



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#

October 7, 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. Texas A&M University System v. BVGCD, et al, Cause No. 24-002626-CV-472, in the 472nd District Court, Brazos County.
- f. Legal advice related to College Station's water permits issued or pending from the Brazos Valley Groundwater Conservation District and any production or transport permits pending or issued from the Brazos Valley Groundwater Conservation District.

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

Possible action. The committee 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. Approximately 1.5 acres of land located 301 Patricia Street and review of the sealed bids submitted under bid number 24-073.
- c. Approximately 8 acres of land located at 1508 Harvey Road.

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 Auditor
- b. City Judge
- c. City Secretary
- d. City Manager
- e. City Attorney
- 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 the week of October 7-13, 2024, as College Station Hope Week.

Sponsors: Tanya Smith

Attachments: 1. 24 College Station Hope 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:

- September 26, 2024 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM092624 DRAFT Minutes

7.2. Presentation, discussion, and possible action regarding a resolution authorizing expenditure to the Aggieland Humane Society, Inc. in the amount of \$303,600.

Sponsors: Mary Ellen Leonard

Attachments: 1. Animal Shelter Resolution

7.3. Presentation, discussion, and possible action regarding a funding agreement with the Amber Alert Network Brazos Valley for FY25 for \$5,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. 25300003 - Amber Alert

7.4. Presentation, discussion, and possible action regarding a funding agreement with the Arts Council of the Brazos Valley for FY25 for \$35,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. 25300004 - Arts Council General Fund

7.5. Presentation, discussion, and possible action on a funding agreement with the Arts Council of the Brazos Valley for FY25 for \$560,953.

Sponsors: Mary Ellen Leonard

Attachments: 1. 25300005 - Arts Council HOT Fund
2. 25300005 - Arts Council FY25 Approved Budget

7.6. Presentation, discussion, and possible action regarding a funding agreement with the Bryan/College Station Chamber of Commerce for FY25 for \$25,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. 25300002 - Chamber of Commerce

7.7. Presentation, discussion, and possible action regarding a funding agreement with Keep Brazos Beautiful for FY25 for \$48,230.

Sponsors: Mary Ellen Leonard

Attachments: 1. 25300007 - Keep Brazos Beautiful

7.8. Presentation, discussion, and possible action on a funding agreement with the Memorial for All Veterans of the Brazos Valley for FY25 for \$30,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. 25300006 - Veterans Memorial
2. BVVM 2025 Budget

7.9. Presentation, discussion, and possible action on a funding agreement with the Brazos Valley Economic Development Corporation for FY25 for \$350,000.

Sponsors: Mary Ellen Leonard

Attachments: 1. 25300001 - Brazos Valley Economic Dev Corp

- 7.10. Presentation, discussion, and possible action regarding adoption of a resolution granting consent to Rock Prairie Management District No. 2 for the sale and issuance of unlimited tax road bonds, series 2024A, in an amount not to exceed \$2,555,000.

Sponsors: Mary Ellen Leonard

- Attachments:
1. Bond - 2024A Road - City Consent Resolution (RPMD2)
 2. Rock Prairie MD 2_ 2024A Road POS Draft (City)
 3. Rock Prairie MD 2_ 2025 BI 5 No Growth Cash Flow for City
 4. Rock Prairie MD_ 2024A Road NOS Draft (City)
 5. Rock Prairie_ 2024 Letter to City re Bond Requirements

- 7.11. Presentation, discussion, and possible action on a professional services contract with The Arkitex Studio, Inc., not to exceed \$1,800,250 for the design and construction administration of the Texas Independence Park Project.

Sponsors: Jennifer Cain

- Attachments: 1. TIP Design Contract Vendor-Signed

- 7.12. Presentation, discussion, and possible action on a third amendment to the lease of 3.1 acres including an approximately 28,949 square foot building at 2611 Texas Avenue South to International American Education Federation, Inc., d/b/a International Leadership of Texas, for an additional 1-year renewal for a total contract amount of approximately \$2,198,103.

Sponsors: Michael Ostrowski

- Attachments: 1. ILT Lease Renewal - Contract 20300455 Amendment 3

- 7.13. Presentation, discussion, and possible action on Change Order No. 12 for the system and software contract with CentralSquare Technologies LLC for the Computer Aided Dispatch Server Upgrade in the amount of \$94,770.

Sponsors: Sam Rivera

- Attachments: 1. 15300406CO12 AD

- 7.14. Presentation, discussion, and possible action regarding a payment in an amount not to exceed \$103,111 to the Texas Comptroller of Public Accounts for the local share of the Event Trust Fund for the execution of the 2024 USATF National Junior Olympics Track & Field Championships.

Sponsors: Jeremiah Cook

- Attachments:
1. Event Trust Fund Application Approval Letter
 2. Economic Impact Study- USATF Junior Olympic Track & Field National Championships

8. Workshop Agenda.

- 8.1. Presentation, discussion, and possible action regarding an update on Code Enforcement activities and initiatives.

Sponsors: Tommy Shilling

- Attachments: None

9. Regular Agenda.

- 9.1. Presentation, discussion, and possible action regarding an ordinance creating a voluntary rental inspection certification program.

Sponsors: Debbie Eller

- Attachments: 1. Voluntary Rental Inspection Cert. Ordinance 10-7-24

- 9.2. Presentation, discussion, and possible action regarding the September 2024 Small Area Plan Audit.
Sponsors: Ashley Klein
Attachments: 1. September-2024-Small-Area-Plan-Audit
- 9.3. Presentation, discussion, and possible action on a construction contract with Aggieland Construction, Ltd., in the amount of \$3,673,500 for the construction of a new operations shop at Central Park, plus the City's contingency in the amount of \$360,000 for a total appropriation of \$4,033,500. 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. Central Park Ops Shop Bid Tab
 2. Central Park Ops Shop Map
 3. Central Park Ops Shop Vendor-Signed Contract
- 9.4. Presentation, discussion, and possible action on a construction contract with JaCody Construction, LP, in the amount of \$1,041,469 for the construction renovations of tennis courts at Bee Creek Park, and Central Park plus the City's contingency in the amount of \$105,000, for a total appropriation of \$1,146,469. 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. Bee Creek and Central Tennis Project Map
 2. Bee Creek and Central Tennis Project Bid Tab Sheet
 3. Bee Creek and Central Tennis Construction Contract Vendor Signed
- 9.5. Presentation, discussion, and possible action on a construction contract with Norman Construction Services, LLC., in the amount of \$3,237,031 for the construction of the new outfall improvements at the Carter Creek Wastewater Treatment Plant (CCWWTP), plus the City's contingency in the amount of \$323,703; for a total appropriation of \$3,560,734. Approval of this item grants authority for the City Manager to authorize project expenditures up to the City's contingency amount.
Sponsors: Jennifer Cain
Attachments: 1. CCWWTP Outfall Project Bid Tab
 2. CCWWTP Outfall Project Map
 3. CCWWTP Outfall Vendor-Signed Contract
- 9.6. Presentation, discussion, and possible action regarding a resolution nominating candidate(s) for the Brazos Central Appraisal District Board of Directors.
Sponsors: Tanya Smith
Attachments: 1. Appraisal District Nomination Letter
 2. Resolution Nominating BCAD Board of Directors

10. Items of Community Interest and Council Calendar.

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

official or staff of the City of College Station; and announcements involving an imminent threat to the public health and safety of people in the City of College Station that has arisen after the posting of the agenda.

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

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

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

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

13. Adjourn.

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

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on October 3, 2024 at 12:00 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.”

October 7, 2024

Item No. 2.2.

Sponsor: Michael Ostrowski, Chief Development Officer

Reviewed By CBC: N/A

Agenda Caption: Real Estate {Gov't Code Section 551.072};

Possible action. The committee 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. Approximately 1.5 acres of land located 301 Patricia Street and review of the sealed bids submitted under bid number 24-073.
- c. Approximately 8 acres of land located at 1508 Harvey Road.

Relationship to Strategic Goals:

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

None

October 7, 2024
Item No. 5.1.
College Station Hope Week

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming the week of October 7-13, 2024, as College Station Hope Week.

Relationship to Strategic Goals:
N/A

Recommendation(s): N/A

Summary: N/A

Budget & Financial Summary: N/A

Attachments:

1. 24 College Station Hope Week



Proclamation

WHEREAS, the City of College Station leaders, citizens, students, businesses, places of worship, and organizations combine to create a culture of caring and optimism admired throughout the nation; and

WHEREAS, a community-wide Hope Conference will be held on October 11th -12th for the benefit of those who need hope or want to share hope; and

WHEREAS, national speakers; an art exhibition in partnership with the Arts Council of Brazos Valley, and over twenty-seven exhibits and organizations will equip and empower those in need of hope; and

WHEREAS, beloved Aggie, former platinum-selling country music artist and current author, “We Bleed Maroon” Granger Smith ‘02, will return to Aggieland as a keynote speaker providing messages of hope, inspiration, integrity and encouragement; and

WHEREAS, the Hope Conference is a reflection of the breadth and depth of the caring people and organizations in our community dedicated to helping others find a hope-filled future; and

WHEREAS, we all need hope!

NOW, THEREFORE BE IT RESOLVED, that I, John P. Nichols, as Mayor of the City of College Station, do proclaim the week of October 7-13, 2024 as:

College Station Hope Week

and call upon the people of College Station to join their friends and neighbors throughout this community in celebrating hope and the future of our city.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of College Station, Texas to be affixed this 7th day of October 2024.

John P. Nichols
Mayor

Attest:

Tanya Smith
City Secretary

October 7, 2024
Item No. 7.1.
September 26th Council Meeting

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action of minutes for:
• September 26, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM092624 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
SEPTEMBER 26, 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 September 26, 2024, in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

2. Executive Session Agenda.

In accordance with the Texas Government Code §551.071-Consultation with Attorney, and §551.072-Real Estate, §551.074-Personnel, and the College Station City Council convened into Executive Session at 4:00 p.m. on September 26, 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
- 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; and
- Cynthia Hopkins & Geoffrey Hopkins v. City of College Station, Cause No. 23-002880-CV-85 in the 85th District Court, Brazos County Texas.

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

- Approximately 28 acres of land generally located at Midtown Drive and Corporate Pkwy in the Midtown Business Park.
- Approximately 1.5 acres of land located 301 Patricia Street and review of the sealed bids submitted under bid number 24-073.
- Approximately 8 acres of land located at 1508 Harvey Road.

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

- City Attorney
- City Manager
- City Judge
- City Secretary
- City Auditor
- 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 6:24 p.m. No action was taken.

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

5. PRESENTATION - PROCLAMATIONS, AWARDS, AND RECOGNITIONS.

5.1. Presentation proclaiming September 30th through October 6th, 2024, as Week Without Driving.

Mayor Nichols presented a proclamation to declaring the week of September 30th through October 6th, 2024, as a Week Without Driving.

6. Hear Visitors Comments.

Neo Jang, College Station, came before Council to discussion his bicycle commute and present a few examples of the benefits to not driving. He explained how his commute allows him to interact with other pedestrians in ways that automobile drivers are isolated from, but also allows him to interact with automobile riders as well as there are fewer barriers to communication such as passenger compartments in automobiles.

Fred Dupriest, College Station, came before council representing a group of citizens to state that they believe the purpose of enforcement of the 4-unrelated is to limit further economic displacement of workforce families; maintain affordable and appropriate neighborhoods for families with children; stop College Station's precipitous loss of homeownership; eliminate unfair market advantage of illegal rental investors in purchasing homes; stop unfair taxation of adjacent properties based on valuations created by illegal operations; and maintain market incentives for investors to create affordable, higher-density housing for students. Mr. Dupriest provide Council with the following recommendations:

1. Implement the requirement for an occupancy Disclosure Statement.

2. Provide public discussion of the intent of enforcement with the idea that achieving convictions might discourage violation.

7. CONSENT ITEMS

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

Item 7.2, 7.5, and 7.8 was pulled from Consent for clarification.

(7.2) Michael Dehaven, Finance Assistant Director, explained provided an overview of the policies of the maturity investment fund, the proposed depository banks for the City and the modifications to the policy and strategy. Majority of Council will pull this item to vote separately to amend the proposed ordinance of modifications to the policy and strategy.

(7.5) Richard Mann, Fire Chief, explained that the process of the application submitted for the Federal Fiscal Year (FY) 2023 Staffing for Adequate Fire and Emergency Response (SAFER) Grant funding opportunity has been approved in the amount of \$3,874,618.44 in Federal funding.

(7.8) Timothy Crabb, Director of Electric Utility, explained that due to site location and infrastructure connectivity issues, this project cannot move forward at this time, which is why staff recommends the rejection of this RFP.

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

- **September 12, 2024 Council Meeting**

7.2. Presentation, discussion, and possible action on Resolution No. 09-26-24-7.2 regarding the City's investment policy, reviewing and recording changes to the policy and strategy, and on a collateral policy, and designating investment officers for the fiscal year ending September 30, 2025, stating that the City Council has reviewed and approved the City's investment policy, broker-dealer list and investment strategy.

7.3. Presentation, discussion, and possible action on Change Order No. 2 for the design contract with Kimley-Horn and Associates, Inc. for the Jones Butler Extension and Roundabout Project in the amount of \$110,000.

7.4. Presentation, discussion, and possible action on a contract for electric underground distribution directional bore projects, to Sterling Global Industries, LLC for an amount not to exceed \$397,798.44.

7.5. Presentation, discussion, and possible action regarding Resolution No. 09-26-24-7.5 to accept the Federal FY-2023 Staffing for Adequate Fire and Emergency Response (SAFER) Grant in the amount of \$3,874,618.44.

7.6. Presentation, discussion, and possible action on a deductive change order with Mitchell & Morgan, LLP for a credit of \$276,215.48 for the design contract for the Corporate Parkway Extension Design Project.

7.7. Presentation, discussion, and possible action on the approval of a deductive change order with Weisinger, Inc., providing a credit of \$628,889 to the construction contract for the Water Well No. 5 and Carrizo Well Rehabilitation projects.

7.8. Presentation, discussion, and possible action on the rejection of proposals received and cancelation of an RFP for a natural gas electric generation facility.

7.9. Presentation, discussion, and possible action on the rejection of bids received and cancelation of Bid #24-072 for the purchase of concrete pull boxes for Electric warehouse inventory.

7.10. Presentation, discussion, and possible action on the rejection and cancelation of BID #24-062 for substation maintenance because no bids were received.

7.11. Presentation, discussion, and possible action regarding a resolution amending the real estate contract with Fera Diagnostics and Biologicals Corporation for the sale of approximately 12 acres of land in the College Station Business Center at the intersection of Gateway Boulevard and State Highway 6 and amendment to the restrictive covenants of the College Station Business Center to reflect the release of the shared cross access easement.

7.12. Presentation, discussion, and possible action on contracts for the City's purchase of single and three-phase transformers for Electric warehouse inventory with a total expenditure of \$482,081.50, awarded to Texas Electric Cooperatives, KBS Electrical Distributors, and Techline, Inc.

MOTION: Upon a motion made by Councilmember Smith and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to approve the Consent agenda, with the exception of item 7.2. The motion carried unanimously.

(7.2) MOTION: Upon a motion made by Councilmember Cunha and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve the Consent Item 7.2 with the change of adding to Page 4 of the proposed ordinance "Retirement Obligation Funding." The motion carried unanimously.

8. WORKSHOP ITEMS

8.1. Presentation, discussion, and possible action regarding the 2023 Incentive Compliance Report by the Brazos Valley Economic Development Corporation.

Michael Camden, Ryan LLC, presented on the annual project compliance report for 2023, which were five (5) projects under agreement that were monitored for performance compliance by the Brazos Valley Economic Development Corporation on behalf of itself, Brazos County, the City of Bryan, and the City of College Station. The 2023 report highlights companies across multiple targeted industries with properties valued over \$353M and providing more than 856 quality jobs with local payrolls in excess of \$90M.

Overview & Executive Summary

Name	Compliance Status	Metric Outstanding	Amount Owed / Not Paid
Fuji Film (2014)	In Compliance	N/A	\$201,000 Cash Incentive – Brazos County \$57,600 Cash Incentive – City of Bryan \$153,000 Cash Incentive – City of College Station
Fuji Film (2022)	Pursuing Contract Amendment	N/A	N/A Until 2026: Cash Incentive – Brazos County N/A Until 2026: Cash Incentive – City of Bryan N/A Until 2026: Cash Incentive – City of College Station
LSPI	In Compliance	N/A	40% Tax Abatement Cash Incentive – Brazos County 40% Tax Abatement Cash Incentive – City of Bryan
Matica	Not in Compliance	Jobs, Salaries, & Investment	Cash Incentive of Five Installments of \$8,000 – BVEDC
Zoetis	In Compliance	N/A	Cash Incentive of Two Installments of \$20,000 – BVEDC

2023 Incentives & Combined Impact				
Company	Incentives	Payroll	Property Value 2023	Employment
Fuji Film (2014)*	\$ 417,600.00	\$76,289,377.38	\$159,803,235	813
Fuji Film (2022)	-----	\$76,289,377.38	\$159,803,235	813
LSPI	50% Tax Abatement	\$2,736,847	\$32,827,047	29
Matica	\$8,000	N/A	N/A	N/A
Zoetis	\$20,000	\$11,334,935	\$872,992	14
		\$90,361,159.38	\$353,306,509	856

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0) opposed, to receive the 2023 Incentive Compliance Report. The motion carried unanimously.

8.2. Presentation, discussion, and possible action regarding an update from representatives of the Texas A&M University Student Government Association (SGA).

Campbell Gattis and Grant Hockenberry, TAMU Student Gov't, provide an update to the City Council regarding SGA's priorities for the academic year and to note that Aggie's are registering to vote.

9. REGULAR ITEMS

9.1. Presentation, discussion, and possible action regarding Resolution No. 09-26-24-9.1 delegating to the City Manager the authority to make an electric utility Transmission Cost of Service (TCOS) refund payment in the amount of \$27,416,135.

Bryan Woods, City Manager, stated that the Public Utility Commission of Texas (PUC) has ordered the City of College Station to issue an arbitrary \$27.4 million refund to 34 major utility systems that pay to use the City's transmission system. The order concerns the city's inclusion of a General Fund Transfer (GFT) in its interim Transmission Cost of Service (TCOS) applications in 2007, 2008, and 2017. The PUC upheld the order despite the State Office of Administrative Hearings Administrative Law Judges (SOAH ALJs) ruling that the refund amount was excessive and unwarranted. The attached resolution will authorize the City Manager to prepay the full refund now, in order to stop the punitive accrual of an additional \$15 million in interest over 15 years. This payment will reduce the fund balance in the Electric Utilities Fund by \$27.4 million.

MOTION: Upon a motion made by Mayor Nichols and a second by Councilmember Harvell, the City Council voted seven (7) for and none (0) opposed, to approve Resolution No. 09-26-24-9.1, delegating

to the City Manager the authority to make an electric utility Transmission Cost of Service (TCOS) refund payment in the amount of \$27,416,135. The motion passed unanimously.

9.2. Public Hearing, presentation, discussion, and possible action on Ordinance No. 2024-4551 Budget Amendment 3 amending Ordinance No. 2023-4457 amending the budget for the 2023-2024 Fiscal Year in the amount of \$39,097,273.

Mary Ellen Leonard, Finance Director, stated that the proposed budget amendment is to increase the FY24 budget appropriations by \$39,097,273 as a result of an increase needed primarily for an electric utility Transmission Cost of Service (TCOS) refund payment in the amount of \$27,416,135 and a grant award in the amount of \$5,924,138. The city has resources or can reasonably expect resources to cover the appropriations in this budget amendment. If approved, the net revised 2023-2024 budget appropriations will be \$545,082,220.

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.

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. 2024-4551, amending Ordinance No. 2023-4457 amending the budget for the 2023-2024 Fiscal Year in the amount of \$39,097,273. The motion passed unanimously.

9.3. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4552 amending the Comprehensive Plan to include the Housing Action Plan as a Master Plan.

David Brower, Community Development Analysis, stated that changes to the plan were incorporated after direction from the Planning and Zoning Commission and City Council, namely, to add language about encouraging and incentivizing the production of housing units. Staff presented the revised plan to the Planning and Zoning Commission at their September 5th meeting where the Commission voted unanimously to recommend approval of the Housing Action Plan. The City of College Station's Housing Action Plan strives to address pressing housing issues and to accomplish housing action items in the City Comprehensive Plan, specifically Action Items 2.3, 3.4, 3.6, and 3.9. The two main overarching goals of the plan are to create and incentivize more housing units of various types to meet growing demand and incentivize the production and preservation of housing that is affordable to community members. The 13-member Housing Action Plan Steering Committee has worked with City Staff to advise and make recommendations for a plan that reflects the community's vision for housing action and initiatives. Plan development included extensive research, public outreach, and stakeholder engagement.

At approximately 7:42 p.m., Mayor Nichols opened the Public Hearing.

Fred Dupriest, College Station, stated that if we oppose the continued takeover of family housing by corporate investors and the resulting decline in home ownership, we need to make that position very clear, both to investors and politicians in Austin. Mr. Dupriest ask Council if it's the intent to eliminate action plan, because the proposed plan does eliminate this protection. He recommended using the wording: Goal 1, Strategy 2, Action 1 - Opportunities for infill development will be explored in the first two actions in this section to allow greater density through amendment of the UDO and rezoning of certain areas. Possibilities could include small home communities or accessory dwelling units with owner-occupied homes from the current wording; opportunities for infill development will be

explored in the first two actions in this section to allow greater density through amendment of the UDO and rezoning of certain areas. Possibilities could include small home communities or accessory dwelling units.

There being no further comments, the Public Hearing was closed at 7:45 p.m.

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. 2024-4552, amending the Comprehensive Plan to include the Housing Action Plan as a Master Plan, with the change of adding to the proposed ordinance “Owner Occupied Homes.” The motion passed unanimously.

9.4. Public Hearing, presentation, discussion, and possible action regarding Resolution No. 09-26-24.9.4 authorizing the City of College Station to apply to the U. S. Department of Housing and Urban Development for the Pathways to Removing Obstacles to Housing Grant in the amount of \$3,600,000.

Raney Whitwell, Community Development Analysis, stated that the U. S. Department of Housing and Urban Development (HUD) released a funding notification regarding the Pathways to Removing Obstacles to Housing (PRO Housing). The draft resolution will allow the City of College Station to submit an application for funding in the amount of \$3,600,000. This grant aligns with the Housing Action Plan which specifies two goals: 1) Create more housing units and more diverse housing types, and 2) Produce and preserve housing that is affordable to current and future community members. The goal of the PRO Housing grant is to identify and remove barriers to affordable housing production and preservation. The resolution also identified matching funds from future Community Development Block Grant and HOME Investment Partnership Program grant funds in the amount of \$3,600,000 over the next five years.

If awarded, Staff has identified 3 projects that will be addressed with the grant funds:

- 1) Density Bonus Study, 2
- 2) Housing Capacity Study, and
- 3) Acquisition & Disposition Housing Program for Rental and/or Homeownership.

At approximately 8:00 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 8:00 p.m.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve Resolution No. 09-26-24-9.4, authorizing the City of College Station to apply to the U. S. Department of Housing and Urban Development for the Pathways to Removing Obstacles to Housing Grant in the amount of \$3,600,000. The motion passed unanimously.

9.5. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4553 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 M-1 Light Industrial to CI Commercial Industrial on approximately 11 acres located in the University Industrial Center, more generally located at 151 Graham Road.

Robin Macias, Planning and Development, stated that this request is to rezone approximately 11 acres of land located at 151 Graham Rd. from M-1 Light Industrial to CI Commercial Industrial. The property is developed as an industrial complex but is currently vacant. A portion of the property is still undeveloped. The M-1 Light Industrial zoning district was retired in 2003 with the original adoption of the Unified Development Ordinance. Mrs. Macias explained that this rezoning request would allow for the zoning to be updated to a current zoning district. The intent of the rezoning is to allow for different uses that are not allowed by right within the current zoning of M-1 Light Industrial. The applicant has stated that the current M-1 Light Industrial zoning is not the highest and best use for the property. Rezoning the property from M-1 Light Industrial to CI Commercial Industrial can provide additional development opportunity by allowing a greater variety of uses. The opportunity for an increased variety of uses will make the property more marketable.

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

At approximately 8:04 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 8:05 p.m.

MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4553, 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 M-1 Light Industrial to CI Commercial Industrial on approximately 11 acres located in the University Industrial Center, more generally located at 151 Graham Road. The motion passed unanimously.

9.3. Presentation, discussion, and possible action regarding an appointment to the Brazos Valley Solid Waste Management Agency, Inc. Board of Directors.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Maloney, the City Council voted seven (7) for and none (0), to appoint Councilmember Mark Smith to the Solid Waste Management Agency, Inc. Board of Directors. The motion carried.

10. Items of Community Interest and Council Calendar: The Council may discuss upcoming events and 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.

Tanya Smith, City Secretary, reported on the Committee 101 seminar coming up on October 15, 2024 at 6 pm in Bush 4141 Community Room, and the city is accepting applications for Citizen Committees, Boards, and Commission until December 27, 2024.

11. 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.

In accordance with the Texas Government Code the Council reconvened into Executive Session at 8:11 p.m. on September 26, 2024, to continue discussing matters pertaining to:

§551.074-Personnel, deliberation on the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer; to wit:

- City Manager

Executive Session recessed at 10:32 p.m.

12. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 10:32 p.m. on Thursday, September 26, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

October 7, 2024
Item No. 7.2.
Aggieland Humane Society, Inc. FY25 Funding Resolution

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a resolution authorizing expenditure to the Aggieland Humane Society, Inc. in the amount of \$303,600.

Relationship to Strategic Goals:

Core Services and Infrastructure

Financial Sustainability

Recommendation(s): Staff recommends approval of the resolution funding in the amount of \$303,600 to the Aggieland Humane Society, Inc.

Summary: As part of the 2024-2025 budget process The City Council approve funding for Aggieland Humane Society, Inc. in the amount of \$303,600. An Animal Shelter Services Agreement, contract number 22300511, for services provided by the Aggieland Humane Society, Inc. was approved on May 26, 2022.

The FY25 funding level is based on the animal shelter determination of the estimated cost to the City of College Station for providing the contracted services.

Budget & Financial Summary: Funds are available and budgeted in the General Fund for this agreement. Payments are made in the amount of \$303,600.00, to be payable in 12 equal installments of \$25,300.00.

Attachments:

1. Animal Shelter Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS AUTHORIZING ANNUAL EXPENDITURE TO THE AGGIELAND HUMANE SOCIETY, INC. FOR ANIMAL SHELTER SERVICES PROVIDED TO THE CITY OF COLLEGE STATION BY THE AGGIELAND HUMANE SOCIETY, INC.

WHEREAS, the City of College Station entered into an Agreement for Animal Shelter Services with the AggIELand Humane Society, Inc. on May 26, 2022.

WHEREAS, Article 5 of the Agreement says the City shall pay a fee for Animal Shelter Services to be established annually by separate resolution; now, therefore,

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

Part 1: That the City Council of the City of College Station authorize the expenditure for Fiscal Year 2024-2025 in the amount of \$303,600.00, to be payable in 12 equal installments of \$25,300.00.

Part 2: That funds are budgeted and available in the Fiscal Year 2024-2025 Approved Budget in the General Fund.

Part 3: That this resolution is to be effective for the 2024-2025 Fiscal Year from October 1, 2024 – September 30, 2025.

Part 4: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, A.D. 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

October 7, 2024

Item No. 7.3.

Amber Alert Network Brazos Valley for FY25 Funding Agreement

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a funding agreement with the Amber Alert Network Brazos Valley for FY25 for \$5,000.

Relationship to Strategic Goals:

Core Services & Infrastructure

Good Governance

Financial Sustainability

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

Summary: As part of the 2024-2025 budget process the City Council approved funding for the Amber Alert Network Brazos Valley in the amount of \$5,000.

Budget & Financial Summary: The funds for this agreement are budgeted and available in the 2024-2025 General Fund.

Attachments:

1. 25300003 - Amber Alert



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300003 PROJECT #: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: City of College Station Funding Agreement for payment and
and us of General Funds with Amber Alert Network Brazos Valley

Name of Contractor: Amber Alert Network Brazos Valley

CONTRACT TOTAL VALUE: \$ 5,000.00 **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)

Funding for this contract is available in the FY25 budget - General Fund - Budget Code: 10019100-6720

*(If required)**
CRC Approval Date*: N/A **Council Approval Date*:** 10/07/24 **Agenda Item No*:**

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION FUNDING AGREEMENT
FOR PAYMENT AND USE OF GENERAL FUNDS WITH
AMBER ALERT NETWORK BRAZOS VALLEY**

This Funding Agreement is by and between the **City of College Station**, a Texas Home Rule Municipal Corporation (“City”) and **Amber Alert Network Brazos Valley** a Texas Nonprofit Corporation (“Agency”).

WHEREAS, Amber Alert has the objective of providing emergency messaging including utilization of various communication devices including road signs, cellphones, television, etc. to advise and gather information throughout Texas, the United States and beyond when a child has been abducted or is otherwise in imminent danger; and

WHEREAS, City finds it to be in the best interest of the general public and citizenry to support such efforts; and

WHEREAS, the City desires to assist Agency by providing funding under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree, and contract as follows:

**ARTICLE I
DEFINITIONS**

1.1 Agency means the Amber Alert Network Brazos Valley a Texas Nonprofit Corporation

1.2 City means the City of College Station, County of Brazos, and the State of Texas.

1.3 Amber Alert Services includes any and all costs including personnel and equipment directly related to the Statement of Work set forth in this Agreement.

1.4 Financial Activity Report means a report which includes a summary of revenues and expenditures for the term of this Agreement, and a summary of assets and liabilities to be submitted to the City on the form attached herein as **Exhibit A** or in a form agreed on by Agency and City.

1.5 Financial Records means invoices, receipts, bank statements, reconciliations, cleared checks, financial statements and audit reports and other relevant financial information relating to the funding provided by City.

1.6 Program Period. October 1, 2024, through September 30, 2025.

1.7 Statement of Work. The description of Agency services for which the City funding will be used and as described in this Agreement.

ARTICLE II STATEMENT OF WORK

2.1 General. The Statement of Work for Agency is as follows: Agency provides emergency messaging including utilization of various communication methods and devices including road signs, cellphones, television, other data-related devices, etc. to share and gather information from the general public throughout Texas, the United States and beyond when a child has been abducted or is otherwise in imminent danger; and builds partnerships with and funds working with various law enforcement agencies as appropriate in fulfilling its mission as described. The Agency provides the personnel and equipment necessary in fulfilling its mission.

2.2 Attending Events. The City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City at no additional cost to the City.

ARTICLE III PAYMENT

3.1 For and in consideration of the activities satisfactorily performed by Agency under this Agreement, City shall provide funding in the amount of **FIVE THOUSAND DOLLARS AND 0/100 CENTS (\$5,000)** from the City's General Fund. The appropriated funds shall be used during or for the period of October 1, 2024, to September 30, 2025.

3.2 Annual Payment from City to Agency will be made within Sixty (60) days from the Effective Date of this Agreement but not before commencement of the Program Period.

ARTICLE IV RECORDS AND REPORTS

4.1 Financial Records. Agency shall maintain financial records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other documentation to verify all expenditures of City funds under the terms of this Agreement. Said documentation shall conform to the City's accounting practices.

4.2 Written Records. Agency shall maintain written records and supporting documents as required under this Agreement for all applicable, generally accepted, and required administrative and operating policies. Agency shall maintain such records, accounts, reports, files, or other documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this 3-year period and for as long as the records are retained by Agency.

4.3 Access to Records. Agency shall provide the City reasonable access during regular business hours to books, accounts, records, reports, files, or other papers related to this Agreement belonging to or in use by Agency. Upon written request of the City, or City Manager, Agency shall make such financial records available for inspection and review by the party making the

request. Agency understands and accepts that all such financial records and any other records relating to this Agreement shall be subject to the Public Information Act, Tex. Gov't Code, §552, as amended.

4.4 Financial Activity Report. The Financial Activity Report from Agency to City must be timely completed and received within Sixty (60) days from the end of the term of this Agreement. The Financial Activity Report must show how City funds were spent must be timely completed and received otherwise Agency agrees to reimburse City within Sixty (60) days from written notice of same.

Agency shall respond promptly to any request from the City Manager, or his designee, for additional information relating to the activities performed under this Agreement.

4.5 Financial Audit. A copy of the Agency financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.6 Monitoring Review. The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews. City shall provide written notice twenty-four (24) hours in advance of such review and a brief description of how that review is to be conducted.

4.7 Presentation. If requested, Agency shall make an annual report and presentation to the City Council.

ARTICLE V AGENCY BOARD OF DIRECTORS

5.1 Agendas. Agency shall provide the City with an agenda of all regular and special Board meetings five (5) days before the meeting with information as to the date, time, and place of meeting. If a special meeting is scheduled, Agency shall immediately notify the City of a special meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone, depending on Agency's own notification of the Board meeting. Agendas shall be made available to the public seventy-two (72) hours before the meeting at a location accessible to the public including but not limited to the Agency's website.

5.2 Minutes. Agency shall submit minutes of each Board of Directors meeting and Executive Committee meeting to the City within ten (10) days after approval of the minutes.

5.3 Appointees. The City shall have the option to recommend up to three (3) appointees for any vacancies that occur on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

ARTICLE VI TERM AND TERMINATION

6.1 Term. This Agreement begins upon the approval of both parties and terminates upon fulfillment of the obligations of the parties herein. Only those expenditures authorized under the Statement of Work, which are actually incurred during or for the Program Period for personnel and equipment are eligible for funding herein, and ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination.

- (a) For Convenience.** This Agreement may be terminated by either party for convenience by giving sixty (60) days advance written notice.
- (b) Funding Out.** This Agreement may be terminated with sixty (60) days advance written notice by the City if funds are not appropriated and Agency shall have no right or legal recourse with respect to the funding.
- (c) Breach.** Upon advance written notice of the breach and after a Sixty-day period to cure, the non-breaching party may terminate this Agreement.
- (d) Reimbursement.** In the event this Agreement is terminated by either party pursuant to §6.2, a City agrees to reimburse Agency for any contractual obligations Agency has undertaken in satisfactory performance of those activities specified hereinabove up to the amount of the funding contracted for herein. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in the Statement of Work.

6.3 Automatic Termination. This Agreement shall automatically terminate upon the occurrence of either of the following events:

- (a)** The termination of the legal existence of Agency; or
- (b)** The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors.

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 Financial Activity Report upon Termination. Upon termination of this Agreement for any reason, Agency will provide City within Sixty (60) days, a full accounting of all expenditures not previously reviewed by City in the same form as the Financial Activity Report but covering only the program period during which this Agreement was in effect.

6.6 Refund of Funds. In the event that this Agreement is terminated Agency agrees to refund any and all unused funds, or funds determined by City to have been used improperly, within thirty Sixty (60) days after termination of this Agreement or within Sixty (60) days from City's written request.

ARTICLE VII INDEMNIFICATION AND RELEASE

7.1 Indemnification. The Agency 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 Agency and funded 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 Agency, or any third party.

7.2 Release. The Agency assumes full responsibility for the work to be performed and funded 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 Agency's work to be performed and funded 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 Agency, 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 VIII INSURANCE

(this section left intentionally blank)

ARTICLE IX GENERAL PROVISIONS

9.1 Other Agreements. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization relating to the Statement of Work. In the event Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments relating to the Statement of Work for which City funds are used.

9.2 Binding Agreement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

9.3 Personal Intent. The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee, or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

9.4 Non-discrimination. Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or disability. Agency will take affirmative action to ensure that applicants who are hired are treated, during employment, without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination requirement.

9.5 Equal Opportunity. Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.

9.6 Religious Affiliation. Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will not provide religious instruction or counseling, conduct religious worship or services, or engage in religious proselytizing in the provision of services, or the use of facilities or furnishings assisted in any way under this Agreement.

9.7 Independent Contractor. Agency is an independent contractor and not an agent or representative of the City and the obligation to compensate employees furnished or used by Agency to provide the services specified in the Statement of Work shall be the responsibility of

Agency and shall not be deemed employees of the City for any purpose. This Agreement does not create a joint venture.

9.8 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.

9.9 Venue. This Agreement will be performed and has been made under and shall be governed by the laws of the State of Texas, Brazos County.

9.10 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 organizations.

9.11 Waiver of Terms. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. 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.

9.12 Agreement Read. The parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.

9.13 Assignment. This Agreement and the rights and obligations contained herein may not be assigned by either party without the prior written approval of the other party to this Agreement.

9.14 Counterparts. 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.

9.15 Invalid Provisions. 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.

9.16 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 any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

9.17 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City:

City of College Station
Attn: Mary Ellen Leonard
Fiscal Services Department
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842

Agency:

Amber Alert Network Brazos Valley
Attn: Charles R. Fleegeer
P O Box 9282
College Station, Tx 77842

9.18 Funding Source. Agency understands and agrees to state in all published material, announcements and advertising regarding activities funded with City funding that the activity was made possible in part through funding from the City of College Station. If there is not published activity material, a sign must be displayed, and a verbal announcement must be made at the time of the activity.

9.19 Verification No Boycott Israel. To the extent applicable, this Agreement is subject to the following:

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

9.20 Governmental Immunity. This Agreement is subject to the proper application of the doctrine of governmental immunity.

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

List of Exhibits:

- A.** Financial Activity Report
- B.** Certificates of Insurance

**AMBER ALERT NETWORK
BRAZOS VALLEY**

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager

Date: _____

EXHIBIT A
FINANCIAL ACTIVITY REPORT

Amber Alert Network Brazos Valley

Statement of Financial Position

As of August 31, 2024

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
BV Schools CU	93,413.95
Total Bank Accounts	\$93,413.95
Total Current Assets	\$93,413.95
TOTAL ASSETS	\$93,413.95
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Direct Deposit Payable	0.00
Payroll Liabilities	
Federal Taxes (941/944)	1,259.00
TX Unemployment Tax	0.00
Total Payroll Liabilities	1,259.00
Total Other Current Liabilities	\$1,259.00
Total Current Liabilities	\$1,259.00
Total Liabilities	\$1,259.00
Equity	
Unrestricted Net Assets	88,768.77
Net Revenue	3,386.18
Total Equity	\$92,154.95
TOTAL LIABILITIES AND EQUITY	\$93,413.95

Amber Alert Network Brazos Valley

Statement of Activity

August 2024

	TOTAL
Revenue	
Direct Public Support	
Individ, Business Contributions	1,000.00
Total Direct Public Support	1,000.00
Total Revenue	\$1,000.00
GROSS PROFIT	\$1,000.00
Expenditures	
Contract Services	
Accounting Fees	4,341.66
Total Contract Services	4,341.66
Operations	
Printing and Copying	29.77
Telephone, Telecommunications	55.05
Total Operations	84.82
Other Types of Expenses	
Insurance - Liability, D and O	1,318.00
Total Other Types of Expenses	1,318.00
Payroll Expenses	
Taxes	229.50
Wages	3,000.00
Total Payroll Expenses	3,229.50
Promotional Material	262.99
Reimbursements	42.68
Total Expenditures	\$9,279.65
NET OPERATING REVENUE	\$ -8,279.65
NET REVENUE	\$ -8,279.65

EXHIBIT B
CERTIFICATES OF INSURANCE



AMBEALE-01

SABBOTT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/5/2024

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 Dexter & Company of Central Texas, Inc. 4030 Highway 6 S. Ste. 310 College Station, TX 77845	CONTACT NAME:		
	PHONE (A/C, No, Ext):	(979) 764-8444	FAX (A/C, No): (979) 694-7603
	E-MAIL ADDRESS:		
INSURED Amber Alert Network Brazos Valley P.O. Box 9282 College Station, TX 77842	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Mount Vernon Fire Insurance Company		26522
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:			NPP2574687D	6/30/2024	6/30/2025	EACH OCCURRENCE	\$ 1,000,000	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	
							MED EXP (Any one person)	\$ 5,000	
							PERSONAL & ADV INJURY	\$	
							GENERAL AGGREGATE	\$ 2,000,000	
							PRODUCTS - COMP/OP AGG	\$	
									\$
	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$	
BODILY INJURY (Per person)							\$		
BODILY INJURY (Per accident)							\$		
PROPERTY DAMAGE (Per accident)							\$		
							\$		
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE	\$	
AGGREGATE							\$		
								\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N 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)

CERTIFICATE HOLDER

CANCELLATION

City of College Station 1101 Texas Ave College Station, TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

October 7, 2024

Item No. 7.4.

Arts Council of the Brazos Valley for FY25 Funding from the General Fund in the amount of \$35,000.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a funding agreement with the Arts Council of the Brazos Valley for FY25 for \$35,000.

Relationship to Strategic Goals:

Core Services & Infrastructure

Good Governance

Financial Sustainability

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

Summary: As part of the 2024-2025 budget process the City Council approved funding for the Arts Council of the Brazos Valley in the amount of \$35,000.

Budget & Financial Summary: The funds for this agreement are budgeted and available in the 2024-2025 General Fund. The full amount of \$35,000 is to be used for the operations and maintenance of the arts programming and gallery operations at the Arts Council facility.

Attachments:

1. 25300004 - Arts Council General Fund



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300004 PROJECT #: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: City of College Station Funding Agreement for Payment and Use of General Funds with Arts Council of Brazos Valley

Name of Contractor: Arts Council of Brazos Valley

CONTRACT TOTAL VALUE: \$ 35,000.00

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)

Funding for this contract is available in the FY25 budget - General Fund - Budget Code: 10019100-6720

(If required)*
CRC Approval Date*: N/A **Council Approval Date*:** 10/07/24 **Agenda Item No*:** _____

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

Insurance Certificates: _____ **Performance Bond:** _____ **Payment Bond:** _____ **Info Tech:** _____

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION FUNDING AGREEMENT
FOR PAYMENT AND USE OF GENERAL FUNDS WITH
ARTS COUNCIL OF BRAZOS VALLEY**

This Funding Agreement is by and between the **City of College Station**, a Texas Home Rule Municipal Corporation (“City”) and the **ARTS COUNCIL OF BRAZOS VALLEY** a Texas Non – Profit Corporation (“Agency”).

WHEREAS, City has the objective of enhancing the artistic and cultural life of its citizens; and

WHEREAS, Agency’s mission is to make the arts accessible to all citizens in the Brazos Valley through funding, promotion, advocacy and partnership building, and

WHEREAS, the City desires to assist Agency in making the arts accessible to its citizens, and

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree, and contract as follows:

**ARTICLE I
DEFINITIONS**

1.1 Agency means the Arts Council of Brazos Valley a Texas Non-Profit Corporation.

1.2 City means the City of College Station, County of Brazos, and the State of Texas.

1.3 Contract Quarter means any quarter of the contract year in which this Agreement is in force. Contract Quarters will end on December 31st, March 31st, June 30th, and September 30th, of each contract year.

1.4 Financial Activity Report means a report which includes a summary of revenues and expenditures for the current Contract Quarter as well as the current fiscal year to date, and a summary of assets and liabilities to be submitted to the City on the form attached herein as **Exhibit A** or in a form agreed on by Agency and City.

1.5 Financial Records means invoices, receipts, bank statements, reconciliations, cleared checks, financial statements and audit reports.

1.6 Narrative Summary of Activity Report means the quarterly summary report of the activities of Agency including a summary of how funds from City have been utilized to accomplish the Agency’s work. Such report shall be submitted on the form attached herein as **Exhibit B**.

1.7 Performance Measure Report means the quarterly report to determine the levels of service being provided by Agency to be submitted to the City on the form attached herein as **Exhibit C**.

1.8 Event includes but is not limited to any and all banquets, ceremonial dinners, fundraising events, promotional programs, or other public or private event hosted by the Agency.

ARTICLE II STATEMENT OF WORK

2.1 The Agency promotes, advocates, builds partnerships with, and funds the arts and cultural organizations of the Brazos Valley in a professional and accountable way on behalf of local governments. The Agency is responsible for maintaining and operating an arts facility, promoting the arts and culture in the Brazos Valley, and providing services for local art affiliates.

2.2 Attending Events. The City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City at no additional cost to the City.

ARTICLE III PAYMENT

3.1 For and in consideration of the activities satisfactorily performed by Agency under this Agreement, City shall provide funding in the amount of **THIRTY-FIVE THOUSAND DOLLARS AND NO/100 CENTS (\$35,000.00)** from the City's General Fund. The appropriated funds shall be used during the period of **October 1, 2024, to September 30, 2025**. Payment will be made in eleven monthly installments of **\$2,916.66** and the twelfth payment will be **\$2,916.74**.

3.2 Monthly Payments (with the exception of the first four (4) monthly installments hereunder) will be dependent upon the City receiving all reports required herein from the Agency no later than thirty (30) days after the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year).

3.3 City may withhold further payments and allocations if City determines Agency's expenditures materially deviate from their Statement of Work or if reports required herein are not submitted in a complete and timely manner.

ARTICLE IV RECORDS AND REPORTS

4.1 Agency shall maintain financial records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other documentation to verify all expenditures of funds under the terms of this Agreement. Said documentation shall conform to the City's accounting practices.

4.2 Written Records. Agency shall maintain written records and supporting documents as required under this Agreement for all applicable, generally accepted, and required administrative and operating policies. Agency shall maintain such records, accounts, reports, files or other

documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this 3-year period and for as long as the records are retained by Agency.

4.3 Access to Records. Agency shall provide the City reasonable access during regular business hours to books, accounts, records, reports, files or other papers related to this Agreement belonging to or in use by Agency. Upon written request of the City, or City Manager, Agency shall make such financial records available for inspection and review by the party making the request. Agency understands and accepts that all such financial records and any other records relating to this Agreement shall be subject to the Public Information Act, Tex. Gov't Code, §552, as amended.

4.4 Quarterly Reports. Agency shall submit the following to the City on a quarterly basis as provided in this Agreement:

- (a) Financial Activity Report
- (b) Narrative Summary of Activity Report
- (c) Performance Measure Report

Agency shall respond promptly to any request from the City Manager, or his designee, for additional information relating to the activities performed under this Agreement.

4.5 Reports. The Financial Activity Reports, Performance Measure Reports, and Narrative Summary of Activity Reports shall be submitted to the City within thirty (30) days of the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year).

4.6 Financial Audit. A copy of the Agency financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.7 Monitoring Review. The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews. City shall provide written notice twenty-four (24) hours in advance of such review and a brief description of how that review is to be conducted.

4.8 Presentation. If requested, Agency shall make an annual report and presentation to the City Council.

ARTICLE V AGENCY BOARD OF DIRECTORS

5.1 Agendas. Agency shall provide the City with an agenda of all regular and special Board meetings five (5) days before the meeting with information as to the date, time and place of meeting. If a special meeting is scheduled, Agency shall immediately notify the City of a special meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone, depending on Agency's own notification of the Board meeting. Agendas shall be made available

to the public seventy-two (72) hours before the meeting at a location accessible to the public including but not limited to the Agency's website.

5.2 Minutes. Agency shall submit minutes of each Board of Directors meeting and Executive Committee meeting to the City within ten (10) days after approval of the minutes.

5.3 Appointees. The City shall have the option to recommend up to three (3) appointees for any vacancies that occur on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

ARTICLE VI TERM AND TERMINATION

6.1 Term. The Agreement term begins October 1, 2024, and terminates at midnight October 31, 2025. However, the program period shall begin October 1, 2024, and terminates at midnight September 30, 2025. Only those expenditures authorized under the Statement of Work, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination.

- (a) **For Convenience.** This Agreement may be terminated for convenience by giving sixty (60) days advance written notice.
- (b) **Funding Out.** This Agreement may be terminated with sixty (60) days advance written notice by the City if funds are not appropriated.
- (c) In the event this Agreement is terminated by either party pursuant to §6.2, City agrees to reimburse Agency for any contractual obligations Agency has undertaken in satisfactory performance of those activities specified hereinabove. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.
- (d) Further, upon termination pursuant to §6.2, Agency will provide City:
 - (1) Within thirty (30) days, a full accounting of all expenditures not previously reviewed by City
 - (2) Within five (5) business days, a listing of expenditures that have occurred since the last required reporting period

(3) A final accounting of all expenditures on the day of termination. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

6.3 Automatic Termination and Breach.

(a) **Automatic Termination.** This Agreement with written notice shall automatically terminate upon the occurrence of any of the following events:

(1) The termination of the legal existence of Agency.

(2) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors.

(b) **Breach.** This Agreement with written notice shall terminate upon the occurrence of any of the following events:

(1) Thirty (30) days after a written notice of the breach of any of the terms or conditions of this Agreement by the Agency if the Agency fails to cure the breach.

(2) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date City notifies Agency of such breach.

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 Refund of Funds. In the event that this Agreement is terminated pursuant to §§6.3 or 6.4 of this Agreement, Agency agrees to refund any and all unused funds, or funds determined by City to have been used improperly, within thirty (30) days after termination of this Agreement.

ARTICLE VII INDEMNIFICATION AND RELEASE

7.1 Indemnification. The Agency 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 Agency and funded 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 Agency, 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.

7.2 Release. The Agency assumes full responsibility for the work to be performed and funded 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 Agency's work to be performed and funded 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 Agency, 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 VIII INSURANCE

8.1 The Agency 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 services performed by the Agency, its officers, agents, volunteers, and employees.

8.2 The Agency'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 policies are attached in **Exhibit D**.

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

8.3 Types. Agency shall have the following types of insurance:

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

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

- (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 D**; and shall be approved by the City before work begins.
- (c) Agency 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.

8.5 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 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.
- (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.

8.6 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 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.

8.7 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 IX GENERAL PROVISIONS

9.1 Other Agreements. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in Article II above. In the event Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments.

9.2 Binding Agreement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

9.3 Personal Intent. The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

9.4 Non-discrimination. Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or disability. Agency will take affirmative action to ensure that applicants who are hired are treated, during employment, without regard to their race, color, religion, sex, national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination requirement.

9.5 Equal Opportunity. Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.

9.6 Religious Affiliation. Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will not provide religious instruction or counseling, conduct religious worship or services, or engage in religious proselytizing in the provision of services or the use of facilities or furnishings assisted in any way under this Agreement.

9.7 Independent Contractor. Agency is an independent contractor and not an agent or representative of the City and the obligation to compensate employees furnished or used by Agency to provide the services specified in Article II shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose. This Agreement does not create a joint venture.

9.8 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.

9.9 Venue. This Agreement will be performed and has been made under and shall be governed by the laws of the State of Texas, Brazos County.

9.10 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 organizations.

9.11 Waiver of Terms. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. 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.

9.12 Agreement Read. The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

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

9.14 Counterparts. 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.

9.15 Invalid Provisions. 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.

9.16 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 any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

9.17 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City:

City of College Station
Attn: Mary Ellen Leonard
Fiscal Services Department
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842

Agency:

Arts Council of Brazos Valley
Attn: Leslie Bowlin, CEO
4180 Highway 6 South
College Station, Texas 77845

9.18 Funding Source. Agency understands and agrees to state in all published material, announcements and advertising regarding activities funded with City funding that the activity was made possible in part through funding from the City of College Station. If there is not published activity material, a sign must be displayed, and a verbal announcement must be made at the time of the activity.

9.19 Verification No Boycott. To the extent applicable, this Agreement is subject to the following:

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

9.20 Governmental Immunity. This Agreement is subject to the proper application of the doctrine of governmental immunity.

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

List of Exhibits:

- A. Statement of Financial Position
- B. Narrative Summary of Activity
- C. Performance Measures
- D. Certificates of Insurance

ARTS COUNCIL OF BRAZOS VALLEY

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager

Date: _____

Exhibit A
Statement of Financial Position

Statement of Financial Position

As of July 31, 2024

	Total
ASSETS	
Current Assets	
Bank Accounts	
10100 Wells Fargo Business Checking *8775	115,600.42
10200 VB - Checking *3808	8,690.60
10210 VB - Savings *3816	7,280.26
10300 PayPal	1,544.30
10500 American Momentum Money Market	2,459.10
10600 American Funds	79,066.04
10800 Community Foundation of BV	11,239.35
Total Bank Accounts	225,880.07
Accounts Receivable	
11000 Accounts Receivable	10,086.44
11200 Pledges Receivable	0.00
11210 Discount on Pledge Receivable	0.48
Total 11200 Pledges Receivable	0.48
11500 Contributions Receivable	69,999.80
11600 Due from Affiliates	14,801.02
Total 11000 Accounts Receivable	94,887.74
Total Accounts Receivable	94,887.74
Other Current Assets	
12000 Undeposited Funds	5,047.86
12300 Art Inventory	13,932.00
12400 Prepaid Expenses	-1,162.81
Total Other Current Assets	17,817.05
Total Current Assets	338,584.86
Fixed Assets	
14000 Property & Equipment	
14100 Furniture and Equipment	159,179.40
14200 Buildings & Improvements	1,729,666.71
14300 Permanent Collection	657,023.02
14500 Land	392,430.00
14900 Accum Depreciation	-270,913.41
Total 14000 Property & Equipment	2,667,385.72
16000 Construction in Progress	23,067.00
Total Fixed Assets	2,690,452.72
Other Assets	
18000 Investments/Endowments	0.00
18040 Amarillo National Bank *6163CD	240,961.73
Total 18000 Investments/Endowments	240,961.73

	Total
Total Other Assets	240,961.73
TOTAL ASSETS	\$3,269,999.31
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 Accounts Payable	115,615.24
Total Accounts Payable	115,615.24
Credit Cards	
21000 Wells Fargo Business Card - Boegner	-184.99
21100 Credit Card *7825 (*0167)	2,205.99
Total Credit Cards	2,021.00
Other Current Liabilities	
23000 Payroll Liabilities	0.00
23100 Federal Tax Payable	1,975.95
23200 Texas Unemployment Payable	-991.78
23300 Simple IRA Payable	816.66
23500 Guardian Insurance Payable	-657.68
23700 Accrued Compensated Absences	4,029.94
Total 23000 Payroll Liabilities	5,173.09
25000 Deferred Income	0.14
26200 Due to COCS- Reimbursements	-42.88
26300 Due to COB - Reimbursements	-3,000.00
28000 Sales Tax Payable	0.00
28100 Sales Tax Payable - Current	31.52
Total 28000 Sales Tax Payable	31.52
Total Other Current Liabilities	2,161.87
Total Current Liabilities	119,798.11
Long-Term Liabilities	
29300 NP - Vera Bank	618,088.33
29900 Northgate Sculpture Fund	63,750.00
Total Long-Term Liabilities	681,838.33
Total Liabilities	801,636.44
Equity	
31000 Net Assets - Donor Restricted	704,674.50
32000 Unrestricted Net Assets	1,918,338.10
Net Revenue	-154,649.73
Total Equity	2,468,362.87
TOTAL LIABILITIES AND EQUITY	\$3,269,999.31

Statement of Activity

October 2023 - July 2024

	Total
REVENUE	
43000 Contributed Income	6,330.91
43100 Membership Dues	
43120 Affiliates Membership	4,471.00
43130 Business Membership	1,750.00
43140 BV Collective Membership	900.00
43150 Individual Membership	8,525.00
43160 Artist and Hotels Membership	300.00
Total 43100 Membership Dues	15,946.00
43200 Fundraising Events	
43240 Celebrate the Arts	31,861.00
43245 Celebrate the Arts Scholarship	11,200.00
Total 43240 Celebrate the Arts	43,061.00
43250 Boots & BBQ	5,625.00
43260 Empty Bowls, Jr.	14,257.69
43270 Stories at the Gallery	4,979.41
Total 43200 Fundraising Events	67,923.10
43300 Government Grants	
43310 Brazos County	10,000.00
43330 College Station	46,986.60
43340 College Station HOT	418,390.80
43350 Navasota HOT	40,500.00
43355 Navasota HOT Reimbursements	-3,258.27
Total 43350 Navasota HOT	37,241.73
43360 TCA	15,500.00
Total 43300 Government Grants	528,119.13
43400 Foundation & Trust Grants	1,040.16
Total 43000 Contributed Income	619,359.30
44000 Program Service Revenue	
44100 Artist Call for Entry	1,988.35
44200 Camps & Workshops	
44220 Children Camps	12,781.00
Total 44200 Camps & Workshops	12,781.00
44400 Community Events	2,984.16
44800 Public Art	12,000.00
Total 44000 Program Service Revenue	29,753.51
45000 Art & Merchandise Sales	11,974.93
46000 Other Revenue	379.90
46200 Investments	14,020.14
46300 Rentals	9,418.20

	Total
46400 Miscellaneous Revenue	269.90
46420 Interest Income	12,344.71
Total 46400 Miscellaneous Revenue	12,614.61
Total 46000 Other Revenue	36,432.85
Discounts given	8.11
Uncategorized Income	2,978.04
Total Revenue	700,506.74
GROSS PROFIT	700,506.74

EXPENDITURES

60000 Grants & Scholarships	
60100 Grants	
60115 College Station Grants	360,000.00
60120 Navasota Grants	25,630.00
60130 Rural Grants	8,000.00
Total 60100 Grants	393,630.00
60200 Scholarships	13,000.00
Total 60000 Grants & Scholarships	406,630.00
61000 Salaries and Related Expenses	
61100 Salaries & Wages	126,011.11
61200 Employer IRA Contributions	3,307.63
61300 Employee Benefits-Other	160.40
61400 Payroll taxes & fees	9,691.71
61600 Employer Health Ins. Contribution	3,957.52
Total 61000 Salaries and Related Expenses	143,128.37
62000 Fees for Services	
62100 Accounting Fees	10,500.00
62300 Legal and Professional Fees	83.54
62400 Marketing Intern & Work Study	5,039.87
Total 62000 Fees for Services	15,623.41
63000 Advertising, Printing, Promo.	1,208.44
63100 HOT Advertising	25,997.55
63200 Local Advertising	6,499.58
Total 63000 Advertising, Printing, Promo.	33,705.57
64000 Programs	
64010 ART for Life	15,050.00
64020 Artist Connect	984.04
64040 Camps & Workshops	
64042 Children Camp Expense	3,243.81
Total 64040 Camps & Workshops	3,243.81
64060 Community Events	528.92
64070 Gallery	1,794.54
64080 Public Art	83,534.87

	Total
Total 64000 Programs	105,136.18
65000 Fundraising	
65100 Boots & BBQ	3,724.26
65200 Celebrate the Arts	33,043.80
65300 Empty Bowls, Jr.	7,269.51
65500 Stories at the Gallery	3,138.74
Total 65000 Fundraising	47,176.31
66000 Office Expenses	1,210.61
66100 Information Technology	3,250.00
66200 Postage, Mailing Service	-39.17
Total 66000 Office Expenses	4,421.44
68000 Occupancy	
68200 Facilities & Equipment Rental	2,142.46
68300 Insurance	18,463.44
68400 Janitorial	13,981.53
68500 Mortgage Expense	22,011.70
68600 Pest Control	85.00
68700 Repairs & Maintenance	7,964.76
68800 Security	696.50
68900 Utilities	17,778.15
Total 68000 Occupancy	83,123.54
69000 Mileage	
69100 Travel & In-Region Mileage	1,169.50
Total 69000 Mileage	1,169.50
80000 Other expenses	
80010 Artist Commission	8,066.54
80020 Bank Charges	1,850.53
80025 PayPal Fees	512.34
Total 80020 Bank Charges	2,362.87
80040 Donor Development	344.90
80060 Meals	227.13
80070 Memberships & Dues	956.95
80080 Training & Development	2,402.97
Total 80000 Other expenses	14,361.36
Total Expenditures	854,475.68
NET OPERATING REVENUE	-153,968.94
OTHER EXPENDITURES	
90000 Ask My Accountant	680.79
Total Other Expenditures	680.79
NET OTHER REVENUE	-680.79
NET REVENUE	\$ -154,649.73

The Arts Council of Brazos Valley

Budget vs. Actuals: Budget_FY24_P&L - FY24 P&L

October 2023 - July 2024

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
Revenue				
43000 Contributed Income	6,330.91	30,000.00	-23,669.09	21.10 %
43100 Membership Dues				
43120 Affiliates Membership	4,471.00	4,000.00	471.00	111.78 %
43130 Business Membership	1,750.00	4,500.00	-2,750.00	38.89 %
43140 BV Collective Membership	900.00		900.00	
43150 Individual Membership	8,525.00	11,267.00	-2,742.00	75.66 %
43160 Artist and Hotels Membership	300.00	800.00	-500.00	37.50 %
43170 500 Club		150,000.00	-150,000.00	
Total 43100 Membership Dues	15,946.00	170,567.00	-154,621.00	9.35 %
43200 Fundraising Events				
43240 Celebrate the Arts	31,861.00	120,000.00	-88,139.00	26.55 %
43245 Celebrate the Arts Scholarship	11,200.00	20,000.00	-8,800.00	56.00 %
Total 43240 Celebrate the Arts	43,061.00	140,000.00	-96,939.00	30.76 %
43250 Boots & BBQ	5,625.00	15,000.00	-9,375.00	37.50 %
43260 Empty Bowls, Jr.	14,257.69	13,000.00	1,257.69	109.67 %
43270 Stories at the Gallery	4,979.41	7,000.00	-2,020.59	71.13 %
43280 NEW Fundraiser Event		40,000.00	-40,000.00	
43290 NEW Fundraiser at ACBV Event		20,000.00	-20,000.00	
Total 43200 Fundraising Events	67,923.10	235,000.00	-167,076.90	28.90 %
43300 Government Grants				
43310 Brazos County	10,000.00	10,000.00	0.00	100.00 %
43320 Bryan HOT				
43325 Bryan HOT Reimbursements		0.00	0.00	
Total 43320 Bryan HOT		0.00	0.00	
43330 College Station	46,986.60	35,000.00	11,986.60	134.25 %
43340 College Station HOT	418,390.80	560,954.00	-142,563.20	74.59 %
43345 College Station HOT Reimbursements		1,000.00	-1,000.00	
Total 43340 College Station HOT	418,390.80	561,954.00	-143,563.20	74.45 %
43350 Navasota HOT	40,500.00	40,500.00	0.00	100.00 %
43355 Navasota HOT Reimbursements	-3,258.27	1,000.00	-4,258.27	-325.83 %
Total 43350 Navasota HOT	37,241.73	41,500.00	-4,258.27	89.74 %
43360 TCA	15,500.00	15,000.00	500.00	103.33 %
Total 43300 Government Grants	528,119.13	663,454.00	-135,334.87	79.60 %
43400 Foundation & Trust Grants	1,040.16	5,000.00	-3,959.84	20.80 %
Total 43000 Contributed Income	619,359.30	1,104,021.00	-484,661.70	56.10 %
44000 Program Service Revenue				
44100 Artist Call for Entry	1,988.35	1,700.00	288.35	116.96 %
44200 Camps & Workshops				
44210 Adult Workshops		1,100.00	-1,100.00	
44220 Children Camps	12,781.00	13,915.00	-1,134.00	91.85 %
Total 44200 Camps & Workshops	12,781.00	15,015.00	-2,234.00	85.12 %

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
44300 Classes	0.00		0.00	
44310 Adult Classes		800.00	-800.00	
44320 Children Classes		3,349.00	-3,349.00	
Total 44300 Classes	0.00	4,149.00	-4,149.00	0.00 %
44400 Community Events	2,984.16	3,000.00	-15.84	99.47 %
44500 Red Wasp		2,000.00	-2,000.00	
44600 Special Exhibits		30,000.00	-30,000.00	
44800 Public Art	12,000.00	125,000.00	-113,000.00	9.60 %
Total 44000 Program Service Revenue	29,753.51	180,864.00	-151,110.49	16.45 %
45000 Art & Merchandise Sales	11,974.93	8,000.00	3,974.93	149.69 %
46000 Other Revenue	379.90		379.90	
46200 Investments	14,020.14	2,000.00	12,020.14	701.01 %
46300 Rentals	9,418.20	13,000.00	-3,581.80	72.45 %
46400 Miscellaneous Revenue	269.90	50.00	219.90	539.80 %
46420 Interest Income	12,344.71	600.00	11,744.71	2,057.45 %
Total 46400 Miscellaneous Revenue	12,614.61	650.00	11,964.61	1,940.71 %
Total 46000 Other Revenue	36,432.85	15,650.00	20,782.85	232.80 %
Discounts given	8.11		8.11	
Uncategorized Income	2,978.04		2,978.04	
Total Revenue	\$700,506.74	\$1,308,535.00	\$ -608,028.26	53.53 %
GROSS PROFIT	\$700,506.74	\$1,308,535.00	\$ -608,028.26	53.53 %
Expenditures				
60000 Grants & Scholarships				
60100 Grants				
60105 Bryan Grants		0.00	0.00	
60115 College Station Grants	360,000.00	360,000.00	0.00	100.00 %
60120 Navasota Grants	25,630.00	25,630.00	0.00	100.00 %
60130 Rural Grants	8,000.00	8,000.00	0.00	100.00 %
60140 Returned Grants		3,000.00	-3,000.00	
Total 60100 Grants	393,630.00	396,630.00	-3,000.00	99.24 %
60200 Scholarships	13,000.00	15,000.00	-2,000.00	86.67 %
Total 60000 Grants & Scholarships	406,630.00	411,630.00	-5,000.00	98.79 %
61000 Salaries and Related Expenses				
61100 Salaries & Wages	126,011.11	224,272.00	-98,260.89	56.19 %
61200 Employer IRA Contributions	3,307.63	6,728.00	-3,420.37	49.16 %
61300 Employee Benefits-Other	160.40	7,000.00	-6,839.60	2.29 %
61400 Payroll taxes & fees	9,691.71	17,157.00	-7,465.29	56.49 %
61600 Employer Health Ins. Contribution	3,957.52	16,200.00	-12,242.48	24.43 %
Total 61000 Salaries and Related Expenses	143,128.37	271,357.00	-128,228.63	52.75 %
62000 Fees for Services				
62100 Accounting Fees	10,500.00	23,360.00	-12,860.00	44.95 %
62200 Contractor Fee		500.00	-500.00	
62300 Legal and Professional Fees	83.54	3,500.00	-3,416.46	2.39 %
62400 Marketing Intern & Work Study	5,039.87	14,000.00	-8,960.13	36.00 %
62500 Program Intern & Work Study		7,500.00	-7,500.00	
Total 62000 Fees for Services	15,623.41	48,860.00	-33,236.59	31.98 %
63000 Advertising, Printing, Promo.	1,208.44		1,208.44	
63100 HOT Advertising	25,997.55	44,000.00	-18,002.45	59.09 %

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
63200 Local Advertising	6,499.58	25,000.00	-18,500.42	26.00 %
63300 Affiliate Advertising		15,000.00	-15,000.00	
Total 63000 Advertising, Printing, Promo.	33,705.57	84,000.00	-50,294.43	40.13 %
64000 Programs				
64010 ART for Life	15,050.00	13,500.00	1,550.00	111.48 %
64020 Artist Connect	984.04	8,000.00	-7,015.96	12.30 %
64030 Artist in Residence		7,125.00	-7,125.00	
64040 Camps & Workshops				
64042 Children Camp Expense	3,243.81	7,042.00	-3,798.19	46.06 %
Total 64040 Camps & Workshops	3,243.81	7,042.00	-3,798.19	46.06 %
64050 Classes				
64051 Adult Class Expense		150.00	-150.00	
64052 Children Class Expense		150.00	-150.00	
Total 64050 Classes		300.00	-300.00	
64060 Community Events	528.92	500.00	28.92	105.78 %
64070 Gallery	1,794.54	8,000.00	-6,205.46	22.43 %
64080 Public Art	83,534.87	155,000.00	-71,465.13	53.89 %
64090 Red Wasp		2,000.00	-2,000.00	
64110 Special Exhibits		30,000.00	-30,000.00	
64130 Programs-Other		1,500.00	-1,500.00	
64140 Navasota Project		10,000.00	-10,000.00	
Total 64000 Programs	105,136.18	242,967.00	-137,830.82	43.27 %
65000 Fundraising				
65100 Boots & BBQ	3,724.26	5,000.00	-1,275.74	74.49 %
65200 Celebrate the Arts	33,043.80	50,000.00	-16,956.20	66.09 %
65300 Empty Bowls, Jr.	7,269.51	7,500.00	-230.49	96.93 %
65400 Fundraising - Other		7,500.00	-7,500.00	
65500 Stories at the Gallery	3,138.74	5,000.00	-1,861.26	62.77 %
65600 NEW Fundraiser Event		20,000.00	-20,000.00	
65700 NEW at ACBV Fundraiser Event		10,000.00	-10,000.00	
Total 65000 Fundraising	47,176.31	105,000.00	-57,823.69	44.93 %
66000 Office Expenses	1,210.61	6,000.00	-4,789.39	20.18 %
66100 Information Technology	3,250.00	5,300.00	-2,050.00	61.32 %
66200 Postage, Mailing Service	-39.17	1,200.00	-1,239.17	-3.26 %
Total 66000 Office Expenses	4,421.44	12,500.00	-8,078.56	35.37 %
68000 Occupancy				
68200 Facilities & Equipment Rental	2,142.46	2,294.00	-151.54	93.39 %
68300 Insurance	18,463.44	19,320.00	-856.56	95.57 %
68400 Janitorial	13,981.53	10,120.00	3,861.53	138.16 %
68500 Mortgage Expense	22,011.70	28,000.00	-5,988.30	78.61 %
68600 Pest Control	85.00	374.00	-289.00	22.73 %
68700 Repairs & Maintenance	7,964.76	12,000.00	-4,035.24	66.37 %
68800 Security	696.50	1,000.00	-303.50	69.65 %
68900 Utilities	17,778.15	25,000.00	-7,221.85	71.11 %
Total 68000 Occupancy	83,123.54	98,108.00	-14,984.46	84.73 %
69000 Mileage				
69100 Travel & In-Region Mileage	1,169.50	4,000.00	-2,830.50	29.24 %
Total 69000 Mileage	1,169.50	4,000.00	-2,830.50	29.24 %

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
80000 Other expenses				
80010 Artist Commission	8,066.54	6,000.00	2,066.54	134.44 %
80020 Bank Charges	1,850.53	700.00	1,150.53	264.36 %
80025 PayPal Fees	512.34		512.34	
Total 80020 Bank Charges	2,362.87	700.00	1,662.87	337.55 %
80040 Donor Development	344.90	5,000.00	-4,655.10	6.90 %
80050 Investment Losses		1,575.00	-1,575.00	
80060 Meals	227.13		227.13	
80070 Memberships & Dues	956.95	1,575.00	-618.05	60.76 %
80080 Training & Development	2,402.97	9,000.00	-6,597.03	26.70 %
80100 Other Costs		1,000.00	-1,000.00	
Total 80000 Other expenses	14,361.36	24,850.00	-10,488.64	57.79 %
Reimbursed Expenses	0.00		0.00	
Total Expenditures	\$854,475.68	\$1,303,272.00	\$ -448,796.32	65.56 %
NET OPERATING REVENUE	\$ -153,968.94	\$5,263.00	\$ -159,231.94	-2,925.50 %
Other Expenditures				
90000 Ask My Accountant	680.79		680.79	
Total Other Expenditures	\$680.79	\$0.00	\$680.79	0.00%
NET OTHER REVENUE	\$ -680.79	\$0.00	\$ -680.79	0.00%
NET REVENUE	\$ -154,649.73	\$5,263.00	\$ -159,912.73	-2,938.43 %

Exhibit B
Narrative Summary of Activity Report

Exhibit C
Performance Measures

Exhibit D
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 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	Wm. Albert Miller Agency 220 E. Washington Avenue P. O. Drawer 31 Navasota TX 77868	CONTACT NAME: Bert Miller PHONE (A/C, No., Ext): (936) 825-6789 E-MAIL ADDRESS: bertmiller@milleragencyinc.com FAX (A/C, No.): (936) 825-6790
INSURED	Arts Council Brazos Valley PO Box 10626 College Station TX 77842-	INSURER(S) AFFORDING COVERAGE INSURER A: Markel Insurance Co INSURER B: Philadelphia Indemnity Insurance Co INSURER C: INSURER D: INSURER E: INSURER F:

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC			PHPK2656997	02/16/2024	02/16/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			PHPK2656997	02/16/2024	02/16/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$ ☐						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	MWC0045351-12	02/16/2024	02/16/2025	☒ WC STATUTORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Property			PHPK2656997	02/16/2024	02/16/2025	Business Property 100,000 Collections-others 150,000 Collections- ACBV 75,000

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

Certificate holder listed as additional insured and waiver of subrogation with regard to general liability and workers compensation coverages. GL coverage is primary & non-contributory and 30-day notice of cancellation applies.

CERTIFICATE HOLDER**CANCELLATION**

AI 002351

City of College Station Att: Risk Management PO Box 9906 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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October 7, 2024

Item No. 7.5.

FY25 Funding Agreement for the Arts Council of the Brazos Valley from the HOT Funds in the amount of \$560,953.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a funding agreement with the Arts Council of the Brazos Valley for FY25 for \$560,953.

Relationship to Strategic Goals:

Core Services & Infrastructure

Good Governance

Financial Sustainability

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

Summary: As part of the 2024-2025 budget process the City Council approved funding for the Arts Council of the Brazos Valley in the amount of \$560,953.

Budget & Financial Summary: The funds for this agreement are budgeted and available in the 2024-2025 Hotel Occupancy Tax Fund. Of this funding \$375,000 is to be used for the Affiliate Grant Program, \$79,033 is to be used for the operations and maintenance of the arts programming and gallery operations at the Arts Council facility, and \$106,920 is to be used for tourism marketing and public art. State law requires that the City Council adopt the budget of any organization that is to be funded through Hotel Tax revenue. The Arts Council's budget is included in the Attachments.

Attachments:

1. 25300005 - Arts Council HOT Fund
2. 25300005 - Arts Council FY25 Approved Budget



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300005 PROJECT #: _____ BID/RFP/RFQ#: _____

Project Name / Contract Description: City of College Station Funding Agreement for Payment
and Use of Hotel Tax Funds with Arts Council of Brazos Valley

Name of Contractor: Arts Council of Brazos Valley

CONTRACT TOTAL VALUE: \$ 560,953.00 **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)

Funding for this contract is available in the FY25 budget - HOT Fund - Budget Code: 31219100-6720

(If required)*

CRC Approval Date*: _____ **Council Approval Date*:** 10/07/24 **Agenda Item No*:** _____

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

Insurance Certificates: _____ **Performance Bond:** _____ **Payment Bond:** _____ **Info Tech:** _____

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION FUNDING AGREEMENT FOR
PAYMENT AND USE OF HOTEL TAX WITH
ARTS COUNCIL OF BRAZOS VALLEY**

This Funding Agreement is made between the **City of College Station**, a Texas Home Rule Municipal Corporation (“City”), and the **ARTS COUNCIL OF BRAZOS VALLEY**, a Texas Non-Profit Corporation (“Agency”).

WHEREAS, Texas Tax Code §§351.002 and 351.003(a) authorize City to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, City has provided for the assessment and collection of a municipal hotel occupancy tax in the City of College Station of seven percent (7%); and

WHEREAS, Tax Code §351.101(a) authorizes and limits the City to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry; and

WHEREAS, Agency is well equipped to perform those activities as referenced in Tax Code §351.101 (a); and

WHEREAS, Tax Code §351.101(c) authorizes City to delegate by contract with Agency; as an independent entity, the management or supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax; and

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree, and contract as follows:

**ARTICLE I
DEFINITIONS**

1.1 Agency means the Arts Council of Brazos Valley, a Texas Non-Profit Corporation to which the City has delegated the management or supervision of programs and activities funded with Hotel Tax Revenue.

1.2 City means the City of College Station, in the County of Brazos, and the State of Texas.

1.3 Contract Quarter refers to any quarter of the contract year in which this Agreement is in force. Contract Quarters will end on December 31st, March 31st, June 30th, and September 30th, of each contract year.

1.4 Financial Activity Report means a report which includes a summary of revenues and expenditures for the current Contract Quarter as well as the current fiscal year to date, and a summary of assets and liabilities to be submitted to the City on the form attached herein as **Exhibit A** or in a form agreed on by Agency and City.

1.5 Financial Records means invoices, receipts, bank statements, reconciliations, cleared checks, financial statements and audit reports.

1.6 Narrative Summary of Activity Report means the quarterly summary report of the activities of Agency including a summary of how funds from City have been utilized to accomplish the Agency's work. Such report shall be submitted on the form attached herein as **Exhibit B**.

1.7 Performance Measure Report means the quarterly report to determine the levels of service that are being provided by Agency to be submitted to the City on the form attached herein as **Exhibit C**.

1.8 Event includes but is not limited to: any and all banquets, ceremonial dinners, fundraising events, promotional programs, or other public or private event hosted by the Agency.

1.9 Expenditure Report means a quarterly report listing the expenditures made by the Agency with Hotel Tax Revenue pursuant to Tax Code §§351.101 and 351.108.

1.10 Hotel Tax Revenue means the gross monies collected and received by City as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Tax Code 351.003 (a) and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late payments of the tax revenue by the taxpayer.

ARTICLE II HOTEL TAX REVENUE PAYMENT

2.1 Consideration and Payment. For and in consideration of the activities to be satisfactorily performed by Agency under this Agreement, City agrees to pay to Agency a portion of the Hotel Tax Revenue collected by City in the total amount of **FIVE HUNDRED SIXTY THOUSAND NINE HUNDRED FIFTY-THREE DOLLARS AND NO/100 CENTS (\$560,953.00)** to be paid as follows:

- (a) The amount of **SEVENTY-NINE THOUSAND THIRTY-THREE DOLLARS AND NO/100 CENTS (\$79,033.00)** shall be paid from the City's Hotel Tax Revenue for the maintenance of the Art and Visitors Center. The appropriated funds shall be used during the period of October 1, 2024, to September 30, 2025. Payment will be made in eleven monthly installments of **\$6,586.08** and the twelfth payment will be **\$6,586.12**.
- (b) The amount of **ONE HUNDRED SIX THOUSAND NINE HUNDRED TWENTY DOLLARS AND NO/100 CENTS (\$106,920.00)** shall be paid from the City's Hotel Tax Revenue for marketing and public art. The appropriated funds shall be used during the period of October 1, 2024, to September 30, 2025. Payment will be made in twelve monthly installments of **\$8,910.00**.
- (c) The amount of **THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO/100 CENTS (\$375,000.00)** shall be paid from the City's

Hotel Tax Revenue for affiliate funding. The appropriated funds shall be used during the period of October 1, 2024, to September 30, 2025. Payment will be made in four quarterly installments of **\$93,750.00**.

2.2 Reports and Payments. Monthly Payments (with the exception of the first four (4) monthly installments hereunder) will be dependent upon the City receiving all reports required herein from the Agency no later than thirty (30) days after the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year).

2.3 Other limitations regarding consideration.

- (a) It is expressly understood that this Agreement in no way obligates the General Fund or any other monies or credits of City.
- (b) City may withhold further payments and allocations if City determines Agency's expenditures deviate from their approved budget subject to §4.1 or if the reports required herein are not submitted in a complete and timely manner.

ARTICLE III USE OF HOTEL TAX REVENUE

3.1 Use of Funds. For and in consideration of the payment by City to Agency of the agreed payments of Hotel Tax Revenue specified above, Agency agrees to use such Hotel Tax Revenue for the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms as authorized by Tax Code §351.101(a).

- (a) **Attending Events.** The City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City at no additional cost to the City to promote tourism and the convention and hotel industry.

3.2 Administrative Costs. The Hotel Tax Revenue received from City by Agency may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in fulfilling a purpose described in §3.1.

3.3 Specific Restrictions on Use of Funds.

- (a) That portion of total administrative costs of Agency for which Hotel Tax Revenue may be used shall not exceed that portion of Agency's administrative costs actually incurred in conducting the activities specified in §3.1.

- (b) Hotel Tax Revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of tourism and the convention and hotel industry or the performance of the person's job in an efficient and professional manner.
- (c) Hotel Tax Revenue may not be spent for the purchase or serving of alcoholic beverages.

ARTICLE IV RECORDKEEPING AND REPORTING REQUIREMENTS

4.1 Budget.

- (a) Before Agreement execution, Agency shall submit to the City Manager of City or the City Manager's designee, an annual budget to be approved by the City Council for each fiscal year, for such Agency operations funded by Hotel Tax Revenues. This budget shall specifically identify proposed expenditures of Hotel Tax Revenue by Agency. City should be able to audit specifically the purpose of each individual expenditure of Hotel Tax Revenue from the separate account relating to Hotel Tax Revenue. City shall not pay to Agency any Hotel Tax Revenues as set forth in Article II of this Agreement during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the College Station City Council. Approval of the budget by the City Council shall not preclude the Agency from reasonably reallocating funds within the budget among line items to meet changing conditions. Such reallocation shall not necessitate a new approval by the City Council. Failure to submit an annual budget may be considered a breach of contract, and if not remedied is considered grounds for termination of this Agreement as stated in paragraph 6.2.
- (b) Agency acknowledges that the approval of such budget by the College Station City Council creates a fiduciary duty in Agency with respect to the Hotel Tax Revenue paid by City to Agency under this Agreement. Agency shall expend Hotel Tax Revenue only in the manner and for the purposes specified in this Agreement, Tax Code §351.101(a), and in the budget as approved by City.

4.2 Separate Accounts. Agency shall maintain Hotel Tax Revenue paid to Agency by City in a separate account, or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

4.3 Financial Records. Agency shall maintain a complete and accurate financial record of each expenditure of the Hotel Tax Revenue made by Agency. These funds shall be classified as restricted funds for audited financial purposes.

4.4 Records Inspection. Upon written request of the City Council, City Manager, or their designee; Agency shall make such financial records available for inspection and review by the party making the request. Agency understands and accepts that all such financial records and any other

records relating to this Agreement shall be subject to the Public Information Act, Texas Government Code, Chapter 552, as hereafter amended.

4.5 Quarterly Reports. Agency shall submit the following to the City on a quarterly basis as provided in this Agreement:

- (a) Financial Activity Report
- (b) Narrative Summary of Activity Report
- (c) Performance Measure Report
- (d) Expenditure Report

Agency shall respond promptly to any request from the City Manager of City, or the City Manager's designee, for additional information relating to the activities performed under this Agreement.

4.6 Reports. The Financial Activity Report, Performance Measure Report, Narrative Summary and Expenditure Report shall be submitted to the City within thirty (30) days of the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year.)

4.7 Financial Audit. A copy of the Agency's annual financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.8 Monitor Review. The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews. City shall provide written notice twenty-four (24) hours in advance of such review and a brief description of how and by whom that review is to be conducted.

4.9 Presentation. If requested, Agency shall make an annual report and presentation to the City Council.

4.10 Records Retention. Agency shall maintain such records, accounts, reports, files or other documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this three (3)–year period and for as long as the records are retained by Agency.

ARTICLE V AGENCY BOARD OF DIRECTORS

5.1 Appointees. The City shall have the option to recommend three (3) appointees for any vacancy that occurs on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

5.2 Agendas. Agency shall provide the City with an agenda of all regular and special Board meetings five (5) days before the meeting with information as to the date, time and place of meeting. If a special meeting is scheduled, Agency shall immediately notify the City of special meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone, depending on Agency's own notification of the Board meeting. Agendas shall be made available to the public seventy-two (72) hours before the meeting at a location accessible to the public, including but not limited to the Agency's website.

5.3 Minutes. Agency shall submit Board of Directors meeting and Executive Committee meeting minutes to the City within ten (10) days after approval of the minutes.

ARTICLE VI TERM AND TERMINATION

6.1 Term. The Agreement term begins on October 1, 2024, and terminates at midnight on October 31, 2025; however, the program period shall commence on October 1, 2024, and terminate at midnight on September 30, 2025. Only those expenditures authorized by Chapter 351 of the Tax Code which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination.

- (a) For Convenience.** This Agreement may be terminated for convenience by giving sixty (60) days advance written notice.
- (b) Funding Out.** This Agreement may be terminated with sixty (60) days advance written notice by the City if funds are not appropriated.
- (c)** In the event this Agreement is terminated by either party pursuant to §6.2, City agrees to reimburse Agency for any contractual obligations Agency has undertaken in satisfactory performance of those activities specified in hereinabove and that were approved by the Council through the budget, as noted in §4.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in §§3.1 through 3.3, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.
- (d)** Further, upon termination pursuant to §6.2, Agency will provide City:
 - (1)** Within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60)-day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by City. If formal approval is not given within ten (10) business days and the budget does not contain any expenditures that would be prohibited by the Tax Code and is

within the current contractual period approved budget; the budget will be considered approved.

(2) Within thirty (30) days, a full accounting of all expenditures not previously audited by City.

(3) Within five (5) business days of a request from City, a listing of expenditures that have occurred since the last required reporting period.

(4) A final accounting of all expenditures and tax funds on the day of termination. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in §3.1 and §3.3 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

6.3 Automatic Termination and Breach.

(a) **Automatic Termination.** This Agreement with written notice shall automatically terminate upon the occurrence of any of the following events:

(1) The termination of the legal existence of Agency

(2) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors

(b) **Breach.** This Agreement with written notice shall terminate upon the occurrence of any of the following events:

(1) Thirty (30) days after a written notice of the breach of any of the terms or conditions of this Agreement by the Agency if the Agency fails to cure the breach

(2) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date City notifies Agency of its breach of this obligation

(3) The failure of Agency to submit a Quarterly Expenditure Report as required by Tax Code §351.101(c) within thirty (30) days from the date City notifies Agency of its breach of this obligation

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating

party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 Refund of Funds. In the event that this Agreement is terminated pursuant to §§6.3 or 6.4 of this Agreement, Agency agrees to return, refund and reimburse any and all unused funds, or funds determined by City to have been used improperly, within thirty (30) days after termination of this Agreement.

ARTICLE VII INDEMNIFICATION AND RELEASE

7.1 Indemnification. The Agency 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 Agency and funded 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 Agency, 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.

7.2 Release. The Agency assumes full responsibility for the work to be performed and funded 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 Agency's work to be performed and funded 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 Agency, 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 VIII INSURANCE

8.1 The Agency 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 services performed by the Agency, its officers, agents, volunteers, and employees.

8.2 The Agency'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 policies are attached in **Exhibit D**.

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

8.3 Types. Agency shall have the following types of insurance:

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

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

- (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 D**; and shall be approved by the City before work begins.
- (c) Agency 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.

8.5 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 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.
- (e) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (ensuring the indemnity provided herein) Host Liquor Liability, and Personal & Advertising Liability.

8.6 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 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.

8.7 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 is 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 IX GENERAL PROVISIONS

9.1 Other Agreements. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in in this Agreement. In the event Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments.

9.2 Binding Agreement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

9.3 Personal Interest. The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

9.4 Non-discrimination. Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or disability. Agency will take affirmative action to ensure that applicants who are hired are treated, during employment, without regard to their race, color, religion, sex, national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination requirement.

9.5 Equal Opportunity. Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.

9.6 Religious Affiliation. Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will not provide religious instruction or counseling, conduct religious worship or services, or engage in religious proselytizing in the provision of services, or the use of facilities or furnishings assisted in any way under this Agreement.

9.7 Independent Contractor. Agency is an independent contractor and not an agent or representative of the City and the obligation to compensate employees furnished or used by Agency to provide the services specified in Article II shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose. This Agreement does not create a joint venture.

9.8 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.

9.9 Venue. This Agreement will be performed and has been made under and shall be governed by the laws of the State of Texas, Brazos County.

9.10 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 organizations.

9.11 Waiver of Terms. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. 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.

9.12 Agreement Read. The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

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

9.14 Counterparts. 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.

9.15 Invalid Provisions. 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.

9.16 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 any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

9.17 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City:

City of College Station
Attn: Mary Ellen Leonard
Fiscal Services Department
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842

Agency:

Arts Council of Brazos Valley
Attn: Leslie Bowlin, CEO
4180 Highway 6 South
College Station, Texas 77845

9.18 Funding Source. Agency understands and agrees to state in all published material, announcements and advertising regarding activities funded with City funding that the activity was made possible in part through funding from the City of College Station. If there is not published activity material, a sign must be displayed, and a verbal announcement must be made at the time of the activity.

9.19 Verification No Boycott. To the extent applicable, this Agreement is subject to the following:

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

9.20 Governmental Immunity. This Agreement is subject to the proper application of the doctrine of governmental immunity.

