereto depict same in generalized terms including future locations; and are subject to modifications by the City to fit local conditions, budget constraints, cost participation, and right-of-way availability that warrant further refinement as development occurs. Linear routes such as thoroughfares, bikeways, pedestrian ways, greenways, waterlines, and sewer lines that are a part of the Comprehensive Plan may be relocated by the City 1,000 feet from the locations shown in the Comprehensive Plan without being considered an amendment thereto.
5. **Reference.** The term College Station Comprehensive Plan includes all of the above in its entirety as if presented in full herein, and as same may from time to time be amended.

EXHIBIT B

That the “Bicycle, Pedestrian, and Greenways Master Plan” is hereby amended by amending a portion of Map 5.4 titled “Proposed Bicycle Facilities” by removing the future bike lanes along the future extension of Balcones Drive between the Jones Crossing Development and Welsh Avenue as shown as follows:

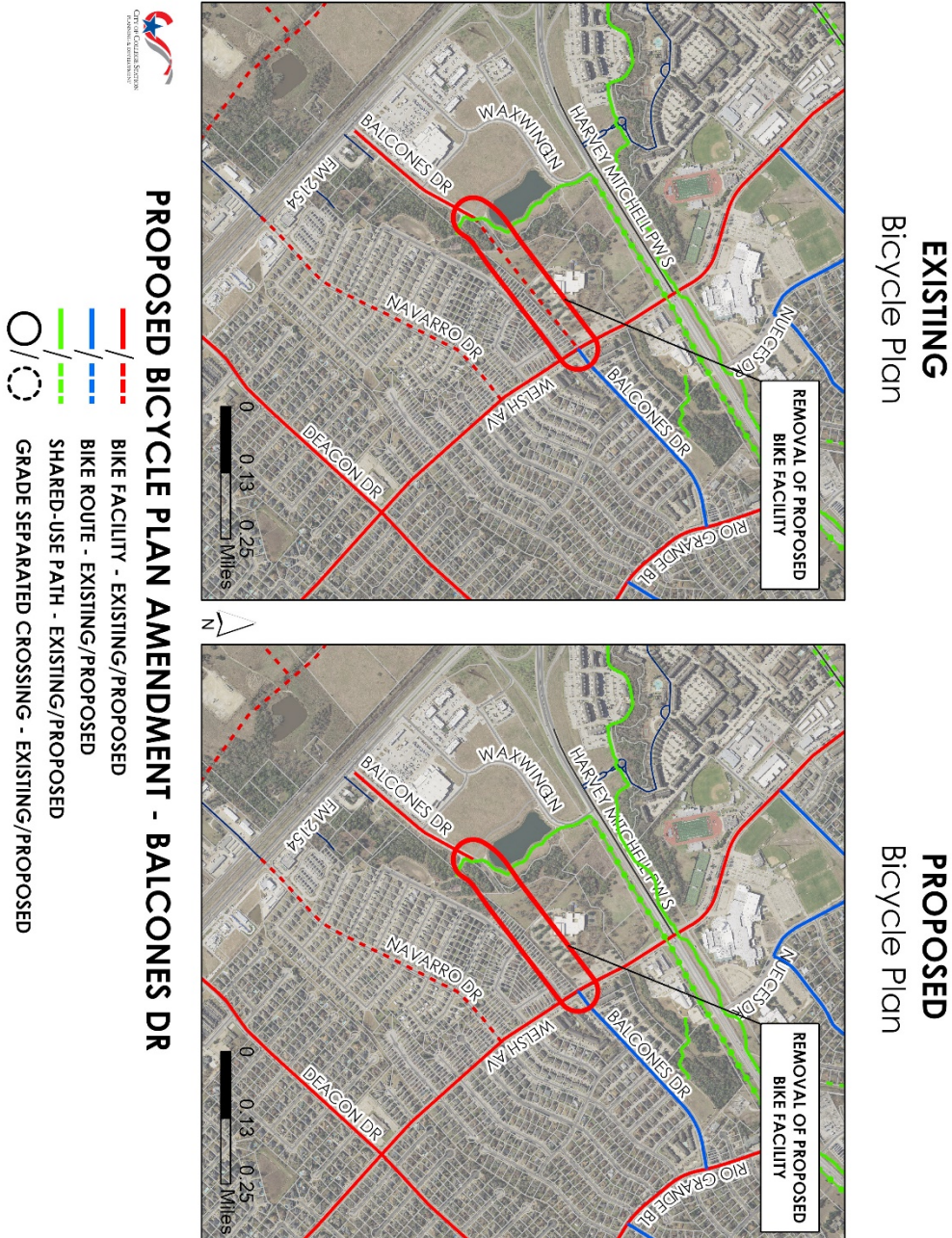


EXHIBIT C

That the “Bicycle, Pedestrian, and Greenways Master Plan” is hereby amended by amending a portion of Map 5.5 titled “Proposed Pedestrian Facilities” by removing the future sidewalks along the future extension of Balcones Drive between the Jones Crossing Development and Welsh Avenue as shown as follows:

