



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 24, 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 & Geoffry 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

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

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

- a. A development agreement for a possible development generally located at FM 2818 and Waxwing.

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 month of October 2024 as Community Planning Month.

Sponsors: Anthony Armstrong

Attachments: 1. 24 Community Planning Month

- 5.2. Presentation proclaiming the week of November 4-8, 2024 as Municipal Court Week.

Sponsors: Tanya Smith

Attachments: 1. 24 Muni Ct Week

- 5.3. Presentation proclaiming November 1, 2024, Texas Arbor Day.

Sponsors: Kelsey Heiden

Attachments: 1. 24 Texas Arbor Day

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:

- October 7, 2024 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM100724 DRAFT Minutes

- 7.2. Presentation, discussion, and possible action on a change order for the 2016 Design Contract with Halff Associates, Inc. for the Barron/Capstone Alignment Project for \$324,447.21.

Sponsors: Jennifer Cain

Attachments: 1. Barron Capstone Project Location Map
2. Barron-Capstone Proposal 2024-10-11
3. Barron Capstone Change Order 3

- 7.3. Presentation, discussion, and possible action regarding an extraterritorial jurisdiction (ETJ) release petition for approximately 97.89 acres of land generally located at 14933, 14727, and 14788 Redman Lane.

Sponsors: Anthony Armstrong

Attachments: 1. Redman ETJ Release Petition Resolution 10-24-24

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

Sponsors: Anthony Armstrong

Attachments: 1. ETJ Petition Resolution Saddle Creek 10-24-24

- 7.5. Presentation, discussion, and possible action regarding an extraterritorial jurisdiction (ETJ) release petition for approximately 40.68 acres of land generally located at 14268 South Dowling Road.

Sponsors: Anthony Armstrong

Attachments: 1. ETJ Release Petition Resolution Eimman and Gibbens 10-24-24

- 7.6. Presentation, discussion, and possible action on the rejection of bids received and cancelation of Invitation to Bid (ITB) 24-085 for the construction and installation of the control house at the Northwest Electric Substation.
Sponsors: Timothy Crabb
Attachments: 1. 24-085 Bid Tabulation
- 7.7. Presentation, discussion, and possible action on approving a contract with D. Reynolds Company, LLC dba The Reynolds Company, for the annual purchase of Water SCADA infrastructure products and services for an amount not to exceed \$250,000.
Sponsors: Gary Mechler
Attachments: 1. Master Agreement #25300038
- 7.8. Presentation, discussion, and possible action regarding an ordinance amending Chapter 38, "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1002 "Traffic Schedule II, Four-Way Stop Intersections" by removing the intersection of Deacon Drive W. and General Parkway and amending Chapter 38 "Traffic and Vehicles," Article VI, "Traffic Schedules," Section 38-1003, "Traffic Schedule III, Stop Signs," by adding the intersection of Deacon Drive and General Parkway, of the Code of Ordinances of the City of College Station, Texas.
Sponsors: Emily Fisher
Attachments: 1. Exhibit General Pkwy and Deacon Dr
2. Ordinance Deacon and General Four-way Removal and Stop Sign addition
- 7.9. Presentation, discussion, and possible action on purchasing network switches for the Traffic Signal Network from The Personal Computer Store Inc DBA Avinext in the amount of \$445,984.
Sponsors: Sam Rivera
Attachments: 1. Avinext Contract 25300067c AD
- 7.10. Presentation, discussion, and possible action on the purchase of new Panasonic Toughbook Rugged Mobile Data Terminals (MDTs), Cradlepoint Routers, and Airgain Antennas from Baycom Inc. for the Fire Department in the amount of \$177,664.
Sponsors: Sam Rivera
Attachments: 1. Fire MDT Upgrades Quote (1)
- 7.11. Presentation, discussion, and possible action to the BVWACS Annual Operating & Maintenance and Capital Budget.
Sponsors: Sam Rivera
Attachments: 1. BVWACS FY25
2. BVWACS FY2025 Budget 2
- 7.12. Presentation, discussion, and possible action on a contract with Hunden Strategic Partners Inc. for a Convention Center Feasibility Study in the amount of \$80,000.
Sponsors: Jeremiah Cook
Attachments: 1. Contract 24300054 - Hunden Partners
- 7.13. Presentation, discussion, and possible action on the rejection of the received proposals and cancelation of ITB 24-068 for construction of the Stonebridge Drive and Scarborough Drive roundabout.
Sponsors: Emily Fisher
Attachments: 1. Tabulation 24-068
2. Stonebridge Location Map

- 7.14. Presentation, discussion, and possible action on approval of the 2024 Property Tax Roll in the amount of \$74,435,521.40.

Sponsors: Mary Ellen Leonard

Attachments: 1. City Of College Station Signed Levy Notification
2. City of College Station Levy Totals

- 7.15. Presentation, discussion, and possible action regarding an ordinance amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," of the Code of Ordinances of the City of College Station, Texas, by amending parking on Milliff Road, Rosemary Lane, Redmond Drive, and Armistead Street.

Sponsors: Emily Fisher

Attachments: 1. Parking Ordinance - Redmond Drive Area
2. Exhibit - Existing No Parking Signage
3. Exhibit - Redmond Dr Area Existing No Parking
4. Exhibit - Redmond Dr Area Parking Removal Proposed

- 7.16. Presentation, discussion, and possible action on a construction contract with Larry Young Paving, Inc., in the amount of \$5,140,781 for the rehabilitation of William D. Fitch Parkway from SH30 to Tonkaway Lake Drive, plus the City's contingency in the amount of \$514,078; for a total appropriation of \$5,654,859. 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. WD Fitch Phase 1 Bid Tabulation
2. WD Fitch Phase 1 Project Map
3. WD Fitch Phase 1 Vendor Signed Contract

- 7.17. Presentation, discussion, and possible action on a design contract with Marmon Mok Architecture, in the amount of \$372,319 for the pre-design work required for space programming, needs assessment, and site feasibility studies for the Public Works Facility Project.

Sponsors: Jennifer Cain

Attachments: 1. MarmonMok Cost Proposal
2. PW Facility CMAR Prof Serv Contract MarmonMok Vendor Signed

- 7.18. Presentation, discussion, and possible action on a construction contract with Jon Tucker Construction, Ltd., dba Tucker Construction, for the Pickleball and Futsal Courts at Anderson Park in the amount of \$1,075,911.41, plus the City's contingency in the amount of \$108,000 for a total appropriation of \$1,183,911.41. 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. Pickleball Futsal at Anderson Project Location Map
2. Pickleball Futsal at Anderson Vendor Signed Contract

8. Workshop Agenda.

- 8.1. Presentation, discussion, and possible action on an update from the Texas A&M Off-Campus Student Services Office.

Sponsors: Barbara Moore

Attachments: None

9. Regular Agenda.

- 9.1. Presentation, discussion, and possible action regarding an ordinance creating a voluntary rental inspection and certification program.
Sponsors: Debbie Eller
Attachments: 1. Voluntary Rental Inspection Cert. Ordinance 10-24-24
 2. Voluntary Rental Inspection Checklist 10-24-24
- 9.2. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Section 3.6 "Conditional Use Permits," Section 6.3.C "Use Table," and Section 9.2.C "Abandonment" of the Code of Ordinances of the City of College Station, Texas, regarding conditional use permits, the abandonment of nonconforming uses, and requiring conditional use permits for new and expanding bars, nightclubs, and taverns in the NG-1 Core Northgate and NG-2 Transitional Northgate zoning districts.
Sponsors: Molly Hitchcock
Attachments: 1. Ordinance
 2. Section 3.6 Conditional Use Permits redlines
 3. Section 6.3 Use Table redlines
 4. Section 9.2 Nonconforming Uses redlines
 5. Northgate Zoning Boundaries
- 9.3. Public Hearing, presentation, discussion and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from PDD Planned Development District to PDD Planned Development District to amend the Concept Plan for approximately 45 acres generally located at 600 Scott & White Drive.
Sponsors: Gabriel Schrum
Attachments: 1. Vicinity Map, Aerial, and Small Area Map
 2. Background Information
 3. Applicant's Supporting Information
 4. Ordinance No. 2010-3300
 5. Exhibit G - Campus Wayfinding Master Plan
 6. Rezoning Exhibit
 7. Adopted Concept Plan
 8. Proposed Concept Plan
 9. PDD Concept Plan Ordinance
- 9.4. Presentation, discussion, and possible action regarding the Tourism Advisory Committee.
Sponsors: Bryan Woods
Attachments: None
- 9.5. Presentation, discussion, and possible action regarding on-street parking removal policy and guidelines.
Sponsors: Emily Fisher
Attachments: 1. Parking Policy 10.15.24
- 9.6. Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Garney Companies, Inc. for the Water Wells 10,11,12 and Collection Line project. The budget for this project is \$51,500,000.
Sponsors: Jennifer Cain
Attachments: 1. Wells 10,11,12 and Collection Location Map
 2. Wells CMAR Contract Vendor Signed

- 9.7. Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Crain Group, LLC., for the Veterans Park Baseball Fields Project. The budget for this Project is \$20,000,000.

Sponsors: Jennifer Cain

Attachments: 1. VPAC BB Fields Crain Group Vendor Signed

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 18, 2024 at 5:00 p.m.



City Secretary

This building is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need accommodations, auxiliary aids, or services such as interpreters, readers, or large print are asked to contact the City Secretary's Office at (979) 764-3541, TDD at 1-800-735-2989, or email adaassistance@cstx.gov at least two business days prior to the

meeting so that appropriate arrangements can be made. If the City does not receive notification at least two business days prior to the meeting, the City will make a reasonable attempt to provide the necessary accommodations.

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

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

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

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

October 24, 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 24, 2024
Item No. 5.1.
Community Planning Month

Sponsor: Anthony Armstrong, Director of Planning and Development

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming the month of October 2024 as Community Planning Month.

Relationship to Strategic Goals:

- Good Governance
- Core Services and Infrastructure
- Neighborhood Integrity

Recommendation(s): Recieve the proclamation.

Summary: Planners work to improve the well-being of all people living in our communities by taking a comprehensive perspective. This approach leads to safer, resilient, more equitable, and more prosperous communities. We celebrate the role that planning plays in creating great communities each October with National Community Planning Month.

Planning is more important than ever as communities continue to navigate the disruptive changes brought about by the pandemic.

Budget & Financial Summary: None.