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

List of Exhibits:

- A. Statement of Financial Position
- B. Narrative Summary of Activity
- C. Performance Measures
- D. Certificates of Insurance

[Signatures on Following Page]

ARTS COUNCIL OF BRAZOS VALLEY

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager

Date: _____

Exhibit A
Statement of Financial Position

Statement of Financial Position

As of July 31, 2024

	Total
ASSETS	
Current Assets	
Bank Accounts	
10100 Wells Fargo Business Checking *8775	115,600.42
10200 VB - Checking *3808	8,690.60
10210 VB - Savings *3816	7,280.26
10300 PayPal	1,544.30
10500 American Momentum Money Market	2,459.10
10600 American Funds	79,066.04
10800 Community Foundation of BV	11,239.35
Total Bank Accounts	225,880.07
Accounts Receivable	
11000 Accounts Receivable	10,086.44
11200 Pledges Receivable	0.00
11210 Discount on Pledge Receivable	0.48
Total 11200 Pledges Receivable	0.48
11500 Contributions Receivable	69,999.80
11600 Due from Affiliates	14,801.02
Total 11000 Accounts Receivable	94,887.74
Total Accounts Receivable	94,887.74
Other Current Assets	
12000 Undeposited Funds	5,047.86
12300 Art Inventory	13,932.00
12400 Prepaid Expenses	-1,162.81
Total Other Current Assets	17,817.05
Total Current Assets	338,584.86
Fixed Assets	
14000 Property & Equipment	
14100 Furniture and Equipment	159,179.40
14200 Buildings & Improvements	1,729,666.71
14300 Permanent Collection	657,023.02
14500 Land	392,430.00
14900 Accum Depreciation	-270,913.41
Total 14000 Property & Equipment	2,667,385.72
16000 Construction in Progress	23,067.00
Total Fixed Assets	2,690,452.72
Other Assets	
18000 Investments/Endowments	0.00
18040 Amarillo National Bank *6163CD	240,961.73
Total 18000 Investments/Endowments	240,961.73

	Total
Total Other Assets	240,961.73
TOTAL ASSETS	\$3,269,999.31
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 Accounts Payable	115,615.24
Total Accounts Payable	115,615.24
Credit Cards	
21000 Wells Fargo Business Card - Boegner	-184.99
21100 Credit Card *7825 (*0167)	2,205.99
Total Credit Cards	2,021.00
Other Current Liabilities	
23000 Payroll Liabilities	0.00
23100 Federal Tax Payable	1,975.95
23200 Texas Unemployment Payable	-991.78
23300 Simple IRA Payable	816.66
23500 Guardian Insurance Payable	-657.68
23700 Accrued Compensated Absences	4,029.94
Total 23000 Payroll Liabilities	5,173.09
25000 Deferred Income	0.14
26200 Due to COCS- Reimbursements	-42.88
26300 Due to COB - Reimbursements	-3,000.00
28000 Sales Tax Payable	0.00
28100 Sales Tax Payable - Current	31.52
Total 28000 Sales Tax Payable	31.52
Total Other Current Liabilities	2,161.87
Total Current Liabilities	119,798.11
Long-Term Liabilities	
29300 NP - Vera Bank	618,088.33
29900 Northgate Sculpture Fund	63,750.00
Total Long-Term Liabilities	681,838.33
Total Liabilities	801,636.44
Equity	
31000 Net Assets - Donor Restricted	704,674.50
32000 Unrestricted Net Assets	1,918,338.10
Net Revenue	-154,649.73
Total Equity	2,468,362.87
TOTAL LIABILITIES AND EQUITY	\$3,269,999.31

Statement of Activity

October 2023 - July 2024

	Total
REVENUE	
43000 Contributed Income	6,330.91
43100 Membership Dues	
43120 Affiliates Membership	4,471.00
43130 Business Membership	1,750.00
43140 BV Collective Membership	900.00
43150 Individual Membership	8,525.00
43160 Artist and Hotels Membership	300.00
Total 43100 Membership Dues	15,946.00
43200 Fundraising Events	
43240 Celebrate the Arts	31,861.00
43245 Celebrate the Arts Scholarship	11,200.00
Total 43240 Celebrate the Arts	43,061.00
43250 Boots & BBQ	5,625.00
43260 Empty Bowls, Jr.	14,257.69
43270 Stories at the Gallery	4,979.41
Total 43200 Fundraising Events	67,923.10
43300 Government Grants	
43310 Brazos County	10,000.00
43330 College Station	46,986.60
43340 College Station HOT	418,390.80
43350 Navasota HOT	40,500.00
43355 Navasota HOT Reimbursements	-3,258.27
Total 43350 Navasota HOT	37,241.73
43360 TCA	15,500.00
Total 43300 Government Grants	528,119.13
43400 Foundation & Trust Grants	1,040.16
Total 43000 Contributed Income	619,359.30
44000 Program Service Revenue	
44100 Artist Call for Entry	1,988.35
44200 Camps & Workshops	
44220 Children Camps	12,781.00
Total 44200 Camps & Workshops	12,781.00
44400 Community Events	2,984.16
44800 Public Art	12,000.00
Total 44000 Program Service Revenue	29,753.51
45000 Art & Merchandise Sales	11,974.93
46000 Other Revenue	379.90
46200 Investments	14,020.14
46300 Rentals	9,418.20

	Total
46400 Miscellaneous Revenue	269.90
46420 Interest Income	12,344.71
Total 46400 Miscellaneous Revenue	12,614.61
Total 46000 Other Revenue	36,432.85
Discounts given	8.11
Uncategorized Income	2,978.04
Total Revenue	700,506.74
GROSS PROFIT	700,506.74

EXPENDITURES

60000 Grants & Scholarships	
60100 Grants	
60115 College Station Grants	360,000.00
60120 Navasota Grants	25,630.00
60130 Rural Grants	8,000.00
Total 60100 Grants	393,630.00
60200 Scholarships	13,000.00
Total 60000 Grants & Scholarships	406,630.00
61000 Salaries and Related Expenses	
61100 Salaries & Wages	126,011.11
61200 Employer IRA Contributions	3,307.63
61300 Employee Benefits-Other	160.40
61400 Payroll taxes & fees	9,691.71
61600 Employer Health Ins. Contribution	3,957.52
Total 61000 Salaries and Related Expenses	143,128.37
62000 Fees for Services	
62100 Accounting Fees	10,500.00
62300 Legal and Professional Fees	83.54
62400 Marketing Intern & Work Study	5,039.87
Total 62000 Fees for Services	15,623.41
63000 Advertising, Printing, Promo.	1,208.44
63100 HOT Advertising	25,997.55
63200 Local Advertising	6,499.58
Total 63000 Advertising, Printing, Promo.	33,705.57
64000 Programs	
64010 ART for Life	15,050.00
64020 Artist Connect	984.04
64040 Camps & Workshops	
64042 Children Camp Expense	3,243.81
Total 64040 Camps & Workshops	3,243.81
64060 Community Events	528.92
64070 Gallery	1,794.54
64080 Public Art	83,534.87

	Total
Total 64000 Programs	105,136.18
65000 Fundraising	
65100 Boots & BBQ	3,724.26
65200 Celebrate the Arts	33,043.80
65300 Empty Bowls, Jr.	7,269.51
65500 Stories at the Gallery	3,138.74
Total 65000 Fundraising	47,176.31
66000 Office Expenses	1,210.61
66100 Information Technology	3,250.00
66200 Postage, Mailing Service	-39.17
Total 66000 Office Expenses	4,421.44
68000 Occupancy	
68200 Facilities & Equipment Rental	2,142.46
68300 Insurance	18,463.44
68400 Janitorial	13,981.53
68500 Mortgage Expense	22,011.70
68600 Pest Control	85.00
68700 Repairs & Maintenance	7,964.76
68800 Security	696.50
68900 Utilities	17,778.15
Total 68000 Occupancy	83,123.54
69000 Mileage	
69100 Travel & In-Region Mileage	1,169.50
Total 69000 Mileage	1,169.50
80000 Other expenses	
80010 Artist Commission	8,066.54
80020 Bank Charges	1,850.53
80025 PayPal Fees	512.34
Total 80020 Bank Charges	2,362.87
80040 Donor Development	344.90
80060 Meals	227.13
80070 Memberships & Dues	956.95
80080 Training & Development	2,402.97
Total 80000 Other expenses	14,361.36
Total Expenditures	854,475.68
NET OPERATING REVENUE	-153,968.94
OTHER EXPENDITURES	
90000 Ask My Accountant	680.79
Total Other Expenditures	680.79
NET OTHER REVENUE	-680.79
NET REVENUE	\$ -154,649.73

The Arts Council of Brazos Valley

Budget vs. Actuals: Budget_FY24_P&L - FY24 P&L

October 2023 - July 2024

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
Revenue				
43000 Contributed Income	6,330.91	30,000.00	-23,669.09	21.10 %
43100 Membership Dues				
43120 Affiliates Membership	4,471.00	4,000.00	471.00	111.78 %
43130 Business Membership	1,750.00	4,500.00	-2,750.00	38.89 %
43140 BV Collective Membership	900.00		900.00	
43150 Individual Membership	8,525.00	11,267.00	-2,742.00	75.66 %
43160 Artist and Hotels Membership	300.00	800.00	-500.00	37.50 %
43170 500 Club		150,000.00	-150,000.00	
Total 43100 Membership Dues	15,946.00	170,567.00	-154,621.00	9.35 %
43200 Fundraising Events				
43240 Celebrate the Arts	31,861.00	120,000.00	-88,139.00	26.55 %
43245 Celebrate the Arts Scholarship	11,200.00	20,000.00	-8,800.00	56.00 %
Total 43240 Celebrate the Arts	43,061.00	140,000.00	-96,939.00	30.76 %
43250 Boots & BBQ	5,625.00	15,000.00	-9,375.00	37.50 %
43260 Empty Bowls, Jr.	14,257.69	13,000.00	1,257.69	109.67 %
43270 Stories at the Gallery	4,979.41	7,000.00	-2,020.59	71.13 %
43280 NEW Fundraiser Event		40,000.00	-40,000.00	
43290 NEW Fundraiser at ACBV Event		20,000.00	-20,000.00	
Total 43200 Fundraising Events	67,923.10	235,000.00	-167,076.90	28.90 %
43300 Government Grants				
43310 Brazos County	10,000.00	10,000.00	0.00	100.00 %
43320 Bryan HOT				
43325 Bryan HOT Reimbursements		0.00	0.00	
Total 43320 Bryan HOT		0.00	0.00	
43330 College Station	46,986.60	35,000.00	11,986.60	134.25 %
43340 College Station HOT	418,390.80	560,954.00	-142,563.20	74.59 %
43345 College Station HOT Reimbursements		1,000.00	-1,000.00	
Total 43340 College Station HOT	418,390.80	561,954.00	-143,563.20	74.45 %
43350 Navasota HOT	40,500.00	40,500.00	0.00	100.00 %
43355 Navasota HOT Reimbursements	-3,258.27	1,000.00	-4,258.27	-325.83 %
Total 43350 Navasota HOT	37,241.73	41,500.00	-4,258.27	89.74 %
43360 TCA	15,500.00	15,000.00	500.00	103.33 %
Total 43300 Government Grants	528,119.13	663,454.00	-135,334.87	79.60 %
43400 Foundation & Trust Grants	1,040.16	5,000.00	-3,959.84	20.80 %
Total 43000 Contributed Income	619,359.30	1,104,021.00	-484,661.70	56.10 %
44000 Program Service Revenue				
44100 Artist Call for Entry	1,988.35	1,700.00	288.35	116.96 %
44200 Camps & Workshops				
44210 Adult Workshops		1,100.00	-1,100.00	
44220 Children Camps	12,781.00	13,915.00	-1,134.00	91.85 %
Total 44200 Camps & Workshops	12,781.00	15,015.00	-2,234.00	85.12 %

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
44300 Classes	0.00		0.00	
44310 Adult Classes		800.00	-800.00	
44320 Children Classes		3,349.00	-3,349.00	
Total 44300 Classes	0.00	4,149.00	-4,149.00	0.00 %
44400 Community Events	2,984.16	3,000.00	-15.84	99.47 %
44500 Red Wasp		2,000.00	-2,000.00	
44600 Special Exhibits		30,000.00	-30,000.00	
44800 Public Art	12,000.00	125,000.00	-113,000.00	9.60 %
Total 44000 Program Service Revenue	29,753.51	180,864.00	-151,110.49	16.45 %
45000 Art & Merchandise Sales	11,974.93	8,000.00	3,974.93	149.69 %
46000 Other Revenue	379.90		379.90	
46200 Investments	14,020.14	2,000.00	12,020.14	701.01 %
46300 Rentals	9,418.20	13,000.00	-3,581.80	72.45 %
46400 Miscellaneous Revenue	269.90	50.00	219.90	539.80 %
46420 Interest Income	12,344.71	600.00	11,744.71	2,057.45 %
Total 46400 Miscellaneous Revenue	12,614.61	650.00	11,964.61	1,940.71 %
Total 46000 Other Revenue	36,432.85	15,650.00	20,782.85	232.80 %
Discounts given	8.11		8.11	
Uncategorized Income	2,978.04		2,978.04	
Total Revenue	\$700,506.74	\$1,308,535.00	\$ -608,028.26	53.53 %
GROSS PROFIT	\$700,506.74	\$1,308,535.00	\$ -608,028.26	53.53 %
Expenditures				
60000 Grants & Scholarships				
60100 Grants				
60105 Bryan Grants		0.00	0.00	
60115 College Station Grants	360,000.00	360,000.00	0.00	100.00 %
60120 Navasota Grants	25,630.00	25,630.00	0.00	100.00 %
60130 Rural Grants	8,000.00	8,000.00	0.00	100.00 %
60140 Returned Grants		3,000.00	-3,000.00	
Total 60100 Grants	393,630.00	396,630.00	-3,000.00	99.24 %
60200 Scholarships	13,000.00	15,000.00	-2,000.00	86.67 %
Total 60000 Grants & Scholarships	406,630.00	411,630.00	-5,000.00	98.79 %
61000 Salaries and Related Expenses				
61100 Salaries & Wages	126,011.11	224,272.00	-98,260.89	56.19 %
61200 Employer IRA Contributions	3,307.63	6,728.00	-3,420.37	49.16 %
61300 Employee Benefits-Other	160.40	7,000.00	-6,839.60	2.29 %
61400 Payroll taxes & fees	9,691.71	17,157.00	-7,465.29	56.49 %
61600 Employer Health Ins. Contribution	3,957.52	16,200.00	-12,242.48	24.43 %
Total 61000 Salaries and Related Expenses	143,128.37	271,357.00	-128,228.63	52.75 %
62000 Fees for Services				
62100 Accounting Fees	10,500.00	23,360.00	-12,860.00	44.95 %
62200 Contractor Fee		500.00	-500.00	
62300 Legal and Professional Fees	83.54	3,500.00	-3,416.46	2.39 %
62400 Marketing Intern & Work Study	5,039.87	14,000.00	-8,960.13	36.00 %
62500 Program Intern & Work Study		7,500.00	-7,500.00	
Total 62000 Fees for Services	15,623.41	48,860.00	-33,236.59	31.98 %
63000 Advertising, Printing, Promo.	1,208.44		1,208.44	
63100 HOT Advertising	25,997.55	44,000.00	-18,002.45	59.09 %

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
63200 Local Advertising	6,499.58	25,000.00	-18,500.42	26.00 %
63300 Affiliate Advertising		15,000.00	-15,000.00	
Total 63000 Advertising, Printing, Promo.	33,705.57	84,000.00	-50,294.43	40.13 %
64000 Programs				
64010 ART for Life	15,050.00	13,500.00	1,550.00	111.48 %
64020 Artist Connect	984.04	8,000.00	-7,015.96	12.30 %
64030 Artist in Residence		7,125.00	-7,125.00	
64040 Camps & Workshops				
64042 Children Camp Expense	3,243.81	7,042.00	-3,798.19	46.06 %
Total 64040 Camps & Workshops	3,243.81	7,042.00	-3,798.19	46.06 %
64050 Classes				
64051 Adult Class Expense		150.00	-150.00	
64052 Children Class Expense		150.00	-150.00	
Total 64050 Classes		300.00	-300.00	
64060 Community Events	528.92	500.00	28.92	105.78 %
64070 Gallery	1,794.54	8,000.00	-6,205.46	22.43 %
64080 Public Art	83,534.87	155,000.00	-71,465.13	53.89 %
64090 Red Wasp		2,000.00	-2,000.00	
64110 Special Exhibits		30,000.00	-30,000.00	
64130 Programs-Other		1,500.00	-1,500.00	
64140 Navasota Project		10,000.00	-10,000.00	
Total 64000 Programs	105,136.18	242,967.00	-137,830.82	43.27 %
65000 Fundraising				
65100 Boots & BBQ	3,724.26	5,000.00	-1,275.74	74.49 %
65200 Celebrate the Arts	33,043.80	50,000.00	-16,956.20	66.09 %
65300 Empty Bowls, Jr.	7,269.51	7,500.00	-230.49	96.93 %
65400 Fundraising - Other		7,500.00	-7,500.00	
65500 Stories at the Gallery	3,138.74	5,000.00	-1,861.26	62.77 %
65600 NEW Fundraiser Event		20,000.00	-20,000.00	
65700 NEW at ACBV Fundraiser Event		10,000.00	-10,000.00	
Total 65000 Fundraising	47,176.31	105,000.00	-57,823.69	44.93 %
66000 Office Expenses	1,210.61	6,000.00	-4,789.39	20.18 %
66100 Information Technology	3,250.00	5,300.00	-2,050.00	61.32 %
66200 Postage, Mailing Service	-39.17	1,200.00	-1,239.17	-3.26 %
Total 66000 Office Expenses	4,421.44	12,500.00	-8,078.56	35.37 %
68000 Occupancy				
68200 Facilities & Equipment Rental	2,142.46	2,294.00	-151.54	93.39 %
68300 Insurance	18,463.44	19,320.00	-856.56	95.57 %
68400 Janitorial	13,981.53	10,120.00	3,861.53	138.16 %
68500 Mortgage Expense	22,011.70	28,000.00	-5,988.30	78.61 %
68600 Pest Control	85.00	374.00	-289.00	22.73 %
68700 Repairs & Maintenance	7,964.76	12,000.00	-4,035.24	66.37 %
68800 Security	696.50	1,000.00	-303.50	69.65 %
68900 Utilities	17,778.15	25,000.00	-7,221.85	71.11 %
Total 68000 Occupancy	83,123.54	98,108.00	-14,984.46	84.73 %
69000 Mileage				
69100 Travel & In-Region Mileage	1,169.50	4,000.00	-2,830.50	29.24 %
Total 69000 Mileage	1,169.50	4,000.00	-2,830.50	29.24 %

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
80000 Other expenses				
80010 Artist Commission	8,066.54	6,000.00	2,066.54	134.44 %
80020 Bank Charges	1,850.53	700.00	1,150.53	264.36 %
80025 PayPal Fees	512.34		512.34	
Total 80020 Bank Charges	2,362.87	700.00	1,662.87	337.55 %
80040 Donor Development	344.90	5,000.00	-4,655.10	6.90 %
80050 Investment Losses		1,575.00	-1,575.00	
80060 Meals	227.13		227.13	
80070 Memberships & Dues	956.95	1,575.00	-618.05	60.76 %
80080 Training & Development	2,402.97	9,000.00	-6,597.03	26.70 %
80100 Other Costs		1,000.00	-1,000.00	
Total 80000 Other expenses	14,361.36	24,850.00	-10,488.64	57.79 %
Reimbursed Expenses	0.00		0.00	
Total Expenditures	\$854,475.68	\$1,303,272.00	\$ -448,796.32	65.56 %
NET OPERATING REVENUE	\$ -153,968.94	\$5,263.00	\$ -159,231.94	-2,925.50 %
Other Expenditures				
90000 Ask My Accountant	680.79		680.79	
Total Other Expenditures	\$680.79	\$0.00	\$680.79	0.00%
NET OTHER REVENUE	\$ -680.79	\$0.00	\$ -680.79	0.00%
NET REVENUE	\$ -154,649.73	\$5,263.00	\$ -159,912.73	-2,938.43 %

Exhibit B
Narrative Summary of Activity Report

Exhibit C
Performance Measures

Exhibit D
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 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	Wm. Albert Miller Agency 220 E. Washington Avenue P. O. Drawer 31 Navasota TX 77868	CONTACT NAME: Bert Miller PHONE (A/C, No., Ext): (936) 825-6789 E-MAIL ADDRESS: bertmiller@milleragencyinc.com FAX (A/C, No.): (936) 825-6790
INSURED	Arts Council Brazos Valley PO Box 10626 College Station TX 77842-	INSURER(S) AFFORDING COVERAGE INSURER A: Markel Insurance Co INSURER B: Philadelphia Indemnity Insurance Co INSURER C: INSURER D: INSURER E: INSURER F:

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC			PHPK2656997	02/16/2024	02/16/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			PHPK2656997	02/16/2024	02/16/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$ ☐						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	MWC0045351-12	02/16/2024	02/16/2025	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Property			PHPK2656997	02/16/2024	02/16/2025	Business Property 100,000 Collections-others 150,000 Collections- ACBV 75,000

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

Certificate holder listed as additional insured and waiver of subrogation with regard to general liability and workers compensation coverages. GL coverage is primary & non-contributory and 30-day notice of cancellation applies.

CERTIFICATE HOLDER**CANCELLATION**

AI 002351

City of College Station Att: Risk Management PO Box 9906 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
---	---

**The Arts Council of Brazos Valley
FY 2024-2025 Approved Budget**

Revenue	
43000 Contributed Income	\$ 20,000.00
43100 Membership Dues	
43120 Affiliates Membership	\$ 4,400.00
43130 Business Membership	\$ 350.00
43140 BV Collective Membership	\$ 750.00
43150 Individual Membership	\$ 9,000.00
43160 Artist and Hotels Membership	\$ 500.00
43170 500 Club	
Total 43100 Membership Dues	\$ 15,000.00
43200 Fundraising Events	
43240 Celebrate the Arts	\$ 80,000.00
43245 Celebrate the Arts Scholarship	\$ 20,000.00
Total 43240 Celebrate the Arts	\$ 100,000.00
43250 Boots & BBQ	\$ 15,000.00
43260 Empty Bowls, Jr.	\$ 12,000.00
43270 Stories at the Gallery	\$ 20,000.00
43280 NEW Fundraiser Event	
43290 NEW Fundraiser at ACBV Event	
Total 43200 Fundraising Events	\$ 147,000.00
43300 Government Grants	
43310 Brazos County	\$ 12,000.00
43320 Bryan HOT	
43325 Bryan HOT Reimbursements	
Total 43320 Bryan HOT	\$ -
43330 College Station Gen	\$ 38,500.00
43340 College Station HOT	\$ 617,000.00
43345 College Station HOT Reimbursements	\$ 1,000.00
Total 43340 College Station HOT	\$ 618,000.00
43350 Navasota HOT	\$ 40,500.00
43355 Navasota HOT Reimbursements	\$ 1,000.00
Total 43350 Navasota HOT	\$ 41,500.00
43360 TCA	\$ 15,500.00
Total 43300 Government Grants	\$ 725,500.00
43400 Foundation & Trust Grants	\$ 15,000.00
Total 43000 Contributed Income	\$ 922,500.00
44000 Program Service Revenue	
44100 Artist Call for Entry	\$ 2,500.00
44200 Camps & Workshops	
44210 Adult Workshops	\$ 1,500.00
44220 Children Camps	\$ 20,000.00

Total 44200 Camps & Workshops	\$ 21,500.00
44300 Classes	
44310 Adult Classes	\$ 500.00
44320 Children Classes	\$ 500.00
Total 44300 Classes	\$ 1,000.00
44400 Community Events	\$ 3,000.00
44500 Red Wasp	
44600 Special Exhibits	
44800 Public Art	\$ 50,000.00
Total 44000 Program Service Revenue	\$ 78,000.00
45000 Art & Merchandise Sales	\$ 20,000.00
46000 Other Revenue	
46200 Investments	\$ 10,000.00
46300 Rentals	\$ 15,000.00
46400 Miscellaneous Revenue	
46410 Payroll Credit	
46420 Interest Income	\$ 350.00
Total 464000 Miscellaneous Revenue	\$ 350.00
Total 46000 Other Revenue	\$ 25,350.00
Discount Given	\$ -
Unapplied Cash Payment Income	
Sales of Product Income	\$ -
Total Revenue	\$ 1,045,850.00
Gross Profit	\$ 1,045,850.00
Expenditures	
60000 Grants & Scholarships	
60100 Grants	
60110 Bryan Grants	\$ 7,500.00
60115 College Station Grants	\$ 385,931.00
60120 Navasota Grants	\$ 28,800.00
60130 Rural Grants	\$ 8,000.00
60140 Returned Grants	
Total 60100 Grants	\$ 430,231.00
60200 Scholarships	\$ 16,000.00
Total 60000 Grants & Scholarships	\$ 446,231.00
61000 Salaries and Related Expenses	
61100 Salaries & Wages	\$ 245,000.00
61200 Employer IRA Contributions	\$ 7,350.00
61300 Employee Benefits-Other	\$ 9,800.00
61400 Payroll taxes & fees	\$ 22,050.00
61500 Sales Commission	
61600 Employer Health Ins. Contribution	\$ 9,800.00
61700 Leased Employees	
Total 61000 Salaries and Related Expenses	\$ 294,000.00
62000 Fees for Services	

62100 Accounting Fees	\$ 23,000.00
62200 Contractor Fee	
62300 Legal Fees	\$ 1,000.00
62400 Marketing Intern & Work Study	\$ 10,000.00
62500 Program Intern & Work Study	\$ 1,500.00
Total 62000 Fees for Services	\$ 35,500.00
63000 Advertising, Printing, Promo.	
63100 HOT Advertising	\$ 25,000.00
63200 Local Advertising	\$ 16,000.00
63300 Affiliate Advertising	\$ 7,500.00
Total 63000 Advertising, Printing, Promo.	\$ 48,500.00
64000 Programs	
64010 ART for Life	\$ 12,000.00
64020 Artist Connect	\$ 2,500.00
64030 Artist in Residence	\$ 2,500.00
64040 Camps & Workshops	
64041 Adult Workshop Expense	\$ 150.00
64042 Children Camp Expense	\$ 7,000.00
Total 64040 Camps & Workshops	\$ 7,150.00
64050 Classes	
64051 Adult Class Expense	\$ 150.00
64052 Children Class Expense	\$ 150.00
Total 64050 Classes	\$ 300.00
64060 Community Events	\$ 350.00
64070 Gallery	\$ 7,000.00
64080 Public Art	\$ 10,000.00
64090 Red Wasp	
64110 Special Exhibits	
64130 Programs-Other	
64140 Navasota Project	
Total 64000 Programs	\$ 41,800.00
65000 Fundraising	
65100 Boots & BBQ	\$ 5,000.00
65200 Celebrate the Arts	\$ 50,000.00
65300 Empty Bowls, Jr.	\$ 5,000.00
65400 Fundraising - Other	\$ 1,000.00
65500 Stories at the Gallery	\$ 5,000.00
65600 NEW Fundraiser Event	
65700 NEW at ACBV Fundraiser Event	
Total 65000 Fundraising	\$ 66,000.00
66000 Office Expenses	\$ 3,000.00
66100 Information Technology	\$ 4,500.00
66200 Postage, Mailing Service	\$ 500.00
Total 66000 Office Expenses	\$ 8,000.00
68000 Occupancy	

68200 Facilities & Equipment Rental	\$ 1,500.00
68300 Insurance	\$ 15,000.00
68400 Janitorial	\$ 9,500.00
68500 Mortgage Expense	\$ 28,000.00
68600 Pest Control	\$ 340.00
68700 Repairs & Maintenance	\$ 2,500.00
68800 Security	\$ 831.50
68900 Utilities	\$ 24,000.00
Total 68000 Occupancy	\$ 81,671.50
69000 Mileage	
69100 Travel & In-Region Mileage	\$ 3,000.00
Total 69000 Mileage	\$ 3,000.00
80000 Other expenses	
80010 Artist Commission	\$ 6,000.00
80020 Bank Charges	\$ 700.00
800025 PayPal Fees	\$ 800.00
80026 Venmo Fees	\$ 5.00
Total Bank Charges	\$ 1,505.00
80030 Donated Goods and Services	
80040 Donor Development	\$ 500.00
80050 Investment Losses	
80060 Meals	
80070 Memberships & Dues	\$ 1,200.00
80080 Training & Development	\$ 3,000.00
80100 Other Costs	
Total 80000 Other expenses	\$ 20,000.00
Total Expenditures	\$ 1,044,702.50
Net Operating Revenue	\$ 1,147.50
Other Expenditures	
90000 Ask My Accountant	
Total Other Expenditures	
Net Other Revenue	
Net Revenue	\$ -

October 7, 2024

Item No. 7.6.

FY25 Funding Agreement for Bryan/College Station Chamber of Commerce in the amount of \$25,000.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a funding agreement with the Bryan/College Station Chamber of Commerce for FY25 for \$25,000.

Relationship to Strategic Goals:

Core Services & Infrastructure

Good Governance

Financial Sustainability

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

Summary: As part of the 2024-2025 budget process the City Council approved funding for the Bryan/College Station Chamber of Commerce in the amount of \$25,000 for the annual banquet and Economic Outlook Conference.

Budget & Financial Summary: The funds for this agreement are budgeted and available in the 2024-2025 General Fund.

Attachments:

1. 25300002 - Chamber of Commerce



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300002 PROJECT #: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: City of College Station Funding Agreement for payment and
and us of General Funds with Bryan/College Station Chamber of Commerce

Name of Contractor: Brazos Valley Chamber of Commerce

CONTRACT TOTAL VALUE: \$ 25,000.00 **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)

Funding for this contract is available in the FY25 budget - General Fund - Budget Code: 10019100-6720

*(If required)**
CRC Approval Date*: N/A **Council Approval Date*:** 10/07/24 **Agenda Item No*:**

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION FUNDING AGREEMENT
FOR PAYMENT AND USE OF GENERAL FUNDS WITH BRYAN/College Station
CHAMBER OF COMMERCE D/B/A BRYAN/COLLEGE STATION CHAMBER OF
COMMERCE**

This Funding Agreement is by and between the **City of College Station**, a Texas Home Rule Municipal Corporation (“City”) and the **BRYAN/COLLEGE STATION CHAMBER OF COMMERCE D/B/A BRYAN/COLLEGE STATION CHAMBER OF COMMERCE**, a Texas Non – Profit Corporation (“Agency”).

WHEREAS, Agency’s mission is to enhance the economic well-being of the businesses of the community, and

WHEREAS, the City desires to assist Agency by providing funding under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree and contract as follows:

**ARTICLE I
DEFINITIONS**

1.1 Agency means the Bryan/College Station Chamber of Commerce d/b/a Bryan/College Station Chamber of Commerce, a Texas Non-Profit Corporation.

1.2 City means the City of College Station, County of Brazos, and the State of Texas.

1.3 Contract Quarter means any quarter of the contract year in which this Agreement is in force. Contract Quarters will end on December 31st, March 31st, June 30th, and September 30th, of each contract year.

1.4 Financial Activity Report means a report which includes a summary of revenues and expenditures for the current Contract Quarter as well as the current fiscal year to date, and a summary of assets and liabilities to be submitted to the City on the form attached herein as **Exhibit A** or in a form agreed on by Agency and City.

1.5 Financial Records means invoices, receipts, bank statements, reconciliations, cleared checks, financial statements and audit reports.

1.6 Narrative Summary of Activity Report means the quarterly summary report of the activities of Agency including a summary of how funds from City have been utilized to accomplish the Agency’s work. Such report shall be submitted on the form attached herein as **Exhibit B**.

1.7 Performance Measure Report means the quarterly report to determine the levels of service being provided by Agency to be submitted to the City on the form attached herein as **Exhibit C**.

1.8 Event includes but is not limited to any and all banquets, ceremonial dinners, fundraising events, promotional programs, or other public or private event hosted by the Agency.

1.9 Reimbursement Request Form means the form documenting and certifying expenses incurred within each quarterly reporting period by Agency to be submitted to the City on the form attached herein as **Exhibit E**.

ARTICLE II STATEMENT OF WORK

2.1 Agency will provide events throughout the fiscal year, including the Economic Outlook Conference and Annual Banquet, at local hotel and conference facilities. Costs associated with these events related to the hotel and conference facilities and the promotion of these facilities will be eligible for reimbursement. Eligible expenses shall include rental of hotel and conference facilities as well as catering costs associated with these events.

- a. In addition to events listed in 2.1 Agency will also provide the benefits listed in **Exhibit F** of this Funding Agreement.

2.2 Attending Events. The City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City at no additional cost to the City.

ARTICLE III PAYMENT

3.1 For and in consideration of the activities satisfactorily performed by Agency under this Agreement, City shall provide funding in the amount of **TWENTY-FIVE THOUSAND DOLLARS AND NO/100 CENTS (\$25,000.00)** from the City's General Fund. The appropriated funds shall be used during the period of **October 1, 2024, to September 30, 2025**. Payment will be considered for reimbursement provided the following:

- a. the City receives the Reimbursement Request Form, and.
- b. funds are available. Payment will be made annually as a reimbursement for services and expenditures already incurred by Agency. Agency shall submit its application for reimbursement to the City, along with supporting documentation and the City shall reimburse Agency for its services no later than thirty (30) calendar days from the date of the City's receipt and the City's approval of the application for reimbursement.

- c. No funds will be reimbursed until City receives the Reimbursement Request Form along with all required receipts, bills, payroll records, canceled checks and other proofs of expenditures, as determined by City, in its sole discretion. The final request for reimbursement must be received by City on or before September 30, 2025. After that date, unexpended funds may be reallocated. Unexpended funds will remain in the possession of the City.

3.2 City may withhold further payments and allocations if City determines Agency's expenditures materially deviate from their Statement of Work or if reports required herein are not submitted in a complete and timely manner.

ARTICLE IV RECORDS AND REPORTS

4.1 Agency shall maintain financial records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other documentation to verify all expenditures of funds under the terms of this Agreement. Said documentation shall conform to the City's accounting practices.

4.2 Written Records. Agency shall maintain written records and supporting documents as required under this Agreement for all applicable, generally accepted, and required administrative and operating policies. Agency shall maintain such records, accounts, reports, files or other documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this 3-year period and for as long as the records are retained by Agency.

4.3 Access to Records. Agency shall provide the City reasonable access during regular business hours to books, accounts, records, reports, files or other papers related to this Agreement belonging to or in use by Agency. Upon written request of the City, or City Manager, Agency shall make such financial records available for inspection and review by the party making the request. Agency understands and accepts that all such financial records and any other records relating to this Agreement shall be subject to the Public Information Act, Tex. Gov't Code, §552, as amended.

4.4 Quarterly Reports. Agency shall submit the following to the City on a quarterly basis as provided in this Agreement:

- (a) Financial Activity Report
- (b) Narrative Summary of Activity Report
- (c) Performance Measure Report

Agency shall respond promptly to any request from the City Manager, or his designee, for additional information relating to the activities performed under this Agreement.

4.5 Reports. The Financial Activity Reports, Performance Measure Reports, and Narrative Summary of Activity Reports shall be submitted to the City within thirty (30) days of the end of each Contract Quarter (no later than January 30th April 30th; July 30th, and October 30th of each contract year).

4.6 Financial Audit. A copy of the Agency financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.7 Monitoring Review. The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews. City shall provide written notice twenty-four (24) hours in advance of such review and a brief description of how that review is to be conducted.

4.8 Presentation. If requested, Agency shall make an annual report and presentation to the City Council.

ARTICLE V AGENCY BOARD OF DIRECTORS

5.1 Agendas. Agency shall provide the City with an agenda of all regular and special Board meetings five (5) days before the meeting with information as to the date, time and place of meeting. If a special meeting is scheduled, Agency shall immediately notify the City of a special meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone, depending on Agency's own notification of the Board meeting. Agendas shall be made available to the public seventy-two (72) hours before the meeting at a location accessible to the public including but not limited to the Agency's website.

5.2 Minutes. Agency shall submit minutes of each Board of Directors meeting and Executive Committee meeting to the City within ten (10) days after approval of the minutes.

5.3 Appointees. The City shall have the option to recommend up to three (3) appointees for any vacancies that occur on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

ARTICLE VI TERM AND TERMINATION

6.1 Term. The Agreement term begins October 1, 2024, and terminates at midnight October 31, 2025. However, the program period shall begin October 1, 2024, and terminates at midnight September 30, 2025. Only those expenditures authorized under the Statement of Work, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination.

- (a) **For Convenience.** This Agreement may be terminated for convenience by giving sixty (60) days advance written notice.
- (b) **Funding Out.** This Agreement may be terminated with sixty (60) days advance written notice by the City if funds are not appropriated.
- (c) In the event this Agreement is terminated by either party pursuant to §6.2, City agrees to reimburse Agency for any contractual obligations Agency has undertaken in satisfactory performance of those activities specified hereinabove. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.
- (d) Further, upon termination pursuant to §6.2, Agency will provide City:
 - (1) Within thirty (30) days, a full accounting of all expenditures not previously reviewed by City
 - (2) Within five (5) business days, a listing of expenditures that have occurred since the last required reporting period
 - (3) A final accounting of all expenditures on the day of termination. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

6.3 Automatic Termination and Breach.

- (a) **Automatic Termination.** This Agreement with written notice shall automatically terminate upon the occurrence of any of the following events:
 - (1) The termination of the legal existence of Agency.
 - (2) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors.
- (b) **Breach.** This Agreement with written notice shall terminate upon the occurrence of any of the following events:

(1) Thirty (30) days after a written notice of the breach of any of the terms or conditions of this Agreement by the Agency if the Agency fails to cure the breach.

(2) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date City notifies Agency of such breach.

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 Refund of Funds. In the event that this Agreement is terminated pursuant to §§6.3 or 6.4 of this Agreement, Agency agrees to refund any and all unused funds, or funds determined by City to have been used improperly, within thirty (30) days after termination of this Agreement.

ARTICLE VII INDEMNIFICATION AND RELEASE

7.1 Indemnification. The Agency 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 Agency and funded 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 Agency, 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.

7.2 Release. The Agency assumes full responsibility for the work to be performed and funded 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 Agency's work to be performed and funded 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 Agency, 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 VIII INSURANCE

8.1 The Agency 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 services performed by the Agency, its officers, agents, volunteers, and employees.

8.2 The Agency'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 policies are attached in **Exhibit D**.

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

8.3 Types. Agency shall have the following types of insurance:

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

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

- (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 D**; and shall be approved by the City before work begins.
- (c) Agency 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.

8.5 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 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.
- (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.

8.6 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 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.

8.7 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 IX GENERAL PROVISIONS

9.1 Other Agreements. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in Article II above. In the event Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments.

9.2 Binding Agreement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

9.3 Personal Intent. The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

9.4 Non-discrimination. Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or disability. Agency will take affirmative action to ensure that applicants who are hired are treated, during employment, without regard to their race, color, religion, sex, national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination requirement.

9.5 Equal Opportunity. Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.

9.6 Religious Affiliation. Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will not provide religious instruction or counseling, conduct religious worship or services, or engage in religious proselytizing in the provision of services or the use of facilities or furnishings assisted in any way under this Agreement.

9.7 Independent Contractor. Agency is an independent contractor and not an agent or representative of the City and the obligation to compensate employees furnished or used by Agency to provide the services specified in Article II shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose. This Agreement does not create a joint venture.

9.8 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.

9.9 Venue. This Agreement will be performed and has been made under and shall be governed by the laws of the State of Texas, Brazos County.

9.10 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 organizations.

9.11 Waiver of Terms. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. 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.

9.12 Agreement Read. The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

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

9.14 Counterparts. 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.

9.15 Invalid Provisions. 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.

9.16 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 any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

9.17 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City:

City of College Station
Attn: Mary Ellen Leonard
Fiscal Services Department
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842

Agency:

Bryan/College Station Chamber of Commerce
Attn: Glen Brewer, President/CEO
P.O. Box 3579
Bryan, Texas 77805

9.18 Funding Source. Agency understands and agrees to state in all published material, announcements and advertising regarding activities funded with City funding that the activity was made possible in part through funding from the City of College Station. If there is not published activity material, a sign must be displayed and a verbal announcement must be made at the time of the activity.

9.19 Verification No Boycott. To the extent applicable, this Agreement is subject to the following:

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

9.20 Governmental Immunity. This Agreement is subject to the proper application of the doctrine of governmental immunity.

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

List of Exhibits:

- A. Statement of Financial Position
- B. Narrative Summary of Activity
- C. Performance Measures
- D. Certificates of Insurance
- E. Reimbursement Request Form
- F. Additional Benefits

**BRYAN/COLLEGE STATION
CHAMBER OF COMMERCE**

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager

Date: _____

EXHIBIT A
Statement of Financial Position

Bryan/College Station Chamber of Commerce

Balance Sheet

As of August 31, 2024

	Aug 31, 24
ASSETS	
Current Assets	
Checking/Savings	
Extraco Trust Account	74,564.56
Truist MM Account	72,472.49
Prosperity Bank CD	254,116.19
Amarillo National Bank MM	88,844.45
Extraco Savings Account	186.69
Frost Bank MM	154,746.05
Petty Cash	598.24
American Momentum CD	105,786.30
Extraco Bank CD	182,994.44
Guaranty Bank & Trust CD	104,911.19
First Financial-Building Fund	2,593.67
First Financial-Operating	548,724.83
First Financial-Payroll Act	1,000.00
Total Checking/Savings	1,591,539.10
Accounts Receivable	
Accounts Receivable	19,000.00
Total Accounts Receivable	19,000.00
Total Current Assets	1,610,539.10
Fixed Assets	
Building	48,035.96
Land	710,130.25
Fixed Assets	
Furniture and Equipment	128,931.56
Leasehold Improvements	255,820.00
Accumulated Depreciation	-301,383.00
Total Fixed Assets	83,368.56
Total Fixed Assets	841,534.77
TOTAL ASSETS	2,452,073.87
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	3,328.38
Total Accounts Payable	3,328.38
Other Current Liabilities	
Def Rev EOC Sponsor	2,500.00
Deferred Revenue	
St. Joe's Health	
Health and Wellness Event	2,500.00
Annual Banquet Table of 10	1,200.00
EOC Briefing Table Sponsor	400.00
Total St. Joe's Health	4,100.00
Capital Farm Credit	
Ag Breakfast	1,500.00
Annual Banquet Table	1,000.00
Total Capital Farm Credit	2,500.00
Guaranty Bank & Trust	
Annual Banquet Table	720.00
Total Guaranty Bank & Trust	720.00
Amarillo National Bank	

Bryan/College Station Chamber of Commerce

Balance Sheet

As of August 31, 2024

	Aug 31, 24
Annual Banquet Sponsorship	1,000.00
Total Amarillo National Bank	1,000.00
First Financial Bank	
Def Annual Banquet Rev	900.00
Total First Financial Bank	900.00
TAMU Funding	
Contract Funding	10,600.00
Membership Break/Lunch	2,500.00
Annual Banquet	1,200.00
EOC Sponsor	2,000.00
B/CS Day - Austin Trip	2,500.00
Discretionary	585.00
Total TAMU Funding	19,385.00
Def Revenue - Leadership Progra	500.00
Def Revenue-Leadership Brazos	15,000.00
Def Reveune B/CS Day	2,500.00
Def Revenue Health&Well Lunch	2,500.00
Def Revenue Career Fair	3,000.00
Def Revenue-Unassigned	1,410.00
Deferred Revenue - Other	1,500.00
Total Deferred Revenue	55,015.00
Payroll Liabilities.	
United Way Contribution Payable	520.00
SUI Tax Payable	-4.31
Pension Contribution Payable	5,417.24
Payroll Liabilities	241.98
FUTA Tax Payable	-2.52
Total Payroll Liabilities.	6,172.39
Accrued Office Expense	1,960.24
Due To LBAA	-181.24
Total Other Current Liabilities	65,466.39
Total Current Liabilities	68,794.77
Total Liabilities	68,794.77
Equity	
Facility Reserves	28,925.49
General Unrestricted	2,004,139.02
Net Income	350,214.59
Total Equity	2,383,279.10
TOTAL LIABILITIES & EQUITY	2,452,073.87

Bryan/College Station Chamber of Commerce

Profit & Loss

October 2023 through August 2024

	Oct '23 - Aug 24
Ordinary Income/Expense	
Income	
LBAA Anniversary	
LBAA Anniv. Event	41,036.00
Total LBAA Anniversary	41,036.00
Contract Income	29,150.00
Annual Banquet Revenues	
Banquet Sponsorship	9,000.00
Banquet Table Sales	42,200.00
Banquet Ticket Revenue	9,450.00
Total Annual Banquet Revenues	60,650.00
Economic Outlook Conf Revenues	96,765.00
Founder's Night Revenue	
Founder's Night Admiss Revenue	8,030.00
Founder's Night Other Revenue	310.00
Founder's Night Sponsorship	47,550.00
Prior Year Founder's Night	2,433.00
Total Founder's Night Revenue	58,323.00
Golf Tournament Revenues	
Golf Other Revenue	400.00
Golf Sponsorship	79,350.00
Golf Tourney Entry Fees	2,000.00
Prior Year Golf Tourney	8,939.76
Total Golf Tournament Revenues	90,689.76
Governmental Affairs Revenues	
B/CS Day (Austin/DC)	95,250.00
Gvnmt Affairs Sponsorship	5,140.00
Total Governmental Affairs Revenues	100,390.00
Job Fair Revenues	
Job Fair Booth Fees	6,630.00
Job Fair Sponsorship	8,000.00
Total Job Fair Revenues	14,630.00
Leadership Div Revenues	
Jr LB Other Revenue	2,980.00
Jr LB Sponsorship Grants	22,350.00
Jr LB Tuition Fees	2,050.00
LB Other Revenue	1,946.00
LB Scholarship Grants	7,400.00
LB Tuition Fees	35,237.70
Total Leadership Div Revenues	71,963.70
Lobsterfest Revenues	
Lobsterfest Admissions	1,800.00
Lobsterfest Sponsorship	24,700.00
Prior Year LobsterFest	5,710.00
Total Lobsterfest Revenues	32,210.00
Membership Directory Revenues	
Directory Ad Revenue	22,770.00
Directory Add'l List Revenue	1,850.00
Mobile Upgrade Sales	4,706.25
Total Membership Directory Revenues	29,326.25
Membership Recruitment	
Membership Drive Admin Fee	280.00

10:24 AM

09/10/24

Accrual Basis

Bryan/College Station Chamber of Commerce

Profit & Loss

October 2023 through August 2024

	Oct '23 - Aug 24
Membership Drive Sales	24,755.00
Total Membership Recruitment	25,035.00
New Membership Sales Revenue	
New Dues-Sales	59,850.00
New Dues Admin Fee	35.00
Student Membership Dues Revenue	150.00
Total New Membership Sales Revenue	60,035.00
Other Community Devlpmt Act Rev	
AG Breakfast Revenue	18,380.00
AG Buying Group/Crawfish Boil	44,793.95
Career Fair Revenue	9,430.00
Water Cooler 5K	20,140.00
Total Other Community Devlpmt Act Rev	92,743.95
Other Membership Act Revenues	
Ambassador Revenue	2,183.00
Biz After Hours Sponsorship	35,610.00
Deluxe Ribbon Cutting	26,450.00
Inner Circle Fees	5,810.00
Inner Circle Sponsor	2,842.50
Insider Report Advertising	1,800.00
M'ship Diversity Sponsorship	6,000.00
Mem Break/Lunch Revenue	59,033.00
Member product Sponsorship	2,500.00
New Member Briefing Sponsorship	3,000.00
Newsletter Advertising Revenue	5,055.00
Web Site Advertising Revenue	1,850.00
Website Enhancement	2,225.00
Total Other Membership Act Revenues	154,358.50
Other Revenues	
Certificates of Origin	272.00
Interest/Royalty Revenue	17,124.14
Other Income	6,555.27
Total Other Revenues	23,951.41
Other Special Project Revenues	
Special Events Registration	240.00
Special Events Sponsorship	21,700.00
Other Special Project Revenues - Other	10.00
Total Other Special Project Revenues	21,950.00
Renewal Dues	464,188.58
Taste of Aggieland Revenues	
TOA/Admission Fees	22,729.20
TOA/Booth Revenue	4,100.00
TOA/Sponsorship Revenue	13,500.00
TOA/Taxable Drinks	1,006.33
TOAOther Revenue	90.00
Total Taste of Aggieland Revenues	41,425.53
Tourism Revenues	
Tourism Funding/Bryan	0.00
Tourism Funding/College Station	25,000.00
Total Tourism Revenues	25,000.00
Total Income	1,533,821.68
Gross Profit	1,533,821.68

Bryan/College Station Chamber of Commerce

Profit & Loss

October 2023 through August 2024

	Oct '23 - Aug 24
Expense	
LBAA Anniversary Expenses	
LBAA Anniv. Event Expense	17,441.19
Total LBAA Anniversary Expenses	17,441.19
HOA Assessment	2,285.43
Reconciliation Discrepancies	-965.00
Annual Banquet Expenses	
Annual Banquet/Committee	126.19
Annual Banquet/Other Exp	28,166.45
Total Annual Banquet Expenses	28,292.64
Bank Charges/Note Payments	
Credit Card Fees	16,247.87
Interest Exp	520.02
Bank Charges/Note Payments - Other	284.88
Total Bank Charges/Note Payments	17,052.77
Economic Outlook Conf Expenses	
Econ Outlook Conf/Other Exp	27,867.17
Total Economic Outlook Conf Expenses	27,867.17
Founder's Night Expenses	
Founder's Night/Other Expenses	11,079.96
Founder's Night/Postage	521.34
Total Founder's Night Expenses	11,601.30
Golf Tournament Expenses	
Golf Tourney/Other Exp	3,095.33
Total Golf Tournament Expenses	3,095.33
Governmental Affairs Expenses	
B/CS Day Exp	81,202.43
Candidate Forum	27.03
Govmt'I Aff/Meals and Ent	4,850.48
Govmt'I Aff/Other Exp	2,955.07
Total Governmental Affairs Expenses	89,035.01
Job Fair Expenses	
Job Fair/Other Exp	72.99
Job Fair Expenses - Other	1,805.00
Total Job Fair Expenses	1,877.99
Leadership Div Expenses	
Jr LB/Meals	10,499.20
Jr LB/Other Exp	4,852.76
LB/Meals	1,747.87
LB/Other Exp	4,093.61
LBAA/Meals	1,042.96
Total Leadership Div Expenses	22,236.40
Lobster Fest Expenses	
LobsterFest/Other Exp	1,336.33
Total Lobster Fest Expenses	1,336.33
Membership Directory Expenses	
Directory/Other Exp	13,909.42
Directory/Postage	2,754.74
Total Membership Directory Expenses	16,664.16
Other Community Devlpmt Act Exp	

Bryan/College Station Chamber of Commerce

Profit & Loss

October 2023 through August 2024

	Oct '23 - Aug 24
AG Breakfast Exp	4,695.04
AG Buying Group	44,444.89
Career Fair Exp	6,422.09
Community Devlpmt/Other Exp	2,175.25
Community Devlpmt/Staff Mileage	108.34
Water Cooler 5K Exp	3,346.36
Total Other Community Devlpmt Act Exp	61,191.97
Other Membership Act Expenses	
Ambassador/Meals	804.36
Ambassador/Other Exp	604.95
Deluxe Ribbon Cutting/Other Exp	44.80
Inner Circle/Other Exp	4,184.26
M'ship Break/Lunch/Other Exp	12,505.24
M'ship Diversity/Other Exp	1,480.05
Membership/ Staff Mileage	99.03
Membership/Other Exp	1,465.85
Membership/Promo & Sales	500.00
Newsletter/Other Exp	13,399.31
Newsletter/Postage	2,717.20
Total Other Membership Act Expenses	37,805.05
Other Operating Expenses	
Rent-Twin City Properties	38,400.00
Audit/Legal/Professional	32,231.10
Board Exp	1,193.72
Board exp-meals	553.01
Committee Expenses	-913.89
Director/Officer Liability Ins	1,741.00
Equipment and Fixture Purchase	156.90
Equipment Lease Exp	6,928.03
Events/Activities	6,285.48
Executive Conferences	10,868.60
Fees Expense	1,118.61
Internet Exp	3,041.23
Janitorial Expense	2,777.04
Kitchen Supplies	451.80
Meals and Entertainment	3,354.64
Office Supplies	3,004.91
Postage	
Postage Purchase Pool	3,919.24
Total Postage	3,919.24
Printing/Photography	258.75
Property Tax Exp	44.38
Property/Casualty Ins	3,847.00
Software/Technical Support	14,630.51
Staff Mileage	
Core Servs/Staff Mileage	7,763.99
Total Staff Mileage	7,763.99
Subscriptions/Dues Exp	5,128.56
Sympathy/Recognition Exp	185.37
Telephone Exp	2,611.09
Travel	19.80
Workmen's Comp Ins Exp	1,205.00
Total Other Operating Expenses	150,805.87
Other Special Project Expenses	
Special Events/Other Exp	10,093.28
Total Other Special Project Expenses	10,093.28

Profit & Loss

October 2023 through August 2024

	Oct '23 - Aug 24
Salaries and Benefits Expenses	
Bonuses	35,076.02
Commissions	40,898.75
Dental Insurance	
Contra-WH Dent Ins	-446.64
Emp And Dep Dent Ins	3,659.21
Total Dental Insurance	3,212.57
Fringe Benefits incl. in Emp W2	0.00
FUTA Tx Exp	495.32
Health Insurance	
Contra-WH Dep Ins	-7,783.67
Emp and Dep Hth Ins	66,531.96
Total Health Insurance	58,748.29
Vision	
Contra-WH Dep. ins	-69.68
Emp and Dep Vision Ins	823.38
Total Vision	753.70
Life and STD Insurance	
Contra-WH Lf STD LTD	-468.39
Life ADD STD LTD	8,226.77
Total Life and STD Insurance	7,758.38
Medicare Tx Exp	7,641.67
Pension Plan Contr	29,672.15
Sal and Wages	426,022.78
Sick Pay	6,478.55
Social Security Tx Exp	32,674.64
SUI Tx Exp	267.67
Vacation Pay	19,317.34
Total Salaries and Benefits Expenses	669,017.83
Taste of Aggieland Expenses	
TOA/Meals	76.82
TOA/Other Exp	16,795.55
Total Taste of Aggieland Expenses	16,872.37
Total Expense	1,183,607.09
Net Ordinary Income	350,214.59
Net Income	350,214.59

EXHIBIT B
Narrative Summary of Activity Report

EXHIBIT C
Performance Measures

EXHIBIT D
Certificates of Insurance



BRYACOL-04

BDREIER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/10/2024

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 Dexter & Company of Central Texas, Inc. 4030 Highway 6 S. Ste. 310 College Station, TX 77845	CONTACT NAME: Breanna Dreier-Gligoor	
	PHONE (A/C, No, Ext): (979) 764-8444 FAX (A/C, No): (979) 694-7603	
	E-MAIL ADDRESS: bdreier@dextercompany.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Allmerica Financial Benefit Insurance Company	41840
INSURED Bryan College Station Chamber of Commerce 1733 Briarcrest Dr. Ste 200 Bryan, TX 77802	INSURER B : Chubb Indemnity Insurance Company	12777
	INSURER C : Philadelphia Indemnity Insurance Company	18058
	INSURER D : ACE American Insurance Company	22667
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:			Z2DH877593	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			Z2DH877593	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$			Z2DH877593	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	71776505	5/1/2024	5/1/2025	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
C	Directors and Office			PHSD1800609-005	7/1/2024	7/1/2025	1,000,000
D	Cyber Liability			D94684377	1/1/2024	1/1/2025	1,000,000

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

The General Liability policy includes an additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. The General Liability policy also has Primary and Non-Contributory wording.

The Worker's Compensation policy includes a blanket Waiver of Subrogation to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

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



ADDITIONAL REMARKS SCHEDULE

AGENCY Dexter & Company of Central Texas, Inc.		NAMED INSURED Bryan College Station Chamber of Commerce 1733 Briarcrest Dr. Ste 200 Bryan, TX 77802
POLICY NUMBER SEE PAGE 1		
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:

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

REIMBURSEMENT REQUEST FORM

CITY OF COLLEGE STATION

GENERAL FUND FUNDING REQUEST

AGENCY:			
CONTRACT EXPENSES:	BUDGETED	CURRENT REQUEST	YEAR TO DATE REQUESTED
	\$	\$	\$
(INVOICES OR ACCEPTABLE ALTERNATIVE DOCUMENTATION MUST BE SUBMITTED)			
TOTAL	\$	\$	\$
REIMBURSEMENT REQUEST		\$	
EXPENSES FOR THE PERIOD OF:			
AMOUNT REMAINING IN FUNDING AGREEMENT	\$		

I hereby request reimbursement for approved program expenses to date in the amount of \$ _____. I certify that the request for reimbursement submitted is accurate and in accordance with the approved funding agreement.

Signature of Authorized Agency Contact

Date

Agency's Certification and Reimbursement Request Form	
Agency Name	Contract #
Program Name	
Name of Agency Contact	Agency's Address
I. Agency's Certification and Reimbursement Request	
I hereby certify: ☐ The information presented on this form is true and complete to the best of my knowledge; ☐ All programs and services have been executed in accordance with the terms and requirements of the contract; ☐ All expenses for which payment is being requested herein were incurred by the above-referenced program(s); ☐ All approved Board minutes and agendas have been received by the Budget and Financial Reporting Department; ☐ All signed and dated Financial Activity Reports, Narrative Reports, Performance Measures and Expenditure Reports have been received by the Budget and Financial Reporting Department; ☐ All supporting documentation to substantiate this request has been received by the Budget and Financial Reporting Department. ☐ The agency is in full compliance with the terms and conditions of the above referenced contract. I hereby request reimbursement for approved program expenses to date in the amount of \$ _____. Signature of Agency Contact Date	
II. Contract Manager's Certification	
I have reviewed the documents submitted for the _____ quarter by the above-referenced agency and agree that all services and expenditures have been satisfactorily completed in accordance with all applicable requirements and terms of the above referenced contract number. I hereby approve payment to the agency in the amount of \$ _____. Signature of Contract Manager Date	
III. Budget Manager's Certification	
I hereby approve payment to the agency in the amount of \$ _____. Signature of Budget Manager Date	

Exhibit F

List of Additional Benefits

Agency shall provide the following to City:

1. Annual Banquet

- City shall be listed as title sponsor on all media, invitation, and signage at event.
- Chamber shall provide table of 12, front and center at event.
- Mayor and spouse shall be seated at head table.
- Mayor shall introduce keynote speaker.

2. Economic Outlook Conference

- City shall be listed as hospitality sponsor on all media, invitation, notebook, and signage at event.
- Chamber shall provide table of 8 front and center at event and luncheon.
- Mayor shall be seated at head table or speakers table at luncheon if such tables are provided.
- Mayor will be provided an opportunity to make remarks at the beginning of the event.

3. Membership /Membership Listing

- Chamber shall provide 1 Platinum Membership valued at \$2,130 at Silver Membership rate of \$720.
- Chamber shall provide the following listings in Annual Directory:
 - City of College Station City Council (John Nichols, Mayor)
 - City of College Station (Bryan Woods, City Manager)
 - City of College Station Parks and Recreation (Kelsey Heiden, Parks and Recreation Director) Listed under Event Facilities and Recreation
 - College Station Utilities (Timothy Crabb, Electric Utility Director; Gary Mechler, Water Services Director) Listed under Utilities

4. Leadership Brazos

- Chamber shall provide \$1,000 to be used for scholarships to City employee(s) selected through the normal selection process.

5. Legislative Affairs

- Chamber shall include 4 attendees on legislative trip to Austin (not including accommodations), list City as a sponsor, and include signage acknowledging sponsorship at reception.
- Chamber shall include 2 attendees on trip to Washington DC
 - Airfare and accommodations will not be paid by the Chamber.
 - Chamber will pay for meals provided to the group, and transportation to and from the airport and any other activity requiring transport.

6. Advertising

- Chamber shall provide a full-page ad in the Annual Directory at either the inside front cover or inside back cover.

October 7, 2024

Item No. 7.7.

FY25 Funding Agreement for Keep Brazos Beautiful from the Solid Waste Fund in the amount of \$48,230.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a funding agreement with Keep Brazos Beautiful for FY25 for \$48,230.

Relationship to Strategic Goals:

Core Services & Infrastructure

Good Governance

Financial Sustainability

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

Summary: As part of the 2024-2025 budget process the City Council approved funding for Keep Brazos Beautiful in the amount of \$48,230.

Budget & Financial Summary: The funds for this agreement are budgeted and available in the 2024-2025 Solid Waste Fund: \$34,990 is to be used for the operations and maintenance, and \$13,240 is to be used for reimbursable expenses for community enhancement projects, events administered by Keep Brazos Beautiful, such as their Annual Awards Gala, Texas Trash-Off and other public landscape and litter-abatement projects.

Attachments:

1. 25300007 - Keep Brazos Beautiful



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300007 PROJECT #: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: City of College Station Funding Agreement for Payment and use of Solid Waste Funds with Keep Brazos Beautiful

Name of Contractor: Keep Brazos Beautiful, Inc.

CONTRACT TOTAL VALUE: \$ 48,230.00 **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)

Funding for this contract is available in the FY25 budget - Solid Waste Fund - Budget Code: 52149100-6720

(If required)*
CRC Approval Date*: N/A **Council Approval Date*:** 10/07/24 **Agenda Item No*:** _____

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

Insurance Certificates: _____ **Performance Bond:** _____ **Payment Bond:** _____ **Info Tech:** _____

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION FUNDING AGREEMENT
FOR PAYMENT AND USE OF SOLID WASTE FUNDS WITH
KEEP BRAZOS BEAUTIFUL, INCORPORATED**

This Funding Agreement is by and between the **City of College Station**, a Texas Home Rule Municipal Corporation (“City”) and the **KEEP BRAZOS BEAUTIFUL, INC** a Texas Non – Profit Corporation (“Agency”).

WHEREAS, City has the objective of improving the environment of the community via litter abatement, beautification, and public education; and

WHEREAS Agency through its purpose shares this common goal with the City; and

WHEREAS the City desires to assist Agency in providing litter abatement and community enhancement efforts; and

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree, and contract as follows:

**ARTICLE I
DEFINITIONS**

1.1 Agency means Keep Brazos Beautiful, Incorporated, a Texas Non-Profit Corporation.

1.2 City means the City of College Station, County of Brazos, and the State of Texas.

1.3 Contract Quarter means any quarter of the contract year in which this Agreement is in force. Contract Quarters will end on December 31st, March 31st, June 30th, and September 30th, of each contract year.

1.4 Financial Activity Report means a report which includes a summary of revenues and expenditures for the current Contract Quarter as well as the current fiscal year to date, and a summary of assets and liabilities to be submitted to the City on the form attached herein as **Exhibit A** or in a form agreed on by Agency and City.

1.5 Financial Records means invoices, receipts, bank statements, reconciliations, cleared checks, financial statements, and audit reports.

1.6 Narrative Summary of Activity Report means the quarterly summary report of the activities of Agency including a summary of how funds from City have been utilized to accomplish the Agency’s work. Such report shall be submitted on the form attached herein as **Exhibit B**.

1.7 Performance Measure Report means the quarterly report to determine the levels of service being provided by Agency to be submitted to the City on the form attached herein as **Exhibit C**.

1.8 Event includes but is not limited to any and all banquets, ceremonial dinners, fundraising events, promotional programs, or other public or private event hosted by the Agency.

ARTICLE II STATEMENT OF WORK

2.1 Agency shall promote and facilitate activities that enhance the beautification of the local area through education, community events, and litter abatement programs in the City of College Station. Agency agrees that no more than **THIRTY-FOUR THOUSAND NINE HUNDRED AND NINETY DOLLARS AND NO/100 DOLLARS (\$34,990.00)** from the City of College Station shall be spent for general operations of Agency to conduct such programs.

2.2 Agency shall provide pass-through funding for the Community Enhancement Grant, which includes several events and public landscape projects. Event and project proposals shall be submitted to City in writing for approval. Upon written approval from City, Agency shall implement and complete the Community Enhancement project according to the requested timeline. Agency agrees that no more than **THIRTEEN THOUSAND TWO HUNDRED FORTY AND NO/100 DOLLARS (\$13,240.00)** from the City of College Station shall be spent for Community Enhancement projects. Agency shall implement the following projects:

(a) **TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00)** of Community Enhancement funding shall be used to support contracted commitments of community enhancement to local gateways, parks, and other projects. Agency shall coordinate and obtain approval of each project from the City Manager or his delegate prior to implementing project. Such projects shall be submitted for approval as stated in 2.2 above.

(b) **TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00)** of Community Enhancement funding shall be used for the purchase of supplies, equipment, and services for the annual Don't Mess With Texas Trash-Off event.

(c) **FOUR THOUSAND SEVEN HUNDRED FORTY AND NO/100 DOLLARS (\$4,740.00)** of Community Enhancement funding will be used to support the Annual Awards Gala through event sponsorship and table purchase for City staff and award recipients.

(d) **FOUR THOUSAND AND NO/100 DOLLARS (\$4,000.00)** of Community Enhancement funding will be used for the purchase of supplies, equipment, and services for the Wildflower Seeds project.

2.3 Attending Events. The City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City at no additional cost to the City.

ARTICLE III PAYMENT

3.1 For and in consideration of the activities to be satisfactorily performed by Agency under this Agreement, City shall provide funding in the amount of **FOURTY-EIGHT THOUSAND TWO HUNDRED AND THIRTY AND NO/100 DOLLARS (\$48,230.00)** to be paid as follows:

(a) The total amount of **THIRTY-FOUR THOUSAND NINE HUNDRED AND NINETY DOLLARS AND NO/100 DOLLARS (\$34,990.00)** shall be paid from the City's Solid Waste Fund for the general operations of Agency. Payments will be made in four (4) quarterly installments of **\$8,747.50**. These appropriated funds shall be used during the period of October 1, 2024, to September 30, 2025.

(b) The total amount of **THIRTEEN THOUSAND TWO HUNDRED FORTY AND NO/100 DOLLARS (\$13,240.00)** shall be paid from the City's Solid Waste Fund for Community Enhancement Projects approved in writing in advance by City:

(1) Agency shall submit invoice to City requesting payment for public landscape and community enhancement projects. Payment(s) shall be made within thirty (30) days of receipt of invoice.

(2) Agency shall submit invoice to City requesting payment for the purchase of supplies, equipment, and services for the Don't Mess With Texas Trash-Off event. Payment shall be made within thirty (30) days of receipt of invoice.

(3) Agency shall submit invoices to City requesting payment for Annual Awards Gala related expenditures. Payment shall be made within thirty (30) days of receipt of invoice.

(4) Agency shall submit invoices to City requesting payment for Wildflower Seeds project related expenditures. Payment shall be made within thirty (30) days of receipt of invoice.

3.2 Funding will also be dependent upon the City receiving all reports required herein from the Agency no later than thirty (30) days after the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, October 30th of each contract year).

3.3 City may withhold further payments and allocations if City determines Agency's expenditures materially deviate from their Statement of Work or if reports required herein are not submitted in a complete and timely manner.

3.4 Other limitations regarding consideration.

(a) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of City.

(b) City may withhold further allocations if City determines that Agency's expenditures deviate materially from their Statement of Work or if the reports required herein are not submitted in a complete and timely manner.

(c) Funding from the City may not be spent for the purchase or serving of alcoholic beverages.

ARTICLE IV RECORDS AND REPORTS

4.1 Agency shall maintain financial records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other documentation to verify all expenditures of funds under the terms of this Agreement. Said documentation shall conform to the City's accounting practices.

4.2 Written Records. Agency shall maintain written records and supporting documents as required under this Agreement for all applicable, generally accepted, and required administrative and operating policies. Agency shall maintain such records, accounts, reports, files, or other documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this 3-year period and for as long as the records are retained by Agency.

4.3 Access to Records. Agency shall provide the City reasonable access during regular business hours to books, accounts, records, reports, files, or other papers related to this Agreement belonging to or in use by Agency. Upon written request of the City, or City Manager, Agency shall make such financial records available for inspection and review by the party making the request. Agency understands and accepts that all such financial records and any other records relating to this Agreement shall be subject to the Public Information Act, Tex. Gov't Code, §552, as amended.

4.4 Quarterly Reports. Agency shall submit the following to the City on a quarterly basis as provided in this Agreement:

- (a) Financial Activity Report
- (b) Narrative Summary of Activity Report
- (c) Performance Measure Report

Agency shall respond promptly to any request from the City Manager, or his designee, for additional information relating to the activities performed under this Agreement.

4.5 Reports. The Financial Activity Reports, Performance Measure Reports, and Narrative Summary of Activity Reports shall be submitted to the City within thirty (30) days of the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year).

4.6 Financial Audit. A copy of the Agency financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.7 Monitoring Review. The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews. City shall provide written notice twenty-four (24) hours in advance of such review and a brief description of how that review is to be conducted.

4.8 Presentation. If requested, Agency shall make an annual report and presentation to the City Council.

ARTICLE V AGENCY BOARD OF DIRECTORS

5.1 Agendas. Agency shall provide the City with an agenda of all regular and special Board meetings five (5) days before the meeting with information as to the date, time, and place of meeting. If a special meeting is scheduled, Agency shall immediately notify the City of a special meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone, depending on Agency's own notification of the Board meeting. Agendas shall be made available to the public seventy-two (72) hours before the meeting at a location accessible to the public including but not limited to the Agency's website.

5.2 Minutes. Agency shall submit minutes of each Board of Directors meeting and Executive Committee meeting to the City within ten (10) days after approval of the minutes.

5.3 Appointees. The City shall have the option to recommend up to three (3) appointees for any vacancies that occur on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

ARTICLE VI TERM AND TERMINATION

6.1 Term. The Agreement term begins October 1, 2024, and terminates at midnight October 31, 2025. However, the program period shall begin October 1, 2024, and terminates at midnight September 30, 2025. Only those expenditures authorized under the Statement of Work, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination.

- (a) For Convenience.** This Agreement may be terminated for convenience by giving sixty (60) days advance written notice.
- (b) Funding Out.** This Agreement may be terminated with sixty (60) days advance written notice by the City if funds are not appropriated.

- (c) In the event this Agreement is terminated by either party pursuant to §6.2, City agrees to reimburse Agency for any contractual obligations Agency has undertaken in satisfactory performance of those activities specified hereinabove. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.
- (d) Further, upon termination pursuant to §6.2, Agency will provide City:
 - (1) Within thirty (30) days, a full accounting of all expenditures not previously reviewed by City
 - (2) Within five (5) business days, a listing of expenditures that have occurred since the last required reporting period
 - (3) A final accounting of all expenditures on the day of termination. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

6.3 Automatic Termination and Breach.

- (a) **Automatic Termination.** This Agreement with written notice shall automatically terminate upon the occurrence of any of the following events:
 - (1) The termination of the legal existence of Agency.
 - (2) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors.
- (b) **Breach.** This Agreement with written notice shall terminate upon the occurrence of any of the following events:
 - (1) Thirty (30) days after a written notice of the breach of any of the terms or conditions of this Agreement by the Agency if the Agency fails to cure the breach.
 - (2) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date City notifies Agency of such breach.

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 Refund of Funds. In the event that this Agreement is terminated pursuant to §§6.3 or 6.4 of this Agreement, Agency agrees to refund any and all unused funds, or funds determined by City to have been used improperly, within thirty (30) days after termination of this Agreement.

ARTICLE VII INDEMNIFICATION AND RELEASE

7.1 Indemnification. The Agency 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 Agency and funded 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 Agency, 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.

7.2 Release. The Agency assumes full responsibility for the work to be performed and funded 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 Agency's work to be performed and funded 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 Agency, 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 VIII INSURANCE

8.1 The Agency 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 services performed by the Agency, its officers, agents, volunteers, and employees.

8.2 The Agency'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 policies are attached in **Exhibit D**.

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

8.3 Types. Agency shall have the following types of insurance:

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

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

- (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 D**; and shall be approved by the City before work begins.
- (c) Agency 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.

8.5 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 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.
- (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.

8.6 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 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.

8.7 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 is 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 IX GENERAL PROVISIONS

9.1 Other Agreements. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in Article II above. In the event Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments.

9.2 Binding Agreement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

9.3 Personal Intent. The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee, or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

9.4 Non-discrimination. Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or disability. Agency will take affirmative action to ensure that applicants who are hired are treated, during employment, without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination requirement.

9.5 Equal Opportunity. Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.

9.6 Religious Affiliation. Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will not provide religious instruction or counseling, conduct religious worship or services, or engage in religious proselytizing in the provision of services, or the use of facilities or furnishings assisted in any way under this Agreement.

9.7 Independent Contractor. Agency is an independent contractor and not an agent or representative of the City and the obligation to compensate employees furnished or used by Agency to provide the services specified in Article II shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose. This Agreement does not create a joint venture.

9.8 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.

9.9 Venue. This Agreement will be performed and has been made under and shall be governed by the laws of the State of Texas, Brazos County.

9.10 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 organizations.

9.11 Waiver of Terms. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. 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.

9.12 Agreement Read. The parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.

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

9.14 Counterparts. 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.

9.15 Invalid Provisions. 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.

9.16 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 any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

9.17 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.

Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City:

City of College Station
Attn: Mary Ellen Leonard
Fiscal Services Department
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842

Agency:

Keep Brazos Beautiful, Incorporated
Attn: J. Brooke Arellano, Executive Director
1713 Broadmoor Drive Suite 302
Bryan, TX 77802

9.18 Funding Source. Agency understands and agrees to state in all published material, announcements and advertising regarding activities funded with City funding that the activity was made possible in part through funding from the City of College Station. If there is not published activity material, a sign must be displayed, and a verbal announcement must be made at the time of the activity.

9.19 Verification No Boycott. To the extent applicable, this Agreement is subject to the following:

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

9.20 Governmental Immunity. This Agreement is subject to the proper application of the doctrine of governmental immunity.

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

List of Exhibits:

- A.** Statement of Financial Position
- B.** Narrative Summary of Activity
- C.** Performance Measures
- D.** Certificates of Insurance

KEEP BRAZOS BEAUTIFUL, INC

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager

Date: _____

EXHIBIT A
FINANCIAL ACTIVITY REPORT

Q3 Financial Report

KEEP BRAZOS BEAUTIFUL, INC.

Fiscal Year to last month, as of August 31, 2024



Prepared by

John Burrencia & J. Brooke Arellano

Prepared on

September 6, 2024

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Balance Sheet

As of August 31, 2024

	Total
ASSETS	
Current Assets	
Bank Accounts	
Cash - Wells Fargo checking	0.00
Prosperity Bank Checking - 8571	49,500.20
Prosperity Bank MMA - 2504	102,902.83
Total Bank Accounts	152,403.03
Accounts Receivable	
Accounts Receivable	-900.00
Total Accounts Receivable	-900.00
Other Current Assets	
1499 Undeposited Funds	0.00
Total Other Current Assets	0.00
Total Current Assets	151,503.03
Fixed Assets	
Furniture and equipment	0.00
Accumulated Depreciation	-7,202.00
Original Cost	7,202.00
Total Furniture and equipment	0.00
Total Fixed Assets	0.00
TOTAL ASSETS	\$151,503.03
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts payable	750.00
Total Accounts Payable	750.00
Other Current Liabilities	
Direct Deposit Payable	0.00
Payroll Liabilities	0.00
Federal Taxes (941/944)	527.99
NC Income Tax	65.00
TX Unemployment Tax	0.00
Total Payroll Liabilities	592.99
Retirement payable	0.00
Total Other Current Liabilities	592.99
Total Current Liabilities	1,342.99
Total Liabilities	1,342.99
Equity	

	Total
3000 Opening Bal Equity	0.00
Net Assets	0.00
Permanently Restricted	0.00
Temporarily restricted	0.00
Unrestricted	0.00
Total Net Assets	0.00
Unrestricted net assets	144,606.46
Net Income	5,553.58
Total Equity	150,160.04
TOTAL LIABILITIES AND EQUITY	\$151,503.03

Profit and Loss

October 2023 - August 2024

	Total
INCOME	
1XX Pledged Support	
10X Program Support	
101 Brazos County	15,000.00
103 City of College Station	31,001.07
Total 10X Program Support	46,001.07
Total 1XX Pledged Support	46,001.07
3XX Estimated Income	
31X Interest	1,278.53
Total 3XX Estimated Income	1,278.53
City of Bryan Project Grants	40,000.00
Total Income	87,279.60
GROSS PROFIT	87,279.60
EXPENSES	
6XX Operational Expense	770.01
60X Board/Networking	80.27
601 Insurance - Liability & BOD	1,381.73
603 Dues & Memberships	1,015.00
604 Meeting Expenses	73.12
Total 60X Board/Networking	2,550.12
62X Office	
621 Rent/Storage	11,550.00
622 Telephone	914.65
623 Website/Internet	1,575.30
624 Professional Services	2,795.00
626 Supplies	2,350.77
629 Maintenance	59.50
Total 62X Office	19,245.22
65X Staff	
651 Staff Salary	39,904.35
653 Payroll Taxes	3,052.68
654 Worker's Comp Insurance	1,093.81
656 Prof. Development & Travel	1,614.55
Total 65X Staff	45,665.39
Total 6XX Operational Expense	68,230.74
7XX-9XX Program Expenses	
7XX Required Programs	
72X Recycling Programs	99.00
76X Beautification Program	

	Total
763 Wildflower Program	7,921.50
Total 76X Beautification Program	7,921.50
780 Awards Ceremony Expense	4,641.98
Total 7XX Required Programs	12,662.48
Total 7XX-9XX Program Expenses	12,662.48
Advertising	832.80
Total Expenses	81,726.02
NET OPERATING INCOME	5,553.58
NET INCOME	\$5,553.58

Exhibit B
Narrative Summary of Activity Report

Please provide a narrative summary of the quarterly activities funded by the City of College Station. Including a year-to-date summary of City-funded programming elements would also be beneficial. Use additional sheets if more space is needed.

Exhibit C
Performance Measures

Exhibit D
Certificates of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/6/2024

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: Evelyn Stein PHONE (A/C, No, Ext): 979-774-6212 E-MAIL ADDRESS: stein@anco.com	FAX (A/C, No): 979-774-5372
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Hartford Underwriters Insuranc		30104
INSURER B : Texas Mutual Insurance Company		22945
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** 1920564465 **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:			61SBAAN1XDB	9/1/2024	9/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			61SBAAN1XDB	9/1/2024	9/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	0001224531	5/24/2024	5/24/2025	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)

The general liability policy includes a blanket additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. The general liability and workers' compensation policies include a blanket waiver of subrogation that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
Attn: Risk Management
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

© 1988-2015 ACORD CORPORATION. All rights reserved.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

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

2. Operations: ALL TEXAS OPERATIONS

3. Premium:

The premium charge for this endorsement shall be **2.00** 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 5/24/24 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001224531 of Texas Mutual Insurance Company effective on 5/24/24

Issued to: KEEP BRAZOS BEAUTIFUL INC

This is not a bill

NCCI Carrier Code: 29939



Authorized representative

4/22/24



BLANKET ADDITIONAL INSURED BY CONTRACT

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

Except as otherwise stated in this endorsement, the terms and conditions of the Policy apply.

A. The following is added to Section C. WHO IS AN INSURED:

Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written contract or written agreement, or when required by a written permit issued by a state or governmental agency or subdivision or political subdivision that such person or organization be added as an additional insured on your Coverage Part, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by any other endorsement issued by us and made a part of this Coverage Part.

The insurance afforded to such additional insured will not be broader than that which you are required by the contract, agreement, or permit to provide for such additional insured.

The insurance afforded to such additional insured only applies to the extent permitted by law.

The limits of insurance that apply to additional insureds are described in Section **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**. How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;



- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- b. Lessors Of Equipment**
 - (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
 - (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.
- c. Lessors Of Land Or Premises**
 - (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
 - (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.
- d. Architects, Engineers Or Surveyors**
 - (1) Any architect, engineer, or surveyor, 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 connection with your premises;
 - (b) In the performance of your ongoing operations performed by you or on your behalf; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if:
 - (i) The written contract, written agreement or permit requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
 - (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

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

 - (i) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (ii) Supervisory, surveying, inspection, architectural or engineering activities.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property



damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service.

e. State Or Governmental Agency Or Subdivision Or Political Subdivision Issuing Permit

- (1) Any state or governmental agency or subdivision or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not in one of the categories or classes listed above in Paragraphs a. through e. above, 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 performed by you or on your behalf;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if:
 - (i) The written contract, written agreement or permit requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

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

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

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service described in Paragraphs f.(2)(a) or f.(2)(b) above.



BUSINESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the insurance company shown in the Declarations.

"Policy period", as used in this Coverage Part, means the period from the effective date of this Coverage Part to the expiration date of the Coverage Part as stated in the Declarations or the date of cancellation, whichever is earlier.

The word "insured" means any person or organization qualifying as such under Section **C. Who Is An Insured**.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **F. Liability And Medical Expenses Definitions**.

A. COVERAGES

1. Business Liability Coverage (Bodily Injury, Property Damage, Personal And Advertising Injury) Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D. Liability And Medical Expenses Limits Of Insurance**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (b) The "bodily injury" or "property damage" occurs during the policy period; and
- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section **C. Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C. Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or



(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. Medical Expenses

Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

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

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

3. Coverage Extension - Supplementary Payments

a. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

(1) All expenses we incur.

(2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish, finance, arrange for, guarantee, or collateralize these bonds, whether the collateralization is characterized as premium or not.

(4) 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.

(5) All court costs taxed against the insured in the "suit". However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed against the insured.

(6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.



- (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the Limits of Insurance.

- b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "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; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".



b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or
- (b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:
 - (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
- (3) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol; or
- (4) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2), (3) or (4) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving, or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.



This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this paragraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this paragraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".



However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

(1) Unmanned Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Exclusion **g.(1)** 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 "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

(2) Aircraft (Other Than Unmanned Aircraft), Auto or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Exclusion **g.(2)** 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 "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This Exclusion **g.(2)** does not apply to:

- (a)** A watercraft while ashore on premises you own or rent;
- (b)** A watercraft you do not own that is:
 - (i)** Less than 51 feet long; and
 - (ii)** Not being used to carry persons or property for a charge;
- (c)** Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (d)** Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft (other than "unmanned aircraft") or watercraft;
- (e)** "Bodily injury" or "property damage" arising out of:
 - (i)** The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
 - (ii)** The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or
- (f)** An aircraft (other than "unmanned aircraft") that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1)** The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2)** The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Pharmaceutical services including but not limited to:
 - (a) The administering, prescribing, preparing, distributing or compounding of pharmaceutical drugs, vaccinations, immunizations or any of their component parts;
 - (b) The providing of or failure to provide home health care or home infusion products or services; and
 - (c) Advising and consulting customers;
- (11) Computer consulting, design or programming services, including web site design.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, 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 you sell, give away or abandon, if the "property damage" arises out of any part of those premises;



- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your 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, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D. Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. 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 if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written, electronic, or any other manner of publication of material, if done by or at the direction of the insured with knowledge of its falsity;



- (2) Arising out of oral, written, electronic, or any other manner of publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of:
 - (a) Any actual or alleged infringement or violation of any intellectual property rights, such as copyright, patent, right of publicity, trademark, trade dress, trade name, trade secret, service mark or other designation of origin or authenticity; or
 - (b) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made against you, or by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

- (i) Infringement, in your "advertisement", of:
 - a. Copyright;
 - b. Slogan; unless the slogan is also a trademark, trade dress, trade name, service mark or other designation of origin or authenticity; or
 - c. Title of any literary or artistic work; or
- (ii) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

Paragraph (7)(b)ii above shall not apply to claims or "suits" alleging infringement or violation of trademark, trade dress, trade name, service mark or other designation of origin or authenticity.

- (8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section F. Liability And Medical Expenses Definitions.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:

- (a) Advertising content for others on your web site;
- (b) Placing a link to a web site of others on your web site;

- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

(13) Arising out of a violation of any anti-trust law;

(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities;

(15) Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information; or

(16) Arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "personal and advertising injury" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

However, this exclusion does not apply if the only allegation in the claim or "suit" involves an intellectual property right which is limited to:

- (a) Infringement, in your "advertisement", of:
 - (i) Copyright;
 - (ii) Slogan; or
 - (iii) Title of any literary or artistic work; or
- (b) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

q. Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability

(1) Damages because of "bodily injury" or "property damage" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

This exclusion applies even if such damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraphs (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or

- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, malicious prosecution or false arrest directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or "suit" alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
 - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - (c) Arise out of any claim or "suit" for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section D. Liability And Medical Expenses Limits Of Insurance.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business, other than that described in **b.** through **e.** below, of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(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), or 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 that "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.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:



(a) Owned, occupied or used by:

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, 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 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

(1) "Bodily injury" or "property damage" that occurred; or

(2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator Of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons or property for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:



- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

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.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance required in a written contract, written agreement or permit; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this Policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this Policy and the endorsements is the single highest limit of liability of all



coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured under this Coverage Part must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured under this Coverage Part must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured under this Coverage Part must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured under this Coverage Part, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with such additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured under this Coverage Part only when such "occurrence", offense, claim or "suit" is known to:



- (1) You or any additional insured under this Coverage Part that is an individual;
- (2) Any partner, if you or an additional insured under this Coverage Part is a partnership;
- (3) Any manager, if you or an additional insured under this Coverage Part is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured under this Coverage Part is a corporation;
- (5) Any trustee, if you or an additional insured under this Coverage Part is a trust; or
- (6) Any elected or appointed official, if you or an additional insured under this Coverage Part is a political subdivision or public entity.

This Paragraph f. applies separately to you and any additional insured under this Coverage Part.

3. Legal action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

5. Representations

a. When You Accept This Policy

By accepting this Policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this Policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

6. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

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

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk, Owner Controlled Insurance Program or OCIP, Contractor Controlled Insurance Program or CCIP, Wrap Up Insurance or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **B.** Exclusions.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **B.** Exclusions.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

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

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

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.



If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

7. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purpose of attracting customers or supporters is considered an advertisement.
2. "Advertising idea" means any idea for an "advertisement".
3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.
4. "Auto" means:
 - a. A land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.However, "auto" does not include "mobile equipment".
5. "Bodily injury" means physical:
 - a. Injury;
 - b. Sickness; or
 - c. Diseasesustained by a person and, if arising out of the above, mental anguish or death at any time.
6. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or



(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication.

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of "electronic data", means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
if such property can be restored to use by:
 - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
12. "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, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. Liability And Medical Expenses Limits Of Insurance.
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement; or
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume 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. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.
However, 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, designs 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; or

- (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.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or motor vehicle registration law are considered "autos".
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written, electronic, or any other manner of publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written, electronic, or any other manner of publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".
- 18. "Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20. "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; or
 - 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 "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21. "Suit"** means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

- 22.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 23.** "Unmanned aircraft" means an aircraft that is not:
- a.** Designed;
 - b.** Manufactured; or
 - c.** Modified after manufacture;
- to be controlled directly by a person from within or on the aircraft.
- 24.** "Volunteer worker" means a person who:
- a.** Is not your "employee";
 - b.** Donates his or her work;
 - c.** Acts at the direction of and within the scope of duties determined by you; and
 - d.** Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 25.** "Your product":
- a.** Means:
 - (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a)** You;
 - (b)** Others trading under your name; or
 - (c)** A person or organization whose business or assets you have acquired; and
 - (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - b.** Includes:
 - (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2)** The providing of or failure to provide warnings or instructions.
 - c.** Does not include vending machines or other property rented to or located for the use of others but not sold.
- 26.** "Your work":
- a.** Means:
 - (1)** Work or operations performed by you or on your behalf; and
 - (2)** Materials, parts or equipment furnished in connection with such work or operations.
 - b.** Includes:
 - (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2)** The providing of or failure to provide warnings or instructions.

October 7, 2024

Item No. 7.8.

FY25 Funding Agreement for Memorial for All Veterans of the Brazos Valley from the HOT Fund in the amount of \$30,000.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a funding agreement with the Memorial for All Veterans of the Brazos Valley for FY25 for \$30,000.

Relationship to Strategic Goals:

Core Services & Infrastructure

Good Governance

Financial Sustainability

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

Summary: As part of the 2024-2025 budget process the City Council approved funding for the Memorial for All Veterans of the Brazos Valley in the amount of \$30,000. The funding is for repair and maintenance in the memorial grounds.

Budget & Financial Summary: The funds for this agreement are budgeted and available in the 2024-2025 Hotel Occupancy Tax Fund. State law requires that the City Council adopt the budget of any organization that is to be funded through Hotel Tax revenue. The Memorial for all Veteran's of the Brazos Valley budget is included in the Attachments.

Attachments:

1. 25300006 - Veterans Memorial
2. BVVM 2025 Budget



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300006 PROJECT #: _____ BID/RFP/RFQ#: _____

Project Name / Contract Description: City of College Station Funding Agreement for Payment
and Use of Hotel Tax Funds with Brazos Valley Veterans Memorial

Name of Contractor: Brazos Valley Veterans Memorial

CONTRACT TOTAL VALUE: \$ 30,000.00 **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)

Funding for this contract is available in the FY25 budget - HOT Fund - Budget Code: 31219100-6720

(If required)*

CRC Approval Date*: _____ **Council Approval Date*:** 10/07/24 **Agenda Item No*:** _____

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

Insurance Certificates: _____ **Performance Bond:** _____ **Payment Bond:** _____ **Info Tech:** _____

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION FUNDING AGREEMENT FOR
PAYMENT AND USE OF HOTEL TAX WITH
MEMORIAL FOR ALL VETERANS OF THE BRAZOS VALLEY D/B/A BRAZOS
VALLEY VETERANS MEMORIAL**

This Funding Agreement is made between the **City of College Station**, a Texas Home Rule Municipal Corporation (“City”), and the **MEMORIAL FOR ALL VETERANS OF THE BRAZOS VALLEY D/B/A BRAZOS VALLEY VETERANS MEMORIAL**, a Texas Non-Profit Corporation (“Agency”).

WHEREAS Texas Tax Code §§351.002 and 351.003(a) authorize City to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, City has provided for the assessment and collection of a municipal hotel occupancy tax in the City of College Station of seven percent (7%); and

WHEREAS Tax Code §351.101(a) authorizes and limits the City to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry; and

WHEREAS Agency is well equipped to perform those activities as referenced in Tax Code §351.101 (a); and

WHEREAS Tax Code §351.101(c) authorizes City to delegate by contract with Agency; as an independent entity, the management or supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax; and

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree, and contract as follows:

**ARTICLE I
DEFINITIONS**

1.1 Agency means the Memorial for All Veterans of the Brazos Valley d/b/a Brazos Valley Veterans Memorial, a Texas Non-Profit Corporation to which the City has delegated the management or supervision of programs and activities funded with Hotel Tax Revenue.

1.2 City means the City of College Station, in the County of Brazos, and the State of Texas.

1.3 Financial Activity Report means a report which includes a summary of revenues and expenditures for the current Contract Quarter as well as the current fiscal year to date, and a summary of assets and liabilities to be submitted to the City on the form attached herein as **Exhibit A** or in a form agreed on by Agency and City.

1.4 Financial Records means invoices, receipts, bank statements, reconciliations, cleared checks, financial statements, and audit reports.

1.5 Narrative Summary of Activity Report means the quarterly summary report of the activities of Agency including a summary of how funds from City have been utilized to accomplish the Agency's work. Such report shall be submitted on the form attached herein as **Exhibit B**.

1.6 Performance Measure Report means the quarterly report to determine the levels of service that are being provided by Agency to be submitted to the City on the form attached herein as **Exhibit C**.

1.7 Event includes but is not limited to: any and all banquets, ceremonial dinners, fundraising events, promotional programs, or other public or private event hosted by the Agency.

1.8 Expenditure Report means a quarterly report listing the expenditures made by the Agency with Hotel Tax Revenue pursuant to Tax Code §§351.101 and 351.108.

1.9 Hotel Tax Revenue means the gross monies collected and received by City as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Tax Code 351.003 (a) and City Ordinance. Hotel Tax Revenue will include penalty and interest related to the late payments of the tax revenue by the taxpayer.

ARTICLE II HOTEL TAX REVENUE PAYMENT

2.1 Consideration and Payment. For and in consideration of the activities to be satisfactorily performed by Agency under this Agreement, City agrees to pay to Agency a portion of the Hotel Tax Revenue collected by City in the total amount of **THIRTY THOUSAND DOLLARS AND NO/100 DOLLARS (\$30,000.00)** to be paid as follows:

- a.** The amount of **THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00)** shall be used for repair and maintenance in the memorial grounds.
- b.** Payment will be made in one lump sum of \$30,000 within thirty (30) days of the close of the first quarter. The appropriated funds shall be used during the period of October 1, 2024, to September 30, 2025.

2.2 Reports and Payments. Agency shall maintain financial records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other documentation to verify all expenditures of funds under the terms of this Agreement. Said documentation shall conform to the City's accounting practices.

2.3 Other limitations regarding consideration.

- a.** It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of City.

- b. City may withhold further payments and allocations if City determines Agency's expenditures deviate from their approved budget subject to §4.1 or if the reports required herein are not submitted in a complete and timely manner.

ARTICLE III USE OF HOTEL TAX REVENUE

3.1 Use of Funds. For and in consideration of the payment by City to Agency of the agreed payments of Hotel Tax Revenue specified above, Agency agrees to use such Hotel Tax Revenue for the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms as authorized by Tax Code §351.101(a).

- (a) **Attending Events.** The City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City at no additional cost to the City to promote tourism and the convention and hotel industry.

3.2 Administrative Costs. The Hotel Tax Revenue received from City by Agency may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in fulfilling a purpose described in §3.1.

3.3 Specific Restrictions on Use of Funds.

- (a) That portion of total administrative costs of Agency for which Hotel Tax Revenue may be used shall not exceed that portion of Agency's administrative costs actually incurred in conducting the activities specified in §3.1.
- (b) Hotel Tax Revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of tourism and the convention and hotel industry or the performance of the person's job in an efficient and professional manner.

ARTICLE IV RECORDKEEPING AND REPORTING REQUIREMENTS

4.1 Budget.

- (a)** Before Agreement execution, Agency shall submit to the City Manager of City or the City Manager's designee, an annual budget to be approved by the City Council for each fiscal year, for such Agency operations funded by Hotel Tax Revenues. This budget shall specifically identify proposed expenditures of Hotel Tax Revenue by Agency. City should be able to audit specifically the purpose of each individual expenditure of Hotel Tax Revenue from the separate account relating to Hotel Tax Revenue. City shall not pay to Agency any Hotel Tax Revenues as set forth in Article II of this Agreement during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the College Station City Council. Approval of the budget by the City Council shall not preclude the Agency from reasonably reallocating funds within the budget among line items to meet changing conditions. Such reallocation shall not necessitate a new approval by the City Council. Failure to submit an annual budget may be considered a breach of contract, and if not remedied is considered grounds for termination of this Agreement as stated in paragraph 6.2.
- (b)** Agency acknowledges that the approval of such budget by the College Station City Council creates a fiduciary duty in Agency with respect to the Hotel Tax Revenue paid by City to Agency under this Agreement. Agency shall expend Hotel Tax Revenue only in the manner and for the purposes specified in this Agreement, Tax Code §351.101(a), and in the budget as approved by City.

4.2 Separate Accounts. Agency shall maintain Hotel Tax Revenue paid to Agency by City in a separate account, or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

4.3 Financial Records. Agency shall maintain a complete and accurate financial record of each expenditure of the Hotel Tax Revenue made by Agency. These funds shall be classified as restricted funds for audited financial purposes.

4.4 Records Inspection. Upon written request of the City Council, City Manager, or their designee; Agency shall make such financial records available for inspection and review by the party making the request. Agency understands and accepts that all such financial records and any other records relating to this Agreement shall be subject to the Public Information Act, Texas Government Code, Chapter 552, as hereafter amended.

4.5 Final Reports. Agency shall submit the following to the City on a quarterly basis as provided in this Agreement:

- (a) Financial Activity Report
- (b) Narrative Summary of Activity Report
- (c) Performance Measure Report
- (d) Expenditure Report

Agency shall respond promptly to any request from the City Manager of City, or the City Manager's designee, for additional information relating to the activities performed under this Agreement.

4.6 Reports. The Financial Activity Report, Performance Measure Report, Narrative Summary and Expenditure Report shall be submitted to the City within thirty (30) days of the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year.)

4.7 Financial Audit. A copy of the Agency's annual financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.8 Monitor Review. The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews. City shall provide written notice twenty-four (24) hours in advance of such review and a brief description of how and by whom that review is to be conducted.

4.9 Presentation. If requested, Agency shall make an annual report and presentation to the City Council.

4.10 Records Retention. Agency shall maintain such records, accounts, reports, files, or other documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this three (3) –year period and for as long as the records are retained by Agency.

ARTICLE V AGENCY BOARD OF DIRECTORS

5.1 Appointees. The City shall have the option to recommend three (3) appointees for any vacancy that occurs on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

5.2 Agendas. Agency shall provide the City with an agenda of all regular and special Board meetings five (5) days before the meeting with information as to the date, time, and place of meeting. If a special meeting is scheduled, Agency shall immediately notify the City of special meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone, depending on Agency's own notification of the Board meeting. Agendas shall be made available to the public seventy-two (72) hours before the meeting at a location accessible to the public, including but not limited to the Agency's website.

5.3 Minutes. Agency shall submit Board of Directors meeting and Executive Committee meeting minutes to the City within ten (10) days after approval of the minutes.

ARTICLE VI TERM AND TERMINATION

6.1 Term. The Agreement term begins on October 1, 2024, and terminates at midnight on October 31, 2025; however, the program period shall commence on October 1, 2024, and terminate at midnight on September 30, 2025. Only those expenditures authorized by Chapter 351 of the Tax Code which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination.

- (a) For Convenience.** This Agreement may be terminated for convenience by giving sixty (60) days advance written notice.
- (b) Funding Out.** This Agreement may be terminated with sixty (60) days advance written notice by the City if funds are not appropriated.
- (c)** In the event this Agreement is terminated by either party pursuant to §6.2, City agrees to reimburse Agency for any contractual obligations Agency has undertaken in satisfactory performance of those activities specified in hereinabove and that were approved by the Council through the budget, as noted in §4.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in §§3.1 through 3.6, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.
- (d)** Further, upon termination pursuant to §6.2, Agency will provide City:
 - (1)** Within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60)-day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by City. If formal approval is not given within ten (10) business days and the budget does not contain any expenditures that would be prohibited by the Tax Code and is within the current contractual period approved budget; the budget will be considered approved.
 - (2)** Within thirty (30) days, a full accounting of all expenditures not previously audited by City.

(3) Within five (5) business days of a request from City, a listing of expenditures that have occurred since the last required reporting period.