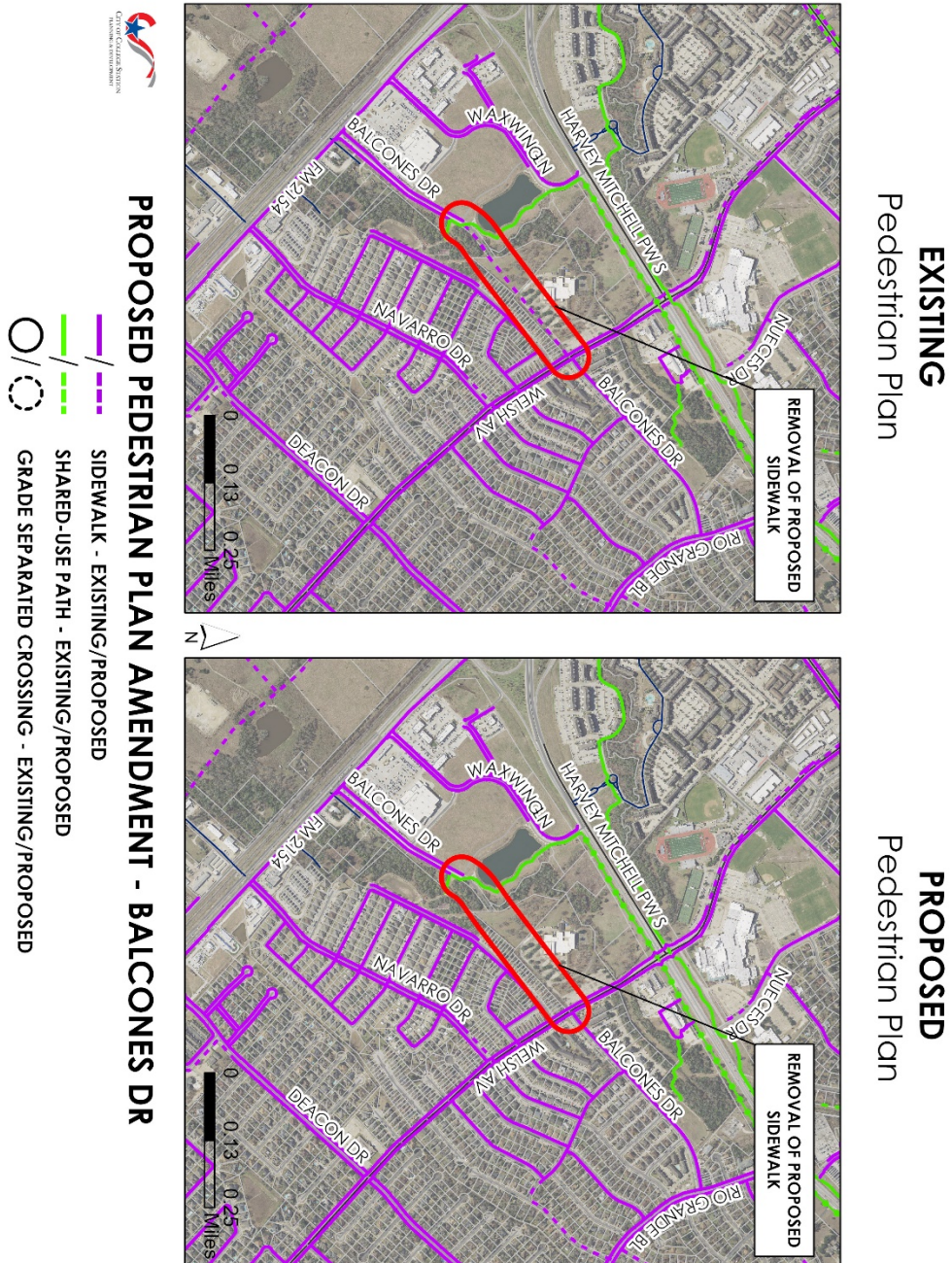
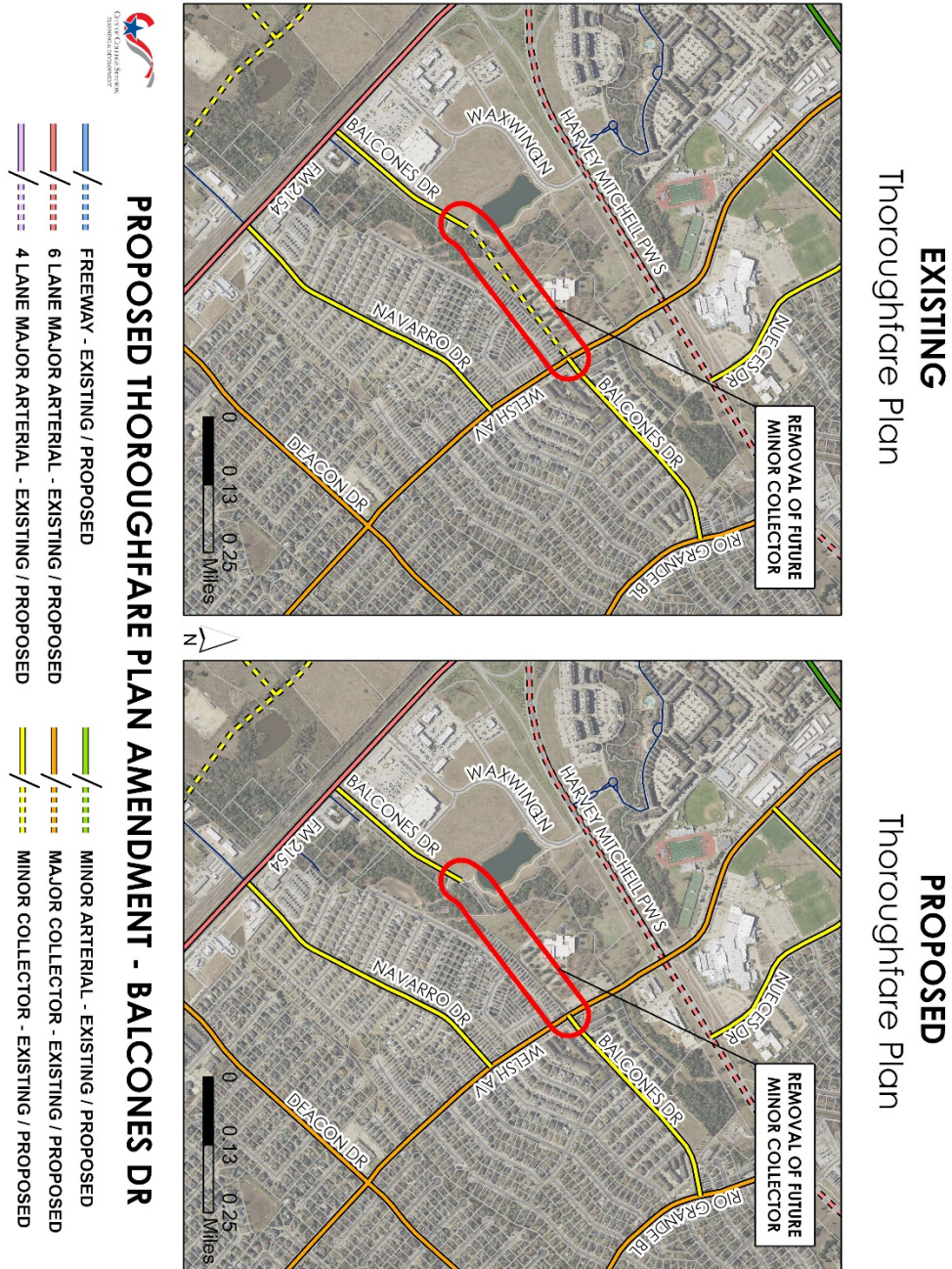