Attachments:

1. 24 Community Planning Month

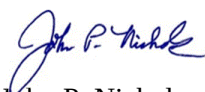


Proclamation Community Planning Month

- Whereas:* change is constant and affects all cities, towns, suburbs, counties, boroughs, townships, rural areas, and other places; and
- Whereas:* community planning and plans can help manage this change in a way that provides better choices for how people work and live; and
- Whereas:* community planning provides an opportunity for all residents to be meaningfully involved in making choices that determine the future of their community; and
- Whereas:* the full benefit of planning requires public officials and citizens who understand, support, and demand excellence in planning and plan implementation; and
- Whereas:* the month of October is designated as National Community Planning Month throughout the United States of America and its territories, and
- Whereas:* The American Planning Association endorses National Community Planning Month as an opportunity to highlight how planning is essential to recovery and how planners can lead communities to equitable, resilient and long-lasting recovery; and
- Whereas:* the celebration of National Community Planning Month gives us the opportunity to publicly recognize the participation and dedication of the members of planning commissions and other citizen planners who have contributed their time and expertise to the improvement of the City of College Station; and
- Whereas:* we recognize the many valuable contributions made by professional community and regional planners of the City of College Station and extend our heartfelt thanks for the continued commitment to public service by these professionals.

Now, Therefore, be it Resolved, I, John P. Nichols, as Mayor of the City of College Station, Texas, and acting on behalf of the College Station City Council, do hereby proclaim the month of October 2024, as Community Planning Month in conjunction with the celebration of National Community Planning Month.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 24th day of October, 2024.


John P. Nichols
Mayor

Attest:


Tanya Smith
City Secretary

October 24, 2024
Item No. 5.2.
Municipal Court Week

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: N/A

Agenda Caption: Presentation proclaiming the week of November 4-8, 2024 as Municipal Court Week.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Receive the Proclamation.

Summary: Join municipal courts, city councils, and communities throughout Texas in showing appreciation for the dedicated municipal judges, court clerks, court administrators, prosecutors, bailiffs, and warrant officers who comprise the Texas municipal courts from November 4-8, 2024. Municipal Court Week is a great time to not only recognize how much municipal courts do, but to share with the public the important role that local courts and their personnel play in the criminal justice system and the larger community.

TMCEC encourages all cities to adopt the attached proclamation in recognition of Municipal Court Week. All cities that adopt the proclamation and notify TMCEC of its adoption will be recognized by TMCEC in a future edition of The Recorder.

Budget & Financial Summary: None.

Attachments:

1. 24 Muni Ct Week



Proclamation

WHEREAS, the Municipal Court of College Station, a time honored and vital part of local government, has existed since January 8, 1952; and

WHEREAS, more people, citizens and non-citizens alike, come in personal contact with municipal courts than all other Texas courts combined; and

WHEREAS, public impression of the entire Texas judicial system is largely dependent upon the public's experience in Municipal Court; and

WHEREAS, Municipal Judges and court support personnel have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all, and conform to the standards set by the Canons of Judicial Conduct; and

WHEREAS, the Municipal Courts play a significant role in preserving the quality of life in Texas communities through the adjudication of traffic offenses, ensuring a high level of traffic safety for our citizens; and

WHEREAS, the Municipal Courts serve as the local justice center for the enforcement of local ordinances and fine-only state offenses that protect the peace and dignity of our community and our state; and

WHEREAS, the Municipal Judges and Clerks continually strive to improve the administration of justice through participation in judicial education programs, seminars, workshops and the annual meetings of their state and local professional organizations; and

WHEREAS, it is most appropriate that we recognize the accomplishments of the 878 Texas Municipal Courts, and salute their critical role in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior.

NOW, THEREFORE, I, John P. Nichols, by virtue of the authority vested in me as Mayor of the City of College Station, Texas, do hereby proclaim November 4-8, 2024 as

Municipal Court Week

and further extend our appreciation to College Station Municipal Judge Spillane and court support personnel for the vital services they perform and their exemplary dedication to our community and call upon all residents of College Station to join with the City Council in recognizing the vital service they perform and their exemplary dedication to the communities they represent.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 24th Day of October, 2024


John P. Nichols
Mayor

Attest:


Tanya Smith
City Secretary

October 24, 2024
Item No. 5.3.
Texas Arbor Day Proclamation

Sponsor: Kelsey Heiden

Reviewed By CBC: City Council

Agenda Caption: Presentation proclaiming November 1, 2024, Texas Arbor Day.

Relationship to Strategic Goals:

Core Services and Infrastructure
Sustainable City

Recommendation(s):

Summary: All across Texas, from towering pines to majestic oaks to scrubby mesquites — the many trees of Texas are beautiful and prominent features of our unique and breathtaking landscape. As Texans, we value our trees and the benefits they provide each of us every day. Benefits like clean air, clear water, improving our health and even saving us money on energy bills. We encourage people in our community to plant trees and celebrate them on the first Friday each November on Texas Arbor Day.

With Halloween season and Texas Arbor Day falling back-to-back in 2024, we are thrilled to celebrate the many Treats that Texas Trees provide on Friday, October 25th from 5:00pm – 8:30pm. Join the City of College Station and Texas A&M Forest Service celebrating Texas Trees at Trunk or Tree-T at Wolf Pen Creek. The free, family friendly event will host booths with games, children's activities, prizes, treats, and FREE TREES!

Texas first observed Arbor Day in 1889, under the leadership of the Texas Forestry Association. This holiday for trees is an opportunity to teach fundamental lessons about the stewardship of our natural resources and caring for our environment. It is an opportunity to learn what each of us can do to keep our community trees healthy and vibrant. And it is a time we can pause to appreciate trees in our lives. Together, we can create a brighter and more beautiful future for the next generation.

Budget & Financial Summary: N/A

Attachments:

1. 24 Texas Arbor Day



Proclamation

Texas Arbor Day

Whereas: Texas Arbor Day is now celebrated on the first Friday of November as a day set aside for the planting of trees; and

Whereas: trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

Whereas: trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

Whereas: trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

Whereas: trees, wherever they are planted, are a source of joy and spiritual renewal, and

Whereas: the Texas A&M Forestry Service alongside the College Station Parks and Recreation Department to increase the habitat and food for native animals in the Brazos Valley.

Now, Therefore, I, John P. Nichols, by virtue of the authority vested in me as Mayor of the City of College Station, Texas, do hereby proclaim November 1, 2024, as

Texas Arbor Day

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the seal of the City of College Station, Texas this 24th day of October 2024.

John P. Nichols
Mayor

Attest:

Tanya Smith
City Secretary

October 24, 2024
Item No. 7.1.
October 7th Council Meeting

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action of minutes for:
• October 7, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:

1. CCM100724 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
OCTOBER 7, 2024

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

John Nichols, Mayor

Council:

Mark Smith
William Wright - absent
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 3:00 p.m. on October 7, 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 3:00 p.m. on October 7, 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 Auditor
- City Judge
- City Secretary
- City Manager
- City Attorney
- 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 6:32 p.m. No action was taken.

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

MOTION: Upon a motion made by Councilmember Smith and a second by Councilmember Harvell, the City Council voted six (6) for and none (0) opposed, to approve an absence request from Councilmember William Wright for the October 7, 2024 Council Meeting. The motion carried unanimously.

5. PRESENTATION - PROCLAMATIONS, AWARDS, AND RECOGNITIONS.

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

Mayor Nichols presented a proclamation to declaring the week of October 7-13, 2024, as College Station Hope Week.

6. Hear Visitors Comments.

No one signed up to speak.

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 7.11 and 7.14 was pulled from Consent for clarification.

(7.11) Jennifer Cain, Capital Projects Director, explained that the working name has Texas Independence Park and Council will need to provide direction if they want to add Midtown to the name. Mrs. Cain also explained how the design will be distinct from other city parks.

(7.14) Jeremiah Cook, Tourism Manager, explained that the 2024 USATF National Junior Olympics Track & Field Championships will be reimbursed out of HOT funds. This will 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, and the state will then provide payment in the amount of \$644,443.

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

- **September 26, 2024 Council Meeting**

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

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

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

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

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

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

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.

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

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.

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.

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.

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.

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.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, to approve the Consent agenda. The motion carried unanimously.

8. WORKSHOP ITEMS

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

Tommy Shilling, Code Enforcement, presented an update of the Code Enforcement activities and initiatives, which includes all different types of Common Code Violations, Property Maintenance Interior and Exterior, Homeless Encampments, Game-Day Parking, Move-in and Move-out.

Additional Responsibilities

- Long-Term Rental Registration (9,142 total properties)
- Short-Term Rental Permitting (352 total properties)
- Community Living Course/Greek Life
- Walk and Talks/Office Hours

Over- Occupancy Enforcement

- Proactive and Reactive Enforcement
- Photos/Access to Leases/Interviews
- There are currently 42 open code cases (19 Proactive/23Reactive)
- 18 citations issued to date

Expansion of SeeClickFix Management

- FY22 (10-1-22 to 9-30-23)
✓ 1,597 SCF Requests
- FY 23 (10-1-22 to 9-30-23)
✓ 2,269 SCF Requests
- FY 24 (10-1-23 to 9-30-24)
✓ 3,209 SCF Requests

At approximately 7:11 p.m., Mayor Nichols opened for Citizen Comments.

Fred Dupriest, College Station, came before Council regarding and Occupancy Disclosure statement and explained how the council should take action to notify students now for certain enforcement later.

There being no further comments, Citizen Comments was closed at 7:13 p.m.

9. REGULAR ITEMS

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

Debbie Eller, Community Services Director, stated that the 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 ordinance. The proposed next steps for implementation of a Mandatory Proactive Rental Inspection program and a timeline will be included:

Phase 1

1) Implement a Voluntary Residential Rental Inspection & Certification Program.

- Inspection arranged by the property owner/manager and completed by a credentialed 3rd party inspector.
- All types of rental units – certified by building.
- Number of units to be inspected determined by type of property - multifamily units randomly selected by the inspector.
- Standard basic habitability inspection.
- Certificate issued: Good for 2 years.
- Address included on list posted on web page – “Gig’em List”.
- Inspector & Certification subject to revocation.

Future Phase 2

2) Implement a Mandatory Violation-Based Residential Rental Inspection Program.

- Requires mandatory registration and inspection of any building with a rental unit where a certain number of code violations have been confirmed within a determined period of time.

Future Phase 3

Revise existing residential rental registration program to include ALL rental properties.

- Registration by building (i.e. Duplex, 4-plex, apartment complex with multiple buildings)
- Phase in based on type and age of building
- Third party administrator

Challenges & Concerns

- Number of rental units ~ 32,000
- Resources to manage and monitor
- Cost of inspection
- Tenant caused code violations
- Displaced tenants from uninhabitable rental units
- Privacy

At approximately 7:45 p.m., Mayor Nichols opened for Citizen Comments.

Chad Hovde, Regional Association of Realtors, came before Council representing members of the Bryan/College Station Realtors Association to request that the City Council take no action on this item and create a diverse stakeholder input committee before making any final decision on mandatory rental inspections. He believes it would be a detriment to only one type of property owner to this standard and seems to outweigh the possible benefits to the City at large. The drawbacks being decreased rental space when inspections do not pass and increased costs to meet the inspection standards. Mr. Hovde stated that his association requests to constructively participate in the requested committee.

Jeff Leatherwood, College Station, came before Council to state his concerns on the voluntary rental inspection certification program and stated that he echoes all of Mr. Hovde's comments.