(4) A final accounting of all expenditures and tax funds on the day of termination. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in §3.1 and §3.6 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

6.3 Automatic Termination and Breach.

(a) **Automatic Termination.** This Agreement with written notice shall automatically terminate upon the occurrence of any of the following events:

(1) The termination of the legal existence of Agency

(2) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors

(b) **Breach.** This Agreement with written notice shall terminate upon the occurrence of any of the following events:

(1) Thirty (30) days after a written notice of the breach of any of the terms or conditions of this Agreement by the Agency if the Agency fails to cure the breach

(2) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date City notifies Agency of its breach of this obligation

(3) The failure of Agency to submit a Quarterly Expenditure Report as required by Tax Code §351.101(c) within thirty (30) days from the date City notifies Agency of its breach of this obligation

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 Refund of Funds. In the event that this Agreement is terminated pursuant to §§6.3 or 6.4 of this Agreement, Agency agrees to return, refund, and reimburse any and all unused funds, or funds

determined by City to have been used improperly, within thirty (30) days after termination of this Agreement.

ARTICLE VII INDEMNIFICATION AND RELEASE

7.1 Indemnification. The Agency 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 Agency and funded 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 Agency, 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.

7.2 Release. The Agency assumes full responsibility for the work to be performed and funded 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 Agency's work to be performed and funded 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 Agency, 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 VIII GENERAL PROVISIONS

8.1 Other Agreements. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in in this Agreement. In the event Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments.

8.2 Binding Agreement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

8.3 Personal Interest. The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee, or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

8.4 Non-discrimination. Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or disability. Agency will take affirmative action to ensure that applicants who are hired are treated, during employment, without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination requirement.

8.5 Equal Opportunity. Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.

8.6 Religious Affiliation. Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will not provide religious instruction or counseling, conduct religious worship or services, or engage in religious proselytizing in the provision of services, or the use of facilities or furnishings assisted in any way under this Agreement.

8.7 Independent Contractor. Agency is an independent contractor and not an agent or representative of the City and the obligation to compensate employees furnished or used by Agency to provide the services specified in Article II shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose. This Agreement does not create a joint venture.

8.8 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.

8.9 Venue. This Agreement will be performed and has been made under and shall be governed by the laws of the State of Texas, Brazos County.

8.10 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 organizations.

8.11 Waiver of Terms. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. 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.

8.12 Agreement Read. The parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.

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

8.14 Counterparts. 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.

8.15 Invalid Provisions. 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.

8.16 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 any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

8.17 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City:

City of College Station
Attn: Mary Ellen Leonard
Fiscal Services Department
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842

Agency:

Memorial for All Veterans of the Brazos
Valley
Attn: Randolph W House, President
P.O. Box 11055
College Station, Texas 77842

9.18 Funding Source. Agency understands and agrees to state in all published material, announcements and advertising regarding activities funded with City funding that the activity was made possible in part through funding from the City of College Station. If there is not published activity material, a sign must be displayed, and a verbal announcement must be made at the time of the activity.

9.19 Verification No Boycott. To the extent applicable, this Agreement is subject to the following:

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

9.20 Governmental Immunity. This Agreement is subject to the proper application of the doctrine of governmental immunity.

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

List of Exhibits:

- A. Statement of Financial Position
- B. Narrative Summary of Activity
- C. Performance Measures

[Signatures on Following Page]

BRAZOS VALLEY VETERANS MEMORIAL CITY OF COLLEGE STATION

By: _____

Printed Name: _____

Title: _____

Date: _____

City Manager

Date: _____

City Attorney

Date: _____

Assistant City Manager

Date: _____

Exhibit A
Statement of Financial Position

MEMORIAL FOR ALL VETERANS OF THE BRAZOS VALLEY, INC.
STATEMENT OF FINANCIAL POSITION
DECEMBER 31, 2022 AND 2021

ASSETS	2022	2021
Current assets:		
Cash and cash equivalents	\$ 157,644	\$ 149,538
Receivables	60,000	60,744
Inventory	2,700	2,700
Total current assets	<u>220,344</u>	<u>212,982</u>
Permanent collection (Note 5)	<u>2,080,361</u>	<u>2,006,486</u>
Fixed assets:		
Furniture and equipment	33,959	33,959
Landscaping	41,727	41,727
Land	20,000	20,000
Less accumulated depreciation	<u>(74,855)</u>	<u>(74,348)</u>
Net fixed assets	<u>20,831</u>	<u>21,338</u>
TOTAL ASSETS	<u>\$ 2,321,536</u>	<u>\$ 2,240,806</u>
LIABILITIES AND NET ASSETS		
Current liabilities:		
Accounts payable	<u>\$ -</u>	<u>\$ 605</u>
Total current liabilities	<u>-</u>	<u>605</u>
Net assets:		
Without donor restrictions	2,259,636	2,196,878
With donor restrictions (restated)	<u>61,900</u>	<u>43,323</u>
Total net assets	<u>2,321,536</u>	<u>2,240,201</u>
TOTAL LIABILITIES AND NET ASSETS	<u>\$ 2,321,536</u>	<u>\$ 2,240,806</u>

See notes to financial statements and independent auditor's report.

MEMORIAL FOR ALL VETERANS OF THE BRAZOS VALLEY, INC.
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED DECEMBER 31, 2022
WITH COMPARATIVE TOTALS FOR 2021

			Totals	
	Without Donor Restrictions	With Donor Restrictions	2022	2021
REVENUES				
Support				
Contributions	\$ 13,353	\$ -	\$ 13,353	\$ 18,242
Brazos County	-	30,000	30,000	30,000
City of College Station	-	30,000	30,000	30,000
City of Bryan	-	30,000	30,000	30,000
Total support	13,353	90,000	103,353	108,242
Wall of Honor fees	23,650	-	23,650	26,849
Interest income and other	483	-	483	76
Net assets released from purpose restrictions	71,423	(71,423)	-	-
Total revenue	108,909	18,577	127,486	135,167
EXPENSES				
Program expenses	30,094	-	30,094	20,930
General and administrative expenses	16,057	-	16,057	16,640
Total expenses	46,151	-	46,151	37,570
Change in net assets	62,758	18,577	81,335	97,597
Net assets, beginning of year (restated)	2,196,878	43,323	2,240,201	2,142,604
Net assets, end of year	\$ 2,259,636	\$ 61,900	\$ 2,321,536	\$ 2,240,201

See notes to financial statements and independent auditor's report.

Exhibit B
Narrative Summary of Activity Report

Exhibit C
Performance Measures

Brazos Valley Veterans Memorial

Proposed Budget for FY 2025

(1/1/25 - 12/31/25)

	Line	GRAND TOTAL	Operating Fund	Capital Fund	R & R* Fund	Footnotes [Excludes Depreciation & In-kind (rent & advert.)]
	Projected Balance Forward (as of 1/1/25)	\$ 109,231	\$ 33,000	\$ 26,231	\$ 50,000	
NON-DIRECTED INCOME	1 Membership Dues (including lunches)	5,000	5,000	-	-	Membership dues and lunch reimbursements from board members
	2 Unrestricted donations	4,000	4,000	-	-	
	3 Interest Income	2,500	2,500	-	-	
	Total Non-Directed Income	11,500	11,500	-	-	
DIRECTED INCOME	4 Wall of Honor Names	37,500	37,500	-	-	Based on 150 names x \$250 per name Requesting \$30K from each city & county.
	5 Submarine Project	90,000	-	90,000	-	
	6 Other	-	-	-	-	
	Total Directed Income	127,500	37,500	90,000	-	
	TOTAL SOURCES OF FUNDS	248,231	82,000	116,231	50,000	
ANNUAL EXPENSES	7 Engraving of Honor Wall Names	24,750	24,750	-	-	Cost to engrave names (150 names x \$165 per name)
	8 Administrative Support	6,000	6,000	-	-	Admin Salary \$500 per month
	9 Audit & Tax Return	5,500	5,500	-	-	Audit & Tax Return
	10 Monthly Meeting	1,200	1,200	-	-	Monthly Meeting Expense (reimbursed by board members as part of membership dues)
	11 Printing	1,500	1,500	-	-	Printing for Wall of Honor certificates, brochures, interpretive panel copies, etc
	12 Memorial Maintenance & Repair	600	600	-	-	As needed
	13 Advertisement	2,000	2,000	-	-	Advertisement (Excludes in-kind)
	14 Kiosk , Computer & Website Maint.	900	900	-	-	Kiosk & Website Maintenance & development; computer replacement
	15 Credit card service fees	900	900	-	-	Credit card processing fees
	16 Flag replacement	1,600	1,600	-	-	Flags (Replaced May 1st & Nov. 1st each year)
	17 Miscellaneous	600	600	-	-	ACBV Membership Dues and miscellaneous items
	18 Office Supplies	500	500	-	-	As needed
	19 Postage	500	500	-	-	As needed
	20 Insurance	-	-	-	-	Not required separately since under city of CS
	Total Annual Expenses	46,550	46,550	-	-	
CAPITAL OUTLAYS	21 Repair & Replacement Initiative	25,000	-	-	25,000	\$60K anticipated to be carried over into 2026 for completion
	22 Kosovo War	-	-	-	-	
	23 Expeditionary Ops	-	-	-	-	
	24 China Relief / Mex. Border Service	-	-	-	-	
	25 Submarine Project	30,000	-	30,000	-	
	26 Dedication Expenses	-	-	-	-	
	Total Capital Outlays	55,000	-	30,000	25,000	
	TOTAL USES OF FUNDS	101,550	46,550	30,000	25,000	
	EXCESS (DEFICIT)	146,681	35,450	86,231	25,000	
Earmarks against Capital Account Balance as of:			<u>12/31/23</u>	<u>12/31/24</u>	<u>12/31/25</u>	
Balance in Capital Account			\$ 151,231	\$ 116,231	\$ 26,231	
Kosovo War			(28,000)	-	-	Expect completion in 2024
Expeditionary Ops			(7,000)	-	-	Expect completion in 2024
China Relief / Mex. Border Service			(90,000)	-	-	Expect completion in 2024
Submarine			-	(90,000)	-	Project \$30K disbursed in 2025; \$60K carried over into 2026 for completion
Entrance Plaza			(6,500)	(6,500)	(6,500)	
Contingency			(16,074)	(16,074)	(16,074)	
Balance Unencumbered			3,657	3,657	3,657	
			<u>2023</u>	<u>2024</u>	<u>2025</u>	* Repair & Replacement
Balance in Repair & Replacement Fund at Beg. of Year			\$ -	\$ 30,000	\$ 50,000	
Receipts			30,000	60,000	-	
Disbursements			-	(40,000)	(25,000)	
Balance at end of Year			\$ 30,000	\$ 50,000	\$ 25,000	Some portion anticipated to be carried over into 2026 for completion

October 7, 2024

Item No. 7.9.

FY25 Funding Agreement for the Brazos Valley Economic Development Corporation from the General Fund in the amount of \$350,000.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a funding agreement with the Brazos Valley Economic Development Corporation for FY25 for \$350,000.

Relationship to Strategic Goals:

Core Services & Infrastructure

Good Governance

Financial Sustainability

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

Summary: As part of the 2024-2025 budget process the City Council approved funding for the Brazos Valley Economic Development Corporation in the amount of \$350,000.

Budget & Financial Summary: The funds for this agreement are budgeted and available in the 2024-2025 General Fund. The full amount of \$350,000 is to be used for operations and maintenance.

Attachments:

1. 25300001 - Brazos Valley Economic Dev Corp



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300001 PROJECT #: _____ BID/RFP/RFQ#: _____

Project Name / Contract Description: City of College Station Funding Agreement for payment and use of General Funds with Brazos Valley Economic Development Corporation

Name of Contractor: Brazos Valley Economic Development Corporation

CONTRACT TOTAL VALUE: \$ 350,000 **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)

Funding for this contract is available in the FY25 budget - General Fund - Budget Code: 10019100-6720

(If required)*
CRC Approval Date*: N/A **Council Approval Date*:** 10/07/24 **Agenda Item No*:** _____

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

MAYOR (if applicable)

DATE

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

**CITY OF COLLEGE STATION FUNDING AGREEMENT
FOR PAYMENT AND USE OF GENERAL FUNDS WITH
BRAZOS VALLEY ECONOMIC DEVELOPMENT CORPORATION**

This Funding Agreement is by and between the **City of College Station**, a Texas Home Rule Municipal Corporation (“City”) and the **BRAZOS VALLEY ECONOMIC DEVELOPMENT CORPORATION** a Texas Non – Profit Corporation (“Agency”).

WHEREAS, City has the objective of promoting and facilitating activities that enhance the economic base of College Station through attraction, creation, expansion and retention of business and industry, focusing on value added to local resources and manufacturing; and

WHEREAS Agency through its purpose shares this common goal with the City; and

WHEREAS the City desires to assist Agency promoting economic development; and

NOW, THEREFORE, IN CONSIDERATION of the performance of the mutual covenants and promises contained herein, City and Agency agree, and contract as follows:

**ARTICLE I
DEFINITIONS**

1.1 Agency means the Brazos Valley Economic Development Corporation, a Texas Non-Profit Corporation.

1.2 City means the City of College Station, County of Brazos, and the State of Texas.

1.3 Contract Quarter means any quarter of the contract year in which this Agreement is in force. Contract Quarters will end on December 31st, March 31st, June 30th, and September 30th, of each contract year.

1.4 Financial Activity Report means a report which includes a summary of revenues and expenditures for the current Contract Quarter as well as the current fiscal year to date, and a summary of assets and liabilities to be submitted to the City on the form attached herein as **Exhibit A** or in a form agreed on by Agency and City.

1.5 Financial Records means invoices, receipts, bank statements, reconciliations, cleared checks, financial statements, and audit reports.

1.6 Narrative Summary of Activity Report means the quarterly summary report of the activities of Agency including a summary of how funds from City have been utilized to accomplish the Agency’s work. Such report shall be submitted on the form attached herein as **Exhibit B**.

1.7 Performance Measure Report means the quarterly report to determine the levels of service being provided by Agency to be submitted to the City on the form attached herein as **Exhibit C**.

1.8 Event includes but is not limited to any and all banquets, ceremonial dinners, fundraising events, promotional programs, or other public or private event hosted by the Agency.

ARTICLE II STATEMENT OF WORK

2.1 Agency is responsible for promoting and facilitating activities that enhance the economic base of Brazos County through attraction, creation, expansion and retention of business and industry, focusing on value added to local resources and manufacturing.

2.2 Attending Events. The City Council and City Manager or their designees shall have the right to attend Agency events or promotional programs as representatives of the City at no additional cost to the City.

ARTICLE III PAYMENT

3.1 For and in consideration of the activities satisfactorily performed by Agency under this Agreement, City shall provide funding in the amount of **THREE HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 CENTS (\$350,000.00)** from the City's General Fund. The appropriated funds shall be used during the period of **October 1, 2024, to September 30, 2025**. Payment will be made in eleven monthly installments of **\$29,166.67** and the twelfth payment will be **\$29,166.63**.

3.2 Monthly Payments (with the exception of the first four (4) monthly installments hereunder) will be dependent upon the City receiving all reports required herein from the Agency no later than thirty (30) days after the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year).

3.3 City may withhold further payments and allocations if City determines Agency's expenditures materially deviate from their Statement of Work or if reports required herein are not submitted in a complete and timely manner.

ARTICLE IV RECORDS AND REPORTS

4.1 Agency shall maintain financial records and supporting documents in the form of receipts, canceled checks, payroll records, employee time sheets and other documentation to verify all expenditures of funds under the terms of this Agreement. Said documentation shall conform to the City's accounting practices.

4.2 Written Records. Agency shall maintain written records and supporting documents as required under this Agreement for all applicable, generally accepted, and required administrative and operating policies. Agency shall maintain such records, accounts, reports, files, or other

documents for a minimum of three (3) years after the expiration of this Agreement. City's right to access Agency's files shall continue during this 3-year period and for as long as the records are retained by Agency.

4.3 Access to Records. Agency shall provide the City reasonable access during regular business hours to books, accounts, records, reports, files, or other papers related to this Agreement belonging to or in use by Agency. Upon written request of the City, or City Manager, Agency shall make such financial records available for inspection and review by the party making the request. Agency understands and accepts that all such financial records and any other records relating to this Agreement shall be subject to the Public Information Act, Tex. Gov't Code, §552, as amended, ("PIA"), and in the event of a request for disclosure of such records under the PIA, City will notify Agency and seek an opinion from the Attorney General's office before disclosure occurs.

4.4 Quarterly Reports. Agency shall submit the following to the City on a quarterly basis as provided in this Agreement:

- (a) Financial Activity Report
- (b) Narrative Summary of Activity Report
- (c) Performance Measure Report

Agency shall respond promptly to any request from the City Manager, or his designee, for additional information relating to the activities performed under this Agreement.

4.5 Reports. The Financial Activity Reports, Performance Measure Reports, and Narrative Summary of Activity Reports shall be submitted to the City within thirty (30) days of the end of each Contract Quarter (no later than January 30th, April 30th, July 30th, and October 30th of each contract year).

4.6 Financial Audit. A copy of the Agency financial audit shall be made available to City no later than thirty (30) days following Agency's receipt of same.

4.7 Monitoring Review. The City shall conduct a monitoring review of the Agency as deemed necessary by the City so as to evaluate Agency's compliance with the provisions of this Agreement. Said monitoring may consist of on-site monitoring reviews. City shall provide written notice twenty-four (24) hours in advance of such review and a brief description of how that review is to be conducted.

4.8 Presentation. If requested, Agency shall make an annual report and presentation to the City Council.

ARTICLE V AGENCY BOARD OF DIRECTORS

5.1 Agendas. Agency shall provide the City with an agenda of all regular and special Board meetings five (5) days before the meeting with information as to the date, time, and place of meeting. If a special meeting is scheduled, Agency shall immediately notify the City of a special meeting. Said notification should be in writing via facsimile or e-mail; or orally by telephone,

depending on Agency's own notification of the Board meeting. Agendas shall be made available to the public seventy-two (72) hours before the meeting at a location accessible to the public including but not limited to the Agency's website.

5.2 Minutes. Agency shall submit minutes of each Board of Directors meeting and Executive Committee meeting to the City within ten (10) days after approval of the minutes.

5.3 Appointees. The City shall have the option to recommend up to three (3) appointees for any vacancies that occur on the Board of Directors of the Agency during the program year. This provision shall not apply if the City is otherwise authorized to appoint members to the Board under the Agency's Bylaws.

ARTICLE VI TERM AND TERMINATION

6.1 Term. The Agreement term begins October 1, 2024, and terminates at midnight October 31, 2025. However, the program period shall begin October 1, 2024, and terminates at midnight September 30, 2025. Only those expenditures authorized under the Statement of Work, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to City upon termination of the Agreement.

6.2 Termination.

- (a) **For Convenience.** This Agreement may be terminated for convenience by giving sixty (60) days advance written notice.
- (b) **Funding Out.** This Agreement may be terminated with sixty (60) days advance written notice by the City if funds are not appropriated.
- (c) In the event this Agreement is terminated by either party pursuant to §6.2, City agrees to reimburse Agency for any contractual obligations Agency has undertaken in satisfactory performance of those activities specified hereinabove. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.
- (d) Further, upon termination pursuant to §6.2, Agency will provide City:
 - (1) Within thirty (30) days, a full accounting of all expenditures not previously reviewed by City
 - (2) Within five (5) business days, a listing of expenditures that have occurred since the last required reporting period

(3) A final accounting of all expenditures on the day of termination. Agency will be obligated to return any unused funds or funds determined to be used improperly. Any use of remaining funds by Agency after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in Article II above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

6.3 Automatic Termination and Breach.

(a) **Automatic Termination.** This Agreement with written notice shall automatically terminate upon the occurrence of any of the following events:

(1) The termination of the legal existence of Agency.

(2) The insolvency of Agency, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by Agency for the benefit of creditors.

(b) **Breach.** This Agreement with written notice shall terminate upon the occurrence of any of the following events:

(1) Thirty (30) days after a written notice of the breach of any of the terms or conditions of this Agreement by the Agency if the Agency fails to cure the breach.

(2) The failure of Agency to submit quarterly reports which comply with the reporting procedures required herein and generally accepted accounting principles within thirty (30) days from the date City notifies Agency of such breach.

6.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

6.5 Refund of Funds. In the event that this Agreement is terminated pursuant to §§6.3 or 6.4 of this Agreement, Agency agrees to refund any and all unused funds, or funds determined by City to have been used improperly, within thirty (30) days after termination of this Agreement.

ARTICLE VII INDEMNIFICATION AND RELEASE

7.1 Indemnification. The Agency 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 Agency and funded 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 Agency, 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.

7.2 Release. The Agency assumes full responsibility for the work to be performed and funded 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 Agency's work to be performed and funded 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 Agency, 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 VIII INSURANCE

8.1 The Agency 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 services performed by the Agency, its officers, agents, volunteers, and employees.

8.2 The Agency'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 policies are attached in **Exhibit D**.

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

8.3 Types. Agency shall have the following types of insurance:

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

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

- (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 D**; and shall be approved by the City before work begins.
- (c) Agency 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.

8.5 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 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.
- (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.

8.6 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 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.

8.7 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 IX GENERAL PROVISIONS

9.1 Other Agreements. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by Agency with another private entity, person, or organization for the performance of those services described in Article II above. In the event Agency enters into any arrangement, contractual or otherwise, with such other entity, person or organization, Agency shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments.

9.2 Binding Agreement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and Agency and their respective successors and assigns.

9.3 Personal Intent. The City and Agency attest that, to the best of their knowledge, no member of the City of College Station City Council and no other officer, employee, or agent of the City, who exercises any function or responsibility in connection with the carrying out of the terms of this Agreement, has any personal interest, direct or indirect, in this Agreement.

9.4 Non-discrimination. Agency covenants and agrees that, during the term of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or disability. Agency will take affirmative action to

ensure that applicants who are hired are treated, during employment, without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection. Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination requirement.

9.5 Equal Opportunity. Agency expressly agrees that, in all solicitations or advertisements for employees placed by or on behalf of Agency, there will be a statement that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.

9.6 Religious Affiliation. Agency certifies that it will not limit services or give preference to any person assisted through this Agreement on the basis of religion and that it will not provide religious instruction or counseling, conduct religious worship or services, or engage in religious proselytizing in the provision of services, or the use of facilities or furnishings assisted in any way under this Agreement.

9.7 Independent Contractor. Agency is an independent contractor and not an agent or representative of the City and the obligation to compensate employees furnished or used by Agency to provide the services specified in Article II shall be the responsibility of Agency and shall not be deemed employees of the City for any purpose. This Agreement does not create a joint venture.

9.8 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.

9.9 Venue. This Agreement will be performed and has been made under and shall be governed by the laws of the State of Texas, Brazos County.

9.10 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 organizations.

9.11 Waiver of Terms. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. 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.

9.12 Agreement Read. The parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.

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

9.14 Counterparts. 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.

9.15 Invalid Provisions. 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.

9.16 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 any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

9.17 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

City:

City of College Station
Attn: Mary Ellen Leonard
Fiscal Services Department
PO Box 9960
1101 Texas Avenue
College Station, Texas 77842

Agency:

Brazos Valley Economic Development
1716 Briarcrest Drive, Suite 714
Bryan, Texas 77802

9.18 Funding Source. Agency understands and agrees to state in all published material, announcements and advertising regarding activities funded with City funding that the activity was made possible in part through funding from the City of College Station. If there is not published activity material, a sign must be displayed, and a verbal announcement must be made at the time of the activity.

9.19 Verification No Boycott. To the extent applicable, this Agreement is subject to the following:

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

9.20 Governmental Immunity. This Agreement is subject to the proper application of the doctrine of governmental immunity.

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

List of Exhibits:

- A. Statement of Financial Position
- B. Narrative Summary of Activity
- C. Performance Measures
- D. Certificates of Insurance

**BRAZOS VALLEY ECONOMIC
DEVELOPMENT CORPORATION**

CITY OF COLLEGE STATION

By: _____

City Manager

Printed Name: _____

Date: _____

Title: _____

City Attorney

Date: _____

Date: _____

Assistant City Manager

Date: _____

EXHIBIT A
Statement of Financial Position

Brazos Valley Economic Development Corporation

Balance Sheet

As of August 31, 2024

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	\$3,363,206.51
Accounts Receivable	\$67,916.65
Other Current Assets	
1210 Prepaid Expenses	31,917.99
Total Other Current Assets	\$31,917.99
Total Current Assets	\$3,463,041.15
Fixed Assets	
1400 Fixed Assets	
1405 Furniture, Fixtures & Eqpt.	128,200.54
1490 Accumulated Depreciation	-94,476.26
Total 1400 Fixed Assets	33,724.28
Total Fixed Assets	\$33,724.28
TOTAL ASSETS	\$3,496,765.43
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	\$24,634.54
Credit Cards	\$18,486.48
Other Current Liabilities	
2010 Deferred Revenue	29,166.67
2020 Accrued Compensated Absences	6,135.82
Total Other Current Liabilities	\$35,302.49
Total Current Liabilities	\$78,423.51
Total Liabilities	\$78,423.51
Equity	\$3,418,341.92
TOTAL LIABILITIES AND EQUITY	\$3,496,765.43

NO ASSURANCE IS PROVIDED ON THESE FINANCIAL STATEMENTS
OR SCHEDULES

Substantially all disclosures required by GAAP are omitted.

Brazos Valley Economic Development Corporation
Budget vs. Actuals: FY24 Budget
AUGUST 2024

	Current Month				Year-to-Date		
	Actual	Budget	over Budget	% of Budget	YTD Actual	Annual Budget	% of Budget
Income							
4100 Brazos County - OP	\$ 29,167	\$ 29,167	\$ (0)	100.00%	\$ 320,833	\$ 350,000	91.67%
4101 City of Bryan - OP	29,167	29,167	(0)	100.00%	320,831	350,000	91.67%
4102 City of College Station - OP	29,167	29,167	(0)	100.00%	320,833	350,000	91.67%
4103 TAMU Partnership	29,167	29,167	-	100.00%	320,834	350,000	91.67%
4104 Invest Brazos Valley	(250)	33,333	(33,583)	-0.75%	243,000	400,000	60.75%
4119 International Gateway	-	2,000	(2,000)	0.00%	-	24,000	0.00%
4185 TCE - Mkt	5,000	5,000	-	100.00%	55,000	60,000	91.67%
4200 Interest Income - Operating	10,401	5,833	4,568	178.30%	114,798	70,000	164.00%
Total Income	131,818	162,834	(31,016)	80.95%	1,696,129	1,954,000	86.80%
Expenses							
5010 Conferences/Training	-	1,188	(1,188)	0.00%	23,131	14,250	162.32%
5100 Memberships	9,258	1,621	7,638	571.31%	26,000	19,446	133.70%
5200 Technology	7,255	9,056	(1,801)	80.11%	98,424	108,670	90.57%
5300 Professional Services	10,584	10,425	159	101.53%	106,850	125,100	85.41%
5400 Office Expenses	6,163	7,918	(1,755)	77.83%	75,417	95,020	79.37%
5600 Administration Costs	56,661	91,442	(34,781)	61.96%	626,953	1,097,300	57.14%
5700 Bus Dev/Mtkg-Hunting	19,625	42,054	(22,429)	46.67%	375,488	504,650	74.41%
Total Expenses	109,546	163,703	(54,157)	66.92%	1,332,263	1,964,436	67.82%
Net Operating Income	22,272	(869)	23,141		363,866	(10,436)	
Other Income and Expense							
Other Income	-				20,000	-	
Prior year surplus	-	-	-		-	450,000	
Website	-	8,333	(8,333)	0.00%	-	(100,000)	0.00%
Branding	5,150	20,833	(15,683)	0.00%	189,049	(250,000)	-75.62%
Net Other Income and (Expense)	(5,150)				(169,049)	100,000	
Net Income	\$ 17,122	\$ (30,035)	\$ 47,157	-57.01%	\$ 194,817	\$ 89,564	217.52%

NO ASSURANCE IS PROVIDED ON THESE FINANCIAL STATEMENTS
OR SCHEDULES

Substantially all disclosures required by GAAP are omitted.

BRAZOS VALLEY ECONOMIC DEVELOPMENT CORPORATION
CASH SCHEDULE
AS OF AUGUST 31, 2024

Bank accounts		
Prosperity Checking		\$ 60,173.16
Prosperity Money Market		1,745,981.67
TRUIST Savings		264,974.14
CD'S		
Amarillo National	250,000.00	
Extraco	250,000.00	
Frost	250,000.00	
Guaranty	250,000.00	
Truist	250,000.00	
Accrued interest	42,077.54	1,292,077.54
Total Cash		<u>\$ 3,363,206.51</u>
Restricted Cash:		
Matica Bio		32,000.00
Economic Development		1,449,465.10
Total Restricted Cash		<u>\$ 1,481,465.10</u>
Operating Cash		<u><u>\$ 1,881,741.41</u></u>

NO ASSURANCE IS PROVIDED ON THESE FINANCIAL STATEMENTS
OR SCHEDULES

Substantially all disclosures required by GAAP are omitted.

Brazos Valley Economic Development Corporation
A/R Aging Summary
As of August 31, 2024

	Current	1 - 30	31 - 60	61 - 90	91 and over	Total
BSW - College Station	\$ 5,000.00					\$ 5,000.00
Brazos County	29,166.66		0.02		0.01	29,166.69
City Bank			5,000.00			5,000.00
Exosent Engineering, LLC					2,500.00	2,500.00
HBI Office Solutions Inc					2,500.00	2,500.00
Jerry Nickerson					2,500.00	2,500.00
Joel Bryan					2,500.00	2,500.00
Matica Biotechnology			5,000.00			5,000.00
Oldham Goodwin					5,000.00	5,000.00
PNC Bank					5,000.00	5,000.00
SpawGlass			2,500.00			2,500.00
The Broaddus Companies					5,000.00	5,000.00
Twin City Endowment		(5,000.00)				(5,000.00)
Ubeo, Inc.			1,250.00			1,250.00
TOTAL	\$ 34,166.66	\$ (5,000.00)	\$ 13,750.02	\$ -	\$ 25,000.01	\$ 67,916.69

NO ASSURANCE IS PROVIDED ON THESE FINANCIAL STATEMENTS
OR SCHEDULES

Substantially all disclosures required by GAAP are omitted.

Brazos Valley Economic Development Corporation

A/P Aging Summary

As of August 31, 2024

	CURRENT	1 - 30	31 - 60	61 - 90	91 AND OVER	TOTAL
Salesforce, Inc.	10,598.37					\$10,598.37
UBEO, LLC	713.83					\$713.83
Zoetis LLC					0.00	\$0.00
Zoominfo Technologies LLC		13,322.34				\$13,322.34
TOTAL	\$11,312.20	\$13,322.34	\$0.00	\$0.00	\$0.00	\$24,634.54

NO ASSURANCE IS PROVIDED ON THESE FINANCIAL STATEMENTS
OR SCHEDULES

Substantially all disclosures required by GAAP are omitted.

Friday, September 6, 2024 02:58 PM GMT-05:00

EXHIBIT B
Narrative Summary of Activity Report

EXHIBIT C
Performance Measures

EXHIBIT D
Certificates of Insurance



BRAZVAL-35

SABBOTT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/3/2024

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

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

PRODUCER Dexter & Company of Central Texas, Inc. 4030 Highway 6 S. Ste. 310 College Station, TX 77845	CONTACT NAME: PHONE (A/C, No, Ext): (979) 764-8444 FAX (A/C, No): (979) 694-7603 E-MAIL ADDRESS:
INSURED Brazos Valley Economic Development Corporation 1716 Briarcrest Dr Suite 714 Bryan, TX 77802	INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Insurance Company, Ltd. NAIC # 11000 INSURER B: United States Liability Insurance Group 25895 INSURER C: INSURER D: INSURER E: INSURER F:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			61SBAIV0359	6/22/2024	6/22/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			61SBAIV0359	6/22/2024	6/22/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			61SBAIV0359	6/22/2024	6/22/2025	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Directors and Office			NDO1554202L	6/22/2024	6/22/2025	Each Occurrence 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The General Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. The General Liability policy contains a Broadening Endorsement with "Primary and Non-Contributory" wording. Waiver of Subrogation provided on the General Liability and Worker's Compensation policies only when there is a written contract between the named insured and the certificate holder that requires such status. 30 days notice of cancellation included.

CERTIFICATE HOLDER

CANCELLATION

City of College Station 1101 Texas Ave College Station, TX 77840	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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BRAZVAL-05

MICHAL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/3/2024

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

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

PRODUCER Cravens Warren Insurance Agency, Inc. 10011 W. Gulf Bank Rd. Houston, TX 77040	CONTACT NAME:		
	PHONE (A/C, No, Ext): (713) 690-6000	FAX (A/C, No): (713) 690-6020	
INSURED G&A Outsourcing, LLC dba G&A Partners 17220 Katy Frwy; Suite 350 Houston, TX 77094	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Texas Mutual Insurance Company		22945
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	\$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	\$
	OTHER:							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	☐ ANY AUTO						BODILY INJURY (Per person)	\$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	\$
	☐ DED ☐ RETENTION \$							\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			0001076234	3/1/2024	3/1/2025	☒ PER STATUTE ☐ OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y ☐ N	N/A				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

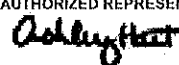
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Form WC 42 03 11, Texas Professional Employer Organization (PEO) Endorsement, extends coverage to the covered employees of Brazos Valley Economic Development Corporation, the client of the Named Insured.

The Workers Compensation policy includes 30 Days Notice of Cancellation in favor of Certificate Holder; where required by written contract; per Form WC 42 06 01.

The Workers Compensation policy includes Form #WC4203 04 B Texas Waiver of Our Right to Recover From Others Endorsement in favor of certificate holder where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of College Station 1101 Texas Ave College Station, TX 77840	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

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

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

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

Schedule

1. Number of days advance notice: 30
2. Notice will be mailed to: PER LIST ON FILE

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
This endorsement, effective on 3/1/24 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001076234 of Texas Mutual Insurance Company effective on 3/1/24

Issued to: G & A OUTSOURCING LLC

DBA: G & A PARTNERS

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

2/9/23

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 3/1/24 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001076234 of Texas Mutual Insurance Company effective on 3/1/24

Issued to: G & A OUTSOURCING LLC

DBA: G & A PARTNERS

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

2/9/23

Texas Professional Employer Organization (PEO) Endorsement

This endorsement provides coverage for your covered employees to the client shown in the Schedule below.

This endorsement applies only if attached to a policy issued in your name as the primary insured, and only with respect to your client's and your covered employees under a professional employer services agreement between you and your client shown in the Schedule below.

Certain words and phrases in this endorsement are defined as follows:

Client means any person who enters into a professional employer services agreement with a PEO.

Coemployment relationship means a contractual relationship between a client and a PEO that involves the sharing of employment responsibilities with, or allocation of employment responsibilities to, covered employees in accordance with the professional employer services agreement and Texas Labor Code, Chapter 91.

Professional Employer Organization (PEO) means a business entity that offers professional employer services.

Covered employee means an individual having a coemployment relationship with a PEO.

Direct employee means an individual who is employed by a PEO or a client and does not have a coemployment relationship with a PEO.

Professional Employer Services Agreement means a contract between a PEO and a client that includes details of the coemployment relationship.

Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) apply to your covered employees to the client shown in the Schedule below. Under Part One, we will reimburse you for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

Under Part Two, the limits of our liability apply jointly to you and the client. Our duty is to provide a single defense for you and the client on a claim, proceeding, or suit for damages payable under this insurance.

The coverage afforded by this endorsement is not intended to satisfy the client's duty to secure its obligations under the workers compensation law for its direct employees.

If this policy is cancelled, we will send notice of such cancellation to you. You must notify each client by certified mail within three days of receipt of such notice.

Premium will be charged for covered employees of the client shown in the Schedule below. To satisfy your obligations under Part Five (Premium), C.2, you must maintain and furnish to us a complete payroll record by client for these covered employees.

Part Four (Your Duties If Injury Occurs) applies to you and to the client. The client will recognize our right to defend under Parts One and Two and our right to inspect under Part Six (Conditions).

Schedule

Client name

FEIN

Client ID

PER LIST ON FILE

Locations

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
This endorsement, effective on 3/01/24 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001076234 of Texas Mutual Insurance Company effective on 3/01/24

Issued to: G & A OUTSOURCING LLC

DBA: G & A PARTNERS

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

October 7, 2024

Item No. 7.10.

Resolution of consent to Rock Prairie Management District No. 2 bond sale of \$2,555,000

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding adoption of a resolution granting consent to Rock Prairie Management District No. 2 for the sale and issuance of unlimited tax road bonds, series 2024A, in an amount not to exceed \$2,555,000.

Relationship to Strategic Goals:

Diverse and Growing Economy
Improving Mobility
Core Services and Infrastructure
Sustainable City

Recommendation(s): Staff recommends approval of the resolution granting consent to Rock Prairie Management District No. 2 for the sale and issuance of unlimited tax road bonds, series 2023, in an amount not to exceed \$2,555,000.

Summary: On July 9, 2015, the City Council passed Resolution No. 07-09-15-02 consenting to the creation of Rock Prairie Management District No. 2. On February 17, 2015, the City Council approved a Utility and Road Agreement between the City and the District which authorizes the District to issue, sell, and deliver bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such form and manner as permitted or provided by federal laws, the general laws of the State of Texas, and the above-referenced consent resolution. In order for the bond issuance to proceed, the District's bond order (authorizing resolution) authorizing the issuance of the bonds must be approved by the City Council to the extent the resolution is in compliance with the above-referenced consent resolution.

The District's representatives met with the City Manager's Office on September 12, 2024, to discuss the bond order, Notice of Sale, Preliminary Official Statement, and other information in preparation for this item. District representatives will be available at the council meeting to answer any questions.

Budget & Financial Summary: There is no financial impact to the City for issuance of the bonds. Repayment is by those residents and businesses located within Rock Prairie Management District No. 2.

Bond proceeds will be used to finance roads, refunding, water, sanitary sewer, and drainage facilities within the District.

All infrastructure is designed and constructed in accordance with the City and County standards, rules, and regulations. Upon completion of construction, the District will convey the road facilities to the City for operation and maintenance, as described in the Utility Agreement.

Attachments:

1. Bond - 2024A Road - City Consent Resolution (RPMD2)
2. Rock Prairie MD 2_ 2024A Road POS Draft (City)
3. Rock Prairie MD 2_ 2025 BI 5 No Growth Cash Flow for City
4. Rock Prairie MD_ 2024A Road NOS Draft (City)

5. Rock Prairie_ 2024 Letter to City re Bond Requirements

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, GRANTING CONSENT TO ROCK PRAIRIE MANAGEMENT DISTRICT NO. 2 FOR THE SALE AND ISSUANCE OF UNLIMITED TAX ROAD BONDS, SERIES 2024A, IN AN AMOUNT NOT TO EXCEED \$2,550,000

WHEREAS, the City of College Station, Texas (the "City") consented to the creation of Rock Prairie Management District No. 2 (the "District") on July 9, 2015, through Resolution No. 07-09-15-02, as amended (the "Consent Resolution"); and

WHEREAS, on February 17, 2015, the City Council of the City approved a Utility and Road Agreement between the City and the District (the "Utility Agreement") which authorizes the District to issue, sell, and deliver bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such form and manner as permitted or provided by federal law, the general laws of the State of Texas, and the Consent Resolution; and

WHEREAS, the Utility Agreement further requires that the authorizing resolution of the District's Board of Directors be approved by the City Council to the extent such resolution is in compliance with the Consent Resolution; and

WHEREAS, the District has requested the City's consent to the District's sale and issuance of Unlimited Tax Road Bonds, Series 2024A, in an amount not to exceed \$2,550,000 (the "Bonds"); and

WHEREAS, the City Council has reviewed the District's request for consent to the sale and issuance of the Bonds and the certifications and documentation submitted by the District in support thereof, and has determined that the sale and issuance of the Bonds by the District complies with the terms of the Utility Agreement and Consent Resolution;

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

Section 1. The facts and recitations set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. The City Council officially finds, determines, recites and declares that sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Texas Open Meetings Act, Texas Government Code, Chapter 551, as amended, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

Section 3. The City Council hereby consents to the sale and issuance of Unlimited Tax Road Bonds, Series 2024A, in an amount not to exceed \$2,550,000, and the authorizing resolution of the District's Board of Directors.

Section 4. This resolution shall be effective immediately upon adoption.

PASSED AND APPROVED by this the ____ day of _____, 2024.

Mayor

ATTEST:

City Secretary

APPROVED:

City Attorney

PRELIMINARY OFFICIAL STATEMENT DATED SEPTEMBER 12, 2024

This Preliminary Official Statement is subject to completion and amendment and is intended solely for the solicitation of initial bids to purchase the Bonds. Upon sale of the Bonds, the Official Statement will be completed and delivered to the Underwriter.

IN THE OPINION OF BOND COUNSEL, THE BONDS ARE VALID OBLIGATIONS OF ROCK PRAIRIE MANAGEMENT DISTRICT NO. 2, AND INTEREST ON THE BONDS IS EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION UNDER STATUTES, REGULATIONS, PUBLISHED RULINGS AND COURT DECISIONS EXISTING ON THE DATE OF SUCH OPINION SUBJECT TO THE MATTERS DESCRIBED UNDER "LEGAL MATTERS" HEREIN, INCLUDING THE ALTERNATIVE MINIMUM TAX ON CERTAIN CORPORATIONS. SEE "LEGAL MATTERS" HEREIN FOR A DISCUSSION OF THE OPINION OF BOND COUNSEL.

THE BONDS HAVE BEEN DESIGNATED "QUALIFIED TAX-EXEMPT OBLIGATIONS" FOR FINANCIAL INSTITUTIONS. SEE "LEGAL MATTERS—Qualified Tax-Exempt Obligations."

BOOK-ENTRY-ONLY

\$2,550,000

ROCK PRAIRIE MANAGEMENT DISTRICT NO. 2

(A political subdivision of the State of Texas located within Brazos County)

UNLIMITED TAX ROAD BONDS

SERIES 2024A

Dated: November 1, 2024

Due: September 1, as shown below

Interest Accrual Date: Date of Delivery

Principal of the bonds described above (the "Bonds") will be payable at maturity or earlier redemption at the principal payment office of the Paying Agent/Registrar, initially The Bank of New York Mellon Trust Co., N.A., Dallas, Texas (the "Paying Agent/Registrar"). Interest on the Bonds will accrue from the initial date of delivery (expected to be on or about November 18, 2024) (the "Delivery Date") and will be payable on March 1 and September 1 of each year commencing September 1, 2025 until maturity or prior redemption and will be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds will be issued in fully registered form only in denominations of \$5,000 each or integral multiples thereof. The Bonds will be subject to redemption prior to their maturity, as shown below.

The Bonds will be registered and delivered only in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Bonds. Beneficial Owners (as defined herein under "BOOK-ENTRY-ONLY SYSTEM") of the Bonds will not receive physical certificates representing the Bonds but will receive a credit balance on the books of the DTC participants. So long as Cede & Co. is the registered owner of the Bonds, the principal of and interest on the Bonds will be paid by the Paying Agent/Registrar, as herein defined, directly to DTC, which will, in turn, remit such principal and interest to its participants for subsequent disbursement to the Beneficial Owners. See "BOOK-ENTRY-ONLY SYSTEM."

MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES AND INITIAL REOFFERING YIELDS

Initial					Initial				
Due	Principal	Interest	Reoffering	CUSIP	Due	Principal	Interest	Reoffering	CUSIP
(Sept 1)	Amount (a)	Rate	Yield (b)	Number (d)	(Sept 1)	Amount (a)	Rate	Yield (b)	Number (d)
2026	\$ 75,000				2039	\$ 105,000 (c)			
2027	75,000				2040	105,000 (c)			
2028	75,000				2041	110,000 (c)			
2029	80,000				2042	110,000 (c)			
2030	80,000				2043	115,000 (c)			
2031	85,000				2044	115,000 (c)			
2032	85,000 (c)				2045	120,000 (c)			
2033	90,000 (c)				2046	125,000 (c)			
2034	90,000 (c)				2047	125,000 (c)			
2035	95,000 (c)				2048	130,000 (c)			
2036	95,000 (c)				2049	135,000 (c)			
2037	95,000 (c)				2050	135,000 (c)			
2038	100,000 (c)								

- (a) The Underwriter (as herein defined) may designate one or more maturities as term bonds. See accompanying "OFFICIAL NOTICE OF SALE" and "OFFICIAL BID FORM."
- (b) Initial reoffering yield represents the initial offering yield to the public, which has been established by the Underwriter for offers to the public and which may be subsequently changed by the Underwriter and is the sole responsibility of the Underwriter. The initial reoffering yields indicated above represent the lower of the yields resulting when priced to maturity or to the first call date.
- (c) The Bonds maturing on or after September 1, 2032 are subject to redemption prior to maturity at the option of the District, in whole or, from time to time in part, on September 1, 2031, or on any date thereafter, at a price equal to the principal amount thereof plus accrued interest thereon to the date fixed for redemption. See "THE BONDS—Redemption Provisions."
- (d) CUSIP Numbers have been assigned to the Bonds by CUSIP Global Services and are included solely for the convenience of the purchasers of the Bonds. Neither the District nor the Underwriter shall be responsible for the selection or correctness of the CUSIP Numbers set forth herein.

The Bonds, when issued, will constitute valid and legally binding obligations of Rock Prairie Management District No. 2 (the "District") and will be payable from the proceeds of an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District, as further described herein. The Bonds are obligations solely of the District and are not obligations of the State of Texas, Brazos County, the City of College Station or any entity other than the District. Investment in the Bonds is subject to special investment considerations described herein. See "RISK FACTORS."

The Bonds are offered when, as and if issued by the District, subject, among other things, to the approval of the Bonds by the Attorney General of Texas and the approval of certain legal matters by Schwartz, Page & Harding, L.L.P., Houston, Texas, Bond Counsel. Delivery of the Bonds in book-entry form through DTC is expected on or about November 18, 2024.

BIDS DUE: THURSDAY, OCTOBER 10, 2024 AT 9:45 A.M., HOUSTON TIME, HOUSTON, TEXAS
BID AWARD: THURSDAY, OCTOBER 10, 2024 AT 2:00 P.M., HOUSTON TIME, COLLEGE STATION, TEXAS

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USE OF INFORMATION IN OFFICIAL STATEMENT

For purposes of compliance with Rule 15c2-12 of the Securities and Exchange Commission, as amended and in effect on the date hereof, this document constitutes an Official Statement with respect to the Bonds that has been “deemed final” by the District as of its date except for the omission of no more than the information permitted by Rule 15c2-12.

No dealer, broker, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representation must not be relied upon as having been authorized by the District.

This Official Statement is not to be used in an offer to sell or the solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

All of the summaries of the statutes, orders, contracts, audited financial statements, engineering and other related reports set forth in this Official Statement are made subject to all of the provisions of such documents. These summaries do not purport to be complete statements of such provisions, and reference is made to such documents, copies of which are available from Schwartz, Page & Harding, L.L.P., 1300 Post Oak Boulevard, Suite 2400, Houston, Texas, 77056 upon payment of the costs of duplication.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, SEC Rule 15c2-12, as amended.

This Official Statement contains, in part, estimates, assumptions and matters of opinion which are not intended as statements of fact, and no representation is made as to the correctness of such estimates, assumptions or matters of opinion, or as to the likelihood that they will be realized. Any information and expressions of opinion herein contained are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the District or other matters described herein since the date hereof. However, the District has agreed to keep this Official Statement current by amendment or sticker to reflect material changes in the affairs of the District and, to the extent that relevant information actually comes to its attention, the other matters described in this Official Statement until delivery of the Bonds to the Underwriter, and thereafter only as specified in “UPDATING OF OFFICIAL STATEMENT.”

OFFICIAL STATEMENT SUMMARY

The following information is qualified in its entirety by the detailed information and financial statements appearing elsewhere in this Official Statement. The summary should not be detached and should be used in conjunction with more complete information contained herein. A full review should be made of the entire OFFICIAL STATEMENT and of the documents summarized or described therein.

THE DISTRICT

Description and

Location The District was created in 2013 by a special act of the 83rd Texas Legislature, House Bill 3874, Regular Session, codified as Chapter 3909, Texas Special District Local Laws Code (the “Act”) pursuant to Sections 52 and 52-a, Article III, and Section 59, Article XVI, of the Texas Constitution. The District contains approximately 319 acres of land and is located on the east side of Texas State Highway 6 (“SH 6”) between Rock Prairie Road and William D. Fitch Parkway, which is approximately 5 miles south of the central business district of the City of College Station. The district lies entirely within the corporate limits of the City of College Station (the “City”) and within the boundaries of the College Station Independent School District. See “THE DISTRICT” and “AERIAL PHOTOGRAPH.”

The Developers Approximately 120 acres of land within the District are currently being developed as Midtown City Center by College Station Town Center, Inc. (“CSTC”), a Texas corporation, which was created to own and develop property within the District. Currently, CSTC owns approximately 78 acres of land within the District, all of which is served with trunk utilities and has no vertical improvements.

Approximately 142 acres of land within the District are currently being developed as Midtown Reserve Subdivision by College Station Downtown Residential, LLC (“CSDR”), a Texas limited liability company, which was created to own and develop property within the District. Currently, CSDR owns approximately 95 acres within the District, all of which is served with trunk utilities and has no vertical improvements.

CSTC and CSDR are collectively referred to herein as the “Developers.” Neither the Developers nor any of their affiliates are obligated to pay any principal or interest on the Bonds. See “THE DEVELOPERS.”

The Developers have each entered into various Utility Development Agreements with the District to provide for the financing and construction of water, sewer, drainage and road facilities for the District. See “THE DEVELOPERS” and “TAX DATA—Principal Taxpayers.”

The remaining developable land in the District is owned by several property owners.

Status of Development Water, sewer and drainage facilities, as well as roads, are complete to serve Midtown Reserve Subdivision (approximately 104 acres developed into 553 single family residential lots). Home construction began in 2019 and, as of September 1, 2024, the District consisted of 388 completed and occupied homes, 5 completed and unoccupied homes, 48 homes under construction, 1 model home, 111 vacant developed lots. Homebuilding in the District is currently being conducted primarily by DR Horton, but a few lots have been sold to two local builders. New homes in the District range in price from approximately \$295,000 to \$595,000.

Utility trunk facilities and roads have also been constructed to serve 95 acres of commercial and multi-family development within the District. Commercial development to date includes an office park located on approximately 11 acres, Accel at College Station, a 116-bed transitional care and rehabilitation facility located on approximately 8 acres, and Nine 50 Town Lake at Midtown, a 264-unit apartment complex located on approximately 14 acres which opened in February 2023 and is approximately 97% occupied. See “TAX DATA—Principal Taxpayers.” The remaining 62 acres of commercial and multi-family reserves do not have vertical construction.

The balance of the District consists of approximately 39 undeveloped but developable acres and approximately 81 undevelopable acres of easements, parks and rights-of-way. See “THE DISTRICT-Status of Development.”

Water and WastewaterRetail water and wastewater service for development within the District is provided by College Station Utilities (“CSU”). CSU holds the requisite certificates of convenience and necessity over the land within the District. See “UTILITY AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF COLLEGE STATION.”

THE FINANCING

The Issue.....\$2,550,000 Rock Prairie Management District No. 2 Unlimited Tax Road Bonds, Series 2024A, dated November 1, 2024. The Bonds mature serially on September 1 in each of the years from 2026 through 2050, both inclusive, in the respective amounts and bearing interest at the rates for each maturity shown on the cover page hereof. Interest on the Bonds will accrue from the Delivery Date (expected to be November 18, 2024) and will be payable March 1 and September 1 of each year commencing September 1, 2025 until maturity or prior redemption and will be calculated on the basis of 360-day year consisting of twelve 30-day months. The Bonds maturing on or after September 1, 2032 are subject to optional redemption, in whole or, from time to time, in part, on September 1, 2031, or on any date thereafter, at a price equal to the principal amount of the Bonds to be redeemed plus accrued interest thereon to the date fixed for redemption. If less than all the Bonds are redeemed, the particular maturity or maturities and the amounts thereof to be redeemed shall be selected by the District in integral multiples of \$5,000 in any one maturity. If less than all the Bonds within a maturity are redeemed, the Bonds to be redeemed shall be selected by DTC in accordance with its procedures. See “BOOK-ENTRY-ONLY SYSTEM” and “THE BONDS—Redemption Provisions.” The Bonds will be issued in fully registered form only, in denominations of \$5,000 or any integral multiple thereof. See “THE BONDS.”

Book-Entry-Only.....The Bonds will be registered in the name of, and delivered only to, Cede & Co., the nominee of DTC, pursuant to the Book-Entry-Only System described herein. Beneficial ownership of the Bonds may be acquired in denominations of \$5,000 or integral multiples thereof. No physical delivery of the Bonds will be made to the Beneficial Owners. Principal of and interest on the Bonds will be payable by the Paying Agent/Registrar to Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC, which will make distribution of the amounts so paid to the participating members of DTC for subsequent payment to the Beneficial Owners of the Bonds. See “BOOK-ENTRY- ONLY SYSTEM.”

Authority for IssuanceThe Bonds are the fifth series of bonds issued out of an aggregate of \$106,600,000 principal amount of unlimited tax bonds authorized by the District’s voters for the purpose of acquiring or constructing road facilities. The Bonds are issued pursuant to the Bond Order (as defined herein); an election held within the District on November 3, 2015; Article III, Section 52 of the Texas Constitution; the general laws of the State of Texas; Chapter 3909, Texas Special District Local Laws Code; Chapter 49 of the Texas Water Code, as amended; Chapter 375 of the Texas Local Government Code, as amended; and the consent of the City. See “THE BONDS—Authority for Issuance.”

Source of Payment.....The Bonds are payable from a continuing direct annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District. The Bonds are obligations solely of the District and are not obligations of the State of Texas, Brazos County, the City of College Station or any entity other than the District. See “THE BONDS—Source and Security for Payment.”

Use of Proceeds.....Proceeds of the Bonds will be used to finance items described herein under “USE AND DISTRIBUTION OF BOND PROCEEDS.” In addition, Bond proceeds will be used to capitalize twelve (12) months of interest on the Bonds; to pay interest on funds advanced by the Developers on behalf of the District; and to pay engineering fees and administrative costs and certain other costs related to the issuance of the Bonds. See “USE AND DISTRIBUTION OF BOND PROCEEDS.”

Payment Record.....The District has previously issued \$8,350,000 principal amount of unlimited tax road bonds in four series (the “Previously Issued Bonds”). The District has a total of \$8,095,000 principal amount of bonds outstanding as of September 2, 2024 (the “Outstanding Bonds”). The District has never defaulted on the debt service payments on the Previously Issued Bonds.

<i>Municipal Bond Rating and Municipal Bond Insurance</i>	The District has not applied for an underlying rating nor is it expected that the District would have received an investment grade rating had such application been made. Applications have been made to various municipal bond insurance companies for qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option of the Underwriter at the Underwriter's expense. See "RISK FACTORS—Risk Factors Related to the Purchase of Municipal Bond Insurance" and "MUNICIPAL BOND RATING AND MUNICIPAL BOND INSURANCE."
<i>Qualified Tax-Exempt Obligations</i>	The District has designated the Bonds as "qualified tax-exempt obligations" pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended. See "LEGAL MATTERS—Qualified Tax-Exempt Obligations."
<i>Bond Counsel</i>	Schwartz, Page & Harding, L.L.P., Houston, Texas.
<i>Engineer</i>	EHRA Engineering, Houston, Texas and Schultz Engineering, LLC, College Station, Texas.
<i>Disclosure Counsel</i>	McCall, Parkhurst & Horton L.L.P, Houston, Texas.
<i>Financial Advisor</i>	Masterson Advisors LLC, Houston, Texas.
<i>Paying Agent/Registrar</i>	The Bank of New York Mellon Trust Company, N.A., Dallas, Texas.

RISK FACTORS

The purchase and ownership of the Bonds are subject to special investment considerations, and all prospective purchasers are urged to examine carefully the entire Official Statement with respect to the investment security of the Bonds, including particularly the section captioned "RISK FACTORS."

FINANCIAL INFORMATION (UNAUDITED)

2024 Taxable Assessed Valuation.....	\$157,680,166 (a)
Estimate of Taxable Assessed Valuation as of August 1, 2024.....	\$165,696,809 (b)
Gross Direct Debt Outstanding.....	\$10,645,000 (c)
Estimated Overlapping Debt	7,930,176
Total Gross Direct Debt and Estimated Overlapping Debt.....	\$18,575,176
Ratios of Gross Direct Debt to:	
2024 Taxable Assessed Valuation.....	6.85%
Estimate of Taxable Assessed Valuation as of August 1, 2024	6.42%
Ratios of Gross Direct and Estimated Overlapping Debt to:	
2024 Taxable Assessed Valuation.....	11.95%
Estimate of Taxable Assessed Valuation as of August 1, 2024	11.21%
2023 Debt Service Tax Rate	\$0.32 (d)
2023 Maintenance Tax Rate	0.18 (d)
Total	\$0.50
Average Annual Debt Service Requirement (2025-2050).....	\$664,947 (e)
Maximum Annual Debt Service Requirement (2027)	\$730,575 (e)
Tax Rate Required to Pay Average Annual Debt Service (2025-2050) at a 95% Collection Rate	
Based upon 2024 Taxable Assessed Valuation	\$0.45
Based upon Estimate of Taxable Assessed Valuation as of August 1, 2024	\$0.43
Tax Rate Required to Pay Maximum Annual Debt Service (2027) at a 95% Collection Rate	
Based upon 2024 Taxable Assessed Valuation	\$0.49
Based upon Estimate of Taxable Assessed Valuation as of August 1, 2024	\$0.47
Status of Residential Development as of September 1, 2024 (f):	
Total Homes Completed (including 388 occupied).....	393
Homes Under Construction	48
Model Homes	1
Vacant Developed Lots	111
Lots Under Construction	0
Multi-Family (264 units).....	1
Estimated 2024 Population.....	1,870(g)

- (a) As certified by the Brazos Central Appraisal District (the "Appraisal District"). See "TAXING PROCEDURES."
- (b) Provided by the Appraisal District for informational purposes only. Such amounts reflect an estimate of the taxable appraised value within the District on August 1, 2024. No tax will be levied on such amount. Taxes are levied on taxable value certified by the Appraisal District as of January 1 of each year. See "TAXING PROCEDURES."
- (c) After giving effect to issuance of the Bonds. See "FINANCIAL INFORMATION CONCERNING THE DISTRICT (UNAUDITED)—Outstanding Bonds."
- (d) The District has authorized publication of its intent to levy a total tax rate of \$0.65 per \$100 assessed valuation for tax year 2024. The District expects to adopt the 2024 tax rate in October 2024.
- (e) See "FINANCIAL INFORMATION CONCERNING THE DISTRICT (UNAUDITED)—Debt Service Requirements."
- (f) See "THE DISTRICT—Land Use" and "Status of Development."
- (g) Based upon 3.5 persons per occupied single-family residence and 2 persons per occupied multi-family residence.

PRELIMINARY OFFICIAL STATEMENT

\$2,550,000

ROCK PRAIRIE MANAGEMENT DISTRICT NO. 2

(A political subdivision of the State of Texas located within Brazos County)

UNLIMITED TAX ROAD BONDS

SERIES 2024A

This Official Statement provides certain information in connection with the issuance by Rock Prairie Management District No. 2 (the “District”) of its \$2,550,000 Unlimited Tax Road Bonds, Series 2024A (the “Bonds”).

The Bonds are issued pursuant to a Bond Order authorizing the issuance of the Bonds (the “Bond Order”) adopted by the Board of Directors of the District (the “Board”); an election held within the District on November 3, 2015; Article III, Section 52 of the Texas Constitution; Chapter 3909 of the Texas Local Government Code, as amended; the general laws of the State of Texas relating to the issuance of bonds by political subdivisions, including Chapter 49 of the Texas Water Code, as amended, and Chapter 375, Texas Local Government Code, as amended; and the consent of the City of College Station (the “City” or “College Station”).

This Official Statement includes descriptions, among others, of the Bonds and the Bond Order, and certain other information about the District and College Station Town Center, Inc. and College Station Downtown Residential, LLC (collectively, the “Developers”), the developers of land within the District. All descriptions of documents contained herein are only summaries and are qualified in their entirety by reference to each document. Copies of documents may be obtained from the District upon payment of the costs of duplication therefor.

THE BONDS

General

The following is a description of some of the terms and conditions of the Bonds, which description is qualified in its entirety by reference to the Bond Order. The Bond Order authorizes the issuance and sale of the Bonds and prescribes the terms, conditions and provisions for the payment of the principal of and interest on the Bonds by the District.

Description

The Bonds will be dated November 1, 2024, with interest payable on September 1, 2025, and on each September 1 and March 1 thereafter (each an “Interest Payment Date”) until the earlier of maturity or redemption. Interest on the Bonds initially accrues from the Delivery Date (expected to be November 18, 2024) of the Bonds to the Underwriter thereof, and thereafter, from the most recent Interest Payment Date. The Bonds mature on September 1 in each of the years and in the amounts shown under “MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES AND INITIAL REOFFERING YIELDS” on the cover page hereof. The Bonds are issued in fully registered form only in denominations of \$5,000 or any integral multiple of \$5,000 for any one maturity. The Bonds will be registered and delivered only to The Depository Trust Company, New York, New York (“DTC”), in its nominee name of Cede & Co., pursuant to the book-entry system described herein (“Registered Owners”). No physical delivery of the Bonds will be made to the purchasers thereof. See “BOOK-ENTRY-ONLY SYSTEM.” Interest calculations are based upon a three hundred sixty (360) day year comprised of twelve (12) thirty (30) day months.

Authority for Issuance

At an election held within the District on November 3, 2015, voters of the District authorized a total of \$106,600,000 in unlimited tax bonds for the purpose of acquiring or constructing road facilities. The Bonds constitute the fifth issuance of bonds from such authorization. After the issuance of the Bonds, a total of \$95,700,000 in principal amount of unlimited tax bonds for road facilities will remain authorized but unissued. The Bonds are issued by the District pursuant to the terms and provisions of the Bond Order; Article III, Section 52 of the Texas Constitution; Chapter 3909, Texas Special District Local Laws Code, as amended; the general laws of the State of Texas, including without limitation Chapter 49 of the Texas Water Code, as amended, and Chapter 375, Texas Local Government Code, as amended; the consent of the City; and an election held within the District as described above. At the above-described election, voters in the District also authorized a total of \$71,400,000 in unlimited tax bonds for the purpose of acquiring or constructing water, sanitary sewer, and drainage facilities. The District has not issued any bonds from such authorization. See “Issuance of Additional Debt” below.

Source and Security for Payment

The Bonds, together with the Outstanding Bonds and any additional bonds payable from ad valorem taxes, are secured by and payable from the proceeds of an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property located within the District. See "TAXING PROCEDURES." Investment in the Bonds involves certain elements of risk, and all prospective purchasers are urged to examine carefully this Official Statement with respect to the investment security of the Bonds. See "RISK FACTORS." The Bonds are obligations solely of the District and are not obligations of the City of College Station, Brazos County, the State of Texas, or any political subdivision or entity other than the District.

Funds

The Bond Order confirms the prior creation of the District's Debt Service Fund, including the sub-accounts which are used to separate funds received to pay debt service on bonds issued to finance water, wastewater and storm drainage facilities ("WSD Bonds") from funds received to pay debt service on bonds issued to finance road facilities ("Road Bonds"). The Bond Order also confirms the District's Construction Fund, including the sub-accounts which are used to separate proceeds from WSD Bonds and Road Bonds. An amount equal to twelve months of interest on the Bonds will be deposited from the proceeds from sale of the Bonds into the sub-account of the Debt Service Fund created in respect of Road Bonds. All remaining proceeds of the Bonds will be deposited in the sub-account of the Construction Fund created in respect of Road Bonds.

The proceeds from all taxes levied, appraised and collected for and on account of the Bonds authorized by the Bond Order shall be deposited, as collected, into the sub-account of the Debt Service Fund created in respect of Road Bonds. The Debt Service Fund, which constitutes a trust fund for the benefit of the owners of the Outstanding Bonds, the Bonds and any additional tax bonds issued by the District, is to be kept separate from all other funds of the District, and funds in the sub-accounts created in respect of Road Bonds are to be used for payment of debt service on the Bonds and any of the District's duly authorized Road Bonds, whether heretofore, hereunder, or hereafter issued, payable in whole or part from taxes. Amounts on deposit in the sub-accounts of the Debt Service Fund created in respect of Road Bonds may also be used to pay the fees and expenses of the Paying Agent/Registrar, to defray the expenses of assessing and collecting taxes levied for payment of interest on and principal of the Bonds, the Outstanding Bonds and any of the Districts duly authorized additional bonds, whether heretofore, hereunder, or hereafter issued, payable in whole or in part from taxes, and to pay any tax anticipation notes issued in respect of debt service due to or become due on Road Bonds, together with interest thereon, as such tax anticipation notes become due. Funds otherwise on deposit in the Debt Service Fund, including funds in a sub-account created in respect of WSD Bonds, will not be allocated to the payment of the Bonds.

Record Date

The record date for payment of the interest on any regularly scheduled interest payment date is defined as the 15th day of the month (whether or not a business day) preceding such interest payment date.

Redemption Provisions

The District reserves the right, at its option, to redeem the Bonds maturing on and after September 1, 2032, prior to their scheduled maturities, in whole or from time to time in part, in integral multiples of \$5,000, on September 1, 2031, or any date thereafter, at a price equal to the principal amount thereof plus accrued interest thereon to the date fixed for redemption. If fewer than all of the Bonds are to be redeemed, the particular maturity or maturities and the amounts thereof to be redeemed shall be determined by the District. If fewer than all of the Bonds of the same maturity are to be redeemed, the particular Bonds shall be selected by DTC in accordance with its procedures. See "BOOK-ENTRY-ONLY SYSTEM." Notice of each exercise of the reserved right of optional redemption shall be given by the Paying Agent/Registrar at least thirty (30) calendar days prior to the redemption date, in the manner specified in the Bond Order.

By the redemption date, due provision shall be made with the Paying Agent/Registrar for payment of the principal of the Bonds or portions thereof to be redeemed, plus accrued interest to the redemption date. When Bonds have been called for redemption in whole or in part and due provision has been made to redeem the same as herein provided, the Bonds or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Registered Owners to collect interest which would otherwise accrue after the redemption date on any Bond or portion thereof called for redemption shall terminate on the date fixed for redemption.

Method of Payment of Principal and Interest

The Board has appointed The Bank of New York Mellon Trust Company, N.A., having its principal corporate trust office and its principal payment office in Dallas, Texas, as the initial Paying Agent/Registrar for the Bonds. The principal of and interest on the Bonds shall be paid to DTC, which will make distribution of the amounts so paid. See "BOOK-ENTRY-ONLY SYSTEM."

Registration

Section 149(a) of the Internal Revenue Code of 1986, as amended, requires that all tax-exempt obligations (with certain exceptions that do not include the Bonds) be in registered form in order for the interest payable on such obligations to be excludable from a Beneficial Owner's income for federal income tax purposes. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. pursuant to the Book-Entry-Only System described herein. One fully-registered Bond will be issued for each maturity of the Bonds and will be deposited with DTC. See "BOOK- ENTRY-ONLY SYSTEM." So long as any Bonds remain outstanding, the District will maintain at least one paying agent/registrars in the State of Texas for the purpose of maintaining the Register on behalf of the District.

Replacement of Paying Agent/Registrar

Provision is made in the Bond Order for replacement of the Paying Agent/Registrar. If the Paying Agent/Registrar is replaced by the District, the new paying agent/registrars shall be required to accept the previous Paying Agent/Registrar's records and act in the same capacity as the previous Paying Agent/Registrar. Any paying agent/registrars selected by the District shall be a duly qualified and competent trust or banking corporation or organization organized and doing business under the laws of the United States of America or of any State thereof, with a combined capital and surplus of at least \$25,000,000, which is subject to supervision of or examination by federal or state banking authorities, and which is a transfer agent duly registered with the United States Securities and Exchange Commission.

Legal Investment and Eligibility to Secure Public Funds in Texas

The following is quoted from Section 49.186 of the Texas Water Code, and is applicable to the District:

“(a) All bonds, notes, and other obligations issued by a district shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees, and for all interest and sinking funds and other public funds of the state, and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic.

(b) A district's bonds, notes, and other obligations are eligible and lawful security for all deposits of public funds of the state, and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, notes, and other obligations when accompanied by any unmatured interest coupons attached to them.”

The Public Funds Collateral Act (Chapter 2257, Texas Government Code) also provides that bonds of the District (including the Bonds) are eligible as collateral for public funds.

No representation is made that the Bonds will be suitable for or acceptable to financial or public entities for investment or collateral purposes. No representation is made concerning other laws, rules, regulations or investment criteria which apply to or which might be utilized by any of such persons or entities to limit the acceptability or suitability of the Bonds for any of the foregoing purposes. Prospective purchasers are urged to carefully evaluate the investment quality of the Bonds as to the suitability or acceptability of the Bonds for investment or collateral purposes.

Issuance of Additional Debt

The District's voters have authorized the issuance of a total of \$106,600,000 unlimited tax bonds for the purpose of acquiring or constructing road facilities and could authorize additional amounts. Following the issuance of the Bonds, the District will have \$95,700,000 of unlimited tax bonds authorized but unissued for said improvements and facilities. The District's voters have also authorized the issuance of a total of \$71,400,000 unlimited tax bonds for the purpose of acquiring or constructing water, sanitary sewer, and drainage facilities, and could authorize additional amounts. The District voters have authorized a total of \$178,000,000 unlimited tax refunding bonds for the purpose of refunding outstanding bonds of the District and could authorize additional amounts. No bonds have been issued from said unlimited tax water, sanitary sewer, and drainage facilities authorization and unlimited tax refunding authorizations.

The Bond Order imposes no limitation on the amount of additional parity bonds which may be authorized for issuance by the District's voters or the amount ultimately issued by the District.

Financing Road Facilities

Pursuant to provisions of the Texas Constitution and the Act, as defined herein, the District is authorized to develop and finance with property taxes certain road facilities following a successful District election to approve the issuance of road bonds payable from taxes. At an election held within the District on November 3, 2015, voters of the District authorized a total of \$106,600,000 in principal amount of unlimited tax bonds for acquiring and constructing road facilities. The Bonds are the fifth series of bonds issued from said authorization. After issuance of the Bonds, the District will have \$95,700,000 principal amount of unlimited tax bonds for acquiring or constructing road facilities authorized but unissued for said improvements and facilities. See “—Issuance of Additional Debt” herein and “RISK FACTORS – Future Debt.” Issuance of additional bonds for road facilities may dilute the security for the Bonds.

Financing Recreational Facilities

The District is authorized to finance, operate, maintain and construct certain recreational facilities; provided, however, the District may not issue bonds payable from ad valorem taxes for said recreational facilities.

Abolishment

Under Texas law, the District may be abolished and dissolved by the City without the District's consent; provided, however, the City's right to dissolve the District is limited by the terms set forth in the Utility Agreement. See “UTILITY AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF COLLEGE STATION.” If the District is abolished, the City will assume the District's assets and obligations (including the Bonds) and abolish the District within ninety (90) days thereafter. Prior to abolishment and dissolution by the City, the District shall have the opportunity to discharge any obligations of the District by selling its bonds or by causing the City to sell bonds of the City in an amount necessary to discharge such obligations. Abolishment of the District by the City is a policymaking matter within the discretion of the Mayor and the City Council of the City, and, therefore, the District makes no representation that abolishment will or will not occur. Moreover, no representation is made concerning the ability of the City of College Station to make debt service payments should abolishment occur.

Remedies in Event of Default

If the District defaults in the payment of principal, interest, or redemption price on the Bonds when due, or if it fails to make payments into any fund or funds created in the Bond Order, or defaults in the observance or performance of any other covenants, conditions, or obligations set forth in the Bond Order, the Registered Owners have the right to seek a writ of mandamus issued by a court of competent jurisdiction requiring the District and its officials to observe and perform the covenants, obligations, or conditions prescribed in the Bond Order. Except for mandamus, the Bond Order does not specifically provide for remedies to protect and enforce the interests of the Registered Owners. There is no acceleration of maturity of the Bonds in the event of default and, consequently, the remedy of mandamus may have to be relied upon from year to year. Further, there is no trust indenture or trustee, and all legal actions to enforce such remedies would have to be undertaken at the initiative of, and be financed by, the Registered Owners. Certain traditional legal remedies may also not be available. See “RISK FACTORS—Registered Owners' Remedies.”

Defeasance

The Bond Order provides that the District may discharge its obligations to the Registered Owners of any or all of the Bonds to pay principal, interest and redemption price thereon in any manner permitted by law. Under current Texas law, such discharge may be accomplished either (i) by depositing with the Comptroller of Public Accounts of the State of Texas a sum of money equal to the principal of, premium, if any, and all interest to accrue on the Bonds to maturity or redemption or (ii) by depositing with any place of payment (paying agent) for obligations of the District payable from revenues or from ad valorem taxes or both, or a commercial bank or trust company designated in the proceedings authorizing such discharge amounts sufficient to provide for the payment and/or redemption of the Bonds; provided that such deposits may be invested and reinvested only in (a) direct noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the District adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; and (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the District adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent. The foregoing obligations may be in book entry form and shall mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment and/or redemption of the Bonds. If any of such Bonds are to be redeemed prior to their respective dates of maturity, provision must have been made for giving notice of redemption as provided in the Bond Order.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. After firm banking and financial arrangements for the discharge and final payment or redemption of the Bonds have been made as described above, all rights of the District to initiate proceedings to call the Bonds for redemption or take any other action amending the terms of the Bonds are extinguished; provided, however, that the right to call the Bonds for redemption is not extinguished if the District: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the owners of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

There is no assurance that the current law will not be changed in a manner which would permit investments other than those described above to be made with amounts deposited to defease the Bonds. Because the Bond Order does not contractually limit such investments, Registered Owners may be deemed to have consented to defeasance with such other investments, notwithstanding the fact that such investments may not be of the same investment quality as those currently permitted under Texas law.

BOOK-ENTRY-ONLY SYSTEM

This section describes how ownership of the Bonds is to be transferred and how the principal of, premium, if any, and interest on the Bonds are to be paid to and credited by The Depository Trust Company, New York, New York, ("DTC") while the Bonds are registered in its nominee name. The information in this section concerning DTC and the Book- Entry-Only System has been provided by DTC for use in disclosure documents such as this Official Statement. The District and the Financial Advisor believe the source of such information to be reliable, but neither of the District or the Financial Advisor take any responsibility for the accuracy or completeness thereof.

The District cannot and does not give any assurance that (1) DTC will distribute payments of debt service on the Bonds, or redemption or other notices, to DTC Participants, (2) DTC Participants or others will distribute debt service payments paid to DTC or its nominee (as the registered owner of the Bonds), or redemption or other notices, to the Beneficial Owners, or that they will do so on a timely basis, or (3) DTC will serve and act in the manner described in this Official Statement. The current rules applicable to DTC are on file with the Securities and Exchange Commission, and the current procedures of DTC to be followed in dealing with DTC Participants are on file with DTC.

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered Bonds registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.6 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a rating of "AA+" from S&P Global Ratings. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

All payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the District or the Paying Agent/Registrar, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with Bonds held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent/Registrar, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Paying Agent/Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the District or the Paying Agent/Registrar. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the District believes to be reliable, but neither the District nor the Underwriters take any responsibility for the accuracy thereof.

THE DISTRICT

General

The District is a municipal management district created in 2013 by a special act of the 83rd Texas Legislature, House Bill 3874, Regular Session, codified as Chapter 3909, Texas Special District Local Laws Code (the "Act") pursuant to Sections 52 and 52-a, Article III, and Section 59, Article XVI, of the Texas Constitution, and operates under the provisions of the Act, Chapter 49, Texas Water Code, as amended, Chapter 375, Texas Local Government Code, as amended, and other general statutes of Texas applicable to municipal management districts. The District contains approximately 319 acres of land and is located on the east side of Texas State Highway 6 (the "SH 6") between Rock Prairie Road and William D. Fitch Parkway, which is approximately 5 miles south of the central business district of the City. The District lies entirely within the corporate limits of the City and within the boundaries of the College Station Independent School District. See "AERIAL PHOTOGRAPH." The District is subject to the continuing supervisory jurisdiction of the Texas Commission on Environmental Quality ("TCEQ").

The District is empowered, among other things, to finance, purchase, construct, operate and maintain all works, improvements, facilities and plants necessary for the supply and distribution of water; the collection, transportation, and treatment of wastewater; and the control and diversion of storm water. The District is also empowered to construct and finance certain road facilities. The District may issue bonds and other forms of indebtedness to purchase or construct all of such facilities. The District may also provide solid waste disposal and collection services. Additionally, the District is empowered to finance, operate, maintain and construct recreational facilities, but may not issue bonds payable from ad valorem taxes therefor. See "THE BONDS-Issuance of Additional Debt" and "-Financing Road Facilities."

The TCEQ exercises continuing supervisory jurisdiction over the District with respect to water, wastewater and drainage projects. The District is required to observe certain requirements of the City which, along with Texas law, limit the purposes for which the District may sell bonds for the acquisition, construction, and improvement of facilities and the refunding of outstanding debt obligations; limit the net effective interest rate on such bonds and other terms of such bonds; and require certain public facilities to be designed in accordance with applicable City standards. Construction and operation of the District's facilities are subject to the regulatory jurisdiction of additional government agencies. See "UTLILTY AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF COLLEGE STATION."

Land Use

	Approximate <u>Acres</u>	<u>Lots</u>
<u>Single-Family Residential</u>		
Midtown Reserve Subdivision:		
Phase 100.....	5	26
Phase 102.....	9	62
Phase 104.....	5	36
Phase 105.....	10	69
Phase 106.....	7	50
Phase 107.....	8	48
Phase 200.....	9	49
Phase 201.....	7	55
Phase 601.....	7	14
Phase 404A.....	2	1
Phase 109 & 112.....	20	44
Phase 110.....	12	78
Phase 111.....	3	21
Subtotal.....	<u>104</u>	<u>553</u>
<i>Developed Commercial (Office Park and Rehab Center)</i>	19	---
<i>Commercial Reserves served with Trunk Utilites (no vertical)</i>	62	---
<i>Multi-family Reserves (a)</i>	14	---
<i>Remaining Developable Acreage</i>	39	---
<i>Non-Developable (Easements, Parks and Rights-of-way)</i>	<u>81</u>	<u>---</u>
Total	319	553

(a) A 264-unit apartment complex completed construction and opened in February 2023.

Status of Development

Water, sewer and drainage facilities, as well as roads, are complete to serve Midtown Reserve Subdivision (approximately 104 acres developed into 553 single family residential lots). Home construction began in 2019 and, as of September 1, 2024, the District consisted of 388 completed and occupied homes, 5 completed and unoccupied homes, 48 homes under construction, 1 model home, 111 vacant developed lots. Homebuilding in the District is currently being conducted primarily by DR Horton, but a few lots have been sold to two local builders. New homes in the District range in price from approximately \$295,000 to \$595,000.

Utility trunk facilities and roads have also been constructed to serve 95 acres of commercial and multi-family development within the District. Commercial development to date includes an office park located on approximately 11 acres, Accel at College Station, a 116-bed transitional care and rehabilitation facility located on approximately 8 acres, and Nine 50 Town Lake at Midtown, a 264-unit apartment complex located on approximately 14 acres which opened in February 2023 and is approximately 97% occupied. See "TAX DATA—Principal Taxpayers." The remaining 62 acres of commercial and multi-family reserves do not have vertical construction.

The balance of the District consists of approximately 39 undeveloped but developable acres and approximately 81 undevelopable acres of easements, parks and rights-of-way.

Future Development

Approximately 39 developable acres of land in the District are not yet fully served with the water, sanitary sewer, drainage, storm sewer or road facilities necessary for the construction of taxable improvements. While the Developers anticipate future development of this acreage as business conditions warrant, there can be no assurances if and when any of such undeveloped land will ultimately be developed. The District anticipates issuing additional bonds to accomplish full development of the District. See “RISK FACTORS—Possible Impact on District Tax Rates.” The Engineer has stated that under current development plans, the remaining authorized but unissued bonds (\$95,700,000 principal amount for road facilities and \$71,400,000 principal amount for water, sanitary sewer, drainage facilities) should be sufficient to finance the construction of water, sanitary sewer, drainage and road facilities required for full development of the District.

UTILITY AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF COLLEGE STATION

The District operates pursuant to a Utility and Road Agreement between the City and the District, dated as of February 17, 2015 (the “Utility Agreement”). Pursuant to the Utility Agreement, the District assumed responsibility for acquiring and constructing for the benefit of the City, the water distribution, wastewater collection, storm water, and road facilities, to serve development occurring within the boundaries of the District (the “Facilities”). The District has agreed to convey, and the City has agreed to accept, the Facilities, except for stormwater detention facilities and recreational facilities, for operation and maintenance at the sole cost of the City in consideration for the District’s financing, acquisition and construction of the Facilities. It is the City’s obligation to set rates and charges for the use of the Facilities and to bill and collect such rates and charges from customers of the Facilities. The City agrees to charge residents of the District equal and uniform water and wastewater rates as those users of similar classifications in non-municipal utility district areas of the City. All revenues from the Facilities belong exclusively to the City. The Utility Agreement provides that the Facilities shall be designed and constructed in accordance with the City’s requirements and criteria.

The City agrees to provide the District with its ultimate requirements for water supply capacity and wastewater treatment capacity without capital charges of any kind. The City has covenanted to maintain the Facilities, or cause the Facilities to be maintained, in good condition and working order and to operate the same, or cause the same, to be operated in an efficient and economical manner at a reasonable cost and in accordance with sound business principles. The City has also covenanted to comply with all contractual provisions and agreements entered into by it and with all valid rules, regulations, directions or orders by any governmental or judicial body promulgating the same.

Under the Utility Agreement, the District is authorized to issue bonds to finance the construction and acquisition of the Facilities. The Bonds must be approved by the City to the extent that such issuance complies with the City’s policy related to municipal management districts.

The District is authorized by the Act to construct, maintain and finance recreational facilities with the use of any available funds, and the City has consented to the use of any available funds for such purposes in Resolution No. 07-09-15-02 dated July 9, 2015 as amended by Resolution No. 03-11-21-3.8 dated March 11, 2021. Pursuant to an Interlocal Agreement between the District and the City dated March 11, 2021, the neighborhood park(s) and/or community park(s) within the District will be dedicated to the City per the City’s Unified Development Ordinance, but operated and maintained by the District. Pursuant to the Utility Agreement, said recreational facilities will not be conveyed to the City.

The City’s right to dissolve the District is restricted under the Utility Agreement. Under the terms of the Utility Agreement, the City agrees that it will not dissolve the District until the Infrastructure and Economic Development Agreement between the City and CSTC, and as partially assigned to the District and CSDR, has expired or has been terminated. The City has also agreed to afford the District the opportunity to discharge any remaining District obligations under any existing Utility Development Agreement with a developer in the District by authorizing the sale of bonds during a dissolution transition period or selling bonds of the City in an amount adequate to discharge the District’s obligations.

MANAGEMENT OF THE DISTRICT

Board of Directors

The District is governed by the Board of Directors, consisting of five directors, which has control over and management supervision of all affairs of the District. Directors serve staggered four-year terms and are appointed by the City based on nominations from the Board. All of the directors are qualified to serve the District. The Directors of the District are listed below:

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
Uri Geva	President	June 2027
Hays Glover	Vice President	June 2027
Mark Lindemulder	Secretary	June 2027
Logan Lee	Assistant Vice President	June 2025
Samuel Kerbel	Assistant Secretary	June 2025

The District has no full-time employees but instead contracts with the entities described below for professional services:

Tax Assessor/Collector

Land and improvements in the District are being appraised for taxation by the Brazos Central Appraisal District. The District contracts with B&A Municipal Tax Service, LLC to act as Tax Assessor/Collector for the District.

Bookkeeper

The District contracts with Municipal Accounts & Consulting, L.P. (the “Bookkeeper”) for bookkeeping services for the District.

Engineer

The consulting engineers for the District in connection with the design and construction of the District’s facilities are EHRA Engineering and Schultz Engineering, LLC (collectively, the “Engineer”).

Auditor

The District retains an independent auditor to audit the District’s financial statements annually, which if required by the Texas Water Code, are filed with the Commission. The financial statements of the District, as of May 31, 2023, and for the fiscal year then ended, included in this official statement, have been audited by FORVIS, LLP, independent auditors, as stated in their report appearing herein. The District has engaged Forvis Mazars, LLP, independent auditors, to audit its financial statements for the fiscal year ended May 31, 2024. See “APPENDIX A” for a copy of the District’s May 31, 2023 audited financial statements.

Bond Counsel and General Counsel

Schwartz, Page & Harding, L.L.P. (“Bond Counsel”) serves as bond counsel to the District. The fee to be paid Bond Counsel for services rendered in connection with the issuance of the Bonds is contingent upon the sale and delivery of the Bonds. In addition, Schwartz, Page & Harding, L.L.P. serves as general counsel to the District on matters other than the issuance of bonds.

Disclosure Counsel

The District has engaged McCall, Parkhurst & Horton L.L.P. as disclosure counsel (“Disclosure Counsel”). The fees paid to Disclosure Counsel in connection with the issuance of the Bonds are contingent upon the sale and delivery of the Bonds.

Financial Advisor

Masterson Advisors LLC (the “Financial Advisor”) serves as financial advisor to the District. The fee to be paid the Financial Advisor is contingent upon the sale and delivery of the Bonds.

THE DEVELOPERS

Role of a Developer

In general, the activities of a landowner or developer in a district such as the District include designing the project, defining a marketing program and setting building schedules; securing necessary governmental approvals and permits for development; arranging for the construction of roads and the installation of utilities; and selling or leasing improved tracts or commercial reserves to other developer or third parties. A developer is under no obligation to a district to undertake development activities according to any particular plan or schedule. Furthermore, there is no restriction on a developer's right to sell any or all of the land which the developer owns within a district. In addition, the developer is ordinarily the major taxpayer within the district during the early stages of development. The relative success or failure of a developer to perform in the above-described capacities may affect the ability of a district to collect sufficient taxes to pay debt service and retire bonds.

Prospective purchasers of the Bonds should note that the prior real estate experience of the Developers should not be construed as an indication that further development within the District will occur, or that construction of taxable improvements upon property within the District will occur, or that marketing or leasing of taxable improvements constructed upon property within the District will be successful. Circumstances surrounding development within the District may differ from circumstances surrounding development of other land in several respects, including the existence of different economic conditions, financial arrangements, homebuilders, geographic location, market conditions, and regulatory climate. No representation is made as to the relative success of any of the projects mentioned above, and no assurance as to the future performance of the Developer should be inferred. Prospective purchasers are urged to inspect the District in order to acquaint themselves with the nature of the Developer's business activities. See "RISK FACTORS – Dependence on Principal Taxpayers."

The Developers

Approximately 120 acres within the District is being developed as Midtown City Center by College Station Town Center, Inc., a Texas corporation ("CSTC"), which was formed for the sole purpose of developing its land in the District. Its only substantial asset consists of land in the District. James Murr is the President of CSTC and an owner of a portion of CSTC. Currently, CSTC owns approximately 78 acres of land within the District, all of which is served with trunk utilities and has no vertical improvements.

Approximately 142 acres of land within the District is being developed as Midtown Reserve for single family purposes by College Station Downtown Residential LLC ("CSDR"), a Texas limited liability company, which was formed for the sole purpose of developing its land in the District. Its only substantial asset consists of land in the District. James Murr is a director of DM-CSDR Inc., which is a member of CSDR. Currently, CSDR owns approximately 95 acres within the District, all of which is served with trunk utilities and has no vertical improvements.

Acquisition and Development Financing

To obtain land acquisition and development financing for the land it owns within the District, CSTC entered into a loan agreement with Crockett National Bank, which has been refinanced with a Loan from VeraBank, N.A.. Pursuant to such loan agreement with VeraBank, N.A., CSTC may obtain advances for the installation of roads and utilities within the District in an amount not to exceed \$10,200,000 in the aggregate. Advances under such loan agreement are subject to a deed of trust on CSTC's land within the District and are guaranteed by its principals. Pursuant to such loan agreement, the note payable to VeraBank, N.A. has a maturity date of September 9, 2025. As of September 1, 2024, the outstanding balance on the note was \$8,187,981. The owners of CSTC have also financed a portion of the acquisition and development cost.

To obtain land acquisition and development financing for the single-family residential land, CSDR entered into a loan agreement with The Bank and Trust. The loan with The Bank and Trust has been paid off and no other debt is in place at this time.

THE ROADS

Bond proceeds will be used to finance a portion of the construction and paving of streets for and other road facilities to serve Midtown Reserve within the District.

All roadways are designed and constructed in accordance with the City and County standards, rules, and regulations. Upon completion of construction, the District will convey the road facilities to the City for operation and maintenance, as described in the Utility Agreement.

The roads within the District lie within the public right-of-way. In addition to the roadway, public utilities such as underground water, sewer and drainage facilities are located within the right-of-way. The right-of-way is also shared by streetlights, sidewalks, and franchise utilities (including power, gas, telephone, fiber, and cable).

USE AND DISTRIBUTION OF BOND PROCEEDS

The estimated use and distribution of Bond proceeds is shown below. Of proceeds to be received from sale of the Bonds, \$ _____ is estimated for construction costs, \$ _____ is estimated for non-construction costs, and \$ _____ is estimated for issuance costs and fees. The actual amounts to be reimbursed by the District and the non-construction costs will be finalized after the sale of the Bonds and completion of agreed-upon procedures by the District's auditor. The surplus funds, if any, may be expended for any lawful purpose for which surplus construction funds may be used, limited, however, to the purposes for which the Bonds were issued.

[TO COME]

In the instance that estimated amounts exceed actual costs, the difference comprises a surplus which may be expended for authorized purposes.

Future Debt

The Developers have financed the cost of creation of the District and the land, engineering and construction costs of underground utilities and roads to serve the District, as well as certain other District improvements. After reimbursement from proceeds of the sale of the Bonds, the Developers will have expended approximately \$ _____ (as of September 1, 2024) for design, construction and acquisition of water, sanitary sewer, and drainage facilities and roadways not yet reimbursed. It is anticipated that proceeds from future issues of District bonds will be used, in part, to reimburse the Developers for these costs to the extent allowed by the TCEQ, including payments to the City for the right to use additional capacity in the City's water supply and wastewater treatment facilities, if applicable. The District contains approximately 20 acres of developable land not presently served with water distribution, wastewater collection and storm drainage facilities or roads. It is anticipated that additional bonds will be issued to finance the construction of these facilities to serve this undeveloped acreage. The District can make no representation that any additional development will occur within the District. The Engineer has stated that the District's authorized but unissued bonds will be adequate, under present land use projections, to finance such improvements.

UNLIMITED TAX BONDS AUTHORIZED BUT UNISSUED

Date of Authorization	Purpose	Amount Authorized	Issued to Date	Amount Unissued
11/3/2015	Roads	\$ 106,600,000	\$ 10,900,000 (a)	\$ 95,700,000
11/3/2015	Roads Refunding	\$ 106,600,000	\$ -	\$ 106,600,000
11/3/2015	Water, Sanitary Sewer, and Drainage Facilities	\$ 71,400,000	\$ -	\$ 71,400,000
11/3/2015	Water, Sanitary Sewer, and Drainage Facilities Refunding	\$ 71,400,000	\$ -	\$ 71,400,000

(a) Includes the Bonds.

FINANCIAL INFORMATION CONCERNING THE DISTRICT (UNAUDITED)

2024 Taxable Assessed Valuation \$157,680,166 (a)
 Estimated Taxable Assessed Valuation as of August 1, 2024 \$165,696,809 (b)

Gross Direct Debt Outstanding (the Bonds and the Outstanding Bonds) \$10,645,000

Ratios of Gross Direct Debt to:

2024 Taxable Assessed Valuation 6.85%
 Estimated Taxable Assessed Valuation as of August 1, 2024 6.42%

Area of District: Approximately 319 acres
 Estimated 2024 Population: 1,870(c)

- (a) As certified by the Brazos Central Appraisal District (the "Appraisal District"). See "TAXING PROCEDURES."
 (b) Provided by the Appraisal District for informational purposes only. Such amounts reflect an estimate of the taxable appraised value within the District on August 1, 2024. No tax will be levied on such amount. Taxes are levied on taxable value certified by the Appraisal District as of January 1 of each year. See "TAXING PROCEDURES."
 (c) Based on 3.5 persons per occupied single-family residence and 2 persons per occupied multi-family residence.

Cash and Investment Balances (unaudited as of September 12, 2024)

Operating Fund	Cash and Temporary Investments	\$ _____ (a)
Road Debt Service Fund	Cash and Temporary Investments	\$ _____ (b)
Road Capital Projects Fund	Cash and Temporary Investments	\$0

- (a) See "RISK FACTORS—Operating Funds."
 (b) The District will capitalize twelve (12) months of interest on the Bonds, which will be deposited to the Road Bond Sub-Account within the District's Debt Service Fund. Neither Texas law nor the Bond Order requires the District to maintain any minimum balance in the Debt Service Funds. See "USE AND DISTRIBUTION OF BOND PROCEEDS."

Investments of the District

The District has adopted an Investment Policy as required by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended. The District's goal is to preserve principal and maintain liquidity while securing a competitive yield on its portfolio. Funds of the District will be invested in short term U.S. Treasuries, certificates of deposit insured by the Federal Deposit Insurance Corporation ("FDIC") or secured by collateral evidenced by perfected safekeeping receipts held by a third-party bank, and public funds investment pools rated in the highest rating category by a nationally recognized rating service. The District does not currently own, nor does it anticipate owning, long term securities or derivative products in the District's investment portfolio.