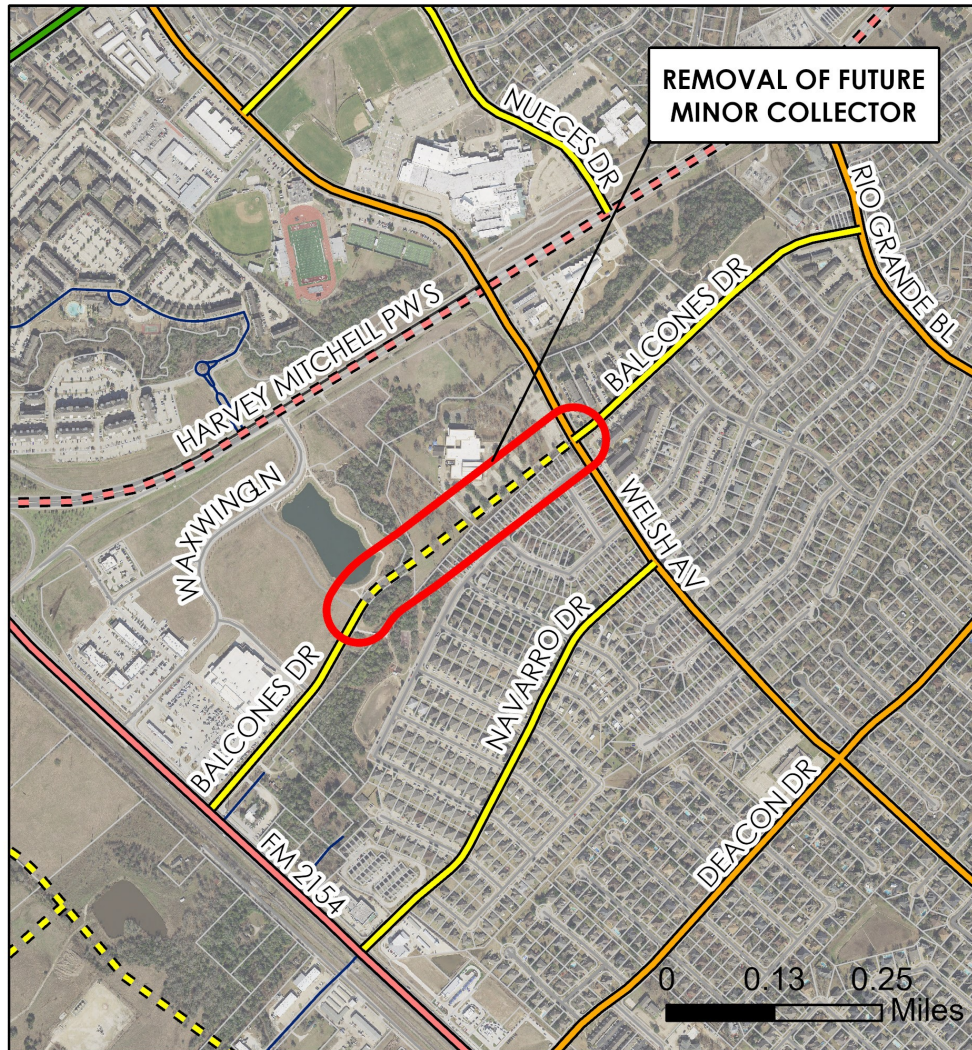