Jennifer Jennings, College Station, came before Council to state her opposition on the ordinance for the voluntary rental inspection certification program and also echoes all of Mr. Hovde and Mr. Leatherwood's comments.

Sharon McCauley, College Station, came before Council regarding the voluntary rental inspection certification program and the rights of renters. He believes that since this is voluntary, you will still need a warrant to enter into someone home.

Donald Deere, College Station, came before Council regarding the voluntary rental inspection certification program but asked what is going to happen after the voluntary, when are you moving to Phase 2 and 3? He stated Council needs to go slower and really look at these phases before moving forward.

William Rodriguez, TAMU Student Government Association, came before Council request them to table this proposed ordinance and create a committee to discuss this program.

There being no further comments, Citizen Comments was closed at 8:11 p.m.

MOTION: Upon a motion made by Councilmember Cunha and a second by Councilmember Yancy, the City Council voted four (4) for and two (2) opposed, with Mayor Nichols and Councilmember Maloney voting against, to table this item until the October 24, 2024 Council Meeting. The motion carried.

9.2. Presentation, discussion, and possible action regarding the September 2024 Small Area Plan Audit.

Ashley Klein, Planning and Development, presented the Small Area Plan Audit that included the 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.

MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember Harvell, the City Council voted six (6) for and none (0) opposed, to expect the September 2024 Small Area Plan Audit. The motion carried unanimously.

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.

Jennifer Cain, Capital Projects Director, stated that 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.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, to approve 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. The motion carried unanimously.

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.

Jennifer Cain, Capital Projects Director, stated that 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.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Smith, the City Council voted six (6) for and none (0) opposed, to approve 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. The motion carried unanimously.

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.

Jennifer Cain, Capital Projects Director, stated that 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.

MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember Maloney, the City Council voted six (6) for and none (0) opposed, to approve 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. The motion carried unanimously.

9.6. Presentation, discussion, and possible action regarding a resolution nominating candidate(s) for the Brazos Central Appraisal District Board of Directors.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Yancy, the City Council voted six (6) for and none (0), to approve Resolution No. 10-07-24-9.6, nominating Susan M. Pesl for the Brazos Central Appraisal District Board of Directors. The motion carried unanimously.

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.

No items to report on at this time.

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

Councilmember Yancy reported on the Board of Health.

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

Councilmember Harvell requested an item to discuss adding an appointed representative to the Tourism and Convention Committee.

In accordance with the Texas Government Code the Council reconvened into Executive Session at 9:28 p.m. on October 7, 2024, to continue discussing matters pertaining to:

§551.072-Real Estate, 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.

Executive Session recessed at 10:51 p.m.

12. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 10:51 p.m. on Monday, October 7, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

October 24, 2024

Item No. 7.2.

Barron/Capstone Alignment Project Design Contract Change Order

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a change order for the 2016 Design Contract with Halff Associates, Inc. for the Barron/Capstone Alignment Project for \$324,447.21.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This is a design contract change order with Halff Associates, Inc. for the design of the Barron/Capstone Alignment Project. The change order is needed for a redesign of the project precipitated by changes in direction from Union Pacific Railroad (UPRR). Negotiations with UPRR have allowed for continuation of the alignment project with an alternative cross section and the addition of an acceleration lane along FM 2154. The underlying design contract with Halff Associates, Inc. for this project was approved by Council on November 21, 2016.

Budget & Financial Summary: A combined budget of \$15,000,000 is available in the Streets Capital Improvement Projects Fund. A combined total of \$1,959,768 has been expended or committed to date, leaving a combined balance of \$13,040,232 for this change order and future expenses.

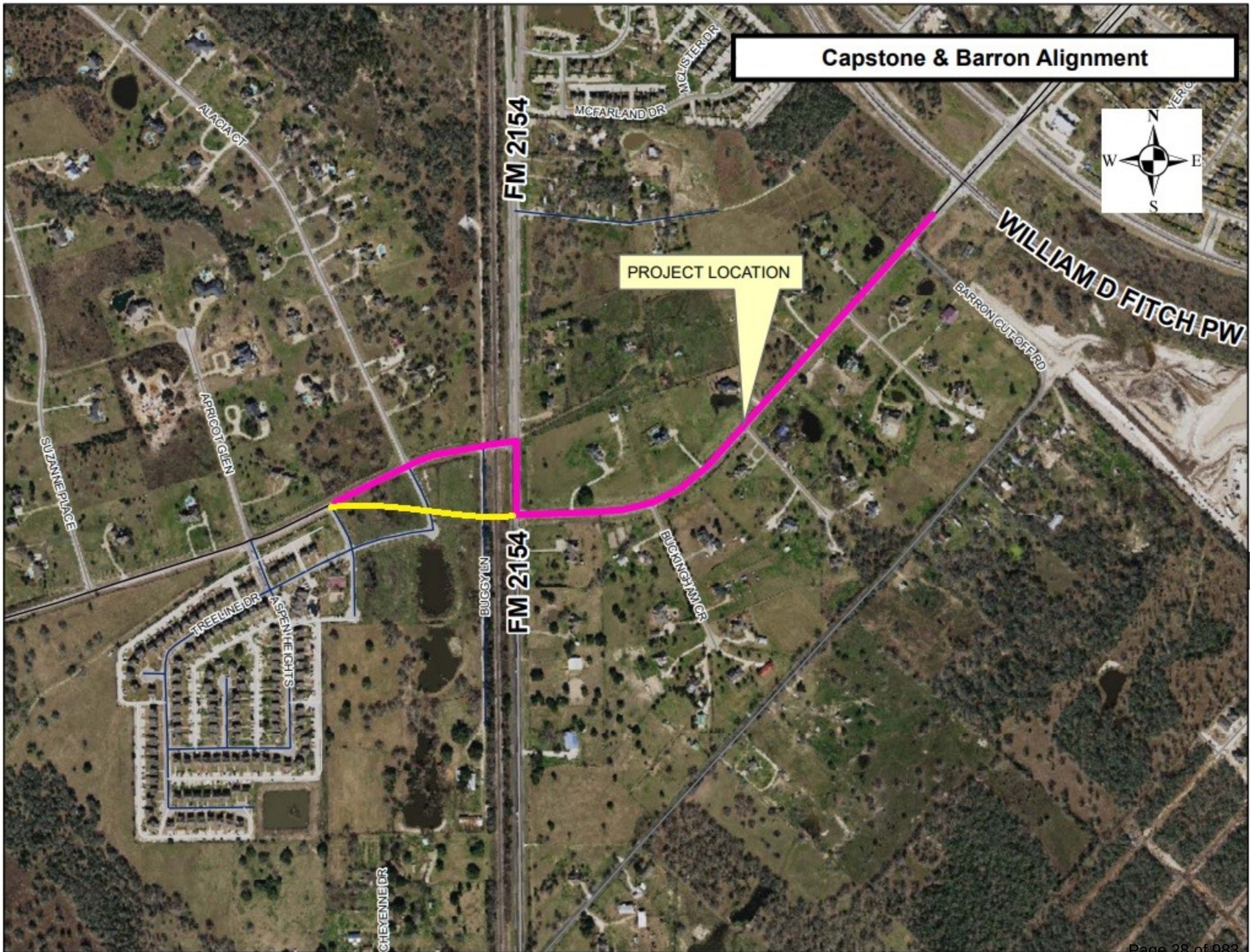
Attachments:

1. Barron Capstone Project Location Map
2. Barron-Capstone Proposal 2024-10-11
3. Barron Capstone Change Order 3

Capstone & Barron Alignment



PROJECT LOCATION





October 11, 2024
AVO: 31550.004

Ms. Susan Monnat, PE
City of College Station

RE: Capstone and Barron Alignment Design - Supplemental Agreement #3

Ms. Monnat:

Enclosed is our proposal for the additional services requested to redesign the plans for Barron Road from the currently proposed five lane section with on-street bike lanes to a three section with shared use paths behind curb.

Please give me a call if you have any questions. We look forward to continuing working with you to get these projects constructed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric J. Ratzman".

Eric J. Ratzman, PE
Vice President
(512) 777-4620

**Addendum to Exhibit “A”
Supplemental #3 - Scope of Services
For
Capstone and Barron Realignment Project
City of College Station**

The proposed Supplemental #3 will address revising the typical roadway sections of Capstone Drive and Barron Road, due to constraints imposed by Union Pacific Railroad upon the allowable lanes for the at-grade rail crossing of realigned Capstone Drive.

The initial agreement between the City and Halff included design plans and construction documents for the realignment and design of Capstone Drive and Barron Road from SH 40 through FM 2154. The realignment of Capstone Drive includes a proposed at-grade crossing of the UPRR tracks. This supplemental will address the task of implementing an updated typical section along Barron Road and Capstone Drive to reduce the number of lanes crossing the UPRR tracks as requested by UPRR. At the time of this Supplemental #3 UPRR approval for this at-grade relocated crossing is outstanding and the City has requested to separate the scope of work into two bid packages:

Phase 1: Barron Rd, FM 2154 and all ancillary items east of the UPRR right-of-way

Phase 2: Capstone Dr, UPRR crossing, all work within UPRR right-of way, and widening FM 2154 on the east side, north of Barron Road to accommodate a separate left turn lane for northbound FM 2154 to Capstone Drive.

The terms of the Supplemental #3 will adhere to the initial contract executed by the City and Halff dated November 22, 2016. The following phase and tasks will be added to the project:

Project Management

Task 1- Project Management:

This task covers project administration, monthly reporting and invoicing, sub management, and quality control reviews of deliverables.

Phase 1- Barron Road and FM 2154

The design completed under the initial agreement will be revised to show the same number of travel lanes crossing the UPRR tracks as existing. Both plan sets (Phase 1/ Phase 2) will specify what construction activities will occur during each respective phase. The design revisions include but are not limited to:

- Project layout
- Typical sections
- Traffic control narrative and layout
- Removal plan
- Pavement plan, profile, and standards
- Drainage design and calculations
- Erosion control and grading
- Signing and pavement marking
- Traffic signal design
- Illumination
- Utility relocations

- Cross sections
- Quantities and summary sheets

These PS&E documents will be incorporated into construction documents for use in bidding and constructing the project in two separate phases.