Outstanding Bonds (as of September 2, 2024)

Series	Original Principal Amount	Outstanding Bonds 9/2/2024
2021 (a)	\$ 2,500,000	\$ 2,305,000
2022 (a)	2,500,000	2,440,000
2023 (a)	1,750,000	1,750,000
2024 (a)	1,600,000	1,600,000
Total	\$ 8,350,000	\$ 8,095,000

- (a) Unlimited tax road bonds.

ESTIMATED OVERLAPPING DEBT STATEMENT

Estimated Overlapping Debt

Other governmental entities whose boundaries overlap the District have outstanding bonds payable from ad valorem taxes. The following statement of direct and estimated overlapping ad valorem tax debt was developed from information contained in "Texas Municipal Reports" published by the Municipal Advisory Council of Texas or other publicly available information. Except for the amount relating to the District, the District has not independently verified the accuracy or completeness of such information, and no person is entitled to rely upon such information as being accurate or complete. Political subdivisions overlapping the District are authorized by Texas law to levy and collect ad valorem taxes for operation, maintenance, and/or general revenue purposes in addition to taxes for payment of their debt, and some are presently levying and collecting such taxes.

Taxing Jurisdiction	Outstanding Bonds	As of	Overlapping	
			Percent	Amount
Brazos County.....	\$ 97,045,000	8/31/2024	0.43%	\$ 417,294
College Station ISD.....	401,685,000	8/31/2024	0.82%	3,293,817
City of College Station.....	468,785,000	8/31/2024	0.90%	4,219,065
Total Estimated Overlapping Debt.....				\$ 7,930,176
The District.....	10,645,000 (a)	Current	100.00%	10,645,000
Total Direct and Estimated Overlapping Debt.....				\$ 18,575,176
Ratio of Estimated Direct and Overlapping Debt to 2024 Certified Taxable Assessed Valuation.....				11.95%
Ratio of Estimated Direct and Overlapping Debt to Estimated Taxable Assessed Valuation as of August 1, 2024.....				11.21%

(a) Includes the Bonds and the Outstanding Bonds.

Overlapping Taxes for 2023

Property within the District is subject to taxation by several taxing authorities in addition to the District. On January 1 of each year a tax lien attaches to property to secure the payment of all taxes, penalties and interest imposed on such property. The lien exists in favor of each taxing unit, including the District, having the power to tax the property. The District's tax lien is on a parity with tax liens of taxing authorities shown below. In addition to ad valorem taxes required to pay debt service on bonded debt of the District and other taxing authorities, certain taxing jurisdictions, including the District, are also authorized by Texas law to assess, levy and collect ad valorem taxes for operation, maintenance, administrative and/or general revenue purposes.

Set forth below are all of the taxes levied for the 2023 tax year by all taxing jurisdictions overlapping the District and the 2023 tax rate of the District. No recognition is given to local assessments for civic association dues, fire department contributions, solid waste disposal charges or any other levy of entities other than political subdivisions.

	2023 Tax Rate per \$100 of Taxable <u>Assessed Valuation</u>
Brazos County.....	\$ 0.409700
College Station ISD.....	0.962200
City of College Station.....	0.513086
Total Overlapping Tax Rate.....	\$ 1.884986
The District (a).....	0.500000
Total Tax Rate.....	\$ 2.384986

(a) The District has authorized publication of its intent to levy a total tax rate of \$0.65 per \$100 assessed valuation for tax year 2024. The District expects to adopt the 2024 tax rate in October 2024.

TAX DATA

Debt Service Tax

The Board covenants in the Bond Order to levy and assess, for each year that all or any part of the Bonds remain outstanding and unpaid, a tax adequate to provide funds to pay the principal of and interest on the Bonds and the Outstanding Bonds. For tax year 2023, the District has levied a tax rate of \$0.32 for debt service. See “Tax Rate Distribution” and “Tax Roll Information” below, and “TAXING PROCEDURES” and “RISK FACTORS—Factors Affecting Taxable Values and Tax Payment.”

Maintenance and Operations Tax

The Board has the statutory authority to levy and collect an annual ad valorem tax for the operation and maintenance of the District, if such a maintenance tax is authorized by the District’s voters. A maintenance tax election was held on November 3, 2015, and voters of the District authorized, among other things, the Board to levy a maintenance tax at a rate not to exceed \$1.00 per \$100 assessed valuation for general operations and maintenance costs. The District levied a \$0.18 maintenance and operations tax rate for 2023. A maintenance tax is in addition to taxes which the District is authorized to levy for paying principal of and interest on the Bonds. See “Debt Service Tax” above.

Tax Rate Distribution

	2024 (a)	2023	2022	2021	2020
Debt Service	\$ 0.454	\$ 0.320	\$ 0.380	\$ 0.330	\$ -
Maintenance and Operations	0.196	0.180	0.120	0.170	0.500
Total	\$ 0.650	\$ 0.500	\$ 0.500	\$ 0.500	\$ 0.500

- (a) The District has authorized publication of its intent to levy a total tax rate of \$0.65 per \$100 assessed valuation for tax year 2024. The District expects to adopt the 2024 tax rate in October 2024.

Historical Tax Collections

The following statement of tax collections sets forth in condensed form the historical tax collection experience of the District. This summary has been prepared for inclusion herein, based upon information from District records. Reference is made to such records for further and more complete information.

Tax Year	Certified Taxable Assessed Valuation	Tax Rate	Total Tax Levy	Total Collections as of July 31, 2024	
				Amount	Percent
2019	\$ 14,659,986	\$ 0.500	\$ 73,300	\$ 73,300	100.00%
2020	23,533,362	0.500	117,667	117,667	100.00%
2021	43,391,211	0.500	216,956	216,956	100.00%
2022	72,753,269	0.500	363,766	363,766	100.00%
2023	128,597,056	0.500	642,985	632,729	98.40%

Taxes are due upon receipt of bill therefor and become delinquent after January 31 of the following year or 30 days after the date billed, whichever is later, or, if billed after January 10, they are delinquent on the first day of the month next following the 21st day after such taxes are billed. No split payments are allowed, and no discounts are allowed.

Principal Taxpayers

The following table represents the principal taxpayers, the type of property, the certified taxable assessed value of such property and such property's certified assessed value as a percentage of the 2024 Certified Taxable Assessed Valuation of \$157,680,166, which represents ownership as of January 1, 2024. An accurate principal taxpayer list related to the Estimated Taxable Assessed Valuation as of August 1, 2024 of \$165,696,809 is not available from the Appraisal District as of the date hereof.

Taxpayer	Type of Property	2024 Certified Taxable Assessed Valuation	% of 2024 Certified Taxable Assessed Valuation
CS Midtown Holdings LP (a)	Land & Improvements	\$ 28,965,635	18.37%
LOA Brazos NH LLC (b)	Land & Improvements	8,101,462	5.14%
College Station Town Center Inc. (c)	Land & Improvements	4,373,462	2.77%
College Station Downtown Residential LLC (c)	Land	2,928,901	1.86%
Midtown Adventures LLC	Land & Improvements	2,357,400	1.50%
Alamo College Station Residences LLC	Land & Improvements	2,010,270	1.27%
Individual	Land & Improvements	1,966,131	1.25%
4121 Midtown Office Park LLC	Land	1,607,115	1.02%
SEC Brazos Investments LLC	Land & Improvements	1,178,694	0.75%
Individual	Land & Improvements	1,116,928	0.71%
Total		\$ 54,605,998	34.63%

(a) Nine 50 Town Lake at Midtown apartment complex.

(b) Accel at College Station Transitional Care and Rehabilitation Center.

(c) See "THE DEVELOPERS."

Tax Roll Information

The District's assessed value as of January 1 of each year is used by the District in establishing its tax rate. See "TAXING PROCEDURES—Valuation of Property for Taxation". The following represents the composition of certified property comprising the 2022 through 2024 Taxable Assessed Valuations. Differences in value from other information herein are due to differences in dates of information provided. A breakdown of the Estimated Taxable Assessed Valuation as of August 1, 2024 is not available.

	2024 Certified Taxable Valuation	2023 Certified Taxable Valuation	2022 Certified Taxable Valuation
Land	\$ 41,633,070	\$ 38,023,928	\$ 28,351,427
Improvements	119,522,878	93,808,503	45,857,086
Personal Property	141,635	140,373	120,621
Exemptions	(3,617,417)	(3,375,748)	(1,575,865)
Total Certified	\$ 157,680,166	\$ 128,597,056	\$ 72,753,269

Tax Adequacy for Debt Service

The tax rate calculations set forth below are presented to indicate the tax rates per \$100 of taxable assessed valuation which would be required to meet average annual and maximum debt service requirements if no growth in the District's tax base occurred beyond the 2024 Taxable Assessed Valuation of \$157,680,166 and the Estimated Taxable Assessed Valuation as of August 1, 2024 of \$165,696,809. The calculations contained in the following table merely represent the tax rates required to pay principal and interest on the Bonds and the Outstanding Bonds when due, assuming no further increase or any decrease in taxable assessed values in the District, collection of ninety-five percent (95%) of taxes levied, the sale of no additional bonds, and no other funds available for the payment of debt service. See "RISK FACTORS—Factors Affecting Taxable Values and Tax Payments."

Average Annual Debt Service Requirement (2025-2050)	\$664,947
\$0.45 Tax Rate on 2024 Taxable Assessed Valuation at 95% collections.....	\$674,083
\$0.43 Tax Rate on Estimated Taxable Assessed Valuation as of August 1, 2024 at 95% collections.....	\$676,871
Maximum Annual Debt Service Requirement (2027)	\$730,575
\$0.49 Tax Rate on 2024 Taxable Assessed Valuation at 95% collections.....	\$734,001
\$0.47 Tax Rate on Estimated Taxable Assessed Valuation as of August 1, 2024 at 95% collections.....	\$739,836

No representations or suggestions are made that the Estimated Taxable Assessed Valuation as of August 1, 2024, provided by the Appraisal District for the District will be certified as taxable value by the Appraisal District, and no person should rely upon such amounts or their inclusion herein as assurance of their attainment. See "TAXING PROCEDURES."

TAXING PROCEDURES

Property Tax Code and County-Wide Appraisal District

The Texas Tax Code (the "Property Tax Code") requires, among other matters, county-wide appraisal and equalization of taxable property values and establishes in each county of the State of Texas a single appraisal district with the responsibility for recording and appraising property for all taxing units within a county and a single appraisal review board with the responsibility for reviewing and equalizing the values established by the appraisal district. The Brazos Central Appraisal District (the "Appraisal District") has the responsibility for appraising property for all taxing units wholly within Brazos County, including the District. Such appraisal values are subject to review and change by the Brazos County Appraisal Review Board (the "Appraisal Review Board"). Under certain circumstances, taxpayers and taxing units (such as the District) may appeal the orders of the Appraisal Review Board by filing a petition for review in State district court. In such event, the value of the property in question will be determined by the court or by a jury if requested by any party. Absent any such appeal, the appraisal roll, as prepared by the Appraisal District and approved by the Appraisal Review Board, must be used by each taxing jurisdiction in establishing its tax roll and tax rate. The District is eligible, along with all other conservation and reclamation districts within Brazos County, to participate in the nomination of and vote for a member of the Board of Directors of the Appraisal District.

Property Subject to Taxation by the District

Except for certain exemptions provided by Texas law, all real property and tangible personal property in the District is subject to taxation by the District; however, it is expected that no effort will be made by the District to collect taxes on personal property other than on personal property rendered for taxation, business inventories and the property of privately owned utilities. Principal categories of exempt property include: property owned by the State of Texas or its political subdivisions if the property is used for public purposes; property exempt from ad valorem taxation by federal law; certain household goods, family supplies, and personal effects; farm products owned by the producer; all oil, gas and mineral interests owned by an institution of higher education; certain property owned by exclusively charitable organizations, youth development associations, religious organizations, and qualified schools; designated historical sites; solar and wind-powered energy devices; and most individually owned automobiles. In addition, the District may by its own action exempt residential homesteads of persons sixty-five (65) years or older or under a disability for purposes of payment of disability insurance benefits under the Federal Old-Age Survivors and Disability Insurance Act to the extent deemed advisable by the Board. The District would be required to call an election on such residential homestead exemption upon petition by at least twenty percent (20%) of the number of qualified voters who voted in the District's preceding election and would be required to offer such an exemption if a majority of voters approve it at such election. For the 2024 tax year, the District has not granted any such exemptions. The District must grant exemptions to disabled veterans or certain surviving dependents of disabled veterans, if requested, of between \$5,000 and \$12,000 of assessed valuation depending upon the disability rating of the veteran, if such rating is less than 100%. A veteran who receives a disability rating of 100% is entitled to an exemption for the full value of the veteran's residence homestead. Additionally, subject to certain conditions, the surviving spouse of a disabled veteran who is entitled to an exemption for the full value of the veteran's residence homestead is also entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied. A partially disabled veteran or certain surviving spouses of partially disabled veterans are entitled to an exemption from taxation of a percentage of the appraised value of their residence homestead in an amount equal to the partially disabled veteran's disability rating if (i) the residence homestead was donated by a charitable organization at no cost to the disabled veteran or, (ii) the residence

was donated by a charitable organization at some cost to the disabled veteran if such cost is less than or equal to fifty percent (50%) of the total good faith estimate of the market value of the residence as of the date the donation is made. Also, the surviving spouse of a member of the armed forces or a first responder (as defined under Texas law), who was (i) killed in action, or (ii) fatally injured in the line of duty, is, subject to certain conditions, entitled to an exemption of the total appraised value of the surviving spouse's residence homestead, and subject to certain conditions, an exemption up to the same amount may be transferred to a subsequent residence homestead of the surviving spouse.

A "Freeport Exemption" applies to goods, wares, merchandise, other tangible personal property and ores, other than oil, natural gas, and petroleum products (defined as liquid and gaseous materials immediately derived from refining oil or natural gas), and to aircraft or repair parts used by a certified air carrier acquired in or imported into Texas which are destined to be forwarded outside of Texas and which are detained in Texas for assembling, storing, manufacturing, processing or fabricating for less than 175 days. Although certain taxing units may take official action to tax such property in transit and negate such exemption, the District does not have such an option. A "Goods-in-Transit" Exemption is applicable to certain tangible personal property, as defined by the Property Tax Code, acquired in or imported into Texas for storage purposes and which is stored under a contract of bailment by a public warehouse operator at one or more public warehouse facilities in Texas that are not in any way owned or controlled by the owner of such property for the account of the person who acquired or imported such property. The exemption excludes oil, natural gas, petroleum products, aircraft and certain special inventory including dealer's motor vehicles, dealer's vessel and outboard motor vehicle, dealer's heavy equipment and retail manufactured housing inventory. The exemption applies to covered property if it is acquired in or imported into Texas for assembling, storing, manufacturing, processing, or fabricating purposes and is subsequently forwarded to another location inside or outside of Texas not later than 175 days after acquisition or importation. A property owner who receives the Goods-in-Transit Exemption is not eligible to receive the Freeport Exemption for the same property. Local taxing units such as the District may, by official action and after public hearing, tax goods-in-transit personal property. A taxing unit must exercise its option to tax goods-in-transit property before January 1 of the first tax year in which it proposes to tax the property at the time and in the manner prescribed by applicable law. However, taxing units who took official action as allowed by prior law before October 1, 2011, to tax goods-in-transit property, and who pledged such taxes for the payment of debt, may continue to impose taxes against the goods-in-transit property until the debt is discharged without further action, if cessation of the imposition would impair the obligations of the contract by which the debt was created. The District has not exercised its option to tax goods-in-transit personal property but may choose to do so in the future.

General Residential Homestead Exemption

Texas law authorizes the governing body of each political subdivision in the State of Texas to exempt up to twenty percent (20%) of the appraised value of residential homesteads, but not less than \$5,000 if any exemption is granted, from ad valorem taxation. The law provides, however, that where ad valorem taxes have previously been pledged for the payment of debt, the governing body of a political subdivision may continue to levy and collect taxes against the exempt value of the homesteads until the debt is discharged, if the cessation of the levy would impair the obligations of the contract by which the debt was created. For the 2024 tax year, the District has not granted a general residential homestead exemption.

Valuation of Property for Taxation

Generally, property in the District must be appraised by the Appraisal District at market value as of January 1 of each year. Assessments under the Property Tax Code are to be based upon one hundred percent (100%) of market value. The appraised value of residential homestead property may be limited to the lesser of the market value of the property, or the sum of the appraised value of the property for the last year in which it was appraised, plus ten percent (10%) of such appraised value multiplied by the number of years since the last appraisal, plus the market value of all new improvements to the property. Once an appraisal roll is prepared and approved by the Appraisal Review Board, it is used by the District in establishing its tax rate. The Property Tax Code requires the Appraisal District to implement a plan for periodic reappraisal of property to update appraised values. The plan must provide for appraisal of all real property by the Appraisal District at least once every three (3) years. It is not known what frequency of reappraisal will be utilized by the Appraisal District or whether reappraisals will be conducted on a zone or county-wide basis.

The Property Tax Code provides for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property that is at least 15% damaged by a disaster and located within an area declared to be a disaster area by the governor of the State of Texas. This temporary exemption is automatic if the disaster is declared prior to a taxing unit, such as the District, adopting its tax rate for the tax year. A taxing unit, such as the District, may authorize the exemption at its discretion if the disaster is declared after the taxing unit has adopted its tax rate for the tax year. The amount of the exemption is based on the percentage of damage and is prorated based on the date of the disaster. Upon receipt of an application submitted within the eligible timeframe by a person who qualifies for a temporary exemption under the Property Tax Code, the Appraisal District is required to complete a damage assessment and assign a damage assessment rating to determine the amount of the exemption. The temporary exemption amounts established in the Property Tax Code range from 15% for property less than 30% damaged to 100% for property that is a total loss. Any such temporary exemption granted for disaster-damaged property expires on January 1 of the first year in which the property is reappraised.

District and Taxpayer Remedies

Under certain circumstances, taxpayers and taxing units, including the District, may appeal orders of the Appraisal Review Board by filing a petition for review in district court within forty-five (45) days after notice is received that a final order has been entered. In such event, the property value in question may be determined by the court, or by a jury, if requested by any party. Additionally, taxing units may bring suit against the Appraisal District to comply with the Property Tax Code. The District may challenge the exclusion of property from the appraisal rolls or the grant, in whole or in part, of an exemption.

Texas law provides for notice and hearing procedures prior to the adoption of an ad valorem tax rate by the District. Additionally, under certain circumstances, an election would be required to determine whether to approve the adopted total tax rate. See "TAXING PROCEDURES—Rollback of Operations and Maintenance Tax Rate." The Property Tax Code also establishes a procedure for notice to property owners of reappraisals reflecting increased property values, appraisals that are higher than renditions and appraisals of property not previously on an appraisal roll.

Agricultural, Open Space, Timberland and Inventory Deferment

The Property Tax Code permits land designated for agricultural use (including wildlife management), open space, or timberland to be appraised at its value based on the land's capacity to produce agriculture or timber products rather than at its fair market value. The Property Tax Code permits, under certain circumstances, that residential real property inventory held by a person in the trade or business be valued at the price all such property would bring if sold as a unit to a purchaser who would continue the business. Landowners wishing to avail themselves of any of such designations must apply for the designation, and the Appraisal District is required by the Property Tax Code to act on each claimant's right to the designation individually. A claimant may waive the special valuation as to taxation by some political subdivisions and not as to others. If a claimant receives the designation and later loses it by changing the use of the property or selling it to an unqualified owner, the District can collect taxes based on the new use for the three (3) years prior to the loss of the designation for agricultural, timberland or open space land. According to the District's Tax Assessor/Collector, as of January 1, 2024, approximately 58 acres of land within the District was designated for agricultural use, open space, inventory deferment, or timberland.

Tax Abatement

The City and Brazos County may designate all or part of the District as a reinvestment zone, and the District, Brazos County, and the City may thereafter enter into tax abatement agreements with the owners of property within the zone. The tax abatement agreements may exempt from ad valorem tax, by the applicable taxing jurisdictions, and by the District, for a period of up to ten (10) years, all or any part of any increase in the assessed valuation of property covered by the agreement over its assessed valuation in the year in which the agreement is executed, on the condition that the property owner make specified improvements or repairs to the property in conformity with a comprehensive plan. According to the District's Tax Assessor/Collector, to date, none of the area within the District has been designated as a reinvestment zone.

Levy and Collection of Taxes

The District is responsible for the collection of its taxes, unless it elects to transfer such functions to another governmental entity. The District adopts its tax rate each year after it receives a tax roll certified by the Appraisal District. Taxes are due upon receipt of a bill therefor and become delinquent after January 31 of the following year or 30 days after the date billed, whichever is later, or, if billed after January 10, they are delinquent on the first day of the month next following the 21st day after such taxes are billed. A delinquent tax accrues interest at a rate of one percent (1%) for each month or portion of a month the tax remains unpaid beginning the first calendar month it is delinquent. A delinquent tax also incurs a penalty of six percent (6%) of the amount of the tax for the first calendar month it is delinquent plus a one percent (1%) penalty for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. However, a tax delinquent on July 1 incurs a total penalty of twelve percent (12%) of the amount of the delinquent tax without regard to the number of months the tax has been delinquent, which penalty remains at such rate without further increase. If the tax is not paid by July 1, an additional penalty of up to the amount of the compensation specified in the District's contract with its delinquent tax collection attorney, but not to exceed twenty percent (20%) of the total tax, penalty and interest, may, under certain circumstances, be imposed by the District. With respect to personal property taxes that become delinquent on or after February 1 of a year and that remain delinquent sixty (60) days after the date on which they become delinquent, as an alternative to the penalty described in the foregoing sentence, an additional penalty on personal property of up to the amount specified in the District's contract with its delinquent tax attorney, but not to exceed twenty percent (20%) of the total tax, penalty and interest, may, under certain circumstances, be imposed by the District prior to July 1. The District's contract with its delinquent tax collection attorney currently specifies a twenty percent (20%) additional penalty. The District may waive penalties and interest on delinquent taxes only for the items specified in the Texas Property Tax Code. The Property Tax Code also makes provision for the split payment of taxes, discounts for early payment and the postponement of the delinquency of taxes under certain circumstances. The owner of a residential homestead property who is (i) a person sixty-five (65) years of age or older, (ii) under a disability for purpose of payment of disability insurance benefits under the Federal Old Age Survivors and Disability Insurance Act, or (iii) qualifies as a disabled veteran under Texas law, is also entitled by law to pay current taxes on a residential homestead in installments or to defer the payment of taxes without penalty during the time of ownership. Additionally, a person who is delinquent on taxes for a residential homestead is entitled to an agreement with the District to pay such taxes in installments over a period of between 12 and 36 months (as determined by the District) when such person has not entered into another installment agreement with respect to delinquent taxes with the District in the preceding 24 months.

Rollback of Operation and Maintenance Tax Rate

Chapter 49 of the Texas Water Code classifies certain special purpose districts, including the District, differently based on their current operation and maintenance tax rate or on the percentage of projected build-out that a district has completed. Districts that have adopted an operation and maintenance tax rate for the current year that is 2.5 cents or less per \$100 of taxable value are classified herein as “Low Tax Rate Districts.” Districts that have financed, completed, and issued bonds to pay for all land, improvements and facilities necessary to serve at least 95% of the projected build-out of the district are classified as “Developed Districts.” Districts that do not meet either of the classifications previously discussed can be classified herein as “Developing Districts.” The impact each classification has on the ability of a district to increase its maintenance and operations tax rate is described for each classification below. Debt service and contract tax rates cannot be reduced by a rollback election held within any of the districts described below. See “SELECTED FINANCIAL INFORMATION” for a description of the District's current total tax rate.

Low Tax Rate Districts

Low Tax Rate Districts that adopt a total tax rate that would impose more than 1.08 times the amount of the total tax imposed by such district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, are required to hold an election within the district to determine whether to approve the adopted total tax rate. If the adopted total tax rate is not approved at the election, the total tax rate for a Low Tax Rate District is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.08 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions.

Developed Districts

Developed Districts that adopt a total tax rate that would impose more than 1.035 times the amount of the total tax imposed by the district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, plus any unused increment rates, as calculated and described in Section 26.013 of the Tax Code, are required to hold an election within the district to determine whether to approve the adopted total tax rate. If the adopted total tax rate is not approved at the election, the total tax rate for a Developed District is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.035 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions, plus any unused increment rates. In addition, if any part of a Developed District lies within an area declared for disaster by the Governor of Texas or President of the United States, alternative procedures and rate limitations may apply for a temporary period. If a district qualifies as both a Low Tax Rate District and a Developed District, the district will be subject to the operation and maintenance tax threshold applicable to Low Tax Rate Districts.

Developing Districts

Districts that do not meet the classification of a Low Tax Rate District or a Developed District can be classified as Developing Districts. The qualified voters of these districts, upon the Developing District's adoption of a total tax rate that would impose more than 1.08 times the amount of the total tax imposed by such district in the preceding tax year on a residence homestead appraised at the average appraised value of a residence homestead in the district, subject to certain homestead exemptions, are authorized to petition for an election to reduce the operation and maintenance tax rate. If an election is called and passes, the total tax rate for Developing Districts is the current year's debt service and contract tax rate plus the operation and maintenance tax rate that would impose 1.08 times the amount of operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, subject to certain homestead exemptions.

The District

A determination as to a district's status as a Low Tax Rate District, Developed District or Developing District will be made by the Board of Directors on an annual basis. The District cannot give any assurances as to what its classification will be at any point in time or whether the District's future tax rates will result in a total tax rate that will reclassify the District into a new classification and new election calculation. For 2024, the District was designated as a Developing District.

District's Rights in the Event of Tax Delinquencies

Taxes levied by the District are a personal obligation of the owner of the property against which the tax is levied. In addition, on January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property. The lien exists in favor of each taxing unit, including the District, having power to tax the property. The District's tax lien is on a parity with tax liens of other such taxing units. See “ESTIMATED OVERLAPPING DEBT STATEMENT.” A tax lien on real property takes priority over the claim of most creditors and other holders of liens on the property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. Further, personal property under certain circumstances is subject to seizure and sale for the payment of delinquent taxes, penalties, and interest.

Except with respect to (i) owners of residential homestead property who are sixty-five (65) years of age or older or under a disability as described above and who have filed an affidavit as required by law and (ii) owners of residential homesteads who have entered into an installment agreement with the District for payment of delinquent taxes as described above and who are not in default under said agreement, at any time after taxes on property become delinquent, the District may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax, or both. In filing a suit to foreclose a tax lien on real property, the District must join other taxing units that have claims for delinquent taxes against all or part of the same property. Collection of delinquent taxes may be adversely affected by the amount of taxes owed to other taxing units, by the effects of market conditions on the foreclosure sale price, or by taxpayer redemption rights (a taxpayer may redeem property that is a residence homestead or was designated for agricultural use within two (2) years after the deed issued at foreclosure is filed of record and may redeem all other property within six (6) months after the deed issued at foreclosure is filed of record) or by bankruptcy proceedings which restrict the collection of taxpayer debt. The District's ability to foreclose its tax lien or collect penalties and interest may be limited on property owned by a financial institution which is under receivership by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1825, as amended. Generally, the District's tax lien and a federal tax lien are on par with the ultimate priority being determined by applicable federal law. See "RISK FACTORS—Tax Collection Limitations."

Tax Exemption Provided to Public Facility Corporations and Certain Lessees

Chapter 303 of the Texas Local Government Code (the "PFC Act") authorizes cities, counties, school districts, housing authorities and special districts (a "Sponsor") to create a sponsored Public Facility Corporation ("PFC") to acquire, construct, rehabilitate, renovate, repair, equip, furnish and place in service public facilities. These activities may be financed through certain obligations of either the Sponsor or the PFC. Under the PFC Act, a "public facility" includes any real, personal, or mixed property, or an interest in property devoted or to be devoted to public use, and authorized to be financed under the PFC Act. A public facility, including a leasehold estate in a public facility, that is owned by a PFC is exempt from taxation by the State or a municipality or other political subdivision of the State, including the District. This exemption applies to both ad valorem and sales taxes levied by such taxing authorities. Subject to certain restrictions, a leasehold or other possessory interest granted by the PFC to the user of a PFC-owned multifamily residential development entitles that user to this same exemption. The 88th Texas Legislature passed H.B. 2071, which became effective June 18, 2023, to amend the PFC Act. H.B. 2071 significantly revised the PFC Act's requirements for the lessee of a multifamily residential development to qualify for this exemption and provides that the exemption for such projects does not apply to taxes imposed by a conservation and reclamation district providing water, sewer or drainage services to the development, unless an agreement is entered into with the district concerning payments in lieu of taxation. Projects for which PFC or Sponsor approval was received prior to the effective date of H. B. 2071 are governed by the prior law and are not subject to the same requirements. The District is not aware of any public facilities located within the boundaries of the District that are either owned or leased by a PFC.

GENERAL FUND

The following statement sets forth in condensed form the historical results of operation of the District's General Fund. The City operates the water and sewer system that serves the District, so the District collects no net revenues from operating the system. Such summary is based upon information obtained from the District's audited financial statements for fiscal years May 31, 2020 through 2023 and an unaudited summary from the District's bookkeeper for the year ended May 31, 2024. Such figures are included for informational purposes only. Accounting principles customarily employed in the determination of net revenues have been observed and in all instances exclude depreciation. See "RISK FACTORS—Operating Funds." Reference is made to "APPENDIX A" for further and complete information.

	Fiscal Year Ended May 31				
	2024 (a)	2023	2022	2021	2020 (b)
Revenues					
Property Taxes		\$ 85,613	\$ 73,108	\$ 116,829	\$ 73,312
Penalty and Interest		-	-	1,738	3,092
Investment Income		-	-	66	54
Other Income		-	-	-	11,156
Total Revenues	\$ -	\$ 85,613	\$ 73,108	\$ 118,633	\$ 87,614
Expenditures					
Professional Fees		\$ 116,642	\$ 86,214	\$ 94,471	\$ 97,192
Contracted Services		26,967	26,452	23,538	19,256
Repairs and Maintenance		87,212	8,084	-	-
Other Expenditures		14,332	11,489	13,843	9,001
Debt Issuance Costs		20,333	-	-	-
Total Expenditures	\$ -	\$ 265,486	\$ 132,239	\$ 131,852	\$ 125,449
Revenues Over (Under) Expenditures	\$ -	\$ (179,873)	\$ (59,131)	\$ (13,219)	\$ (37,835)
Other Sources (Uses)					
Developer Advances		\$ 173,000	\$ -	\$ 50,033	\$ 67,490
Interfund Transfer		-	(27,952)	-	-
Fund Balance (Beginning of Year)	\$ (23,316)	\$ (16,443)	\$ 70,640	\$ 33,826	\$ 4,171
Fund Balance (End of Year)	\$ (23,316)	\$ (23,316)	\$ (16,443)	\$ 70,640	\$ 33,826

(a) Unaudited. Provided by the District's bookkeeper.

(b) Initial audited financial statements.

DEBT SERVICE REQUIREMENTS

The following sets forth the debt service requirements for the Outstanding Bonds plus the estimated debt service requirements for the Bonds at an assumed interest rate of 4.75%. This schedule does not reflect the fact that an amount equal to twelve months of interest will be capitalized from Bond proceeds to pay debt service on the Bonds.

Year	Outstanding Bonds Debt Service Requirements	Plus: Debt Service on the Bonds			Total Debt Service Requirements
		Principal	Interest	Total	
2025	\$ 523,816		\$ 90,844	\$ 90,844	\$ 614,659
2026	534,258	\$ 75,000	121,125	196,125	730,383
2027	538,013	75,000	117,563	192,563	730,575
2028	531,138	75,000	114,000	189,000	720,138
2029	523,843	80,000	110,438	190,438	714,280
2030	528,003	80,000	106,638	186,638	714,640
2031	521,243	85,000	102,838	187,838	709,080
2032	514,813	85,000	98,800	183,800	698,613
2033	519,288	90,000	94,763	184,763	704,050
2034	508,863	90,000	90,488	180,488	689,350
2035	508,338	95,000	86,213	181,213	689,550
2036	502,550	95,000	81,700	176,700	679,250
2037	496,306	95,000	77,188	172,188	668,494
2038	484,931	100,000	72,675	172,675	657,606
2039	488,556	105,000	67,925	172,925	661,481
2040	481,650	105,000	62,938	167,938	649,588
2041	484,613	110,000	57,950	167,950	652,563
2042	476,744	110,000	52,725	162,725	639,469
2043	473,738	115,000	47,500	162,500	636,238
2044	475,300	115,000	42,038	157,038	632,338
2045	471,206	120,000	36,575	156,575	627,781
2046	476,769	125,000	30,875	155,875	632,644
2047	471,263	125,000	24,938	149,938	621,200
2048	465,294	130,000	19,000	149,000	614,294
2049	458,963	135,000	12,825	147,825	606,788
2050	452,163	135,000	6,413	141,413	593,575
Total	\$ 12,911,654	\$ 2,550,000	\$ 1,826,969	\$ 4,376,969	\$ 17,288,623

Maximum Annual Debt Service Requirement (2027) \$730,575
Average Annual Debt Service Requirements (2025-2050) \$664,947

RISK FACTORS

General

The Bonds are obligations solely of the District and are not obligations of the State of Texas, Brazos County, the City of College Station, or any entity other than the District. Payment of the principal of and interest on the Bonds depends upon the ability of the District to collect taxes levied on taxable property within the District in an amount sufficient to service the District's bonded debt or, in the event of foreclosure, on the value of the taxable property in the District and the taxes levied by the District and other taxing authorities upon the property within the District. See "THE BONDS—Source and Security of Payment." The collection by the District of delinquent taxes owed to it and the enforcement by Registered Owners (as hereinafter defined) of the District's obligation to collect sufficient taxes may be a costly and lengthy process. Furthermore, the District cannot and does not make any representations that continued development of taxable property within the District will accumulate or maintain taxable values sufficient to justify continued payment of taxes by property owners or that there will be a market for the property or that owners of the property will have the ability to pay taxes. See "Registered Owners' Remedies" below.

Specific Flood Type Risks

Riverine, or fluvial, flooding occurs when water levels rise over the top of river, bayou or channel banks due to excessive rain from tropical systems making landfall and/or persistent thunderstorms over the same area for extended periods of time. The damage from a riverine flood can be widespread. The overflow can affect smaller rivers and streams downstream or may sheet-flow over land. Flash flooding is a type of riverine flood that is characterized by an intense, high velocity torrent of water that occurs in an existing river channel with little to no notice. Flash flooding can also occur even if no rain has fallen, for instance, after a levee, dam or reservoir has failed or experienced an uncontrolled release, or after a sudden release of water by a debris or ice jam. In addition, planned or unplanned controlled releases from a dam, levee or reservoir also may result in flooding in areas adjacent to rivers, bayous or drainage systems downstream.

Economic Factors and Interest Rates

A substantial percentage of the taxable value of the District results from the current market value of single-family residences, undeveloped land and developed lots, along with some commercial and multi-family development. The market value of such properties is related to general economic conditions affecting the demand for residences. Demand for residential lots of this type and the construction of homes thereon and the demand for commercial tracts of land can be significantly affected by factors such as interest rates, credit availability, construction costs, energy availability and the prosperity and demographic characteristics of the urban center toward which the marketing of lots is directed. Decreased levels of construction activity would tend to restrict the growth of property values in the District or could adversely impact such values. See "Credit and Liquidity in the Financial Markets" below and "THE DISTRICT—Status of Development."

Credit Markets and Liquidity in the Financial Markets

Interest rates and the availability of mortgage and development funding have a direct impact on construction activity, particularly short-term interest rates at which landowners are able to obtain financing for development costs. Interest rate levels may affect the ability of a landowner with undeveloped property to undertake and complete construction activities within the District. Because of the numerous and changing factors affecting the availability of funds, particularly liquidity in the national credit markets, the District is unable to assess the future availability of such funds for continued construction within the District. In addition, since the District is located approximately 5 miles south of the central business district of the City, the success of development within the District and growth of District taxable property values are, to a great extent, a function of the City and regional economies and national credit and financial markets. A downturn in the economic conditions in the College Station area, including Texas A&M University, or a decline in the nation's real estate and financial markets could adversely affect development in the District and restrain the growth of or reduce the value of the District's property tax base.

Developers Obligation to the District

There are no commitments from or obligations of the Developers or any other landowner to the District to proceed at any particular rate or according to any specified plan with the development of land or the construction of improvements in the District, and there is no restriction on any landowner's right to sell its land. Failure to construct taxable improvements on developed tracts of land could restrict the rate of growth of taxable values in the District. The District cannot and does not make any representations that over the life of the Bonds the District will increase or maintain its taxable value.

Competition

The demand for and construction of single-family homes and commercial and multi-family improvements in the District could be affected by competition from other developments including other developments located in College Station. In addition to competition for new home sales from other developments, there are numerous previously-owned homes in the area of the District and in more established neighborhoods. Such homes could represent additional competition for new homes proposed to be sold within the District.

The competitive position of the Developers in the sale of developed lots and commercial tracts and of prospective builders in the construction of single-family residential houses within the District is affected by most of the factors discussed in this section. Such a competitive position directly affects the growth and maintenance of taxable values in the District. The District can give no assurance that building and marketing programs in the District by the Developers will be implemented or, if implemented, will be successful.

Maximum Impact on District Tax Rates

Assuming no further development, the value of the land and improvements currently within the District will be the major determinant of the ability or willingness of owners of property within the District to pay their taxes. The 2024 Taxable Assessed Valuation is \$157,680,166, and the Estimated Taxable Assessed Valuation as of August 1, 2024, is \$165,696,809. After issuance of the Bonds, the maximum annual debt service requirement will be \$730,575 (2027), and the average annual debt service requirement will be \$664,947 (2025-2050, inclusive). Assuming no increase or decrease from the 2024 Taxable Assessed Valuation and the Estimated Taxable Assessed Valuation as of August 1, 2024, the issuance of no additional debt, and no other funds available for the payment of debt service, tax rates of \$0.49 and \$0.45, respectively, based on the 2024 Taxable Assessed Valuation and \$0.47 and \$0.43, respectively, based on the Estimated Taxable Assessed Valuation as of August 1, 2024, per \$100 of taxable assessed valuation at a ninety-five percent (95%) collection rate would be necessary to pay both the maximum annual debt service requirement and the average annual debt service requirements. See “DEBT SERVICE REQUIREMENTS.”

No representations or suggestions are made that the estimated values of land and improvements provided by the Appraisal District as of August 1, 2024 for the District will be certified as taxable value by the Appraisal District, and no person should rely upon such amounts or their inclusion herein as assurance of their attainment. See “TAXING PROCEDURES.”

Undeveloped Acreage and Vacant Lots

There are approximately 62 acres of commercial and multi-family reserves served with trunk utilities where vertical improvements have not been constructed and approximately 39 acres of undeveloped but developable land within the District as of September 1, 2024. There are currently 111 vacant developed lots available for home construction owned by CSDR. The District makes no representation as to when or if development of this acreage will occur or that the lot sales and building program will be successful. Failure of the Developers to develop the developable land or of builders to construct homes in the developed lots could restrict the rate of growth of taxable values in the District. See “THE DISTRICT—Land Use.”

Operating Funds

The District’s only significant sources of revenue to pay its operating expenses are advances from the Developers and maintenance tax proceeds. The District does not receive water and sewer revenues. The District levied a 2023 operation and maintenance tax rate of \$0.18 per \$100 of assessed valuation. The District’s unaudited Operating Fund balance at September 12, 2024 was \$_____. Attaining and maintaining a positive Operating Fund balance will depend upon (1) advances from the Developers and (2) continued development and increased amounts of maintenance tax revenue. In the event that funds are not made available by the Developers, the District will be required to levy a maintenance tax at a rate sufficient to fund its operating expenses. Such a tax, when added to the District’s debt service tax, may result in a total District tax in excess of similar developments and could adversely affect continued development of the District, as well as the willingness of taxpayers to pay taxes on their property. See “GENERAL FUND.”

Dependence on Principal Taxpayers

Based upon the certified 2024 tax rolls, the top ten taxpayers are responsible for approximately 34.63% of the District’s 2024 taxes (levied on \$157,680,166 in taxable property value). The principal taxpayer in the District is CS Midtown Holdings LP, the owner of the Nine 50 Town Lake at Midtown apartment complex, who is responsible for approximately 18.37% of the District’s 2024 taxes. The second largest taxpayer is LOA Brazos NH LLC, the owner of Accel at College Station, a transitional care and rehabilitation center, who is responsible for approximately 5.14% of the District’s 2024 taxes. The third and fourth largest taxpayers in the District are the Developers, which are responsible for approximately 2.77% and 1.86%, respectively, of the District’s 2024 taxes. See “THE DISTRICT - Status of Development,” “THE DEVELOPERS,” and “TAX DATA - Principal Taxpayers.” The ability of any principal taxpayer to make full and timely payments of taxes levied against its property by the District will directly affect the District’s ability to meet its debt service obligations. If, for any reason, any one or more principal taxpayers do not pay taxes due or do not pay in a timely manner, the District may need to levy additional taxes or use other funds available for debt service purposes. However, the District has not covenanted in the Bond Order, nor is it required by Texas law, to maintain any particular balance in its Debt Service Fund or any other funds to allow for any such delinquencies. Therefore, failure by one or more principal taxpayers to pay their taxes on a timely basis in amounts in excess of the District’s available funds could have a material adverse effect upon the District’s ability to pay debt service on the Bonds on a current basis.

Future Debt

The District reserves in the Bond Order the right to issue the remaining \$95,700,000 principal amount of authorized but unissued unlimited tax bonds for the purpose of acquiring or constructing road facilities and \$106,600,000 principal amount of unlimited tax bonds for the purpose of refunding such bonds, \$71,400,000 principal amount of unlimited tax bonds authorized but unissued for the purpose of acquiring or constructing water, sanitary sewer and drainage facilities and \$71,400,000 principal amount of unlimited tax bonds for the purpose of refunding such bonds. The District may issue additional bonds which may be voted hereafter. After reimbursement from the proceeds of the sale of the Bonds, the Developers will have expended approximately \$ _____ (as of September 1, 2024) for design, construction and acquisition of water, sanitary sewer, and drainage facilities and road facilities not yet reimbursed. See “THE BONDS-Issuance of Additional Debt.” The issuance of such obligations may adversely affect the investment security of the Bonds. The District does not employ any formula with regard to assessed valuations or tax collections or otherwise to limit the amount of bonds which may be issued. Any bonds issued by the District, however, must be approved by the Attorney General of Texas and the Board of the District and any bonds issued to acquire or construct water, sanitary sewer and drainage facilities must be approved by the Texas Commission on Environmental Quality (the “Commission”).

Environmental and Air Quality Regulations

Wastewater treatment, water supply, storm sewer facilities and construction activities within the District are subject to complex environmental laws and regulations at the federal, state and local levels that may require or prohibit certain activities that affect the environment, such as

- Requiring permits for construction and operation of water wells, wastewater treatment and other facilities;
- Restricting the manner in which wastes are treated and released into the air, water and soils;
- Restricting or regulating the use of wetlands or other properties; or
- Requiring remedial action to prevent or mitigate pollution.

Sanctions against a municipal utility district or other type of special purpose district for failure to comply with environmental laws and regulations may include a variety of civil and criminal enforcement measures, including assessment of monetary penalties, imposition of remedial requirements and issuance of injunctions to ensure future compliance. Environmental laws and compliance with environmental laws and regulations can increase the cost of planning, designing, constructing and operating water production and wastewater treatment facilities. Environmental laws can also inhibit growth and development within the District. Further, changes in regulations occur frequently, and any changes that result in more stringent and costly requirements could materially impact the District.

Air Quality Issues: Air quality control measures required by the United States Environmental Protection Agency (the “EPA”) and the Texas Commission on Environmental Quality (the “TCEQ”) may impact new industrial, commercial and residential development in Brazos County. Under the Clean Air Act (“CAA”) Amendments of 1990, Brazos County has been designated an attainment/unclassifiable area under three separate federal ozone standards: the one- hour (124 parts per billion (“ppb”)) and eight hour (84 ppb) standards promulgated by the EPA in 1997 (the “1997 Ozone Standards”); the tighter, eight-hour ozone standard of 75 ppb promulgated by the EPA in 2008 (the “2008 Ozone Standard”), and the EPA’s most-recent promulgation of an even lower, 70 ppb eight-hour ozone standard in 2015 (the “2015 Ozone Standard”).

Although Brazos County is currently in attainment, Brazos County has been and continues to be near the non-attainment thresholds for ozone. Accordingly, it is possible that Brazos County could be re-classified as a nonattainment area should ozone levels increase. A designation of nonattainment for ozone or any other pollutant could negatively impact business due to additional permitting/regulatory constraints that accompany this designation and because of the community stigma associated with a nonattainment designation. It is possible that additional controls will be necessary to allow Brazos County to maintain attainment with the ozone standards. Such additional controls could have a negative impact on Brazos County’s economic growth and development.

Water Supply & Discharge Issues: Water supply and discharge regulations that certain special districts, including the District, may be required to comply with involve: (1) public water supply systems; (2) wastewater discharges from treatment facilities; (3) storm water discharges; and (4) wetlands dredge and fill activities. Each of these is addressed below:

Texas Pollutant Discharge Elimination System (“TPDES”) permits set limits on the type and quantity of discharge, in accordance with state and federal laws and regulations. The TCEQ reissued the TPDES Construction General Permit (TXR150000) (“CGP”), with an effective date of March 5, 2023, which is a general permit authorizing the discharge of stormwater runoff associated with small and large construction sites and certain non-stormwater discharges into surface water in the state. The CGP has a 5-year permit term, and is then subject to renewal. Moreover, the Clean Water Act (“CWA”) and Texas Water Code require municipal wastewater treatment plants to meet secondary treatment effluent limitations and more stringent water quality-based limitations and requirements to comply with the Texas water quality standards. Any water quality-based limitations and requirements with which a municipal utility district must comply may have an impact on the municipal utility district’s ability to obtain and maintain compliance with TPDES permits.

The TCEQ issued its General Permit for Phase II (Small) Municipal Storm Sewer Systems (the “MS4 Permit”) on January 24, 2019. The MS4 Permit authorizes the discharge of stormwater to surface water in the state from small municipal separate storm sewer systems. While the District is not currently subject to the MS4 Permit, if the District’s inclusion were required at a future date, the District could incur substantial costs to develop, implement, and maintain the necessary plans as well as to install or implement best management practices to minimize or eliminate unauthorized pollutants that may otherwise be found in stormwater runoff in order to comply with the MS4 Permit.

Operations of certain special districts, including the District, are also potentially subject to requirements and restrictions under the CWA regarding the use and alteration of wetland areas that are within the “waters of the United States.” The District must obtain a permit from the United States Army Corps of Engineers (“USACE”) if operations of the District require that wetlands be filled, dredged, or otherwise altered.

On May 25, 2023, the Supreme Court of the United States issued its decision in *Sackett v. EPA*, which clarified the definition of “waters of the United States” and significantly restricted the reach of federal jurisdiction under the CWA. Under the *Sackett* decision, “waters of the United States” includes only geographical features that are described in ordinary parlance as “streams, oceans, rivers, and lakes” and to adjacent wetlands that are indistinguishable from such bodies of water due to a continuous surface connection.

While the *Sackett* decision removed a great deal of uncertainty regarding the ultimate scope of “waters of the United States” and the extent of EPA and USACE jurisdiction, operations of municipal utility districts, including the District, could potentially be subject to additional restrictions and requirements, including additional permitting requirements, in the future.

Tax Collection Limitations

The District’s ability to make debt service payments may be adversely affected by its inability to collect ad valorem taxes. Under Texas law, the levy of ad valorem taxes by the District constitutes a lien in favor of the District on a parity with the liens of all other state and local taxing authorities on the property against which taxes are levied, and such lien may be enforced by foreclosure. The District’s ability to collect ad valorem taxes through such foreclosure may be impaired by (a) cumbersome, time consuming and expensive collection procedures, (b) a bankruptcy court’s stay of tax collection procedure against a taxpayer, or (c) market conditions limiting the proceeds from a foreclosure sale of taxable property. While the District has a lien on taxable property within the District for taxes levied against such property, such lien can be foreclosed only in a judicial proceeding. Attorney’s fees and other costs of collecting any such taxpayer’s delinquencies could substantially reduce the net proceeds to the District from a tax foreclosure sale. Finally, a bankruptcy court with jurisdiction over bankruptcy proceedings initiated by or against a taxpayer within the District pursuant to the Federal Bankruptcy Code could stay any attempt by the District to collect delinquent ad valorem taxes against such taxpayer. In addition to the automatic stay against collection of delinquent taxes afforded a taxpayer during the pendency of a bankruptcy, a bankruptcy could affect payment of taxes in two other ways: first, a debtor’s confirmation plan may allow a debtor to make installment payments on delinquent taxes for up to six years; and, second, a debtor may challenge, and a bankruptcy court may reduce, the amount of any taxes assessed against the debtor, including taxes that have already been paid. See “TAXING PROCEDURES—District’s Rights in the Event of Tax Delinquencies.”

Tax Exemption Provided to Lessees of Public Facility Corporations

As described in “TAXING PROCEDURES—Tax Exemption Provided to Lessees of Public Facility Corporations” herein, a multifamily residential development owned or leased by a Public Facility Corporation (“PFC”) is exempt from ad valorem taxation by the State and any other political subdivision of the State, including a municipal utility district such as the District. Chapter 303 of the Texas Local Government Code (the “PFC Act”), does not require any notice to, or consent by, any taxing jurisdictions that may be impacted by such exemption prior to the exemption being implemented. This tax-exempt lease structure has been utilized by Sponsors (as defined herein) to address the creation of affordable multifamily apartments, both through the development of new apartment projects and the acquisition of existing (and previously taxable) apartment projects. The District is not aware of any public facilities located within the boundaries of the District that are either owned or leased by a PFC. The District makes no representations or predictions regarding whether future public facilities will be created or established within the District’s boundaries by a Sponsor pursuant to the PFC Act.

Registered Owners' Remedies

If the District defaults in the payment of principal, interest, or redemption price on the Bonds when due, or if it fails to make payments into any fund or funds created in the Bond Order, or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the Bond Order, the Beneficial Owners have the right to seek a writ of mandamus issued by a court of competent jurisdiction requiring the District and its officials to observe and perform the covenants, obligations, or conditions prescribed in the Bond Order. Except for mandamus, the Bond Order does not specifically provide for remedies to protect and enforce the interests of the Beneficial Owners. There is no acceleration of maturity of the Bonds in the event of default and, consequently, the remedy of mandamus may have to be relied upon from year to year. Further, there is no trust indenture or trustee, and all legal actions to enforce such remedies would have to be undertaken at the initiative of, and be financed by, the Beneficial Owners.

Statutory language authorizing local governments such as the District to sue and be sued does not waive the local government's sovereign immunity from suits for money damages so that in the absence of other waivers of such immunity by the Texas Legislature, a default by the District in its covenants in the Bond Order may not be reduced to a judgment for money damages. Even if a judgment against the District for money damages could be obtained, it could not be enforced by direct levy and execution against the District's property. Further, the Beneficial Owners cannot themselves foreclose on property within the District or sell property within the District to enforce the tax lien on taxable property to pay the principal of and interest on the Bonds. The enforceability of the rights and remedies of the Beneficial Owners may further be limited by a State of Texas statute reasonably required to attain an important public purpose or by laws relating to bankruptcy, reorganization or other similar laws of general application affecting the rights of creditors of political subdivisions, such as the District.

Bankruptcy Limitation to Registered Owners' Rights

Subject to the requirements of Texas law, the District may voluntarily proceed under Chapter 9 of the Federal Bankruptcy Code, 11 U.S.C. Section 901-946, if the District: (1) is authorized to file for federal bankruptcy protection by Texas law; (2) is insolvent or unable to meet its debts as they mature; (3) desires to effect a plan to adjust such debts; and (4) has either obtained the agreement of or negotiated in good faith with its creditors or is unable to negotiate with its creditors because negotiation is impracticable. Under Texas law, the District must also obtain the approval of the Commission prior to filing bankruptcy. Such law requires that the Commission investigate the financial conditions of the District and authorize the District to proceed only if the District has fully exercised its rights and powers under Texas law and remains unable to meet its debts and other obligations as they mature.

Notwithstanding noncompliance by a district with Texas law requirements, the District could file a voluntary bankruptcy petition under Chapter 9, thereby invoking the protection of the automatic stay until the bankruptcy court, after a hearing, dismisses the petition. A federal bankruptcy court is a court of equity and federal bankruptcy judges have considerable discretion in the conduct of bankruptcy proceedings and in making the decision of whether to grant the petitioning District relief from its creditors. While such a decision might be appealable, the concomitant delay and loss of remedies to the Registered Owner could potentially and adversely impair the value of the Registered Owner's claim.

If the District decides in the future to proceed voluntarily under the federal Bankruptcy Code, the District could develop and file a plan for the adjustment of its debts. If such a plan were confirmed by the bankruptcy court, it could, among other things, affect the Registered Owners by reducing or eliminating the interest rate or the principal amount, modifying or abrogating collateral or security arrangements, substituting (in whole or in part) other securities, and otherwise compromising and modifying the rights and remedies of such Registered Owner's claim against the District.

A district may not be forced into bankruptcy involuntarily.

Continuing Compliance with Certain Covenants

The Bond Order contains covenants by the District intended to preserve the exclusion from gross income of interest on the Bonds. Failure by the District to comply with such covenants in the Bond Order on a continuous basis prior to maturity of the Bonds could result in interest on the Bonds becoming taxable retroactively to the date of original issuance. See "LEGAL MATTERS—Tax Exemption."

Marketability

The District has no agreement with the Underwriter regarding the reoffering yields or prices of the Bonds and has no control over trading of the Bonds in the secondary market. Moreover, there is no assurance that a secondary market will be made in the Bonds. If there is a secondary market, the difference between the bid and asked price of the Bonds may be greater than the difference between the bid and asked price of bonds of comparable maturity and quality issued by more traditional issuers as such bonds are generally bought, sold or traded in the secondary market.

Risk Factors Related to the Purchase of Municipal Bond Insurance

The District has applied for a bond insurance policy (the "Policy") to guarantee the scheduled payment of principal and interest on the Bonds. If the Policy is issued, investors should be aware of the following investment considerations:

The long-term ratings on the Bonds are dependent in part on the financial strength of the Bond Insurer (the “Insurer”) and its claim paying ability. The Insurer’s financial strength and claims paying ability are predicated upon a number of factors which could change over time. No assurance is given that the long-term ratings of the Insurer and of the ratings on the Bonds insured by the Insurer will not be subject to downgrade and such event could adversely affect the market price of the Bonds or the marketability (liquidity) for the Bonds. See description of “MUNICIPAL BOND RATING AND MUNICIPAL BOND INSURANCE.”

The obligations of the Insurer are contractual obligations and in an event of default by the Insurer, the remedies available may be limited by applicable bankruptcy law or state law related to insolvency of insurance companies.

Neither the District nor the Underwriter has made independent investigation into the claims paying ability of the Insurer and no assurance or representation regarding the financial strength or projected financial strength of the Insurer is given. Thus, when making an investment decision, potential investors should carefully consider the ability of the District to pay principal and interest on the Bonds and the claims paying ability of the Insurer, particularly over the life of the investment. See “MUNICIPAL BOND RATING AND MUNICIPAL BOND INSURANCE” for further information provided by the Insurer and the Policy, which includes further instructions for obtaining current financial information concerning the Insurer.

Future and Proposed Legislation

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the Federal or state level, may adversely affect the tax-exempt status of interest on the Bonds under Federal or state law and could affect the market price or marketability of the Bonds. Any such proposal could limit the value of certain deductions and exclusions, including the exclusion for tax-exempt interest. The likelihood of any such proposal being enacted cannot be predicted. Prospective purchasers of the Bonds should consult their own tax advisors regarding the foregoing matters.

LEGAL MATTERS

Legal Opinions

The District will furnish to the Underwriter a transcript of certain certified proceedings incident to the issuance and authorization of the Bonds, including a certified copy of the approving legal opinion of the Attorney General of Texas, as recorded in the Bond Register of the Comptroller of Public Accounts of the State of Texas, to the effect that the Attorney General has examined a transcript of proceedings authorizing the issuance of the Bonds, and that based upon such examination, the Bonds are valid and binding obligations of the District payable from the proceeds of an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property within the District. The District will also furnish the approving legal opinion of Schwartz, Page & Harding, L.L.P., Houston, Texas, Bond Counsel, to the effect that, based upon an examination of such transcript, the Bonds are valid and binding obligations of the District under the Constitution and laws of the State of Texas, except to the extent that enforcement of the rights and remedies of the Registered Owners of the Bonds may be limited by laws relating to bankruptcy, reorganization, or other similar laws of general application affecting the rights of creditors of political subdivisions such as the District and to the effect that interest on the Bonds is excludable from gross income for federal income tax purposes under the statutes, regulations, published rulings and court decisions existing on the date of such opinion, assuming compliance by the District with certain covenants relating to the use and investment of the proceeds of the Bonds. See “Tax Exemption” below. The legal opinion of Bond Counsel will further state that the Bonds are payable, both as to principal and interest, from the levy of ad valorem taxes, without legal limitation as to rate or amount, upon all taxable property within the District. Bond Counsel's opinion will also address the matters described below.

In addition to serving as Bond Counsel, Schwartz, Page & Harding, L.L.P., also serves as counsel to the District on matters not related to the issuance of bonds. The legal fees to be paid to Bond Counsel for services rendered in connection with the issuance of the Bonds are based upon a percentage of bonds actually issued, sold and delivered, and, therefore, such fees are contingent upon the sale and delivery of the Bonds. Certain legal matters will be passed upon for the District by McCall, Parkhurst & Horton L.L.P., Houston, Texas, as Disclosure Counsel.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

Legal Review

In its capacity as Bond Counsel, Schwartz, Page & Harding, L.L.P., has reviewed the information appearing in this Official Statement under the captioned sections “THE BONDS,” “THE DISTRICT—General,” “UTILITY AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF COLLEGE STATION,” “MANAGEMENT OF THE DISTRICT—Bond Counsel and General Counsel,” “TAXING PROCEDURES,” and “LEGAL MATTERS” solely to determine whether such information fairly summarizes the law and documents referred to therein. Such firm has not independently verified factual information contained in this Official Statement, nor has such firm conducted an investigation of the affairs of the District for the purpose of passing upon the accuracy or completeness of this Official Statement. No person is entitled to rely upon such firm's limited participation as an assumption of responsibility for, or an expression of opinion of any kind with regard to, the accuracy or completeness of any of the other information contained herein.

Tax Exemption

On the date of initial delivery of the Bonds, Bond Counsel will render its opinion that, in accordance with statutes, regulations, published rulings and court decisions existing on the date thereof (“Existing Law”), (1) interest on the Bonds for federal income tax purposes will be excludable from the “gross income” of the holders thereof, and (2) the Bonds will not be treated as “specified private activity bonds” the interest on which would be included as an alternative minimum tax preference item under Section 57(a)(5) of the Internal Revenue Code of 1986, as amended (the “Code”). Except as stated above, Bond Counsel will express no opinion as to any federal, state or local tax consequences resulting from the ownership of, receipt of interest on or disposition of the Bonds.

In rendering its opinion, Bond Counsel will rely upon, and assume continuing compliance with, (a) certain information and representations of the District, including information and representations contained in the District's federal tax certificate issued in connection with the Bonds, and (b) covenants of the District contained in the Bond Order relating to certain matters, including arbitrage and the use of the proceeds of the Bonds and the property financed or refinanced therewith. Failure by the District to observe the aforementioned representations or covenants could cause the interest on the Bonds to become taxable retroactively to the date of issuance.

Bond Counsel's opinion represents its legal judgment based upon its review of Existing Law and the reliance on the aforementioned information, representations and covenants. Bond Counsel's opinion is not a guarantee of a result. Existing Law, upon which Bond Counsel has based its opinion, is subject to change by Congress, administrative interpretation by the Department of the Treasury and to subsequent judicial interpretation. There can be no assurance that Existing Law or the interpretation thereof will not be changed in a manner which would adversely affect the tax treatment of ownership of the Bonds.

Qualified Tax-Exempt Obligations

Section 265(a) of the Code provides, in pertinent part, that interest paid or incurred by a taxpayer, including a “financial institution,” on indebtedness incurred or continued to purchase or carry tax-exempt obligations is not deductible in determining the taxpayer's taxable income. Section 265(b) of the Code provides an exception to the disallowance of such deduction for any interest expense paid or incurred on indebtedness of a taxpayer that is a “financial institution” allocable to tax-exempt obligations, other than “private activity bonds,” that are designated by a “qualified small issuer” as “qualified tax-exempt obligations.” A “qualified small issuer” is any governmental issuer (together with any “on-behalf of” and “subordinate” issuers) who issues no more than \$10,000,000 of tax-exempt obligations during the calendar year. Section 265(b)(5) of the Code defines the term “financial institution” as any “bank” described in Section 585(a)(2) of the Code, or any person accepting deposits from the public in the ordinary course of such person's trade or business that is subject to federal or state supervision as a financial institution. Notwithstanding the exception to the disallowance of the deduction of interest on indebtedness related to “qualified tax-exempt obligations” provided by Section 265(b) of the Code, Section 291 of the Code provides that the allowable deduction to a “bank,” as defined in Section 585(a)(2) of the Code, for interest on indebtedness incurred or continued to purchase “qualified tax-exempt obligations” shall be reduced by twenty-percent (20%) as a “financial institution preference item.”

The District has designated the Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b) of the Code. In furtherance of that designation, the District will covenant to take such action that would assure, or to refrain from such action that would adversely affect, the treatment of the Bonds as “qualified tax-exempt obligations.” Potential purchasers should be aware that if the issue price to the public exceeds \$10,000,000, there is a reasonable basis to conclude that the payment of a de minimis amount of premium in excess of \$10,000,000 is disregarded; however, the Internal Revenue Service could take a contrary view. If the Internal Revenue Service takes the position that the amount of such premium is not disregarded, then such obligations might fail to satisfy the aforementioned dollar limitation and the Bonds would not be “qualified tax-exempt obligations.”

Collateral Federal Income Tax Consequences

The following discussion is a summary of certain collateral federal income tax consequences resulting from the purchase, ownership or disposition of the Bonds. This discussion is based on Existing Law which is subject to change or modification retroactively.

Prospective purchasers of the Bonds should be aware that the ownership of tax-exempt obligations may result in collateral federal income tax consequences. The following discussion is applicable to investors, other than those who are subject to special provisions of the Code, including financial institutions, life insurance and property and casualty insurance companies, owners of interests in a FASIT, individual recipients of Social Security or Railroad Retirement benefits, taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, certain S corporations with accumulated earnings and profits and excess passive investment income, foreign corporations subject to the branch profits tax, taxpayers qualifying for the health-insurance premium assistance credit, and individuals allowed an earned income credit. THE DISCUSSION CONTAINED HEREIN MAY NOT BE EXHAUSTIVE. INVESTORS, INCLUDING THOSE WHO ARE SUBJECT TO SPECIFIC PROVISIONS OF THE CODE, SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX TREATMENT WHICH MAY BE ANTICIPATED TO RESULT FROM THE PURCHASE, OWNERSHIP, AND DISPOSITION OF TAX-EXEMPT OBLIGATIONS BEFORE DETERMINING WHETHER TO PURCHASE THE BONDS.

Interest on the Bonds may be includable in certain corporation's "adjusted financial statement income" determined under Section 56A of the Code to calculate the alternative minimum tax imposed by Section 55 of the Code.

Under Section 6012 of the Code, holders of tax-exempt obligations, such as the Bonds, may be required to disclose interest received or accrued during each taxable year on their returns of federal income taxation.

Section 1276 of the Code provides for ordinary income tax treatment of gain recognized upon the disposition of a tax-exempt obligation, such as the Bonds, if such obligation was acquired at a "market discount" and if the fixed maturity of such obligation is equal to, or exceeds, one year from the date of issue. Such treatment applies to "market discount bonds" to the extent such gain does not exceed the accrued market discount of such bonds; although for this purpose, a de minimis amount of market discount is ignored. A "market discount bond" is one which is acquired by the holder at a purchase price which is less than the stated redemption price at maturity or, in the case of a bond issued at an original issue discount, the "revised issue price" (i.e., the issue price plus accrued original issue discount). The "accrued market discount" is the amount which bears the same ratio to the market discount as the number of days during which the holder holds the obligation bears to the number of days between the acquisition date and the final maturity date.

State, Local and Foreign Taxes

Investors should consult their own tax advisors concerning the tax implications of the purchase, ownership or disposition of the Bonds under applicable state or local laws. Foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not United States persons.

Tax Accounting Treatment of Original Issue Discount and Premium Bonds

The initial public offering price to be paid for one or more maturities of the Bonds may be less than the principal amount thereof or one or more periods for the payment of interest on the Bonds may not be equal to the accrued period or be in excess of one year (the "Original Issue Discount Bonds"). The difference between (i) the "stated redemption price at maturity" of each Original Issue Discount Bond, and (ii) the initial offering price to the public of such Original Issue Discount Bond constitutes original issue discount with respect to such Original Issue Discount Bond in the hands of any owner who has purchased such Original Issue Discount Bond in the initial public offering of the Bonds. The "stated redemption price at maturity" means the sum of all payments to be made on the Bonds less the amount of all periodic interest payments. Periodic interest payments are payments which are made during equal accrual periods (or during any unequal period if it is the initial or final period) and which are made during accrual periods which do not exceed one year.

Under Existing Law, such initial owner is entitled to exclude from gross income (as defined in Section 61 of the Code) an amount of income with respect to such Original Issue Discount Bond equal to that portion of the amount of such original issue discount allocable to the period that such Original Issue Discount Bond continues to be owned by such owner. See "Tax Exemption" herein for a discussion of certain collateral federal tax consequences.

In the event of the redemption, sale or other taxable disposition of such Original Issue Discount Bond prior to stated maturity, however, the amount realized by such owner in excess of the basis of such Original Issue Discount Bond in the hands of such owner (adjusted upward by the portion of the original issue discount allocable to the period for which such Original Issue Discount Bond was held by such initial owner) is includable in gross income.

Under Existing Law, the original issue discount on each Original Issue Discount Bond is accrued daily to the stated maturity thereof (in amounts calculated as described below for each six-month period ending on the date before the semiannual anniversary dates of the date of the Bonds and ratably within each such six-month period) and the accrued amount is added to an initial owner's basis for such Original Issue Discount Bond for purposes of determining the amount of gain or loss recognized by such owner upon the redemption, sale or other disposition thereof. The amount to be added to basis for each accrual period is equal to (a) the sum of the issue price and amount of original issue discount accrued in prior periods multiplied by the yield to stated maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period) less (b) the amounts payable as current interest during such accrual period on such Bond.

The federal income tax consequences of the purchase, ownership, redemption, sale or other disposition of Original Issue Discount Bonds which are not purchased in the initial offering at the initial offering price may be determined according to rules which differ from those described above. ALL OWNERS OF ORIGINAL ISSUE DISCOUNT BONDS SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE DETERMINATION FOR FEDERAL, STATE AND LOCAL INCOME TAX PURPOSES OF INTEREST ACCRUED UPON REDEMPTION, SALE OR OTHER DISPOSITION OF SUCH ORIGINAL ISSUE DISCOUNT BONDS AND WITH RESPECT TO THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP, REDEMPTION, SALE OR OTHER DISPOSITION OF SUCH ORIGINAL ISSUE DISCOUNT BONDS.

The initial public offering price to be paid for certain maturities of the Bonds may be greater than the amount payable on such Bonds at maturity (the "Premium Bonds"). An amount equal to the difference between the initial public offering price of a Premium Bond (assuming that a substantial amount of the Premium Bonds of that maturity are sold to the public at such price) and the amount payable at maturity constitutes premium to the initial purchaser of such Premium Bonds. The basis for federal income tax purposes of a Premium Bond in the hands of such initial purchaser must be reduced each year by the amortizable bond premium. Such reduction in basis will increase the amount of any gain (or decrease the amount of any loss) to be recognized for federal income tax purposes upon a sale or other taxable disposition of a Premium Bond. The amount of premium which is amortizable each year by an initial purchaser is determined by using such purchaser's yield to maturity. PURCHASERS OF THE PREMIUM BONDS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS WITH RESPECT TO THE DETERMINATION OF AMORTIZABLE BOND PREMIUM WITH RESPECT TO THE PREMIUM BONDS FOR FEDERAL INCOME TAX PURPOSES AND WITH RESPECT TO THE STATE AND LOCAL TAX CONSEQUENCES OF OWNING PREMIUM BONDS.

REGISTRATION AND QUALIFICATION UNDER SECURITIES LAWS

The offer and sale of the Bonds have not been registered or qualified under the Securities Act of 1933, as amended, in reliance upon the exemptions provided thereunder; the Bonds have not been registered or qualified under the Securities Act of Texas in reliance upon various exemptions contained therein; and the Bonds have not been registered or qualified under the securities laws of any other jurisdiction.

The District assumes no responsibility for registration or qualification of the Bonds under the securities laws of any jurisdiction in which the Bonds may be sold, assigned, pledged, hypothecated or otherwise transferred. This disclaimer of responsibility for registration or qualification for sale or other disposition of the Bonds shall not be construed as an interpretation of any kind with regard to the availability of any exemption from securities registration provisions.

NO MATERIAL ADVERSE CHANGE

The obligations of the Underwriter to take and pay for the Bonds, and the District to deliver the Bonds, are subject to the condition that, up to the time of delivery of and receipt of payment for the Bonds, there shall have been no material adverse change in the financial condition of the District subsequent to the date of sale from that set forth or contemplated in the Preliminary Official Statement, as it may have been supplemented or amended through the date of the sale.

NO LITIGATION CERTIFICATE

With the delivery of the Bonds, the President or Vice President and Secretary or Assistant Secretary of the Board will, on behalf of the District, execute and deliver to the Underwriter a certificate dated as of the date of delivery, to the effect that no litigation of any nature of which the District has notice is pending against or, to the knowledge of the District's certifying officers, threatened against the District, either in state or federal courts, contesting or attacking the Bonds; restraining or enjoining the authorization, execution or delivery of the Bonds; affecting the provision made for the payment of or security for the Bonds; in any manner questioning the authority or proceedings for the authorization, execution or delivery of the Bonds; or affecting the validity of the Bonds, the corporate existence or boundaries of the District or the title of the then present officers and directors of the Board.

MUNICIPAL BOND RATING AND MUNICIPAL BOND INSURANCE

The District has not applied for an underlying rating nor is it expected that the District would have received an investment grade rating had such application been made.

Application has also been made to various municipal bond insurance companies for qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option of the Underwriter and at the Underwriter's expense. See "RISK FACTORS—Risk Factors Related to the Purchase of Municipal Bond Insurance."

SALE AND DISTRIBUTION OF THE BONDS

After requesting competitive bids for the Bonds, the District accepted the bid resulting in the lowest net interest cost, which bid was rendered by _____ (the "Underwriter") bearing the interest rates shown on the cover page of this Official Statement, at a price of _____% of the principal amount thereof which resulted in a net effective interest rate of _____% as calculated pursuant to Chapter 1204, Texas Government Code (the "IBA" method).

The prices and other terms with respect to the offering and the sale of the Bonds may be changed from time to time by the Underwriter after the Bonds are released for sale, and the Bonds may be offered and sold at prices other than the initial prices, including sales to dealers who may sell the Bonds into investment accounts. In connection with the offering of the Bonds, the Underwriter may over-allocate or effect transactions which stabilize or maintain the market prices of the Bonds at levels above those which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

The District has no control over trading of the Bonds in the secondary market. Moreover, there is no guarantee that a secondary market will be made in the Bonds. In such a secondary market, the difference between the bid and asked price of municipal utility district bonds may be greater than the difference between the bid and asked price of bonds of comparable maturity and quality issued by more traditional municipal entities, which are more generally bought, sold or traded in the secondary market.

PREPARATION OF OFFICIAL STATEMENT

Sources and Compilation of Information

The financial data and other information contained in this Official Statement has been obtained primarily from the District's records, the Developers, the Engineer, the Tax Assessor/Collector, the Appraisal District and information from other sources believed to be reliable. No guarantee is made by the District as to the accuracy or completeness of the information derived from sources other than the District, and the inclusion herein of information from sources other than the District is not to be construed as a representation on the part of the District to such effect, except as described below under "CERTIFICATION OF OFFICIAL STATEMENT." Furthermore, there is no guarantee that any of the assumptions or estimates contained herein will be realized. The summaries of the agreements, reports, statutes, resolutions, engineering and other related information set forth in this Official Statement are included herein subject to all of the provisions of such documents. These summaries do not purport to be complete statements of such provisions, and reference is made to such documents for further information.

Financial Advisor

Masterson Advisors LLC is employed as the Financial Advisor to the District to render certain professional services, including advising the District on a plan of financing and preparing the OFFICIAL STATEMENT, including the OFFICIAL NOTICE OF SALE and the OFFICIAL BID FORM for the sale of the Bonds. In its capacity as Financial Advisor, Masterson Advisors LLC has compiled and edited this OFFICIAL STATEMENT. The Financial Advisor has reviewed the information in this OFFICIAL STATEMENT in accordance with, and as a part of, its responsibilities to the District and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Financial Advisor does not guarantee the accuracy or completeness of such information.

Consultants

In approving this Official Statement, the District has relied upon the following consultants in addition to the Financial Advisor.

Engineer: The information contained in this Official Statement relating to engineering and to the description of the System and, in particular that information included in the sections entitled "THE DISTRICT" and "THE ROADS" (as it relates to District facilities) has been provided by EHRA Engineering and has been included herein in reliance upon the authority of said firm as experts in the field of civil engineering.

Appraisal District: The information contained in this Official Statement relating to the Assessed Valuations of the District has been provided by the Brazos Central Appraisal District and has been included herein in reliance upon the authority of such entity as experts in assessing the values of property in Brazos County, including the District.

Tax Assessor Collector: The information contained in this Official Statement relating to the historical breakdown of the Certified Taxable Assessed Valuations, principal taxpayers, and certain other historical data concerning tax rates and tax collections has been provided by B&A Municipal Tax Service, LLC and is included herein in reliance upon B&A Municipal Tax Service, LLC as an expert in collecting taxes.

Auditor: The financial statements of the District as of May 31, 2023 and for the year then ended, included in this offering document, have been audited by FORVIS, LLP, independent auditors, as stated in their report appearing herein. See “APPENDIX A.”

Bookkeeper: The information related to the “unaudited” summary of the District's General Operating Fund as it appears in “THE GENERAL FUND” has been provided by Municipal Accounts & Consulting, L.P. and is included herein in reliance upon the authority of such firm as experts in the tracking and managing the various funds of special districts.

UPDATING OF OFFICIAL STATEMENT

For the period beginning on the date of the award of the sale of the Bonds to the Underwriter and ending on the ninety-first (91st) day after the “end of the underwriting period,” (as defined in Rule 15c(2)-12(f)(2) of the United States Securities and Exchange Commission (the “SEC”)), if any event shall occur of which the District has knowledge and as a result of which it is necessary to amend or supplement this Official Statement in order to make the statements herein, in light of the circumstances when this Official Statement is delivered to a prospective purchaser, not materially misleading, the District will promptly notify the Underwriter of the occurrence of such event and will cooperate in the preparation of a revised Official Statement, or amendments or supplements hereto, so that the statements in this Official Statement, as revised, amended or supplemented, will not, in light of the circumstances when this Official Statement is delivered to a prospective purchaser, be materially misleading. The District assumes no responsibility for supplementing this Official Statement thereafter.

CERTIFICATION OF OFFICIAL STATEMENT

The District, acting through its Board in its official capacity and in reliance upon the experts listed above, hereby certifies, as of the date hereof, that the information, statements, and descriptions or any addenda, supplement and amendment thereto pertaining to the District and its affairs contained herein, to the best of its knowledge and belief, contain no untrue statement of a material fact and do not omit to state any material fact necessary to make the statements herein, in the light of the circumstances under which they are made, not misleading. With respect to information included in this Official Statement other than that relating to the District, the District has no reason to believe that such information contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein, in the light of the circumstances under which they are made, not misleading; however, the Board has made no independent investigation as to the accuracy or completeness of the information derived from sources other than the District.

CONTINUING DISCLOSURE OF INFORMATION

In the Bond Order, the District has made the following agreement for the benefit of the registered and beneficial owners of the Bonds. The District is required to observe the agreement for so long as it remains obligated to advance funds to pay the Bonds. Under the agreement, the District will be obligated to provide certain updated financial information and operating data annually, and timely notice of specified events, to the Municipal Securities Rulemaking Board (the “MSRB”).

Annual Reports

The District will provide annually to the MSRB certain updated financial information and operating data. The information to be updated includes all quantitative financial information and operating data of the general type included in this OFFICIAL STATEMENT under the headings “FINANCIAL INFORMATION CONCERNING THE DISTRICT (UNAUDITED),” “GENERAL FUND,” “DEBT SERVICE REQUIREMENTS,” “TAX DATA,” (most of which information is contained in the District’s annual audited financial statements) and in “APPENDIX A.” The District will update and provide this information within six (6) months after the end of each fiscal year ending in or after 2024.

The District may provide updated information in full text or may incorporate by reference certain other publicly available documents, as permitted by SEC Rule 15c2-12. The updated information will include audited financial statements, if the District commissions an audit and the audit is completed by the required time. If the audit of such financial statements is not complete within such period, then the District will provide unaudited financial statements by the required time, and audited financial statements when and if such audited financial statements become available. Any such financial statements will be prepared in accordance with the accounting principles described in the Bond Order or such other accounting principles as the District may be required to employ from time to time pursuant to state law or regulation.

The District's current fiscal year end is May 31. Accordingly, it must provide updated information by November 30 in each year, unless the District changes its fiscal year. If the District changes its fiscal year, it will notify the MSRB of the change.

Event Notices

The District will provide timely notices of certain events to the MSRB, but in no event will such notices be provided to the MSRB in excess of ten business days after the occurrence of an event. The District will provide notice of any of the following events with respect to the Bonds: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax-exempt status of the Bonds, or other events affecting the tax-exempt status of the Bonds; (7) modifications to rights of Beneficial Owners of the Bonds, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the District or other obligated person within the meaning of CFR § 240.15c2-12 (the "Rule"); (13) consummation of a merger, consolidation, or acquisition involving the District or other obligated person within the meaning of the Rule or the sale of all or substantially all of the assets of the District or other obligated person within the meaning of the Rule, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of an definitive agreement relating to any such actions, other than pursuant to its terms, if material; (14) appointment of a successor or additional trustee or the change of name of a trustee, if material; (15) incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties. The terms "financial obligation" and "material" when used in this paragraph shall have the meanings ascribed to them under federal securities laws.

Neither the Bonds nor the Bond Order makes any provision for debt service reserves or liquidity enhancement. In addition, the District will provide timely notice of any failure by the District to provide financial information, operating data, or financial statements in accordance with its agreement described above under "Annual Reports."

Availability of Information from the MSRB

The District has agreed to provide the foregoing information only to the MSRB. Investors can access continuing disclosure information filed with the MSRB at www.emma.msrb.org.

Limitations and Amendments

The District has agreed to update information and to provide notices of specified events only as described above. The District has not agreed to provide other information that may be relevant or material to a complete presentation of its financial results of operations, condition or prospects or agreed to update any information that is provided, except as described above. The District makes no representation or warranty concerning such information or concerning its usefulness to a decision to invest in or sell Bonds at any future date. The District disclaims any contractual or tort liability for damages resulting in whole or in part from any breach of its continuing disclosure agreement or from any statement made pursuant to its agreement, although Holders and beneficial owners of the Bonds may seek a writ of mandamus to compel the District to comply with its agreement.

The District may amend its continuing disclosure agreement to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or operations of the District, but only if the agreement, as amended, would have permitted an underwriter to purchase or sell Bonds in the offering described herein in compliance with SEC Rule 15c2-12, taking into account any amendments and interpretations of SEC Rule 15c2-12 to the date of such amendment, as well as changed circumstances, and either the Holders of a majority in aggregate principal amount of the outstanding Bonds consent or any person unaffiliated with the District (such as a nationally recognized bond counsel) determines that the amendment will not materially impair the interests of the beneficial owners of the Bonds. The District may also amend or repeal the agreement if the SEC amends or repeals the applicable provisions of SEC Rule 15c2-12 or a court of final jurisdiction determines that such provisions are invalid but in either case, only to the extent that its right to do so would not prevent the Underwriter from lawfully

purchasing the Bonds in the offering described herein. If the District so amends the agreement, it has agreed to include with any financial information or operating data next provided in accordance with its agreement described above under "Annual Reports" an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information and operating data so provided.

Compliance With Prior Undertakings

During the last five years, the District has complied in all material respects with all continuing disclosure agreements made by it in accordance with SEC Rule 15c2-12.

MISCELLANEOUS

All estimates, statements and assumptions in this Official Statement and the Appendix hereto have been made on the basis of the best information available and are believed to be reliable and accurate. Any statements in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended as such and not as representations of fact, and no representation is made that any such statements will be realized.

This Official Statement was approved by the Board of Directors of Rock Prairie Management District No. 2, as of the date shown on the cover page.

/s/ _____
President, Board of Directors

ATTEST:

/s/ _____
Secretary, Board of Directors

AERIAL PHOTO
(Approximate boundaries as of September 2024)

PHOTOGRAPHS

(Taken February 2024)

APPENDIX A

Independent Auditor's Report and Financial Statements for the fiscal year ended May 31, 2023

NO GROWTH CASH FLOW ANALYSIS

Rock Prairie Management District No. 2 Bond Issue No. 5 (Roads)

Tax Year	Projected Assessed Valuation	Proj Debt Tax Rate	Cldr Year	Beginning Fund Balance (a)	Tax Collections 97.0%	Capitalized Interest (b)	Interest Income 2.0%	Total Funds Available	Outstanding Debt Service	The Bonds (c)			Total Debt Service	Ending Fund Balance	% of Next Year's Debt Service
										Principal	Interest	Total			
2024	155,391,752	0.454	2025	243,290	684,314	121,125	4,866	1,053,595	523,816	-	90,844	90,844	614,659	438,935	60.10%
2025	155,391,752	0.454	2026	438,935	684,314		8,779	1,132,028	534,258	75,000	121,125	196,125	730,383	401,646	54.98%
2026	155,391,752	0.454	2027	401,646	684,314			1,085,960	538,013	75,000	117,563	192,563	730,575	355,385	49.35%
2027	155,391,752	0.454	2028	355,385	684,314			1,039,699	531,138	75,000	114,000	189,000	720,138	319,562	44.74%
2028	155,391,752	0.454	2029	319,562	684,314			1,003,876	523,843	80,000	110,438	190,438	714,280	289,596	40.52%
2029	155,391,752	0.454	2030	289,596	684,314			973,910	528,003	80,000	106,638	186,638	714,640	259,270	36.56%
2030	155,391,752	0.454	2031	259,270	684,314			943,584	521,243	85,000	102,838	187,838	709,080	234,504	33.57%
2031	155,391,752	0.454	2032	234,504	684,314			918,818	514,813	85,000	98,800	183,800	698,613	220,206	31.28%
2032	155,391,752	0.454	2033	220,206	684,314			904,520	519,288	90,000	94,763	184,763	704,050	200,470	29.08%
2033	155,391,752	0.454	2034	200,470	684,314			884,784	508,863	90,000	90,488	180,488	689,350	195,434	28.34%
2034	155,391,752	0.454	2035	195,434	684,314			879,748	508,338	95,000	86,213	181,213	689,550	190,198	28.00%
2035	155,391,752	0.454	2036	190,198	684,314			874,513	502,550	95,000	81,700	176,700	679,250	195,263	29.21%
2036	155,391,752	0.454	2037	195,263	684,314			879,577	496,306	95,000	77,188	172,188	668,494	211,083	32.10%
2037	155,391,752	0.454	2038	211,083	684,314			895,397	484,931	100,000	72,675	172,675	657,606	237,791	35.95%
2038	155,391,752	0.454	2039	237,791	684,314			922,105	488,556	105,000	67,925	172,925	661,481	260,624	40.12%
2039	155,391,752	0.454	2040	260,624	684,314			944,938	481,650	105,000	62,938	167,938	649,588	295,351	45.26%
2040	155,391,752	0.454	2041	295,351	684,314			979,665	484,613	110,000	57,950	167,950	652,563	327,102	51.15%
2041	155,391,752	0.454	2042	327,102	684,314			1,011,417	476,744	110,000	52,725	162,725	639,469	371,948	58.46%
2042	155,391,752	0.454	2043	371,948	684,314			1,056,262	473,738	115,000	47,500	162,500	636,238	420,025	66.42%
2043	155,391,752	0.454	2044	420,025	684,314			1,104,339	475,300	115,000	42,038	157,038	632,338	472,001	75.19%
2044	155,391,752	0.454	2045	472,001	684,314			1,156,315	471,206	120,000	36,575	156,575	627,781	528,534	83.54%
2045	155,391,752	0.454	2046	528,534	684,314			1,212,848	476,769	125,000	30,875	155,875	632,644	580,205	93.40%
2046	155,391,752	0.454	2047	580,205	684,314			1,264,519	471,263	125,000	24,938	149,938	621,200	643,319	104.72%
2047	155,391,752	0.454	2048	643,319	684,314			1,327,633	465,294	130,000	19,000	149,000	614,294	713,339	117.56%
2048	155,391,752	0.454	2049	713,339	684,314			1,397,653	458,963	135,000	12,825	147,825	606,788	790,866	133.24%
2049	155,391,752	0.454	2050	790,866	684,314			1,475,180	452,163	135,000	6,413	141,413	593,575	881,605	
Total						121,125	13,644		12,911,654	2,550,000	1,826,969	4,376,969	17,288,623		

- (a) Debt service fund balance as of 9/02/24
 (b) Represents one year of capitalized interest on the Bonds
 (c) Assumes an interest rate on the Bonds of 4.75%
 (d) 2024 certified value, including 90% of uncertified value (\$34,547,302)

This OFFICIAL NOTICE OF SALE does not alone constitute an invitation for bids on the Bonds but is merely notice of sale of the Bonds described herein. The invitation for bids is being made by means of this OFFICIAL NOTICE OF SALE, the PRELIMINARY OFFICIAL STATEMENT and the OFFICIAL BID FORM attached hereto. Information contained in this OFFICIAL NOTICE OF SALE is qualified in its entirety by the detailed information contained in the PRELIMINARY OFFICIAL STATEMENT.

OFFICIAL NOTICE OF SALE

\$2,550,000

ROCK PRAIRIE MANAGEMENT DISTRICT NO. 2,
(A political subdivision of the State of Texas located within Brazos County)

UNLIMITED TAX ROAD BONDS SERIES 2024A

Bids Due: Thursday, October 10, 2024, at 9:45 A.M., Houston Time in Houston, Texas
Bid Award: Thursday, October 10, 2024, at 2:00 P.M., Houston Time, in College Station, Texas

BOOK-ENTRY-ONLY

THE SALE

Bonds Offered for Sale by Competitive Bidding: The Board of Directors (the “Board”) of Rock Prairie Management District No. 2 (the “District”) is inviting competitive bids for the purchase of its \$2,550,000 Unlimited Tax Road Bonds, Series 2024A (the “Bonds”). Bidders may submit bids for the Bonds by any of the following methods:

- (1) Deliver bids directly to the District as described below in “Sealed Bids Delivered to the District;”
- (2) Submit bids electronically as described below in “Electronic Bidding Procedures;” or
- (3) Submit bids by telephone as described below in “Bids by Telephone.”

Place and Time of Bid Opening: Masterson Advisors LLC, on behalf of the District will open and publicly read bids for the purchase of the Bonds at Masterson Advisors LLC, 3 Greenway Plaza, Suite 1100, Houston, Texas 77046, at 9:45 A.M., Houston Time, Thursday, October 10, 2024. Any bid received after the scheduled time for bid opening will not be accepted by the Board and will be returned unopened.

Sealed Bids Delivered to the District: Sealed bids, plainly marked “Bid for Bonds” should be addressed to “President and Board of Directors, Rock Prairie Management District No. 2, of Brazos County, Texas,” % Masterson Advisors LLC, 3 Greenway Plaza, Suite 1100, Houston, Texas 77046 and delivered prior to 9:45 A.M., Houston Time, Thursday, October 10, 2024. All bids must be submitted in duplicate on the OFFICIAL BID FORM, without alteration or interlineation.

Electronic Bidding Procedures: Any prospective bidder that intends to submit an electronic bid must submit its electronic bid through the facilities of PARITY by 9:45 A.M., Houston Time, Thursday, October 10, 2024. Bidders must submit by e-mail (anthea.moran@mastersonadvisors.com / (713) 814-0552), prior to 9:00 A.M., Houston Time, Thursday, October 10, 2024, a signed OFFICIAL BID FORM to Ms. Anthea Moran, Masterson Advisors LLC, 3 Greenway Plaza, Suite 1100, Houston, Texas 77046. A signed OFFICIAL BID FORM received after 9:45 A.M., Houston Time will result in the electronic bid not being accepted by the Board. Subscription to i-Deal LLC’s BIDCOMP Competitive Bidding System is required in order to submit an electronic bid. The District will neither confirm any subscription nor be responsible for the failure of any prospective bidder to subscribe.

An electronic bid made through the facilities of PARITY shall be deemed an irrevocable offer to purchase the Bonds on the terms provided in this OFFICIAL NOTICE OF SALE and shall be binding upon the bidder as if made by a signed, sealed bid delivered to the District. The District shall not be responsible for any malfunction or mistake made by, or as a result of the use of the facilities of, PARITY, the use of such facilities being the sole risk of the prospective bidder.

If any provision of this OFFICIAL NOTICE OF SALE shall conflict with information provided by PARITY as the approved provider of electronic bidding services, this OFFICIAL NOTICE OF SALE shall control. Further information about PARITY, including any fee charged, may be obtained from PARITY Customer Support, 40 West 23rd Street, 5th Floor, New York, New York 10010, telephone: 212-404-8102.

For purposes of both the written sealed bid process and the electronic bidding process, the time as maintained by PARITY shall constitute the official time. **For information purposes only, bidders are requested to state in their electronic bids the net interest cost to the District, as described under “CONDITIONS OF THE SALE—Basis of Award” below. All electronic bids shall be deemed to incorporate the provisions of this OFFICIAL NOTICE OF SALE and the OFFICIAL BID FORM.**

Bids by Telephone: Bidders must submit by e-mail or facsimile (anthea.moran@mastersonadvisors.com / (713) 814-0552) a signed original OFFICIAL BID FORM to Ms. Anthea Moran, Masterson Advisors LLC, 3 Greenway Plaza, Suite 1100, Houston, Texas 77046, prior to 9:00 A.M., Houston Time, Thursday, October 10, 2024. Bidders that have provided a signed bid form will be contacted by a representative of Masterson Advisors LLC between 9:10 A.M. and 9:40 A.M., Houston Time, on the date of the sale. Questions about this procedure should be addressed to Ms. Moran at (713) 814-0552.

*Masterson Advisors LLC will not be responsible for the submission of any bids tendered by telephone before the deadline for filing but received by the Board after the filing deadline nor does Masterson Advisors LLC assume any responsibility or liability with respect to any irregularities or errors associated with the submission of bids if the above-described telephone options are exercised. **The District will not accept bids submitted by facsimile.***

Award of the Bonds: The District will take action to award the Bonds or reject all bids at a meeting scheduled to convene at 2:00 P.M., Houston time, on the date of the bid opening at 4121 State Highway 6 South, College Station, Texas 77845. Upon awarding the Bonds to the winning bidder (the “Underwriter”), the Board will adopt an order authorizing the issuance of the Bonds (the “Bond Order”). Sale of the Bonds will be made subject to the terms, conditions and provisions of the Bond Order, to which Bond Order reference is hereby made for all purposes and subject to compliance with Texas Government Code § 2252.908 as more fully described below. The District reserves the right to reject any and all bids and to waive any irregularities, except the time of filing.

THE BONDS

Description of the Bonds: Principal of the Bonds is payable at maturity or earlier redemption. Interest on the Bonds will accrue from the Date of Delivery (as defined herein) and will be payable on each September 1 and March 1, commencing September 1, 2025, and will be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds will be initially registered in the name of and delivered only to Cede & Co., the nominee of The Depository Trust Company (“DTC”), pursuant to the Book-Entry-Only System described herein. Beneficial ownership of the Bonds may be acquired in denominations of \$5,000 or integral multiples thereof. No physical delivery of the Bonds will be made to the owners thereof. Principal of and interest on the Bonds will be payable by the Paying Agent/Registrar to Cede & Co., which will make distribution of the amounts so paid to the participating members of DTC for subsequent payment to the Beneficial Owners of the Bonds. The initial Paying Agent/Registrar is The Bank of New York Mellon Trust Co., N.A., in Dallas, Texas. See the PRELIMINARY OFFICIAL STATEMENT for a more complete description of the Bonds. The Bonds will mature serially on September 1 in the years and amounts as follows:

YEAR DUE	PRINCIPAL AMOUNT	YEAR DUE	PRINCIPAL AMOUNT	YEAR DUE	PRINCIPAL AMOUNT
2026	\$ 75,000	2035	\$ 95,000	2044	\$ 115,000
2027	75,000	2036	95,000	2045	120,000
2028	75,000	2037	95,000	2046	125,000
2029	80,000	2038	100,000	2047	125,000
2030	80,000	2039	105,000	2048	130,000
2031	85,000	2040	105,000	2049	135,000
2032	85,000	2041	110,000	2050	135,000
2033	90,000	2042	110,000		
2034	90,000	2043	115,000		

Book-Entry-Only: The Bonds will be registered and delivered only in the name of Cede & Co., as nominee for the Depository Trust Company, New York, New York (“DTC”), which will act as securities depository for the Bonds. Beneficial Owners of the Bonds will not receive physical certificates representing the Bonds but will receive a credit balance on the books of the nominees of such Beneficial Owners. So long as Cede & Co. is the registered owner of the Bonds, the principal of and interest on the Bonds will be paid by the paying agent/registrar, initially The Bank of New York Mellon Trust Company, N.A. in Dallas, Texas (the “Paying Agent/Registrar”), directly to DTC, which will, in turn, remit such principal and interest to its participants for subsequent disbursement to the Beneficial Owners of the Bonds as described in the PRELIMINARY OFFICIAL STATEMENT. See “BOOK-ENTRY-ONLY SYSTEM” in the PRELIMINARY OFFICIAL STATEMENT.