EXHIBIT D

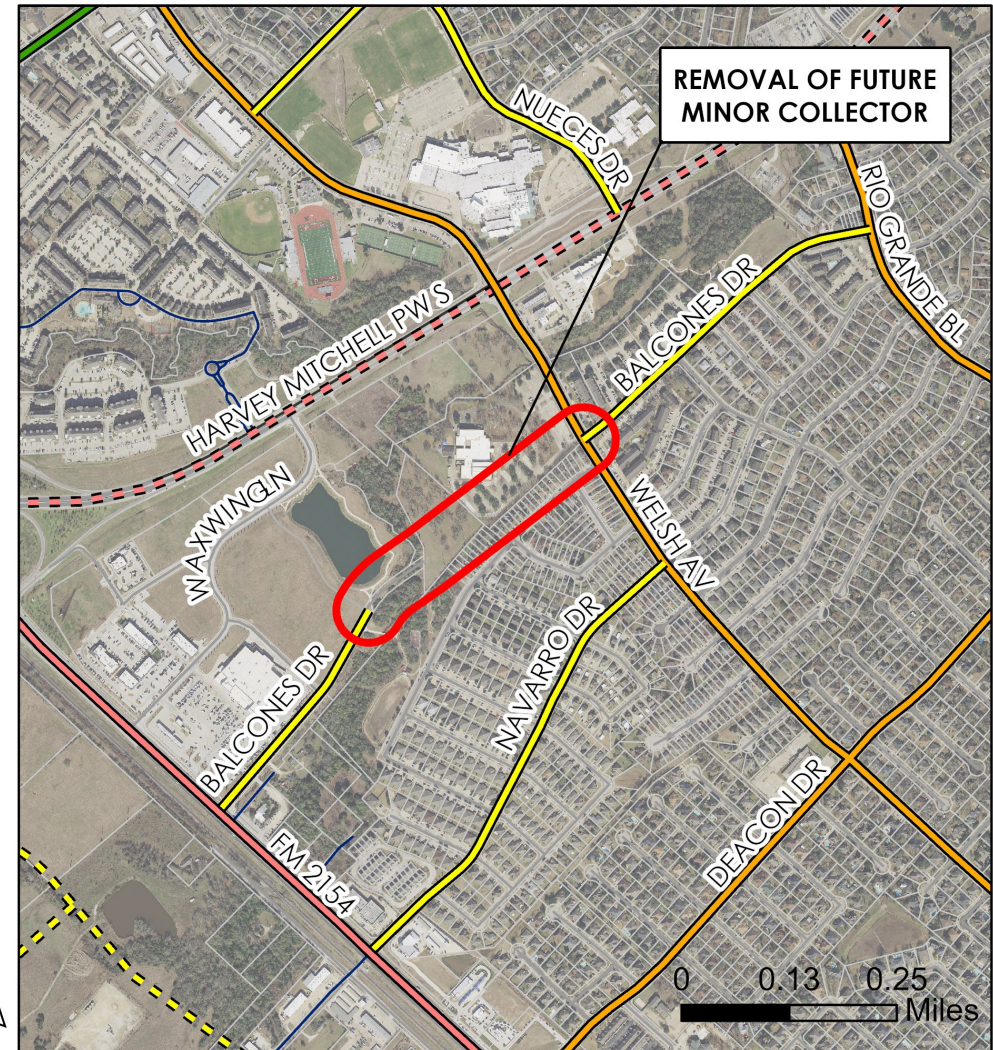
That the “Official City of College Station Comprehensive Plan” is hereby amended by amending a portion of Map 6.3 titled “Functional Classification & Context Class” by removing the future extension of Balcones Drive, a Minor Collector, between the Jones Crossing Development and Welsh Avenue as shown as follows:



EXISTING Thoroughfare Plan



PROPOSED Thoroughfare Plan



PROPOSED THOROUGHFARE PLAN AMENDMENT - BALCONES DR

-  FREEWAY - EXISTING / PROPOSED
-  6 LANE MAJOR ARTERIAL - EXISTING / PROPOSED
-  4 LANE MAJOR ARTERIAL - EXISTING / PROPOSED

-  MINOR ARTERIAL - EXISTING / PROPOSED
-  MAJOR COLLECTOR - EXISTING / PROPOSED
-  MINOR COLLECTOR - EXISTING / PROPOSED

Project Type: Comprehensive Plan Amendment

Project Subtype: Thoroughfare Plan

Short Description: Balcones Drive (Jones Crossing Development to Welsh) Thoroughfare Amendment

APPLICATION FEES:

Rezoning App Fee: \$1,566.00

Total: **\$1,566.00**

COMP PLAN:

Total Acreage:

1.664-Acres on FBC property, .624 acres within Jones Crossing Development. Total acreage is 2.288.

Community Character: This application is related to Community Character.

Not Applicable.

Transportation: This application is related to Transportation.

Applicable.

Other: This application is related to other (please explain below).

Not Applicable.

Element & Loc Amended: What specific element of the Comprehensive Plan (for example, Land Use & Character designation, Thoroughfare Plan Context Class, or thoroughfare alignment) and at what specific location (if applicable) is requested to be amended?

Thoroughfare alignment (including the Pedestrian and Bicycle alignments) of the proposed two-lane Minor Collector that is currently shown to connect the existing portion of Balcones Drive from where it terminates in the Jones Crossing Development to Welsh Avenue. The roadway alignment removal is a change to the Thoroughfare Plan and the removal of the bike lane/sidewalks is a change to the Bicycle, Pedestrian, and Greenways Master Plan.

Amendment Request: Please list the amendment(s) requested.

Our request is to delete the segment of Balcones Drive from where it terminates in the Jones Crossing Development to Welsh Avenue from the Thoroughfare Plan. This would include the proposed bike lanes, sidewalks and vehicle travel lanes. The removal of the bike lane/sidewalks is a change to the Bicycle, Pedestrian, and Greenways Master Plan.

Reason for the Amendment: Please explain the reason for the amendment(s).

In October 2015, in association with the Jones Crossing Development, initial meetings were held among the City of College Station (COCS), First Baptist Church (FBC), and Stratus Properties (Stratus) to discuss the alignment and extension of Balcones Drive from Wellborn Road to Welsh Avenue. After two additional meetings in early 2016, discussions regarding participation in the extension of Balcones to Welsh broke down for several reasons:

- there was no proposed fiscal participation by FBC or the COCS;
- FBC was not willing to grant the right-of-way for the roadway extension; and
- the COCS required a traffic signal at Balcones and Welsh and other improvements that significantly increased the cost of the project.

Between September 2016 and August 2017, the Jones Crossing Development worked through multiple steps of the entitlement process. In particular, the Final Plat for the subdivision was submitted, reviewed, and approved. A requirement of this approval was for Stratus to provide fiscal surety for the final portion of Balcones Drive within the Jones Crossing Subdivision. Because the final portion of Balcones required a creek crossing and the property line is in the middle of the creek, it was not possible to complete construction of the road to the property line. Thus, surety in the amount of \$734,704.36 was posted in cash with the COCS prior to the final plat being approved by P&Z and filed of record.