Task 2- Phase 1 Plan Set Preparation:

The consultant shall develop the Bid Package for the design of Barron Rd, the FM 2154 intersection and all ancillary items east of the UPRR ROW. Interim conditions must be established in the Phase 1 Bid Package to ensure that all elements within Phase 1 satisfy the design requirements and allow for the future integration of Phase 2. Design modifications shall be in accordance with the manuals and standards outlined in the original agreement. Quantities and unit costs for all construction in Phase 1 are to be updated in the Engineer's OPCC. The project manual will reflect design modifications with included specifications and the current documents of TxDOT and BCS Unified Technical Specifications at the time of the deliverable. Design elements that require modification to accommodate the revised UPRR crossing configuration and reduced pavement section include:

- Typical sections showing the reduced lane configuration
- Roadway, driveway and intersection design
- Cross sections
- Drainage design, calculations, and inlet locations (including in-line detention if required to mitigate increases of flow onto UPRR; detention ponds and structural outlets are excluded)
- Proposed grading (all grading will be confined to existing right-of-way)
- Updated traffic control narrative and plan for construction along Barron Road and FM 2154
- Signal pole location for FM 2154 intersection
- Illumination pole and conduit locations update, voltage drop calculations, photometric study updates with narrowed road width, fixture and detail review and updates as needed to comply with latest requirements and standards
- Striping and signage of Barron and Phase 1 of FM 2154
- Erosion control measures
- Removal plan
- Project layout

Task 2 Deliverables (all provided as digital PDFs):

- Exhibit of entire project (both Barron Road and Capstone Drive) showing lane configurations in a plan view roll plot at 1"=50' scale (no profile)
- 60% Plan Set (11x17) and OPCC
- 95% Plan Set (11x17), OPCC, Spec list, and responses to 60% City review comments
- Phase 1 Final Bid Documents (11x17), OPCC, Spec list, and responses to 95% City review comments

Task 3- Bid Phase Services:

Bid Phase Services for Phase 1 will include the following:

- Attend one (1) Pre-Bid Meeting with the City and prospective bidders. Halff will prepare meeting minutes and submit to the City within three (3) business days of the meeting. Budget is based upon this meeting being in person.
- Respond to Contractor questions raised during the bidding process and develop addendums to the Bid Documentation as required. The hours are based upon the City

uploading all responses and addendums to the e-Marketplace bid site after being prepared.

- Attend the formal bid opening. Hours are based upon this meeting being virtual.
- Furnish an electronic set of final conformed construction plans to the awarded Contractor. Hours are based upon the City providing the conformed Project Manual.

Task 3 Deliverables (all provided as digital PDFs):

- Bid Addendums and responses to contractor questions
- Conformed set of construction documents with all associated changes

Task 4- Construction Administration:

For purposes of this scope of work, it is based upon Phase 1 having a construction duration of 16 months to Substantial Completion. The following services shall be provided:

- Meetings – Engineer will attend the pre-construction meeting (1 meeting in-person budgeted), monthly construction progress meetings (14 in person meetings budgeted), and field meetings as needed (6 field meetings budgeted), and will prepare and distribute meeting minutes within three (3) business days of the meeting.
- Coordination and correspondence – coordinate with City, contractor, and testing firm, throughout the project (budgeted 1.5 hours/week on average)
- Submittal Reviews - Review Contractor submittals and shop drawings. Shop drawings will be reviewed for general conformance with the plans and specifications and will include providing stamped concurrence, exceptions, or resubmittal notations to the Contractor (18 submittals budgeted)
- Requests Information (RFI) - Respond to Contractor RFIs and provide design clarifications, additional information, and additional data to the City as required (12 RFIs budgeted)
- Construction materials testing (by Terracon, see attached fee estimate and rates); retesting after failed tests will be paid by the city, and to collect payment from the contractor, in the form of credit on the contractor's next pay application)
- Engineer to review and sign off on general concordance of Contractor's monthly pay applications
- Engineer will coordinate with the Registered Accessibility Specialist (RAS) for a final inspection and project closeout with TDLR.
- Attend final walk through of the Project to observe any apparent defects in the completed construction with regard to the plans and specifications, and provide a final Punch List within one (1) business day of the final walk through.
- Prepare and compile all necessary closeout documents including a set of Record Drawings and concurrence letter of final completion.

Task 4 Deliverables (all provided as digital PDFs)

- Meeting minutes
- Submittal reviews
- Responses to RFIs with Engineer's signature
- Materials testing reports
- Punch list
- Record drawings
- Engineer's Letter of Concurrence

Phase 2- Capstone Drive and FM 2154

The design completed under the initial agreement will be revised to show the same number of travel lanes crossing the UPRR tracks as existing. This plan set is to detail how to tie in to the completed Phase 1 construction. These design elements include but are not limited to:

- Project layout
- Typical sections
- Traffic control narrative and layout
- Removal plan
- Pavement plan, profile, and standards
- Drainage design and calculations
- Erosion control and grading
- Signing and pavement marking
- Traffic signal design
- Illumination
- Utility relocations
- Cross sections
- Quantities and summary sheets

These PS&E documents will be incorporated into construction documents for use in bidding and constructing the project in two separate phases.

Task 5- Phase 2 Plan Set Preparation:

The consultant shall develop the Bid Package for the design and realignment of Capstone Dr, the updated UPRR crossing, all work within UPRR right-of way, and widening FM 2154 north of Barron Road to accommodate a separate left turn lane for northbound FM 2154 to Capstone Drive. Capstone Drive will be revised to show the same number of travel lanes crossing the UPRR tracks as existing. Design modifications shall be in accordance with the manuals and standards outlined in the original agreement. Quantities and unit costs for all construction in Phase 2 are to be updated in the Engineer's OPCC. The project manual will reflect design modifications with included specifications and the current documents of TxDOT and BCS Unified Technical Specifications at the time of the deliverable. Design elements that require modification to accommodate the existing UPRR crossing lane configuration include:

- Typical sections showing the reduced lane configuration
- Roadway, driveway and intersection design
- Cross sections
- Culvert design & calculations (includes drainage study within UPRR ROW)
- Proposed grading
- Updated traffic control narrative and plan for Capstone Drive and FM 2154
- Addition of southbound acceleration lane on FM 2154; one round of TxDOT comments
- Illumination pole and conduit locations update, voltage drop calculations, photometric study updates with narrowed road width, fixture and detail review and updates as needed to comply with latest requirements and standards
- Striping and signage of Capstone and Phase 2 of FM 2154
- Erosion control measures
- Removal plan
- Project layout

Task 5 Deliverables (all provided as digital PDFs):

- 60% Plan Set (11x17) and OPCC
- 95% Plan Set (11x17), OPCC, Spec list, and responses to 60% City review comments
- Phase 2 Final Bid Documents (11x17), OPCC, Spec list, and responses to 95% City review comments

Task 5B- UPRR Coordination:

The signal subconsultant (BGE) will assist the City with UPRR coordination regarding to preemption calculations, as needed. Two (2) meetings and two (2) rounds of revisions to preemption calculations are budgeted for in this scope. Signal timing is not included in this supplemental. See attached scope of services from BGE and hourly rates.

Engineer will prepare a drainage study memo, detailing existing and proposed conditions of the culvert proposed beneath Capstone Drive in UPRR. Halff will conduct an analysis of the water surface elevations and capacity in the culvert outfall swale adjacent to UPRR tracks and confirm adherence to UPRR drainage criteria as applicable and update pipe size if not in conformance with UPRR and propose mitigation measures if needed to meet criteria. CivilStorm software will be used to model the water being received by the culvert.

Task 5B Deliverables:

- Revised preemption calculations
- Drainage study of UPRR culvert and outfall swale for city and UPRR review

Task 6- Bid Phase Services:

Bid Phase Services for Phase 2 will include the following:

- Attend one (1) Pre-Bid Meeting with the City and prospective bidders. Halff will prepare meeting minutes and submit to the City within three (3) business days of the meeting. Hours are based upon this meeting occurring be in person.
- Respond to Contractor questions raised during the bidding process and develop addendums to the Bid Documentation as required. Hours are based upon the City uploading all responses and addendums to the e-Marketplace bid site.
- Attend the formal bid opening. Hours are based upon this meeting being virtual.
- Furnish an electronic set of final conformed construction plans to the awarded Contractor. Hours are based upon that City providing the conformed Project Manual.

Task 6 Deliverables (all provided as digital PDFs):

- Bid Addendums and responses to contractor questions
- Conformed set of construction documents with all associated changes

Task 7- Construction Administration:

For purposes of this scope of work, hours are based upon Phase 2 having a construction duration of 10 months to Substantial Completion. The following services shall be provided:

- Meetings – Engineer will attend the pre-construction meeting (1 meeting in-person budgeted), monthly construction progress meetings (8 in person meetings budgeted) and field meetings as needed (3 field meetings budgeted), and will prepare and distribute meeting minutes within three (3) business days of the meeting.
- Coordination and correspondence – coordinate with City, contractor, and testing firm, throughout the project (budgeted 1.5 hours/week on average)

- Submittal Reviews - Review Contractor submittals and shop drawings. Shop drawings will be reviewed for general conformance with the plans and specifications and will include providing stamped concurrence, exceptions, or resubmittal notations to the Contractor. (12 submittals budgeted)
- Requests Information (RFI) - Respond to Contractor RFIs and provide design clarifications, additional information, and additional data to the City as required (6 RFIs budgeted)
- Construction materials testing (by Terracon, see attached fee estimate and rates); retesting after failed tests will be paid by the city, and to collect payment from the contractor, in the form of credit on the contractor's next pay application)
- Engineer to review and sign off on general concordance of Contractor's monthly pay applications
- Engineer will coordinate with the Registered Accessibility Specialist (RAS) for a final inspection and project closeout with TDLR.
- Attend final walk through of the Project to observe any apparent defects in the completed construction with regard to the plans and specifications, and provide a final Punch List within one (1) business day of the final walk through.
- Prepare and compile all necessary closeout documents including a set of Record Drawings and concurrence letter of final completion.

Task 7 Deliverables (all provided as digital PDFs)

- Meeting minutes
- Submittal reviews
- Responses to RFIs with Engineer's signature
- Punch list
- Record drawings
- Engineer's Letter of Concurrence

**Addendum to Exhibit “B”
Proposed Supplemental #3-Payment Terms**

Payment is in the amount listed in paragraph 2.01 of this Contract plus the additional amount from Supplemental #1, Supplemental #2, and this Supplemental #3, for a total not-to-exceed (NTE) amount of \$1,050,740.21. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase/task (to be billed on an hourly NTE basis at the hourly rates provided in attached summaries*):

Task 1 – Project Management	\$25,840.00
Task 2 – Phase 1 Plan Set Preparation	\$17,939.06 **
Task 3 – Phase 1 Bid Phase Services	\$5,820.00
Task 4 – Phase 1 Construction Administration	\$137,916.35
Task 5 – Phase 2 Plan Set Preparation	\$38,995.00
Task 5B – Phase 2 UPRR Coordination	\$19,140.00
Task 6 – Phase 2 Bid Phase Services	\$5,180.00
<u>Task 7 – Phase 2 Construction Administration</u>	<u>\$73,526.80</u>
 SUB-TOTAL FEE (including direct expenses)	 \$324,447.21

* The rates in the following fee schedules are good for 2025. If either project delays or extends past June 1, 2026, Halff reserves the right to negotiate new rates and budgets to complete any services needed beyond that date.

** The remaining fee on the existing contract (\$83,560.94) will be utilized and billed towards above Task 2 in accordance with the original contract payment terms until expended. Once that budget has been expended, this budget of \$17,939.06 will be used to complete Task 2.