Redemption Provisions: The Bonds maturing on or after September 1, 2032, are subject to redemption prior to maturity, at the option of the District, as a whole or, from time to time, in part, on September 1, 2031, or on any date thereafter, at a price of par plus unpaid accrued interest from the most recent interest payment date to the date fixed for redemption. If fewer than all of the Bonds are redeemed, the particular maturity or maturities and amounts to be redeemed shall be determined by the District. If fewer than all of the Bonds of the same maturity are to be redeemed, the particular Bonds within each such maturity to be redeemed shall be selected by DTC in accordance with its procedures.

Mandatory Sinking Fund Redemption: If the successful bidder designates principal amounts to be combined into one or more term bonds, each such term bond shall be subject to mandatory sinking fund redemption commencing on September 1 of the first year which has been combined to form such term bond and continuing on September 1 in each year thereafter until the stated maturity date of that term bond. The amount redeemed in any year shall be equal to the principal amount for such year set forth on the cover page of the PRELIMINARY OFFICIAL STATEMENT under the captioned “Maturity Schedule.” Term bonds to be redeemed in any year by mandatory sinking fund redemption shall be redeemed at a price of par plus unpaid accrued interest from the most recent interest payment date to the date of redemption. The term bonds to be redeemed shall be selected by DTC in accordance with its procedures. The principal amount of term bonds to be mandatorily redeemed is subject to reduction by the amount of any prior optional redemption.

Source of Payment: The Bonds will constitute valid and binding obligations of the District, payable as to principal and interest from the proceeds of an annual ad valorem tax, without legal limitation as to rate or amount, levied upon all taxable property located within the District, as further described in the PRELIMINARY OFFICIAL STATEMENT. The Bonds are obligations solely of the District and are not obligations of Brazos County, the City of College Station, the State of Texas, or any entity other than the District.

CONDITIONS OF THE SALE

Types of Bids and Interest Rates: The Bonds will be sold in one block, all or none, and no bid of less than 97% of the principal amount thereof will be considered. Bidders are to name the rate or rates of interest to be borne by the Bonds, provided that each interest rate bid must be in a multiple of 1/8 of 1% or 1/20 of 1%. No bid which results in a net effective interest rate as defined by Chapter 1204, Texas Government Code, as amended, in excess of ____ % will be considered. Subject to the conditions below, no limitation will be imposed upon bidders as to the number of interest rates which may be used, but each rate of interest for the period 2034 (base year) through 2050, cannot be less than the rate of interest specified for any earlier maturity during the period 2034 through 2050 and the highest interest rate bid may not exceed the lowest interest rate bid by more than 2.5% in rate. No bid that generates a cash premium greater than \$5,000 will be considered. All Bonds maturing within a single year must bear the same rate of interest, and no bids for the Bonds involving supplemental interest rates will be considered. Each bidder shall state in its bid the total and net interest cost in dollars and the net effective interest rate determined thereby, which shall be considered informative only and not as a part of the bid.

Basis of Award: For the purpose of awarding the sale of the Bonds, the interest cost of each bid will be computed by determining, at the interest rate or rates specified therein, the total dollar value of all interest on the Bonds from the date thereof to their respective maturities and adding thereto the dollar amount of the discount bid, if any, or subtracting therefrom the dollar amount of the premium bid, if any. Subject to the District's right to reject any or all bids, the Bonds will be awarded to the bidder whose bid, under the above computation, produces the lowest net interest cost to the District.

Good Faith Deposit: Each bid must be accompanied by a bank cashier's check payable to the order of "Rock Prairie Management District No. 2" in the amount of \$51,000, which represents two percent (2%) of the principal amount of the Bonds. Only bank cashier checks will be accepted; no "Official Bank Checks" will be accepted. The check will be considered as a Good Faith Deposit, and the check of the Underwriter will be retained uncashed by the District until the Bonds are delivered. In the event the Underwriter should fail or refuse to accept delivery of and pay for the Bonds in accordance with its bid, or if it is determined that after the acceptance of its bid by the District that the Underwriter was found not to satisfy the requirements described below regarding the filing of a standing letter with the Office of the Attorney General of Texas, and as a result, the Attorney General of Texas will not deliver its approving opinion of the Bonds, then the Good Faith Deposit shall be cashed, and the proceeds accepted by the District as full and complete liquidated damages against the Underwriter. The Good Faith Deposit may accompany the OFFICIAL BID FORM, or it may be submitted separately. If submitted separately, it shall be made available to the District prior to the opening of the bids and shall be accompanied by instructions from the bank on which it is drawn to authorize its use as a Good Faith Deposit by the bidder, who shall be named in such instructions. Upon payment for and delivery of the Bonds, the Good Faith Deposit will be returned uncashed. No interest will be paid on the Good Faith Deposit. The checks accompanying bids other than the winning bid will be returned immediately after the bids are opened and an award of the Bonds has been made.

Bidders are further advised that that the award of the Bonds is conditioned upon compliance by the bidder, each syndicate member listed on the Official Bid Form, and the provider of municipal bond insurance for the Bonds, if any and if required, with any rules and requirements of the Office of the Attorney General of Texas related to the filing of standing letters supporting the verifications and certifications herein, and that compliance with such rules and requirements has been confirmed by the District, either by its receipt of a copy of any required standing letters with the Official Bid Form prior to the time prescribed for award of the Bonds or such other means as is reasonably determined by the District. A form of standing letter may be obtained through the website of the Office of the Attorney General of Texas at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Letter%20September%2022%202021%20-%20Standing%20Letter%20Requirement.pdf>.

In submitting a bid, bidder represents to the District that it and each syndicate member listed on the Official Bid Form, if any, (i) has filed a standing letter with the Attorney General of Texas and the Municipal Advisory Council of Texas that conforms to the requirements of the Office of the Attorney General of Texas, (ii) has no reason to believe that the District may not be entitled to rely on such standing letters, and (iii) neither bidder, any syndicate member listed on the Official Bid Form, nor any parent company, subsidiaries, or affiliates of the same, have received a letter from the Texas Comptroller of Public Accounts related to its inclusion on any list of financial companies boycotting energy companies. Bidder agrees that it will not rescind its standing letter at any time before the delivery of the Bonds unless same is immediately replaced with a standing letter that meets the requirements of the Office of the Attorney General. The District reserves the right, in its sole discretion, to reject any bid from a bidder that does not have such standing letter on file as of the deadline for bids for the Bonds. By submitting a bid, each bidder agrees, should it be the winning bidder, to cooperate with the District and take any action necessary to further verify and confirm compliance with state law by the bidder and each syndicate member listed on the Official Bid Form.

Provision of Texas Ethics Commission Form 1295 (“TEC Form 1295”) by Bidders: Pursuant to Texas Government Code § 2252.908 (the “Interested Party Disclosure Act” or the “Act”), the District may not award the Bonds to a bidder that is a privately held entity unless the bidder, and each privately held syndicate member listed on the Official Bid Form, have provided to the District (c/o Masterson Advisors LLC, 3 Greenway Plaza, Suite 1100, Houston, Texas 77046; Attn: Anthea Moran, anthea.moran@mastersonadvisors.com) a completed and signed TEC Form 1295 which has been assigned a certificate number by the Texas Ethics Commission (the “TEC”). Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed, and provided to the District. The TEC Form 1295 may accompany the Official Bid Form or may be submitted separately but must be provided to the District prior to the time prescribed for the award of the Bonds. The TEC Form 1295 may be provided to the District via facsimile or electronically, however, the original signed TEC Form 1295 complete with certificate number must be physically delivered to the District (c/o Schwartz, Page & Harding, L.L.P., 1300 Post Oak Boulevard, Suite 2400, Houston, Texas, 77056) within two business days of the award. Following the award of the Bonds, the District will notify the TEC of the receipt of each completed TEC Form 1295. The District reserves the right to reject any bid that does not comply with the requirements prescribed herein or to waive any such requirements. For purposes of completing the TEC Form 1295, the entity’s name is Rock Prairie Management District No. 2, and the **contract ID number is RPMD2-S2024A-B**. Neither the District nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising any bidder with respect to the proper completion of the TEC Form 1295. Consequently, an entity intending to bid on the Bonds should consult its own advisors to the extent it deems necessary and be prepared to submit the completed form promptly upon notification from the District that its bid is the apparent winning bid.

Compliance with Laws Prohibiting Contracts with Certain Parties: The District will not award the Bonds to a bidder unless the bidder verifies on behalf of itself and each syndicate member listed on the Official Bid Form that, at the time of execution and delivery of the bid and through the term of the contract, being through the end of the underwriting period as defined by United States Securities and Exchange Commission Rule 15c2-12: (1) neither the bidder nor a syndicate member listed on the Official Bid Form, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, boycotts or will boycott Israel, (2) neither the bidder nor a syndicate member listed on the Official Bid Form, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, boycotts or will boycott energy companies, and (3) neither the bidder nor a syndicate member listed on the Official Bid Form, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, (a) has or will have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, or (b) will discriminate against a firearm entity or firearm trade association.

Additionally, the District will not award the Bonds to a bidder unless the bidder certifies that, at the time of execution and delivery of this bid, neither the bidder nor a syndicate member listed on the Official Bid Form, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

Bidder is advised that the foregoing representations, verifications, and certifications shall be made such that liability for breach of such representations, verifications, and certifications during the term of the bid form shall survive termination of the bid form until barred by the applicable statute of limitations, and shall not be liquidated or otherwise limited by any provision of the bid form, notwithstanding anything therein to the contrary.

The terms (1) “boycotts Israel” and “boycott Israel” as used herein have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended, (2) “boycotts energy companies” and “boycott energy companies” as used herein have the meanings assigned to the term “boycott energy company” in Sections 809.001 and 2276.001 of the Texas Government Code, each as amended, and (3) “discriminates against a firearm entity or firearm trade association” as used herein has the meaning assigned to the term “discriminate against a firearm entity or firearm trade association” in Section 2274.001(3) of the Texas Government Code, as amended. As used herein, the term “affiliate” shall mean an entity that controls, is controlled by, or is under common control with the bidder or each syndicate member listed on the Official Bid Form, as applicable, within the meaning of SEC Rules 405, 17 C.F.R. § 230.405, and exists to make a profit.

Compliance with the Texas Public Information Act: The District will not award the Bonds to a bidder unless the bidder agrees to maintain all records in accordance with the requirements of the Texas Public Information Act, including Subchapter J thereof relating to contracting information as defined therein, and the District’s rules, regulations, policies, and retention schedules adopted thereunder with respect to any records to which said Act applies.

DELIVERY OF THE BONDS AND ACCOMPANYING DOCUMENTS

Delivery: The Bonds will initially be delivered as one Bond for each maturity. Delivery will be at the corporate trust office of the Paying Agent/Registrar in Dallas, Texas. Payment for the Bonds must be made in immediately available funds for unconditional credit to the District, or as otherwise directed by the District. The Underwriter will be given at least three (3) business days' notice of the time fixed for delivery of the Bonds. It is anticipated that initial delivery can be made on or about November 18, 2024 (the "Date of Delivery"), and it is understood and agreed that the Underwriter will accept delivery of and make payment for the Bonds by 10:00 A.M., Houston Time on the Date of Delivery, or thereafter on the date the Bonds are tendered for delivery, up to and including December 9, 2024. If for any reason the District is unable to make delivery on or before December 9, 2024, then the District shall immediately contact the Underwriter and offer to allow the Underwriter to extend its offer for an additional thirty (30) days. If the Underwriter does not elect to extend its offer within three (3) business days thereafter, then its Good Faith Deposit will be returned, and both the District and the Underwriter shall be relieved of any further obligation.

DTC Definitive Bonds: After delivery, the Bonds will be issued in book-entry-only form. Cede & Co. is the nominee for DTC. All references herein to the Registered Owners of the Bonds shall mean Cede & Co. and not the Beneficial Owners of the Bonds. Purchase of beneficial interests in the Bonds will be made in book-entry-only form (without registered Bonds) in the denomination of \$5,000 principal amount or any integral multiple thereof. Under certain limited circumstances described herein, the District may determine to forego immobilization of the Bonds at DTC, or another securities depository, in which case, such beneficial interests would become exchangeable for one or more fully registered Bonds of like principal amount for the Bonds. See "BOOK-ENTRY-ONLY SYSTEM" in the PRELIMINARY OFFICIAL STATEMENT.

CUSIP Numbers: It is anticipated that CUSIP identification numbers will be printed on the initial Bonds, but neither the failure to print such number on any Bond nor any error with respect thereto shall constitute cause for a failure or refusal by the Underwriter to accept delivery of and pay for the Bonds in accordance with the terms of this OFFICIAL NOTICE OF SALE. CUSIP identification numbers will be made available to the Underwriter at the time the Bonds are awarded or as soon thereafter as practicable. The CUSIP Service Bureau charge for the assignment of the numbers shall be the responsibility of and shall be paid by the Underwriter.

Conditions to Delivery: The obligation to take up and pay for the Bonds is subject to the following conditions: the issuance of the approving opinion of the Attorney General of Texas, the Underwriter's receipt of the Initial Bonds, the Underwriter's receipt of the legal opinion of Bond Counsel and the no-litigation certificate, all as described below, and no material adverse change in the condition of the District.

Legal Opinions: The District will furnish to the Underwriter a transcript of certain certified proceedings incident to the issuance and authorization of the Bonds, including a certified copy of the approving legal opinion of the Attorney General of Texas, as recorded in the Bond Register of the Comptroller of Public Accounts of the State of Texas, to the effect that the Attorney General has examined a transcript of proceedings authorizing the issuance of the Bonds, and that based upon such examination, the Bonds are valid and binding obligations of the District payable from the proceeds of an annual ad valorem tax, levied without legal limitation as to rate or amount upon all taxable property in the District. The District will also furnish the approving legal opinion of Schwartz, Page & Harding, L.L.P., Bond Counsel, Houston, Texas, to the effect that, based upon an examination of such transcript, the Bonds are valid and binding obligations of the District under the Constitution and laws of the State of Texas, except to the extent that enforcement of the rights and remedies of the Registered Owners of the Bonds may be limited by laws relating to bankruptcy, reorganization, or other similar laws of general application affecting the rights of creditors of political subdivisions such as the District. The legal opinion of Bond Counsel will further state that the Bonds are payable, both as to principal and interest, from the levy of ad valorem taxes without legal limitation as to rate or amount, upon all taxable property within the District, and that the interest on the Bonds is excludable from gross income for federal income tax purposes under statutes, regulations, published rulings and court decisions existing on the date of such opinion assuming compliance by the District with certain covenants relating to the use and investment of the proceeds of the Bonds. See "LEGAL MATTERS" in the PRELIMINARY OFFICIAL STATEMENT. Such opinions express no opinion with respect to the sufficiency of the security for or marketability of the Bonds.

Qualified Tax-Exempt Obligations: Section 265 of the Internal Revenue Code of 1986, as amended (the "Code") provides, in general, that interest expense incurred to acquire or carry tax-exempt obligations is not deductible from the gross income of the owner of the Bonds. For certain owners that are "financial institutions" within the meaning of such section, complete disallowance of such expense would apply to taxable years beginning after December 31, 1986, with respect to tax-exempt obligations acquired after August 7, 1986. Section 265(b) of the Code provides an exception to this rule for interest expense incurred by financial institutions to carry tax-exempt obligations (other than specified private activity bonds) which are designated by an issuer as "qualified tax-exempt obligations." An issuer may only designate an issue as an issue of "qualified tax-exempt obligations" where less than \$10 million of tax-exempt obligations are issued by the issuer during the calendar year in which the issue so designated is issued.

The District has designated the Bonds as "qualified tax-exempt obligations." Furthermore, the District has represented that it has or will take such action as is necessary for the Bonds to constitute "qualified tax-exempt obligations." Notwithstanding the designation of the Bonds as "qualified tax-exempt obligations," financial institutions acquiring the Bonds will be subject to a 20% disallowance of interest expense allocable to the Bonds.

Establishing the Issue Price of the Bonds: In order to provide the District with information that enables it to comply with certain conditions of the Code, relating to the exclusion of interest on the Bonds from the gross income of their owners, the winning bidder will be required to complete, execute, and deliver to the District or to the District's municipal advisor, Masterson Advisors LLC (the "Financial Advisor"), at least five (5) business days prior to the Date of Delivery of the Bonds, a certification as to the "issue price" of the Bonds (the "Issue Price Certificate"), substantially in the form attached hereto or accompanying this Notice of Sale. In the event the winning bidder will not reoffer any maturity of the Bonds for sale to the Public (as defined herein) by the Date of Delivery of the Bonds, the Issue Price Certificate may be modified in a manner approved by the District and Bond Counsel. Each bidder, by submitting its bid, agrees to complete, execute, and timely deliver the Issue Price Certificate, if its bid is accepted by the District. It will be the responsibility of the winning bidder to institute such syndicate reporting requirements, to make such investigation, or otherwise to ascertain such facts necessary to enable it to make such certification with reasonable certainty. Any questions concerning such certification should be directed to Bond Counsel.

For purposes of this section of this Notice of Sale:

- (i) "Public" means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party;
- (ii) "Underwriter" means (A) any person that agrees pursuant to a written contract with the District (or with the lead Underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public);
- (iii) "Related Party" means any two or more persons (including an individual, trust, estate, partnership, association, company, or corporation) that are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and
- (iv) "Sale Date" means the date that the Bonds are awarded by the District to the winning bidder.

All actions to be taken by the District under this Notice of Sale to establish the issue price of the Bonds may be taken on behalf of the District by the Financial Advisor, and any notice or report to be provided to the District may be provided to the Financial Advisor.

The District will consider any bid submitted pursuant to this Notice of Sale to be a firm offer for the purchase of the Bonds, as specified in the bid and, if so stated, in the Official Bid Form.

The District intends to rely on Treasury Regulation section 1.148-1(f)(3)(i) (defining "competitive sale" for purposes of establishing the issue price of municipal bonds), which require, among other things, that the District receives bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds (the "Competitive Sale Requirement").

In the event that the Competitive Sale Requirement is satisfied, the sale of the Bonds will be awarded to the bidder making a bid that conforms to the specifications herein. In the event that the Competitive Sale Requirement is not satisfied, bids **will not be subject to cancellation and the winning bidder will be required to hold the initial offering price to the Public of each maturity of the Bonds, other than a maturity 10% of which has been sold to the Public on the Sale Date ("Hold-the-Price Bonds"), as described in the next paragraph.**

By submitting a bid, the winning bidder agrees, on behalf of each Underwriter participating in the purchase of the Bonds, that each Underwriter will neither offer nor sell any maturity of the Hold-the-Price Bonds to any person at a price that is higher than the initial offering price to the Public during the period starting on the Sale Date and ending on the earlier of the following:

- (i) the close of the fifth (5th) business day after the Sale Date; or
- (ii) the date on which the Underwriters have sold at least 10% of that maturity of the Bonds to the Public at a price that is no higher than the initial offering price to the Public.

The winning bidder shall promptly advise the District when the Underwriters have sold 10% of a maturity of the Hold-the-Price Bonds to the Public at a price that is no higher than the initial offering price to the Public, if that occurs prior to the close of the fifth (5th) business day after the Sale Date.

No Material Adverse Change: The obligation of the Underwriter to take up and pay for the Initial Bonds, and of the District to deliver the Initial Bonds, is subject to the condition that, up to the time of delivery of and receipt of payment for the Initial Bonds, there shall have been no material adverse change in the affairs of the District subsequent to the date of sale from that set forth in the PRELIMINARY OFFICIAL STATEMENT, as it may have been finalized, supplemented or amended through the Date of Delivery.

No-Litigation Certificate: On the Date of Delivery of the Bonds to the Underwriter, the District will execute and deliver to the Underwriter, a certificate to the effect that no litigation of any nature has been filed or is pending, as of that date, of which the District has notice, to restrain or enjoin the issuance or delivery of the Bonds, or which would affect the provisions made for their payment or security, or in any manner questioning the validity of the Bonds.

Rule G-32 Requirements: It is the responsibility of the Underwriter to comply with the Municipal Securities Rule Making Board's Rule G-32 within the required time frame. The Underwriter must send two copies of the OFFICIAL STATEMENT along with two complete Form G-32's to the appropriate address.

OFFICIAL STATEMENT

To assist the Underwriter in complying with Rule 15c2-12 of the Securities and Exchange Commission ("SEC"), the District and the Underwriter agree, by the submission and acceptance of the winning bid, as follows.

Final Official Statement: The District has approved and authorized distribution of the accompanying PRELIMINARY OFFICIAL STATEMENT for dissemination to potential purchasers of the Bonds but does not intend to prepare any other document or version thereof for such purpose, except as described below. Accordingly, the District intends the PRELIMINARY OFFICIAL STATEMENT to be final as of its date, within the meaning of SEC Rule 15c2-12(b)(1), except for information relating to the offering prices, interest rates, final debt service schedule, selling compensation, identity of the Underwriter and other similar information, terms and provisions to be specified in the competitive bidding process. The Underwriter shall be responsible for promptly informing the District of the initial reoffering yields of the Bonds. Thereafter, the District will complete and authorize distribution of the OFFICIAL STATEMENT identifying the Underwriter and containing such omitted information. The District does not intend to amend or supplement the OFFICIAL STATEMENT otherwise, except to take into account certain subsequent events, if any, as described below. By delivering the final OFFICIAL STATEMENT or any amendment or supplement thereto in the requested quantity to the Underwriter on or after the sale date, the District intends the same to be final as of such date, within the meaning of SEC Rule 15c2-12(f)(3). Notwithstanding the foregoing, the only representations concerning the absence of material misstatements or omissions from the OFFICIAL STATEMENT which are being or which will be made by the District are those described and contained in the OFFICIAL STATEMENT under the caption "PREPARATION OF OFFICIAL STATEMENT—Certification of OFFICIAL STATEMENT."

Changes to Official Statement: If subsequent to the date of the OFFICIAL STATEMENT, the District learns, through the ordinary course of business and without undertaking any investigation or examination for such purposes, or is notified by the Underwriter, of any adverse event which causes the OFFICIAL STATEMENT to be materially misleading, and unless the Underwriter elects to terminate its obligation to purchase the Bonds, as described above under "DELIVERY OF THE BONDS AND ACCOMPANYING DOCUMENTS—Conditions to Delivery," the District will promptly prepare and supply to the Underwriter an appropriate amendment or supplement to the OFFICIAL STATEMENT satisfactory to the Underwriter provided, however, that the obligation of the District to so amend or supplement the OFFICIAL STATEMENT will terminate when the District delivers the Bonds to the Underwriter, unless the Underwriter notifies the District on or before such date that less than all of the Bonds have been sold to ultimate customers in which case the District's obligations hereunder will extend for an additional period of time (but not more than 90 days after the date the District delivers the Bonds) until all of the Bonds have been sold to ultimate customers.

Delivery of Official Statements: The District shall furnish final OFFICIAL STATEMENTS to the Underwriter (and to each participating underwriter of the Bonds, within the meaning of SEC Rule 15c2-12(a), designated by the Underwriter) within seven (7) business days after the sale date. The District also shall furnish to the Underwriter a like number of any supplements or amendments approved and authorized for distribution by the District for dissemination to potential purchasers of the Bonds, as well as such additional copies of the OFFICIAL STATEMENT or any such supplements or amendments as the Underwriter may reasonably request prior to the 90th day after the end of the underwriting period described in SEC Rule 15c2-12(f)(2). The District shall pay the expense of preparing the number of copies of the OFFICIAL STATEMENT specified in the winning bid and an equal number of any supplements or amendments issued on or before the Date of Delivery, but the Underwriter shall pay for all other copies of the OFFICIAL STATEMENT or any supplement or amendment thereto.

Continuing Disclosure of Information: The District will agree in the Bond Order to provide certain periodic information and notices of material events in accordance with Securities and Exchange Commission Rule 15c2-12, as described in the PRELIMINARY OFFICIAL STATEMENT under "CONTINUING DISCLOSURE OF INFORMATION." The Underwriter's obligation to accept and pay for the Bonds is conditioned upon delivery to the Underwriter or their agent of a certified copy of the Bond Order containing the agreement described under such heading.

Substantive Requirements for Official Statement: To the best knowledge and belief of the District, the PRELIMINARY OFFICIAL STATEMENT contains information, including financial information or operating data, concerning every entity, enterprise, fund, account, or person that is material to an evaluation of the offering of the Bonds.

GENERAL CONSIDERATIONS

Risk Factors: The Bonds involve certain risk factors. Prospective bidders are urged to examine carefully the entire Preliminary Official Statement, with respect to the risk factors associated with the Bonds. Particular attention should be given to the information set forth therein under the caption “RISK FACTORS.”

Municipal Bond Rating and Municipal Bond Insurance: The District has not applied for an underlying rating nor is it expected that the District would have received an investment grade rating had such application been made. Applications have been made to various municipal bond insurance companies for qualification of the Bonds for municipal bond insurance. If qualified, such insurance will be available at the option of the Underwriter at the Underwriter’s expense. See “DELIVERY OF THE BONDS AND ACCOMPANYING DOCUMENTS—Conditions of Delivery” herein. It should be noted that there are risk factors related to the purchase of municipal bond insurance. See “RISK FACTORS” in the Preliminary Official Statement.

Reservation of Rights: The District reserves the right to reject any and all bids and to waive any and all irregularities, except time of filing.

Not an Offer to Sell: This OFFICIAL NOTICE OF SALE does not alone constitute an offer to sell the Bonds but is merely notice of sale of the Bonds. The invitation for bids on the Bonds is being made by means of this OFFICIAL NOTICE OF SALE, the PRELIMINARY OFFICIAL STATEMENT and the OFFICIAL BID FORM.

Registration and Qualification of Bonds for Sale: The offer and sale of the Bonds have not been registered or qualified under the Securities Act of 1933, as amended, in reliance upon the exemptions provided thereunder. The Bonds have not been registered or qualified under the Securities Act of Texas in reliance upon various exemptions contained therein, and the Bonds have not been registered or qualified under the securities acts of any other jurisdiction. The District assumes no responsibility for registration or qualification of the Bonds under the securities laws of any jurisdiction in which the Bonds may be sold, assigned, pledged, hypothecated or otherwise transferred. This disclaimer of responsibility for registration or qualification for sale or other disposition of the Bonds shall not be construed as an interpretation of any kind with regard to the availability of any exemption from securities registration or qualification provisions. By submission of its bid, the Underwriter represents that the sale of the Bonds in states other than the State of Texas will be made pursuant to exemptions from registration or qualification, or where necessary, the Underwriter will register the Bonds in accordance with the securities laws of the state in which the Bonds are offered or sold. The District agrees to cooperate with the Underwriter, at the Underwriter’s written request and expense, in registering or qualifying the Bonds or obtaining an exemption from registration or qualification (other than filing a consent to service of process in such state), in any state where such action is necessary.

Section 149(a) of the Code requires that all tax-exempt obligations (with certain exceptions that do not include the Bonds) be in registered form in order for the interest payable on such obligations to be excludable from a Beneficial Owners’ income for federal income tax purposes. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. pursuant to the Book-Entry-Only System described herein. One fully-registered bond will be issued for each maturity of the Bonds and will be deposited with DTC. See “BOOK-ENTRY-ONLY SYSTEM.” So long as any Bonds remain outstanding, the District will maintain at least one Paying Agent/Registrar in the State of Texas for the purpose of maintaining the Register on behalf of the District.

Additional Copies of Documents: Additional copies of this OFFICIAL NOTICE OF SALE, the PRELIMINARY OFFICIAL STATEMENT and the OFFICIAL BID FORM may be obtained from the Financial Advisor, Masterson Advisors LLC, 3 Greenway Plaza, Suite 1100, Houston, Texas 77046.

Mr. Uri Geva
President, Board of Directors
Rock Prairie Management District No. 2

OFFICIAL BID FORM

President and Board of Directors
Rock Prairie Management District No. 2
c/o Masterson Advisors LLC
3 Greenway Plaza, Suite 1100
Houston, Texas 77046

Board Members:

We have read in detail the OFFICIAL NOTICE OF SALE and PRELIMINARY OFFICIAL STATEMENT dated September 12, 2024, relating to the \$2,550,000 Rock Prairie Management District No. 2 (the "District") Unlimited Tax Road Bonds, Series 2024A (the "Bonds"). We realize that the Bonds involve certain investment considerations, and we have made inspections and investigations as we deem necessary relating to the District and to the investment quality of the Bonds.

For your legally issued Bonds, as described in the "PRELIMINARY OFFICIAL STATEMENT," and pursuant to the terms and condition of the sale of the Bonds described in the "OFFICIAL NOTICE OF SALE," we will pay you a price of \$_____, representing _____% of the principal amount. Such Bonds mature September 1, in each of the years and in the amounts and interest rates shown below:

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2026	\$ 75,000	_____ %	2039	\$ 105,000 *	_____ %
2027	75,000	_____ %	2040	105,000 *	_____ %
2028	75,000	_____ %	2041	110,000 *	_____ %
2029	80,000	_____ %	2042	110,000 *	_____ %
2030	80,000	_____ %	2043	115,000 *	_____ %
2031	85,000	_____ %	2044	115,000 *	_____ %
2032	85,000 *	_____ %	2045	120,000 *	_____ %
2033	90,000 *	_____ %	2046	125,000 *	_____ %
2034	90,000 *	_____ %	2047	125,000 *	_____ %
2035	95,000 *	_____ %	2048	130,000 *	_____ %
2036	95,000 *	_____ %	2049	135,000 *	_____ %
2037	95,000 *	_____ %	2050	135,000 *	_____ %
2038	100,000 *	_____ %			

* Subject to optional redemption on or after September 1, 2031.

Of the principal maturities set forth in the table above, we have created term bonds as indicated in the following table (which may include multiple term bonds, one term bond or no term bond if none is indicated). For those years which have been combined into a term bond, the principal amount shown in the table above shall be the mandatory sinking fund redemption amounts in such years except that the amount shown in the year of the term bond maturity date shall mature in such year. The term bonds created are as follows:

<u>Term Bond Maturity Date</u>	<u>Year of First Mandatory Redemption</u>	<u>Principal Amount of Term Bond</u>	<u>Interest Rate</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Our calculation (which is not a part of this bid) of the interest cost from the above is:

Gross Interest Cost from November 18, 2024 (the "Date of Delivery").....	\$ _____
Plus Dollar Amount of Discount (or Less: Dollar Amount of Premium)	\$ _____
NET INTEREST COST	\$ _____
NET EFFECTIVE INTEREST RATE.....	_____ %

The initial Bonds shall be registered in the name of Cede & Co. as the nominee for The Depository Trust Company.

By submitting this bid, we agree to provide copies of the final OFFICIAL STATEMENT, and any amendments and supplements thereto, in accordance with the terms of the OFFICIAL NOTICE OF SALE and as required by Rule 15c2-12 of the Securities and Exchange Commission and Rule G-32 of the Municipal Securities Rulemaking Board.

A Bank Cashier's Check payable to the order of the District in the amount of \$51,000 has been made available to you prior to the opening of this bid, as a Good Faith Deposit, and is submitted in accordance with the OFFICIAL NOTICE OF SALE.

The undersigned agrees to complete, execute, and deliver to the District by the Date of Delivery of the Bonds a certificate relating to the "issue price" of the Bonds in the form accompanying the OFFICIAL NOTICE OF SALE, with such changes thereto as may be acceptable to the District.

We agree to accept delivery of and make payment for the Bonds in immediately available funds at the offices of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, not later than 10:00 A.M., Houston, Texas time, on the Date of Delivery or thereafter on the date the Bonds are tendered for delivery, pursuant to the terms set forth in the "Official Notice of Sale." In addition, in the event less than all of the Bonds are sold to ultimate customers prior to the Date of Delivery of the Bonds, we will so notify the District on such date.

The District may not accept this bid until it has received from the bidder, if that bidder is a privately held entity, a completed and signed TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The undersigned understands that failure to provide said form complete with a certificate number assigned by the TEC as provided for in the Official Notice of Sale will result in a non-conforming bid and will prohibit the District from considering this bid for acceptance.

By executing this Bid Form, the bidder represents and verifies that, at the time of execution and delivery of this bid and through the term of this contract, being through the end of the underwriting period as defined by United States Securities and Exchange Commission Rule 15c2-12: (1) neither the bidder nor a syndicate member listed on the Official Bid Form, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, boycotts or will boycott Israel, (2) neither the bidder nor a syndicate member listed on the Official Bid Form, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, boycotts or will boycott energy companies, and (3) neither the bidder nor a syndicate member listed on the Official Bid Form, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, (a) has or will have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, or (b) will discriminate against a firearm entity or firearm trade association.

Additionally, by executing this Bid Form, the bidder also represents and certifies that, at the time of execution and delivery of this bid, neither the bidder nor a syndicate member listed on the Official Bid Form, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

The terms (1) "boycotts Israel" and "boycott Israel" as used herein have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended, (2) "boycotts energy companies" and "boycott energy companies" as used herein have the meanings assigned to the term "boycott energy company" in Sections 809.001 and 2276.001 of the Texas Government Code, each as amended, and (3) "discriminates against a firearm entity or firearm trade association" as used herein has the meaning assigned to the term "discriminate against a firearm entity or firearm trade association" in Section 2274.001(3) of the Texas Government Code, as amended. As used herein, the term "affiliate" shall mean an entity that controls, is controlled by, or is under common control with the bidder or each syndicate member listed on the Official Bid Form, as applicable, within the meaning of SEC Rules 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any of the foregoing representations, verifications, and certifications during the term of this bid form shall survive termination of this bid form until barred by the applicable statute of limitations, and shall not be liquidated or otherwise limited by any provision hereof, notwithstanding anything herein to the contrary.

By executing this Bid Form, Bidder acknowledges the award of the Bonds is conditioned upon compliance by the Bidder, each syndicate member listed on the Official Bid Form, and the provider of municipal bond insurance for the Bonds, if any and if required, with any rules and requirements of the Office of the Attorney General of Texas related to the filing of standing letters supporting the verifications and certifications herein, and that compliance with such rules and requirements has been confirmed by the District, either by its receipt of a copy of any required standing letters with this Bid Form prior to the time prescribed for award of the Bonds or such other means as is reasonably determined by the District.

By executing this Bid Form, bidder represents to the District that it and each syndicate member listed on the Official Bid Form, if any, (i) has filed a standing letter with the Attorney General of Texas and the Municipal Advisory Council of Texas that conforms to the requirements of the Office of the Attorney General of Texas, (ii) has no reason to believe that the District may not be entitled to rely on such standing letters, and (iii) neither bidder, any syndicate member listed in the Official Bid Form, nor any parent company, subsidiaries, or affiliates of the same, have received a letter from the Texas Comptroller of Public Accounts related to its inclusion on any list of financial companies boycotting energy companies. Bidder agrees that it will not rescind its standing letter at any time before the delivery of the Bonds unless same is immediately replaced with a standing letter that meets the requirements of the Office of the Attorney General. By executing this Bid Form, Bidder acknowledges that the District reserves the right, in its sole discretion, to reject any bid from a bidder that does not have such standing letter on file as of the deadline for bids for the Bonds. By submitting a bid, each bidder agrees, should it be the winning bidder, to cooperate with the District and take any action necessary to further verify and confirm compliance with state law by the bidder and each syndicate member listed in the Bid Form.

Further, by executing this Bid Form, the bidder also agrees that it will maintain all records in accordance with the requirements of the Texas Public Information Act, including Subchapter J thereof relating to contracting information as defined therein, and the District's rules, regulations, policies, and retention schedules adopted thereunder with respect to any records to which said Act applies.

Respectfully submitted,

By: _____

Telephone Number: _____

ACCEPTANCE CLAUSE

The above and foregoing bid is hereby in all things accepted by Rock Prairie Management District No. 2, this 10th day of October, 2024.

ATTEST:

Secretary, Board of Directors

President, Board of Directors

BOND YEARS

Due: September 1, Annually
Interest Accrual Date: November 18, 2024

<u>Year</u>	<u>Principal</u>	<u>Bond Years</u>	<u>Cumulative Bond Years</u>
2026	\$ 75,000	133.96	133.96
2027	75,000	208.96	342.92
2028	75,000	283.96	626.88
2029	80,000	382.89	1,009.76
2030	80,000	462.89	1,472.65
2031	85,000	576.82	2,049.47
2032	85,000	661.82	2,711.29
2033	90,000	790.75	3,502.04
2034	90,000	880.75	4,382.79
2035	95,000	1,024.68	5,407.47
2036	95,000	1,119.68	6,527.15
2037	95,000	1,214.68	7,741.83
2038	100,000	1,378.61	9,120.44
2039	105,000	1,552.54	10,672.99
2040	105,000	1,657.54	12,330.53
2041	110,000	1,846.47	14,177.00
2042	110,000	1,956.47	16,133.47
2043	115,000	2,160.40	18,293.88
2044	115,000	2,275.40	20,569.28
2045	120,000	2,494.33	23,063.61
2046	125,000	2,723.26	25,786.88
2047	125,000	2,848.26	28,635.14
2048	130,000	3,092.19	31,727.33
2049	135,000	3,346.13	35,073.46
2050	135,000	3,481.13	38,554.58
Total	\$ 2,550,000		
Average Maturity		15.119	

ISSUE PRICE CERTIFICATE

The undersigned, being a duly authorized representative of the underwriter or the manager of the syndicate of underwriters ("Purchaser") with respect to the purchase of \$2,550,000 Unlimited Tax Road Bonds, Series 2024A, by Rock Prairie Management District No. 2 (the "District"), hereby certifies and represents, based on its records and information, as follows:

[If at least 3 qualified bids are received from underwriters]

1. On the first day on which there was a binding contract in writing for the purchase of the Bonds by the Purchaser, the Purchaser's reasonably expected initial offering prices of each maturity of the Bonds with the same credit and payment terms (the "Expected Offering Prices") to a person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter are as set forth in the pricing wire or equivalent communication for the Bonds, as attached to this Issue Price Certificate as **Schedule A**. The Expected Offering Prices are the prices for the Bonds used by the Purchaser in formulating its bid to purchase the Bonds.

2. The Purchaser had an equal opportunity to bid to purchase the Bonds and it was not given the opportunity to review other bids that was not equally given to all other bidders (i.e., no last look).

3. The bid submitted by the Purchaser constituted a firm bid to purchase the Bonds.

[If less than 3 qualified bids are received from underwriters]

1. [Other than the Bonds maturing in _____ ("Hold-the-Price Maturities"), the][The first price at which at least ten percent ("Substantial Amount") of the principal amount of each maturity of the Bonds having the same credit and payment terms ("Maturity") was sold to a person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter ("Public") are the initial offering prices (the "Initial Offering Prices"), as listed in the pricing wire or equivalent communication for the Bonds that is attached to this Issue Price Certificate as **Schedule A**.]

[Include the following paragraphs 2 and 3 if there are Hold-the-Price Maturities]

2. On or before the first day on which there is a binding contract in writing for the sale of the Bonds ("Sale Date"), the Purchaser offered to the Public each [maturity of the Bonds having the same credit and payment terms ("Maturity")][Maturity of the Hold-the-Price Maturities] at the [Initial Offering Prices for such Maturity][initial offering prices for such Maturity ("Initial Offering Prices")], as set forth in **Schedule A** hereto. [A copy of the pricing wire or equivalent communication for the Bonds is attached to this Issue Price Certificate as **Schedule A**.]

3. As set forth in the Notice of Sale, the Purchaser agreed in writing to neither offer nor sell any of the Hold-the-Price Maturities to any person at any higher price than the Initial Offering Price for such Maturity until the earlier of the close of the fifth business day after the Sale Date or the date on which the Purchaser sells [at least ten percent ("Substantial Amount")][a Substantial Amount] of a Maturity of the Bonds to the Public at no higher price than the Initial Offering Price for such Maturity.]

[Include the remaining paragraphs regardless of number of bids; revise numbering of paragraphs as appropriate]

4. As used hereinabove, the term "Underwriter" means (i) (A) a person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, or (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i)(A) of this paragraph (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public) to participate in the initial sale of the Bonds to the Public, and (ii) any person who has more than 50% common ownership, directly or indirectly, with a person described in clause (i) of this paragraph.

5. Please choose the appropriate statement:

() Purchaser will not purchase bond insurance for the Bonds.

() Purchaser will purchase bond insurance from _____ (the "Insurer") for a fee/premium of \$_____ (the "Fee"). To the best of the undersigned's knowledge, information and belief, based upon the facts available at this time and current market conditions, the Fee is a reasonable amount payable solely for the transfer of credit risk for the payment of debt service on the Bonds and does not include any amount payable for a cost other than such guarantee, e.g., a credit rating or legal fees. [Purchaser represents that the present value of the Fee for each obligation constituting the Bonds to which such Fee is properly allocated and which are insured thereby is less than the present value of the interest reasonably expected to be saved as a result of the insurance on each obligation constituting the Bonds. In determining present value for this purpose, the yield of the Bonds (determined with regard to the payment of the guarantee fee) has been used as the discount rate.] The Fee has been paid to a person who is not exempt from federal income taxation and who is not a user or related to the user of any proceeds of the Bonds. No portion of the Fee is refundable upon redemption of any of the Bonds in an amount which would exceed the portion of such Fee that has not been earned.

6. The undersigned has calculated the total underwriting spread on the Bonds to be \$ _____. As used herein, the term "total underwriting spread" means the cost for marketing and selling the Bonds, and includes (a) a total takedown of \$ _____, (b) a total management fee of \$ _____, (c) fees and expenses of underwriter's counsel in the estimated total amount of \$ _____, and (d) other expenses in the total estimated amount of \$ _____.

The undersigned understands that the foregoing information will be relied upon by District with respect to certain of the representations set forth in the Federal Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Schwartz, Page & Harding, L.L.P. in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the District from time to time relating to the Bonds. The undersigned understands that the foregoing information will also be relied upon by the District and by Schwartz, Page & Harding, L.L.P. with respect to compliance with the requirements of Section 1202.008 of Chapter 1202, Texas Government Code, as amended. Notwithstanding anything set forth herein, the Purchaser is not engaged in the practice of law and makes no representation as to the legal sufficiency of the factual matters set forth herein.

EXECUTED and DELIVERED this _____ day of _____, 2024.

Name of Underwriter

By: _____

Title: _____



Anthea W. Moran
Managing Director

September 4, 2024

City of College Station
1101 Texas Avenue
College Station, Texas 77840
Attn: Finance Department

Re: Rock Prairie Management District No. 2
Unlimited Tax Road Bonds, Series 2024A

Dear Sir or Madam,

This letter is written in connection with the referenced bond issue by Rock Prairie Management District No. 2 (the "District").

As the District's financial advisor, we hereby certify that the proposed bonds are being issued within the existing economic feasibility guidelines established by the Texas Commission Environmental Quality and should meet all of the requirements set out in the City's ordinance approving creation of the District.

Sincerely,



Anthea W. Moran
Managing Director

October 7, 2024
Item No. 7.11.
Texas Independence Park Design Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a professional services contract with The Arkitex Studio, Inc., not to exceed \$1,800,250 for the design and construction administration of the Texas Independence Park Project.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: Texas Independence Park is located 7300 Rock Prairie Road. Earlier this year, City Council approved the Texas Independence Park Master Plan that was developed by The Arkitex Studio, Inc. and their subconsultants. The Master Plan includes bike and pedestrian elements and trails, dog park, open spaces, play elements, a fishing pond, disc golf and other various amenities. The next step is to complete the design and produce construction drawings. The proposed not to exceed professional services contract will include design and construction phase services for Texas Independence Park. The contract includes architectural, civil, structural, mechanical, and plumbing engineering, and landscaping design services, including schematic design, design development, construction documents, bidding documents, and construction administration.

The Arkitex Studio, Inc. was selected as the most qualified through a Request for Qualifications (RFQ) process.

Budget & Financial Summary: Budget in the amount of \$5,000,000 is included for this project in the Parks Capital Improvement Projects Fund. Nothing has been expended or committed to date, leaving a balance of \$5,000,000 for this design contract and future costs.

Attachments:

1. TIP Design Contract Vendor-Signed



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300017 PROJECT #: PK2501 BID/RFP/RFQ#: _____

Project Name / Contract Description: Independence Park

Architectural Services

Name of Contractor: The Arkitek Studio, Inc.

CONTRACT TOTAL VALUE: \$ 1,800,250 **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)

PK2501 41389971-6561

(If required)*

CRC Approval Date*: n/a **Council Approval Date*:** 10/07/24 **Agenda Item No*:** _____

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

Insurance Certificates: DDV **Performance Bond:** n/a **Payment Bond:** n/a **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
ARCHITECTS & ENGINEERING PROFESSIONAL SERVICES CONTRACT
WITH CONSTRUCTION**

This Contract is between the **City of College Station**, a Texas home-rule municipal corporation, (the “City”) and THE ARKITEX STUDIO, INC., a TEXAS corporation (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
SCOPE OF SERVICES**

1.01 In consideration of the compensation stated in paragraph 2.01 below, the Consultant agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows (the “Project”):

Independence Park

**ARTICLE II
PAYMENT**

2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed One Million Eight Hundred Thousand Two Hundred Fifty and NO /100 Dollars (\$ 1,800,250.00).

2.02 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.

ARTICLE III TIME OF PERFORMANCE AND CONSTRUCTION COST

3.01 The Consultant shall perform all professional services necessary for the complete design and construction documentation of the Project within the times set forth below and in Section 3.02. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Furthermore, the Consultant shall perform with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

- (a) Conceptual Design: n/a calendar days after the authorization to commence planning.
- (b) Preliminary Design: n/a calendar days after authorization to commence PPD.
- (c) Final Design: n/a calendar days after authorization to commence final design.

3.02 All design work and other professional services provided under this Contract must be completed by the following date(s):

Survey and geotechnical report	5 weeks
Schematic Design	8 weeks
Design Development	6 weeks
Construction Documents	12 weeks
Bidding/Permit/	+ 6 weeks (city dependent)
Construction Administration	+ 18 months (contractor schedule)

3.03 Time is of the essence of this Contract. The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible and with adequate resources and manpower in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates, which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which Consultant has absolute control shall not be exceeded without written approval from the City. Consultant may request in writing an extension of the contract time due to delays beyond their control. In the event that a deadline provided in this Contract is not met by the Consultant, Consultant shall provide the City with a written narrative setting forth in a reasonable degree of detail a plan of recovery to overcome or mitigate the delay which may include (i) employing additional people, or (ii) accelerating the work by working longer hours on any portion of the Project that is deemed by the City to be behind schedule ("Recovery Plan"). With the City's approval, Consultant shall execute the Recovery Plan at no additional cost to the City.

(a) **Liquidated Damages.**

- (1) The time for the completion of all Work described in this Agreement are reasonable times for the completion of each task by the agreed upon days or dates, taking into consideration all conditions, including but not limited to the usual industry conditions prevailing in this locality. The amount of liquidated damages for the Consultant's failure to meet contractual deadlines specifically set forth in the Consultant's scope of services and schedule are fixed and agreed on by the Consultant because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be deducted by the City from current amounts owed to Consultant for payment or from final payment.
- (2) As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Consultant to achieve timely completion of the Work, if the Consultant should neglect, or fail, or refuse to complete the Work within the times specified in the Consultant's scope of services and schedule, or any proper extension thereof granted by the City's Representative pursuant to this Agreement, then the Consultant does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Consultant's total compensation the sum of **TWO HUNDRED FIFTY and 00/100 DOLLARS (\$250.00)** for each and every calendar day that the Consultant shall be in default after the time(s) stipulated completion of the task(s) in question, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet any of the deadlines specified in the Consultant's scope of services and schedule for completion in this Agreement.

3.04 The Consultant's services consist of all of the services required to be performed by Consultant, Consultant's employees and Consultant's sub-consultants under the terms of this Contract. Such services include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The Consultant shall contract and employ at its expense sub-consultants necessary for the design of the Project, and such sub-consultants shall be licensed as required by the State of Texas and approved in writing by the City.

3.05 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant's services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

3.06 Consultant shall be responsible for the coordination of its services with those of its subconsultants, the City, and the City's consultants, including the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for its compliance with all applicable codes, ordinances, regulations, laws and statutes. Upon receipt from the City, the Consultant shall review the services and information furnished by the City and the City's consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

3.07 Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.

3.08 The construction budget for this Project, which is established as a condition of this Contract is \$ 3,200,000.00. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE IV CONCEPTUAL DESIGN

4.01 Upon the Consultant's receipt from the City of a letter of authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the Project budget, if applicable.

4.03 The Consultant shall prepare a Conceptual Design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the City's Program, the Project Schedule

and budget. The Consultant shall reach an understanding with the City regarding the requirements of the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and the City Council to make a presentation of its report.

ARTICLE V PRELIMINARY DESIGN

5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a letter of authorization to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the letter of authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design, including any material changes and deviations that have taken place from the Conceptual Design, a cost estimate, and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VI FINAL DESIGN

6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a letter of authorization to begin work on the Final Design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.

6.02 Notwithstanding the City's approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project.

6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's *current* pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the construction contractor. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.

6.04 The Consultant shall provide the City with complete contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design, including identification of all material changes and deviations that have taken place from the Preliminary Design Documents and a cost estimate. The Consultant shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VII BID PREPARATIONS & EVALUATION

7.01 The Consultant shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City staff and the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.

7.02 The Consultant shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the Final Design of the Project, then the Consultant, at its sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the Final Design of the Project.

7.03 Where substitutions are requested by a construction contractor, the Consultant shall review the substitution requested and shall recommend approval or disapproval of such substitutions.

ARTICLE VIII CONSTRUCTION

8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction, or warranty, period described in the construction contract. The Consultant shall have authority to act

on behalf of the City only to the extent provided in this Contract unless modified by written instrument.

8.02 The Consultant shall make visits to the site, to inspect the progress and quality of the executed work of the construction contractor and its subcontractors and to determine if such work is proceeding in accordance with the contract documents. The minimum number of site visits and their frequency shall be established by the City and Consultant prior to commencement of construction. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.

8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall employ the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.

8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.

8.06 The Consultant shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the work. Consultant shall receive no additional compensation for providing clarification of the drawings and specifications.

8.07 The Consultant shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.

8.08 Upon notification from the construction contractor that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.

8.09 The Consultant shall not be responsible for the work of the construction contractor or any of its subcontractors, except that the Consultant shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

8.10 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.

8.11 The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

8.12 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

8.13 The Consultant shall assist the construction contractor and City in obtaining a Certificate of Occupancy by accompanying governing officials during inspections of the Project if requested to do so by the City.

ARTICLE IX CHANGE ORDERS, DOCUMENTS & MATERIALS

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project. The schedules, milestones, timelines, and deadlines contained in this Agreement, the Scope of Services, and 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 Consultant shall submit an updated schedule that reflects changes authorized by approved change orders.

9.02 When the original contract amount plus all change orders is \$100,000 or less, the City Manager or his delegate 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 must approve such change order prior to commencement of the services.

9.03 When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or his delegate may approve the written change order provided the change order does not exceed \$50,000 and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract, the City Council must approve such change order prior to commencement of the services or work. Thereafter, any additional change orders exceeding \$50,000 or any additional change orders totaling 25 percent following such council approval, must be approved by City Council.

9.04 Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.05 The Consultant shall furnish the City with both electronic (PDF) and CAD file sets of all plans and specifications. The Consultant shall provide the City one (1) set of reproducible, mylar record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. The Consultant shall provide copies of Work Product including documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's Work Product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall furnish one set of digital files representing the final record drawings.

ARTICLE X WARRANTY, INDEMNIFICATION & RELEASE

10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant warrants that the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the

City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

10.02 The Consultant shall promptly correct any defective Work Product, including designs or specifications, furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final Work Product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the services it is to provide under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

10.05 Indemnity.

- (a) **To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City, its Council members, officials, officers, agents, employees, and volunteers (separately and collectively referred to in this paragraph as "Indemnatee") from and against all claims, damages losses and expenses (including but not limited to attorney's fees) arising out of or resulting from any negligent act, error or omission, intentional tort or willful misconduct, intellectual property infringement or including failure to pay a subconsultant, subcontractor, or supplier pursuant to this Contract by Consultant, its employees, subcontractors, subconsultants, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. IF THE CLAIMS, ETC. ARE CAUSED IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARATIVE BASIS, AND ONLY FOR THE AMOUNT FOR WHICH CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR**

WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.

- (b) To the fullest extent permitted by law, Consultant agrees to defend the Indemnitees where the indemnifiable acts listed in Article 10 above occur outside the course of performance of professional services (i.e. non-professional services) and the claim is not based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, employee, or other entity over which the governmental agency exercises control, other than the Consultant or Consultant Parties.**
- (c) Consultant shall procure liability insurance covering its obligations under this section.**
- (d) It is mutually understood and agreed that the indemnification provided for in this section 10.05 shall indefinitely survive any expiration, completion or termination of this Contract. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.**

10.06 Release. The Consultant releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, employees, and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

10.07 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05 and 10.06, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI INSURANCE

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

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

11.02 Types. Consultant shall have the following types of insurance:

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

11.03 Certificates of Insurance. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees and volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as Exhibit C, and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

11.04 General Requirements Applicable to All Policies. The following General Requirements 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.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days prior written notice has been given to the City of College Station.
- (e) The Certificates of Insurance shall be prepared and executed by the insurance carrier or its authorized agent on the most current State of Texas Department of Insurance-approved forms.

11.05 Commercial General Liability Requirements. The following Commercial General Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (d) The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.06 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

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

11.07 Workers’ Compensation/Employers Liability Insurance Requirements. The following Workers’ Compensation Insurance requirements shall apply; and the term “contractor” shall be construed to mean “consultant” as identified in this Contract:

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, 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 Consultant’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, Consultants and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the

subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

(b) The workers' compensation/Employer's Liability insurance shall include the following terms:

- i. Employer's Liability limits of \$1,000,000 for each accident is 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 Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

i. Definitions:

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

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

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

- ii. 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.

- iii. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- iv. 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.
- v. 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.
- vi. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- vii. 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.
- viii. 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.
- ix. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 2. provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. obtain from each other person with whom it contracts, and provide to the Contractor:
 - A. a certificate of coverage, prior to the other person beginning work on the project; and
 - B. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
- x. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- xi. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."

11.01 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.

- (b) Minimum of \$1,000,000 per claim and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of College Station when requested.
- (c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of two years after completion of the Project or termination of this Contract, as may be amended, whichever occurs later. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.
- (d) Retroactive date must be shown on certificate.

ARTICLE XII

USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

12.01 Any and all drawings, specifications and other documents prepared, furnished, or both prepared and furnished by Consultant or any Subconsultant or other designer contracted under Consultant pursuant to this Contract (including, without limitation, the Construction Documents) ("Work Product"), shall be the exclusive property of the City, whether the Project is completed or not. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all records, notes, data, memoranda, models, and equipment of any nature that are within Consultant's possession or control and that are the City's property or relate to the City or its business. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's Work Product and related documents and information relating to the Project.

12.02 Consultant warrants to City that (i) Consultant has the full power and authority to enter into this Contract, (ii) Consultant has not previously assigned, transferred or otherwise encumbered the rights conveyed herein, (iii) Work Product is an original work of authorship created by Consultant's employees during the course of their employment by Consultant, and does not infringe on any copyright, patent, trademark, trade secret, contractual right, or any other proprietary right of any person or entity, (iv) Consultant has not published the Work Product (including any derivative works) or any portion thereof outside of the United States, and (v) to the best of the Consultant's knowledge, no other person or entity, except City, has any claim of any right, title, or interest in or to the Work Product.

12.03 Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this Article 12 of the Contract.

12.04 The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its sub-consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this

Contract. If the City elects to employ a different architect or engineer to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype, that architect or engineer will be entitled to use Consultant's sub-consultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect or engineer will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect or engineer. The Consultant shall commit its subconsultants to the terms of this subparagraph. The provisions of this section shall survive termination of this Contract.

12.05 In the event of termination of this Contract for any reason, the City shall receive all Work Product and original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

12.06 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City-furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII TERMINATION

13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant shall be compensated for the services satisfactorily performed prior to the termination date.

13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice. The Consultant will be compensated for the services satisfactorily performed prior to the termination date.

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

ARTICLE XIV MISCELLANEOUS TERMS

14.01 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.

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

14.03 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.

City of College Station

Attn: Rusty Warncke
PO BOX 9960
1101 Texas Ave
College Station, TX 77842
Rwarncke @cstx.gov

The Arkitex Studio, Inc.

Attn: Michael S. Record
308 N. Bryan Avenue
Bryan, Texas 77803
msr@arkitex.com

14.04 No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing. No waiver of any provision of the Contract shall be of any force or effect, unless such waiver is in writing, expressly stating to be a waiver of a specified provision of the Contract and is signed by the party to be bound thereby. In addition, no waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition and shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with the Contract or any portion or provision or right under the Contract.

14.05 This Contract represents the entire and integrated contract between the City and the Consultant and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

14.06 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.

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

14.08 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.

14.09 The Consultant, its agents, employees, and subconsultants must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

14.10 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract. If there is a conflict between a provision in any documents provided by Consultant made a part of this Contract and any other provision in this Contract, the latter controls.

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

14.12 Notice of Indemnification. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.

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

14.14 Verification No Boycott of 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

14.15 Verification No Boycott of Energy Companies. Subject to § 2274.002 Texas Government Code Consultant herein verifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Contract.

14.16 Force Majeure. Force majeure shall be any acts of God or the public enemy; compliance with any order, rule, regulation, decree, or request of any governmental authority or agency or person purporting to act therefore; acts of war, public disorder, rebellion, terrorism, or sabotage; floods, hurricanes, or other storms; strikes or labor disputes; or any other cause, whether or not of the class of kind specifically named or referred to herein, not within the reasonable control of the Party affected. A delay in or failure of performance of either Party shall not constitute a default hereunder nor be the basis for, or give rise to, any claim for damages, if and to the extent such delay or failure is caused by force majeure.

List of Exhibits

- A. Scope of Services
- B. Payment Schedule
- C Certificates of Insurance

The Arkitex Studio

CITY OF COLLEGE STATION

By: Mike Record

By: _____

Printed Name: Mike Record

City Manager

Date: _____

Title: Principal

Date: 10/2/2024

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
SCOPE OF SERVICES

PROPOSAL

PROJECT: Independence Park



August 27, 2024 **Revised Sept 6, 2024**

The Arkitek Studio, Inc. is pleased to offer this proposal for Architectural services for this project. Based on our observations and discussions, the following information is provided for your review:

Owner

City of College Station
1101 Texas Avenue
College Station, Texas 77840

Architect

The Arkitek Studio, Inc.
308 North Bryan Avenue
Bryan, Texas 77803

Project Description

The City of College Station has approved the Masterplan for Independence Park. This was prepared by the project team headed by The Arkitek Studio and submitted July 1, 2024. The project includes a pump track/bike park, trails (bike/pedestrian), a large playground, open area, dog park, fishing pond, 18-hole disc golf course, 2 large and 4 small pavilions, and other passive park elements. The site was partially developed as Southeast Park. The previous development includes a finished an operational restroom building and water supply with fire hydrants, electricity, sanitary sewer lines, and storm water lines. These will all be utilized in the new design. The project site includes the property to the south of the original park so that it can connect with the Lick Creek Trailway. The Owner has indicated "Texas Independence" as a design theme for the park. Signage will be provided for wayfinding, park/activity rules, area identifications, and major park identification. The project cost is estimated to be around \$21M. It is anticipated that construction can begin in early part of the second quarter of 2025. The construction of the project may be phased over time. The architect will work with the owner to define the different phases of construction for the project in the construction documents. Construction administration phase services will be based on the phases selected for construction. The fee for future design phases will be negotiated based on the scope of work selected.

Scope of Services

The Architect shall provide Architectural, Structural, Mechanical/Electrical/Plumbing, Civil Engineering, Landscape Design, Trail Design, Disc Golf Course Design, and Pond Design Services. This includes Conceptual Design (schematic design), Preliminary Design (design development), Final Design (construction documents), Bid Preparations & Evaluation (permitting and negotiation) and Construction (construction administration) phase services as defined in the City of College Station Architects & Engineering Professional Services Contract with Construction. A 50% Final Design set of drawings will be provided for the Owners review and approval. A complete topographic, utility, boundary, and tree survey is required to perform the work. This scope is included in the proposal. The scope also includes a boundary and topographic survey of the "West Phase" property as defined in the masterplan document. A new geotechnical report in addition to the Owner provided report is also required for our scope of services and is include in the proposal.

The architect will retain the following consultants for the project: Landscape Architect - Coleman & Associates; Civil Engineer – Kimley Horn; Structural Engineer – Dudley; Electrical/Plumbing Engineering – Cleary Zimmerman; Bike Park – Vanguard Trailworks; Disk Golf – Armory Disk Golf; Fishing Pond design –

308 N. Bryan Avenue, Bryan, TX 77803 | www.arkitek.com | 979.821.2635

Lochow Ranch. Data and security design is not included in the scope of work, only pathways for the cable.

Terms and Conditions

Contract: Architectural/Engineering Services will be provided in accordance with the City of College Station Architects & Engineering Professional Services Contract with Construction

Standard of Care: The standard of care for architectural services provided under this agreement will be performed with the degree of skill and care ordinarily exercised by other members of the profession under similar circumstances, at the same time and in the same or a similar locale.

Fee and Schedule Proposal

We propose to provide architectural services for at hourly rates with a maximum not-to-exceed amount of \$1,800,250. Refer to the attached letter with estimated fees per phase. An allowance amount of \$52,250 is included for geotechnical report, and \$60,000 for survey, and \$225,000 for material testing during construction. Following is the anticipated time for each phase. Owner review time is not included in the schedule:

Survey and geotechnical report	5 weeks
Schematic Design	8 weeks
Design Development	6 weeks
Construction Documents	12 weeks
Bidding/Permit/	+ - 6 weeks (city dependent)
Construction Administration	+ - 18 months (contractor schedule)

Reimbursable expense allowance of \$12,985 is included in this amount. Reimbursable expenses will be invoiced at 1.15 times their actual expense incurred. All expenses will be justified by provision of records or receipts. Reimbursable expenses may include Texas Accessibility drawing review and inspection, prints/copies, and other items as approved by the Owner.

Additional Services, for work beyond the original scope, shall be based on the hourly rates as set forth in the attached fee breakdown letter. Additional Services will not be performed without written approval between the Owner and Architect.

Invoices will be sent monthly, proportionate to the work accomplished, and are payable within 30 days of the date of invoice. If not paid within 30 days, unpaid balances will accrue interest at a rate of 10% per annum or 0.833 per month.

We are prepared to start the work immediately upon receipt of a written Notice to Proceed.

Sincerely,



Mike Record, AIA
Principal

The Texas Board of Architectural Examiners has jurisdiction over individuals licensed under the Architect's Registration Law, Texas Civil Statutes, Article 249A. The Texas Board of Architectural Examiners may be contacted using the following information: P.O. Box 12337, Austin, TX 78711-7337, or 333 Guadalupe, Suite 2-350, Austin TX 78701-3942, phone 512-305-9000 or on the web at www.tbae.state.tx.us.

September 6, 2024

Rusty Warncke
Project Manager, Capital Projects
City of College Station
P.O. Box 9960
College Station, TX 77842



Re: Independence Park proposal breakdown

Dear Rusty,

Following is our breakdown of the design fee into hours by phase, by discipline, and by staff level. As a result of revising the proposal to hourly not-to-exceed, we have rearranged the design fee and the reimbursable amounts. Some of the consultants gave us the fixed fee amount that included reimbursables and these are now separated.

SCHEMATIC DESIGN				\$286,546
	Hourly rate	Hours/phase		
Architectural				\$138,080
Principal in Charge	200	274	\$54,800	
Project Architect	180	344	\$61,920	
Project Staff	100	188	\$18,800	
Administration	80	32	\$2,560	
Civil				\$54,450
Senior Professional II	350	10	\$3,500	
Senior Professional I	300	11	\$3,300	
Professional	280	45	\$12,600	
Analyst	200	155	\$31,000	
Support Staff	125	10	\$1,250	
Technical Support	140	20	\$2,800	
Landscape Architect				\$16,860
Partner Landscape Architect	340	10	\$3,400	
Partner Landscape Architect	340	15	\$5,100	
Principal Landscape Architect	260	5	\$1,300	
PM Landscape Architect	185	10	\$1,850	
Landscape Designer III	115	14	\$1,610	
Landscape Designer I	90	40	\$3,600	
Structural				\$22,541
Principal	295	10.5	\$3,098	

Project Manager	245	22.3	\$5,464	
Project Engineer	220	47	\$10,340	
Technician/Drafter	175	20	\$3,500	
Clerical	140	1	\$140	
Electrical				\$28,915
Principal	290	10	\$2,900	
Electrical Engineer	225	40	\$9,000	
Electrical Designer	185	84	\$15,540	
Clerical	120	5	\$600	
Accounting	175	5	\$875	
Trail Designer	150	136	\$20,400	
Disc Golf Designer	50	56	\$2,800	
Pond Designer	100	25	\$2,500	
DESIGN DEVELOPMENT				\$291,830
Architectural				\$129,480
Principal in Charge	200	259	\$51,800	
Project Architect	180	324	\$58,320	
Project Staff	100	168	\$16,800	
Administration	80	32	\$2,560	
Civil				\$40,825
Senior Professional II	350	5	\$1,750	
Senior Professional I	300	5	\$1,500	
Professional	280	35	\$9,800	
Analyst	200	125	\$25,000	
Support Staff	125	11	\$1,375	
Technical Support	140	10	\$1,400	
Landscape Architect				\$21,490
Partner Landscape Architect	340	5	\$1,700	
Partner Landscape Architect	340	22	\$7,480	
Principal Landscape Architect	260	10	\$2,600	
PM Landscape Architect	185	24	\$4,440	
Landscape Designer III	115	38	\$4,370	
Landscape Designer I	90	10	\$900	
Structural				\$40,960
Principal	295	18.9	\$5,576	
Project Manager	245	40.1	\$9,825	

Project Engineer	220	86.4	\$19,008	
Technician/Drafter	175	36	\$6,300	
Clerical	140	1.8	\$252	
Electrical				\$21,825
Principal	290	10	\$2,900	
Electrical Engineer	225	20	\$4,500	
Electrical Designer	185	70	\$12,950	
Clerical	120	5	\$600	
Accounting	175	5	\$875	
Trail Designer	150	220	\$33,000	
Disc Golf Designer	50	45	\$2,250	
Pond Designer	100	20	\$2,000	
CONSTRUCTION DOCUMENTS				\$535,159
Architectural				\$272,240
Principal in Charge	200	285	\$57,000	
Project Architect	180	968	\$174,240	
Project Staff	100	358	\$35,800	
Administration	80	65	\$5,200	
Civil				\$108,850
Senior Professional II	350	30	\$10,500	
Senior Professional I	300	30	\$9,000	
Professional	280	95	\$26,600	
Analyst	200	281	\$56,200	
Support Staff	125	30	\$3,750	
Technical Support	140	20	\$2,800	
Landscape Architect				\$33,670
Partner Landscape Architect	340	8	\$2,720	
Partner Landscape Architect	340	30	\$10,200	
Principal Landscape Architect	260	20	\$5,200	
PM Landscape Architect	185	45	\$8,325	
Landscape Designer III	115	55	\$6,325	
Landscape Designer I	90	10	\$900	
Structural				\$27,299
Principal	295	12.6	\$3,717	
Project Manager	245	26.7	\$6,542	
Project Engineer	220	57.6	\$12,672	

Technician/Drafter	175	24	\$4,200	
Clerical	140	1.2	\$168	
Electrical				\$57,450
Principal	290	20	\$5,800	
Electrical Engineer	225	75	\$16,875	
Electrical Designer	185	180	\$33,300	
Clerical	120	5	\$600	
Accounting	175	5	\$875	
Trail Designer	150	160	\$24,000	
Disc Golf Designer	50	123	\$6,150	
Pond Designer	100	55	\$5,500	
PROCUREMENT/PERMIT				\$58,515
Architectural				\$32,460
Principal in Charge	200	62	\$12,400	
Project Architect	180	99	\$17,820	
Project Staff	100	16	\$1,600	
Administration	80	8	\$640	
Civil				\$13,550
Senior Professional II	350	10	\$3,500	
Senior Professional I	300	0	\$0	
Professional	280	10	\$2,800	
Analyst	200	30	\$6,000	
Support Staff	125	10	\$1,250	
Technical Support	140	0	\$0	
Landscape Architect				\$2,320
Partner Landscape Architect	340	1	\$340	
Partner Landscape Architect	340	1	\$340	
Principal Landscape Architect	260	0	\$0	
PM Landscape Architect	185	7	\$1,295	
Landscape Designer III	115	3	\$345	
Landscape Designer I	90	0	\$0	
Structural				\$0
Principal	295	0	\$0	
Project Manager	245	0	\$0	
Project Engineer	220	0	\$0	
Technician/Drafter	175	0	\$0	

Clerical	140	0	\$0	
Electrical				\$7,185
Principal	290	6	\$1,740	
Electrical Engineer	225	15	\$3,375	
Electrical Designer	185	8	\$1,480	
Clerical	120	2	\$240	
Accounting	175	2	\$350	
Trail Designer	150	20	\$3,000	
Disc Golf Designer	50	0	\$0	
Pond Designer	100	0	\$0	
CONSTRUCTION ADMINISTRATION				\$277,965
Architectural				\$129,440
Principal in Charge	200	194	\$38,800	
Project Architect	180	396	\$71,280	
Project Staff	100	168	\$16,800	
Administration	80	32	\$2,560	
Civil				\$54,450
Senior Professional II	350	11	\$3,850	
Senior Professional I	300	0	\$0	
Professional	280	65	\$18,200	
Analyst	200	130	\$26,000	
Support Staff	125	40	\$5,000	
Technical Support	140	10	\$1,400	
Landscape Architect				\$19,150
Partner Landscape Architect	340	3	\$1,020	
Partner Landscape Architect	340	40	\$13,600	
Principal Landscape Architect	260	5	\$1,300	
PM Landscape Architect	185	10	\$1,850	
Landscape Designer III	115	12	\$1,380	
Landscape Designer I	90	0	\$0	
Structural				\$29,660
Principal	295	20	\$5,900	
Project Manager	245	48	\$11,760	
Project Engineer	220	52	\$11,440	
Technician/Drafter	175	0	\$0	
Clerical	140	4	\$560	

Electrical				\$28,665
Principal	290	8	\$2,320	
Electrical Engineer	225	45	\$10,125	
Electrical Designer	185	80	\$14,800	
Clerical	120	6	\$720	
Accounting	175	4	\$700	
Trail Designer	150	84	\$12,600	
Disc Golf Designer	50	40	\$2,000	
Pond Designer	100	20	\$2,000	

Total Design Fee is \$1,450,015.

Total allowance and reimbursable amount is \$350,235 and includes the following:

Vanguard (reimbursable)	\$7,000
Prints/TAS (reimbursable)	\$5,985
Geotech (allowance)	\$52,250
Survey (allowance)	\$60,000
CMT (allowance)	\$225,000

Total not-to-exceed contract amount, including Design Fee, & Allowances/Reimbursables is \$1,800,250

Should you have any questions or require additional information, please feel free to contact us.

Sincerely,



Michael S. Record
Principal

EXHIBIT B PAYMENT TERMS

Compensation is based on **actual** hours of work/time devoted to providing the described professional services. The Consultant will be paid at a rate of \$_____ per hour, or at the rates per service or employee shown below. The City will reimburse the Consultant for **actual**, non-salary expenses at the rate of _____ percent (____%) above the Consultant's actual costs, or at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract: (\$_____).

☐

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

-OR-

☒

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

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

Schedule of Payment for each phase:

See Page 2 of the Proposal under scope of work.

To provide architectural services for at hourly rates with a maximum not-to-exceed amount of \$1,800,250. Refer to the attached letter with estimated fees per phase.

An allowance amount of \$52,250 is included for geo-technical report, and \$60,000 for survey, and \$225,000 for material testing during construction.

EXHIBIT C
CERTIFICATE(S) OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/19/2024

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  Lance Snider State Farm Agency 3608 East 29th St., Suite 112 Bryan, TX 77802	CONTACT NAME: Lance Snider PHONE (A/C No. Ext): 979-703-1011 E-MAIL ADDRESS: lance@agentsnider.com FAX (A/C No): 979-703-1104
INSURED THE ARKITEK STUDIO INC 308 N BRYAN AVE BRYAN, TX 77803	INSURER(S) AFFORDING COVERAGE INSURER A: State Farm and Casualty Company INSURER B: State Farm Mutual Automobile Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 25143 25178

COVERAGES**CERTIFICATE NUMBER: 01****REVISION NUMBER: 03**

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:	X	X	90-63-3298-5	06/22/2018	06/22/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	90-63-3298-5	06/22/2018	06/22/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	X	X	90-CS-W652-5	06/09/2021	06/09/2025	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	X	90-G7-X203-9	04/30/2021	04/30/2025 ☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The City shall be included as additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

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

Lance D Snider

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ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/27/2024

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

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

PRODUCER USI Southwest 9811 Katy Freeway, Suite 500 Houston, TX 77024 713 490-4600	CONTACT NAME: Callie Renaud PHONE (A/C, No, Ext): 713 490-4600 E-MAIL ADDRESS: callie.renaud@usi.com		FAX (A/C, No): 713-490-4700
	INSURER(S) AFFORDING COVERAGE INSURER A : Aspen American Insurance Company		NAIC # 43460
INSURED The Arkitek Studio Inc 308 North Bryan Ave Bryan, TX 77803	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY ☐						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability Claims Made			AAAE30062301	02/26/2024	02/26/2025	\$1,000,000 per claim \$2,000,000 annl aggr.

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

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**CMP-4786 ADDITIONAL INSURED — OWNERS, LESSEES, OR CONTRACTORS
(Scheduled)**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Policy Number: 906332985

Named Insured:

THE ARKITEK STUDIO INC
308 N BRYAN AVE
BRYAN, TX 77803-3248

Name And Address Of Additional Insured Person Or Organization:

CITY OF COLLEGE STATION
1101 TEXAS AVE S
COLLEGE STA, TX 77840

- 1. SECTION II — WHO IS AN INSURED of SECTION II — LIABILITY** is amended to include, as an additional insured, any person or organization 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:

a. Ongoing Operations

- (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for that additional insured; or

b. Products-Completed Operations

"Your work" performed for that additional insured and included in the "products-completed operations hazard".

- 2. Any insurance provided to the additional insured shall only apply with respect to a claim made or a "suit" brought for damages for which you are provided coverage.
- 3. Primary Insurance. The insurance afforded the additional insured shall be primary insurance. Any insurance carried by the additional insured shall be noncontributory with respect to coverage provided by you.

There will be no refund of premium in the event this endorsement is cancelled.

All other policy provisions apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**CMP-4787 WAIVER OF TRANSFER OF RIGHTS OR RECOVERY AGAINST
OTHERS TO US**

This endorsement modifies insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Policy Number: 906332985

Named Insured:

THE ARKITEK STUDIO INC
308 N BRYAN AVE
BRYAN, TX 77803-3248

Name And Address Of Person Or Organization:

CITY OF COLLEGE STATION
1101 TEXAS AVE S
COLLEGE STA, TX 77840

The following is added to Paragraph **10.b.** of **SECTION I AND SECTION II — COMMON POLICY CONDITIONS:**

We waive any right of recovery we may have against the person or organization shown in the Schedule because of payments we make for injury or damage arising out of:

- a.** Your ongoing operations; or
- b.** "Your work" done under contract with that person or organization and included in the "products-completed operations hazard".

This waiver applies only to the person or organization shown in the Schedule.

All other policy provisions apply.

CMP-4787

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1006225 137715.1 11-19-2013

October 7, 2024
Item No. 7.12.
Third Amendment to 2611 Texas Avenue Lease Agreement

Sponsor: Michael Ostrowski, Chief Development Officer

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on a third amendment to the lease of 3.1 acres including an approximately 28,949 square foot building at 2611 Texas Avenue South to International American Education Federation, Inc., d/b/a International Leadership of Texas, for an additional 1-year renewal for a total contract amount of approximately \$2,198,103.

Relationship to Strategic Goals:

- Good Governance
- Financial Sustainability

Recommendation(s): Staff recommends approval of the lease amendment.

Summary: This item is an amendment to the lease agreement with the International Leadership of Texas (ILT) School to extend the current lease for an additional one-year period as the organization continues to work toward a permanent high school facility.

The initial three-year agreement in the amount of approximately \$1,015,580 was executed in May 2020 to coincide with the construction of the new Police Department building and the resulting vacancy of 2611 Texas Avenue. An amendment to extend the agreement through September 2025 was approved by Council in July 2023 to increase the total overall contract to approximately \$1,771,952. A second amendment was executed December 2023 for the inclusion of a portable building at the site.

Budget & Financial Summary: The lease rate for the additional year would increase 10% from the 2025 rate, or \$35,512.61 per month or \$426,151.32 for the October 1, 2025 – September 30, 2026 term.

Attachments:

1. ILT Lease Renewal - Contract 20300455 Amendment 3

**THIRD LEASE AMENDMENT
LEASE AGREEMENT FOR 2611 TEXAS AVENUE SOUTH**

This Third Lease Amendment is by and between **The City of College Station**, a Texas Home Rule Municipal Corporation, (with its successors, called "Landlord"), and **International American Education Federation, Inc., d/b/a International Leadership of Texas, a Texas Domestic Nonprofit Corporation** (with its successors, called "Tenant"), in consideration of their mutual covenants and agreements in this Third Lease Amendment, the parties agree as follows:

WHEREAS, Landlord and Tenant entered into a Lease Agreement for 2611 Texas Avenue South, College Station, Texas dated May 28, 2020 with contract number 20300455 (collectively hereinafter referred to as the "Lease"), for certain real property containing approximately 28,949 square feet located at 2611 Texas Avenue South, College Station, Texas 77840; and

WHEREAS, Landlord and Tenant entered into a First Amendment to the Lease for 2611 Texas Avenue South, College Station, Texas dated July 14, 2023 ("First Amendment"), in which Landlord and Tenant agreed to renew the Lease for two additional 1-year renewal periods and adjust the Base Rent for the renewal periods; and

WHEREAS, Landlord and Tenant entered into a Second Amendment to the Lease for 2611 Texas Avenue South, College Station, Texas dated December 12, 2023 ("Second Amendment"), in which Landlord allowed Tenant to place one Portable Classroom Building in the parking lot of the Leased Premises; and

WHEREAS, Landlord and Tenant desire to renew the Lease for one additional 1-year renewal period, and

WHEREAS, Landlord and Tenant desire to adjust the Base Rent for the renewal period,

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth below, Landlord and Tenant agree to amend the Lease as follows:

1. Section 1.01. Definitions.

"Lease Term" means the period commencing on August 1, 2020, and terminating at midnight on September 30, 2026 unless the Lease Term shall sooner terminate as set forth in this Lease.

2. Section 2.04. Base Rent. Base Rent may be calculated on an annual basis but prorated as a monthly rate and paid on a monthly basis. Rent for the initial Lease Term (August 1, 2020 – September 30, 2023) and three 1-year renewal periods (October 1, 2023 – September 30, 2026) shall be as follows:

August 1, 2020 through July 31, 2021:

August 1 – September 30:	\$0/mo.
October 1 – July 31:	\$26,870.30/mo.

August 1, 2021 through July 31, 2022:

August 1 – July 31:	\$28,076.51/mo.
---------------------	-----------------

August 1, 2022 through September 30, 2023:

August 1 – September 30:	\$29,282.71/mo.
--------------------------	-----------------

October 1, 2023 through September 30, 2024:

October 1 – September 30:	\$30,746.85/mo.
---------------------------	-----------------

October 1, 2024 through September 30, 2025:

October 1 – September 30:	\$32,284.19/mo.
---------------------------	-----------------

October 1, 2025 through September 30, 2026:

October 1 – September 30:	\$35,512.61/mo.
---------------------------	-----------------

In the event the Lease Term is renewed in accordance with the provisions of this Lease, the Base Rent for each additional term this Lease is in effect shall be adjusted to reflect any upward change in the market rate as determined by the Consumer Price Index for Housing or upward as may be mutually agreed upon in writing by the parties. The Base Rent shall be paid monthly with the first payment due and payable within ten (10) days of the execution of this Lease, and with the due date to fall thereafter on the first of the month. Failure to timely pay the Base Rent to Landlord shall be considered a breach and may result in termination of this Lease by Landlord pursuant to the termination provisions herein.

3. All other terms, covenants and conditions of the Lease shall remain in full force and effect.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Third Lease Amendment is hereby executed in multiple originals as of the date approved by the Landlord.

**INTERNATIONAL AMERICAN
EDUCATION FEDERATION, INC. d/b/a
INTERNATIONAL LEADERSHIP OF
TEXAS,
TENANT**

By: Edward G. Conger

Name: Edward G. Conger

Title: CEO-Superintendent

Date: 9/20/2024

**CITY OF COLLEGE STATION,
LANDLORD**

By: _____

City Manager

Date: _____

APPROVED:

Laron Longoria

City Attorney

Date: 9/24/2024

Jim Costa

Assistant City Manager/CFO

Date: 9/24/2024

Contract# 20300455 and Amendment 3
International Leadership of Texas (ILT) Recap

Contract# 20300455

Term: 8/1/2020 - 9/30/2023

Dates	Monthly Rent	No. Months	Year Total	Deposit Paid
August 1, 2020 - September 30, 2020	n/a	n/a		\$30,155.20
October 1 - July 31, 2021	\$26,870.30	10	\$268,703.00	
August 1, 2021 - July 31, 2022	\$28,076.51	12	\$336,918.12	
August 1, 2022 - September 30, 2023	\$29,282.71	14	\$409,957.94	
	Original Contract Value		\$1,015,579.06	

Contract #20300455 Amd 1

Term: 10/1/2023 - 9/30/2025

Dates	Monthly Rent	No. Months	Year Total
October 1, 2023 - September 30, 2024	\$30,746.85	12	\$368,962.20
October 1, 2024 - September 30, 2025	\$32,284.19	12	\$387,410.28
	Amendment 1 Value		\$756,372.48

Contract #20300455 Amd 3

Term: 10/1/2025 - 9/30/2026

Dates	Monthly Rent	No. Months	Year Total
October 1, 2025 - September 30, 2026	\$35,512.61	12	\$426,151.32
	Amendment 3 Value		\$426,151.32

Revised Total C#20300455: \$2,198,102.86

October 7, 2024
Item No. 7.13.
Computer Aided Dispatch Server Upgrade

Sponsor: Sam Rivera

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on Change Order No. 12 for the system and software contract with CentralSquare Technologies LLC for the Computer Aided Dispatch Server Upgrade in the amount of \$94,770.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): CIO recommends approval

Summary: Police and Fire use Computer Aided Dispatch (CAD) systems to dispatch units to calls and coordinate response efforts. CAD systems use mapping technology to pinpoint the exact location of units in the field and share information continuously, ensuring they all have the same information. The current CAD servers for Public Safety need to be upgraded since they are still on an older version of the Windows operating system. Microsoft announced support for our current version of Windows Server will be removed within the next few years. CentralSquare is our current vendor for the CAD system. They will be assisting with upgrading the new servers, installing the CAD software on the new servers, and going live with the new servers. CentralSquare will also troubleshoot any issues found during the project testing phase. This will be a change order to the existing contract with TriTech/CentralSquare. The total cost for this project is \$94,770.00.

Budget & Financial Summary: Funds are available in the CAD/RMS Server Replacement Fund(CO2401).

Attachments:

1. 15300406CO12 AD



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 15300406 PROJECT#: N/A BID/RFP/RFQ#: N/A

Project Name / Contract Description: Public Safety GIS/Analytics Services, Technical and Project Management

Name of Contractor: TriTech Software, a CentralSquare Technologies, LLC Company

CONTRACT TOTAL VALUE: \$ 94,770.00 **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 #** 12 ☐ **OTHER** N/A

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

10010390-5112

Change Order to original contract number 15300406, proposal is attached

CRC Approval Date*: N/A *(If required)** **Council Approval Date*:** 10/7/2024 **Agenda Item No*:** N/A

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

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

SIGNATURES RECOMMENDING APPROVAL

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 _____

CHANGE ORDER NO. 12		DATE:9/12/2024		Contract No. 15300406																																												
P.O.# 16201102		PROJECT:																																														
OWNER:			CONTRACTOR: TriTech Software Systems, Inc																																													
City of College Station			1000 Business Center Drive																																													
P.O. Box 9960			Lake Mary, Ph:																																													
College Station, Texas 77842			Fax:																																													
PURPOSE OF THIS CHANGE ORDER:																																																
A. Public Safety GIS/Analytics Services, Project Management Services and Technical Services																																																
B.																																																
C.																																																
ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST																																										
1	1	Public Safety GIS/Analytics Services-Fixed Fee	LOT	0	\$10,140	\$10,140																																										
2	1	Public Safety Project Mgmt Services-Fixed Fee	LOT	0	\$15,795	\$15,795																																										
3	1	Public Safety Technical Services-Fixed Fee	LOT	0	\$68,835	\$68,835																																										
					TOTAL	\$94,770.00																																										
THE NET AFFECT OF THIS CHANGE ORDER IS 4.60% INCREASE.																																																
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SALES ORDER
PURSUANT TO EXISTING AGREEMENT

This Sales Order is intended as a binding Agreement between City of College Station, TX ("Customer") and TriTech Software Systems (a CentralSquare Technologies, LLC company), and shall be effective as of the date of the last signature herein.

Quote Number: Q-172457 is attached to this Sales Order as Exhibit "A". The Quote contains a description of all products and services sold pursuant to this Sales Order. The Quote is hereby incorporated by reference as a term of this Sales Order.

Statement of Work. Services for the products purchased under this Sales Order shall be governed by the Statement of Work document attached to this Sales Order as Exhibit "B".

Payment Terms.

Services

50 % due on the Effective Date of this Sales Order

50 % due on the Completion of Services

Payment due in full 30 days from date of invoice.

Master Agreements. This Sales Order shall be governed by the terms and conditions of the **System Purchase Agreement (Contract No. 15300406)** and the **Software Support Agreement (Contract No. 15300407)** (the "Master Agreements"). NO OTHER TERMS OR CONDITIONS OF THE MASTER AGREEMENTS ARE NEGATED OR CHANGED AS A RESULT OF THIS DOCUMENT.

Purchase Order. Customer may provide TriTech with a valid purchase order, upon execution of this Sales Order. Notwithstanding anything to the contrary herein, purchase orders are to be used solely for Customer's accounting purposes and any terms and conditions contained therein shall be deemed null and void with respect to the parties' relationship and this Sales Order. Any such purchase order provided to TriTech shall in no way relieve Customer of any obligation entered into pursuant to this Sales Order including, but not limited to, its obligation to pay TriTech in a timely fashion.

Acceptance of Order Terms. By signing this Sales Order below, Customer represents and warrants that: (a) it has read and understands the Master Agreements and Quote that are incorporated by reference into this Sales Order and agrees to be bound by the terms thereof, and (b) it has full power and authority to accept this Sales Order.

TriTech Software Systems (a CentralSquare Technologies, LLC company)	City of College Station
1000 Business Center Drive Lake Mary, FL 32746	310 Krenek Tap Rd. College Station, TX 77842
By:	By:
Print Name:	Print Name:
Print Title:	Print Title:
Date Signed:	Date Signed:

Exhibit A

Quote

Quote #: Q-172457
Primary Quoted Solution: PSJ Enterprise
Quote expires on: October 30, 2024

Quote prepared for:
Cody Mays
City of College Station
310 Krenek Tap Rd.
College Station, TX 77842
(979) 764-3487

Thank you for your interest in TriTech. TriTech provides software that powers over 8,000 communities. More about our products can be found at www.centralsquare.com.

WHAT SERVICES ARE INCLUDED?

DESCRIPTION	TOTAL
1. Public Safety GIS/Analytics Services - Fixed Fee	10,140.00
2. Public Safety Project Management Services - Fixed Fee	15,795.00
3. Public Safety Technical Services - Fixed Fee	68,835.00
Services Total	94,770.00 USD

QUOTE SUMMARY

Services Subtotal	94,770.00 USD
-------------------	---------------

Quote Subtotal 94,770.00 USD

Quote Total 94,770.00 USD

WHAT ARE THE RECURRING FEES?

TYPE	AMOUNT
FIRST YEAR MAINTENANCE TOTAL	0.00
FIRST YEAR SUBSCRIPTION TOTAL	0.00

The amount totals for Maintenance and/or Subscription on this quote include only the first year of software use and maintenance. Renewal invoices will include this total plus any applicable uplift amount as outlined in the relevant purchase agreement.

This Quote is not intended to constitute a binding agreement. The terms herein shall only be effective once incorporated into a definitive written agreement with TriTech Software Systems (including its subsidiaries) containing other customary commercial terms and signed by authorized representatives of both parties.

BILLING INFORMATION

Fees will be payable within 30 days of invoicing.

Please note that the Unit Price shown above has been rounded to the nearest two decimal places for display purposes only. The actual price may include as many as five decimal places. For example, an actual price of \$21.37656 will be shown as a Unit Price of \$21.38. The Total for this quote has been calculated using the actual prices for the product and/or service, rather than the Unit Price displayed above.

Prices shown do not include any taxes that may apply. Any such taxes are the responsibility of Customer. This is not an invoice.

For customers based in the United States or Canada, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To" location provided by Customer on the Quote Form.

PURCHASE ORDER INFORMATION

Is a Purchase Order (PO) required for the purchase or payment of the products on this Quote Form? (Customer to complete)

Yes [] No []

Customer's purchase order terms will be governed by the parties' existing mutually executed agreement, or in the absence of such, are void and will have no legal effect.

PO Number: _____

Initials: _____

Exhibit B

Statement of Work (Attached)

College Station (PS), TX: Enterprise: CAD Rehost

The parties mutually agree and acknowledge this Summary of Services is a high-level overview of the project requested, not detailed requirements or designs of solution.

Project Scheduling

Parties agree a schedule will be provided for services within **sixty days** from the execution of the applicable quote.

Change Requests

The parties may request a change to this summary of services, to increase hours or deliverables, through a written request to the TriTech project manager or resource.

Professional Services

Throughout the course of the project, TriTech will use several types of services (defined herein) to complete the necessary steps for successful deployment of the contracted services. The overall services aligned to implementation include Project Management, Consulting Services, Technical Services, Data Conversion Services, Training Services, and in some cases, Installation Services.

TriTech is not responsible for coordination, management, or covering the cost of any software, work, customization, coding or testing that is required to be performed by any third-party vendors engaged in the context of standard or custom interfaces, unless the work is defined under a Sub-Agreement with TriTech within the scope of this Agreement.

Business Hours

All project services will be performed during normal business hours, defined as 8:00-5:00 PM Eastern Time. If Customer desires to perform the services outside of these hours, additional fees will apply.

TriTech Connectivity to On-Premises Systems

The BeyondTrust/Bomgar and/or SecureLink remote support solutions shall be the method of remote access to on-premises customer systems and/or data. These solutions meet all requirements as contained in Section 5.5.6 of the FBI CJIS Security Policy (Remote Access). Use of either of these solutions enables customer agencies to remain CJIS compliant for purposes of FBI and/or state regulatory agency audits.

In addition to the above, the PSJ ProSuite application utilizes SSH connectivity to maintain a persistent connection to the appliance/s. The 911 application utilizes Kaseya for application and/or support needs. These solutions are only utilized for these specific applications in addition to Bomgar and/or SecureLink.

Services Scope of Project

The project includes the following scope of services.

The overall goal of the project will be to rehost the following Servers from their current Operating Systems and SQL Server Versions to the latest supported Operating Systems and SQL Server versions per product. This involves standing up the new servers side by side with the old servers, installing and configuring the applications and migrating configuration and data at the Go Live:



Server Name	Function	Environment	Notes
INFCad	CAD - SQL\DB	Production	
INFMobSer	Mobile - Server	Production	
INFReport	CAD - Archive\Reporting	Production	
INFROUTING	Routing Server	Production	
INFSTD1IF	CAD - Interface Server	Production	ANI/ALI and Paging Server
INFSTD2IF	CAD - Interface Server	Production	ESO Interface/ ESO CAD Monitor
INFWeb	CAD - Web\Browser	Production	
INFTSCAD	CAD - SQL\DB	Test	
INFTSMOB	Mobile - Server	Test	
INFTSROUTING	Routing Server	Test	
INFTSSTDIF	CAD - Interface Server	Test	ANIALI, Paging Server, ESO RMS
INFTSWEB	CAD - Web\Browser	Test	
INFTRNCAD	CAD - SQL\DB	Training	
INFTRNMOB	Mobile - Server	Training	
INFTRNROUTING	Routing Server	Training	
INFTRNSTDIF	CAD - Interface Server	Training	
INFTRNWEB	CAD - Web\Browser	Training	

Project Initiation and Planning (Project Manager, Installation Engineer, Systems Engineer):

- **Resource allocation and initial project plan (Project Manager)**
- **Kick Off (Project Manager, Installation Engineer, Systems Engineer)**

TriTech will host a planning meeting between the Technical Services staff and the Customer's subject matter experts (IT staff, Operations staff and/or Customer Project Manager).