The Grand Opening for the Jones Crossing Development and its anchor tenant, HEB, was held on September 12, 2018. A new round of discussions among the COCS, FBC, and Stratus were held between Fall 2018 and Spring 2019. At that time, FBC was willing to dedicate the required right-of-way for the roadway extension as long as their site was improved along the roadway, i.e., new curb line and driveways constructed, etc. Stratus discussed the potential use of a 380 Agreement between the COCS and Stratus to fund the Balcones extension to Welsh Avenue in conjunction with the \$734,704.36 fiscal surety posted with the Jones Crossing Plat. The COCS was not interested in a 380 Agreement and discussions failed again.

In April 2021, Stratus met with Jennifer Prochazka, Assistant City Manager, to discuss removing the extension of Balcones from the Thoroughfare Plan and the possibility of the city refunding the \$734,704.36. The request was based on the unlikelihood of Balcones being extended by FBC or by the city as a CIP project. At that time, Ms. Prochazka stated that staff did not support the proposal to remove Balcones from the Thoroughfare Plan. nor did they believe Balcones would be constructed in the future by either the City or FBC. Following subsequent conversations, staff indicated they would recommend the Balcones Extension project for inclusion in the 2022 Bond Election.

In February 2022, the Bond Election Citizen Advisory Committee was formed and by March 2022, the city's shortlist of projects was released. The Balcones extension was not on the list. It is our understanding that the Balcones extension was submitted for consideration by the City's Transportation Planner but was removed from the project list prior to it being submitted to the Citizen Advisory Bond Committee for consideration.

Stratus has attempted several times to work with the COCS to participate in the extension of Balcones. FBC cannot afford to fund construction of their portion of the bridge and the remaining roadway to Welsh Avenue, and based on the decisions that COCS has made, it is apparent that completing the Balcones extension is not a priority for the City. The only way the Balcones extension will be constructed is if it is included in a future bond election in 5-10 years.

Because of the failure of multiple efforts and the apparent lack of interest in completing this project, the applicants request that this portion of Balcones Drive be removed from the city's thoroughfare plan and that the \$734,704.36 that was posted seven (7) years ago by Stratus be released.

Changed Conditions: Please explain the changed or changing conditions in the subject area of the City.

This area of College Station is mostly built out and traffic patterns are unlikely to change significantly in the future. The Jones Crossing TIA determined that development of the project does not necessitate the extension of Balcones Drive. Several other traffic improvement projects have been completed in the area along Wellborn Road recently. These include the closure of the Cain Road railroad crossing, the construction of a new railroad crossing and traffic signal at the Deacon Drive intersection, and the widening of Rock Prairie Road with railroad crossing improvements at Wellborn. **Additionally, the Jones Crossing Development constructed a pedestrian bridge connection from Balcones Drive to Steeplechase Park and extended a shared use path through the development to FM2818 where it will be extended with future development / projects.**

Existing Element: Please show the compatibility with the existing uses, development patterns, and character of the immediate area concerned, the general area, and the city as a whole.

This area of College Station is mostly built out, with almost all greenfield areas developed or approved for planned development. The Jones Crossing TIA proves that the extension of Balcones is not required for the overall transportation network. The extension of Balcones to Welsh would only serve as a convenient but not necessary back door to the Jones Crossing development.

ADDITIONAL INFORMATION:

Environment Impact: Please list any impacts on environmentally sensitive and natural areas.

The alignment of this roadway extension necessitates a crossing of Bee Creek Tributary B.3. This portion of creek was identified as a perennial tributary in a preliminary jurisdictional determination of Waters of the United States, which was completed in October 2015 as part of the Jones Crossing project. Choosing not to construct this roadway eliminates any potential construction impacts to this existing creek and preserves its health and character.

Infrastructure Impact: List any impacts on infrastructure, including water, wastewater, drainage and transportation network.

There are no planned utility extensions along the Balcones extension route. Therefore, there would be no impact to existing water, wastewater, or drainage networks. As mentioned previously, this area is mostly built out except for areas approved for future development within Jones Crossing, and required infrastructure for this future development has already been constructed. Existing utilities are located along Welsh Avenue and within the FBC property to serve their facilities.

The Jones Crossing TIA determined that the Balcones extension is not required for the overall transportation network.

Goals & Objectives: Explain consistency with the goals and strategies set forth in the Comprehensive Plan.

The goal of **Chapter 9 – Collaborative Partnerships** in the City’s Comprehensive Plan is to have “well-coordinated planning at all levels and effective engagement with local jurisdictions, institutions, and organizations to further realize the City’s vision and support the broad community.”

The Comprehensive Plan further explains, “The purpose of which is because **collaborative partnerships** are essential in leveraging resources for **maximum efficiency and benefit**. Many challenges that communities face are regional issues – like mobility network congestion and housing affordability – or are even broader in scope, such as environmental sustainability and natural disaster recovery which cross jurisdictional boundaries.”