EXHIBIT 'A'
PROPOSED FEE SCHEDULE FOR SUPPLEMENT SERVICE #3
Capstone and Barron Realignment Project for the City of College Station

PROJECT TASK	SR PROJECT ADVISOR	PROJECT MANAGER	CIVIL ENGINEER, PE	CIVIL ENGINEER, EIT	CONTRACT ADMINISTRATOR	SUB CONSULTANT	EXPENSES (MILEAGE)	TOTAL
Project Management								\$25,840.00
Task 1: Project Management								\$25,840.00
Project administration	28.0	56.0			36.0			\$25,840.00
Phase 1: (Barron Road and FM 2154)								\$245,326.35
Task 2: Plan Set Preparation								\$101,590.00
Updates to Barron Plan Set		30.0	230.5	392.0				\$92,630.00
Update Signal Plans						\$4,950.00		\$4,950.00
Update OPCCs		2.0	8.0	8.0				\$2,730.00
Update Spec List and Project Manual Assistance			8.0					\$1,280.00
Task 3: Bid Phase Services								\$5,820.00
Bid Phase Services		4.0	24.5	8.0				\$5,820.00
Task 4: Construction Administration								\$137,916.35
Attend Pre-Construction meeting		6.0	6.0				\$157.45	\$2,467.45
Attend monthly in person construction progress meetings and coordination		12.0	226.0	55.0			\$3,149.00	\$48,884.00
Contractor questions, RFIs, and materials submittals; Walk through; Record drawings, RAS		24.0	72.0	40.0			\$314.90	\$22,234.90
Construction Materials Testing (by Terracon)						\$64,330.00		\$64,330.00
Phase 2: (Capstone Drive and UPRR Crossing)								\$136,841.80
Task 5: Plan Set Preparation								\$38,995.00
Updates to Capstone Plan Set		14.0	97.5	139.0				\$36,125.00
Update OPCCs		2.0	4.0	4.0				\$1,590.00
Update Spec List and Project Manual Assistance			8.0					\$1,280.00
Task 5B: UPRR Coordination								\$19,140.00
UPRR Coordination for Signal Preemption						\$5,000.00		\$5,000.00
UPRR Drainage Study within UP ROW	8.0	12.0	24.0	40.0				\$14,140.00
Task 6: Bid Phase Services								\$5,180.00
Bid Phase Services		4.0	20.5	8.0				\$5,180.00
Task 7: Construction Administration								\$73,526.80
Attend Pre-Construction meeting		6.0	6.0				\$157.45	\$2,467.45
Attend monthly in person construction progress meetings and coordination		12.0	131.5	32.5			\$1,731.95	\$29,534.45
Contractor questions, RFIs, and materials submittals; Walk through; Record drawings, RAS		24.0	54.0	20.0			\$314.90	\$16,854.90
Construction Materials Testing (by Terracon)						\$24,670.00		\$24,670.00
TOTAL HOURS	36.0	208.0	920.5	746.5		\$ 98,950.00	\$ 5,825.65	
TOTAL PROJECT								\$408,008.15
Total budget remaining on existing contract								\$83,560.94
NET AMOUNT OF SA#3								\$324,447.21
HOURLY RATES	\$325	\$225	\$160	\$125	\$115			
MILEAGE RATE							\$0.67	



Eric Ratzman, PE
Halff Associates, Inc.
13620 Briarwick Dr
Building C, Suite 100
Austin, Texas 78729

Re: Professional Services for Capstone and Barron signals
City of College Station, Texas

Mr. Ratzman,

We sincerely appreciate the opportunity to present this proposal for Design Services necessitated by the revised curb line at the intersection of Capstone/Barron and FM 2154 located in the City of College Station, Texas. This document details the work breakdown and cost estimate to accomplish the developer's needs and the reviewer's requirements.

This proposal is an amendment to the previous contract to provide professional services for the Capstone and Barron Alignment project executed on February 24, 2017.

Again, BGE, Inc. thanks you for the opportunity to provide this proposal and we look forward to working with you towards the completion of this project. If any questions remain, please do not hesitate to ask.

Sincerely,

BGE, Inc.

CLIENT: Halff Associates, Inc.

SIGNED: _____

TYPED NAME: SHAUN SPIVEY, P.E., PTOE

TITLE: SENIOR PROJECT MANAGER

DATE: AUGUST 29, 2024

SIGNED: _____

TYPED NAME: _____

TITLE: _____

DATE: _____

SCOPE OF SERVICES TO BE PROVIDED BY ENGINEER

BGE, Inc., herein after referred to as the **Engineer**, shall perform Construction Phase Services for Halff Associates, Inc., herein after referred to as the **Client**. This service, herein after referred to as the **Project**, shall be to provide revised sheets to modify the design of the signal that BGE designed for the intersection of Capstone/Barron Road and FM 2154 in the City of College Station, Texas. The Project will also include general coordination, meetings, and support on the railroad preemption calculations.

To accomplish these, the following assumptions were made:

- The Engineer shall provide services to revise the Phase 1 and Phase 2 signal plans for the Capstone/Barron and FM 2154 intersection that were designed by BGE and sealed on April 11, 2022.
- The proposed Capstone and Barron roads are being narrowed at the intersection to allow only one through lane in each direction.
- The signal plans will be modified to adjust to the new lane configuration.
- Pedestrian equipment will be relocated or added to accommodate the revised curb line locations.
- Wiring tables and detection details will be revised to match the new configuration.
- Quantities and cost estimate will be revised.
- Revised curb line base files will be provided to the Engineer prior to commencing work.
- This proposal does not include signal timing.
- Two meetings and two rounds of preemption calculation sheet revisions were used as the basis for the coordination estimate.

FEE SUMMARY

The Engineer shall be compensated on a Lump Sum basis for the Signal Design Modification work performed. The Engineer shall be compensated on an Hourly Not-To-Exceed basis for the coordination, meetings, and preemption calculation support, based on the current fee schedule. Fees will be billed on a monthly basis and shall be payable upon receipt. The estimated fee is below.

Signal Design Modification	\$4,950
Coordination	\$5,000
Fee Total	\$9,950

HOURLY RATES

The Hourly Rates are set forth below.

Senior Project Manager	\$312
Project Engineer	\$260
Design Engineer	\$130
Admin	\$98

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase I

Terracon Proposal No. PA1161136

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
General Fill - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	2	4	\$ 280.00
Standard Proctor	\$ 200.00	2	tests	2	4	\$ 800.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	2	4	\$ 280.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	2	4	\$ 160.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 1,610.00
General Fill - Density Testing						
Sr. Engineering Technician	\$ 80.00	3	hours	8	24	\$ 1,920.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	8	8	\$ 600.00
Vehicle Charge	\$ 45.00	1	trips	8	8	\$ 360.00
Sub Total						\$ 2,880.00
Utility - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	2	4	\$ 280.00
Standard Proctor	\$ 200.00	2	tests	2	4	\$ 800.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	2	4	\$ 280.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	2	4	\$ 160.00
Unconfined Compressive Strength	\$ 300.00	1	tests	2	2	\$ 600.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 2,210.00
Utility - Density Testing						
Sr. Engineering Technician	\$ 80.00	4	hours	8	32	\$ 2,560.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	8	8	\$ 600.00
Vehicle Charge	\$ 45.00	1	trips	8	8	\$ 360.00
Sub Total						\$ 3,520.00
Site & Paving - Proof Roll						
Sr. Engineering Technician	\$ 80.00	3	hours	4	12	\$ 960.00
Vehicle Charge	\$ 45.00	1	trips	4	4	\$ 180.00
Sub Total						\$ 1,140.00

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase I

Terracon Proposal No. PA1161136

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
Lime Treated Subgrade - Lab, Gradation & Pickup						
Engineering Technician	\$ 70.00	3	hours	5	15	\$ 1,050.00
Standard Proctor	\$ 200.00	16	tests	1	16	\$ 3,200.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	4	tests	5	20	\$ 1,400.00
Lime Series	\$ 200.00	2	tests	1	2	\$ 400.00
pH Testing	\$ 40.00	4	tests	5	20	\$ 800.00
Tex-113-E Proctor	\$ 250.00	4	tests	1	4	\$ 1,000.00
Sieve/Gradation	\$ 35.00	4	each	5	20	\$ 700.00
Vehicle Charge	\$ 45.00	1	trips	5	5	\$ 225.00
Sub Total						\$ 8,775.00
Lime Treated Subgrade - Density Testing & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	5	15	\$ 1,200.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	5	5	\$ 375.00
Lime Treated Subgrade Depth Check	\$ 35.00	4	each	5	20	\$ 700.00
Vehicle Charge	\$ 45.00	1	trips	5	5	\$ 225.00
Sub Total						\$ 2,500.00
Base Subgrade - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	1	tests	1	1	\$ 70.00
TxDOT Wet-Ball Mill	\$ 200.00	1	tests	1	1	\$ 200.00
Modified Proctor	\$ 250.00	1	tests	1	1	\$ 250.00
Sieve Analysis	\$ 70.00	1	tests	1	1	\$ 70.00
Tex-113-E Proctor	\$ 250.00	1	tests	1	1	\$ 250.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 1,025.00
Base Subgrade - Density Test & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	3	9	\$ 720.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	3	3	\$ 225.00
Crushed Stone Base Depth Check	\$ 35.00	3	each	3	9	\$ 315.00
Vehicle Charge	\$ 45.00	1	trips	3	3	\$ 135.00
Sub Total						\$ 1,395.00

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase I

Terracon Proposal No. PA1161136

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
HMAC - Lab, Roll Pattern, Testing & Sample Pickup						
Sr. Engineering Technician	\$ 80.00	6	hours	2	12	\$ 960.00
Asphalt Cement by ignition (includes gradation)	\$ 135.00	1	tests	2	2	\$ 270.00
Hveem Stability and Density (Set of 3) (already mixed)	\$ 145.00	1	tests	2	2	\$ 290.00
Bulk Specific Gravity (Set of 3)	\$ 45.00	1	tests	2	2	\$ 90.00
Theoretical Maximum Specific Gravity	\$ 90.00	1	tests	2	2	\$ 180.00
Molding Asphalt Specimens (each)	\$ 30.00	1	tests	2	2	\$ 60.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	2	2	\$ 150.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 2,090.00
HMAC - Coring						
Sr. Engineering Technician	\$ 80.00	6	hours	1	6	\$ 480.00
Asphalt Cores (Equipment & Patching Material)	\$ 50.00	4	each	1	4	\$ 200.00
Density and Thickness of Asphaltic	\$ 35.00	4	each (per core)	1	4	\$ 140.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 865.00
Site & Paving - Concrete Testing						
Engineering Technician	\$ 70.00	143	hours	1	143	\$ 10,010.00
Compressive Strength of 4" x 8" Cylinder	\$ 20.00	475	tests	1	475	\$ 9,500.00
Vehicle Charge	\$ 45.00	1	trips	31	31	\$ 1,395.00
Initial Curing Environment	\$ 5.00	1	trips	31	31	\$ 155.00
Sub Total						\$ 21,060.00
Site & Paving - Concrete Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	31	62	\$ 4,340.00
Vehicle Charge	\$ 45.00	1	trips	31	31	\$ 1,395.00
Sub Total						\$ 5,735.00
Proposal, Project Setup & Project Management						
Assistant Project Manager	\$ 100.00	30	hours	1	30	\$ 3,000.00
Project Manager	\$ 150.00	40	hours	1	40	\$ 6,000.00
Sr. Manager (APR)	\$ 175.00	3	hours	1	3	\$ 525.00
Sub Total						\$ 9,525.00
Total						\$ 64,330.00