TriTech to advise Customer on any required upgrades or updates to TriTech products to meet requirements for new Operating Systems and SQL Server versions. Any pre-rehost upgrades to be scheduled with Customer Support.

- **ISR Process (Installation Engineer)**

TriTech Technical Services Engineer will provide an ISR (Installation Services Request) server sizing spreadsheet for completion by the Customer.

Customer to provision hardware\virtual infrastructure and virtual machines per specifications.

Customer to complete and return server sizing spreadsheet with details of new servers.

Customer to confirm remote access to servers for TriTech staff.

- **Interface review (Systems Engineer)**



TriTech System Engineer (Interfaces) to connect to the system, review (CAD/RMS) Interfaces and advise Installation Engineer of Go Live procedures.

- **Project Scope Process (Installation Engineer)**

TriTech Installation Engineer to develop and present detailed Project Scope document for Project Manager and Customer review. The Project Scope document will contain detailed steps on a server-by-server basis for installation and Go Live.

- **Documentation (Installation Engineer)**

TriTech Installation Engineer to document all new server, operating system, SQL server, interface, product version and layout details in all applicable documentation including Salesforce and secure Customer Connection Notes in preparation for Go Live.

Server Preparation (Installation Engineer):

- TriTech Installation Engineer will connect to the new servers, validate their configuration, and install pre-requisites as needed.

Software Installation on Staging Servers (Installation Engineer, GIS Engineer, Systems Engineers):

- TriTech Installation Engineer to install SQL Server on new servers which require SQL Server.
- TriTech Installation Engineer to install, configure and test all TriTech software on Staging servers.
- TriTech Installation Engineer to advise on scale out of any servers or services.
- TriTech Installation Engineer will install interfaces on Staging servers and Systems Engineers to assist with the migration of configurations of each Interface. Testing will be coordinated for each interface to confirm that the install and configuration was successful.
- TriTech GIS Engineer to rehost Production GISLink
- TriTech GIS Engineer to configure/rehost Test GISLink.
- TriTech GIS Engineer to assist with Routing Server rehost.
- Customer to test the new systems for performance and reliability. This is generally a two-week window for Customer testing.

Go Live Preparation (Installation Engineer):

- TriTech and Customer to confirm Go Live schedule, resources, and procedures.

Go Live (Installation Engineer, Systems Engineers):



- TriTech and Customer to perform tasks as detailed in the Project Scope for Go Live on a server-by-server basis. New servers are to be brought online into production with old servers being retired. The process usually involves a rename and re-IP of the new servers to match old server names and IP addresses at Go Live to avoid client and reporting reconfiguration.
- TriTech Systems Engineers will be on Standby to assist as Interfaces are brought into production use.
- TriTech will migrate databases to the new SQL Instances as part of this operation. TriTech will migrate configuration and Interfaces as part of this operation.
- TriTech to configure refresh for Test\Training environments.

Follow up and Documentation (Installation Engineer):

- TriTech staff troubleshoot all post Go Live issues and escalate issues as needed.
- TriTech Installation Engineer to confirm TriTech Salesforce and Customer Connection documentation.

Second Hop Upgrade, ISR, Server Prep, Install and Go Live (Installation Engineer)

- For CAD Installations which involve a large jump in OS and SQL versions there may need to be additional scope to rehost to an intermediary OS and SQL level, then upgrade CAD, before following on with a second rehost.
- In this scenario, due to the current version level of the CAD Application and Operating System and SQL Server combination it is necessary to perform the rehost operation for Production CAD twice to reach the desired CAD version, Operating System, and SQL Server combination. This involves staging duplicate servers for CAD Production and performing the CAD Production staging, rehost and data transfer twice. This results in additional scope.

Project Closure:

- Customer to sign Project Completion TCR (Task Completion Report)



Assumptions and Customer Responsibilities

- Services are offered for delivery during normal business hours unless specifically documented elsewhere in this Scope of Services. To ensure the success of every project and availability of support resources from Central Square and various third-party vendors, which vary from site to site, certain limitations are imposed, and a specific definition of business hours is defined. Services outside of normal business hours shall be scheduled between the hours of 5pm EST Monday and be completed no later than 5pm EST Thursday and incur additional costs. Delivery of all services will be scheduled to avoid all Customer, Central Square and/or nationally recognized holidays.
- Customer to supply hardware, virtualization software, Operating System licensing, SQL Server licensing and licensing of any other third-party hardware or software not specifically listed in the quote or Services Scope.
- During the ISR process TriTech to advise Customer on any recommended scale-out of servers, applications, interfaces, or services. If the scale out includes additional licensed items, additional scope may be required.
- Customer to install hardware, create virtual machines and install Operating Systems unless specified as a TriTech or partner responsibility in the quote or Services Scope.
- Customer will maintain remote connectivity to the site through TriTech's remote connectivity solution.
- TriTech staff will be permitted console access to all servers.
- TriTech staff will be permitted SQL administrator access to all database instances.
- Customer will adhere to minimum specifications and disk space recommendations and guidelines as documented in the System Planning Guide and the Customer-specific specifications documented by the TriTech project team as a project artefact.
- Customer to ensure any Customer-installed third-party software (for example utilities for backups, antivirus) are certified to operate on the new operating system.
- The Customer will be responsible for any physical connections to the servers such as serial interface connections.
- Customer to run all Windows Critical and Important Updates on all new servers.
- Customer to add all servers to the Customer's domain and ensure the TriTech Console account has local administrative rights on all servers.
- During the staging process no new builds or configuration changes are recommended in any environment to be rehosted. If necessary, changes are to be coordinated through the Project Manager as well as Customer Support. Some changes may require a Change Order to the project.
- Active Directory, Jump Servers and Hypervisor servers are not included in this scope unless explicitly contracted for. It is expected that these will be migrated or replaced by the Customer.
- Product upgrades may be required to move to the latest supported Operating System and SQL Server versions. For older versions of software on 32-bit operating systems, or for certain version upgrades there is the potential for multiple rehost and upgrade operations to migrate to the latest supported Operating System and SQL Version.
- In some cases, SQL Server versions must match between certain server groups – example of these being SQL Replication partners, SQL Server versions per product across installed instances (i.e., Production and Test must match for refresh purposes), SQL Server versions for integrated products within a product line (i.e., Enterprise Classic and Enterprise Web RMS), SQL Cluster nodes\Availability Groups.
- for Disaster Recovery SQL Server protected systems, the SQL Server version of Production must match the SQL Server version of the DR site.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/23/2024

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. TWO ALLIANCE CENTER 3560 LENOX ROAD, SUITE 2400 ATLANTA, GA 30326 CN130114897-EO/C-GAWU-24-25	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:														
INSURED CentralSquare Technologies, LLC Superior, LLC TriTech Software Systems 1000 Business Center Dr. Lake Mary, FL 32746	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : The Charter Oak Fire Insurance Co.</td><td>25615</td></tr><tr><td>INSURER B : Phoenix Insurance Company</td><td>25623</td></tr><tr><td>INSURER C : Travelers Property Casualty Company Of America</td><td>25674</td></tr><tr><td>INSURER D : Travelers Casualty And Surety Company</td><td>19038</td></tr><tr><td>INSURER E : AIG Specialty Insurance Company</td><td>26883</td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : The Charter Oak Fire Insurance Co.	25615	INSURER B : Phoenix Insurance Company	25623	INSURER C : Travelers Property Casualty Company Of America	25674	INSURER D : Travelers Casualty And Surety Company	19038	INSURER E : AIG Specialty Insurance Company	26883	INSURER F :	
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INSURER F :															

COVERAGES **CERTIFICATE NUMBER:** ATL-005306442-11 **REVISION NUMBER:** 1

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:			H-660-6S758660-COF-24	08/31/2024	08/31/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BA-6S783539-24-I3-G	08/31/2024	08/31/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			CUP-6S801390-24-I3	08/31/2024	08/31/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
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		N/A	UB-6S783668-24-I3-G	08/31/2024	08/31/2025	☒ 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
E	E&O/Cyber			01-492-21-01	08/31/2024	08/31/2025	Limit \$ 5,000,000 SIR \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of College Station, its officers, agents, employees and volunteers are included as additional insured where required by written contract with respect to General and Auto Liability. Waiver of subrogation is applicable where required by written contract with respect to General Liability and Workers Compensation. The General Liability is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and where required by written contract.

CERTIFICATE HOLDER City of College Station Attn: Risk Management 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 of Marsh USA LLC <i>John Whittle</i>
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ADDITIONAL REMARKS SCHEDULE

AGENCY MARSH USA, LLC.		NAMED INSURED CentralSquare Technologies, LLC Superion, LLC TriTech Software Systems 1000 Business Center Dr. Lake Mary, FL 32746
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Excess E&O/Cyber:

Carrier: Indian Harbor Insurance Company
 Policy Number: MTE9043949 03
 Effective Date: 08/31/2024
 Expiration Date: 08/31/2025
 Limit: \$5M x \$5M

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

PROVISIONS

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

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph B.5., **Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION OR NONRENEWAL PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice: 90

WHEN WE DO NOT RENEW (Nonrenewal):

Number of Days Notice: 90

PROVISIONS

A. If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.

B. If we do not renew this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for When We Do Not Renew (Nonrenewal) in the Schedule above, we will mail notice of nonrenewal at least the number of days shown for When We Do Not Renew (Nonrenewal) in such Schedule before the effective date of nonrenewal.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

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

The following replaces Paragraph A.5., **Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

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

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

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

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
 - (a) How, when and where the "occurrence" or offense took place;
 - (b) The names and addresses of any injured persons and witnesses; and
 - (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- (2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
 - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

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

Primary And Noncontributory Insurance

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR TECHNOLOGY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. Non-Owned Watercraft – 75 Feet Long Or Less B. Who Is An Insured – Unnamed Subsidiaries C. Who Is An Insured – Employees – Supervisory Positions D. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies E. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures F. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement G. Blanket Additional Insured – Broad Form Vendors H. Blanket Additional Insured – Controlling Interest | <ul style="list-style-type: none"> I. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers J. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises K. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations L. Medical Payments – Increased Limit M. Blanket Waiver Of Subrogation N. Contractual Liability – Railroads O. Damage To Premises Rented To You |
|---|---|

PROVISIONS

A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS

1. The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

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

- (a) 75 feet long or less; and
- (b) Not being used to carry any person or property for a charge;

2. The following replaces Paragraph 2.e. of **SECTION II – WHO IS AN INSURED**:

- e. Any person or organization that, with your express or implied consent, either uses or

is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge.

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

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

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

COMMERCIAL GENERAL LIABILITY

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS

The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a co-"employee" while in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

D. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of SECTION II – WHO IS AN INSURED:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, 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:
 - (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or
 - (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such

organization in writing to us within 180 days after you acquire or form it;

- 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.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization, other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

E. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES

The following replaces the last paragraph of SECTION II – WHO IS AN INSURED:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

F. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

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

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Occurs subsequent to the signing of that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or

agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

G. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

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

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Occurs subsequent to the signing of that contract or agreement; and
- b. Arises out of "your products" that are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you or any distribution or sale for a purpose not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
 - (5) Demonstration, installation, servicing or repair operations, except such operations

performed at such vendor's premises in connection with the sale of "your products"; or

- (6) "Your products" that, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

H. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

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

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of **SECTION II – WHO IS AN INSURED**:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

I. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

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

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its

COMMERCIAL GENERAL LIABILITY

liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

J. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

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

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair,

construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations.

K. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

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

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

L. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE**:

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:
 - a. \$10,000; or
 - b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

M. BLANKET WAIVER OF SUBROGATION

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

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we

waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

N. CONTRACTUAL LIABILITY – RAILROADS

- 1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:

- c. Any easement or license agreement;

- 2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

O. DAMAGE TO PREMISES RENTED TO YOU

The following replaces the definition of "premises damage" in the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

POLICY NUMBER: UB-68783668-23-I3-G

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

**ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.**

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

October 7, 2024

Item No. 7.14.

Event Trust Fund Local Share Payment - USA Track & Field Junior Olympic National Championships 2024

Sponsor: Jeremiah Cook, Tourism Manager

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a payment in an amount not to exceed \$103,111 to the Texas Comptroller of Public Accounts for the local share of the Event Trust Fund for the execution of the 2024 USATF National Junior Olympics Track & Field Championships.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): Staff recommends approval.

Summary: In July 2024, staff worked with Texas A&M University on the execution of the 2024 USA Track & Field Junior Olympic National Championships held at E.B. Cushing Stadium on the campus of Texas A&M University. To offset some of the costs of the event, an Event Trust Fund application was submitted to the State of Texas in the amount of \$747,554. Of the \$747,554, \$103,111 is required as the local match, which is the basis for this item. Upon payment of the local match and required documentation, the state will then provide payment in the amount of \$644,443.

Budget & Financial Summary: Upon payment, the City will submit documentation to receive \$644,443 as reimbursement for pre-approved event-related expenses.

Attachments:

1. Event Trust Fund Application Approval Letter
2. Economic Impact Study- USATF Junior Olympic Track & Field National Championships



**GOVERNOR GREG ABBOTT
ECONOMIC DEVELOPMENT & TOURISM**

April 5, 2024

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

Dear Mr. Cook:

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

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

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

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

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

Page Two
Mr. Cook
April 5, 2024

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

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

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

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

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

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

Sincerely,



Terry Zrubek
Executive Deputy Director
Economic Development & Tourism

TZ: cc

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

Submitted for consideration under the Events Trust Fund by the

City of College Station

March 4th, 2024

Event Background

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

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

Table 1
Expected Schedule of Events and Total Attendance¹

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

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

Total Economic Gain

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

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

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

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

Event Trust Fund Gain

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

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

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

Appendix A

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

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

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

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

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

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

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

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

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

Appendix B

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

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

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

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

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

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

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

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

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

October 7, 2024
Item No. 8.1.
Code Enforcement Update

Sponsor: Tommy Shilling

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an update on Code Enforcement activities and initiatives.

Relationship to Strategic Goals:

Good Governance, Core Services & Infrastructure, Neighborhood Integrity

Recommendation(s): Staff recommends City Council receive the presentation and provide feedback

Summary: Staff will provide a presentation on Code Enforcement activities and initiatives.

Budget & Financial Summary: N/A

Attachments:

None

October 7, 2024
Item No. 9.1.
Rental Certification Program

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance creating a voluntary rental inspection certification program.

Relationship to Strategic Goals:

Neighborhood Integrity, Core Services & Infrastructure

Recommendation(s): Staff recommends that City Council consider adoption of an ordinance to allow implementation of a voluntary rental inspection certification program.

Summary: In June of 2022, multiple residents spoke to City Council at Hear Visitors expressing concerns about the conditions of rental properties and requesting that Council direct staff to implement a proactive rental inspection program. In September 2022, staff presented information regarding a proactive rental inspection program to City Council and staff was directed to move forward with developing a pilot program through a complaint-driven process.

Staff developed a reporting mechanism for rental property maintenance issues through SeeClickFix. The system includes a question to ensure that the residents have gone through the appropriate process of reporting the issues to the property owner or manager. Code Enforcement staff will respond and, if needed, include Building Inspectors and the Fire Marshalls office to determine if actual violations are present and then work to get the violation corrected and gain compliance.

In April 2023, staff provided information to City Council regarding the proposed rental inspection program, outreach completed, and next steps for implementation. The implementation was placed on hold to allow Texas A&M University to staff and open the Off Campus Student Services (OCSS) office.

The first proposed step includes implementation of a voluntary rental inspection certification program through the attached ordinance. The proposed next steps for implementation of a Mandatory Proactive Rental Inspection program and a timeline will be included in the presentation.

Budget & Financial Summary: N/A

Attachments:

1. Voluntary Rental Inspection Cert. Ordinance 10-7-24

ORDINANCE NO. _____

AN ORDINANCE AMENDING SUBPART B, “LAND DEVELOPMENT ORDINANCES,” CHAPTER 103, “BUILDINGS AND BUILDING REGULATIONS,” BY ADDING ARTICLE VII, “VOLUNTARY RESIDENTIAL RENTAL INSPECTION AND CERTIFICATION” ADOPTING A VOLUNTARY RENTAL INSPECTION PROGRAM; 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 Subpart B, “Land Development Ordinances” Chapter 103, “Buildings and Building Regulations,” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Subpart B, Chapter 103, “Buildings and Building Regulations,” Article VII, “Voluntary Residential Rental Inspection and Certification,” of the Code of Ordinances of the City of College Station, Texas, is hereby added to read as follows:

ARTICLE VII. VOLUNTARY RESIDENTIAL RENTAL INSPECTION AND CERTIFICATION.**Sec. 103-256. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means the City Manager or designee.

Building means a structure having a roof supported by columns or walls and build for the support, shelter, or enclosure of persons, chattel, or movable property of any kind and which is affixed to the land.

Checklist means a City developed standardized checklist and any addenda to clarify any checklist items used for the inspection. Any working guidance necessary or requested as clarification for checklist items are developed by the City’s Building Official. The checklist is subject to amendment from time to time, as determined by the City’s Building Official.

Dwelling unit means a residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating, and sanitation.

Inspector means a private third-party inspector possessing at least one of the following credentials:

- (a) American Association of Code Enforcement property maintenance or housing inspector certification;
- (b) International Code Council property maintenance and housing inspector certification;
- (c) International Code Council residential building code inspector;
- (d) State of Texas licensed home inspector; or
- (e) Other comparable credentials accepted by the Building Official.

Owner occupied is defined as the property's owner of record that utilizes the dwelling as the owner's primary residence.

Owner means the person or legal entity who is listed in public records as the owner of record of the residential rental property.

Residential Rental Property means any residential dwelling unit not owner occupied by the owner of record, whether or not rent is charged. The term “residential rental property” includes all

residential rental property and includes, but is not limited to, properties rented to students, families, or any other persons; properties in which a family member of the owner resides in the home, but the owner of record does not regardless of whether additional persons also reside in the home; and properties where a property caretaker lives in the home, but the owner does not.

Sec. 103-257. Purpose.

This article's purpose is establishing a voluntary residential rental inspection certification program to protect the health and safety of renters, encourage residential rental properties to be regularly maintained and reduce the potential blighting influences on neighborhoods.

Sec. 103-258 Voluntary Rental Inspection Certification

(a) Application. Residential Rental Property Owners may choose to apply for the voluntary residential Rental Inspection Program by submitting an application and providing an inspection report for each residential rental unit requested in the application. Residential Rental Properties that are inspected and meet the checklist requirements shall be issued a City inspection certificate indicating compliance with the Voluntary Rental Inspection Program.

(b) Inspection.

- (1)** The Inspector must provide a completed City inspection form based on the Checklist for each Residential Rental Property and any associated notes or corrections that were required for compliance.
- (2)** The inspection will not be considered complete until the Residential Rental Property is deemed compliant by the Inspector with all the Checklist items in compliance.

(c) Inspector Revocation. The Building Official has the authority to revoke approval of an Inspector if there is good cause to believe the inspections completed by the Inspector failed to identify violations or substandard conditions that existed and were discoverable at inspection time and not in compliance with the Checklist. The Building Official's decision to revoke approval of an Inspector may be appealed to the Administrator in writing within seven (7) days. An Inspector whose approval is revoked is prohibited from performing inspections for the purposes of this ordinance for two (2) years.

(d) Units Required to be Inspected. The number of units to be inspected areas follows:

Total Dwelling Units per Building	Number of Units to be Inspected for Certification	Inspection Timeframe
1 – 6	100%	Every 5 years
7 or more	20% (minimum of 4) Units must be randomly selected by the Inspector	20% every year to ensure 100% of dwelling units are inspected within a 5 year period.

(e) Certificate. An inspection certificate shall be issued on a City form and may be posted at the property upon approval and completion. The certificate is good for a two (2) years from the date of certification unless revoked.

(f) Certified Rental List. If all residential rental properties inspected under subsection (d) pass inspection, such residential rental properties shall, with owner consent, be placed on a list of certified “voluntarily inspection program” properties, maintained by the City and advertised on the City's website along with the owner’s contact information. Owners may advertise their inclusion on this list

(g) Certificate Revocation. Should any violations be found on the property following the issuance of the certificate, the Owner shall abate such violations within the timeframe provided by the City. If the violations are not abated within that timeframe, the City has the right to revoke the property’s certificate, remove the Owner from the list. If the certificate is revoked, the owner must remove any advertisement of their name from the list and reapply and meet all requirements of the program to be reinstated.

October 7, 2024
Item No. 9.2.
September 2024 Small Area Plan Audit

Sponsor: Ashley Klein, Staff Planner

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Presentation, discussion, and possible action regarding the September 2024 Small Area Plan Audit.

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Staff recommends acceptance of the Small Area Plan Audit.

Summary: City staff will present the September 2024 Small Area Plan Audit that includes findings from the audit process, infrastructure maps, and implementation charts for each plan. This audit evaluated the following Small Area Plans:

- The Wolf Pen Creek Corridor Study (1987)
 - Master Plan Updates (1998 & 2005)
 - Strategic Issues and Action Plan (1998)

- The Northgate Redevelopment Plan (1996)
 - Redevelopment Implementation Plan (2003)

- The Medical District Master Plan (2012)
 - Implementation Plan (2012)

The City of College Station's Comprehensive Plan requires the evaluation of all small area plans that have surpassed their planning horizons. The purpose of the evaluation is to determine the status of each plan's implementation, associated successes and challenges, and recommendations for each plan's retirement or update (Comprehensive Plan Action 3.8). This audit is a continuation of the process started in 2022, where staff audited five small area plans that had reached or surpassed their planning horizons.

With the acceptance of the audit's findings, staff will bring forward amendments to the Unified Development Ordinance (UDO), the Comprehensive Plan, and any other impacted ordinances in order to officially retire the audited plans.

The Planning & Zoning Commission accepted the findings of the audit 6-0.

Budget & Financial Summary:

Attachments:

1. September-2024-Small-Area-Plan-Audit



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

SMALL AREA PLAN AUDIT

SEPTEMBER 2024



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Appendices - Plan Implementation Charts

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36	Appendix C Medical District



Introduction

This audit evaluates three of the City of College Station's small area plans and identifies the successes and shortcomings of those plans and their implementation. It is a continuation of the process started in 2022, where staff audited five small area plans that had reached or surpassed their planning horizons.

This audit evaluates the following Small Area Plans:

THE WOLF PEN CREEK CORRIDOR STUDY (1987)

- Master Plan Updates (1998 & 2005)
- Strategic Issues and Action Plan (1998)

THE NORTHGATE REDEVELOPMENT PLAN (1996)

- Redevelopment Implementation Plan (2003)

THE MEDICAL DISTRICT MASTER PLAN (2012)

- Implementation Report (2012)

The City of College Station's Comprehensive Plan requires the evaluation of all small area plans that have surpassed their planning horizons. The purpose of the evaluation is to determine the status of each plan's implementation, associated successes and challenges, and recommendations for each plan's retirement or update.

Small Area Plan Overview

Small area plans allow for a closer look into the existing conditions, trends, and development pressures within a specific area of the City. Over the years, the City of College Station has adopted several small area plans which fall under four main categories – Neighborhood Plans, District Plans, Redevelopment Plans, and Corridor Plans.

During the Comprehensive Plan's 10-year evaluation process in 2020, the need for small area plan audits was identified through rigorous stakeholder engagement and plan analysis. The discussions with the public, Planning & Zoning Commission, and City Council led to the development of action item 3.8 in the Comprehensive Plan. This item states that the City should "evaluate relevancy of neighborhood and small area plans that are beyond their planning horizon [and] develop a process to either retire or update plans."

In 2022, the City completed its first small area plan audit. Staff conducted research on peer city audit methods, established an auditing process, and completed the evaluation of five small area plans. Lessons learned from the initial auditing process resulted in four key recommendations for future small area planning efforts:

- 1) Develop a clear implementation tracking strategy early in the plan creation process that ideally includes plan action tracking software to support collaboration across City departments;
- 2) Distinguish between actions that are the responsibility of the City to implement and those that will be neighborhood-led;
- 3) Develop specific and quantifiable actions that lead to measurable outcomes; and
- 4) Set clear planning horizons with sunset provisions that expire plans after a certain date.

Because the plans in this audit were created before the City incorporated a standardized system of implementation tracking, some information regarding the plans has been lost. Additionally, none of the audited plans had an established retirement date, making their planning horizons unclear. Future audits will not present the same challenges. Moving forward, plans will have established retirement dates upon adoption and will be monitored using implementation tracking software.

Wolf Pen Creek

The Wolf Pen Creek Corridor Study was adopted by the City Council on October 26, 1988. The planning area was made up of approximately 500 acres located on the east side of College Station and was bounded by Harvey Road, Texas Avenue, East Bypass, and Southwest Parkway. The intention of the Wolf Pen Creek Corridor Study was to maximize the area's use before further development occurred. It presented ways to preserve the creek's natural beauty and functionality while encouraging public and private recreation. The study contained concept maps outlining the overall vision for the district, specific development guidelines, and strategies for utilizing Wolf Pen Creek's floodplain. The Master Plan Updates from 1998 and 2005 provided additional guidance for implementing the vision of the district.

Northgate

The Northgate Redevelopment Plan was adopted by the City Council on January 11, 1996. The planning area was made up of approximately 145 acres and was located on the northwest side of College Station, bordered by Texas A&M University property and the City of Bryan. It was bounded by Wellborn Road – FM 2514, University Drive – FM 60, College Avenue – SH 308, and Bryan city limits. The City adopted the Plan to revitalize the Northgate area and address the need for increased density near the university. The major goals of the plan included updating utility and transportation infrastructure to accommodate growth, creating an appealing and cohesive design for the area, and encouraging infill and economic activity. The Redevelopment Implementation Plan (2003) incorporated the progress made towards the original Plan's goals and provided additional direction for the area's improvement.

Medical District

The Medical District Master Plan was adopted by the City Council on October 11, 2012. The planning area was made up of approximately 1,700 acres in central College Station and generally located around the intersection of State Highway 6 and Rock Prairie Road. The Medical District Master Plan was created as a strategic initiative to enhance the quality of life for residents, support economic diversity, and create a vibrant, health-focused community. It included design guidelines to encourage a sense of place and prioritized pedestrian mobility. The accompanying Implementation Report provided details regarding potential development regulations and standards, management structure, funding mechanisms, and capital expenditures.



Methods

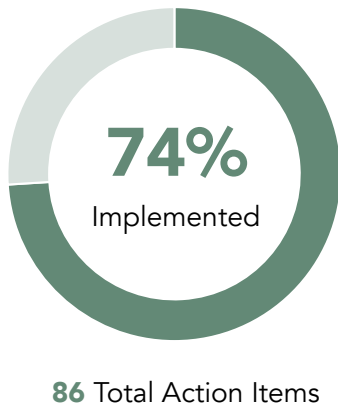
The methods used for the Small Area Plan Audit are qualitative in nature, primarily utilizing content analysis, interviews with City staff, and reviewing other relevant records pertaining to the implementation of the plans. For this audit, staff reviewed the original plans and accompanying documents, cataloged every action item contained within the plans, and collaborated with multiple City departments to determine the status of each item.

While this audit used the process established in 2022, clarified definitions of each status were developed for audit consistency (see Status Definitions Table). The statuses include: Achieved, Partially Achieved, Not Achieved, Not Pursued, and Unknown. The data was then analyzed and summarized to understand the overall results of each plan's implementation.

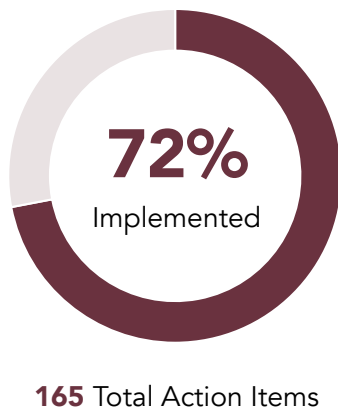
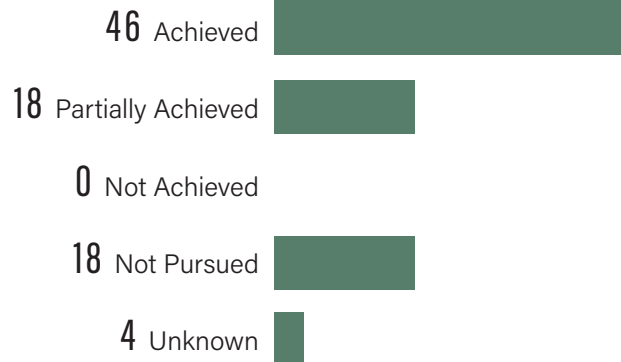
STATUS DEFINITIONS	
ACHIEVED:	The action item was fully achieved as described.
PARTIALLY ACHIEVED:	The action item was pursued and resulted in an outcome/deliverable that may differ from the original description.
NOT ACHIEVED:	The action item was pursued but did not result in an outcome/deliverable.
NOT PURSUED:	The action item was not pursued.
UNKNOWN:	The status of the action item is not known.

Results

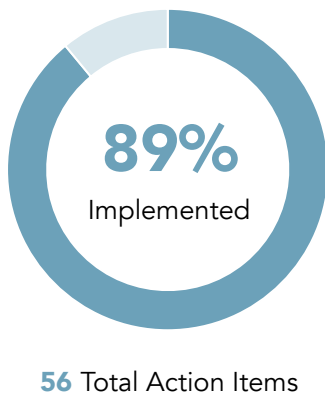
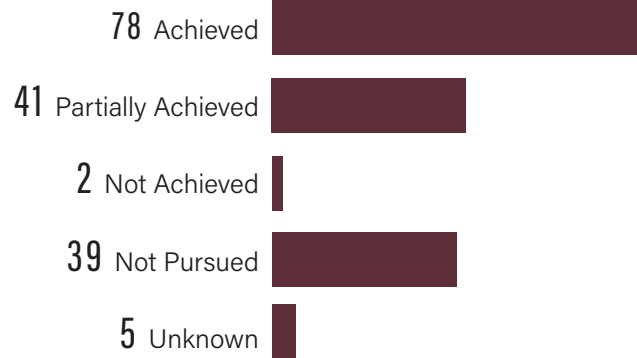
The implementation charts in the appendices include the status of every action item and provide detailed narratives of the action updates. The total implementation percentage includes action items that were either achieved or partially achieved.



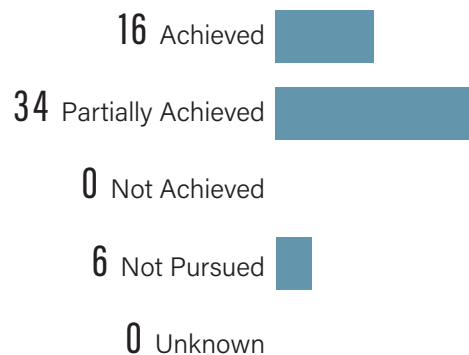
WOLF PEN CREEK



NORTHGATE



MEDICAL



Next Steps

With the acceptance of the audit's findings, the plans will be retired. Staff will bring forward amendments to the Unified Development Ordinance (UDO), the Comprehensive Plan, and any other impacted ordinances to remove references to the audited plans.

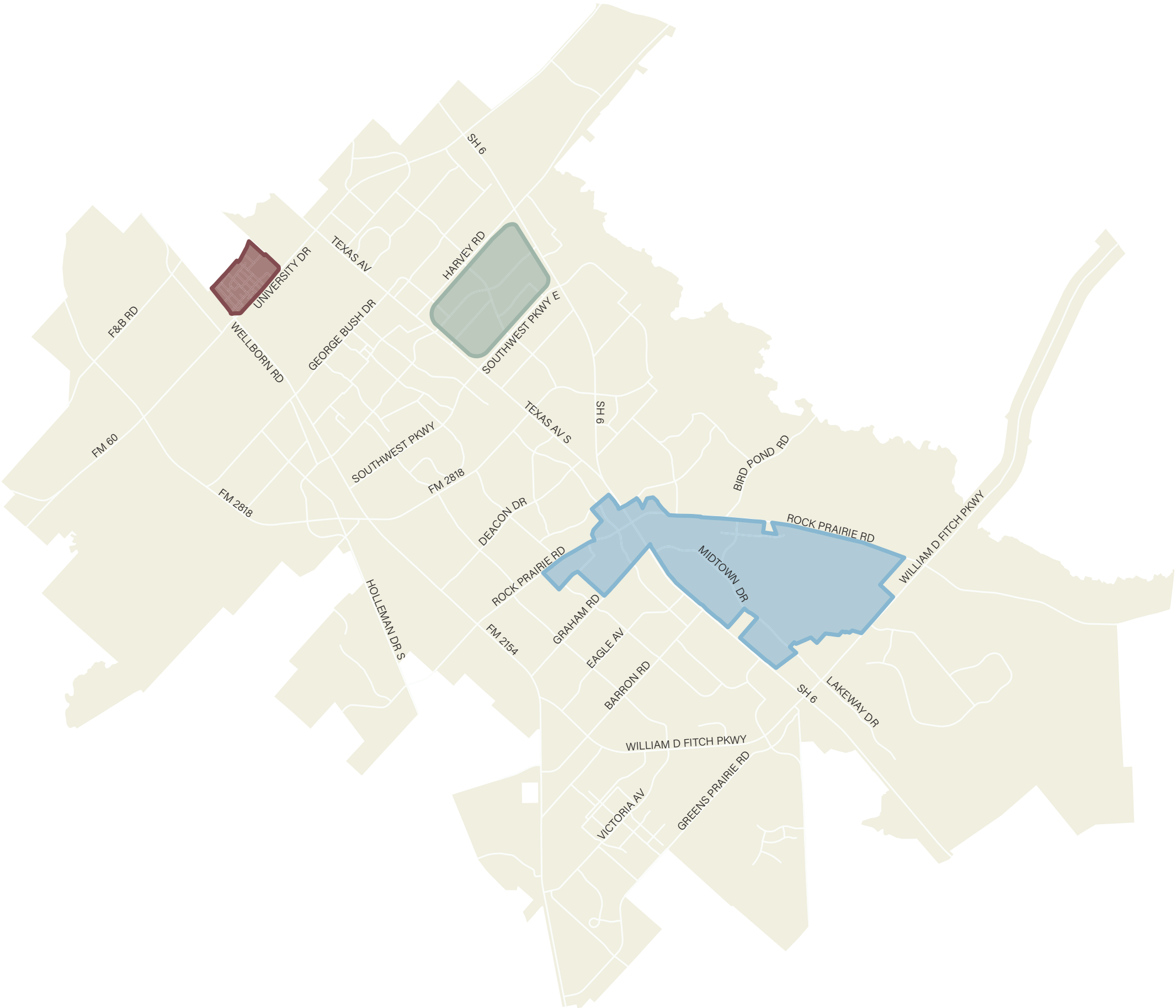
Currently, there are no scheduled updates for the Northgate District or the Medical District; however, there are two upcoming planning efforts related to the Wolf Pen Creek District.

In FY 2025, the City's Parks & Recreation Department staff will develop a Master Plan for the Wolf Pen Creek Park. In addition, in FY 2026 Planning & Development staff will initiate the Harvey Road Redevelopment Area planning process. The redevelopment plan will make recommendations to revitalize this area that has a number of underperforming commercial properties and older multifamily structures.

This planning process presents the opportunity to explore increased density through the use of vertical and horizontal mixed-use developments, which could compliment the adjacent Wolf Pen Creek District.

Future small area planning efforts may be identified during the 2025 Comprehensive Plan 5-Year Update. City staff will utilize this process to gather feedback from elected officials, community stakeholders, and the public to help identify areas in the community for targeted study.

PLANNING AREAS

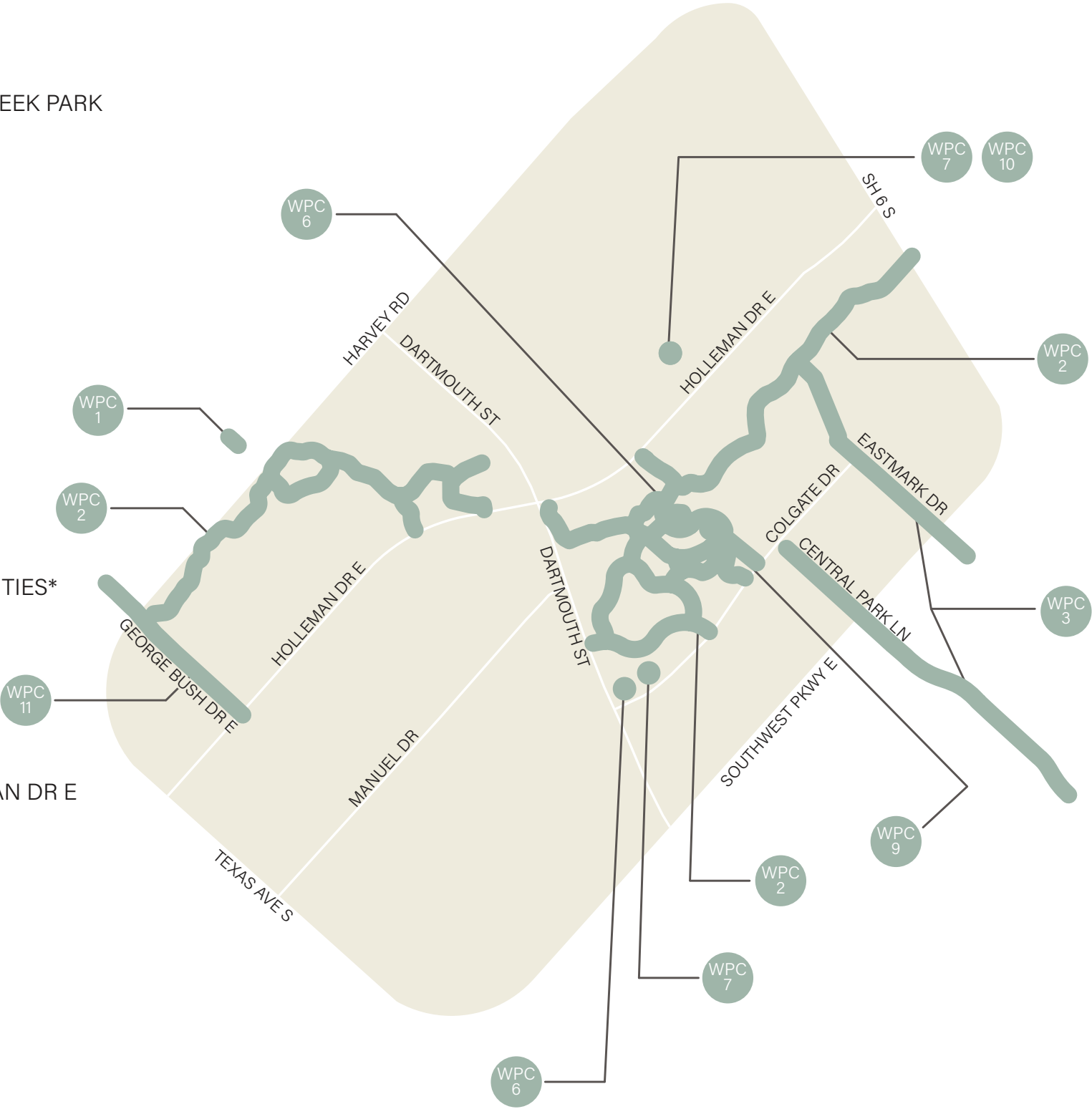


-  NORTHGATE DISTRICT PLAN
-  WOLF PEN CREEK DISTRICT PLAN
-  MEDICAL DISTRICT PLAN

COMPLETED CAPITAL PROJECTS

Wolf Pen Creek District Plan

- WPC 1** PEDESTRIAN AT-GRADE CROSSING AT HARVEY RD CONNECTING OAKS PARK TO WOLF PEN CREEK PARK
- WPC 2** TRAIL SYSTEM FROM SH 6 S TO TEXAS AVE S
- WPC 3** PEDESTRIAN LINKAGE TO CENTRAL PARK FROM WOLF PEN CREEK PARK
- WPC 4** PARK BENCHES ALONG TRAILS*
- WPC 5** DRAINAGE, IRRIGATION & FERTILIZATION OF ALL CULTIVATED BEDS*
- WPC 6** DEVELOP RECREATION AND CULTURAL PROGRAMS & FACILITIES
- WPC 7** PURSUE ADEQUATE VEHICULAR ACCESS AND PARKING
- WPC 8** ACCESS POINTS FOR MAINTENANCE EQUIPMENT FOR ALL TRAILS, PONDS, AND PUBLIC FACILITIES*
- WPC 9** BICYCLE RACKS
- WPC 10** PURSUE ADEQUATE VEHICULAR ACCESS AND PARKING
- WPC 11** STALLINGS AVENUE (NOW GEORGE BUSH DR E) CONNECTION FROM HARVEY RD TO HOLLEMAN DR E



PROJECTS ARE NOT SHOWN VISIBLY ON THE MAP

COMPLETED CAPITAL PROJECTS

Northgate District Plan

- NG 1 UPGRADE EXISTING SUBSTANDARD WATER MAINS TO 8-INCH OR 10-INCH WATER TRANSMISSION MAINS*
- NG 2 REPAIR/UPGRADE WATER MAIN NAGEL STREET REDEVELOPMENT (UNIVERSITY DR TO CITY LIMITS)*
- NG 3 DEVELOP LINEAR PARK AS CITY/UNIVERSITY JOINT VENTURE
- NG 4 DEVELOP STRATEGIC PARCELS
- NG 5 CREATE REGULATIONS TO REQUIRE RESIDENTIAL DENSITY IN NORTHGATE'S INTERIOR
- NG 6 DEVELOP A PROMENADE AND A PLAZA GENERALLY ALONG THE EXISTING PATRICIA AVE ALIGNMENT
- NG 7 CONSTRUCT A 'LIVE FROM NORTHGATE' PAVILION IN PLACE OF COMMUNITY DUMPSTERS
- NG 8 DEVELOP AN URBAN SQUARE OR PLAZA
- NG 9 PROVIDE GUIDE SIGNS TO DIRECT COMMERCIAL TRAFFIC TO AREA PARKING FACILITIES
- NG 10 RETAIN, REHABILITATE, OR SELL CITY-OWNED RETAIL BUILDING
- NG 11 DEVELOP THE PARKING GARAGE
- NG 12 WIDEN UNIVERSITY DR/FM 60 SIDEWALK (COLLEGE MAIN TO WELLBORN RD/FM 2154)
- NG 13 INSTALL STAMPED CONCRETE SIDEWALK CHURCH AVENUE REDEVELOPMENT (WELLBORN RD TO NAGLE ST)
- NG 14 PROVIDE OFF-STREET PARKING IN THE CORE AREA

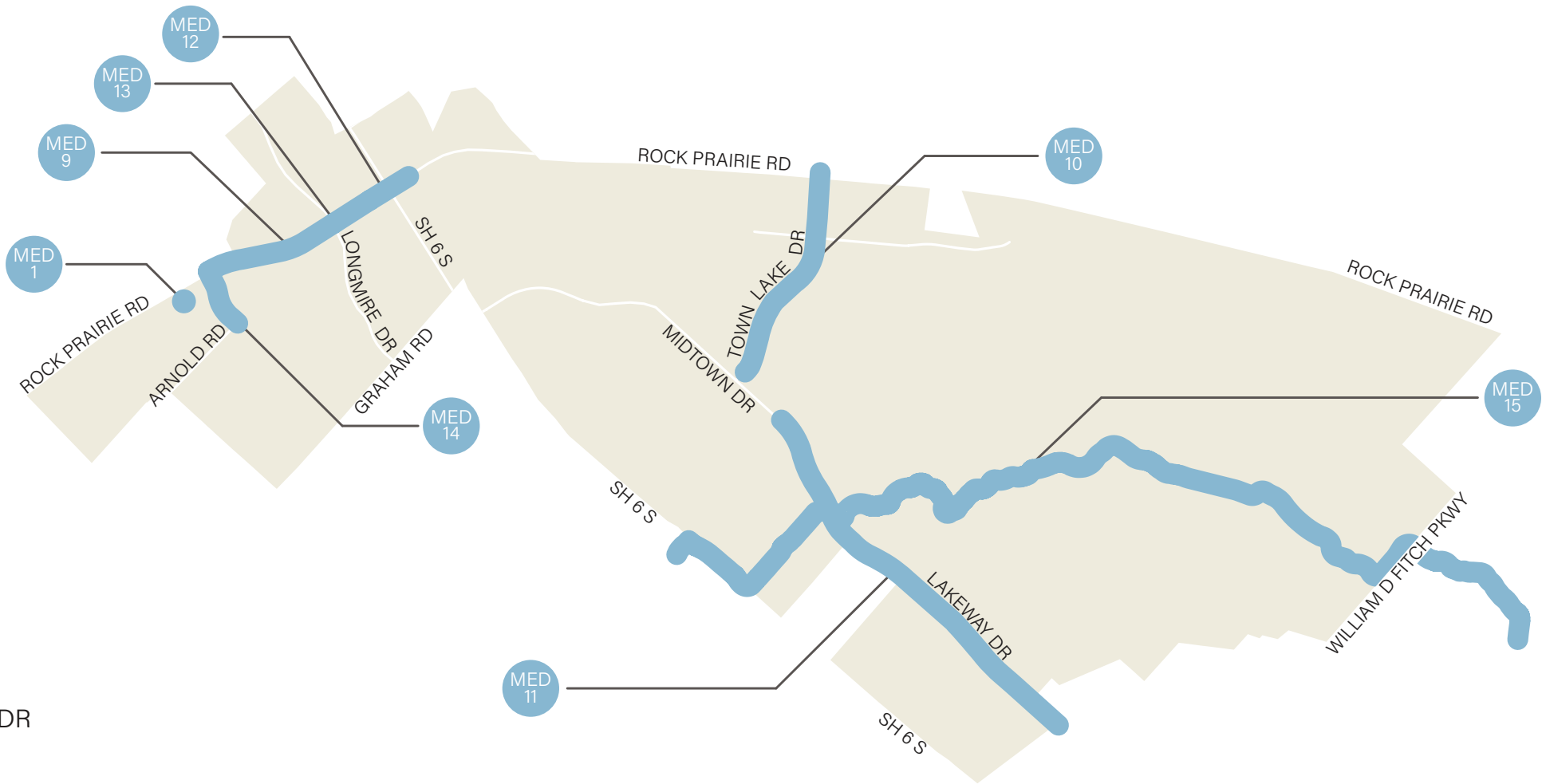


PROJECTS ARE NOT SHOWN VISIBLY ON THE MAP

COMPLETED CAPITAL PROJECTS

Medical District Plan

- MED 1 SOUTHWOOD ATHLETIC PARK IMPROVEMENTS
- MED 2 SANITARY MAINS: LICK CREEK - TRUNK PH II*
- MED 3 SANITARY MAINS: SPRING CREEK - BASELINE C*
- MED 4 SANITARY MAINS: SPRING CREEK - BASELINE A*
- MED 5 SANITARY MAINS: LICK CREEK - TRUNK LINE PH 1*
- MED 6 WATER MAINS: LAKEWAY DR - BARRON RD TO SPRING CREEK*
- MED 7 WATER MAINS: LAKEWAY DR - MEDICAL AVE TO BARRON RD*
- MED 8 WATER MAINS: SH 6 - ROCK PRAIRIE RD TO SCOTT & WHITE*
- MED 9 THOROUGHFARE: ROCK PRAIRIE RD - LONGMIRE DR TO NORMAND DR
- MED 10 THOROUGHFARE: TOWN LAKE DR - ROCK PRAIRIE RD TO MIDTOWN DR
- MED 11 THOROUGHFARE: MIDTOWN DR - BARRON RD TO SPRING CREEK
- MED 12 THOROUGHFARE: ROCK PRAIRIE RD BRIDGE
- MED 13 THOROUGHFARE: ROCK PRAIRIE RD - SH 6 TO LONGMIRE DR
- MED 14 THOROUGHFARE: NORMAND DR - ROCK PRAIRIE RD TO ARNOLD RD
- MED 15 GREENWAY TRAIL: LICK CREEK (EAST) - SH 6 S & BARRON RD TO WILLIAM D FITCH PKWY



PROJECTS ARE NOT SHOWN VISIBLY ON THE MAP



Appendix A:

WOLF PEN CREEK (1987)

Online Resources

WOLF PEN CREEK SMALL AREA PLAN AUDIT (1987)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1987.03		Promote urban development with the creek as an amenity to development.	Achieved	Economic Development	A Wolf Pen Creek design district was established to promote development along the corridor. Permitted uses include a variety of commercial, office, and residential uses, particularly through mixed-use development.
1987.03		Utilize soil stabilization and other methods to deter erosion of creek banks.	Partially Achieved	Parks & Recreation	
1987.03		Recognize the Wolf Pen Creek Development as an open space park connector, as well as a part of the City-wide park system of bicycle and pedestrian trails.	Achieved	Planning & Development	Multiple capital projects have been directed towards achieving this.
1987.03		Orient focal points in Creek development to major access points throughout the creek corridor.	Achieved	Parks & Recreation	
1987.03		Develop a comprehensive plan to recognize the interrelationships of drainage, erosion, and recreation as they apply to the Wolf Pen Creek Corridor from Texas Avenue to the East Bypass, as well as to create a community attraction for College Station Residents and out-of-town guests	Achieved	Planning & Development	Reflected in 1987 Wolf Pen Creek Corridor Study and 1998 Ordinance No. 1819.
1987.03		Establish drainage practices in compliance with the College Station stormwater management plan	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987.03		Promote urban development with the creek as an amenity to development	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987.03		Recognize the Wolf Pen Creek Development as an open space park connector, as well as a part of the city wide park system of bicycle and pedestrian trails	Achieved	Planning & Development	Multiple capital projects have been completed.
1987.03		Orient focal points in creek development to major access points throughout the creek corridor	Achieved	Planning & Development	
1987.04	WPC 6	Develop recreational and cultural programs and facilities designed to maximize the potential usage of the creek as a community attraction.	Achieved	Economic Development	Festival site and amphitheater host a variety of events and activities, including concerts and community events hosted by the City's Parks & Recreation Department as well as private entities. The adjacent Bob & Wanda Meyer Senior Center provides programming opportunities for College Station seniors.
1987.04		Preserve as much of the natural beauty of the creek's plants and wildlife as possible.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987.04		Seek and receive matching funds through TxDOT.	Unknown	Fiscal Services	No information available.
1987.21	WPC 7 & 10	Pursue adequate vehicular access and parking.	Achieved	Parks & Recreation	The Meyer Center parking lot has been expanded, and the City is currently working with CBL to acquire leased parking at Post Oak Mall. There is parking and a joint parking agreement with Post Oak Mall; a parking lot (Holleman/ Dartmouth) was put in.
1987.23		Evaluate the land use plan in the vicinity of Wolf Pen Creek between Highway 6/Texas Avenue, and Harvey Road/Southwest Parkway based on the impact of Wolf Pen improvements.	Achieved	Planning & Development	

WOLF PEN CREEK SMALL AREA PLAN AUDIT (1987)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1987.25		Prepare an overlay or new zoning district for the corridor area.	Achieved	Planning & Development	District WPC Development Corridor was created in 1998, with Ordinance No. 1819.
1987.26		Secure right-of-way for handling drainage for the 100-year flood plain.	Partially Achieved	Capital Improvement Projects	The City owns most of the 100 year flood plain, but some portions still remain on private property. The majority of the property has been acquired and drainage easements dedicated with development along the corridor.
1987.27		Examine the policy of drainageway improvements.	Achieved	Planning & Development	Maintenance responsibilities of private drainage easements are identified on plats or provided in separate instrument documents.
1987.28	WPC 1	Tie Wolf Pen Creek to Oaks Park by an appropriate pedestrian space in the form of an easement or right-of-way extending from the park to Harvey Road across from Oaks Park.	Achieved	Capital Improvement Projects	There is an at-grade crossing at Harvey Rd that connects Oaks Park to WPC.
1987.30		Pursue connection of Wolf Pen Creek to Central Park.	Partially Achieved	Capital Improvement Projects	Connection is provided through road network (sidewalks). Upon completion of the SH 6 widening, an SUP should connect the two parks along the SH 6 ROW.
1987.34		Space smaller lakes between Texas Avenue and the By-pass.	Not Pursued	Capital Improvement Projects	Smaller lakes were not constructed as shown on Plate 12 (determined not to be feasible).
1987.35		Pursue the vision provided in Plate 12 of the Core Concept Plan.	Partially Achieved	Capital Improvement Projects	Some concepts of Plate 12 were implemented such as connection to Oaks Park.
1987.36	WPC 2	Create a trail system between the By-pass and Texas Avenue.	Partially Achieved	Capital Improvement Projects	A trail system was completed from SH 6 to Texas via connection to Harvey Rd at George Bush. The majority of this has been accomplished, the only missing piece is TX/George Bush.
1987.36		Create a botanical garden.	Not Pursued	Capital Improvement Projects	
1987.36		Create a community activity center.	Partially Achieved	Capital Improvement Projects	There is play equipment located at what was previously Brentwood Park.
1987.36		Pursue an extension from Colgate Drive from Eastmark to Bypass.	Not Pursued	Capital Improvement Projects	
1987.37		Pursue the vision provided in Plate 13 of the Core Conceptual Master Plan.	Partially Achieved	Capital Improvement Projects	
1987.39	WPC 3	Pursue a pedestrian linkage to Central Park extending south from Wolf Pen Park at Colgate drive and Central Park.	Achieved	Capital Improvement Projects	Sidewalks exist along Eastmark and Central Park to connect WPC and Central Park.
1987.39		Develop an arboretum.	Not Pursued	Capital Improvement Projects	A nature study was conducted along the trails.

WOLF PEN CREEK SMALL AREA PLAN AUDIT (1987)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1987.39		Engage in further study to determine demand of the facility and timing for several of the uses identified in the community activity area in Plate 13.	Partially Achieved	Economic Development	Several elements of Plate 13 were not implemented, including the proposed extensions of Stallings and Colgate through Wolf Pen Creek. While a connected trail system was carried out, some of the more dynamic proposals such as a botanical garden and native arboretum were not realized. However, significant improvements were made relating to drainage and community spaces such as the amphitheater and festival site. Additional private development stimulated residential opportunities.
1987.39		Pursue a pedestrian linkage to Central Park extending south from Wolf Pen Park at Colgate drive and Central Park.	Not Pursued	Planning & Development	
1987.39	WPC 11	Extend Stallings Avenue from Harvey Road to Holleman Drive.	Not Pursued	Planning & Development	While Stallings was not pursued, the George Bush extension was completed.
1987.39-40		Pursue a public-private approach to improving the corridor.	Achieved	Planning & Development	Collaboration supported through U.D.O.. reflected in 1998 Ordinance No. 1819.
1987.40		Develop focal points which would be designed to place emphasis on their locations as shown on plate 13 for Texas Avenue, Dartmouth Street, and the Bypass.	Partially Achieved	Planning & Development	Includes WPC corner sign, freestanding WPC sign, and focal point mid-block.
1987.40		Develop a continuous trail system.	Partially Achieved	Planning & Development	While there are no natural trails, there are other trails in recent plans.
1987.43-60		Before implementing any drainage or park improvement along Wolf Pen Creek, obtain control of land within the floodway and flood fringe and appropriate areas adjacent to these boundaries.	Partially Achieved	Capital Improvement Projects	Although the City owns most of the property surrounding the Creek, it is unknown how it was obtained.
1987.47		Update channel designs for lake shorelines; concrete lined channels are to be pursued according to provided illustrations; side wall slopes are to be avoided.	Unknown	Planning & Development	
1987.50		Update lake shoreline designs according to provided illustrations.	Achieved	Planning & Development	Any designs would have been included with the initial project set.
1987.51		Hike & Bike Trail: The trail must be durable and able to withstand flooding conditions. Encourage use of concrete and discourage cinders, pavers, or stone .	Achieved	Planning & Development	
1987.51		The bollards should be clean and simple in design and easy to reproduce because of the proposed development schedule for Wolf Pen Creek.	Achieved	Planning & Development	
1987.52	WPC 4	Link park together with benches.	Achieved	Capital Improvement Projects	
1987.52		Retaining Walls: Concrete walls with stone veneer and/or dry stack stone walls should be encouraged to enhance the character of the park and blend with the proposed shoreline and channel improvements.	Not Pursued	Parks & Recreation	This item may be incorporated in future plans.

WOLF PEN CREEK SMALL AREA PLAN AUDIT (1987)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1987.53	WPC 9	Encourage clean and simple design in bike racks to blend with other site amenities in the Park.	Achieved	Planning & Development	
1987.54		As an addition to the Land Use Plan, make a study of the recommendations for use of land made herein for the Corridor Study Area between Holleman Drive and Harvey Road, and between Holleman Drive and Colegate Drive from Highway 6 Bypass to Texas Avenue.	Achieved	Planning & Development	
1987.54		Create a special overlay district for the Corridor Study Area which establishes separate development standards by categories of use for permitted uses in the C-1 District.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987.54-5		Within the overlay district, scale standards or building setback, parking, signage, and landscaping to the specific categories of uses formed for those permitted uses within the C-1 District.	Not Pursued	Planning & Development	
1987.55		Create other incentives by transferring development rights from property dedicated, setback reductions as related to common boundary, and granting by owner a perpetual open space easement and using this space as site area.	Not Pursued	Planning & Development	
1987.55		Modify the development standards for the C-1 District to create design incentives.	Not Pursued	Planning & Development	Elements were captured in the WPC district guidelines through 1998 Ordinance No. 1819.
1987.55		If an overlay district is selected as a means to increase in the Corridor, develop design standards within the district to address site development factors such as: design and location criteria for refuse container areas; building line adjustments; customer access and service access coordination between sites; special sign provisions; and other factors to assist in creating a harmonious site development with adjoining properties and the park space.	Not Pursued	Planning & Development	Elements were captured in the WPC district guidelines through 1998 Ordinance No. 1820
1987.56		Secure the floodway for construction of the lake system in either the eastern or western section of the project.	Partially Achieved	Capital Improvement Projects	Lakes not developed, but the City obtained a majority of the floodway.
1987.57		Obtain voluntary property owner dedication of floodway and a twenty-foot strip within the flood fringe.	Unknown	Capital Improvement Projects	
1987.57		Acquire any additional property needed for the project under consideration.	Partially Achieved	Capital Improvement Projects	
1987.57		Complete bid and construction process.	Achieved	Capital Improvement Projects	
1987.57		Repeat process for second project.	Achieved	Capital Improvement Projects	
1987.57		Pursue acquisition of any additional property needed for the project under consideration.	Not Pursued	Planning & Development	

WOLF PEN CREEK SMALL AREA PLAN AUDIT (1987)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1987.57		Prepare for a final development plan for the first phase of the project.	Achieved	Planning & Development	
1987.57		Complete the bid and construction process.	Achieved	Planning & Development	
1987.57		Repeat the process for the second project.	Achieved	Planning & Development	
1987.57		Secure Texas Parks and Wildlife matching grant for the first project, the dollar value of the match being determined by the appraised land values of property owner dedications and any monies from municipal sources.	Unknown	Fiscal Services	No information available.
Fill Materials		The fill materials must be placed or stored in accordance with an approved site plan by the City of College Station.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819. Materials may be hauled in or excavated for lake construction.
Fill Materials		The fill must not be placed over existing utility lines without permission of the City of College Station.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
Fill Materials		The fill must not be stored or placed under the driplines of any tree three inches (3") or greater in caliper.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
Fill Materials		Stored fill materials must be maintained in an aesthetically pleasing manner by the property owner.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987 Appendix A		On-site lighting shall be positioned to reduce glare and undesirable light. A listing of acceptable fixtures and lights will be made available.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819. Sodium lights are not to be used in the corridor.
1987 Appendix A		On-site trash collection points shall be identified on a site plan. Owners shall be encouraged in the joint use of property trash collection agreements. Collection points may also act as vehicular access points for park maintenance vehicles.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987 Appendix A		Building service areas and trash collection points shall be screened from the creek corridor, trail system, parking areas, and dedicated streets	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987 Appendix A		Sign regulations will address the type, size, illumination, and location for signage for which would front Wolf Pen Creek.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987 Appendix A		The property dedication lines may act as the rear building line where approved by site plan The owner may build or deck into the dedicated property or floodway. Filling in the floodway shall be prohibited and property in the flood fringe may be filled with City permission after appropriate drainage study is prepared, submitted, and approved. The allowable depth of building or decking into the park or floodway shall be determined by the amount of dedicated land or a set maximum depth.	Partially Achieved	Planning & Development	Elements reflected in 1998 Ordinance No. 1819.

WOLF PEN CREEK SMALL AREA PLAN AUDIT (1987)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1987 Appendix A		All utility services will be installed underground by the developer.	Partially Achieved	Planning & Development	
1987 Appendix A		Architectural standards shall control the use of metal panels, tilt walls, or other construction materials considered to have an adverse visual impact.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819, compliance with Design District and Non-residential Architectural Standards.
1987 Appendix A		Encourage joint vehicular access agreements from dedicated streets.	Achieved	Planning & Development	There are shared driveways.
1987 Appendix A		Minimum park access easements for vehicular and pedestrian traffic	Partially Achieved	Planning & Development	Continues as development happens.
1987 Appendix A		To minimize erosion, drainage discharge from private property to park land shall be approved on the site plan.	Achieved	Planning & Development	
1987 Appendix A		Any building with the rear of the structure oriented to the park space shall maintain a setback as required by the Ordinance and shall provide a living screen on the inside of the rear property line.	Partially Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987 Appendix C		Raised Islands: Reduce the 8' buffer strip to 4'.	Not Pursued	Planning & Development	
1987 Appendix C		Area of Raised Islands: Reduce the 180 square feet to 90 square feet. This will still allow for planting of 3 to 4 inch caliper trees.	Not Pursued	Planning & Development	
1987 Appendix C		Interior Parking: Eliminate the interior parking at both ends because none of the sites are large enough in the Wolf Pen Corridor.	Not Pursued	Planning & Development	
1987 Appendix C		Peripheral Parking: Increase the 20 space minimum to 25 parking spaces.	Not Pursued	Planning & Development	
1987 Appendix D		Preserve the natural setting of the creek while conveying the 100-year flood waters of the fully developed Wolf Pen watershed in a natural drainageway in lieu of a man-made channel of concrete or similar material.	Achieved	Planning & Development	
1987 Appendix D		The initial acquisition in the floodway and the minimum reservation line.	Partially Achieved	Planning & Development	Significant progress was made. Although all minimum reservation area was not acquired, a significant portion was. The floodway and minimum reservation line is recommended to be dedicated to the City for drainage and public open space use.
1987 Appendix D		In the event the developer does not dedicate the floodway and opts to bear the cost of the drainage improvements, the developer shall improve the drainageway and maintain the floodway to City Standards.	Achieved	Planning & Development	To date, no private proposals for dedication remain.
1987 Appendix D		The developer, or property owner, may reclaim the flood fringe subsequent to reclamation plans approved by the City Engineer.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.

WOLF PEN CREEK SMALL AREA PLAN AUDIT (1987)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1987 Appendix D		Flood fringe areas not reclaimed by the developer may be acquired by the City through dedication.	Achieved	Planning & Development	Reflected in 1998 Ordinance No. 1819.
1987 Appendix D	WPC 5	Construct all cultivated beds to allow proper drainage, irrigation, and fertilization.	Achieved	Capital Improvement Projects	
1987 Appendix D	WPC 8	Establish access points for maintenance equipment for all trails, ponds, and public facilities.	Achieved	Parks & Recreation	Access points have been created at Dartmouth and Holleman.
1987 Appendix D		Consider Wolf Pen Creek as a separate district for maintenance and operation purposes, rather than “attached” to existing crews.	Not Pursued	Parks & Recreation	The City currently utilizes a quadrant system, though this action may be pursued in future plans.
1987 Appendix D		Conduct an internal staff reorganization study to determine the best course of action for coordinating and supervising maintenance operations of the project.	Not Pursued	Parks & Recreation	This item may be incorporated in future plans.



Appendix B:

Northgate (1996-2003)

Online Resources

NORTHGATE SMALL AREA PLAN AUDIT (1996 AND 2003)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.21		Provide guide signs to direct commercial traffic to area parking facilities.	Achieved	Capital Improvement Projects	
1996.22	NG 1	Upgrade existing substandard water mains to 8-inch or 10-inch water transmission mains.	Achieved	Water Services	The lines that were undersized in 1996 have since been upsized to 8" or greater where they are needed. If the Northgate park is ever converted into a dense development, there is one 2" line along Boyett Street between Cherry Street and Spruce Street that would need to be upsize, but that is highly unlikely.
1996.25		Specifically model the Northgate area to determine if there are any negative impacts as a result of increased development and stormwater run-off,	Achieved	Planning & Development	Site by site models are created as development occurs.
1996.28		Encourage the development of new retail/commercial/office space that maximizes Northgate's proximity to the University and its location along three State-controlled roadways.	Achieved	Economic Development	There has been market driven development of new retail and restaurants, with a significant increase in student housing to drive resident population in Northgate, aided by zoning flexibility for multi-story developments.
1996.28		Provide opportunities for existing District businesses to expand and relocate within Northgate.	Achieved	Economic Development	City established a grant-funded facade improvement program for existing businesses.
1996.28		Create a safe, secure, and attractive campus-area neighborhood that provides an alternative for student apartments/housing that is within walking distance of the main (east) campus.	Achieved	Community Services	Redevelopment continue to occur.
1996.28		Create a "gathering place" in the commercial core of Northgate that would be patronized by students and City residents alike.	Achieved	Planning & Development	Achieved through the development of the Promenade.
1996.29	NG 4	Develop Strategic Parcels.	Partially Achieved	Economic Development	The City developed the Second Street Promenade, Patricia Street Promenade, and College Main promenade to provide pedestrian access and public spaces.
1996.32	NG 5	Develop more dense apartments and "private dorms" in the interior of Northgate.	Achieved	Economic Development	There has been construction of numerous student-focused multistory apartment complexes, specifically along the area bound by Wellborn Rd., University Drive, and Church Ave, aided by zoning flexibility for multi-story developments.
1996.32		Develop a linear park in the northern portion of Northgate to act as a buffer for Northgate, add new park space for residents, add new permeable land for stormwater run-off, and which could connect to the University's Hensel Park (on the eastside of College Avenue/SH 308 in the City of Bryan).	Partially Achieved	Capital Improvement Projects	Northgate Park was developed.
1996.32		Develop the vacant land currently owned by the University as "market housing", townhomes and condominiums for sale rather than as rental apartments. This would be oriented to married students, graduate students, or those that want to live near a major university. Parents might also be interested in purchasing a unit and selling it after graduation as a way to reduce living expenses for their children.	Unknown	Capital Improvement Projects	

NORTHGATE SMALL AREA PLAN AUDIT (1996 AND 2003)

PAGE #	MAP #	ACTION ITEM		CITY DEPARTMENT	ACTION UPDATE
1996.35	NG 6	Develop a promenade/plaza generally along the existing Patricia Avenue alignment.	Achieved	Economic Development	Patricia Street was completed in the early 2000s.
1996.35		Develop retail building at northwest corner of Boyett and Patricia Street which would accommodate all of the 301 Patricia Street tenants and the Christian Science Reading Room.	Not Pursued	Economic Development	Waiting for private development to occur.
1996.35		Consolidate existing under-utilized areas into more efficient off-street parking lots, especially in the area behind Shadow Canyon nightclub.	Unknown	Capital Improvement Projects	
1996.35	NG 10	Retain, rehabilitate, or sell City-owned retail building at northeastern corner of Patricia Street and College Main; could also be removed to allow for a larger promenade gateway.	Achieved	Capital Improvement Projects	
1996.37		Develop mixed-use products such as a hotel, conference center, and associated parking improvements in Subarea 2.	Partially Achieved	Economic Development	Parking garage constructed and currently maintained by the City. Pursued opportunities through potential public/private partnerships; yet to develop.
1996.37		To accommodate core development, develop satellite lots north of Church Avenue.	Achieved	Planning & Development	Achieved through the development of the Northgate Garage.
1996.37		To accommodate core development, satellite lots north of Church Avenue would be necessary to accommodate the increased demand.	Achieved	Planning & Development	Achieved through the development of the Northgate Garage.
1996.37		Pursue further development of detailed design standards for the promenade and plaza.	Achieved	Planning & Development	Achieved through guidelines in Zoning Ordinance 1638, carried into U.D.O., Northgate Design Guidelines, and ultimately the U.D.O.
1996.40		Pursue additional off-street Core Area parking.	Achieved	Community Services	The College Main parking garage is in place.
1996.40		Accommodate long-term parking demand (longer than 1 hour) in off-street facilities	Achieved	Planning & Development	Achieved through the development of the Northgate Garage.
1996.42		Implement suggested cross-sections for different classifications of street as shown in Plan.	Partially Achieved	Public Works	Some portions of the Type A streets listed were reconstructed (either by redevelopment or CIP) with wider sidewalks, trees, pedestrian lighting, and benches. These include College Main, Nagle, Boyett, and Cross. Wider sidewalks were constructed along University Drive in conformance with the plan. Fig 20-24 show different street cross-sections. In general, streets should include 10-16 ft sidewalks, pedestrian lighting, and trees with some streets requiring benches.

NORTHGATE SMALL AREA PLAN AUDIT (1996 AND 2003)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.42-4		All retail, commercial, and office development is to be located generally along Type "A" streets. This development will be located: between University drive/ FM 60, Church Avenue, Wellborn Road/FM 2514, and College Avenue/SH 308; along College Avenue/SH 308 (the Albertson's shopping center); and along Wellborn Road/FM 2514 at the intersection with Church Avenue	Achieved	Planning & Development	Achieved through the adoption of Ordinance 2195 in 191996.
1996.44		Residential development in Northgate will be with multi-family (attached) or owner-occupied (attached dwelling units. No additional single-family (detached) is planned for Northgate. This development is to be located generally between Wellborn Road/FM 2514, Church Avenue, Nagle Street, and the College Station city limit, and between Nagle Street, Cross Street, College Avenue/SH 308, and the College Station city limit.	Achieved	Planning & Development	Achieved through the adoption of Ordinance 2195 in 191996.
1996.44		As Northgate develops, the City should encourage mixed-use developments	Achieved	Planning & Development	Achieved through the adoption of Ordinance 2183 in 191996.
1996.44		Churches may be located anywhere in Northgate	Achieved	Planning & Development	Achieved, reflected in Amended Zoning Ordinance 1638 Section 8.12, with a conditional use permit. Carried into U.D.O.
1996.44		All new retail, commercial, and office buildings should not be greater than two stories. Overall building height should not be greater than 2 stories. Overall building height should not be greater than 45 feet (incorporating HVAC, roof systems, vent stacks, chimneys, etc.).	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines. (Exceptions include: the proposed hotel development (maximum of 9 stories); the proposed Nagle parking garage (maximum of 36 feet or 4 levels); retail, commercial, and office buildings may be allowed to be up to 3 stories if an elevator is provided. In this case, the overall height of the building may not exceed 60 feet.)
1996.45		Update streetscape guidelines according to Figures 20-24	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.
1996.50		All residential buildings should not be greater than 2 stories. Overall building height should not be greater than 35 feet (incorporating roof systems, vent stacks, chimneys, etc.). If an elevator is provided, buildings may be up to 3 stories and may not exceed 45 feet.	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines.
1996.50		Church steeples may be a maximum of 75 feet	Not Pursued	Planning & Development	
1996.50		All new retail, commercial, or office developments on Type "A" or "B" streets should be located on the property line (or as near as possible). Corner locations should be oriented to both the front and corner property lines	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines.
1996.50		All new residential developments on Type "A" or "B" streets should be setback 15 feet from the property line in order to provide maximum rear setbacks. Corner locations should be oriented close to both the front and corner property lines.	Achieved	Planning & Development	
1996.50		Churches should conform to the same standards as retail/commercial/office developments.	Achieved	Planning & Development	Reflected in the U.D.O.

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1996.50		Retail, commercial, and office buildings in Northgate should generally conform to traditional "Texana" architectural style, as typified by the Aggie Credit Union building. Buildings must have a masonry facade, utilizing brick, split-face CMU, or other similar material (stone should be permitted as a base, exterior wainscot, or first floor surface material). Masonry colors should range from beige to light sand. Other building designs and materials may be considered for approval on a case-by-case basis. All new construction or renovation designs must be submitted to the City for approval prior to construction.	Achieved	Planning & Development	While colors are not specified, general guidance is reflected in 1998 Northgate Design Guidelines.
1996.50-1		Buildings in the residential portion of Northgate should generally conform to a traditional "Texana" architectural style. Buildings must have a brick masonry facade with colors ranging from sand to light red. Mottled or variegated types should not be permitted. Other building designs and materials may be considered for approval on a case-by-case basis. All new construction or renovation designs must be submitted to the City for approval prior to construction.	Achieved	Planning & Development	While colors are not specified, general guidance is reflected in 1998 Northgate Design Guidelines.
1996.51		All business signs in Northgate should be wall-mounted signs and may be illuminated. Wall-mounted signs must be mounted parallel with, not perpendicular to, the wall-face. Billboards and pole-mounted signs should not be permitted.	Partially Achieved	Planning & Development	Partially reflected in Northgate Design Guidelines, Amended Zoning Ordinance 1638, and carried into U.D.O.
1996.51		All signs in Northgate's residential areas should be wall-mounted signs. Signs should only be for the purpose of indicating the name of the residential development (apartments, condominium, etc.) or for informative/regulatory purposes. Wall-mounted signs should be mounted parallel with, not perpendicular to, the wall-face. Billboards and pole-mounted signs should not be permitted.	Partially Achieved	Planning & Development	Partially reflected in Amended Zoning Ordinance 1638, carried into U.D.O.
1996.51		Churches may have either wall-mounted signs or monument signs which are consistent with the City's sign ordinance.	Achieved	Planning & Development	Reflected in the U.D.O., not specific to churches.
1996.51		Real estate signs ("For Sale" and "For Rent/Lease") should conform to City specifications for size and placement.	Not Pursued	Planning & Development	
1996.52		Dumpsters and other similar receptacles should be kept in the rear of all retail, commercial, and office buildings. Businesses located between University Drive/ FM 60 and Church Avenue should screen dumpsters from view using masonry or metal fencing, or landscaping. Screening plans should be approved by City staff. Businesses may "group" dumpsters together in a common screened areas to consolidate these uses.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.
1996.52		For residential developments with more than four units in a single building, dumpsters and other similar receptacles should be kept in the rear of the residential building and be screened from view using wooden or masonry fencing, or landscaping. Screening plans should be approved by City staff.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.

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PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.52		Awnings are encouraged for retail/commercial/office buildings along University Drive/FM 60 and College Main. Awnings must be permanently affixed structures which do not obscure the second floor. Signs may be incorporated into the awning design, but the awnings themselves may not be illuminated. Awning colors must be consistent with the suggested building design for Northgate.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.
1996.52		Awnings are encouraged for residential buildings along both Type "A" and "B" streets. Awnings must be permanently affixed structures which do not obscure the second floor. Signs may not be incorporated into the awning design. Awning colors must be consistent with the building design and the overall design of Northgate.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.
1996.52		Churches should conform to the same standards as retail/commercial/office development.	Achieved	Planning & Development	Reflected in the U.D.O.
1996.53		"Storefront" windows are encouraged for first-floor businesses. Second-floor windows should be vertical proportioned, such as individual casement windows. Continuous "ribbon" window systems with glazed curtain walls should not be permitted.	Partially Achieved	Planning & Development	The latter half is reflected in the Amended Zoning Ordinance 1638, carried into U.D.O. For retail/commercial/office areas.
1996.53		Change parking requirements to 1 space for each bedroom per dwelling unit. For residential developments with more than four dwelling units per building, parking should be accommodated behind the building. If front head-in parking is provided, all spaces must be completely contained within the property line.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O. Intent: adequately accommodate the resident parking demand off-street in order to allow additional on-street parking for Northgate visitors and customers.
1996.53		It is recommended that churches provide 4 spaces for each 1,000 square feet building area for other buildings (offices, education centers, recreation centers, day care, etc.). Front head-in parking should be allowed only by variance. Churches are encouraged to "pool" their lots with adjacent businesses and churches to create larger surface parking facilities.	Partially Achieved	Planning & Development	Front head-in parking has been disallowed.
1996.53		Regarding retail/commercial/office, off-street parking should be provided at a ratio of 4 spaces for each 1000 square feet of leasable area, as currently required by the City Amended Zoning Ordinance 1638, carried into U.D.O.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.
1996.53		Regarding residential, the current City Amended Zoning Ordinance 1638, carried into U.D.O. requires a minimum of 1.5 spaces per unit for apartment/ multi-family developments, with a maximum of 3 spaces per unit. It is recommended that in the Northgate area, this requirement be changed to 1 space for each bedroom per dwelling unit. For residential developments with more than four dwelling units over building, parking should be accommodated behind the building. If front head-in parking is provided, all spaces must be completely contained within the property line.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.

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PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.54		Businesses with large blank wall are encouraged to utilize graphic treatment in harmony with Northgate's design to mitigate the impact of such large blank surfaces. Faux finishes and trompe l'oeil are appropriate mechanisms. Designs should be approved by the City prior to implementation.	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines.
1996.54		Each intersection in Northgate should have a standard-size street sign which indicates each street name, along with the block number (in hundreds). Signs should have white lettering on a maroon background field, with the City's logo in the left margin.	Partially Achieved	Planning & Development	While the maroon background did not meet a state street signage standard, there were some toppers installed between 2006-2008. The item has not been pursued further.
1996.54		Sloped roofs on residential structures should be oriented with the gable towards the front. Retail, commercial, and office building roofs may be either flat-roofed or gabled - if the latter, they should also be oriented with the gable towards the front	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines and Zoning Ordinance 1638, carried into U.D.O.
1996.54		Porches are encouraged on residential buildings and should be permitted to encroach within the setback line.	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines.
1996.55		Type "A" streets should be landscaped in conformance with the City's Streetscape Plan using either live oaks or red tree crepe myrtles.	Partially Achieved	Public Works	Reflected in 1998 Northgate Design Guidelines. Additionally, it appears that most of the trees planted are either crepe myrtles or live oaks.
1996.55		Type "A" streets should be landscaped in conformance with the City's Streetscape Plan using either live oaks or red tree crepe myrtles.	Achieved	Capital Improvement Projects	
1996.55		All blocks within Northgate should have curbs and gutters which conform to City specifications. Storm sewers would be installed by the City as Northgate redevelops.	Achieved	Planning & Development	Reflected in Zoning Ordinance 1638, carried into U.D.O.
1996.55		Sidewalks which follow standard City specifications are to be provided on every blockface of every street in Northgate.	Achieved	Planning & Development	The majority, if not all, of the sidewalks are at least 7'. The rest are individual developments.
1996.55		On-street bicycle lanes which share the travel lane with automobiles should be allowed throughout Northgate. Bicycle lane signage should be located along University Drive/Fm 60, College Main, Nagle Street, and Church Avenue.	Partially Achieved	Planning & Development	
1996.55		Businesses along University Drive/FM 60 are encouraged to install bike racks to accommodate/consolidate bicycle parking.	Achieved	Planning & Development	Reflected in Amended Zoning Ordinance 1638, carried into U.D.O.
1996.55		Benches should be incorporated on Type "A" streets and be constructed of materials designed to withstand weather and potential abuse, such as wrought iron or aggregate concrete, with pressure-treated wood seats. Materials which are subject to weather damage such as recycled plastic should not be used.	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines.

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PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.56		Lighting should be incorporated on Type "A" streets. Light standards should be constructed of materials designed to withstand weather and potential abuse, such as wrought iron, be pedestrian-scale height (12 feet to 15 feet), and be compatible with Northgate design (traditional, as opposed to contemporary).	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines.
1996.56		Trash receptacles should be incorporated on Type "A" streets and be constructed of materials designed to withstand weather and potential abuse, such as wrought iron or aggregate concrete. Materials which are subject to weather-damage such as recycled plastic or wood should not be used. Trash receptacles should be located on Type "A" streets at each intersection .	Achieved	Planning & Development	Reflected in 1998 Northgate Design Guidelines.
1996.61		Pursue every available grant program, including ISTEA funds, CDBG funds, and State park grants.	Achieved	Community Services	Staff continues to search for grants that would meet the needs of projects in Northgate.
1996.61		Establish the Northgate District Association.	Partially Achieved	Community Services	Northgate District Association no longer meets. Representative did not find value in meeting with City representatives as an association.
1996.61		Establish a Northgate TIF District.	Achieved	Community Services	
1996.62		Bring together public and private sectors to redevelop and revitalize Northgate; encourage public/private sector cooperation.	Achieved	Neighborhood Service	Public and private redevelopments continue to be planned and constructed.
1996.62		Help fund the NDA.	Partially Achieved	Community Services	The NDA was funded initially.
1996.62	NG 11	Develop the parking garage.	Achieved	Community Services	College Main parking garage is in place.
1996.63		Upgrade water and wastewater mains.	Partially Achieved	Water Services	Mains of primary importance: Along Boyett Street, Church Avenue, Nagle Street, and Patricia Street. Could be funded either through a TIF district, through CIP funds, or from the City's general revenues.
1996.63		Develop linear park as a City/University joint venture.	Achieved	Parks & Recreation	Northgate Park developed and open.
1996.63		Rebuild Type "A" and "B" streets to meet existing standards for curb and gutter, storm sewers, and sidewalks. Street furniture, landscaping, and lighting could also be installed at that time. Could be funded either through a TIF district, through CIP funds, or from the City's general revenues.	Partially Achieved	Public Works	Several of these streets have been improved, although there are some that are not developed.
1996.63		Widen the University Drive/FM 60 sidewalk to approximately 7 feet wide from Nagle Street to just south of Boyett Street.	Achieved	Capital Improvement Projects	

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PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.63		Develop linear park.	Achieved	Community Services	Northgate Park was developed and is open.
1996.63	NG 14	Provide off-street parking in the Core area.	Achieved	Community Services	Parking garage and surface lot are in place.
1996.63		Incorporate the suggested redevelopment guidelines into an "overlay district" to be applied to the entire Northgate District. The City could also rezone the areas within Northgate as a "Planned Development" district which would incorporate the 1998 Northgate Design Guidelines.	Achieved	Planning & Development	Achieved through the adoption of Ordinance 2183 in 191996, Northgate District Established.
1996.64		Jointly patrol the Core area with University.	Partially Achieved	Police Department	Police staffing at Northgate has increased in both presence and visibility since 191996.
1996.64		Jointly patrol the Core area.	Achieved	Community Services	Northgate District staff are responsible for parking operations and district management.
1996.65		Develop two off-street parking lots for 250 cars between College Main, Boyett Street, Church Avenue, and Patricia Street .	Partially Achieved	Capital Improvement Projects	The surface lot performs this function.
1996.65	NG 12	Widen University Drive/FM 60 sidewalk. (College Main to Wellborn Road/FM 2514 - 900 LF).	Achieved	Capital Improvement Projects	
1996.65		Develop two off-street parking lots for 250 cars between College Main, Boyett Street, Church Avenue, and Patricia Street	Partially Achieved	Community Services	Surface lot on Patricia, Boyett, & Church
1996.65		Patricia Street Redevelopment (Wellborn Road to College Main - 1,100 LF)	Not Pursued	Community Services	
1996.66		Repair/upgrade water and sewer mains. Patricia Street Redevelopment (Wellborn Road to College Main - 1,100 LF).	Partially Achieved	Water Services	
1996.66		Repair/upgrade water main. Boyett Street Redevelopment (University Drive to City Limits - 2,000 LF).	Partially Achieved	Water Services	
1996.66		Repair/upgrade water main. Church Avenue Redevelopment (Wellborn Road to Nagle Street - 2,200 LF).	Achieved	Water Services	
1996.66	NG 2	Repair/upgrade water main. Nagle Street Redevelopment (University Drive to City Limits - 1,800 LF).	Partially Achieved	Water Services	
1996.66		Repair/replace curb and gutter and rebuild roadway. Patricia Street Redevelopment (Wellborn Road to College Main - 1,100 LF).	Partially Achieved	Public Works	Wellborn to First was removed for interchange. Boyett to Main part of promenade.

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PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.66		Repair/replace curb and gutter and rebuild roadway. Nagle Street Redevelopment (University Drive to City Limits - 1,800 LF).	Achieved	Public Works	
1996.66		Type "A" street landscaping. College Main (University Drive to City Limits - 1,860 LF).	Partially Achieved	Public Works	
1996.66		Repair/upgrade water and sewer mains	Partially Achieved	Water Services	
1996.66		Type "A" street landscaping. Nagle Street (University Drive to City Limits 1,800 LF).	Partially Achieved	Public Works	
1996.66		Type "A" street landscaping. Boyett Street (University Drive to City Limits - 2,000 LF).	Partially Achieved	Public Works	
1996.66		Type "A" street landscaping. Cross Street (College Avenue to Nagle Street - 1,200 LF).	Partially Achieved	Public Works	
1996.66		Type "A" street landscaping. University Drive (Wellborn Road to College Avenue - 3,100 LF).	Not Pursued	Public Works	
1996.66		Develop pedestrian promenade and plaza.	Achieved	Capital Improvement Projects	
1996.66		Patricia Street Redevelopment (Wellborn Road to College Main - 1,100 LF).	Not Pursued	Capital Improvement Projects	
1996.66		Install pedestrian-scale lighting. Patricia Street Redevelopment (Wellborn Road to College Main - 1,100 LF).	Not Pursued	Capital Improvement Projects	
1996.66		Improve landscaping and lighting. Patricia Street Redevelopment (Wellborn Road to College Main - 1,100 LF).	Not Pursued	Capital Improvement Projects	
1996.66		Install colored stamped concrete sidewalk. Boyett Street Redevelopment (University Drive to City Limits - 2,000 LF).	Partially Achieved	Capital Improvement Projects	
1996.66		Install pedestrian-scale lighting. Boyett Street Redevelopment (University Drive to City Limits - 2,000 LF).	Not Pursued	Capital Improvement Projects	
1996.66	NG 13	Install stamped concrete sidewalk. Church Avenue Redevelopment (Wellborn Road to Nagle Street - 2,200 LF).	Achieved	Capital Improvement Projects	
1996.66		Install pedestrian-scale lighting. Church Avenue Redevelopment (Wellborn Road to Nagle Street - 2,200 LF).	Not Pursued	Capital Improvement Projects	

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PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
1996.66		Install colored stamped concrete sidewalk. Nagle Street Redevelopment (University Drive to City Limits - 1,800 LF).	Partially Achieved	Capital Improvement Projects	
1996.66		Install pedestrian-scale lighting. Nagle Street Redevelopment (University Drive to City Limits - 1,800 LF).	Not Pursued	Capital Improvement Projects	
1996.66		Develop pedestrian promenade and plaza	Achieved	Community Services	Patricia Street promenade between College Main and Boyett was developed.
1996.67		Repair/upgrade water and sewer mains.	Achieved	Water Services	
1996.67		Repair/install storm sewer mains.	Achieved	Water Services	This is generally done in tandem with street reconstruction and continues to be pursued.
1996.67		Repair/replace curb and gutter and rebuild roadway.	Partially Achieved	Public Works	Many of the streets have been rebuilt either by the city or development.
1996.67		Develop public building in linear park near Boyett Street.	Not Pursued	Capital Improvement Projects	
1996.67		Install standard concrete sidewalk.	Partially Achieved	Capital Improvement Projects	
1996.67	NG 3	Develop linear park	Achieved	Community Services	Northgate Park was developed and is open.
2003.13		To offset the gap between low rental rates and high land prices, the City should look to subsidize the purchase of land in the district.	Not Pursued	Economic Development	Land values have increased significantly, along with private interest in development without City subsidy.
2003.15		Make improvements to University Drive by adding bulb-outs at corners, reducing lane widths, adding medians, widening sidewalks, lowering the speed limit and tree-lining the streets.	Partially Achieved	Public Works	Medians were added, sidewalks were improved along University, other items were not addressed or are unknown.
2003.15		Enhance Linkages: make improvements to University Drive by adding bulb-outs at corners, reducing lane widths, adding medians, widening sidewalks, lowering the speed limit and tree-lining the streets.	Achieved	Community Services	University Drive pedestrian improvement projects have been completed.
2003.20		In residential areas, the city should negotiate rear lot utility easements in exchange for upgraded services to the owners.	Unknown	Water Services	
2003.20		An overall demand analysis should be performed to assess the excess capacity in the Northgate District.	Achieved	Electrical Services	Services are assessed as development, redevelopment, and remodels occur.
2003.20		In residential areas, the city should negotiate rear lot utility easements in exchange for upgraded services to the owners.	Unknown	Public Works	

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2003.20		Along streets with rights-of-way which are too narrow to accommodate streetscape improvements, the City should pay for, and construct, improvements in exchange for streetscape easements granted by the property owners.	Not Pursued	Public Works	No streetscape easements have been acquired. All City maintained streetscape is located within the ROW.
2003.20		The drainage should be re-engineered and rebuilt to provide a regional detention basin for the area.	Not Pursued	Public Works	Those projects that have been required to provide on site detention should be allowed to redevelop their sites once this regional detention facility is in place. New utility mains and services lines should be routed down access easements at the rear of existing properties.
2003.20		Where the 100-year floodplain intrudes into the district near College Main, channelization of the creek should be pursued to free up adjacent land for neighborhood park development.	Not Pursued	Public Works	
2003.29		Extend entertainment venue hours.	Achieved	Community Services	Hours were extended to closing at 2:00 AM.
2003.30		Work with TXDOT and the University to formulate a plan which converts University into a mixed-use, mixed mode Boulevard.	Not Pursued	Capital Improvement Projects	
2003.30		Create a Transportation Node near the municipal parking garage for College Station, Bryan, and Northgate to serve as a hub for all modes of transportation between the district, Bryan, TAMU, and College Station.	Not Pursued	Capital Improvement Projects	
2003.30		Create a Management District.	Achieved	Community Services	City-staffed district management model was created.
2003.30		Create a Parking Management Entity.	Achieved	Community Services	The Northgate District management model was created.
2003.31		Upgrade utilities.	Partially Achieved	Water Services	The City does not proactively pursue getting rid of rear lot easements so it is unclear if it is being pursued. When development does come through, the City attempts to relocate utilities if possible, but many times it is not feasible with a small development that does not take the whole block.
2003.31		Pursue bike/foot patrols.	Achieved	Police Department	The full-time College Station Tourism & Entertainment Policing Unit (CSTEP) was started in 2013. This unit patrols Northgate nearly every Thursday, Friday, and Saturday night.
2003.31		Incorporate a grocer to stay in the district for fresh produce and groceries. The district would benefit greatly from a retail anchor, such as a grocery store. An anchor located on the east end of Church would help invigorate retailing westward along Church.	Not Achieved	Economic Development	No grocer currently in Northgate, though staff has pursued conversations with grocery stores as a part of evolving mixed-use development.
2003.31		Upgrade Infrastructure: Alleys	Not Pursued	Capital Improvement Projects	

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2003.37		Establish the revolving loan program with a group of local lenders [as detailed in the last chapter] with seed money of at least \$500,000.	Not Pursued	Economic Development	
2003.37		Establish a redevelopment authority, or utilize an existing one, to take temporary title to infill properties. Redevelop those properties according to the district plan and transfer title back to the original owner. During the redevelopment period (no longer than 18 months) subsidize the profit of the properties' owner to make the redevelopment program acceptable to non-resident owners.	Not Pursued	Economic Development	
2003.37		Establish a property development consortium to purchase multiple contiguous properties and syndicate the ownership of all previous individual owners. After redevelopment, the consortium would lease and manage the property, treating former individual owners as limited partners.	Not Pursued	Economic Development	Not pursued due to market demand.
2003.37		Establish the revolving loan program with a group of local lenders as detailed in the last chapter with seed money of at least \$500,000.	Partially Achieved	Community Services	CDBG was utilized for facade improvement program - no other funding was made available.
2003.37		Purchase key properties and resell them to developers to accomplish projects that reinforce the district vision. Subsidize each resale as necessary to ensure project feasibility.	Partially Achieved	Community Services	There is a possible partnership for surface lot redevelopment.
2003.37		Establish a redevelopment authority, or utilize an existing one, to take temporary title to infill properties.	Not Pursued	Community Services	Redevelop those properties according to the district plan and transfer title back to the original owner. During the redevelopment period (no longer than 18 months) subsidize the profit of the properties' owner to make the redevelopment program acceptable to non-resident owners.
2003.37		Establish a property development consortium to purchase multiple contiguous properties and syndicate the ownership of all previous individual owners.	Not Pursued	Community Services	After redevelopment the consortium would lease and manage the property, treating former individual owners as limited partners.
2003.38		Continue Church Street enhancements.	Achieved	Public Works	The realignment of the east end of Church Street should be pursued along with construction of the streetscape improvements.
2003.38	NG 7	Construct a "Live from Northgate" pavilion in place of community dumpsters.	Achieved	Economic Development	Pavilion was constructed with utilities to support concerts. One pavilion had electrical updated to accommodate a stage.
2003.38		Partner with TAMU to build an urban village on the Brazos Duplex site which embodies mixed-use, mixed income, and mixed housing types combined with neighborhood retail.	Achieved	Economic Development	TAMU entered into public/private partnership, which was Achieved as U Centre at Northgate.
2003.38		Pursue University Boulevard calming with TXDOT and TAMU.	Partially Achieved	Capital Improvement Projects	
2003.38		Replace metered parking on most streets, particularly those that are catering to quick turnover retailing.	Achieved	Community Services	2-hour parking implemented in high traffic areas - currently managed with ParkMobile. This would not affect already existing bike lanes.
2003.38		Pursue a work/live project on City land on Wellborn.	Not Pursued	Community Services	This was sold and developed as The Domain. This is an immediate opportunity to take advantage of the positive effects of the restaurants on the west end of Church Street.