After eight (8) years of trying to cooperate with the city, Stratus is convinced that the Balcones extension is not a priority for the City and thus there is no desire on the city’s part to collaborate in constructing the extension of Balcones Drive.

Another goal from the Comprehensive Plan, **Chapter 8 – Managed Growth** is “Fiscally responsible and carefully managed development that is aligned with growth expectations and the ability to provide safe, timely, and efficient infrastructure and services.”

As the Comprehensive Plan states, “The purpose of this chapter is to establish the necessary policy guidance and associated strategic actions to enable the City of College Station to manage its ongoing physical growth and development in a **sensible, predictable, and fiscally responsible** manner.”

Stratus made many attempts to partner with the city in order to construct the Balcones extension in a sensible, predictable and fiscally responsible manner. The surety that was posted in 2017 has lost significant value due to increased construction costs and inflation. There have been opportunities for the city to benefit from a cost-free dedication of right-of-way from FBC and from monetary participation by Stratus, but the City chose not to participate when presented with these opportunities and, with regard to this project, failed to act in a fiscally responsible manner. Because the City must now bear the entire cost of acquiring right-of-way acquisition extending the roadway, the only fiscally responsible option is to remove the Balcones extension from the Thoroughfare Plan.

Additional Properties:

2200 Metalmark Way (Geo ID#362100-0101-0020)

ACKNOWLEDGEMENTS:

Acknowledgement (1): The applicant has prepared this application and certifies that the facts stated herein and exhibits attached hereto are true, correct, and complete.

Agreed.

Acknowledgement (2): IF THIS APPLICATION IS FILED BY ANYONE OTHER THAN THE OWNER OF THE PROPERTY, this application must be accompanied by a power of attorney statement from the owner. If there is more than one owner, all owners must sign the application or the power of attorney. If the owner is a company, the application must

be accompanied by proof of authority for the company's representative to sign the application on its behalf.

Understood.

Project Proposal Meeting Acknowledgement: Applicant acknowledges that they understand a Project Proposal Meeting with neighborhood representatives is required for all CPAs requesting changes to the Future Land Use & Character Map, as stated in UDO Section 3.22.

Understood.

LOCATION:

Address: 2300 Welsh Avenue
Parcel Number: 582800-3000-0060

Applicant Information:

Name: Mitchell & Morgan, LLP C/O Veronica Morgan
Address: 3204 Earl Rudder Freeway South
City: College Station
State: Texas
Zip Code: 77845-6457
Phone: 979-260-6963
Email Address: v@mitchellandmorgan.com

Owner Information:

Name: College Station 1892 Properties, LLC C/O Chessie Zimmerman
Address: 212 Lavaca Street, Suite 300
City: Austin
State: Texas
Zip Code: 78701
Phone: 512-708-0739
Email Address: czimmerman@stratusproperties.com

Owner Information:

Name: 1892 Jones Crossing, LTD C/O Don Jones
Address: 804 Berry Creek
City: College Station
State: Texas
Zip Code: 77845
Phone: 979-255-6600
Email Address: donaldwjones@gmail.com

Owner Information:

Name: First Baptist Church of College Station C/O Trustees
Address: 2300 Welsh Avenue
City: College Station

State: Texas
Zip Code: 77845
Phone: 979-696-7000
Email Address: info@fbccollegestation.com

Contact Primary Information:

Name: Mitchell & Morgan, LLP C/O Veronica Morgan
Address: 3204 Earl Rudder Freeway South
City: College Station
State: Texas
Zip Code: 77845-6457
Phone: 979-260-6963
Email Address: v@mitchellandmorgan.com

Contact Secondary Information:

Name: Mitchell & Morgan, LLP C/O Kerry Pillow
Address: 3204 Earl Rudder Freeway South
City: College Station
State: Texas
Zip Code: 77845-6457
Phone: 979-260-6963
Email Address: kerry@mitchellandmorgan.com

Contact Tertiary Information:

Name: Mitchell & Morgan, LLP C/O Tina Weido
Address: 3204 Earl Rudder Freeway South
City: College Station
State: Texas
Zip Code: 77845-6457
Phone: 979-260-6963
Email Address: tina@mitchellandmorgan.com

Engineer Information:

Name: Mitchell & Morgan, LLP C/O Veronica Morgan
Address: 3204 Earl Rudder Freeway South
City: College Station
State: Texas
Zip Code: 77845-6457
Phone: 979-260-6963
Email Address: v@mitchellandmorgan.com



City of College Station
Attn: Planning & Development Services
P.O. Box 9960,
College Station, TX 77842

March 5, 2024

RE: Letter of Support for a Thoroughfare Plan Amendment to Remove Balcones Drive between Welsh Avenue and the current terminus within the Jones Crossing Development in College Station, Texas

To Whom It May Concern,

We are writing you this letter on behalf of Stratus Properties to show our support for the removal of Balcones Drive from the City of College Station's Thoroughfare Plan, specifically the portion of Balcones Drive from Welsh Avenue to the current terminus of the roadway within the Jones Crossing Development.