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase II

Terracon Proposal No. PA1201204

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
General Fill - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Standard Proctor	\$ 200.00	2	tests	1	2	\$ 400.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	1	2	\$ 140.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	1	2	\$ 80.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 805.00
General Fill - Density Testing						
Sr. Engineering Technician	\$ 80.00	3	hours	4	12	\$ 960.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	4	4	\$ 300.00
Vehicle Charge	\$ 45.00	1	trips	4	4	\$ 180.00
Sub Total						\$ 1,440.00
Utility - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Standard Proctor	\$ 200.00	2	tests	1	2	\$ 400.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	1	2	\$ 140.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	1	2	\$ 80.00
Unconfined Compressive Strength	\$ 300.00	1	tests	1	1	\$ 300.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 1,105.00
Utility - Density Testing						
Sr. Engineering Technician	\$ 80.00	5	hours	4	20	\$ 1,600.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	4	4	\$ 300.00
Vehicle Charge	\$ 45.00	1	trips	4	4	\$ 180.00
Sub Total						\$ 2,080.00
Site & Paving - Proof Roll						
Sr. Engineering Technician	\$ 80.00	3	hours	2	6	\$ 480.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 570.00

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase II

Terracon Proposal No. PA1201204

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
Lime Treated Subgrade - Lab, Gradation & Pickup						
Engineering Technician	\$ 70.00	3	hours	2	6	\$ 420.00
Standard Proctor	\$ 200.00	3	tests	2	6	\$ 1,200.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	3	tests	2	6	\$ 420.00
Lime Series	\$ 200.00	1	tests	1	1	\$ 200.00
pH Testing	\$ 40.00	3	tests	2	6	\$ 240.00
Sieve/Gradation	\$ 35.00	3	each	2	6	\$ 210.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 2,780.00
Lime Treated Subgrade - Density Testing & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	2	6	\$ 480.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	2	2	\$ 150.00
Lime Treated Subgrade Depth Check	\$ 35.00	3	each	2	6	\$ 210.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 930.00
Base Subgrade - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	1	tests	1	1	\$ 70.00
TxDOT Wet-Ball Mill	\$ 200.00	1	tests	1	1	\$ 200.00
Modified Proctor	\$ 250.00	1	tests	1	1	\$ 250.00
Sieve Analysis	\$ 70.00	1	tests	1	1	\$ 70.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 775.00
Base Subgrade - Density Test & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	2	6	\$ 480.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	2	2	\$ 150.00
Crushed Stone Base Depth Check	\$ 35.00	3	each	2	6	\$ 210.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 930.00

Fee Estimate

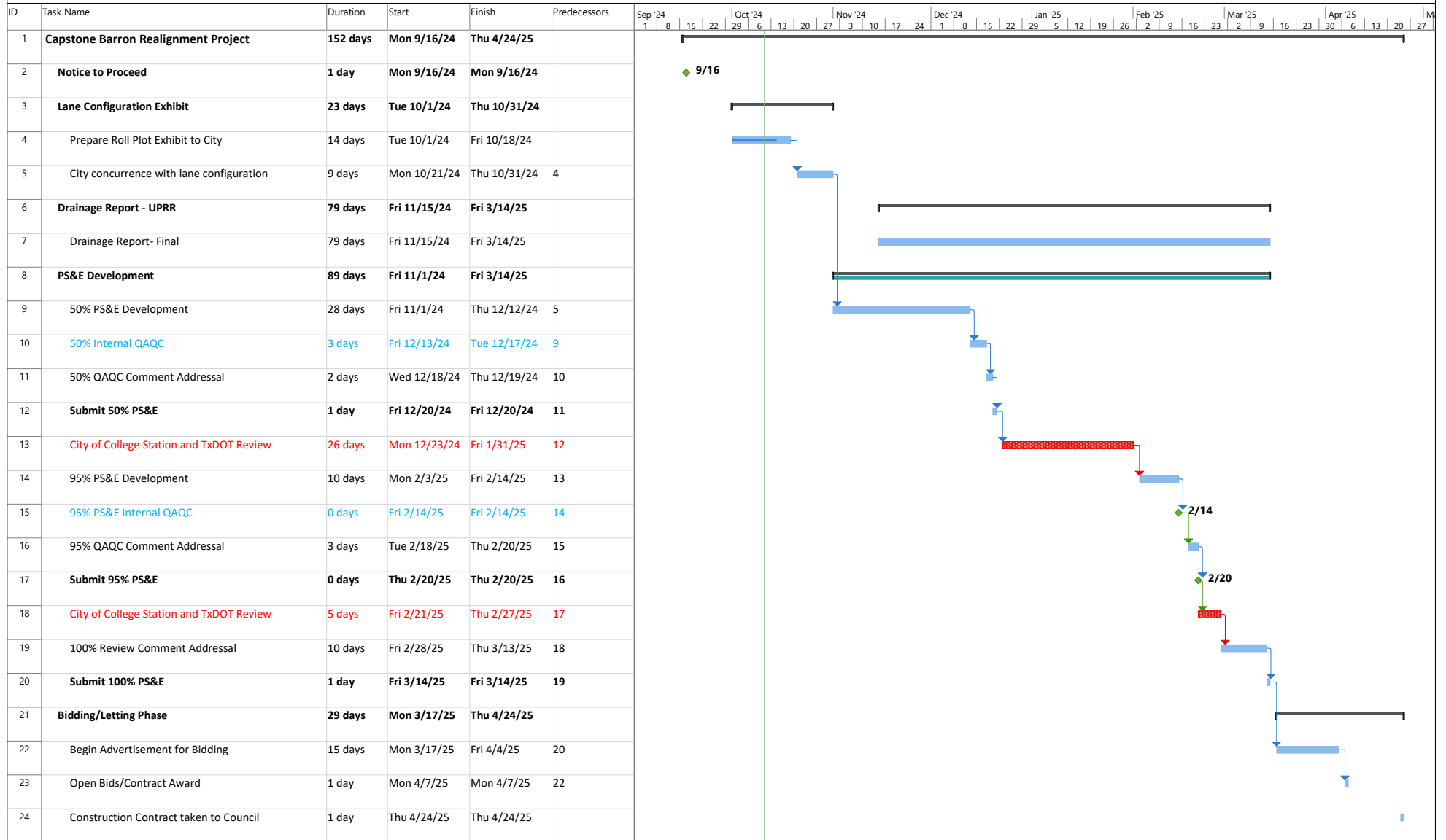
Materials Services

Capstone Drive and Barron Road Alignment - Phase II

Terracon Proposal No. PA1201204

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
HMAC - Lab, Roll Pattern, Testing & Sample Pickup						
Sr. Engineering Technician	\$ 80.00	6	hours	3	18	\$ 1,440.00
Asphalt Cement by ignition (includes gradation)	\$ 135.00	1	tests	3	3	\$ 405.00
Hveem Stability and Density (Set of 3) (already mixed)	\$ 145.00	1	tests	3	3	\$ 435.00
Bulk Specific Gravity (Set of 3)	\$ 45.00	1	tests	3	3	\$ 135.00
Theoretical Maximum Specific Gravity	\$ 90.00	1	tests	3	3	\$ 270.00
Molding Asphalt Specimens (each)	\$ 30.00	1	tests	3	3	\$ 90.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	3	3	\$ 225.00
Vehicle Charge	\$ 45.00	1	trips	3	3	\$ 135.00
Sub Total						\$ 3,135.00
HMAC - Coring						
Sr. Engineering Technician	\$ 80.00	6	hours	1	6	\$ 480.00
Asphalt Cores (Equipment & Patching Material)	\$ 50.00	12	each	1	12	\$ 600.00
Density and Thickness of Asphaltic	\$ 35.00	12	each (per core)	1	12	\$ 420.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 1,545.00
Site & Paving - Concrete Testing						
Engineering Technician	\$ 70.00	22	hours	1	22	\$ 1,540.00
Compressive Strength of 4" x 8" Cylinder	\$ 20.00	60	tests	1	60	\$ 1,200.00
Vehicle Charge	\$ 45.00	1	trips	6	6	\$ 270.00
Initial Curing Environment	\$ 5.00	1	trips	6	6	\$ 30.00
Sub Total						\$ 3,040.00
Site & Paving - Concrete Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	6	12	\$ 840.00
Vehicle Charge	\$ 45.00	1	trips	6	6	\$ 270.00
Sub Total						\$ 1,110.00
Proposal, Project Setup & Project Management						
Assistant Project Manager	\$ 100.00	12	hours	1	12	\$ 1,200.00
Project Manager	\$ 150.00	18	hours	1	18	\$ 2,700.00
Sr. Manager (APR)	\$ 175.00	3	hours	1	3	\$ 525.00
Sub Total						\$ 4,425.00
Total						\$ 24,670.00

Capstone and Barron Realignment
City of College Station
Fri 10/11/24



CHANGE ORDER NO. 3		DATE: October 14, 2024	Contract No. 17300146	
P.O.#: 17200821		PROJECT: Barron Capstone Realignment Project	Project No. ST1605/ST2501	

OWNER: City of College Station P.O. Box 9960 College Station, Texas 77842	CONTRACTOR: Halff Associates, Inc 9500 Amberglenn Blvd, Bldg F Ste1: Ph: 512-942-6228 Austin, Texas 78729 Fax:
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PURPOSE OF THIS CHANGE ORDER:
 This change order is for additional design services required due to a redesign based on new direction given by Union Pacific Railroad.

ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	CURRENT QUANTITY	REVISED QUANTITY	ADDED COST
1	EA	Scope Amendment No. 3 Design Fees	\$ 1.00	\$644,617.00	\$969,064.21	\$ 324,447.21
						\$ -
						\$ -
					TOTAL	\$ 324,447.21

THE NET AFFECT OF THIS CHANGE ORDER IS A 82.8% INCREASE.

LINE 1 STREET (41399971-6560)	\$324,447.21
TOTAL CHANGE ORDER	\$324,447.21

ORIGINAL CONTRACT AMOUNT	\$530,177.00
CHANGE ORDER NO. 1	\$21,000.00 4.0% CHANGE
CHANGE ORDER NO. 2	\$93,440.00 17.6% CHANGE
CHANGE ORDER NO. 3	\$324,447.21 61.2% CHANGE
REVISED CONTRACT AMOUNT	\$969,064.21 82.8% TOTAL CHANGE

APPROVED

<u>Eric Ratzman</u> 10/17/2024 A/E CONTRACTOR Date <u>Susan Monnat</u> 10/18/2024 PROJECT MANAGER Date _____ DEPARTMENT DIRECTOR Date	_____ CITY ATTORNEY Date _____ ASST CITY MGR - CFO Date _____ CITY MANAGER Date
--	--



October 17, 2024
AVO: 31550.004

Ms. Susan Monnat, PE
City of College Station

RE: Capstone and Barron Alignment Design - Supplemental Agreement #3

Ms. Monnat:

Enclosed is our proposal for the additional services requested to redesign the plans for Barron Road from the currently proposed five lane section with on-street bike lanes to a three section with shared use paths behind curb.