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PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2003.38		Pursue the infill project at the northeast and northwest corners of Church and First Streets.	Partially Achieved	Community Services	NW corner was developed as The Domain, plans in progress for NE corner.
2003.38		Promote retail projects at the corner of Boyette and Patricia to strengthen and anchor the promenade on the southwest corner of the existing parking lot.	Partially Achieved	Community Services	There is a possible partnership for surface lot redevelopment.
2003.38		Establish a District Management Coalition and coalesce all common district functions.	Achieved	Community Services	The Northgate District management model was created.
2003.38		Retrofit the garage with a more user friendly exit payment sequence and sell the garage to the Brazos County Transit Authority.	Unknown	Community Services	The current system is very user friendly; unknown regarding BTD.
2003.38		Adopt an overall Regulating Plan and Development Code.	Achieved	Community Services	NG UDO Development codes were adopted.
2003.38		Infill Pursuit: The Mud Lot represents a significant infill opportunity on the east end of Church Street to establish a pedestrian oriented mixed-use destination.	Partially Achieved	Planning & Development	This location was infilled by St. Mary's Catholic Church in 1997.
2003.40		Create a clear and aggressive parking management policy under the proposed Community Services which would combine all district parking under one entity.	Achieved	Community Services	The Northgate District management model was created.
2003.44		Channelize the creek between Boyette and Bryan city limits.	Partially Achieved	Public Works	Creek was not channelized, however property was purchased for Northgate Park.
2003.44		Pursue block infill with major land owner.	Not Pursued	Economic Development	Not pursued due to market demand.
2003.44		Pursue block infill with multiple landowners.	Not Pursued	Economic Development	Not pursued due to market demand.
2003.44		Pursue block infill with City sponsorship.	Not Pursued	Economic Development	Not pursued due to market demand.
2003.44		Organize an entity to facilitate 1031 exchanges & land swaps.	Not Pursued	Economic Development	
2003.44		Develop Anchor Tenant Action Plan: The City should engage the owners of Albertson's to retrofit the building as a District anchor by offering low interest loans and infrastructure upgrades such as the realignment of Church Street.	Not Achieved	Planning & Development	Plans were created and reviewed, but did not materialize.
2003.47		Pursue Church Street retail.	Partially Achieved	Economic Development	Zoning in place to encourage a variety of uses; private market has developed a limited number of restaurants with a heavy concentration of bars.
2003.48	NG 8	Develop an urban Square or Plaza	Achieved	Economic Development	Promenades at Patricia, College Main, and Second Street have been developed as public spaces.

NORTHGATE SMALL AREA PLAN AUDIT (1996 AND 2003)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2003.49		Pursue a Cultural/Science Center Anchor.	Not Pursued	Economic Development	
2003.50		Pursue an Education Complex Anchor.	Not Pursued	Economic Development	
2003.51		Pursue an Entertainment Cluster Anchor.	Not Pursued	Economic Development	
2003.51		Pursue a combination of the previous three suggestions.	Not Pursued	Economic Development	
2003.54		Set up a "quasi-public" redevelopment authority who would take temporary ownership of property and redevelop it utilizing a Housing Finance Authority approach.	Not Pursued	Community Services	
2003.55		Create a PID within the boundaries of the Northgate neighborhood.	Not Pursued	Community Services	This item is subject to future consideration.
2003.55		Establish a TIF or TIRZ.	Partially Achieved	Community Services	
2003.56		Create a Northgate Improvement District.	Not Pursued	Community Services	
2003.56		Create a Municipal Management District	Not Pursued	Community Services	
2003.57		Pursue EDA support in creating a district-wide storm water detention facility along the north edge of the area.	Not Pursued	Capital Improvement Projects	
2003.59		Utilize the services of a Housing Finance Authority in order to provide low interest funding for residential development within the area.	Not Pursued	Community Services	



Appendix C:

MEDICAL DISTRICT (2012)

Online Resources

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2011.83		Establish free wireless network covering the entire medical district.	Not Pursued	Public Works	Include access to:
					▪ Medical district management organization's website.
					▪ District business websites.
					▪ Directions.
					▪ Transit/shuttle service information.
					▪ Medical appointments.
					▪ Education/classes/seminars.
					▪ Special events and activities.
					▪ Special 'subscriber only' features, such as
					notifications to patrons, employees and residents
2012.07		Unfunded Thoroughfare: Rock Prairie E from SH 6 to Bird Pond	Partially Achieved	Transportation Planning	of the medical district.
					City capital project is underway for constructing the roadway and will be completed in 2025.
					Pvmt: 78ft
					Length: 5,200ft
					10ft Wide Southern sidewalk included.

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.07	MED 9	Unfunded Thoroughfare: Rock Prairie W from Longmire to Normand	Achieved	Transportation Planning	City capital project was completed in 2017. 4 Lane Minor Arterial
					Pvmt: 72ft
					Length: 1,800ft
					10ft Wide Southern sidewalk included.
2012.07	MED 10	Unfunded Thoroughfare: Bird Pond from Rock Prairie to Lakeway	Achieved	Transportation Planning	Street constructed by Midtown development in 2019. 4 Lane Minor Arterial
					Pvmt: 72ft
					Length: 2,800ft.
2012.07		Unfunded Thoroughfare: Bird Pond from Lakeway to SH 6	Partially Achieved	Transportation Planning	Two lanes constructed and right-of-way dedicated with private development in 2022. Remaining portions to be completed with future phase of Midtown development and future City capital project when funding is identified. 2 Lane Minor Collector
					Pvmt: 38ft
					Length: 2,000ft.
2012.07		Unfunded Thoroughfare: Pebble Creek from SH 6 to WD Fitch	Partially Achieved	Transportation Planning	Renamed Corporate Parkway. City capital project constructed a portion between SH 6 and Midtown Dr in 2019. Remaining portion to be future City capital project with future phases of Midtown Business Park. 4 Lane Major Collector
					Pvmt: 52ft
					Length: 7,900ft.

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.07		Unfunded Thoroughfare: Unnamed from Rock Prairie to Lakeway	Partially Achieved	Transportation Planning	The street will be constructed with a future phase of the Midtown development. 2 Lane Minor Collector
					Pvmt: 38ft
					Length: 2,300ft.
2012.07		Unfunded Thoroughfare: Barron from Lakeway to Rock Prairie	Not Pursued	Transportation Planning	This street was removed as part of amendments to the Thoroughfare Plan in 2017. 4 Lane Minor Arterial
					Pvmt:72ft
					Length: 5,400ft.
2012.07		Unfunded Thoroughfare: Double Mtn from Medical to Barron	Partially Achieved	Transportation Planning	Sections of Double Mountain Road have been constructed by private development with platting from 2019-2023. Remaining sections to be constructed by future development. 2 Lane Minor Collector
					Pvmt: 38ft
					Length: 5,100ft.
2012.07		Unfunded Thoroughfare: Normand from Graham to Arnold	Partially Achieved	Transportation Planning	Future street remains shown on Thoroughfare Plan. Funding for the future City capital project to construct it has not been identified. 2 Lane Minor Collector
					Pvmt:38ft
					Length: 1,900ft.
2012.07		Unfunded Thoroughfare: Lakeway from Medical to Barron	Partially Achieved	Transportation Planning	City capital project extended a two-lane section in 2019. Remaining two lanes will be constructed with future phase of Midtown development. 4 Lane Major Collector
					Pvmt:54ft
					Length: 3,000ft.

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.07	MED 11	Funded Thoroughfare: Lakeway from Barron to Spring Creek	Achieved	Transportation Planning	City capital project was completed in 2017 with street constructed as two lanes with two-way center turn lane. 4 Lane Major Collector
					Pvmt:54ft
					Length: 5,300ft.
2012.07		Funded Thoroughfare: Barron from SH6 to Lakeway	Not Pursued	Transportation Planning	This street was removed as part of amendments to the Thoroughfare Plan in 2017. 4 Lane Minor Arterial
					Pvmt:72ft
					Length: 2,000ft
2012.07	MED 12	Funded Thoroughfare: Rock Prairie Bridge	Achieved	Transportation Planning	City capital project was completed in 2014. 10ft Wide Southern sidewalk included.
2012.07	MED 13	Funded Thoroughfare: Rock Prairie W from SH6 to Longmire	Achieved	Transportation Planning	City capital project was completed in 2017. 6 Lane Major Arterial
					Pvmt: 81ft
					Length: 700ft
					10ft Wide Southern sidewalk included.
2012.07		Funded Thoroughfare: Rock Prairie E from Bird Pond to WD Fitch	Partially Achieved	Transportation Planning	City capital project to design roadway is underway. Construction is anticipated to be complete in 2028. 2 Lane Minor Collector R
					Pvmt: 30ft
					Length: 10,600ft

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.07	MED 14	Funded Thoroughfare: Normand from Rock Prairie to Arnold	Achieved	Transportation Planning	Street constructed by private development in 2013. 2 Lane Minor Collector
					Pvmt: 38ft
					Length: 800ft
2012.07		Future Thoroughfare: Rock Prairie E from Bird Pond to Barron	Partially Achieved	Transportation Planning	City capital project to design roadway is underway. Construction is anticipated to be complete in 2028. 3 Lane Major Collector
					Pvmt: 48ft
					Length: 4,300ft
2012.07		Future Thoroughfare: Rock Prairie E from Barron to WD Fitch	Partially Achieved	Transportation Planning	10ft Wide Southern sidewalk included.
					City capital project to design roadway is underway. Construction is anticipated to be complete in 2028. 4 Lane Minor Arterial
					Pvmt: 72ft
2012.07		Future Thoroughfare: Rock Prairie W from Normand to Rio Grande	Partially Achieved	Transportation Planning	Length: 6,000ft
					10ft Wide Southern sidewalk included.
					Future shared use path (sidewalk) remains shown on Bicycle, Pedestrian, and Greenways Master Plan. Funding for the future City capital project to construct it has not been identified. 4 Lane Minor Arterial
2012.07					Pvmt: 72ft
					Length: 2,000ft
					10ft Wide Southern sidewalk included.

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.07		Future Thoroughfare: Bird Pond from Rock Prairie to (north)	Partially Achieved	Transportation Planning	Realignment of street remains shown on Thoroughfare Plan. Funding for a future City capital project to construct it has not been identified. 4 Lane Minor Arterial
					Pvmt: 72ft
					Length: 1,000ft
2012.07		Future Thoroughfare: Double Mtn from Barron to Pebble Creek	Not Pursued	Transportation Planning	This street was removed as part of amendments to the Thoroughfare Plan in 2017. 2 Lane Minor Collector
					Pvmt: 38ft
					Length: 2,600ft
2012.08	MED 2	Unfunded Sanitary Mains: Lick Creek - Trunk Ph II from S of Pebble Creek Sub to WD Fitch	Achieved	Engineering	Diameter: 36in Length: 6,700ft
2012.08	MED 3	Unfunded Sanitary Mains: Spring Creek - Baseline C from WD Fitch to Baseline A / C fork	Achieved	Engineering	Diameter: 36in Length: 6,000ft
2012.08	MED 4	Unfunded Sanitary Mains: Spring Creek - Baseline A from Baseline A / C fork to Lift Station #2 (SH6)	Partially Achieved	Engineering	Currently built up to the end of midtown district, 90% design on the remainder. Diameter: 24in Length: 7,500ft
2012.08	MED 5	Funded Sanitary Mains: Lick Creek - Trunk Line Ph I from Lick Creek Plant to South of Pebble Creek Sub	Achieved	Engineering	Diameter: 36in Length: 5,400ft
2012.08		Future Sanitary Mains: Spring Creek - Baseline B from Baseline A / C fork to Lift Station #3 (SH6)	Partially Achieved	Engineering	90% design. Diameter: 24in Length: 5,200ft
2012.09		Unfunded Water Mains: Bird Pond from Rock Prairie to SH 6	Partially Achieved	Engineering	~460ft section remaining that will be built by the Midtown Development in a future phase. Diameter: 12in Length: 4,800ft
2012.09		Unfunded Water Mains: Pebble Creek from SH 6 to WD Fitch	Partially Achieved	Engineering	Diameter: 12in Length: 8,300ft
2012.09		Unfunded Water Mains: Unnamed from Rock Prairie to SH 6	Partially Achieved	Engineering	Rock Prairie to Lakeway (Now Midtown Dr.) - It is part of the Midtown PP. Diameter: 12in Length: 2,300ft
2012.09		Unfunded Water Mains: Barron from Lakeway to Rock Prairie	Partially Achieved	Engineering	Diameter: 12in Length: 5,400ft

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.09		Unfunded Water Mains: Barron from SH6 to Lakeway	Partially Achieved	Engineering	Diameter: 12in Length: 2,000ft
2012.09		Unfunded Water Mains: Double Mtn from Medical to Barron	Partially Achieved	Engineering	Removed. Diameter: 12in Length: 5,100ft
2012.09	MED 6	Unfunded Water Mains: Lakeway from Barron to Spring Creek	Achieved	Engineering	Diameter: 12in Length: 8,300ft
2012.09	MED 7	Unfunded Water Mains: Lakeway from Medical to Barron	Achieved	Engineering	Diameter: 12in Length: 3,000ft
2012.10	MED 8	Funded Water Mains: SH 6 from Rock Prairie to S&W	Achieved	Engineering	Diameter: 18in Length: 1,100ft
2012.10		Unfunded Greenway Trail: Lick Creek (northwest) from Hibiscus to Longmire	Partially Achieved	Transportation Planning	Future trail remains shown on Bicycle, Pedestrian, and Greenways Master Plan. Funding for a future City capital project has not been identified. Width: 10ft
					Length: 4,500ft
2012.10		Unfunded Greenway Trail: Longmire (west side) from Rock Prairie to Graham	Partially Achieved	Transportation Planning	Future trail remain shown on Bicycle, Pedestrian, and Greenways Master Plan. Funding for a future City capital project has not been identified. Width: 10ft
					Length: 1,900ft
2012.10		Unfunded Greenway Trail: Southwood Park (west) from Hibiscus to Rock Prairie	Partially Achieved	Transportation Planning	Future trail remain shown on Bicycle, Pedestrian, and Greenways Master Plan. Funding for a future City capital project has not been identified. Width: 10ft
					Length: 1,300ft
2012.10		Unfunded Greenway Trail: Southwood Park (Rio Grande) from Rock Prairie to Arnold	Partially Achieved	Transportation Planning	Portion from Arnold Rd being constructed by private development. Remaining section will be future City capital project when funding is identified. Width: 10ft
					Length: 1,200ft
2012.10		Unfunded Greenway Trail: Arnold Rd from Hibiscus to Normand	Partially Achieved	Transportation Planning	Trail remain shown on Bicycle, Pedestrian, and Greenways Master Plan. Funding for a future City capital project to upgrade existing sidewalk to a trail has not been identified. Width: 8ft
					Length: 650ft

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)					
PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.10		Unfunded Greenway Trail: LCT 14 from Lakeway to Lick Ck (B)	Partially Achieved	Transportation Planning	One section of trail was constructed by private development in 2019. Funding for remaining portion as a City capital project has not been identified. Width: 10ft
					Length: 4,600ft
2012.10		Unfunded Greenway Trail: LCT 11 from Rock Prairie to Lick Ck (B)	Partially Achieved	Transportation Planning	Portions of trail have been constructed with phases of the Midtown development with remaining portions being completed with future phases. Width: 10ft
					Length: 4,400ft
2012.10		Unfunded Greenway Trail: LCT 10 from Rock Prairie to Lick Ck (B)	Partially Achieved	Transportation Planning	Portions of trail have been constructed with phases of the Midtown development with remaining portions being completed with future phases. Width: 10ft
					Length: 4,000ft
2012.11	MED 15	Funded Greenway Trail: Lick Creek (east) from SH 6 & Barron to WD Fitch	Achieved	Transportation Planning	City capital project completed in 2016. Width: 10ft
					Length: 10,000ft
2012.11		Future Greenway Trail: Spring Creek from SH 6 to WD Fitch	Partially Achieved	Transportation Planning	Future trail remain shown on Bicycle, Pedestrian, and Greenways Master Plan. Funding for a future City capital project has not been identified. Width: 10ft
					Length: 6,600ft
2012.11		Future Greenway Trail: Gulf States Pipeline from SH 6 to WD Fitch	Partially Achieved	Transportation Planning	Future trail remain shown on Bicycle, Pedestrian, and Greenways Master Plan. Funding for a future City capital project has not been identified. Width: 10ft
					Length: 4,700ft
2012.11	MED 1	Southwood Athletic Park Improvements	Achieved	Parks & Recreation	Restrooms were added near the skate park. Approved in the 2022 GO Bond, new baseball restroom facilities slated to be completed by summer 2025.
2012.11		Parks & Open Space: Southeast Community Park	Partially Achieved	Parks & Recreation	Working on conceptual design of Texas Independence Park

MEDICAL DISTRICT SMALL AREA PLAN AUDIT (2011 AND 2012)

PAGE #	MAP #	ACTION ITEM	STATUS	CITY DEPARTMENT	ACTION UPDATE
2012.11		Neighborhood Parks and/or open spaces in conjunction with the village center and residential development	Partially Achieved	Parks & Recreation	Continuous work is being done with the community and developers to connect to Lick Creek Trail.
2012.12		Creation of Municipal Management District (MMD)	Achieved	Economic Development	Rock Prairie Management District No. 2 was established in 2015 and remains in effect. The MMD has issued bonds to pay for necessary infrastructure improvements.
2012.14		Creation of a Tax Increment Reinvestment Zone (TIRZ)	Achieved	Economic Development	West Medical District TIRZ #18 and East Medical District TIRZ #19 were established following adoption of this plan. TIRZ #18 was dissolved in FY18, while TIRZ #19 remains in effect. Proceeds can go to support infrastructure improvements.
2012.21		Creation of New Zoning District: Village Center	Partially Achieved	Planning & Development	Midtown did an extensive PDD aligned with this zoning category. General commercial is located where Village Center is shown in the MD Plan. The remaining shown area is City-owned and is zoned GC.
2012.37		Creation of New Zoning District: Medical Use	Not Pursued	Planning & Development	The zoning already allowed for medical uses. The land had some existing medical-related uses on it at the time; there is also a PDD covering the medical-related use areas. The corner of Longmire/Graham remains undeveloped.
2012.28		Creation of New Zoning District: Urban Residential - Open	Partially Achieved	Planning & Development	Elements of this are captured in the Midtown PDD.
2012.33		Creation of New Zoning District: Urban Residential - Restricted	Not Pursued	Planning & Development	



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

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October 7, 2024

Item No. 9.3.

2022 Bond Central Park Operations Shop Construction

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Aggieland Construction, Ltd., in the amount of \$3,673,500 for the construction of a new operations shop at Central Park, plus the City's contingency in the amount of \$360,000 for a total appropriation of \$4,033,500. 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 and award of the construction contract with Aggieland Construction, Ltd., for the construction of a new operations shop at Central Park

Summary: Under this contract, the existing Central Park operations building, constructed in 1982, will be demolished, making room for the new shop that will consist of two metal buildings. Building A, an 11,500 square foot building, will serve as a dual-purpose building. The first part of building A will consist of offices, restrooms, a breakroom, and a small conference room for meetings and training. The second part of building A will be for storage of equipment and tools. Building B, a 5,000 square foot building, will be used for storage of equipment and tools only. In addition to the two buildings, soil bins will be constructed, and the entire area will be paved and fenced for security purposes.

Nine (9) competitive sealed proposals were received and opened on September 4, 2024. Aggieland Construction, Ltd., was found to be the best value.

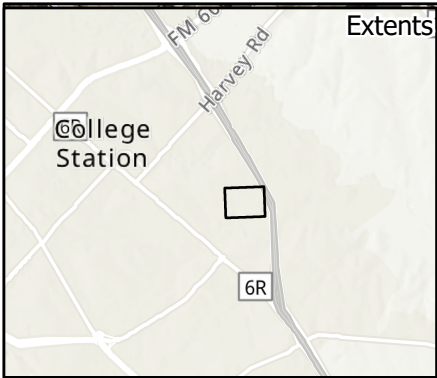
Budget & Financial Summary: Budget in the amount of \$7,475,000 is included for this project in the Parks Capital Improvement Projects Fund. A total of \$501,674 has been expended or committed to date, leaving a balance of \$6,973,326 for this contract and future costs. If this contract is approved, it will leave a balance of approximately \$2,900,000 in the project fund. Funding for this project was approved via the City of College Station's November 2022 General Obligation Bond Election.

Attachments:

1. Central Park Ops Shop Bid Tab
2. Central Park Ops Shop Map
3. Central Park Ops Shop Vendor-Signed Contract

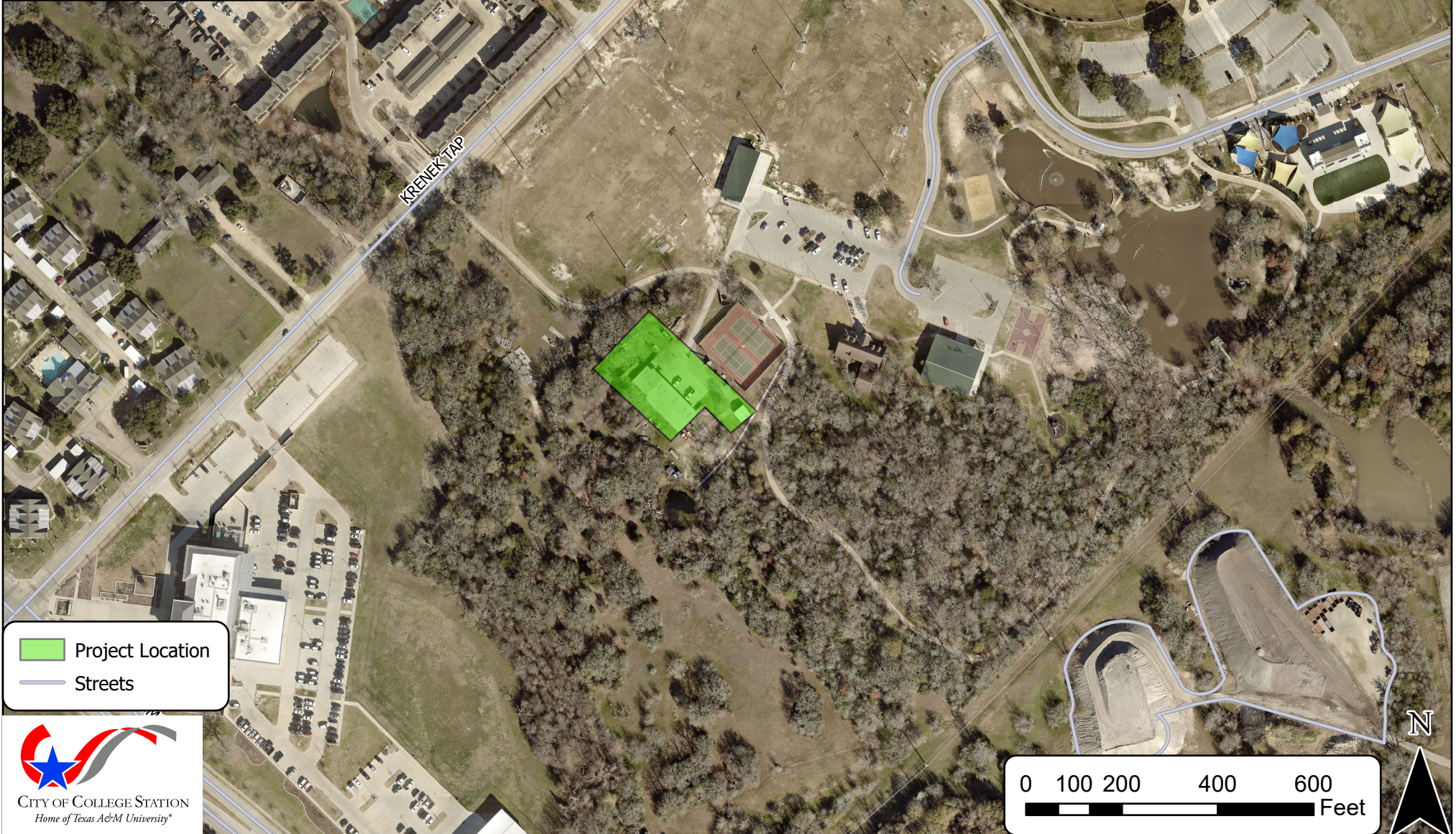
	AGGIELAND CONSTRUCTION	BARTLETT COCKE GENERAL CONTRACTOR	BROADBUSH CONSTRUCTION	CA WALKER CONSTRUCTION	CRAIN GROUP	DUDLEY CONSTRUCTION	JACODY CONSTRUCTION, LP	MAREK BROTHERS CONSTRUCTION, INC.	VAUGHN CONSTRUCTION
DESCRIPTION	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE
Base Bid	\$ 3,398,000.00	\$ 4,500,000.00	\$ 3,600,000.00	\$ 3,788,831.00	\$ 3,723,400.00	\$ 3,724,000.00	\$ 5,058,744.00	\$ 3,975,000.00	\$ 4,227,978.00
Alternate No 1, All Landscaping and Irrigation	\$ 28,000.00	\$ 39,000.00	\$ 36,096.00	\$ 62,000.00	\$ 58,600.00	\$ 30,000.00	\$ 25,720.00	\$ 65,000.00	\$ 25,527.00
Alternate No 2 Regular Duty Concrete and Mortared Common Rip Rap	\$ 167,000.00	\$ 167,000.00	\$ 113,201.00	\$ 110,000.00	\$ 108,000.00	\$ 128,000.00	\$ 103,505.00	\$ 140,000.00	\$ 127,317.00
Alternate No 3 Proposed public water line	\$ 49,000.00	\$ 71,000.00	\$ 38,243.00	\$ 43,400.00	\$ 39,600.00	\$ 41,000.00	\$ 52,134.00	\$ 65,000.00	\$ 37,723.00
Alternate No 4 Concrete Flume Deduct	\$ (6,000.00)	\$ (20,000.00)	\$ (28,981.00)	\$ (20,000.00)	\$ (23,000.00)	\$ (28,000.00)	\$ (20,500.00)	\$ (8,500.00)	\$ (24,189.00)
Alternate No 5 Electrical conduit from transformer to utility pole	\$ 31,500.00	\$ 54,000.00	\$ 24,400.00	\$ 27,750.00	\$ 25,300.00	\$ 32,000.00	\$ 24,851.00	\$ 30,000.00	\$ 61,088.00
TOTAL Sum of Base Bid and All additive Alternates	\$ 3,667,500.00	\$ 4,802,000.00	\$ 3,782,959.00	\$ 4,011,981.00	\$ 3,931,900.00	\$ 3,927,000.00	\$ 5,244,454.00	\$ 4,266,500.00	\$ 4,455,444.00
Acknowledgement of Addendums 1 & 2	Y	Y	Y	Y	Y	Y	Y	Y	Y
Bid Bond	Y	Y	Y	Y	Y	Y	Y	Y	Y

CALENDAR DAYS: Total number of calendar days to substantial completion is 335 days



Central Park Operations Shop

1000 Krenek Tap Rd





CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300016 PROJECT #: PK2309 BID/RFP/RFQ#: RFP 24-078

Project Name / Contract Description: Central Park Operations Shop

Construction over \$50,000

Name of Contractor: Aggieland Construction

CONTRACT TOTAL VALUE: \$ 3,673,500 **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)

PK2309 41389971-6411

Owner Contingency Amount is 360,000.00, there were a total of nine (9) responses to this RFP/CSP

(If required)*

CRC Approval Date*: N/A **Council Approval Date*:** 10/07/2024 **Agenda Item No*:**

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

9/30/2024
DATE

[Signature]
ASST CITY MGR – CFO

9/30/2024
DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

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

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and AGGIELAND CONSTRUCTION, LTD (the "Contractor") for the construction and/or installation of the following:
as described in RFP (CSP) 24-078 Central Park Operations Shop to include Base bid and Alter 1-3 and 5.

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: Three Hundred Sixty Thousand and NO /100 Dollars (\$360,000.00).

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: Three Million Six Hundred Seventy-Three Thousand Five Hundred and NO /100 Dollars (\$3,673,500.00).

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 FIVE HUNDRED and NO /100 DOLLARS (\$ 500.00) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

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

27. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

27.07 Additional Insured.

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

27.08 Builder's Risk

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

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

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

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

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

employee are required.

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

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

“A. Definitions:

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

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

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

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

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

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

extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

of coverage ends during the duration of the project;

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

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

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

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

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

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

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

28. BOND PROVISIONS

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

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

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

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

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

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

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

29. SURETY

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

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

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

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

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

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

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

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

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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

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

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

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

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

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

34. RELEASE

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

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

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

39. TERMINATION FOR CONVENIENCE

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

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

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

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

- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination;
- (d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;
- (f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the Work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred.

42. TERMINATION CONVERSION

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

43. HIRING

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

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Exhibits

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

AGGIELAND CONSTRUCTION LTD.

By: Matt Shive

Printed Name: Matt Shive

Title: COO

Date: 9/30/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Jim Enste

Assistant City Manager/CFO

Date: 9/30/2024

EXHIBIT A
DAVIS BACON WAGE RATES

"General Decision Number: TX20240234 01/05/2024
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 0	Publication Date 01/05/2024
BOIL0074-003 07/01/2023	
	Rates Fringes
BOILERMAKER.....	\$ 37.00 24.64

ELEV0031-003 01/01/2023	
	Rates Fringes
ELEVATOR MECHANIC.....	\$ 49.15 37.335+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.

** 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 alphabetical rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
- * an existing published wage determination
 - * a survey underlying a wage determination
 - * a Wage and Hour Division letter setting forth a position on a wage determination matter
 - * a conformance (additional classification and rate) ruling

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

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

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

- 2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:
- Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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

- 3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:
- Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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

=====

END OF GENERAL DECISION"

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

EXHIBIT B
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Bond No. SPA150405-019

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Aggieland Construction Ltd, as Principal, hereinafter called "Contractor" and the other subscriber hereto SiriusPoint America Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Million Six Hundred Seventy-Three Thousand Five Hundred and NO /100 Dollars (\$ 3,673,500) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for _____
as described in RFP (CSP) 24-078 Central Park Operations Shop to include Base bid and Alter 1-3 and 5, all of such Work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

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

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

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

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

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

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

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

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

Bond No. SPA150405-019

FOR THE CONTRACTOR:

AGGIELAND CONSTRUCTION, LTD

MS

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

(Name of Contractor)

By: David Miller

By: Matt Shive

Name: David Miller

Name: Matt Shive

Title: Project Manager

Title: COO

Date: October 7, 2024

Date: October 7, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

SiriusPoint America Insurance Company

(Full Name of Surety)

By: Kenneth Hotchkiss

285 Fulton Street, Ste 47J, New York, NY 10007

Name: Kenneth Hotchkiss

(Address of Surety for Notice)

Title: COO

Date: October 7, 2024

By: Maryana Zhuk

Name: Maryana Zhuk

Title: Attorney-in-Fact

Date: October 7, 2024

FOR THE CITY:

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

REVIEWED:

City Attorney

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. SPA150405-019

THE STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

THAT WE, Aggieland Construction Ltd, as Principal, hereinafter called "Principal" and the other subscriber hereto SiriusPoint America Insurance Company, a corporation organized and existing under the laws of the State of New York, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Million Six Hundred Seventy-Three Thousand Five Hundred and no /100 Dollars (\$3,673,500.00) 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 07 day of October, 20 24, for as described in RFP (CSP) 24-078 Central Park Operations Shop to include Base bid and Alter 1-3 and 5, referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

Bond No. SPA150405-019

FOR THE CONTRACTOR:

AGGIELAND CONSTRUCTION, LTD

MS

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

(Name of Contractor)

By: David Miller
Name: David Miller
Title: Project Manager
Date: October 7, 2024

By: Matt Shive
Name: Matt Shive
Title: COO
Date: October 7, 2024

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

SiriusPoint America Insurance Company
(Full Name of Surety)

By: Kenneth Hotchkiss
Name: Kenneth Hotchkiss
Title: COO
Date: October 7, 2024

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

By: Maryana Zhuk
Name: Maryana Zhuk
Title: Attorney-in-Fact
Date: October 7, 2024

FOR THE CITY:

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

REVIEWED:

City Attorney

City Manager

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

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

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

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

Does hereby nominate, constitute and appoint:

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

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

\$50,000,000 single bond limit

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

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

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

SiriusPoint America Insurance Company

By: Melissa J. Ralph
Melissa J. Ralph
Secretary

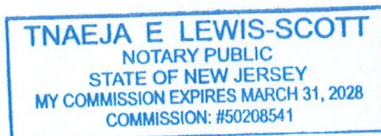
State of New Jersey }

} ss.

County of Monmouth }

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

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



State of New Jersey
County of Monmouth

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this 7 day of October, 2024



Melissa J. Ralph
Melissa J. Ralph
Secretary

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/25/2024

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

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

PRODUCER Hotchkiss Insurance Agency, LLC 4120 International Parkway Suite 2000 Carrollton TX 75007	CONTACT NAME:	
	PHONE (A/C, No, Ext): 800-899-3750	FAX (A/C, No): 972-512-7799
INSURED Aggieland Construction, Ltd. P.O. Box 271 Wellborn TX 77881	E-MAIL ADDRESS: info@hiallc.com	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A : Allmerica Financial Benefit Insurance Co 41840	
	INSURER B : Hanover Insurance Company 22292	
	INSURER C : Massachusetts Bay Insurance Company 22306	
	INSURER D : The Hanover Casualty Company 41602	
INSURER E :		
INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** 1068633708 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:			ZLDH46632603	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY ☒ Hired Auto ☐ Phys. Damage			AWDH46635503	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired Car Phys Damage \$ \$50,000
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			UHDH46632703	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N ☒ N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WDD-H452460-03	1/1/2024	1/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Property - Location 1 Property - Location 2 Equipment			ZLDH46632603	1/1/2024	1/1/2025	Bus Pers Prop Loc. 1 \$26,500 Bus Pers Prop Loc. 2 \$106,000 Rented/Leased Equip \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The general liability policy includes a blanket Additional Insured, blanket Primary and Non-Contributory and blanket Waiver of Subrogation endorsement (421-2915 06/15) when required by written contract or agreement and Texas Blanket Additional Insured by Contract or Agreement with Products-Completed Operations Coverage (421-4492 04/18). The auto policy includes a blanket Additional Insured, Blanket Primary and Non-Contributory (461-0478 12/12) and blanket Waiver of Subrogation (461-0500 11/13) when required by written contract. The workers compensation policy includes a blanket Waiver of Our Right to Recover from Others endorsement (WC420304B). The general liability policy includes a 30 day notice of cancellation when required by written contract (401-1235 1214).

RE: Project: Central Park Operations Shop
Certificate Holder Continued: The City of College Station, its agents, officials, employees, and volunteers.

CERTIFICATE HOLDER	CANCELLATION
City of College Station Attn: Risk Management P.O. Box 9960 College Station TX 77842 United States	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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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION to designated ENTITY(s)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 HANOVER COMMERCIAL FOLLOW FORM EXCESS AND UMBRELLA POLICY
 COMMERCIAL PROPERTY COVERAGE PART
 BUSINESS AUTO COVERAGE FORM
 BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Name of Designated Entity	Mailing Address or Email Address	Number Days Notice
Blanket as required by written contract or agreement.	As per written contract or agreement.	30

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

If we cancel this policy for any reason other than nonpayment of premium, we will give written notice of such cancellation to the Designated Entity(s) shown in the Schedule. Such notice may be delivered or sent by any means of our choosing. The notice to the Designated Entity(s) will state the effective date of cancellation.

Unless otherwise noted in the Schedule above, such notice will be provided to the Designated Entity(s) no more than the number of days in advance of the effective date of cancellation that we are required to provide to the Named Insured for such cancellation.

Such notice of cancellation is solely for the purpose of informing the Designated Entity(s) of the effective date of cancellation and does not grant, alter, or extend any rights or obligations under this policy.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver
Name of person or organization

☒ Blanket Waiver

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

2. Operations:

ALL TEXAS OPERATIONS

3. Premium:
The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
4. Advance Premium:

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

Additional Insured – Written Contract, Agreement or Permit

- a. Any person or organization as required by a written contract, agreement or permit to add as an additional insured on your policy is an additional insured but only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, and only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;
- (2) Premises you own, rent, lease or occupy;
- (3) Your maintenance, operation or use of equipment leased to you; or
- (4) "Your work" for the additional insured(s) designated in the contract, agreement or permit including "bodily injury" or "property damage" included in the "products-completed operations hazard" provided that:
 - (a) This Coverage Part provides such coverage; and
 - (b) The written contract, agreement or permit requires such coverage for the additional insured.
- (5) A claim for "bodily injury" to an employee of the indemnitor, its agents or its subcontractor of any tier as permitted by Texas Title 2, Subtitle C, Chapter 151.103.

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

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

- (1) Only applies to the extent permitted by law.
- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.
- (3) Is primary to and will not seek contribution from any other insurance available to such additional insured provided that:
 - (a) The additional insured is a Named Insured under such other insurance; and
 - (b) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

d. This provision does not apply:

- (1) Unless the written contract or agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) If the "bodily injury", "property damage", or "personal and advertising injury" arises out of sole negligence of the additional insured unless such "bodily injury" is to an employee of the indemnitor, its agents or

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

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

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

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

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

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

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

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

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

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

Additional Insured if Required by Contract

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

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

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

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

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

Primary and Non-Contributory

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

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

- (1) For the sole negligence of the additional "insured"; or
 - (2) For negligence arising out of the ownership, maintenance or use of any "auto" not owned by the additional "insured" or by you, unless that "auto" is a "trailer" connected to an "auto" owned by the additional "insured" or by you; or
 - (3) When the additional "insured" is also an additional "insured" under another liability policy.
- C. This endorsement will apply only if the "accident" occurs:**
1. During the policy period;
 2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and
 3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional "insured".
- D. Coverage provided to an additional "insured" will not be broader than coverage provided to any other "insured" under this Coverage Part.**

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SUMMARY OF COVERAGES

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

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

1. Additional Insured by Contract, Agreement or Permit

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

Additional Insured by Contract, Agreement or Permit

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

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

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

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

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

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

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

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

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

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

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

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

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

2. Additional Insured – Primary and Non-Contributory

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

Additional Insured – Primary and Non-Contributory

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

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

a. Primary Insurance

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

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

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

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

b. Excess Insurance

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

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

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

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

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

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

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

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

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

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

c. Method Of Sharing

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

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

3. Blanket Waiver of Subrogation

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

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

4. Bodily Injury Redefined

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

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

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

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

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

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

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

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

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

6. Knowledge of Occurrence

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

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

7. Liberalization Clause

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

Liberalization Clause

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

8. Medical Payments – Extended Reporting Period

- a. **SECTION I – COVERAGES, COVERAGE C – MEDICAL PAYMENTS**, Paragraph 1. **Insuring Agreement**, subparagraph a.(3)(b) is replaced by the following:
 - (b) The expenses are incurred and reported to us within three years of the date of the accident; and
- b. This coverage does not apply if **COVERAGE C – MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Part or by endorsement.

9. Newly Acquired Or Formed Organizations

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

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

10. Non-Owned Watercraft

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

g. Aircraft, Auto Or Watercraft

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

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

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

11. Supplementary Payments Increased Limits

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

1.b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1000 a day because of time off from work.

12. Unintentional Failure to Disclose Hazards

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

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

13. Unintentional Failure to Notify

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

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

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

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

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

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

Named Insured:

Endorsement Effective Date:

SCHEDULE

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

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

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

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



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

9/26/2024

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

AGENCY Hotchkiss Insurance Agency, LLC 4120 International Parkway Suite 2000 Carrollton, TX 75007	PHONE (A/C, No, Ext): 800-899-3750	COMPANY Palomar Specialty Insurance Company 7979 Ivanhoe Ave #500 La Jolla, CA 92037
FAX (A/C, No): 972-512-7799	E-MAIL ADDRESS: info@hiallc.com	
CODE:	SUB CODE:	
AGENCY CUSTOMER ID #:		
INSURED Aggieland Construction Ltd P.O. Box 271 Wellborn TX 77881	LOAN NUMBER	POLICY NUMBER TBD
	EFFECTIVE DATE 10/01/2024	EXPIRATION DATE 10/01/2025
		☐ CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:		

PROPERTY INFORMATION

LOCATION/DESCRIPTION Location: 1000 Krenak Tap Rd, College Station, TX 77840
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

PERILS INSURED BASIC BROAD SPECIAL X Builders Risk

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Builders Risk - Limit Per Disaster	3,673,500	1,000
Wind/Hail Deductible		2%
Flood Limit at Any Location per Policy Year	1,000,000	25,000
Earthquake Limit at Any Location per Policy Year	1,000,000	25,000
Covered Property in due course of Transit	100,000	1,000
Covered Property at any other location, other than in due course of Transit	100,000	1,000
Soft Costs	50,000	1,000

REMARKS (Including Special Conditions)

RE: Project: Central Park Operations Shop Certificate Holder Continued: The City of College Station, its agents, officials, employees, and volunteers.

CANCELLATION

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

ADDITIONAL INTEREST

NAME AND ADDRESS City of College Station Attn: Risk Management P.O. Box 9960 College Station, TX 77842 United States	ADDITIONAL INSURED MORTGAGEE LOAN #	LENDER'S LOSS PAYABLE AUTHORIZED REPRESENTATIVE 	LOSS PAYEE
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EXHIBIT D
PLANS AND SPECIFICATIONS

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

CSP 24-078 in this contract by reference.

EXHIBIT E
CONSTRUCTION SCHEDULE

Complete of 303 days

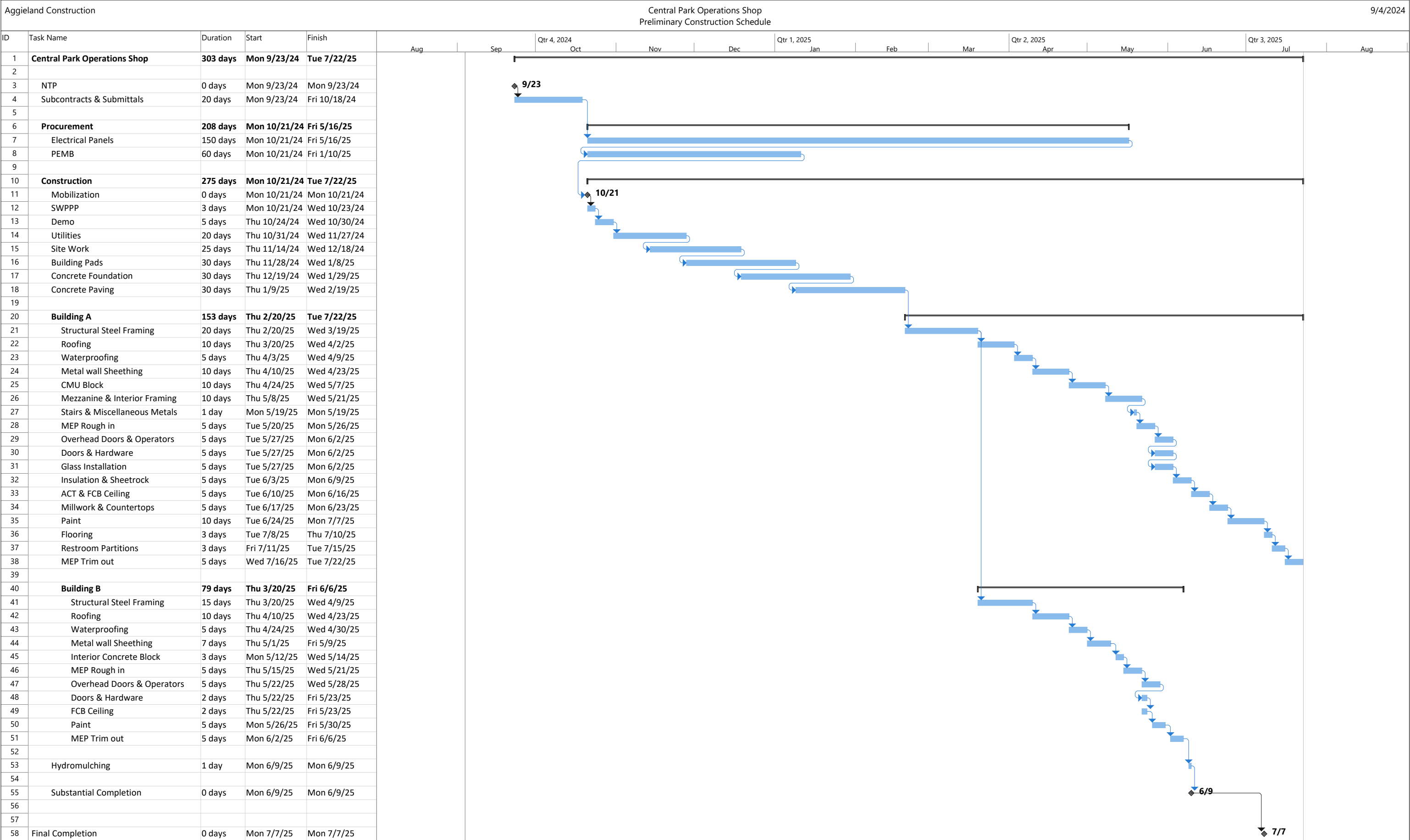
Tab 6. Plan & Schedule:

Critical Path Method: AggieLand Construction has extensive experience with Critical Path Method (CPM) scheduling, where we will utilize this technique to effectively plan, manage, and track Central Park Operations Shop. Our approach involves defining project tasks, establishing their dependencies, and creating detailed network diagrams to visualize the workflow. By identifying the critical path—the sequence of tasks that dictates the project's minimum completion time—We focus on optimizing these critical activities to ensure timely project delivery. Our experience includes estimating task durations, monitoring progress, and making adjustments to address delays, ensuring projects stay on schedule and within scope. See next page for baseline schedule.

Ensuring Timely Completion: To ensure the project schedule remains accurate and effective throughout all phases of construction, a structured approach will be employed. A comprehensive work breakdown structure (WBS) identifying milestones and dates outlining every step and deadline necessary for project completion will be used to create the project timeline. As the project moves into construction, regular reviews and continuous monitoring by our project team will be used to keep the timeline on track. Regular status meetings and progress reports will facilitate clear communication and prompt issue resolution, ensuring that the project stays on track and within scope. This iterative process of development, maintenance, and updating will help achieve project goals efficiently and adapt to evolving project demands.

Schedule Recovery: To ensure timely completion of the project, AggieLand Construction's approach involves extensive preparation, continuous progress monitoring, and adaptable schedule management. We start by establishing clear milestones and allocating resources effectively while identifying potential risks upfront. Regular progress reviews and status meetings help track adherence to the schedule. If delays arise, our team implements recovery strategies such as reallocating resources, adjusting deadlines with stakeholder approval, or employing techniques like fast-tracking or crashing to expedite critical tasks. This proactive and adaptable approach allows for swift resolution of issues and helps keep the project on track.

RACE – Detailed daily logs by QC personnel aided all members of the project team in identifying potential bottlenecks in the construction process for this project. Because the entire project team had access to these reports, they were able to work together to modify the constructability program and keep the project schedule on track. The foresight afforded by having dedicated QC personnel on-site prevented any potential future issues with either punch list or warranty items.



Page 1

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EXHIBIT F
SCHEDULE OF VALUES

**PROPOSAL FORM
(Tab 4)**

Date: 09-04-2024

PROPOSAL FROM: Aggieland Construction

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

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for the construction of the Central Park Operations Shop and to perform the work required for the construction of said Central Park Operations Shop 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 Bid
\$ 3,398,000.00

Amount in Figures.

Add Alternate No. 1 (All landscaping and Irrigation as proposed in plans)
\$ 28,000.00

Amount in Figures.

Add Alternate No. 2 (Regular duty concrete and mortared common rip rap)
\$ 167,000.00

Amount in Figures.

Add Alternate No.3 (Proposed public water line)
\$ 49,000.00

Amount in Figures.

Add Alternate No. 4 (Concrete flume deduct)
\$ (6,000.00)

Amount in Figures.

Add Alternate No. 5 (Electrical conduit from transformer to utility pole)

\$ 31,500.00

Amount in Figures.

Total Sum of Proposal Including all Additive Alternates

(Gen. Conditions, overhead and profit are to be attributed with each item)

\$ 3,667,500.00

Amount in Figures.

CALENDAR DAYS: Total number of calendar days to substantial completion is 335 days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: Addendums 1 & 2

CONTRACTOR NAME: Aggieland Construction

CONTRACTOR SIGNATURE: Jacob Duncan

October 7, 2024
Item No. 9.4.
2022 Bond Bee Creek and Central Park Tennis

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with JaCody Construction, LP, in the amount of \$1,041,469 for the construction renovations of tennis courts at Bee Creek Park, and Central Park plus the City's contingency in the amount of \$105,000, for a total appropriation of \$1,146,469. 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 and award of the construction contract with JaCody Construction, for the renovations of tennis courts and Bee Creek Park and Central Park

Summary:

Under this contract, all four existing courts, at Bee Creek, will be demolished. Once demolition is complete, the contractor will relocate an existing waterline that currently runs under the courts, regrade the site, pour post tension slab for the new courts, add new fencing, strip four courts, and add new nets.

At Central Park, the two current courts will also be demolished and rebuilt using post tension slab method of construction. New fencing, netting, and surfacing will also be completed at this location.

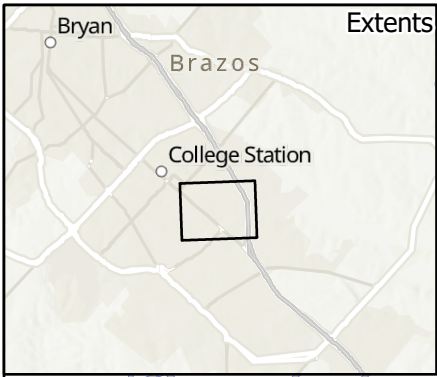
Ten (10) competitive sealed proposals were received and opened on August 27, 2024. JaCody Construction was found to be the best value and was also the lowest bid.

Court lighting will also be upgraded at both Bee Creek and Central through a Buy Board contract with Musco, in the amount of \$332,655. The Musco contract will be presented at a future Council meeting.

Budget & Financial Summary: Budget in the amount of \$1,700,00 is included for this project in the Parks Capital Improvement Projects Fund. A total of \$207,720 has been expended or committed to date, leaving a balance of \$1,492,280 for this contract and future costs. Funding for this project was approved via the City of College Station's November 2022 General Obligation Bond Election.

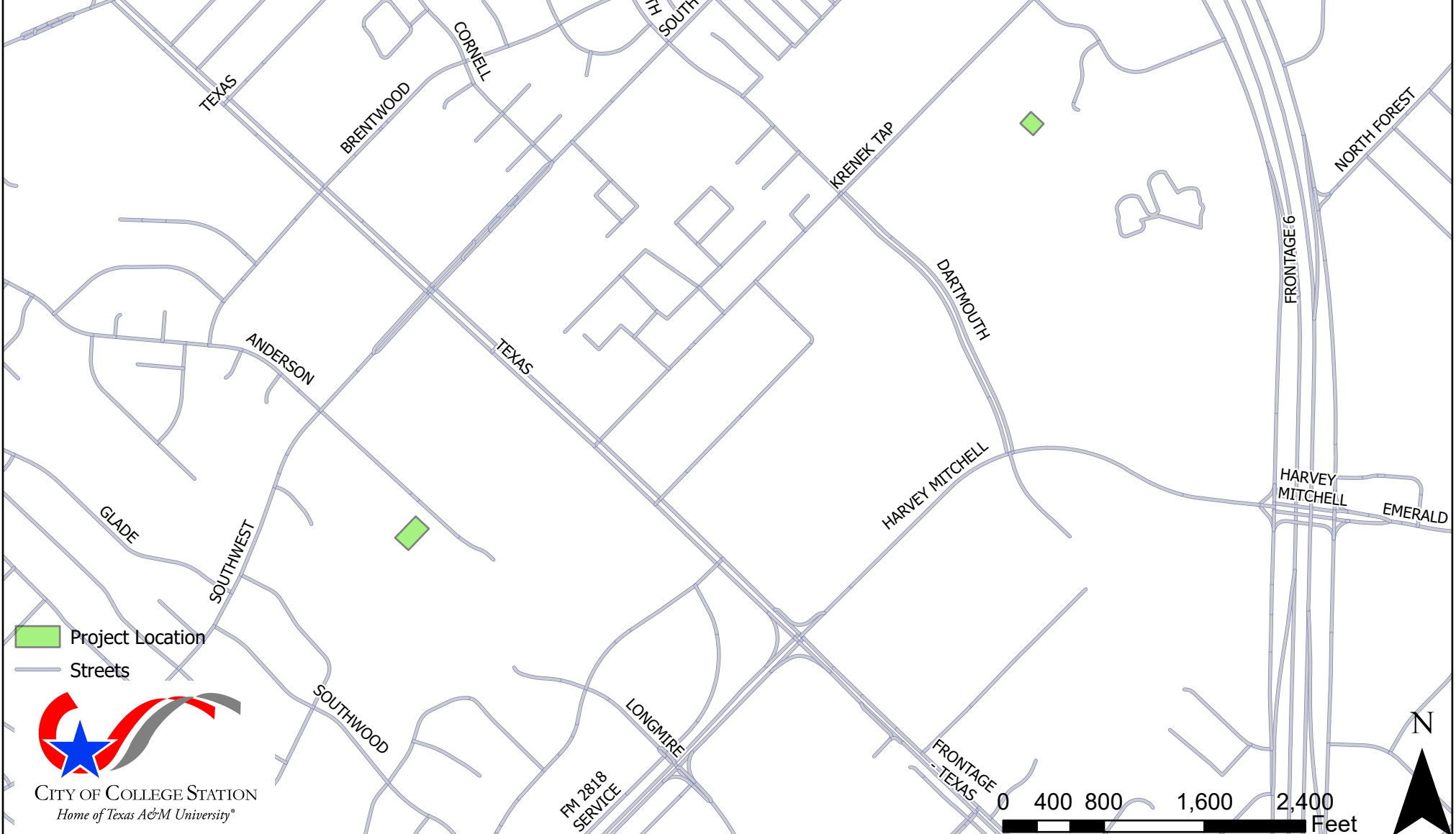
Attachments:

1. Bee Creek and Central Tennis Project Map
2. Bee Creek and Central Tennis Project Bid Tab Sheet
3. Bee Creek and Central Tennis Construction Contract Vendor Signed



Bee Creek and Central Park Tennis

1900 Anderson and
1000 Krenek Tap



Project Location
Streets



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

0 400 800 1,600 2,400 Feet



TABULATION

RFP NO. 24-077 Bee Creek and Central Park Tennis Courts Renovations

9/17/2024

FIRM	BASE PROPOSAL	NUMBER OF CALENDAR DAYS	Total Sum	BOND	Addenda	Certification
Aggieland Construction	\$ 1,418,000.00	180	\$ 1,418,000.00	Y	Y	Y
C.A. Walker Construction	\$ 1,399,005.00	180	\$ 1,399,005.00	Y	Y	Y
ASD Consultants	\$ 1,867,500.00	180	\$ 1,867,500.00	Y	Y	Y
Dudley Construction	\$ 1,212,000.00	180	\$ 1,212,000.00	Y	Y	Y
Marek Brothers	\$ 1,240,000.00	180	\$ 1,240,000.00	Y	Y	Y
BH Harris	\$ 1,530,248.00	180	\$ 1,530,248.00	Y	Y	Y
Hellas Construction	\$ 1,267,180.00	180	\$ 1,267,180.00	Y	Y	Y
JaCody Construction	\$ 1,041,469.00	180	\$ 1,041,469.00	Y	Y	Y
PCC Sports	\$ 1,298,810.00	180	\$ 1,298,810.00	Y	Y	Y
Tucker Construction	\$ 1,172,960.00	180	\$ 1,172,960.00	Y	Y	Y

Award to most qualified meeting specifications.



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300811 PROJECT #: PK2306 BID/RFP/RFQ#: RFP 24-077

Project Name / Contract Description: Bee Creek and Central Park Tennis Court Renovations

Construction over \$50,000

Name of Contractor: JaCody Construction, LP

CONTRACT TOTAL VALUE: \$ 1,041,469.00

Grant Funded Yes ☐ No ☒

If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☒ N/A

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

Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Buy America Required ☐ Yes ☐ No ☒ N/A

Transparency Report ☐ Yes ☐ No ☒ N/A

☒ **NEW CONTRACT** ☐ **RENEWAL #** 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)

PK2306 41389971-6561

Lowest bidder and most qualified vendor taken from RFP 24-077.

(If required)*

CRC Approval Date*: N/A **Council Approval Date*:** 10/7/2024 **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:** AD **Info Tech:** N/A

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

9/24/2024
DATE

Jim Eiste
ASST CITY MGR – CFO

9/24/2024
DATE

John A. Haislet
LEGAL DEPARTMENT

9/24/2024
DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A
MAYOR (if applicable)

DATE

N/A
CITY SECRETARY (if applicable)

DATE

9.12.23 UPDATED

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

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and JaCody Construction, LP (the "Contractor") for the construction and/or installation of the following:
Bee Creek and Central Park Tennis Court Renovations.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: One Hundred Five Thousand and Zero /100 Dollars (\$105,000.00).

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 Million Forty-One Thousand Four Hundred Sixty-Nine and Zero /100 Dollars (\$1,041,469.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

12. MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

14. REJECTED WORK

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

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

OR:

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

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

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

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

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

16.09 Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

OR:

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

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

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

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

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

23.02 As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Section 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of Five Hundred and No **/100 DOLLARS (\$ 500.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

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

27. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

27.07 Additional Insured.

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

27.08 Builder's Risk

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

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

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

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

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

employee are required.

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

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

"A. Definitions:

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

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

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

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

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

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

extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

of coverage ends during the duration of the project;

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

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

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

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

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

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

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

28. BOND PROVISIONS

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

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

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

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

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

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

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

29. SURETY

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

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

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

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

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

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

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

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

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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

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

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

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

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

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

34. RELEASE

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

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

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

39. TERMINATION FOR CONVENIENCE

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

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

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

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

- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination;
- (d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;
- (f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the Work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred.

42. TERMINATION CONVERSION

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

43. HIRING

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

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Exhibits

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

JACODY CONSTRUCTION, LP

By: Forrest Couch

Printed Name: Forrest Couch

Title: Partner

Date: 9/24/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

John A. Haislet

City Attorney

Date: 9/24/2024

Jim Enos

Assistant City Manager/CFO

Date: 9/24/2024

EXHIBIT A
DAVIS BACON WAGE RATES

"General Decision Number: TX20240234 07/12/2024

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
2	07/12/2024

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 06/03/2024

	Rates	Fringes
PIPEFITTER (Excludes HVAC Pipe Installation).....	\$ 36.15	15.92

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

PERFORMANCE BOND

Bond No. 4478816

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

THAT WE, JaCody Construction, LP, as Principal, hereinafter called "Contractor" and the other subscriber hereto SureTec Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of One Million Forty One Thousand Four Hundred Sixty Nine Dollars and Zero /100 Dollars (\$ 1,041,469.00) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for Bee Creek and Central Park Tennis Court Renovations

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

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

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

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

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

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

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

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

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

Bond No. 4478816

FOR THE CONTRACTOR:

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

(Name of Contractor)

By: JOSIE ELY
Name: [Signature]
Title: ASSISTANT
Date: 10/7/2024

By: JaCody Construction, LP
Name: [Signature]
Title: PARTNER
Date: 10/7/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: [Signature]
Name: Jim Siddons
Title: Bond Dept Manager - Witness
Date: 10/7/2024

SureTec Insurance Company
(Full Name of Surety)
9500 Arboretum Blvd., Suite 400
Austin, Tx 78759
(Address of Surety for Notice)

By: [Signature]
Name: Jeff Husk
Title: Attorney-In-Fact
Date: 10/7/2024

FOR THE CITY:

REVIEWED:

John D. Haislet 9/24/2024
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. 4478816

THE STATE OF TEXAS

§

§

THE COUNTY OF BRAZOS

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, JaCody Construction, LP, 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 Million Forty One Thousand Four Hundred Sixty Nine Dollars and zero /100 Dollars (\$1,041,469.00) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 7th day of October, 2024, for Bee Creek and Central Park Tennis Court Renovations, 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. 4478816

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

(Name of Contractor)

By: Josie Ely

Name: Josie Ely

Title: ASSISTANT

Date: 10/7/2024

By: JaCody Construction, LP

Name: J. Cody

Title: PARTNER

Date: 10/7/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Jim Siddons

Name: Jim Siddons

Title: Bond Dept Manager - Witness

Date: 10/7/2024

SureTec Insurance Company

(Full Name of Surety)

9500 Arboretum Blvd., Suite 400

Austin, Tx 78759

(Address of Surety for Notice)

By: Jeff Husk

Name: Jeff Husk

Title: Attorney-In-Fact

Date: 10/7/2024

FOR THE CITY:

REVIEWED:

John A. Haislet 9/24/2024
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:

Patrick L Watkins, Rodney T Watkins, James F Siddons, April M Terbay, Andrew Webb, Jeff Husk, Cindy Rodriguez

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:

Twenty Five Million and 00/100 Dollars (\$25,000,000.00)

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."

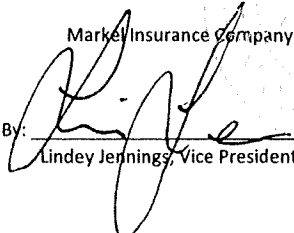
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 10th day of June, 2024.

SureTec Insurance Company

By: 
Michael C. Keimig, President



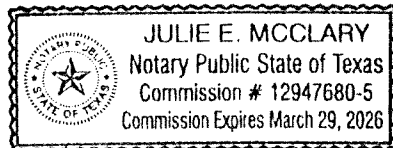
Markel Insurance Company

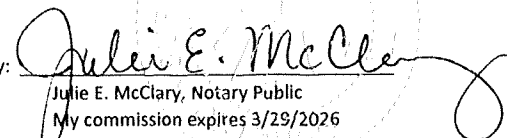
By: 
Lindey Jennings, Vice President

State of Texas
County of Harris:

On this 10th day of June, 2024 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.

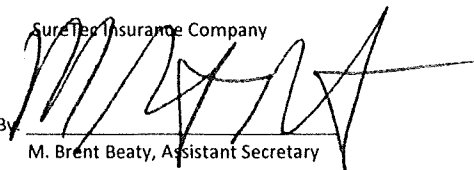


By: 
Julie E. McClary, Notary Public
My commission expires 3/29/2026

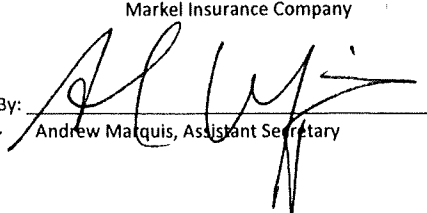
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 7th day of October, 2024.

SureTec Insurance Company

By: 
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: 
Andrew Marquis, Assistant Secretary

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)

9/17/2024

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

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

PRODUCER ANCO Insurance PO Box 3889 Bryan TX 77805	CONTACT NAME: Wendy Harrod PHONE (A/C, No, Ext): 979-774-6283 E-MAIL ADDRESS: harrod@anco.com FAX (A/C, No): 979-774-5372
INSURED JaCody Construction LP 10770 State Hwy 30, Suite 400 College Station TX 77845	INSURER(S) AFFORDING COVERAGE INSURER A: Texas Mutual Insurance Company INSURER B: EMC Insurance Cos INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 61644733 **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
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			BBB2039	10/26/2023	10/26/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			6E60373	10/26/2023	10/26/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			6J60373	10/26/2023	10/26/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N ☐ N / A			0001110485	10/26/2023	10/26/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Equipment Floater			6C60373	10/26/2023	10/26/2024	Leased/Rented 100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Bee Creek and Central Park Tennis Court Renovations

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
1101 Texas Ave
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS –
AUTOMATIC STATUS WHEN REQUIRED IN A WRITTEN
CONSTRUCTION CONTRACT – PRIMARY AND NONCONTRIBUTORY**

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of:

- a. your ongoing operations for the additional insured; or
- b. "Your work" for the additional insured and included in the "products – completed operations hazard" but only if:
 - (1) A written contract requires you to provide such coverage to such additional insured; and
 - (2) The coverage form to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law;
- b. Will not be broader than that which you are required by the contract to provide for such additional insured.
- c. Only applies if the "bodily injury", "property damage" or "personal and advertising injury" takes place subsequent to the execution of such written contract; and

d. Only applies while such written contract is in force.

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

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural, engineering or surveying activities.

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

2. There is no coverage for the additional insured for "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on the behalf of the additional insured.

However, if a written contract requires you to defend or indemnify the additional insured for its sole negligence, then the coverage for the additional insured shall conform to what is required in such written contract.

3. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this coverage form.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract described in Paragraph **A.1.**; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

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

Primary and Noncontributory Insurance

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

- (1) The additional insured is a Named Insured under such other insurance; and
 - (2) You have agreed in writing in a contract that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.
- E.** All other terms and conditions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CHANGES – CANCELLATION AND NONRENEWAL PROVISIONS FOR CASUALTY LINES AND COMMERCIAL PACKAGE POLICIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY
FARM COVERAGE PART – FARM LIABILITY COVERAGE FORM
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

This endorsement also modifies insurance provided under the following when written as part of a Commercial Package Policy:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Paragraph **2.** of the **Cancellation** Common Policy Condition is replaced by the following:

2. We may cancel this policy:

- a.** By mailing or delivering to the first Named Insured written notice of cancellation, stating the reason for cancellation, at least 10 days before the effective date of cancellation.

However, if this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then the notice of cancellation, as described above, will be provided to the first Named Insured 30 days before the effective date of cancellation. We will also provide 30 days' written notice to each unit-owner to whom we issued a certificate or memorandum of insurance, by mailing or delivering the notice to each last mailing address known to us.

b. For the following reasons, if this policy does not provide coverage to a governmental unit, as defined under 28 TEX. ADMIN. CODE, Section 5.7001 or on one- and two-family dwellings:

(1) If this policy has been in effect for 60 days or less, we may cancel for any reason except that, under the provisions of the Texas Insurance Code, we may not cancel this policy solely because the policyholder is an elected official.

(2) If this policy has been in effect for more than 60 days, or if it is a renewal or continuation of a policy issued by us, we may cancel only for one or more of the following reasons:

- (a) Fraud in obtaining coverage;
- (b) Failure to pay premiums when due;
- (c) An increase in hazard within the control of the insured which would produce an increase in rate;
- (d) Loss of our reinsurance covering all or part of the risk covered by the policy; or
- (e) If we have been placed in supervision, conservatorship or receivership and the cancellation is approved or directed by the supervisor, conservator or receiver.

c. For the following reasons, if this policy provides coverage to a governmental unit, as defined under 28 TEX. ADMIN. CODE, Section 5.7001 or on one- and two-family dwellings:

(1) If this policy has been in effect for less than 90 days, we may cancel coverage for any reason.

(2) If this policy has been in effect for 90 days or more, or if it is a renewal or continuation of a policy issued by us, we may cancel coverage, only for the following reasons:

- (a) If the first Named Insured does not pay the premium or any portion of the premium when due;
- (b) If the Texas Department of Insurance determines that continuation of this policy would result in violation of the Texas Insurance Code or any other law governing the business of insurance in Texas;

(c) If the Named Insured submits a fraudulent claim; or

(d) If there is an increase in the hazard within the control of the Named Insured which would produce an increase in rate.

B. The following condition is added and supersedes any provision to the contrary:

Nonrenewal

1. We may elect not to renew this policy except that, under the provisions of the Texas Insurance Code, we may not refuse to renew this policy solely because the policyholder is an elected official.

2. This paragraph, 2., applies unless the policy qualifies under Paragraph 3. below.

If we elect not to renew this policy, we may do so by mailing or delivering to the first Named Insured, at the last mailing address known to us, written notice of nonrenewal, stating the reason for nonrenewal, at least 60 days before the expiration date. If notice is mailed or delivered less than 60 days before the expiration date, this policy will remain in effect until the 61st day after the date on which the notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date will be computed pro rata based on the previous year's premium.

3. If this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then we will mail or deliver written notice of nonrenewal, at least 30 days before the expiration or anniversary date of the policy, to:

- a. The first Named Insured; and
- b. Each unit-owner to whom we issued a certificate or memorandum of insurance.

We will mail or deliver such notice to each last mailing address known to us.

4. If notice is mailed, proof of mailing will be sufficient proof of notice.

5. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ELITE EXTENSION – TEXAS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

A. EXPECTED OR INTENDED INJURY

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

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

B. NON-OWNED WATERCRAFT

Section I – Coverage A, Exclusion **g.(2)** is amended as follows:

- (2)** A watercraft you do not own that is:

- (a)** Less than 60 feet long; and
- (b)** Not being used to carry person(s) or property for a charge;

C. EXTENDED PROPERTY DAMAGE COVERAGE

Section I – Coverage A, Exclusions **j.(3)** and **(4)** is amended to add the following:

Paragraphs **(3)** and **(4)** of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

SCHEDULE	
Limits Of Insurance	Deductible
\$5,000 Each Occurrence	\$250 Per Claim
\$10,000 Annual Aggregate	

- a.** The each occurrence limit listed above is the most we will pay for all damages because of “property damage” to property in the care, custody and control of or property loaned to an insured as the result of any one “occurrence”, regardless of the number of:

- (1)** insureds;
- (2)** claims made or “suits” brought;
- (3)** persons or organizations making claims or bringing “suits”.

The aggregate limit listed above is the most we will pay for all damages because of “property damage” to property in the care custody and control of or property loaned to an insured during the policy period.

Any payment we make for damages because of “property damage” to property in the care, custody and control of or property loaned to an insured will apply against the General Aggregate Limit shown in the declarations.

- b.** Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the deductible amount listed above. We may pay any part or all of the deductible amount listed above. We may pay any part or all of the deductible amount to effect settlement of any claim or “suit” and upon notification by us, you will promptly reimburse us for that part of the deductible we paid.
- c.** If two or more coverages apply under one “occurrence”, only the highest per claim deductible applicable to these coverages will apply.
- d.** Insurance provided by this provision is excess over any other insurance, whether primary, excess, contingent or any other basis. Since insurance provided by this endorsement is excess, we will have no duty to defend any claim or “suit” to which insurance provided by this endorsement applies if any other insurer has a duty to defend such a claim or “suit”. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured’s rights against all those other insurers.

D. PROPERTY DAMAGE – ELEVATORS

Section I – Coverage A.2. Exclusions paragraphs **j.(3)**, **j.(4)**, **j.(6)** and **k.** do not apply to use of elevators.

This insurance afforded by this provision is excess over any valid and collectible property insurance (including any deductible) available to the insured and **Section IV – Commercial General Liability Conditions Paragraph 4. Other Insurance.**

E. FIRE, LIGHTNING OR EXPLOSION DAMAGE

Except where it is used in the term "hostile fire", the word fire includes fire, lightning or explosion wherever it appears in the Coverage Form.

Under **Section I – Coverage A**, the last paragraph (after the exclusions) is replaced with the following:

Exclusions **c.** through **n.** do not apply to damage by fire, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance**.

F. MEDICAL PAYMENTS

If **Section I – Coverage C. Medical Payments Coverage** is not otherwise excluded from this Coverage Form:

The requirement, in the Insuring Agreement of Coverage **C.**, that expenses must be incurred and reported to us within **one year** of the accident date is changed to **three years**.

G. SUPPLEMENTARY PAYMENTS

Supplementary Payments – Coverages A and B Paragraphs **1.b.** and **1.d.** are replaced by the following:

1.b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

H. SUBSIDIARIES AS INSURED

Section II – Who Is An Insured is amended to add the following:

1.f. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, insured does not include any subsidiary that is an insured under any other general liability policy, or would have been an insured under such a policy but for termination of that policy or the exhaustion of that policy's limits of liability.

I. BLANKET ADDITIONAL INSURED – AS REQUIRED BY CONTRACT

1. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) subject to provisions in Paragraph **2.** below, (hereinafter referred to as additional insured) when you and such person(s) or organization(s) have agreed in a written contract or written agreement that such person(s) or organization(s) be added as an additional insured on your policy provided that the written contract or agreement is:

- a. Currently in effect or becomes effective during the policy period; and
- b. Executed prior to an "occurrence" or offense to which this insurance would apply.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured; and
- c. Applies only if the person or organization is not specifically named as an additional insured under any other provision of, or endorsement added to, **Section II – Who Is An Insured** of this policy.

2. As provided herein, the insurance coverage provided to such additional insureds is limited to:

- a. Any Controlling Interest, but only with respect to their liability arising out of their financial control of you; or premises they own, maintain, or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- b. Any architect, engineer, or surveyor engaged by you but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In the performance of your ongoing operations.

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

- c. Any manager or lessor of a premises leased to you, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

- d. Any state or governmental agency or subdivision or political subdivision, subject to the following:

- (1) This insurance applies only with respect to the following hazards for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
- (b) The construction, erection or removal of elevators; or
- (c) The ownership, maintenance or use of any elevators covered by this insurance.

- (2) This insurance applies only with respect to operations performed by you or on your behalf for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

- e. Any vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

With respect to the insurance afforded to these vendors, the following additional exclusions apply:

- (1) The insurance afforded any vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which any vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that any vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by any vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at any vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for any vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of any vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Subparagraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- f. Any Mortgagee, Assignee Or Receiver, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you.
 This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.
- g. Any Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you.
 With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
 - (1) This insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land;
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- h. Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- i. Any Owners, Lessees, or Contractors for whom you are performing operations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

(2) "Bodily injury" or "property damage" occurring after:

(a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

j. Any Grantor of Licenses to you, but only with respect to their liability as grantor of licenses to you.

Their status as additional insured under this endorsement ends when:

1. The license granted to you by such person(s) or organization(s) expires; or

2. Your license is terminated or revoked by such person(s) or organization(s) prior to expiration of the license as stipulated by the contract or agreement.

k. Any Grantor of Franchise, but only with respect to their liability as grantor of a franchise to you.

l. Any Co-owner of Insured Premises, but only with respect to their liability as co-owner of any insured premises.

m. Any Concessionaires Trading Under Your Name, but only with respect to their liability as a concessionaire trading under your name.

3. Any insurance provided to any additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or its agents, "employees" or any other representative of the additional insured.

4. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance:**

If coverage provided to any additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

J. COVERAGE FOR INJURY TO CO-EMPLOYEES AND/OR YOUR OTHER VOLUNTEER WORKERS

Section II – Who is an Insured, Paragraph 2.a. (1) is amended to add the following:

e. Paragraphs (a), (b), and (c) do not apply to your "employees" or "volunteer workers" with respect to "bodily injury" to a co-"employee" or other "volunteer worker".

Damages owed to an injured co-"employee" or "volunteer worker" will be reduced by any amount paid or available to the injured co-"employee" or "volunteer worker" under any other valid and collectible insurance.

K. HEALTH CARE SERVICE PROFESSIONALS AS INSUREDS - INCIDENTAL MALPRACTICE

Section II – Who is an Insured, Paragraph 2.a. (1) (d) is amended as follows:

This provision does not apply to Nurses, Emergency Medical Technicians, or Paramedics who provide professional health care services on your behalf.

However this exception does not apply if you are in the business or occupation of providing any such professional services.

L. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Section II – Who Is An Insured, Paragraph 3.a. is replaced by the following:

3.a. Coverage under this provision is afforded until the end of the policy period.

This provision does not apply if newly formed or acquired organizations coverage is excluded either by the provisions of the Coverage Form or by endorsements.

M. DAMAGE TO PREMISES RENTED TO YOU

Section III – Limits of Insurance, Paragraph 6. is replaced by the following:

Subject to **5.a.** above, the Damage To Premises Rented To You Limit, or \$500,000, whichever is higher, is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke or leakage from automatic protection systems, while rented to you or temporarily occupied by you with permission of the owner.

N. MEDICAL PAYMENTS – INCREASED LIMITS

Section III – Limits of Insurance, Paragraph 7. is replaced by the following:

7. Subject to Paragraph 5. above, \$10,000 is the Medical Expense Limit we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, unless the amount shown on the Declarations of this Coverage Part for Medical Expense Limit states:
- (a) No Coverage; or
 - (b) \$1,000; or
 - (c) \$5,000; or
 - (d) A limit higher than \$10,000.

O. DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Section IV – Commercial General Liability Conditions Paragraph 2. is amended to add the following:

1. The requirement in Condition 2.a. that you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim, applies only when the "occurrence" or offense is known to:
- (1) You, if you are an individual or a limited liability company;
 - (2) A partner, if you are a partnership;
 - (3) A member or manager, if you are a limited liability company;
 - (4) An "executive officer" or insurance manager, if you are a corporation; or
 - (5) A trustee, if you are a trust.
2. The requirement in Condition 2.b. that you must see to it that we receive notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:
- (1) You, if you are an individual or a limited liability company;
 - (2) A partner, if you are a partnership;
 - (3) A member or manager, if you are a limited liability company;
 - (4) An "executive officer" or insurance manager, if you are a corporation; or
 - (5) A trustee, if you are a trust.

P. PRIMARY AND NONCONTRIBUTORY – ADDITIONAL INSURED EXTENSION

Section IV – Commercial General Liability Conditions Paragraph 4. **Other Insurance** is amended to add the following:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

However, if the additional insured has been added as an additional insured on other policies, whether primary, excess, contingent or on any other basis, this insurance is excess over any other insurance regardless of the written agreement between you and an additional insured.

Q. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES

Section IV – Commercial General Liability Conditions Paragraph 6. **Representations** is amended to add the following:

If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under the Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

R. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

Section IV – Commercial General Liability Condition Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of:

- 1. Your ongoing operations; or
- 2. "Your work" included in the "products-completed operations hazard".

However, this waiver applies only when you have agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

- 1. Is in effect or becomes effective during the term of this policy; and
- 2. Was executed prior to loss.

S. MENTAL ANGUISH

Section V – Definition 3. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

T. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

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 10/26/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001110485 of Texas Mutual Insurance Company effective on 10/26/23

Issued to: JACODY CONSTRUCTION LP

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

10/25/23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTO ELITE EXTENSION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

The BUSINESS AUTO COVERAGE FORM is amended to include the following clarifications and extensions of coverage. With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

Section I – Covered Autos Paragraph **C. Certain Trailers, Mobile Equipment, and Temporary Substitute Autos** is amended by adding the following:

If **Physical Damage Coverage** is provided by this coverage form for an "auto" you own, the **Physical Damage Coverages** provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of breakdown, repair, servicing, "loss" or destruction.

The coverage provided is the same as the coverage provided for the vehicle being replaced.

B. BLANKET ADDITIONAL INSURED

The **Who Is An Insured** provision under **Section II – Covered Autos Liability Coverage** is amended to include the following as an "insured":

1. Any person or organization whom you have agreed in a written contract or agreement to name as an additional "insured" under your "auto" Policy to provide "bodily injury" or "property damage" coverage, but only with respects to liability arising out of the use of a covered "auto" you own, hire or borrow and resulting from the acts or omissions by you, any of your "employees" or agents. The insurance afforded to such additional "insured" will not be broader than that which you are required to provide for such additional "insured" and applies only to a written contract executed prior to the "bodily injury" or "property damage" and is still in force at the time of the "accident".
2. With respect to the insurance afforded to the additional "insured" described above, the following is added to **Section – C. Limit Of Insurance Covered Autos Liability Coverage**:

The most we will pay on behalf of the additional "insured" is the amount of insurance:

- (1) Required by the written contract or agreement described above, or

- (2) Available under the applicable Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations; whichever is less.

C. EMPLOYEES AS INSURED

The following is added to the **Section II – Covered Autos Liability Coverage**, Paragraph **A.1. Who Is An Insured** provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. EMPLOYEE HIRED AUTOS

1. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions

Paragraph **5.b.** of the **Other Insurance** in the Business Auto Coverage Form is amended by the addition of the following:

For Hired Auto Physical Damage Coverage any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

E. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured is amended by adding the following:

Any organization which you acquire or form after the effective date of this Policy in which you maintain ownership or majority interest. However:

- (1) Coverage under this provision is afforded only up to 180 days after you acquire or form the organization, or to the end of the Policy period, whichever is earlier.

F. SUBSIDIARIES AS INSURED

Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured is amended by adding the following:

Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this Policy. However, "insured" does not include any subsidiary that is an "insured" under any other automobile liability Policy or was an "insured" under such a Policy but for termination of that Policy or the exhaustion of the Policy's limits of liability.

G. SUPPLEMENTARY PAYMENTS

Section II – Covered Autos Liability Coverage, A.2.a. Coverage Extensions, Supplementary Payments (2) and (4) are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

H. FELLOW EMPLOYEE COVERAGE

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by workers compensation exclusivity rule, or similar protection. The following provision is added:

Subparagraph 5. of Paragraph B. **Exclusions in Section II – Covered Autos Liability Coverage** does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

I. TOWING AND LABOR

Section III – Physical Damage Coverage, A.2. Towing And Labor is replaced with the following:

We will pay for **Towing And Labor** costs incurred, subject to the following:

- a. Up to \$100 each time a covered "auto" that is a private passenger type is disabled; or
- b. Up to \$500 each time a covered "auto" other than the private passenger type is disabled.

However, the labor must be performed at the place of disablement.

J. LOCKSMITH SERVICES

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$250 per occurrence for necessary locksmith services for keys locked inside

a covered private passenger "auto". The deductible is waived for these services.

K. TRANSPORTATION EXPENSES

Section III – Physical Damage Coverage, A.4. Coverage Extensions Subparagraph a. Transportation Expenses is replaced by the following:

- (1) We will pay up to \$75 per day to a maximum of \$2,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the Policy's expirations, when the covered "auto" is returned to use or we pay for its "loss".
- (2) If the temporary transportation expenses you incur arise from your rental of an "auto" of the private passenger type, the most we will pay is the amount it costs to rent an "auto" of the private passenger type which is of the same like, kind and quality as the stolen covered "auto".

L. ELECTRONIC EQUIPMENT COVERAGE ADDED LIMITS

All electronic equipment that reproduces, receives or transmits audio, visual, or data signals in any one "loss" is \$5,000, in addition to the sublimit in Paragraph C.1.b. of the **Limits Of Insurance** provision under **Section III – Physical Damage Coverage**.

M. HIRED AUTO PHYSICAL DAMAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following: If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision Coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you lease, hire, rent or borrow is deemed to be a covered "auto" you own, subject to the following limit and deductible:

- (1) The most we will pay for loss to any leased, hired, rented or borrowed "auto" is the lesser of up to a limit of \$100,000, Actual Cash Value or Cost of Repair, minus the deductible.
- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- (3) Subject to the above limit and deductible provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will pay up to \$1,000, in addition to the limit above, for **Loss Of Use** of a hired auto to a leasing or rental concern for a monetary loss

sustained, provided it results from an "accident" for which you are legally liable.

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

N. AUTO LOAN/LEASE GAP COVERAGE

Section III – Physical Damage Coverage
Paragraph A.4. Coverage Extensions is amended by the addition of the following:

Autos of the private passenger, light or medium trucks that are loaned or leased for a period of six months or longer and which have been provided Physical Damage Coverage is a covered "auto" under this Policy for which a premium charge has been made for Comprehensive, Specified Cause of Loss, or Collision Coverage. We will pay any unpaid amount due up to a limit of \$10,000 on the lease or loan for a covered "auto", including up to a maximum of \$500 for early termination fees or penalties, on the lease or loan for a covered "auto", less:

1. The amount paid under the Policy's **Physical Damage Coverage**; and
2. Any:
 - a. Overdue or any deferred lease/loan payments at the time of the "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - c. Security deposits not returned by the lessor;
 - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous loans or leases.

The insurance provided by this Auto Loan/Lease Gap Coverage is excess over any other collectible insurance including but not limited to any coverage provided by or purchased from the lessor or any financial institution.

O. PERSONAL PROPERTY OF OTHERS

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$500 for loss to Personal Property Of Others in or on your covered "auto" in the event of a covered "auto" loss.

No deductibles apply to this coverage.

P. PERSONAL EFFECTS COVERAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$500 for "loss" to your Personal Effects not otherwise covered in the Policy or, if you

are an individual, the Personal Effects of a family member, that is in the covered auto at the time of the "loss".

For the purposes of this extension Personal Effects means tangible property that is worn or carried by an insured including portable audio, visual, or electronic devices. Personal Effects does not include tools, jewelry, guns, money and securities, or musical instruments.

Q. EXTRA EXPENSE FOR STOLEN AUTO

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$1,000 for the expense incurred returning a stolen covered "auto" to you because of the total theft of such covered "auto". Coverage applies only to those covered "autos" for which you carry Comprehensive or Specified Causes Of Loss Coverage.

R. RENTAL REIMBURSEMENT EXPENSES

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. We will pay for **Rental Reimbursement Expenses** incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
3. We will pay only for those expenses incurred during the Policy period beginning 24 hours after the "loss" and ending, regardless of the Policy's expiration, with the lesser of the following number of days
 - a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
 - b. 30 days.
4. Our payment is limited to the lesser of the following amounts:
 - a. Necessary and actual expenses incurred; or
 - b. \$75 per day, subject to a \$2,250 limit.
5. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
6. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your **Rental Reimbursement Expenses** which is not already provided for under the **Physical Damage – Transportation Expense**

Coverage Extension included in this endorsement.

7. Coverage provided by this extension is excess over any other collectible insurance and/or endorsement to this Policy.

S. VEHICLE WRAPS COVERAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. Vehicle wraps that are damaged are covered at the lessor of replacement cost or the original purchase cost of the vehicle wrap, whichever is less, up to \$2,000.

This coverage does not apply to wear and tear.

T. AIRBAG COVERAGE

Section III – Physical Damage Coverage, B.3.a. Exclusions is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this Policy, the exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

U. NEW VEHICLE REPLACEMENT COST

The following is added to Paragraph **C. Limit Of Insurance** of **Section III – Physical Damage Coverage**

In the event of a total "loss" to a covered "auto" you own of the private passenger type or vehicle having a gross vehicle weight of 20,000 pounds or less, to which this coverage applies, we will pay to replace such covered "auto", minus any applicable deductible shown in the Declarations, at your option:

- a. The verifiable new vehicle purchase price you paid for your damaged vehicle, not including any insurance or warranties.
- b. The purchase price, as negotiated by us, of a new vehicle of the same make, model, and equipment, or most similar model available, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.
- c. The market value of your damaged vehicle, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.

We will not pay for initiation or set up costs associated with a loans or leases.

For the purposes of this coverage extension a new covered auto is defined as an "auto" of which you are the original owner that has not been previously titled which you purchased less than 180 days prior to the date of loss.

V. LOSS TO TWO OR MORE COVERED AUTOS FROM ONE ACCIDENT

Section III – Physical Damage Coverage, D. Deductible Subparagraph 2. is replaced by the following:

2. Regardless of the number of covered "autos" damaged or stolen the maximum deductible applicable for all "loss" in any one event caused by:

- a. Theft or Mischief or Vandalism; or
- b. All Perils
- c. Collision

Will be equal to two times the highest deductible applicable to any one covered "auto" on the Policy for Comprehensive, Specified Causes of Loss or Collision Coverage. The application of the highest deductible used to calculate the maximum deductible will be made regardless of which covered "autos" were damaged or stolen in the "loss".

W. FULL GLASS COVERAGE

Section III – Physical Damage Coverage, D. Deductible is amended by the addition of the following:

If the Comprehensive Coverage applies to the covered "autos", no Comprehensive Coverage Deductible applies to the cost of repairing or replacing damaged glass on the covered "auto(s)".

X. PHYSICAL DAMAGE DEDUCTIBLE – VEHICLE TRACKING SYSTEM

Section III – Physical Damage D. Deductible is amended by adding the following:

Comprehensive Coverage Deductible shown in the Declaration will be reduced by 50% for any "loss" caused by theft of the vehicle when equipped with a vehicle tracking device such as a radio tracking device or a global positioning device and that device was the method of recovery of the vehicle.

Y. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

Section IV – Business Auto Conditions, A.2. Duties In The Event Of Accident, Claim, Suit Or Loss is amended by adding the following:

Your obligation to notify us promptly of an "accident", claim, "suit" or "loss" is satisfied if you send us the required notice as soon as practicable after your Insurance Administrator or anyone else designated by you to be responsible for insurance matters is notified, or in any manner made aware, of an "accident", claim, "suit" or "loss".

Z. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

Subparagraph 5. of Paragraph **A. Loss Conditions** of **Section IV – Business Auto Conditions** is deleted in its entirety and replaced with the following.

Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, we waive any right of recovery we may have against any person, or organization with whom you have a

written contract, agreement or permit executed prior to the "loss" that requires a waiver of recovery for payments made for damages arising out of your operations done under contract with such person or organization.

AA. PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

Section IV – Business Auto Conditions, B. General Conditions, 5. Other Insurance c. is replaced by the following:

This Coverage **Form's Covered Autos Liability Coverage** is primary to and will not seek contribution from any other insurance available to an "insured" under your Policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

AB. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES

Section IV – Business Auto Conditions, B.2. Concealment, Misrepresentation, Or Fraud is amended by adding the following:

If you unintentionally fail to disclose any exposures existing at the inception date of this Policy, we will not deny coverage under this Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

AC. MENTAL ANGUISH

Section V – Definitions, C. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

AD. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

9/17/2024

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY ANCO Insurance PO Box 3889 Bryan, TX 77805	PHONE (A/C, No, Ext): 979-776-2626	COMPANY United Fire & Casualty Company	
FAX (A/C, No): 979-774-5372	E-MAIL ADDRESS: harrod@anco.com		
CODE:	SUB CODE:		
AGENCY CUSTOMER ID #:			
INSURED JaCody Construction LP 10770 State Hwy 30, Suite 400 College Station TX 77845	LOAN NUMBER	POLICY NUMBER 46310638	
	EFFECTIVE DATE 10/26/2023	EXPIRATION DATE 10/26/2024	☐ CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

PERILS INSURED

BASIC

BROAD

☒

SPECIAL

COVERAGE / PERILS / FORMS

AMOUNT OF INSURANCE

DEDUCTIBLE

Builders Risk

6,500,000

2,500

REMARKS (Including Special Conditions)

Re: Bee Creek and Central Park Tennis Court Renovations

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS City of College Station 1101 Texas Ave College Station, TX 77842	ADDITIONAL INSURED	LENDER'S LOSS PAYABLE	LOSS PAYEE
	MORTGAGEE		
	LOAN #		
AUTHORIZED REPRESENTATIVE 			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS –
AUTOMATIC STATUS WHEN REQUIRED IN A WRITTEN
CONSTRUCTION CONTRACT – PRIMARY AND NONCONTRIBUTORY**

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of:

- a. your ongoing operations for the additional insured; or
- b. "Your work" for the additional insured and included in the "products – completed operations hazard" but only if:
 - (1) A written contract requires you to provide such coverage to such additional insured; and
 - (2) The coverage form to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law;
- b. Will not be broader than that which you are required by the contract to provide for such additional insured.
- c. Only applies if the "bodily injury", "property damage" or "personal and advertising injury" takes place subsequent to the execution of such written contract; and

d. Only applies while such written contract is in force.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural, engineering or surveying activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. There is no coverage for the additional insured for "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on the behalf of the additional insured.

However, if a written contract requires you to defend or indemnify the additional insured for its sole negligence, then the coverage for the additional insured shall conform to what is required in such written contract.

3. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this coverage form.

- C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract described in Paragraph **A.1.**; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- D.** The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary and Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
 - (2) You have agreed in writing in a contract that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.
- E.** All other terms and conditions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CHANGES – CANCELLATION AND NONRENEWAL PROVISIONS FOR CASUALTY LINES AND COMMERCIAL PACKAGE POLICIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY
FARM COVERAGE PART – FARM LIABILITY COVERAGE FORM
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

This endorsement also modifies insurance provided under the following when written as part of a Commercial Package Policy:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Paragraph **2.** of the **Cancellation** Common Policy Condition is replaced by the following:

2. We may cancel this policy:

- a.** By mailing or delivering to the first Named Insured written notice of cancellation, stating the reason for cancellation, at least 10 days before the effective date of cancellation.

However, if this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then the notice of cancellation, as described above, will be provided to the first Named Insured 30 days before the effective date of cancellation. We will also provide 30 days' written notice to each unit-owner to whom we issued a certificate or memorandum of insurance, by mailing or delivering the notice to each last mailing address known to us.

b. For the following reasons, if this policy does not provide coverage to a governmental unit, as defined under 28 TEX. ADMIN. CODE, Section 5.7001 or on one- and two-family dwellings:

(1) If this policy has been in effect for 60 days or less, we may cancel for any reason except that, under the provisions of the Texas Insurance Code, we may not cancel this policy solely because the policyholder is an elected official.

(2) If this policy has been in effect for more than 60 days, or if it is a renewal or continuation of a policy issued by us, we may cancel only for one or more of the following reasons:

- (a) Fraud in obtaining coverage;
- (b) Failure to pay premiums when due;
- (c) An increase in hazard within the control of the insured which would produce an increase in rate;
- (d) Loss of our reinsurance covering all or part of the risk covered by the policy; or
- (e) If we have been placed in supervision, conservatorship or receivership and the cancellation is approved or directed by the supervisor, conservator or receiver.

c. For the following reasons, if this policy provides coverage to a governmental unit, as defined under 28 TEX. ADMIN. CODE, Section 5.7001 or on one- and two-family dwellings:

(1) If this policy has been in effect for less than 90 days, we may cancel coverage for any reason.

(2) If this policy has been in effect for 90 days or more, or if it is a renewal or continuation of a policy issued by us, we may cancel coverage, only for the following reasons:

- (a) If the first Named Insured does not pay the premium or any portion of the premium when due;
- (b) If the Texas Department of Insurance determines that continuation of this policy would result in violation of the Texas Insurance Code or any other law governing the business of insurance in Texas;

(c) If the Named Insured submits a fraudulent claim; or

(d) If there is an increase in the hazard within the control of the Named Insured which would produce an increase in rate.