Stratus Properties started working on the Jones Crossing Development in August 2015. By October 2015 we had our first meeting between Stratus Properties and representatives from the City of College Station to discuss the extension of Balcones Drive. Over the next couple of years, there were several meetings and attempts made by Stratus Properties to work with First Baptist Church of College Station and the City of College Station to extend Balcones Drive to no avail.

Through these meetings our church learned a tremendous amount about development requirements in the city. We now know that the development of property in the City of College Station, including grading, land development, utilities, new buildings or parking lots, etc., requires platting of the property. Our church campus is located on approximately 17.817-acres (25.997-acres when floodplain acreage is included), 4.587-acres of this property is currently un-platted. To develop this 4.587 acres with a building expansion and associated parking lot, we would be required to dedicate right-of-way to the City and to construct the portion of Balcones Drive and/or any utility extensions identified on the City's Master Plans within our property. Balcones Drive is a 38-foot-wide Minor Collector on the Thoroughfare Plan that requires a 60-foot right-of-way dedication.

If the church were to ever construct this roadway it would have the following impacts to church property:

- 430-LF of roadway construction costs
- 2.66 acres lost to the Balcones extension (1.664 acres lost to right-of-way and .998 acres lost to being separated from the property due to the road extension)
- 44 parking spaces lost to require modifications to the existing parking lot.

This 4.587-acres was gifted to the First Baptist Church of College Station in December 2005 from Edsel Jones. The consideration in the Special Warranty Deed states "a gift deed arising out of

[Mr. Jones] deep respect and appreciation for the Church which has served him and his family for many years, and to the honor and glory of our Lord whose mission the church seeks to serve, and further as a gift to honor the valuable years of service of Malcolm Bane whose ministry, as pastor, reached the Edsel G. Jones family in special and life changing ways.” Our goal is to someday be able to utilize this gift from Mr. Jones to continue to serve this community as he intended. Given the city requirements that FBC construct Balcones prior to developing this 4.587-acres, we will likely never be able to use this property for any church facilities.

Our church is a non-profit organization. As a non-profit, we are limited in our ability to raise funds. It is very unlikely that we would be able to afford the construction of this roadway. We believe whole heartedly that the development of the road in this location should be the responsibility of the City of College Station. We understand that Stratus Properties made a request of the city to place this road on the last bond election and the city opted not to include it, so with this we have assumed that this is not a roadway that the city feels is important to construct. Stratus Properties is not going to construct it, and it would be extremely difficult for the church to construct it. This results in our conclusion that it is appropriate to remove it from the Thoroughfare Plan.

Therefore, we fully support the efforts of Stratus Properties as they seek to remove this portion of Balcones Drive from the City of College Station’s Thoroughfare Plan and are happy to join them in this request.

Thank you for your time and consideration.

Sincerely,

Steve Rodgers
Trustee

Brian Hennings
Trustee

Jack Madeley
Trustee

cc: file

Zimmerman, Chessie

From: Steve Rodgers <rodgers@rodgersmiller.com>
Sent: Wednesday, March 13, 2024 9:56 AM
To: Zimmerman, Chessie; bdhen1967@gmail.com; jack@jmadmail.com
Cc: troy@fbccollegestation.com
Subject: RE: Jones Crossing - comprehensive plan amendment

You don't often get email from rodgers@rodgersmiller.com. [Learn why this is important](#)

Ms. Zimmerman,

I have reviewed the documents and I am in agreement with the letter of support and owner's certification. In accordance with Texas Business & Commerce Code §322.007 please consider my electronic signature below as my affirmation and signature.

Presently I am working in London and will not return until April 6, 2024.

W. Stephen Rodgers



*Mediator – Certified by A.A. White Dispute Resolution Center
at The University of Houston Law Center*

Contact Information:

Email: rodgers@rodgersmiller.com

Rodgers, Miller, Rodriguez & Fusco P.C.

4444 Carter Creek Parkway, Suite 208

Bryan, Texas 77802

P. O. Box 4884

Bryan, Texas 77805-4884

Telephone: 979-260-9911

Fax: 979-846-7083

www.rodgersmiller.com

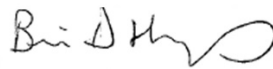
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Trustee

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cc: file

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