Please give me a call if you have any questions. We look forward to continuing working with you to get these projects constructed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric J. Ratzman', is written over a light blue horizontal line.

Eric J. Ratzman, PE
Vice President
(512) 777-4620

**Addendum to Exhibit “A”
Supplemental #3 - Scope of Services
For
Capstone and Barron Realignment Project
City of College Station**

The proposed Supplemental #3 will address revising the typical roadway sections of Capstone Drive and Barron Road, due to constraints imposed by Union Pacific Railroad upon the allowable lanes for the at-grade rail crossing of realigned Capstone Drive.

The initial agreement between the City and Halff included design plans and construction documents for the realignment and design of Capstone Drive and Barron Road from SH 40 through FM 2154. The realignment of Capstone Drive includes a proposed at-grade crossing of the UPRR tracks. This supplemental will address the task of implementing an updated typical section along Barron Road and Capstone Drive to reduce the number of lanes crossing the UPRR tracks as requested by UPRR. At the time of this Supplemental #3 UPRR approval for this at-grade relocated crossing is outstanding and the City has requested to separate the scope of work into two bid packages:

Phase 1: Barron Rd, FM 2154 and all ancillary items east of the UPRR right-of-way

Phase 2: Capstone Dr, UPRR crossing, all work within UPRR right-of way, and widening FM 2154 on the east side, north of Barron Road to accommodate a separate left turn lane for northbound FM 2154 to Capstone Drive.

The terms of the Supplemental #3 will adhere to the initial contract executed by the City and Halff dated November 22, 2016. The following phase and tasks will be added to the project:

Project Management

Task 1- Project Management:

This task covers project administration, monthly reporting and invoicing, sub management, and quality control reviews of deliverables.

Phase 1- Barron Road and FM 2154

The design completed under the initial agreement will be revised to show the same number of travel lanes crossing the UPRR tracks as existing. Both plan sets (Phase 1/ Phase 2) will specify what construction activities will occur during each respective phase. The design revisions include but are not limited to:

- Project layout
- Typical sections
- Traffic control narrative and layout
- Removal plan
- Pavement plan, profile, and standards
- Drainage design and calculations
- Erosion control and grading
- Signing and pavement marking
- Traffic signal design
- Illumination
- Utility relocations

- Cross sections
- Quantities and summary sheets

These PS&E documents will be incorporated into construction documents for use in bidding and constructing the project in two separate phases.

Task 2- Phase 1 Plan Set Preparation:

The consultant shall develop the Bid Package for the design of Barron Rd, the FM 2154 intersection and all ancillary items east of the UPRR ROW. Interim conditions must be established in the Phase 1 Bid Package to ensure that all elements within Phase 1 satisfy the design requirements and allow for the future integration of Phase 2. Design modifications shall be in accordance with the manuals and standards outlined in the original agreement. Quantities and unit costs for all construction in Phase 1 are to be updated in the Engineer's OPCC. The project manual will reflect design modifications with included specifications and the current documents of TxDOT and BCS Unified Technical Specifications at the time of the deliverable. Design elements that require modification to accommodate the revised UPRR crossing configuration and reduced pavement section include:

- Typical sections showing the reduced lane configuration
- Roadway, driveway and intersection design
- Cross sections
- Drainage design, calculations, and inlet locations (including in-line detention if required to mitigate increases of flow onto UPRR; detention ponds and structural outlets are excluded)
- Proposed grading (all grading will be confined to existing right-of-way)
- Updated traffic control narrative and plan for construction along Barron Road and FM 2154
- Signal pole location for FM 2154 intersection
- Illumination pole and conduit locations update, voltage drop calculations, photometric study updates with narrowed road width, fixture and detail review and updates as needed to comply with latest requirements and standards
- Striping and signage of Barron and Phase 1 of FM 2154
- Erosion control measures
- Removal plan
- Project layout

Task 2 Deliverables (all provided as digital PDFs):

- Exhibit of entire project (both Barron Road and Capstone Drive) showing lane configurations in a plan view roll plot at 1"=50' scale (no profile)
- 60% Plan Set (11x17) and OPCC
- 95% Plan Set (11x17), OPCC, Spec list, and responses to 60% City review comments
- Phase 1 Final Bid Documents (11x17), OPCC, Spec list, and responses to 95% City review comments

Task 3- Bid Phase Services:

Bid Phase Services for Phase 1 will include the following:

- Attend one (1) Pre-Bid Meeting with the City and prospective bidders. Halff will prepare meeting minutes and submit to the City within three (3) business days of the meeting. Budget is based upon this meeting being in person.
- Respond to Contractor questions raised during the bidding process and develop addendums to the Bid Documentation as required. The hours are based upon the City

uploading all responses and addendums to the e-Marketplace bid site after being prepared.

- Attend the formal bid opening. Hours are based upon this meeting being virtual.
- Furnish an electronic set of final conformed construction plans to the awarded Contractor. Hours are based upon the City providing the conformed Project Manual.

Task 3 Deliverables (all provided as digital PDFs):

- Bid Addendums and responses to contractor questions
- Conformed set of construction documents with all associated changes

Task 4- Construction Administration:

For purposes of this scope of work, it is based upon Phase 1 having a construction duration of 16 months to Substantial Completion. The following services shall be provided:

- Meetings – Engineer will attend the pre-construction meeting (1 meeting in-person budgeted), monthly construction progress meetings (14 in person meetings budgeted), and field meetings as needed (6 field meetings budgeted), and will prepare and distribute meeting minutes within three (3) business days of the meeting.
- Coordination and correspondence – coordinate with City, contractor, and testing firm, throughout the project (budgeted 1.5 hours/week on average)
- Submittal Reviews - Review Contractor submittals and shop drawings. Shop drawings will be reviewed for general conformance with the plans and specifications and will include providing stamped concurrence, exceptions, or resubmittal notations to the Contractor (18 submittals budgeted)
- Requests Information (RFI) - Respond to Contractor RFIs and provide design clarifications, additional information, and additional data to the City as required (12 RFIs budgeted)
- Construction materials testing (by Terracon, see attached fee estimate and rates); retesting after failed tests will be paid by the city, and to collect payment from the contractor, in the form of credit on the contractor's next pay application)
- Engineer to review and sign off on general concordance of Contractor's monthly pay applications
- Engineer will coordinate with the Registered Accessibility Specialist (RAS) for a final inspection and project closeout with TDLR.
- Attend final walk through of the Project to observe any apparent defects in the completed construction with regard to the plans and specifications, and provide a final Punch List within one (1) business day of the final walk through.
- Prepare and compile all necessary closeout documents including a set of Record Drawings and concurrence letter of final completion.

Task 4 Deliverables (all provided as digital PDFs)

- Meeting minutes
- Submittal reviews
- Responses to RFIs with Engineer's signature
- Materials testing reports
- Punch list
- Record drawings
- Engineer's Letter of Concurrence

Phase 2- Capstone Drive and FM 2154

The design completed under the initial agreement will be revised to show the same number of travel lanes crossing the UPRR tracks as existing. This plan set is to detail how to tie in to the completed Phase 1 construction. These design elements include but are not limited to:

- Project layout
- Typical sections
- Traffic control narrative and layout
- Removal plan
- Pavement plan, profile, and standards
- Drainage design and calculations
- Erosion control and grading
- Signing and pavement marking
- Traffic signal design
- Illumination
- Utility relocations
- Cross sections
- Quantities and summary sheets

These PS&E documents will be incorporated into construction documents for use in bidding and constructing the project in two separate phases.

Task 5- Phase 2 Plan Set Preparation:

The consultant shall develop the Bid Package for the design and realignment of Capstone Dr, the updated UPRR crossing, all work within UPRR right-of way, and widening FM 2154 north of Barron Road to accommodate a separate left turn lane for northbound FM 2154 to Capstone Drive. Capstone Drive will be revised to show the same number of travel lanes crossing the UPRR tracks as existing. Design modifications shall be in accordance with the manuals and standards outlined in the original agreement. Quantities and unit costs for all construction in Phase 2 are to be updated in the Engineer's OPCC. The project manual will reflect design modifications with included specifications and the current documents of TxDOT and BCS Unified Technical Specifications at the time of the deliverable. Design elements that require modification to accommodate the existing UPRR crossing lane configuration include:

- Typical sections showing the reduced lane configuration
- Roadway, driveway and intersection design
- Cross sections
- Culvert design & calculations (includes drainage study within UPRR ROW)
- Proposed grading
- Updated traffic control narrative and plan for Capstone Drive and FM 2154
- Addition of southbound acceleration lane on FM 2154; one round of TxDOT comments
- Illumination pole and conduit locations update, voltage drop calculations, photometric study updates with narrowed road width, fixture and detail review and updates as needed to comply with latest requirements and standards
- Striping and signage of Capstone and Phase 2 of FM 2154
- Erosion control measures
- Removal plan
- Project layout

Task 5 Deliverables (all provided as digital PDFs):

- 60% Plan Set (11x17) and OPCC
- 95% Plan Set (11x17), OPCC, Spec list, and responses to 60% City review comments
- Phase 2 Final Bid Documents (11x17), OPCC, Spec list, and responses to 95% City review comments

Task 5B- UPRR Coordination:

The signal subconsultant (BGE) will assist the City with UPRR coordination regarding to preemption calculations, as needed. Two (2) meetings and two (2) rounds of revisions to preemption calculations are budgeted for in this scope. Signal timing is not included in this supplemental. See attached scope of services from BGE and hourly rates.

Engineer will prepare a drainage study memo, detailing existing and proposed conditions of the culvert proposed beneath Capstone Drive in UPRR. Halff will conduct an analysis of the water surface elevations and capacity in the culvert outfall swale adjacent to UPRR tracks and confirm adherence to UPRR drainage criteria as applicable and update pipe size if not in conformance with UPRR and propose mitigation measures if needed to meet criteria. CivilStorm software will be used to model the water being received by the culvert.

Task 5B Deliverables:

- Revised preemption calculations
- Drainage study of UPRR culvert and outfall swale for city and UPRR review

Task 6- Bid Phase Services:

Bid Phase Services for Phase 2 will include the following:

- Attend one (1) Pre-Bid Meeting with the City and prospective bidders. Halff will prepare meeting minutes and submit to the City within three (3) business days of the meeting. Hours are based upon this meeting occurring be in person.
- Respond to Contractor questions raised during the bidding process and develop addendums to the Bid Documentation as required. Hours are based upon the City uploading all responses and addendums to the e-Marketplace bid site.
- Attend the formal bid opening. Hours are based upon this meeting being virtual.
- Furnish an electronic set of final conformed construction plans to the awarded Contractor. Hours are based upon that City providing the conformed Project Manual.