B. The following condition is added and supersedes any provision to the contrary:

Nonrenewal

1. We may elect not to renew this policy except that, under the provisions of the Texas Insurance Code, we may not refuse to renew this policy solely because the policyholder is an elected official.

2. This paragraph, 2., applies unless the policy qualifies under Paragraph 3. below.

If we elect not to renew this policy, we may do so by mailing or delivering to the first Named Insured, at the last mailing address known to us, written notice of nonrenewal, stating the reason for nonrenewal, at least 60 days before the expiration date. If notice is mailed or delivered less than 60 days before the expiration date, this policy will remain in effect until the 61st day after the date on which the notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date will be computed pro rata based on the previous year's premium.

3. If this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then we will mail or deliver written notice of nonrenewal, at least 30 days before the expiration or anniversary date of the policy, to:

- a. The first Named Insured; and
- b. Each unit-owner to whom we issued a certificate or memorandum of insurance.

We will mail or deliver such notice to each last mailing address known to us.

4. If notice is mailed, proof of mailing will be sufficient proof of notice.

5. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ELITE EXTENSION – TEXAS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is amended to include the following clarifications and extensions of coverage. The provisions of the Coverage Form apply unless modified by endorsement.

A. EXPECTED OR INTENDED INJURY

Section I – Coverage A, Exclusion **a.** is amended as follows:

- a.** “Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.

B. NON-OWNED WATERCRAFT

Section I – Coverage A, Exclusion **g.(2)** is amended as follows:

- (2)** A watercraft you do not own that is:

- (a)** Less than 60 feet long; and
- (b)** Not being used to carry person(s) or property for a charge;

C. EXTENDED PROPERTY DAMAGE COVERAGE

Section I – Coverage A, Exclusions **j.(3)** and **(4)** is amended to add the following:

Paragraphs **(3)** and **(4)** of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

SCHEDULE	
Limits Of Insurance	Deductible
\$5,000 Each Occurrence	\$250 Per Claim
\$10,000 Annual Aggregate	

- a.** The each occurrence limit listed above is the most we will pay for all damages because of “property damage” to property in the care, custody and control of or property loaned to an insured as the result of any one “occurrence”, regardless of the number of:

- (1)** insureds;
- (2)** claims made or “suits” brought;
- (3)** persons or organizations making claims or bringing “suits”.

The aggregate limit listed above is the most we will pay for all damages because of “property damage” to property in the care custody and control of or property loaned to an insured during the policy period.

Any payment we make for damages because of “property damage” to property in the care, custody and control of or property loaned to an insured will apply against the General Aggregate Limit shown in the declarations.

- b.** Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the deductible amount listed above. We may pay any part or all of the deductible amount listed above. We may pay any part or all of the deductible amount to effect settlement of any claim or “suit” and upon notification by us, you will promptly reimburse us for that part of the deductible we paid.
- c.** If two or more coverages apply under one “occurrence”, only the highest per claim deductible applicable to these coverages will apply.
- d.** Insurance provided by this provision is excess over any other insurance, whether primary, excess, contingent or any other basis. Since insurance provided by this endorsement is excess, we will have no duty to defend any claim or “suit” to which insurance provided by this endorsement applies if any other insurer has a duty to defend such a claim or “suit”. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured’s rights against all those other insurers.

D. PROPERTY DAMAGE – ELEVATORS

Section I – Coverage A.2. Exclusions paragraphs **j.(3)**, **j.(4)**, **j.(6)** and **k.** do not apply to use of elevators.

This insurance afforded by this provision is excess over any valid and collectible property insurance (including any deductible) available to the insured and **Section IV – Commercial General Liability Conditions Paragraph 4. Other Insurance.**

E. FIRE, LIGHTNING OR EXPLOSION DAMAGE

Except where it is used in the term "hostile fire", the word fire includes fire, lightning or explosion wherever it appears in the Coverage Form.

Under **Section I – Coverage A**, the last paragraph (after the exclusions) is replaced with the following:

Exclusions **c.** through **n.** do not apply to damage by fire, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance**.

F. MEDICAL PAYMENTS

If **Section I – Coverage C. Medical Payments Coverage** is not otherwise excluded from this Coverage Form:

The requirement, in the Insuring Agreement of Coverage **C.**, that expenses must be incurred and reported to us within **one year** of the accident date is changed to **three years**.

G. SUPPLEMENTARY PAYMENTS

Supplementary Payments – Coverages A and B Paragraphs **1.b.** and **1.d.** are replaced by the following:

1.b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

H. SUBSIDIARIES AS INSURED

Section II – Who Is An Insured is amended to add the following:

1.f. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, insured does not include any subsidiary that is an insured under any other general liability policy, or would have been an insured under such a policy but for termination of that policy or the exhaustion of that policy's limits of liability.

I. BLANKET ADDITIONAL INSURED – AS REQUIRED BY CONTRACT

1. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) subject to provisions in Paragraph **2.** below, (hereinafter referred to as additional insured) when you and such person(s) or organization(s) have agreed in a written contract or written agreement that such person(s) or organization(s) be added as an additional insured on your policy provided that the written contract or agreement is:

- a. Currently in effect or becomes effective during the policy period; and
- b. Executed prior to an "occurrence" or offense to which this insurance would apply.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured; and
- c. Applies only if the person or organization is not specifically named as an additional insured under any other provision of, or endorsement added to, **Section II – Who Is An Insured** of this policy.

2. As provided herein, the insurance coverage provided to such additional insureds is limited to:

- a. Any Controlling Interest, but only with respect to their liability arising out of their financial control of you; or premises they own, maintain, or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- b. Any architect, engineer, or surveyor engaged by you but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In the performance of your ongoing operations.

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

- c. Any manager or lessor of a premises leased to you, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

- d. Any state or governmental agency or subdivision or political subdivision, subject to the following:

- (1) This insurance applies only with respect to the following hazards for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
- (b) The construction, erection or removal of elevators; or
- (c) The ownership, maintenance or use of any elevators covered by this insurance.

- (2) This insurance applies only with respect to operations performed by you or on your behalf for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

- e. Any vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

With respect to the insurance afforded to these vendors, the following additional exclusions apply:

- (1) The insurance afforded any vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which any vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that any vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by any vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at any vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for any vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of any vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Subparagraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- f. Any Mortgagee, Assignee Or Receiver, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you.
This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.
- g. Any Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you.
With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
 - (1) This insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land;
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- h. Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- i. Any Owners, Lessees, or Contractors for whom you are performing operations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

(2) "Bodily injury" or "property damage" occurring after:

(a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

j. Any Grantor of Licenses to you, but only with respect to their liability as grantor of licenses to you.

Their status as additional insured under this endorsement ends when:

1. The license granted to you by such person(s) or organization(s) expires; or

2. Your license is terminated or revoked by such person(s) or organization(s) prior to expiration of the license as stipulated by the contract or agreement.

k. Any Grantor of Franchise, but only with respect to their liability as grantor of a franchise to you.

l. Any Co-owner of Insured Premises, but only with respect to their liability as co-owner of any insured premises.

m. Any Concessionaires Trading Under Your Name, but only with respect to their liability as a concessionaire trading under your name.

3. Any insurance provided to any additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or its agents, "employees" or any other representative of the additional insured.

4. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance:**

If coverage provided to any additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

J. COVERAGE FOR INJURY TO CO-EMPLOYEES AND/OR YOUR OTHER VOLUNTEER WORKERS

Section II – Who is an Insured, Paragraph 2.a. (1) is amended to add the following:

e. Paragraphs (a), (b), and (c) do not apply to your "employees" or "volunteer workers" with respect to "bodily injury" to a co-"employee" or other "volunteer worker".

Damages owed to an injured co-"employee" or "volunteer worker" will be reduced by any amount paid or available to the injured co-"employee" or "volunteer worker" under any other valid and collectible insurance.

K. HEALTH CARE SERVICE PROFESSIONALS AS INSUREDS - INCIDENTAL MALPRACTICE

Section II – Who is an Insured, Paragraph 2.a. (1) (d) is amended as follows:

This provision does not apply to Nurses, Emergency Medical Technicians, or Paramedics who provide professional health care services on your behalf.

However this exception does not apply if you are in the business or occupation of providing any such professional services.

L. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Section II – Who Is An Insured, Paragraph 3.a. is replaced by the following:

3.a. Coverage under this provision is afforded until the end of the policy period.

This provision does not apply if newly formed or acquired organizations coverage is excluded either by the provisions of the Coverage Form or by endorsements.

M. DAMAGE TO PREMISES RENTED TO YOU

Section III – Limits of Insurance, Paragraph 6. is replaced by the following:

Subject to **5.a.** above, the Damage To Premises Rented To You Limit, or \$500,000, whichever is higher, is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke or leakage from automatic protection systems, while rented to you or temporarily occupied by you with permission of the owner.

N. MEDICAL PAYMENTS – INCREASED LIMITS

Section III – Limits of Insurance, Paragraph 7. is replaced by the following:

7. Subject to Paragraph 5. above, \$10,000 is the Medical Expense Limit we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, unless the amount shown on the Declarations of this Coverage Part for Medical Expense Limit states:
- (a) No Coverage; or
 - (b) \$1,000; or
 - (c) \$5,000; or
 - (d) A limit higher than \$10,000.

O. DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Section IV – Commercial General Liability Conditions Paragraph 2. is amended to add the following:

1. The requirement in Condition 2.a. that you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim, applies only when the "occurrence" or offense is known to:
- (1) You, if you are an individual or a limited liability company;
 - (2) A partner, if you are a partnership;
 - (3) A member or manager, if you are a limited liability company;
 - (4) An "executive officer" or insurance manager, if you are a corporation; or
 - (5) A trustee, if you are a trust.
2. The requirement in Condition 2.b. that you must see to it that we receive notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:
- (1) You, if you are an individual or a limited liability company;
 - (2) A partner, if you are a partnership;
 - (3) A member or manager, if you are a limited liability company;
 - (4) An "executive officer" or insurance manager, if you are a corporation; or
 - (5) A trustee, if you are a trust.

P. PRIMARY AND NONCONTRIBUTORY – ADDITIONAL INSURED EXTENSION

Section IV – Commercial General Liability Conditions Paragraph 4. **Other Insurance** is amended to add the following:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

However, if the additional insured has been added as an additional insured on other policies, whether primary, excess, contingent or on any other basis, this insurance is excess over any other insurance regardless of the written agreement between you and an additional insured.

Q. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES

Section IV – Commercial General Liability Conditions Paragraph 6. **Representations** is amended to add the following:

If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under the Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

R. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

Section IV – Commercial General Liability Condition Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of:

- 1. Your ongoing operations; or
- 2. "Your work" included in the "products-completed operations hazard".

However, this waiver applies only when you have agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

- 1. Is in effect or becomes effective during the term of this policy; and
- 2. Was executed prior to loss.

S. MENTAL ANGUISH

Section V – Definition 3. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

T. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

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 10/26/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001110485 of Texas Mutual Insurance Company effective on 10/26/23

Issued to: JACODY CONSTRUCTION LP

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

10/25/23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTO ELITE EXTENSION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

The BUSINESS AUTO COVERAGE FORM is amended to include the following clarifications and extensions of coverage. With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

Section I – Covered Autos Paragraph **C. Certain Trailers, Mobile Equipment, and Temporary Substitute Autos** is amended by adding the following:

If **Physical Damage Coverage** is provided by this coverage form for an "auto" you own, the **Physical Damage Coverages** provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of breakdown, repair, servicing, "loss" or destruction.

The coverage provided is the same as the coverage provided for the vehicle being replaced.

B. BLANKET ADDITIONAL INSURED

The **Who Is An Insured** provision under **Section II – Covered Autos Liability Coverage** is amended to include the following as an "insured":

- Any person or organization whom you have agreed in a written contract or agreement to name as an additional "insured" under your "auto" Policy to provide "bodily injury" or "property damage" coverage, but only with respects to liability arising out of the use of a covered "auto" you own, hire or borrow and resulting from the acts or omissions by you, any of your "employees" or agents. The insurance afforded to such additional "insured" will not be broader than that which you are required to provide for such additional "insured" and applies only to a written contract executed prior to the "bodily injury" or "property damage" and is still in force at the time of the "accident".
- With respect to the insurance afforded to the additional "insured" described above, the following is added to **Section – C. Limit Of Insurance Covered Autos Liability Coverage**:

The most we will pay on behalf of the additional "insured" is the amount of insurance:

- Required by the written contract or agreement described above, or

- Available under the applicable Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations; whichever is less.

C. EMPLOYEES AS INSURED

The following is added to the **Section II – Covered Autos Liability Coverage**, Paragraph **A.1. Who Is An Insured** provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. EMPLOYEE HIRED AUTOS

1. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions

Paragraph **5.b.** of the **Other Insurance** in the Business Auto Coverage Form is amended by the addition of the following:

For **Hired Auto Physical Damage Coverage** any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

E. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured is amended by adding the following:

Any organization which you acquire or form after the effective date of this Policy in which you maintain ownership or majority interest. However:

- (1) Coverage under this provision is afforded only up to 180 days after you acquire or form the organization, or to the end of the Policy period, whichever is earlier.

F. SUBSIDIARIES AS INSURED

Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured is amended by adding the following:

Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this Policy. However, "insured" does not include any subsidiary that is an "insured" under any other automobile liability Policy or was an "insured" under such a Policy but for termination of that Policy or the exhaustion of the Policy's limits of liability.

G. SUPPLEMENTARY PAYMENTS

Section II – Covered Autos Liability Coverage, A.2.a. Coverage Extensions, Supplementary Payments (2) and (4) are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

H. FELLOW EMPLOYEE COVERAGE

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by workers compensation exclusivity rule, or similar protection. The following provision is added:

Subparagraph 5. of Paragraph B. **Exclusions in Section II – Covered Autos Liability Coverage** does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

I. TOWING AND LABOR

Section III – Physical Damage Coverage, A.2. Towing And Labor is replaced with the following:

We will pay for **Towing And Labor** costs incurred, subject to the following:

- a. Up to \$100 each time a covered "auto" that is a private passenger type is disabled; or
- b. Up to \$500 each time a covered "auto" other than the private passenger type is disabled.

However, the labor must be performed at the place of disablement.

J. LOCKSMITH SERVICES

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$250 per occurrence for necessary locksmith services for keys locked inside

a covered private passenger "auto". The deductible is waived for these services.

K. TRANSPORTATION EXPENSES

Section III – Physical Damage Coverage, A.4. Coverage Extensions Subparagraph a. **Transportation Expenses** is replaced by the following:

- (1) We will pay up to \$75 per day to a maximum of \$2,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the Policy's expirations, when the covered "auto" is returned to use or we pay for its "loss".
- (2) If the temporary transportation expenses you incur arise from your rental of an "auto" of the private passenger type, the most we will pay is the amount it costs to rent an "auto" of the private passenger type which is of the same like, kind and quality as the stolen covered "auto".

L. ELECTRONIC EQUIPMENT COVERAGE ADDED LIMITS

All electronic equipment that reproduces, receives or transmits audio, visual, or data signals in any one "loss" is \$5,000, in addition to the sublimit in Paragraph C.1.b. of the **Limits Of Insurance** provision under **Section III – Physical Damage Coverage**.

M. HIRED AUTO PHYSICAL DAMAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following: If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision Coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you lease, hire, rent or borrow is deemed to be a covered "auto" you own, subject to the following limit and deductible:

- (1) The most we will pay for loss to any leased, hired, rented or borrowed "auto" is the lesser of up to a limit of \$100,000, Actual Cash Value or Cost of Repair, minus the deductible.
- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- (3) Subject to the above limit and deductible provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will pay up to \$1,000, in addition to the limit above, for **Loss Of Use** of a hired auto to a leasing or rental concern for a monetary loss

sustained, provided it results from an "accident" for which you are legally liable.

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

N. AUTO LOAN/LEASE GAP COVERAGE

Section III – Physical Damage Coverage
Paragraph A.4. Coverage Extensions is amended by the addition of the following:

Autos of the private passenger, light or medium trucks that are loaned or leased for a period of six months or longer and which have been provided Physical Damage Coverage is a covered "auto" under this Policy for which a premium charge has been made for Comprehensive, Specified Cause of Loss, or Collision Coverage. We will pay any unpaid amount due up to a limit of \$10,000 on the lease or loan for a covered "auto", including up to a maximum of \$500 for early termination fees or penalties, on the lease or loan for a covered "auto", less:

1. The amount paid under the Policy's **Physical Damage Coverage**; and
2. Any:
 - a. Overdue or any deferred lease/loan payments at the time of the "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - c. Security deposits not returned by the lessor;
 - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous loans or leases.

The insurance provided by this Auto Loan/Lease Gap Coverage is excess over any other collectible insurance including but not limited to any coverage provided by or purchased from the lessor or any financial institution.

O. PERSONAL PROPERTY OF OTHERS

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$500 for loss to Personal Property Of Others in or on your covered "auto" in the event of a covered "auto" loss.

No deductibles apply to this coverage.

P. PERSONAL EFFECTS COVERAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$500 for "loss" to your Personal Effects not otherwise covered in the Policy or, if you

are an individual, the Personal Effects of a family member, that is in the covered auto at the time of the "loss".

For the purposes of this extension Personal Effects means tangible property that is worn or carried by an insured including portable audio, visual, or electronic devices. Personal Effects does not include tools, jewelry, guns, money and securities, or musical instruments.

Q. EXTRA EXPENSE FOR STOLEN AUTO

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

We will pay up to \$1,000 for the expense incurred returning a stolen covered "auto" to you because of the total theft of such covered "auto". Coverage applies only to those covered "autos" for which you carry Comprehensive or Specified Causes Of Loss Coverage.

R. RENTAL REIMBURSEMENT EXPENSES

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. We will pay for **Rental Reimbursement Expenses** incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
3. We will pay only for those expenses incurred during the Policy period beginning 24 hours after the "loss" and ending, regardless of the Policy's expiration, with the lesser of the following number of days
 - a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
 - b. 30 days.
4. Our payment is limited to the lesser of the following amounts:
 - a. Necessary and actual expenses incurred; or
 - b. \$75 per day, subject to a \$2,250 limit.
5. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
6. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your **Rental Reimbursement Expenses** which is not already provided for under the **Physical Damage – Transportation Expense**

Coverage Extension included in this endorsement.

7. Coverage provided by this extension is excess over any other collectible insurance and/or endorsement to this Policy.

S. VEHICLE WRAPS COVERAGE

Section III – Physical Damage Coverage, A.4. Coverage Extensions is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. Vehicle wraps that are damaged are covered at the lessor of replacement cost or the original purchase cost of the vehicle wrap, whichever is less, up to \$2,000.

This coverage does not apply to wear and tear.

T. AIRBAG COVERAGE

Section III – Physical Damage Coverage, B.3.a. Exclusions is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this Policy, the exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

U. NEW VEHICLE REPLACEMENT COST

The following is added to Paragraph **C. Limit Of Insurance** of **Section III – Physical Damage Coverage**

In the event of a total "loss" to a covered "auto" you own of the private passenger type or vehicle having a gross vehicle weight of 20,000 pounds or less, to which this coverage applies, we will pay to replace such covered "auto", minus any applicable deductible shown in the Declarations, at your option:

- a. The verifiable new vehicle purchase price you paid for your damaged vehicle, not including any insurance or warranties.
- b. The purchase price, as negotiated by us, of a new vehicle of the same make, model, and equipment, or most similar model available, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.
- c. The market value of your damaged vehicle, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.

We will not pay for initiation or set up costs associated with a loans or leases.

For the purposes of this coverage extension a new covered auto is defined as an "auto" of which you are the original owner that has not been previously titled which you purchased less than 180 days prior to the date of loss.

V. LOSS TO TWO OR MORE COVERED AUTOS FROM ONE ACCIDENT

Section III – Physical Damage Coverage, D. Deductible Subparagraph 2. is replaced by the following:

2. Regardless of the number of covered "autos" damaged or stolen the maximum deductible applicable for all "loss" in any one event caused by:

- a. Theft or Mischief or Vandalism; or
- b. All Perils
- c. Collision

Will be equal to two times the highest deductible applicable to any one covered "auto" on the Policy for Comprehensive, Specified Causes of Loss or Collision Coverage. The application of the highest deductible used to calculate the maximum deductible will be made regardless of which covered "autos" were damaged or stolen in the "loss".

W. FULL GLASS COVERAGE

Section III – Physical Damage Coverage, D. Deductible is amended by the addition of the following:

If the Comprehensive Coverage applies to the covered "autos", no Comprehensive Coverage Deductible applies to the cost of repairing or replacing damaged glass on the covered "auto(s)".

X. PHYSICAL DAMAGE DEDUCTIBLE – VEHICLE TRACKING SYSTEM

Section III – Physical Damage D. Deductible is amended by adding the following:

Comprehensive Coverage Deductible shown in the Declaration will be reduced by 50% for any "loss" caused by theft of the vehicle when equipped with a vehicle tracking device such as a radio tracking device or a global positioning device and that device was the method of recovery of the vehicle.

Y. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

Section IV – Business Auto Conditions, A.2. Duties In The Event Of Accident, Claim, Suit Or Loss is amended by adding the following:

Your obligation to notify us promptly of an "accident", claim, "suit" or "loss" is satisfied if you send us the required notice as soon as practicable after your Insurance Administrator or anyone else designated by you to be responsible for insurance matters is notified, or in any manner made aware, of an "accident", claim, "suit" or "loss".

Z. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

Subparagraph 5. of Paragraph **A. Loss Conditions** of **Section IV – Business Auto Conditions** is deleted in its entirety and replaced with the following.

Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, we waive any right of recovery we may have against any person, or organization with whom you have a

written contract, agreement or permit executed prior to the "loss" that requires a waiver of recovery for payments made for damages arising out of your operations done under contract with such person or organization.

AA. PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

Section IV – Business Auto Conditions, B. General Conditions, 5. Other Insurance c. is replaced by the following:

This Coverage **Form's Covered Autos Liability Coverage** is primary to and will not seek contribution from any other insurance available to an "insured" under your Policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

AB. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES

Section IV – Business Auto Conditions, B.2. Concealment, Misrepresentation, Or Fraud is amended by adding the following:

If you unintentionally fail to disclose any exposures existing at the inception date of this Policy, we will not deny coverage under this Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

AC. MENTAL ANGUISH

Section V – Definitions, C. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

AD. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

POLICY NUMBER:

46310638

INLAND MARINE SUPPLEMENTAL DECLARATIONS

FORM/ COVERAGE	DEDUCTIBLE	LIMIT OF INSURANCE	PREMIUM
ADDITIONAL INTEREST - Additional Insured CITY OF COLLEGE STATION PO BOX 9960 COLLEGE STATION TX 77842-7960 ADDITIONAL INTEREST - Loss Payable CITY OF COLLEGE STATION PO BOX 9960 COLLEGE STATION TX 77842-7960			

EXHIBIT D
PLANS AND SPECIFICATIONS

If the plans and specifications from the RFP/CSP are not physically inserted here, then they are fully incorporated into this contract by reference.

EXHIBIT E
CONSTRUCTION PROPOSAL/SCHEDULE

City of College Station

Bee Creek and Central Park Tennis Courts

RFP (CSP) No – 24-077

Proposal Form – Competitive Sealed Proposal

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for the construction of the tennis court renovations and to perform the work required for the construction of said tennis court renovations 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 Bid

\$ 1,041,469.00

Amount in Figures.

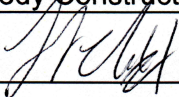
One Million, Forty-One Thousand, Four Hundred Sixty-Nine Dollars and No Cents.

Amount in Words

Calendar days to substantial completion is 180 days.

Receipt of Addenda 1 & 2

CONTRACTOR NAME: JaCody Construction, LP

CONTRACTOR SIGNATURE: 

October 7, 2024
Item No. 9.5.
CCWWTP Phase 1, Outfall Improvements Project

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Norman Construction Services, LLC., in the amount of \$3,237,031 for the construction of the new outfall improvements at the Carter Creek Wastewater Treatment Plant (CCWWTP), plus the City's contingency in the amount of \$323,703; for a total appropriation of \$3,560,734. 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 and award of the construction contract with Norman Construction Services, LLC., for the construction of new outfall improvements work at the Carter Creek Wastewater Treatment Plant, in the amount of \$3,560,734.

Summary:

Under this contract, the existing parallel 60" outfall piping and existing concrete headwall would be demolished, removed, and that area would be backfilled/compacted to grade. It would be replaced with new parallel 60" and 69" outfall piping, a new concrete headwall with rip rap connecting to Carter Creek, a large concrete junction box, a 60" stub-out for future connection, some new fencing, and all the area would be backfilled, compacted to grade, and seeded for grass. Some concrete sidewalk paving would also be replaced in the process. The work is planned sequentially so that at least one 60" outfall pipe would always be operational. This work is entirely located on site at the CCWWTP and within the recently acquired easement adjacent to the CCWWTP, obtained for this purpose. The project originated from the discovery that the existing outfall components, including the concrete headwall and Reinforced Concrete Pipe (RCP) components, were breaking apart and the resulting erosion was creating some significant maintenance issues with the outfall system that required full replacement of that system.

This project was bid as an Invitation to Bid (ITB) and 6 responses were received, of which Norman Construction Services, LLC. was the lowest, qualified, responsible and responsive bid. The bid received from Rubios Solutions, Inc. was 53% lower than all other bids due to some errors in estimating. Rubios Solutions, Inc. subsequently requested to remove their bid from consideration, which was approved.

Budget & Financial Summary: Budget in the amount of \$5,329,594 is included for this project in the Wastewater Projects Fund. A total of \$895,751.53 has been expended or committed to date, leaving a balance of \$4,433,842.47 in the total project budget for this construction contract and future costs. If this project is approved, it will leave a remaining balance of approximately \$870,000 in the project fund.

Attachments:

1. CCWWTP Outfall Project Bid Tab
2. CCWWTP Outfall Project Map
3. CCWWTP Outfall Vendor-Signed Contract

City of College Station
ITB# 24-083
CCWWTP Outfall Improvement Phase 1
Bid Opening: Tuesday, September 10, 2024 @ 2:00 PM

				D&S Contracting, Inc. (College Station, TX)		Dudley Construction, LLC (College Station, TX)		Norman Construction Services, LLC (Wellborn, TX)		RAVA Construction, LLC (Houston, TX)		Solid Bridge Construction (New Waverly, TX)		Rubios Solutions, Inc (College Station, TX)	
BASE BID ITEMS															
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Amount	Unit Price	Extended Amount	Unit Price	Extended Amount	Unit Price	Extended Amount	Unit Price	Extended Amount	Unit Price	Extended Amount
Carters Creek WWTP Effluent Filter Phase I - Outfall Improvements															
1	Mobilization	LS	1	\$245,165.00	\$245,165.00	\$112,500.00	\$112,500.00	\$436,111.00	\$436,111.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$49,000.00	\$49,000.00
2	Carters Creek WWTP Outfall Pipe Improvements	LS	1	\$4,400,640.00	\$4,400,640.00	\$3,430,000.00	\$3,430,000.00	\$2,372,170.00	\$2,372,170.00	\$3,072,500.00	\$3,072,500.00	\$3,320,655.00	\$3,320,655.00	\$1,308,000.00	\$1,308,000.00
3	Trench Safety	LF	750	\$205.00	\$153,750.00	\$45.00	\$33,750.00	\$140.00	\$105,000.00	\$10.00	\$7,500.00	\$32.00	\$24,000.00	\$1.00	\$750.00
4	Stormwater Pollution Prevention Plan	LS	1	\$25,000.00	\$25,000.00	\$17,500.00	\$17,500.00	\$84,750.00	\$84,750.00	\$16,000.00	\$16,000.00	\$60,000.00	\$60,000.00	\$11,213.00	\$11,213.00
5	Additional Flowable Fill	CY	250	\$200.00	\$50,000.00	\$200.00	\$50,000.00	\$230.00	\$57,500.00	\$160.00	\$40,000.00	\$220.00	\$55,000.00	\$146.00	\$36,500.00
6	Additional Structural Excavation	CY	250	\$25.00	\$6,250.00	\$15.00	\$3,750.00	\$50.00	\$12,500.00	\$20.00	\$5,000.00	\$18.00	\$4,500.00	\$20.00	\$5,000.00
7	Additional Structural Backfill	CY	250	\$180.00	\$45,000.00	\$32.00	\$8,000.00	\$75.00	\$18,750.00	\$50.00	\$12,500.00	\$18.00	\$4,500.00	\$34.00	\$8,500.00
8	Additional Class 3 Backfill	CY	250	\$45.00	\$11,250.00	\$30.00	\$7,500.00	\$145.00	\$36,250.00	\$25.00	\$6,250.00	\$120.00	\$30,000.00	\$34.00	\$8,500.00
9	Additional Class 12 Backfill	CY	100	\$50.00	\$5,000.00	\$45.00	\$4,500.00	\$50.00	\$5,000.00	\$130.00	\$13,000.00	\$100.00	\$10,000.00	\$37.00	\$3,700.00
10	Additional Riprap	SY	200	\$400.00	\$80,000.00	\$85.00	\$17,000.00	\$275.00	\$55,000.00	\$90.00	\$18,000.00	\$140.00	\$28,000.00	\$153.00	\$30,600.00
11	Additional Concrete Paving	SY	50	\$160.00	\$8,000.00	\$80.00	\$4,000.00	\$80.00	\$4,000.00	\$160.00	\$8,000.00	\$120.00	\$6,000.00	\$101.00	\$5,050.00
12	Allowance for College Station Utilities Coordination	LS	1	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
TOTAL BID				\$5,080,055.00		\$3,738,500.00		\$3,237,031.00		\$3,398,750.00		\$3,742,655.00		\$1,516,813.00	
Addendum Acknowledged				Y		Y		Y		Y		Y		Y	
Certification Received				Y		Y		Y		Y		Y		Y	
Bond				Y		Y		Y		Y		Y		Y	

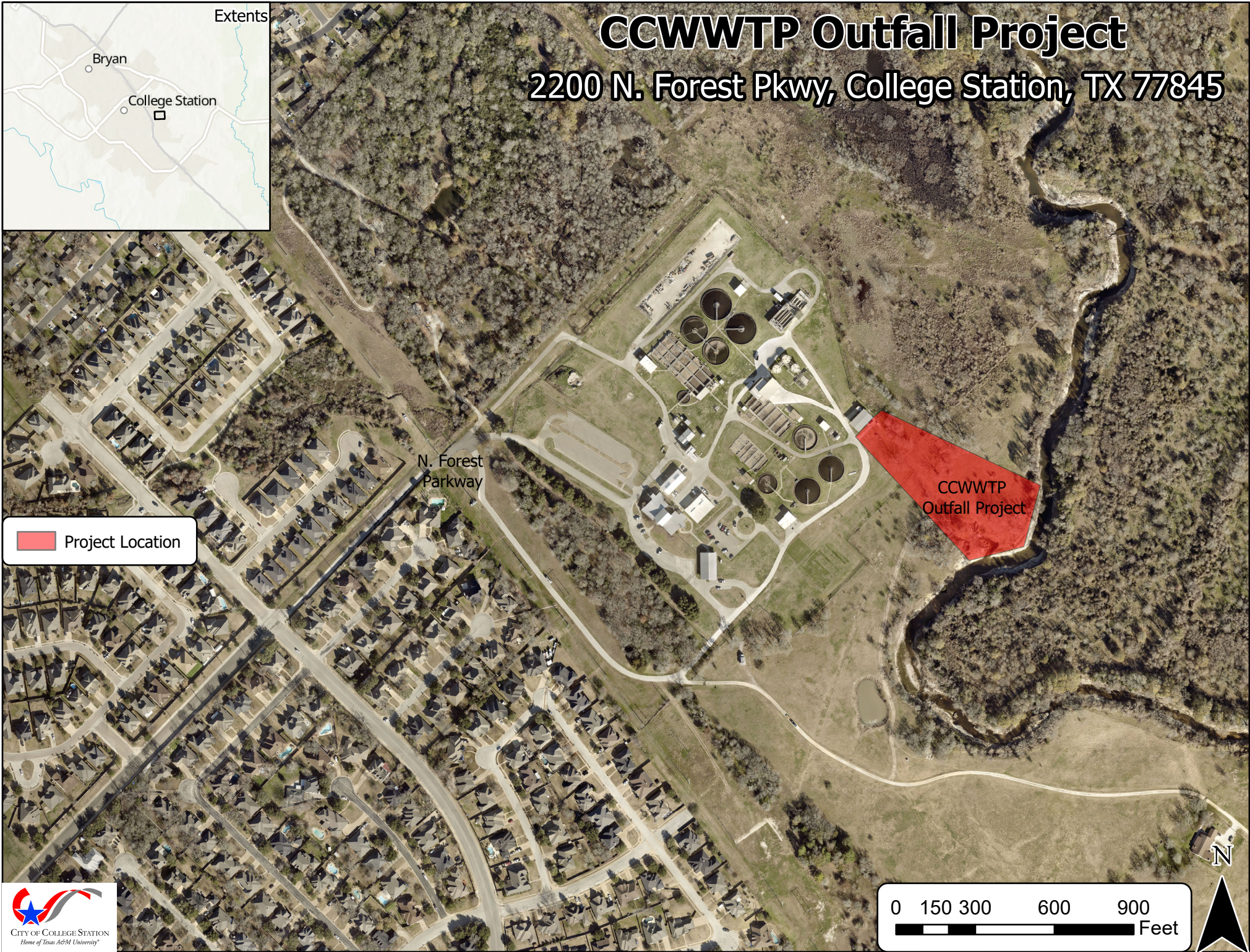
Should there be discrepancies between unit prices and totals, the unit price shall prevail.

Lowest, qualified, responsible and responsive bidder
Bid withdrawn



CCWWTP Outfall Project

2200 N. Forest Pkwy, College Station, TX 77845





CITY OF COLLEGE STATION
Home of Texas A&M University®

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300037 PROJECT#: WW2202 BID/RFP/RFQ#: 24-083

Project Name / Contract Description: CCWWTP Outfall Improvement Project Phase 1

Name of Contractor: Norman Construction Services, LLC

CONTRACT TOTAL VALUE: \$ 3,237,031.00 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)

This project was advertised as an Invitation to Bid (ITB) and opened on September 10th. Six (6) bids were received with Norman Construction Services, being the lowest, qualified, responsive bidder. Budget in the amount of \$5,329,594 is included for this project in the Waste Water Projects Fund. Contract includes a 10% contingency to pay City-authorized costs associated with this Project, should the need arise.

CRC Approval Date*: N/A (If required)* Council Approval Date*: 10/7/24 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: AD 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 Norman Construction Services, LLC. (the "Contractor") for the construction and/or installation of the following:
Carters Creek Wastewater Treatment Plant Outfall Improvement Project; as described in ITB 24-083.

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: Three Hundred Twenty-Three Thousand Seven Hundred Three and 00 /100 Dollars (\$ 323,703.00).

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: Three Million Two Hundred Thirty-Seven Thousand Thirty-One and 00 /100 Dollars (\$ 3,237,031.00).

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

NORMAN CONSTRUCTION SERVICES, LLC.

By: Gene Norman

Printed Name: Gene Norman

Title: owner

Date: 10/2/2024

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.

=====
** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$17.20) or 13658
(\$12.90). Please see the Note at the top of the wage
determination for more information. Please also note that the
minimum wage requirements of Executive Order 14026 are not
currently being enforced as to any contract or subcontract to
which the states of Texas, Louisiana, or Mississippi, including
their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including
preventive care; to assist a family member (or person who is
like family to the employee) who is ill, injured, or has other
health-related needs, including preventive care; or for reasons
resulting from, or to assist a family member (or person who is
like family to the employee) who is a victim of, domestic
violence, sexual assault, or stalking. Additional information
on contractor requirements and worker protections under the EO
is available at
<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of ""identifiers"" that indicate whether the particular
rate is a union rate (current union negotiated rate for local),
a survey rate (weighted average rate) or a union average rate
(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
- * an existing published wage determination
 - * a survey underlying a wage determination
 - * a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additionalclassification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.
5. Except for Heavy/Highway Construction, building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

EXHIBIT B
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Bond No. 022239408

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Norman Construction Services, LLC., as Principal, hereinafter called "Contractor" and the other subscriber hereto Liberty Mutual Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Million Two Hundred Thirty-Seven Thousand Thirty-One and 00 /100 Dollars (\$ 3,237,031.00) 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 Carters Creek Wastewater Treatment Plant Outfall Improvement Project, as described in ITB 24-083, 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. 25300037

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.

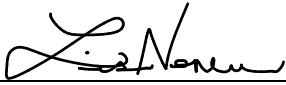
Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed 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. 022239408

FOR THE CONTRACTOR:

ATTEST & SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

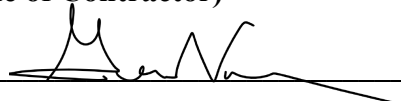
By: 

Name: Lisa Norman

Title: Admin Operations Manager

Date: 10/07/24

Norman Construction Services, LLC
(Name of Contractor)

By: 

Name: Gene Norman

Title: President

Date: 10/07/24

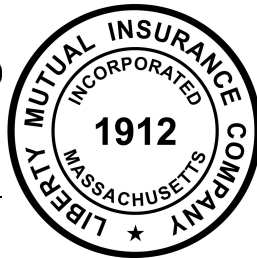
FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: Patricia K. Skelton

Name: Patricia K. Skelton

Title: CSR

Date: 10/07/24



Seal No. 5051

Liberty Mutual Insurance Company
(Full Name of Surety)

175 Berkley Street

Boston, MA 02116
(Address of Surety for Notice)

By: 

Name: David T. Satine

Title: Attorney-in-Fact

Date: 10/07/24

FOR THE CITY:

REVIEWED:

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. 022239408

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Norman Construction Services, LLC., as Principal, hereinafter called "Principal" and the other subscriber hereto Liberty Mutual Insurance Company, a corporation organized and existing under the laws of the State of Massachusetts, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Million Two Hundred Thirty-Seven Thousand Thirty-One and 00 /100 Dollars (\$3,237,031.00) 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 7 day of October, 2024, for Carters Creek Wastewater Treatment Plant Outfall Improvement Project; as described in ITB 24-083, 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. 022239408

FOR THE CONTRACTOR:

ATTEST & SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

Norman Construction Services, LLC
(Name of Contractor)

By: 

By: 

Name: Lisa Norman

Name: Gene Norman

Title: Admin Operations Manger

Title: President

Date: 10/07/24

Date: 10/07/24

FOR THE SURETY:
ATTEST/WITNESS (SEAL)



Liberty Mutual Insurance Company
(Full Name of Surety)

By: Patricia K. Skelton

175 Berkley Street

Name: Patricia K. Skelton

Boston, MA 02116

Title: CSR

(Address of Surety for Notice)

Date: 10/07/24

By: 

Name: David T. Satine

Title: Attorney-in-Fact

Date: 10/07/24

FOR THE CITY:

THE FOREGOING BOND IS ACCEPTED ON
BEHALF OF THE CITY OF COLLEGE
STATION, TEXAS:

REVIEWED:

City Attorney

City Manager

NOTE: Date of bonds must be on or after the date of execution by City.



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.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8205217-984816**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, David T. Satine; Jonathan A. Bursevich; Warren M. Alter

all of the city of Miami Lakes state of FL 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 Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 7th day of April, 2021.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By:

David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 7th day of April, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American 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 a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, 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-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are 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 execution of any such instruments and to attach thereto the seal of the Corporation. When so 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.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company 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 Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

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 of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney 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, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, 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 Companies this 7th day of October, 2024.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Surety's toll free telephone number for information or to make a complaint at:

1-800-782-1546

You may also write to the Surety at:

**P.O. Box 19725
Irvine, CA 92623-9725**

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:

**P.O. Box 149104
Austin, TX 78714-9104
Fax# 512-475-1771
web: <http://www.tdi.state.tx.us>**

E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANCE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de para informacion o para someter una queja al:

1-800-782-1546

Usted tambien puede escribir al Surety:

**P.O. Box 19725
Irvine, CA 92623-9725**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de compa-
nias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

**P.O. Box 149104
Austin, TX 78714-9104
Fax# 512-475-1771
web: <http://www.tdi.state.tx.us>**

E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Surety primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTEAVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



Liberty Mutual Surety

17771 Cowan, Suite 100 • Irvine, California 92614 • (949) 263-3300
www.libertymutualsurety.com

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



ADDITIONAL REMARKS SCHEDULE

AGENCY Dexter & Company of Central Texas, Inc.		NAMED INSURED Norman Construction Services, LLC PO Box 223 Wellborn, TX 77881	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1		
		EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
the Umbrella Liability policy has endorsements for additional insured, waiver of subrogation, primary, non-contributory wording, and at least 7 days' notice of cancellation,

The Workers Compensation policy includes Blanket Waiver of Subrogation only when there is a written contract between the named insured and the certificate holder that requires such status.
And has at least 7 days' notice of cancellation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS ADDITIONAL INSURED - AUTOMATIC STATUS AND AUTOMATIC WAIVER OF SUBROGATION WHEN REQUIRED IN WRITTEN CONTRACT, AGREEMENT, PERMIT OR AUTHORIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Additional Insured - Owners, Lessees Or Contractors - Automatic Status For Other Parties When Required In Written Contract Or Agreement With You

1. Section II - Who Is An Insured is amended to include as an additional insured any person or organization you have agreed in writing in a contract or agreement to add as an additional insured on this Coverage Part. Such person(s) or organization(s) is an additional insured only with respect to liability for:

a. "Bodily injury", "property damage" or "personal and advertising injury" *caused, in whole or in part, by* the performance of your ongoing operations by you or on your behalf, under that written contract or written agreement. Ongoing operations does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the 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; and

b. "Bodily injury" or "property damage" *caused, in whole or in part, by* "your work" performed under that written contract or written agreement and in

cluded in the "products-completed operations hazard", but only if:

(1) The Coverage Part to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard"; and

(2) The written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for that person or organization.

If the written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for a specified length of time for that person or organization, the "bodily injury" or "property damage" must occur prior to the expiration of that period of time in order for this insurance to apply.

If the written contract or written agreement requires you to provide additional insured coverage for a person or organization per only ISO additional insured endorsement form number **CG 20 10**, without specifying an edition date, and without specifically requiring additional insured coverage included within the "products-completed operations hazard", this Paragraph **b.** does not apply to that person or organization.

2. If the written contract or written agreement described in Paragraph **1.** above specifically requires you to provide additional insured coverage to that person or organization:

a. *Arising out of* your ongoing operations or *arising out of* "your work"; or

- b. By way of an edition of an ISO additional insured endorsement that includes *arising out of* your ongoing operations or *arising out of* "your work";

then the phrase *caused, in whole or in part, by* in Paragraph **A.1.a.** and/or Paragraph **A.1.b.** above, whichever applies, is replaced by the phrase *arising out of*.

3. With respect to the insurance afforded to the additional insureds described in Paragraph **A.1.**, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

4. This Paragraph **A.** does not apply to additional insureds described in Paragraph **B.**

B. Additional Insured - State Or Governmental Agency Or Subdivision Or Political Subdivision - Automatic Status When Required In Written Permits Or Authorizations

1. **Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision you have agreed in writing in a contract, agreement, permit or authorization to add as an additional insured on this Coverage Part. Such state or governmental agency or subdivision or political subdivision is an additional insured only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision issued, in writing, a contract, agreement, permit or authorization.

2. With respect to the insurance afforded to the additional insureds described in Paragraph **B.1.**, the following additional exclusions apply:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard."

- C. The insurance afforded to additional insureds described in Paragraphs **A.** and **B.**:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and
3. Does not apply to any person, organization, state, governmental agency or subdivision or political subdivision specifically named as an additional insured for the same project in the schedule of an endorsement added to this Coverage Part.

- D. With respect to the insurance afforded to the additional insureds described in Paragraphs **A.** and **B.**, the following is added to **Section III - Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract, written agreement, written permit or written authorization described in Paragraphs **A.** and **B.**; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- E. **Section IV - Commercial General Liability Conditions** is amended to add the following:

Automatic Additional Insured Provision

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

1. During the policy period; and

2. Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraphs **A.** and **B.**
- F. Except when **G.** below applies, the following is added to **Section IV - Commercial General Liability Conditions, 5. Other Insurance**, and supersedes any provision to the contrary:

When Other Additional Insured Coverage Applies On An Excess Basis

This insurance is primary to other insurance available to the additional insured described in Paragraphs **A.** and **B.** except:

1. As otherwise provided in **Section IV - Commercial General Liability Conditions, 5. Other Insurance, b. Excess Insurance**; or
 2. For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, this insurance is also excess.
- G. The following is added to **Section IV - Commercial General Liability Conditions, 5. Other Insurance**, and supersedes any provision to the contrary:

Primary Insurance When Required By Written Contract, Agreement, Permit Or Authorization

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization described in Paragraph **A.** or **B.** that this insurance would be primary to any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means any insurance provided by a consolidated (wrap-up) insurance program.

Primary And Noncontributory Insurance When Required By Written Contract, Agreement, Permit Or Authorization

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to and will not seek contribution from any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization described in Paragraph **A.** or **B.** that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means any insurance provided by a consolidated (wrap-up) insurance program.

- H. **Section IV - Commercial General Liability Conditions, 9. Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

We waive any right of recovery we may have against any additional insured under this endorsement against whom you have agreed to waive such right of recovery in a written contract, written agreement, written permit or written authorization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract, written agreement, written permit or written authorization. However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

- (3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - (4) An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders. Each of the following is also a Named Insured:
 - (a) Any "subsidiary" company of such organization, including any "subsidiary" of such "subsidiary":
 - 1) Existing at the inception of this Coverage Part; or
 - 2) Formed or acquired on or after the inception of this Coverage Part.
 - (b) Any other company controlled and actively managed by such organization or any "subsidiary" thereof:
 - 1) At the inception of this Coverage Part; or
 - 2) If the control and active management thereof is acquired on or after the inception of this Coverage Part.
 - (5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- b.** Each of the following is also an insured:
- (1) Any "employee" of yours while acting within the scope of their duties as such.
 - (2) Any person or organization while acting as your real estate manager.
 - (3) Any person or organization having proper temporary custody of your property if you die, but only:
 - (a) With respect to liability arising out of the maintenance or use of that property; and
 - (b) Until your legal representative has been appointed.
 - (4) Your legal representative if you die, but only with respect to duties as such.
- 2.** Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":
- a.** You are an insured.
 - b.** Anyone else while using with your permission an "auto" you own, hire or borrow is also an insured except:
 - (1) The owner or any other person or organization (except your "executive officers" or principals) from whom you hire or borrow an "auto", unless such persons or organizations are insureds in your "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance". This exception does not apply if the "auto" is a trailer or semi-trailer connected to an "auto" you own.
 - (2) Your "employee", if the "auto" is owned by that "employee" or a member of his or her household, unless:
 - (a) Such "employee" is an insured with respect to that "auto" in the "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance"; or
 - (b) The "bodily injury" or "property damage" is sustained by a co-"employee" of such "employee".
 - (3) Someone using an "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos", unless that business is yours.
 - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".
 - c.** Anyone liable for the conduct of an insured described in Paragraphs **2.a.** and **b.** above is also an insured, but only if they are provided insurance coverage for such liability by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance and then only for such hazards for which coverage is provided by such "underlying insurance".

3. At your option and subject to the terms and conditions of this insurance, any other person or organization not addressed by Paragraphs 1. and 2. above, but covered in the "underlying insurance" listed in the Schedule of Underlying Insurance are also insureds, but only to the extent that insurance is provided for such person or organization by the "underlying insurance".

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.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made, "suits" brought or number of vehicles involved or insured; or
 - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for all damages:
 - a. Included in the "products-completed operations hazard";
 - b. Because of "bodily injury" by disease sustained by your "employees" arising out of and in the course of their employment by you; or
 - c. Because of "bodily injury", "personal and advertising injury" or "property damage" not included within a. or b. above. However, this Aggregate Limit will not apply to damages which are not subject to an Aggregate Limit in the "underlying insurance".

The Aggregate Limit applies separately to a., b. and c. The Aggregate Limit described in c. will apply only to damages not subject to a. or b. above.

3. Subject to the Limit of Insurance described in 2.c. above:
 - a. Only in the event that "underlying insurance" specifically listed in the Schedule of Underlying Insurance provides an annual Aggregate Limit of Insurance for damages that would not be subject to 2.a. or b. above that is applicable separately to each:
 - (1) Location owned by, or rented or leased to you solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be at-

tributed to operations at only a single location, then the Aggregate Limit described in 2.c. above applies separately to each location owned by, or rented or leased to you.

- (2) Of your construction projects solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be attributed only to ongoing operations and only at a single construction project, then the Aggregate Limit described in 2.c. above applies separately to each of your construction projects.

- b. Only with respect to the application of Limits of Insurance described in 3.a. above, the following terms location and construction project will have the following meanings:

- (1) Location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- (2) Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on your behalf at the same location for the same persons or entities, no matter how often or under how many different contracts, will be deemed to be a single construction project.

4. Subject to the limits described in 2. and 3. above, the Each Occurrence Limit is the most we will pay for the "ultimate net loss":

- a. In excess of the applicable limits of "underlying insurance"; or
- b. If an "occurrence" is not covered by "underlying insurance", but covered by the terms and conditions of this Coverage Part,

for all "bodily injury", "personal and advertising injury" and "property damage" arising out of any one "occurrence".

We will not pay more than the Limit of Insurance shown in this Coverage Part's Declarations for each "occurrence" because any Personal Umbrella Liability Policy(ies) is/are attached to this policy.

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 3/8/24 at 12:01 a.m. standard time, forms a part of:

Policy no. 0002107305 of Texas Mutual Insurance Company effective on 3/8/24

Issued to: Norman Construction Services, LLC

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

3/4/24

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.

Carters Creek Wastewater Treatment Plant Outfall Improvement Phase 1 Project, as described in ITB 24-083.

INVITATION TO BID 24-083 IS INCORPORATED IN THIS CONTRACT BY REFERENCE

EXHIBIT E
CONSTRUCTION SCHEDULE

EXHIBIT F
SCHEDULE OF VALUES

Construction project will consist of Base Bid with total number of 365 calendar days to substantial completion from notice to proceed.

CONTRACTOR'S PROPOSAL

**CONTRACTOR'S PROPOSAL
AND
ALTERNATES (if applicable)
BI D# 24-083**

Date: September 9, 2024

PROPOSAL FROM: Norman Construction Services 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 construction of the Carters Creek Wastewater Treatment Plant Outfall Improvement Project and to perform the work required for the construction of said Carters Creek Wastewater Treatment Plant Outfall Improvement 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:

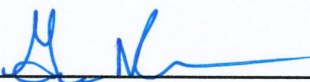
BASE BID W/ALLOWANCE: \$ 3,237,031.00

CALENDAR DAYS: Total number of calendar days to substantial completion is 365 days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: #1+#2 GN

CONTRACTOR NAME: Gene Norman - Norman Construction Services LLC

CONTRACTOR SIGNATURE: 

City of College Station
CCWWTP Outfall Improvement
Bid Number 24-083
Tuesday, September 10, 2024 at 2:00 p.m.

BASE BID ITEMS					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Amount
Carters Creek WWTP Effluent Filter Phase I - Outfall Improvements					
1	Mobilization	LS	1	436,111.00	436,111.00
2	Carters Creek WWTP Outfall Pipe Improvements	LS	1	2,372,170.00	2,372,170.00
3	Trench Safety	LF	750	140.00	105,000.00
4	Stormwater Pollution Prevention Plan	LS	1	84,750.00	84,750.00
5	Additional Flowable Fill	CY	250	230.00	57,500.00
6	Additional Structural Excavation	CY	250	50.00	12,500.00
7	Additional Structural Backfill	CY	250	75.00	18,750.00
8	Additional Class 3 Backfill	CY	250	145.00	36,250.00
9	Additional Class 12 Backfill	CY	100	50.00	5,000.00
10	Additional Riprap	SY	200	275.00	55,000.00
11	Additional Concrete Paving	SY	50	80.00	4,000.00
12	Allowance for College Station Utilities Coordination	LS	1	\$ 50,000.00	\$ 50,000.00
Subtotal for Carters Creek WWTP Effluent Filters Phase I - Outfall Improvements					
Total Bid					\$3,237,031.00

**GENERAL/SUB-CONTRACTOR'S EXPERIENCE
AND
DATA INFORMATION**

Name of Company: Norman Construction Services LLC

Company Years in Business: 30 Years

List Municipal Projects
(Similar Projects in Size and Scope Completed in Last Five Years)

Project	Municipality	\$ Amount	Type	Date
Midtown PH3 Detention Pond	City of Bryan	2M	Storm/Sanitary Detention Facility	Dec 2023
Project - Palasota Dr. PH II Rehab	City of Bryan	2M	Storm Sewer Roadway	Jan 2023
Washington Ave & 33rd Street Drainage Improvements	City of Bryan	800,000	Storm Sewer Roadway	Aug 2023
Copperfield Dr Drainage Improvements	City of Bryan	1.3M	Storm Sewer Roadway	April 2023
Windmill Park Sewer Ext	City of Bryan	100,000	Storm/Sanitary Detention Facility	April 2022
Pinebrook Dr. Extension	Grimes County	250,000	Storm Pipe Roadway	Aug 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
Mike Nobles	47 Years	Private / Public Infrastructure
JT Norman	13 Years	Private / Public Infrastructure
Wesley Norman	16 Years	Private / Public Infrastructure

Project Manager	Years Experience	Projects
Gary Arnold	46 Years	Private / Public Infrastructure
Gene Norman	29 Years	Private / Public Infrastructure

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 Bryan

Engineer - Sam Vernon, PE

Phone - (979) 209-5030

Project -
Washington Ave & 33rd Street
Drainage Improvements

Scope - Storm/Sanitary Sewer/Roadway Repairs

2. City of Bryan

Engineer - Eric Blackburn

Phone - (979) 209-5030

Project -
Sulphur Springs Utility & Roadway Rehab

Scope - Storm/Sanitary Sewer/Roadway Repairs

3. City of Bryan

Engineer - James Hayes

Phone - (979) 209-5030

Project -
Commerce Street Utility & Roadway Rehab

Scope - Storm/Sanitary Sewer/Roadway Repairs

4. City of Bryan

Engineer - Alan Munger, PE

Phone - (979) 599-9870

Project -
Copperfield Dr Drainage Improvements

Scope - Storm Sewer/Roadway Repairs

5. City of Bryan & 5J Land Development

Engineer - Joe Schultz

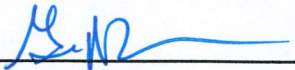
Phone - (979) 764-3900

Project - Windmill Park Sewer Extension

Scope - Storm/Sanitary Sewer/Roadway Repairs

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: Gene Norman Company Name: Norman Construction Services LLC

Phone No.: 979-690-0015 Fax No.: _____

Email: gene@normanconstructionservices.com

Bid Address: PO Box 223 Wellborn, TX 77881
P.O. Box or Street City State Zip

Order Address: PO Box 223 Wellborn, TX 77881
P.O. Box or Street City State Zip

Remit Address: PO Box 223 Wellborn, TX 77881
P.O. Box or Street City State Zip

Federal Tax ID No.: 27-0337638

DUNS No.: 06-073-5100

Date: September 09, 2024

END OF BID #24-083

Gene Norman
PO Box 223
Wellborn, TX 77881
979-739-9392
gene@normanconstructionservices.com

Construction Superintendent/Owner with 26 years in the construction field to include 24 years of experience serving in a construction management capacity

Skills Summary

- 26 years of experience working in the commercial construction field
- 24 years of experience serving in a construction management capacity (Underground and Concrete Superintendent)
- Possess a background owning and operating a large successful general contracting company with 30 + employees for 26 years (projects ranged in value from \$250K to \$5M)
- Experienced in overseeing various large commercial and capital improvement projects ranging from high rise building, parking garages, public schools, municipal building, public streets, drainage improvements, underground utilities etc.
- Highly skilled in hiring, scheduling and supervising subcontractors
- Extensive experience in managing and reviewing budgets (including project and man-hour costs)
- Skilled in developing and enforcing company policies, procedures and project safety regulations
- Possess a background in submitting over 150 bids annually (60% success rate)
- Possess a verifiable track record of 100% job completion on time while meeting strict timelines and budget requirements
- Experienced managing construction crews up to 50 employees while simultaneously managing subcontractors
- Highly skilled in reading and interpreting construction blueprints and specifications
- Bi-lingual (English and Spanish)
- Proficient in MS Office, QuickBooks Pro, Internet, Email, Familiar with estimating software.

Professional Experience

Norman Construction Services, LLC. (College Station, TX)
Managing Member

1997 - Present

A \$10M a year public and private infrastructure company with 40+ employees and numerous sub-contractors. Specializing in public and private utilities, earthwork, and paving.

- Managed the overall operations of a large commercial concrete company (projects ranged from \$75K - \$10M)
- Served in a Construction Project Manager capacity responsible for budget tracking, QA, completing projects within allocated budget, safety compliance, scheduling and coordinating construction materials and crews
- Estimated project costs and complete "takeoffs" based on materials, labor, location, duration, special machinery requirements, taxes, insurance, overhead, and any other costs that may affect the project
- Composed and submitted bid proposals for future projects (bid on over 100 projects annually to include securing 60%)

- Developed, reviewed, and amended construction contracts
- Completed (3) 32-story high rise apartment buildings valued at \$10M each (brought project in on time, within budget, and without any injury reports)
- Detected numerous design problems with a 5-story parking garage to include assisting engineers in rectifying the issues
- Oversaw the construction of \$1.7M bio-fuel processing plant to include working with engineers and general contractor to value engineer the project
- Completed \$850K Veteran's Park Memorial 2 weeks early despite 3 weeks of inclement weather
- Completed \$1.2M City of Palasota PH II Street Rehabilitation on time and within budget while navigating through a high traffic residential / school zone.

Texcon General Contractor, Inc. (College Station, TX)
Superintendent of Concrete & Underground

Jan '95 –March '97

A \$30M general contractor with 175 employees specialized in concrete and underground utility services

- Coordinated and supervised work crews to complete the following work: commercial concrete structures, underground utilities and excavation
- Responsible for project layout according to plans and specifications
- Supervised commercial concrete and underground utility project from start to finish while adhering to a strict timeline. Projects ranging in value from \$100K - \$800K
- Hired, trained and terminated employees
- Completed 98% of projects within the contractual timeline
- Oversaw the construction of \$400K Bee Creek drainage channel (project was completed on time despite extensive delays due to rain and the extra time involved in diverting water from the creek bed)

United State Marine Corps (Camps Pendleton, CA)
Aviation Hydraulic Maintenance & Repair Technician

1992-1995

A 75 troop unit specializing in hydraulic maintenance and repair of the helicopter and F-16 aircrafts.

- Served as Helicopter Systems Mechanic capacity responsible for completing necessary repairs and maintenance helicopter hydraulic systems
- Coordinated maintenance schedule for a fleet of 50 aircrafts
- Conducted parts inventory on a weekly basis and ordered mechanical parts when necessary
- Served as Squadron Leader while in boot camp
- Completed MCT (Marine Combat Training) while serving as Squadron Leader

Education and Training

- Texas Gulf Coast Real Estate School, College Station, TX. Completed 2005
- U.S. Marine Corp Marine Combat Training, Camp Pendleton, CA. Completed 1992
- U.S. Marine Corp Aviation Hydraulic Training, Millington, TN. Completed 1992

Gary Arnold
7625 Planters Loop
Bryan, TX 77808
979-436-2716
gary@normanconstructionservices.com

Construction Manager with 45 years of experience in the construction industry

Skills Summary

- 45 years of experience in Construction Management, Project Management, Estimating
- 45 years of experience in owning, operating, maintaining large fleet of construction equipment
- 35 years of safety coordinator and instruction experience
- 19 years of experience in floodplain management
- 19 years of experience in stormwater management
- 19 years of experience in FEMA Emergency Management
- Manage crew of 70+ employees
- Project manage and inspect projects, up to \$50MM.

Professional Experience

Norman Construction Services, LLC
Lead Estimator / Project Manager

June 2021 - Present

A \$10M a year public and private infrastructure company with 20+ employees and numerous sub-contractors. Specializing in public and private utilities, earthwork and paving.

- Manage public and private infrastructure projects, ranging from \$250K - \$2.5MM
- Estimate and value engineer projects ranging from \$250K - \$2.5MM
- Coordinate and facilitate weekly safety meetings
- Network and build new relationships with potential clients
- Communicate with Engineers, Architects, and Surveyors.

**Brazos County Road and Bridge
Operations Manager of Road & Bridge**

Sept 2003 – June 2021

Municipality with 70+ employees specializing in County road maintenance and infrastructure

- Served the Brazos County in the following capacity –
 - Floodplain Manager
 - Stormwater Manager
 - Capital Projects Manager
 - Safety Manger
 - Budget Manager
- Managed 20 bridge replacements, program funded by Brazos County
- Managed 10 bridge replacements, program funded by TX DOT
- Managed up to \$20MM per year in road rehabilitation projects

**Texcon General Contractors
General Superintenndent, Project Manager, Estimator**

Jan 1989 – Aug 2003

- Managed and estimated the following project types –
 - Commercial Construction
 - Site Civil
 - Public Utilities
 - Heavy Highway
 - Public Roads
 - Drainage

Education and Training

- MSHA Training and Trainer Certified
- Competent Person Certification
- Trench Excavation Certification
- Certified Floodplain Manager
- Stormwater Certified
- MSHA 40 HR Emergency First Aid
- Work Zone Safety Certification
- Certified Defensive Flagger Instructor

Wesley Norman
15610 Wood Brook Ln.
College Station, TX 77845
979-739-2278
wes@normanconstructionservices.com

Construction Superintendent with 16 years of experience in the construction

industry. **Skills Summary**

- 15 years of experience working in the commercial construction field
- 8 years of experience in construction management (Concrete Superintendent)
- Experience overseeing traffic control high traffic zones
- Possess a background in owning and operating a successful landscape/irrigation company with 15+ employees for 7 years (projects up to \$65,000)
- Experience in overseeing commercial projects ranging from civil concrete work, ADA sidewalks, foundations, storm sewer inlet boxes and earthwork.
- Skilled in overseeing and enforcing company policies, procedures, and safety regulations
- Highly skilled in scheduling and supervising several subcontractor crews at a time
- Highly skilled in reading and interpreting blueprints and specifications
- Bi-lingual (English and Spanish)

Professional Experience

Norman Construction Services, LLC
Superintendent

June 2007 – December 2017
& April 2022 – Present

A \$10M a year public and private infrastructure company with 40+ employees and numerous sub-contractors. Specializing in public and private utilities, earthwork, and paving.

- Manage all employees and subcontractors in the field to ensure work is done per plan design
- Manage all schedules pertaining to work performed in the field
- Communicate with Inspectors and Engineers regarding and scheduling and project management in the field
- Manage materials for each project. Ordering, delivery, and job tracking
- Maintain a clean and safe work environment on each project
- Build and maintain relationships with Inspectors, Engineers, Suppliers, and Subcontractors

Rise All-Scapes, LLC
Managing Member

March 2015 – June 2022

A landscaping and irrigation company that specialized in private installs and managed 12 commercial contracts for local HOA's. Projects included landscaping, lawn maintenance, irrigation

audits and repairs to maintain properly functioning systems, concrete repairs and patio additions, fence building and repairs.

- Managed several crews at multiple times and locations
- Surveyed and inventoried all equipment monthly
- Managed several material and rental accounts in Bryan/College Station
- Estimated projects costs and composed "takeoff's" based on materials, labor, location, duration, machinery needs/requirements, insurance and overhead for all projects completed. (Projects ranged from \$1,500 - \$65,000)

Education and Training

- Associated Degree in Commercial Music from South Plains College, Levelland, TX. Completed

Projects Completed

- City of Bryan / Hudson Oaks Copperfield Drive Drainage Improvements
 - Earthwork, Concrete Street Paving, ADA Concrete Sidewalks, Junction/Inlet Boxes, Traffic Control
 - Paul Kochman, City of Bryan Inspector (979) 595-8718
- BTU Lake Bryan Sidewalk Ramp to Boat Dock
 - Dirt work, ADA Concrete Sidewalk, punch list when completed.
 - Inspector – Dennis Norris (979) 255-7199
- City of Bryan Hole 18
 - Dirt work prep, cased piers and abutments on both sides of the creek, setting bridge, punch list when completed.
 - Inspector – Paul Kochman (979) 595-8718
- Washington and 33rd Street Drainage Improvements
 - Demo RCP and replace with Box Culverts, Inlet boxes and junction boxes, demo and replacement of street, traffic control.
 - Inspector – Paul Kochman (979) 595-8718
- City of College Station Sidewalk Improvements Texas Ave to Tarrow St and Sidewalk Improvements on Holleman Dr.
 - Demo and replacement of sidewalk and driveway approaches, backfill of all disturbed areas, traffic control.
 - Vox Construction
- City of College Station Veterans Park Ph 1
 - Concrete sidewalks and approaches, ADA ramps, curb and gutters.
 - JaCody Construction
- City of College Station Lick Creek
 - Concrete Pedestrian path and gateways for Keischnick General Contractors
 - Parking lot and foundation for JaCody Construction
- City of College Station Wellborn Road Sidewalk Improvements
 - Demo and replacement of sidewalk and driveway approaches, backfill of all disturbed areas, traffic control.
 - Inspector – Jerry Jones (979) 764-3570

Joseph T. Norman

1211 Mariners Cove
College Station, TX 77845
979-422-4118

jt@normanconstructionservices.com

Construction Superintendent with 12 years of experience in the construction industry.

Skills Summary

- 12 years of experience working in the commercial construction field
- 12 years of experience in construction management (Earthwork/Utility Superintendent)
- Experience in overseeing private commercial & capital improvement projects
- Experience in overseeing traffic control in densely populated areas
- Skilled in overseeing and enforcing company policies, procedures, and safety regulations
- Highly skilled in scheduling and supervising several subcontractor crews at a time
- Highly skilled in reading and interpreting blueprints and specifications
- Bi-lingual (English and Spanish)

Professional Experience

Norman Construction Services, LLC
Superintendent

May 2012 – Present

A \$10M a year public and private infrastructure company with 40+ employees and numerous sub-contractors. Specializing in public and private utilities, earthwork, and roadway construction.

- Manage all employees and subcontractors in the field to ensure work is done per plan design
- Manage all schedules pertaining to work performed in the field
- Proficient in reading and understanding plans and specifications
- Communicate with Inspectors and Engineers regarding and scheduling and project management in the field
- Manage materials for each project. Ordering, delivery, and job tracking
- Maintain a clean and safe work environment on each project
- Build and maintain relationships with Inspectors, Engineers, Suppliers, and Subcontractors

A \$2M a year aggregate sales business with 5+ employees. Specializing in aggregate sales and trucking logistics.

- Supervise daily operations of the material yard
- Oversee all aspects of the trucking operation
- Develop and implement strategies, procedures and business plans needed to enhance company growth
- Perform employee reviews and develop corrective action plans if needed
- Work with executive team to set company performance goals

Projects Completed

- City of Bryan Hole 18
 - Dirt work prep, cased piers and abutments on both sides of the creek, setting bridge, traffic control, punch list when completed.
 - Inspector – Paul Kochman (979) 595-8718
- Washington and 33rd Street Drainage Improvements
 - Demo RCP and replace with Box Culverts, Inlet boxes and junction boxes, demo and replacement of street, traffic control.
 - Inspector – Paul Kochman (979) 595-8718
- Copperfield Drive Drainage
 - Demo and replace storm sewer, concrete paving, asphalt repair, and traffic control
 - Inspector – Paul Kochman (979) 595-8718
- The Creek Place
 - Earthwork, level site, building pad, sewer, demo and replace sanitary sewer line.
 - Owner – Great Aggie Land LP – Ryan Soper (979) 393-4886
- Palasota Dr. PH II Rehabilitation
 - Earthwork, sanitary / storm sewer, concrete flatwork, detention pond, and traffic control
 - Owner – City of Bryan, TX
 - Inspector – Kurk Fowler (979) 209-5030
- Big Shots Aggieland
 - Earthwork, limestone delivered in place.
 - Owner – Villa Maria Partnership

Training and Technical Adequacy of the Onsite Personnel.

Certificates and a safety manual can be provided upon request. See next page for training log.



<u>Employee</u>	<u>OSHA 10</u>	<u>OSHA 30</u>	<u>OSHA 7510</u>	<u>TRAFFIC CONTROL</u>	<u>EXCAVATION SAFETY</u>	<u>STORMWATER</u>
Ancelmo De Anda					3/8/23	
Claude Willingham					3/8/23	
Everardo Gloria-Garcia					3/8/23	
Gary Arnold				02/15/2017	3/8/23	4/10/23
Gene Norman			6/21/21	9/27/23	3/8/23	4/10/23
Joseph Norman				12/6/23	3/16/22 3/8/23	11/28/23
Jose Mascorro-Adame					3/8/23	
Lisa Norman					3/8/23	
Megan Norman					3/8/23	
Ruben Pineda					3/8/23	
Wesley Norman	1/15/24	1/15/24			3/8/23 10/26/23	

Experience of the Company based upon Previous Public Infrastructure Construction.

See next page for project log.

RECENTLY COMPLETED PROJECTS

Twin City Mission Parking Lot Addition

- Private Project for Non-Profit
- Superintendent – Wesley Norman
- Project Manager – Gene Norman
- Original Cost - \$278,938
- Scope of Work
 - Install Concrete Paving
 - Install Concrete Sidewalks, Curb/Gutter
 - Landscaping
 - Signage / Parking Lot Stripping
- Project Start Date – September 2023
- Project Finish Date – November 2023
- Engineer – Fred Patterson, PE (979) 775-6036

City of Bryan, TX – Midtown PH3E Sedimentation Pond / S. College Detention Pond Structures

- Capital Improvement Project
- Superintendent – Wes Norman / JT Norman
- Project Manager – Gary Arnold
- Original Cost - \$1,908,866
- Final Construction Cost - \$1,937,889
- Scope of Work
 - Sedimentation Pond with concrete bottom and push wall
 - 48" & 15" HDPE Storm Sewer
 - 12" SDR 26 PVC Sanitary Sewer
 - 12" Steel Sedimentation Pond Outlet Pipe
 - 6" Chain Link Fencing with Gates
 - SWPPP & Erosion Control
- Project Start Date – April 2023
- Project Finish Date – December 2023
- Engineer – Brianna Groves, PE (979) 209-5030

City of Bryan, TX – Palasota Dr PH II Rehabilitation

- Public Infrastructure Project
- Superintendent – Gene Norman / JT Norman
- Project Manager – Gary Arnold
- Original Construction Cost - \$2,008,967.20
- Final Construction Cost - \$2,016,597
- Scope of Work
 - Traffic control and project phasing.
 - Construction of 1700 LF 3 lane concrete roadway.
 - Construction of 6' and 12' sidewalks along edge of roadway.
 - Construction of 1715 LF 8" sanitary sewer and 11 manholes.
 - Construction of storm water culvert and inlets for roadway.
 - Excavation and offsite disposal of detention basin expansion.
 - All other appurtenances necessary to complete the Project.
- Project Start Date January 2022
- Project Finish Date – January 2023
- Engineer – Pat Edward (979) 209-5030

City of Bryan, TX – Washington Ave & 33rd Street Drainage Improvements

- Public Infrastructure Project
- Superintendent – Gene Norman / Wesley Norman
- Project Manager – Gary Arnold
- Original Construction Cost - \$781,863
- Final Construction Cost - \$781,863
- Scope of Work –
 - Demolition, erosion control, and storm water pollution prevention.
 - Traffic Control
 - Furnish and install 1,191 SY block sod and 4" top soil.
 - Removal and disposal of 722 SY asphalt pavement.
 - Removal and disposal of 508 SY concrete pavement.
 - Removal and disposal of 883 LF concrete curb and gutter.
 - Milling 1,029 SY of HMAC pavement.
 - Construction of 878 LF curb and gutter.
 - Construction of 1,753 SY of 2" Type D HMAC Overlay
 - Construction of 1,287 SY asphalt stabilized base.
 - Construction of 1,178 LF 42" RCP (Class III)
 - Construction of 9 Junction boxes.
 - Interconnect 4 8"-12" water lines to existing water lines.
- Project Start Date – July 2022
- Project Finish Date – January 2023
- Subcontractors – Rubio's Solutions
- Engineer – Sam Vernon (979) 209-5030

City of Bryan, TX - Copperfield Drive Drainage Improvements

- Public Infrastructure Project
- Superintendent – Gene Norman
- Project Manager – Gary Arnold
- Original Construction Cost - \$1,336,881
- Construction Cost - \$1,376,492
- Scope of Work –
 - Demolition, erosion control, and storm water pollution prevention.
 - Traffic Control
 - Furnish and install 1,191 SY block sod and 4" top soil.
 - Removal and disposal of 722 SY asphalt pavement.
 - Removal and disposal of 508 SY concrete pavement.
 - Removal and disposal of 883 LF concrete curb and gutter.
 - Milling 1,029 SY of HMA pavement
 - Construction of 878 LF curb and gutter.
 - Construction of 1,753 SY of 2" Type D HMA Overlay
 - Construction of 1,287 SY asphalt stabilized base.
 - Construction of 1,178 LF 42" RCP (Class III)
 - Construction of 9 Junction boxes.
 - Interconnect 4 8"-12" water lines to existing water lines.
- Project Start Date – October 2022
- Project Finish Date – August 2023
- Subcontractor – Rubio's Solutions
- Engineer – Alan Munger (979) 599-9870

Heritage Lake Meadows Subdivision

- Residential Subdivision Development
- Superintendent – JT Norman
- Construction Manager – Gary Arnold
- Original Construction Cost - \$550,000.00
- Final Construction Cost - \$550,000.00
- Scope of Work –
 - Construction of 12,188 CY earthwork cut.
 - Construction of 2,311 CY earthwork fill.
 - Construction of 5,140 SY 6" Lime stabilized subgrade preparation.
 - Construction of 4,518 SY 2" HMA Pavement.
 - Construction of 4,518 SY 6" Crushed limestone base.
 - Construction of 824 LF 8" PVC, C900 CI 235, Water Line, Str. Backfill
 - Construction of 96 LF 16" Diameter steel casing.
 - Connect to existing water line.
 - Construction of 25 Tees, bends, valves, reducers, and hydrants.
- Project Start Date – June 2022
- Project Finish Date – September 2022
- Owner – JAXSIR Group – Jason Dent – (979) 500-3124

Reliance Ridge Residential Subdivision Development

- Owner – DC Investment Group
- Superintendent – JT Norman
- Original Construction Cost - \$910,000
- Final Construction Cost - \$932,687
- Scope of Work -
 - Construction of 8,950 CY Mass Grading Cut.
 - Construction of 9,620 CY Mass Grading Fill.
 - Construction of 326 LF 8" PVC Waterline - (DR-14, AWWA C900) – Non-Structural
 - Construction of 4,786 LF 6" PVC Waterline - (DR-14, AWWA C900) – Non-Structural
 - Construction of 6" PVC Waterline - (DR-14, AWWA C900) - Structural
 - with 14" Schedule 40 PVC casing at road crossings
 - Construction of 24 water services.
 - Construction of 36 valves, reducers, connections, and bends.
 - Construction of 370 LF 18"-30" HP Storm with structural backfill.
 - Construction of 13,080 SY 6" lime stabilization.
 - Construction of 13,080 SY 2" Type D HMAC
 - Construction of 16,500 SY 6" Crushed limestone base - Type A Grade 1
 - Construction of 10,372 SF Concrete paving at Intersection w/#4@18"OCEW.
- Project Start Date – November 2021
- Project Finish Date – February 2022
- Owner/Engineer – DC Investment Group – JBS Engineering Bill Cullen (979) 485-2879

Type	Year	Description of Equipment	Leased or Owned	Age in Years	Equipment Maintenance Program to Prevent Unnecessary Downtime
Trackhoe	2020	John Deere 380G	Owned	3	Full time mechanic on staff
Trackhoe	2019	CAT 326 FL	Owned	4	
Wheel Loader	2018	CAT 930M	Owned	5	
Dozer	2020	CAT D4K2LGP	Owned	3	
Dozer	2020	CAT 299D2	Owned	3	
Mini Excavator	2018	CAT 304E2CR	Owned	5	
Track Loader	2017	DAT 299D2	Owned	2	
Pad Foot Roller	2021	CASE 84" Pad Foot	Owned	2	
Smooth Drum Roller	2022	CASE 84" Smooth Drum	Owned	1	
Motor Grader	2019	CAT Motor Grader	Owned	3	
Backhoe	2021	CAT 420F2ST Backhoe	Owned	3	
Skidsteer	2022	Bobcat T740 – B3CA23843	Owned	1	
Skidsteer	2022	Bobcat T740 – B3CA23115	Owned	1	
Water Truck	1994	International Water Truck	Owned	30	
Water Truck	1980	Peterbilt Water Truck	Owned	44	
Scraper	1996	CAT Scraper	Owned	28	
Skidsteer	2023	Bobcat T66	Owned	0	
Mini Excavator	2023	Bobcat E88	Owned	0	
Dump Truck	2012	Mack GU13 – Bobtail Dump Truck	Owned	12	
End Dump	2013	Mack GU13 – Straight Tractor w/Dump Trailer	Owned	11	

Letters of Recommendation

See attached, below.

**DWS DEVELOPMENT INC.
PO BOX 4508
BRYAN, TX 77805**

September 13, 2023

Subject: Letter of Recommendation for Norman Construction

To Whom It May Concern:

I have known Gene Norman and Gary Arnold for over twenty years and have worked with them on multiple development projects, of which the most recent was less than a year ago. In all my dealings with them, they have proven to be quality oriented, very responsive, and if a problem arose, it was taken care of in a timely matter. With that said, I highly recommend Norman Construction Services. If I can answer any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Scarmardo". The signature is fluid and cursive, with a large initial "D" and "S".

David W. Scarmardo
President
DWS Development Inc.
979-412-1386

GATTISENGINEERING

ENGINEERS ♦ CONSULTANTS

September 1, 2023

City of Bryan
c/o Purchasing Department
300 Texas Avenue
Bryan, Texas 77803

Re: Norman Construction Services

To Whom It May Concern,

The purpose of this letter is to acknowledge and attest on behalf of Norman Construction Services (NCS) and the high quality of work that Gene Norman and his company provide.

I consider it a blessing when I have a project and NCS on the job. NCS is always professional, meets deadlines and always provides the highest quality of workmanship. As with any project, you have hurdles and NCS jumps in and helps solve the problem.

I personally have worked with NCS on many projects in the B/CS area, but most recently the Heart of Texas Goodwill in Bryan. NCS's performance on this project was not only vital to completing a successful project but the quality of work was beyond reproach.

Please feel free to contact me for any further information.

Respectfully,
GATTIS ENGINEERING, LLC

Joe Gattis

Joe I. Gattis, PE
Licensed Professional Engineer



JaCody Construction LP,
10770 SH 30, Suite 400
College Station, TX 77845
Phone: 979.774.5613
Fax: 979.774.5693

October 8, 2023

City of Bryan
Purchasing Department
205 E. 28th Street
Bryan, TX 77803

RE: Norman Construction Services – Letter of Recommendation

To Whom It May Concern:

It's my pleasure to write this letter of recommendation on behalf of Norman Construction Services. As a managing member of JaCody Construction, I have worked with Gene Norman & Gary Arnold on a number of private and public Infrastructure projects in the City of Bryan, most recently Edgewater Park.

Norman Construction Services has illustrated their attention to detail, quality and safety on a number of occasions. It is their policy to strive for the highest quality and safety standards. Over the past 5 years I've worked side by side with Mr. Norman on projects involving public utilities, paving, and earthwork. I've been impressed by Mr. Norman's knowledge and quality of workmanship.

Mr. Norman has been able to effectively meet project schedule requirements. He and his crew have been able to quickly adapt to schedule changes, in order to keep the project moving forward. In addition, Norman Construction Services has been exceptionally accommodating when dealing with unforeseen conditions and potential change orders.

Please contact me at (979) 446-5512 if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Forrest Couch', written over a horizontal line.

Forrest Couch
JaCody Construction

September 5, 2023

City of Bryan
Purchasing Department
205 East 28th Street
Bryan, Texas 77803

RE: Contractor Reference Letter Norman Construction Services

To Whom It May Concern:

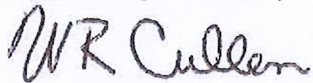
Please accept this letter of recommendation of Norman Construction Services (NCS) for public and private infrastructure projects in the City of Bryan. I have personally been involved in various capacities with the principals of NCS for over 30 years and have been impressed with their knowledge and quality of work, as well as professionalism. NCS has been approved by the City of Bryan for public infrastructure projects as evident by participation in the City of Bryan Contractor Registration Program.

As the owner of the consulting firm, JBS Engineering & Environmental, LLC (JBS), I have previously worked with and overseen NCS in their capacity as the general contractor on several commercial and development projects. NCS has shown a high level of technical expertise, communication and project oversight for projects dealing with public utilities, general earthwork, and paving projects. The members of NCS have always been efficient communicators and accommodating through various project aspects.

JBS is currently providing construction management services of the Reliance Ridge Subdivision of which NCS is the prime contractor. Conversations with the developer indicate the project is ahead on schedule and on budget. Information provided by the Brazos County inspector indicate that NCS have provided excellent communication and are executing proper means and methods for the ongoing construction activities.

Please contact me at (979) 485-2879 if you have any questions or require additional information regarding this matter.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "W. R. Cullen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

W. R. Cullen, P.E.
Senior Engineer
TBPE Registration No. - F15869

Letter of Bondibility & EMR Rating

See attached, below.



www.altersurety.com

September 5, 2024

City of College Station
1101 Texas Ave
College Station, TX 77840

RE: Norman Construction Services, LLC

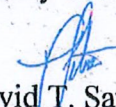
This is to advise you that our office provides Bid, Performance, and Payment Bonds for Norman Construction Services, LLC. Their surety is Liberty Mutual Insurance Company, which carries an A.M. Best Rating of A XV and is listed in the Department of the Treasury's Federal Listing.

Based upon normal and standard underwriting criteria at the time of the request, we anticipate providing Performance and Payment Bonds for single-sized jobs in the \$10,000,000 range and \$30,000,000 in the aggregate. These amounts should not be construed as a limit but rather a guide to handle their day-to-day needs. We obviously reserve the right to review all contractual documents, bond forms, and obtain satisfactory evidence of funding prior to final commitment to issue any bonds.

Norman Construction Services, LLC., is an excellent contractor and we hold them in high regard. Obviously, we feel extremely confident in our contractor and encourage you to offer them an opportunity to execute the captioned project.

This letter is not an assumption of liability. It is issued only as a bonding reference requested by our respected client. If you should have any questions, please do not hesitate to give me a call.

Sincerely,
Liberty Mutual Insurance Company


David T. Satine
Attorney-In-Fact



Mod Factors

NORMAN CONSTRUCTION SERVICES LLC

Risk ID 421842140

Rating Eff Date 03/08/2024

Production Date 10/24/2023

Mod Factor **0.84**

Status Final

ARAP	FLARAP	SARAP	MAARAP
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October 7, 2024

Item No. 9.6.

Brazos Appraisal District Board of Directors Nominations

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a resolution nominating candidate(s) for the Brazos Central Appraisal District Board of Directors.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommend approval of Resolution.

Summary: Effective January 1, 2025, the appraisal district will be governed by a board of nine directors. Five directors are appointed by the taxing units that participate in the district in the manner prescribed by Section 6.03 of the Texas Tax Code.

To be eligible to serve on the board of directors, a person must be a resident of the appraisal district for the last two (2) years. An employee of a taxing unit participating in the appraisal district is prohibited from serving as a director unless the employee is also an elected official or member of the governing body of a taxing unit.

Each voting taxing unit may nominate one candidate for each position to be filled. There are five (5) seats to be filled for a term beginning January 1, 2025. Therefore, your taxing unit may nominate from one to five candidates. Nominations must be made in an open meeting and the presiding officer must submit the names of the nominees by written resolution to the Chief Appraiser before October 15.

Ron Kaiser currently serves as the City of College Station's appointed member with a term expiring on December 31, 2024.

Budget & Financial Summary: N/A

Attachments:

1. Appraisal District Nomination Letter
2. Resolution Nominating BCAD Board of Directors



Dana Horton
Chief Appraiser
Phone (979) 774-4100
Fax (979) 774-4196

September 25, 2024

RE: Written Notice of Appraisal District Board of Directors Appointments – Five (5) Appointed Members

Effective January 1, 2025, the appraisal district will be governed by a board of nine directors. Five directors are appointed by the taxing units that participate in the district in the manner prescribed by Section 6.03 of the Texas Property Tax Code. The tax code requires the Chief Appraiser to conduct the selection process. The following outlines the Chief Appraiser's duties in this regard:

Before October 1	Notify each taxing unit entitled to participate in the selection process of the number of votes it may cast and request candidate nominations by resolution.
Before October 15	Receive director nominations from each voting tax unit.
Before October 30	Prepare and deliver a ballot listing all nominees in alphabetical order to the presiding officer of each voting unit.
Before December 15	Taxing units shall determine its vote by resolution and submit to the Chief Appraiser.
Before December 31	Count the votes, declare the candidates who receive the largest vote totals as elected, and submit the results to the taxing units and to the candidates.

To be eligible to serve on the board of directors, a person must be a resident of the appraisal district for the last two (2) years. An employee of a taxing unit participating in the appraisal district is prohibited from serving as a director unless the employee is also an elected official or member of the governing body of a taxing unit.

Each voting taxing unit may nominate one candidate for each position to be filled. There are five (5) seats to be filled for a term beginning January 1, 2025. Therefore, your taxing unit may nominate from one to five candidates. Nominations must be made in an open meeting and the presiding officer must submit the names of the nominees by written resolution to the Chief Appraiser before October 15. A sample resolution is enclosed.

The following persons currently serve as appointed members with a term expiring on December 31, 2024:

Bill Lero | John Flynn | Ron Kaiser | Kyle DeWitt | Silas Garrett

Rick Lemons | Raul Pendas

The Chief Appraiser is required to calculate and notify each eligible taxing unit of the number of votes it is entitled to cast before October 1.

2025 VOTING ENTITLEMENTS

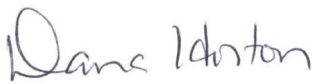
VOTING ENTITIES	NUMBER OF VOTES
BRAZOS COUNTY	1195
BRYAN ISD	1155
CITY OF BRYAN	565
CITY COLLEGE STATION	715
CITY OF KURTEN	0
CITY OF NAVASOTA	0
COLLEGE STATION ISD	1345
NAVASOTA ISD	25
TOTAL	5000

Voting taxing units must nominate candidates by resolution and submit to the Chief Appraiser before October 15.

Please return all candidate nominations by resolution before October 15, 2024.

As this is a new process for us all, please feel free to contact me with any questions or concerns you might have.

Sincerely,



Dana Horton, RPA, CCA
Chief Appraiser
Brazos Central Appraisal District
dhorton@brazoscad.org

BOARD OF DIRECTORS	LENGTH OF TERM	BEGIN TERM	END TERM	# OF DIRECTORS	SB 2	EFFECTIVE IMMEDIATELY
APPOINTED DIRECTORS						
APPOINTED BY DECEMBER 15, 2023	1 YEAR	1/1/2024	12/31/2024	5	5.13(d)	The term of an appraisal district director serving on December 31, 2024 expires on January 1, 2025.
APPOINTED BY DECEMBER 31, 2024	1 YEAR	1/1/2025	12/31/2025	2	5.13(d)	Not later than December 31, 2024 taxing units shall appoint five directors to serve beginning January 1, 2025. Two shall be appointed to serve a term of one year.
APPOINTED BY DECEMBER 31, 2024	3 YEAR	1/1/2025	12/31/2027	3	5.13(d)	Not later than December 31, 2024 taxing units shall appoint five directors to serve beginning January 1, 2025. Three shall be appointed to serve a term of three years.
APPOINTED BY DECEMBER 31, 2025	4 YEAR	1/1/2026	12/31/2029	2	5.13(d)	Thereafter all appointed directors serve a term of four years.
APPOINTED BY DECEMBER 31, 2027	4 YEAR	1/1/2028	12/31/2031	3	5.13(d)	Thereafter all appointed directors serve a term of four years.
THE COUNTY ASSESSOR/COLLECTOR SERVES AS AN EX OFFICIO DIRECTOR.						
ELECTED DIRECTORS						
MAY 2024 UNIFORM ELECTION	2.5 YEAR	7/1/2024	12/31/2026	3	5.13(a)	Appraisal district directors (three) shall be elected beginning with the election May 2024, with an effective office date of July 1, 2024 that expires on December 31, 2026.
NOVEMBER 2026 GENERAL ELECTION	2 OR 4 YR	1/1/2027	varies	3	5.13(b)	Following the initial election (May 2024) directors shall be elected beginning with the general election in November 2026, with an effective office date of January 1, 2027.
ALL DRAW LOTS TO DETERMINE 2 OR 4 YEARS	2 YEAR	1/1/2027	12/31/2028	1	5.13(c)	At the January 2027 meeting elected directors draw lots to determine which shall serve a two year term and which two will serve a four year term.
THEREAFTER ALL SERVE 4 YEAR TERMS	4 YEAR	1/1/2027	12/31/2030	2	5.13(c)	Thereafter all shall serve four-year terms.
NOVEMBER 2028 GENERAL ELECTION	4 YEAR	1/1/2029	12/31/2032	1	5.13(c)	Thereafter all shall serve four-year terms.
NOVEMBER 2030 GENERAL ELECTION	4 YEAR	1/1/2031	12/31/2034	2	5.13(c)	Thereafter all shall serve four-year terms.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, NOMINATING CANDIDATE(S) FOR CONSIDERATION TO SERVE ON THE BOARD OF DIRECTORS FOR THE BRAZOS CENTRAL APPRAISAL DISTRICT, BRAZOS COUNTY, TEXAS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Texas Tax Code Section 6.03(g) provides that each taxing unit that is entitled to vote may nominate by resolution adopted by its governing body one candidate for each position to be filled on the Board of Directors of the Brazos Central Appraisal District (District); and

WHEREAS, The City of College Station is a taxing unit within the District; and

WHEREAS, The City of College Station is entitled to vote for members of the District's Board of Directors and desires to nominate qualified candidate(s) for Board positions to be filled; and

WHEREAS, The presiding officer of the governing body of a taxing unit is required to submit the name(s) of the unit's nominee(s) to the chief appraiser before October 15, 2024; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: The City Council of the City of College Station, Brazos County, Texas, nominates, _____, as a candidate for membership on the Board of Directors of the Brazos Central Appraisal District, Brazos County, Texas; and

PART 2: The City Secretary's Office is directed, on behalf of the Mayor, as presiding officer, to forward a certified copy of this resolution to the Chief Appraiser, Brazos Central Appraisal District, Brazos County, Texas, before October 15, 2024; and

PART 3: That this Resolution shall take effect immediately from and after its passage.

ADOPTED this ____ day of _____, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

October 7, 2024

Item No. 10.1.

Items of Community Interest and Council Calendar

Sponsor: City Council

Reviewed By CBC: City Council

Agenda Caption: Items of Community Interest and Council Calendar: The Council may discuss upcoming events and 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.

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Review meetings attended.

Summary: A current calendar of upcoming community events can be found in more detail at cstx.gov/calendar and official meetings or public notices are posted at cstx.gov/agendas.

Meetings and events for the days of October 7th through October 24th:

Oct 9-11 - TML Annual Conference

Oct 10 - Rock Prairie Management District No. 2

Oct 13 - Fall Homegrown at Northgate

Oct 14 - Keep Brazos Beautiful Annual Awards & Scholarship Luncheon

Oct 14 - Parks Board Meeting

Oct 15 - Council Transportation Committee Meeting

Oct 15 - The Texas Music Scene

Oct 15 - Committee 101

Oct 15 - Pebble Creek Candidate Forum

Oct 16 - B/CS MPO Policy Board Meeting

Oct 16 - Exploring History Luncheons

Oct 17 - Business After Hours

Oct 17 - Planning and Zoning Commission Meeting

Oct 21-22 - Chamber of Commerce "Local Candidate Forum"

Oct 22 - Neighborhood Seminar Supper

Oct 23 - Brazos County RMA Board Meeting

Oct 24 - City Council Meeting

Budget & Financial Summary: None.

Attachments:

None

October 7, 2024

Item No. 11.1.

Council Reports on Committees, Boards, and Commissions

Sponsor: City Council

Reviewed By CBC: City Council

Agenda Caption: A Council Member may make a report regarding meetings of City Council boards and commissions or meetings of boards and committees on which a Council Member serves as a representative that have met since the last council meeting. (Committees listed in Coversheet)

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Review meetings attended.

Summary: Aggieland Humane Society, Arts Council of Brazos Valley, Architectural Advisory Committee, Audit Committee, B/CS Library Board, Bond Citizens Advisory Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Economic Development Corporation, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, CDBG Public Service Agency Funding Review Committee, Census Committee Group, Compensation and Benefits Committee, Construction Board of Adjustments and Appeals/Building and Standards Commission, Design Review Board, Economic Development Committee, Gulf Coast Strategic Highway Coalition, Historic Preservation Committee, Intergovernmental Committee, Metropolitan Planning Organization, Parks and Recreation Board, Planning and Zoning Commission, Regional Transportation Committee for Council of Governments, Sister Cities Association, Spring Creek Local Government Corporation, Transportation and Mobility Committee, TAMU Student Senate, Texas Municipal League, Zoning Board of Adjustments. (Notice of Agendas posted on City Hall bulletin board.)

Budget & Financial Summary: None.

Attachments:

None