Task 6 Deliverables (all provided as digital PDFs):

- Bid Addendums and responses to contractor questions
- Conformed set of construction documents with all associated changes

Task 7- Construction Administration:

For purposes of this scope of work, hours are based upon Phase 2 having a construction duration of 10 months to Substantial Completion. The following services shall be provided:

- Meetings – Engineer will attend the pre-construction meeting (1 meeting in-person budgeted), monthly construction progress meetings (8 in person meetings budgeted) and field meetings as needed (3 field meetings budgeted), and will prepare and distribute meeting minutes within three (3) business days of the meeting.
- Coordination and correspondence – coordinate with City, contractor, and testing firm, throughout the project (budgeted 1.5 hours/week on average)

- Submittal Reviews - Review Contractor submittals and shop drawings. Shop drawings will be reviewed for general conformance with the plans and specifications and will include providing stamped concurrence, exceptions, or resubmittal notations to the Contractor. (12 submittals budgeted)
- Requests Information (RFI) - Respond to Contractor RFIs and provide design clarifications, additional information, and additional data to the City as required (6 RFIs budgeted)
- Construction materials testing (by Terracon, see attached fee estimate and rates); retesting after failed tests will be paid by the city, and to collect payment from the contractor, in the form of credit on the contractor's next pay application)
- Engineer to review and sign off on general concordance of Contractor's monthly pay applications
- Engineer will coordinate with the Registered Accessibility Specialist (RAS) for a final inspection and project closeout with TDLR.
- Attend final walk through of the Project to observe any apparent defects in the completed construction with regard to the plans and specifications, and provide a final Punch List within one (1) business day of the final walk through.
- Prepare and compile all necessary closeout documents including a set of Record Drawings and concurrence letter of final completion.

Task 7 Deliverables (all provided as digital PDFs)

- Meeting minutes
- Submittal reviews
- Responses to RFIs with Engineer's signature
- Punch list
- Record drawings
- Engineer's Letter of Concurrence

**Addendum to Exhibit “B”
Proposed Supplemental #3-Payment Terms**

Payment is in the amount listed in paragraph 2.01 of this Contract plus the additional amount from Supplemental #1, Supplemental #2, and this Supplemental #3, for a total not-to-exceed (NTE) amount of \$969,064.21. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase/task (to be billed on an hourly NTE basis at the hourly rates provided in attached summaries*):

Task 1 – Project Management	\$25,840.00
Task 2 – Phase 1 Plan Set Preparation	\$17,939.06 **
Task 3 – Phase 1 Bid Phase Services	\$5,820.00
Task 4 – Phase 1 Construction Administration	\$137,916.35
Task 5 – Phase 2 Plan Set Preparation	\$38,995.00
Task 5B – Phase 2 UPRR Coordination	\$19,140.00
Task 6 – Phase 2 Bid Phase Services	\$5,180.00
<u>Task 7 – Phase 2 Construction Administration</u>	<u>\$73,526.80</u>
 SUB-TOTAL FEE (including direct expenses)	 \$324,447.21

* The rates in the following fee schedules are good for 2025. If either project delays or extends past June 1, 2026, Halff reserves the right to negotiate new rates and budgets to complete any services needed beyond that date.

** The remaining fee on the existing contract (\$83,560.94) will be utilized and billed towards above Task 2 in accordance with the original contract payment terms until expended. Once that budget has been expended, this budget of \$17,939.06 will be used to complete Task 2.

EXHIBIT 'A'
PROPOSED FEE SCHEDULE FOR SUPPLEMENT SERVICE #3
Capstone and Barron Realignment Project for the City of College Station

PROJECT TASK	SR PROJECT ADVISOR	PROJECT MANAGER	CIVIL ENGINEER, PE	CIVIL ENGINEER, EIT	CONTRACT ADMINISTRATOR	SUB CONSULTANT	EXPENSES (MILEAGE)	TOTAL
Project Management								\$25,840.00
Task 1: Project Management								\$25,840.00
Project administration	28.0	56.0			36.0			\$25,840.00
Phase 1: (Barron Road and FM 2154)								\$245,326.35
Task 2: Plan Set Preparation								\$101,590.00
Updates to Barron Plan Set		30.0	230.5	392.0				\$92,630.00
Update Signal Plans						\$4,950.00		\$4,950.00
Update OPCCs		2.0	8.0	8.0				\$2,730.00
Update Spec List and Project Manual Assistance			8.0					\$1,280.00
Task 3: Bid Phase Services								\$5,820.00
Bid Phase Services		4.0	24.5	8.0				\$5,820.00
Task 4: Construction Administration								\$137,916.35
Attend Pre-Construction meeting		6.0	6.0				\$157.45	\$2,467.45
Attend monthly in person construction progress meetings and coordination		12.0	226.0	55.0			\$3,149.00	\$48,884.00
Contractor questions, RFIs, and materials submittals; Walk through; Record drawings, RAS		24.0	72.0	40.0			\$314.90	\$22,234.90
Construction Materials Testing (by Terracon)						\$64,330.00		\$64,330.00
Phase 2: (Capstone Drive and UPRR Crossing)								\$136,841.80
Task 5: Plan Set Preparation								\$38,995.00
Updates to Capstone Plan Set		14.0	97.5	139.0				\$36,125.00
Update OPCCs		2.0	4.0	4.0				\$1,590.00
Update Spec List and Project Manual Assistance			8.0					\$1,280.00
Task 5B: UPRR Coordination								\$19,140.00
UPRR Coordination for Signal Preemption						\$5,000.00		\$5,000.00
UPRR Drainage Study within UP ROW	8.0	12.0	24.0	40.0				\$14,140.00
Task 6: Bid Phase Services								\$5,180.00
Bid Phase Services		4.0	20.5	8.0				\$5,180.00
Task 7: Construction Administration								\$73,526.80
Attend Pre-Construction meeting		6.0	6.0				\$157.45	\$2,467.45
Attend monthly in person construction progress meetings and coordination		12.0	131.5	32.5			\$1,731.95	\$29,534.45
Contractor questions, RFIs, and materials submittals; Walk through; Record drawings, RAS		24.0	54.0	20.0			\$314.90	\$16,854.90
Construction Materials Testing (by Terracon)						\$24,670.00		\$24,670.00
TOTAL HOURS	36.0	208.0	920.5	746.5		\$ 98,950.00	\$ 5,825.65	
TOTAL PROJECT								\$408,008.15
Total budget remaining on existing contract								\$83,560.94
NET AMOUNT OF SA#3								\$324,447.21
HOURLY RATES	\$325	\$225	\$160	\$125	\$115			
MILEAGE RATE							\$0.67	



Eric Ratzman, PE
Halff Associates, Inc.
13620 Briarwick Dr
Building C, Suite 100
Austin, Texas 78729

Re: Professional Services for Capstone and Barron signals
City of College Station, Texas

Mr. Ratzman,

We sincerely appreciate the opportunity to present this proposal for Design Services necessitated by the revised curb line at the intersection of Capstone/Barron and FM 2154 located in the City of College Station, Texas. This document details the work breakdown and cost estimate to accomplish the developer's needs and the reviewer's requirements.

This proposal is an amendment to the previous contract to provide professional services for the Capstone and Barron Alignment project executed on February 24, 2017.

Again, BGE, Inc. thanks you for the opportunity to provide this proposal and we look forward to working with you towards the completion of this project. If any questions remain, please do not hesitate to ask.

Sincerely,

BGE, Inc.

CLIENT: Halff Associates, Inc.

SIGNED: 
TYPED NAME: SHAUN SPIVEY, P.E., PTOE
TITLE: SENIOR PROJECT MANAGER
DATE: OCTOBER 15, 2024

SIGNED: _____
TYPED NAME: _____
TITLE: _____
DATE: _____

SCOPE OF SERVICES TO BE PROVIDED BY ENGINEER

BGE, Inc., herein after referred to as the **Engineer**, shall perform Construction Phase Services for Halff Associates, Inc., herein after referred to as the **Client**. This service, herein after referred to as the **Project**, shall be to provide revised sheets to modify the design of the signal that BGE designed for the intersection of Capstone/Barron Road and FM 2154 in the City of College Station, Texas. The Project will also include general coordination, meetings, and support on the railroad preemption calculations.

To accomplish these, the following assumptions were made:

- The Engineer shall provide services to revise the Phase 1 and Phase 2 signal plans for the Capstone/Barron and FM 2154 intersection that were designed by BGE and sealed on April 11, 2022.
- The proposed Capstone and Barron roads are being narrowed at the intersection to allow only one through lane in each direction.
- The signal plans will be modified to adjust to the new lane configuration.
- Pedestrian equipment will be relocated or added to accommodate the revised curb line locations.
- Wiring tables and detection details will be revised to match the new configuration.
- Quantities and cost estimate will be revised.
- Revised curb line base files will be provided to the Engineer prior to commencing work.
- This proposal does not include signal timing.
- Two meetings and two rounds of preemption calculation sheet revisions were used as the basis for the coordination estimate.

FEE SUMMARY

The Engineer shall be compensated on a Hourly Not-To-Exceed basis for the Signal Design Modification, Coordination, Meetings, and Preemption Calculation support, based on the current fee schedule. Fees will be billed on a monthly basis and shall be payable upon receipt. The estimated fee is below.

Signal Design Modification	\$4,950
Coordination	\$5,000
Fee Total	\$9,950

HOURLY RATES

The Hourly Rates are set forth below.

Senior Project Manager	\$312
Project Engineer	\$260
Design Engineer	\$130
Admin	\$98

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase I

Terracon Proposal No. PA1161136

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
General Fill - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	2	4	\$ 280.00
Standard Proctor	\$ 200.00	2	tests	2	4	\$ 800.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	2	4	\$ 280.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	2	4	\$ 160.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 1,610.00
General Fill - Density Testing						
Sr. Engineering Technician	\$ 80.00	3	hours	8	24	\$ 1,920.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	8	8	\$ 600.00
Vehicle Charge	\$ 45.00	1	trips	8	8	\$ 360.00
Sub Total						\$ 2,880.00
Utility - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	2	4	\$ 280.00
Standard Proctor	\$ 200.00	2	tests	2	4	\$ 800.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	2	4	\$ 280.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	2	4	\$ 160.00
Unconfined Compressive Strength	\$ 300.00	1	tests	2	2	\$ 600.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 2,210.00
Utility - Density Testing						
Sr. Engineering Technician	\$ 80.00	4	hours	8	32	\$ 2,560.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	8	8	\$ 600.00
Vehicle Charge	\$ 45.00	1	trips	8	8	\$ 360.00
Sub Total						\$ 3,520.00
Site & Paving - Proof Roll						
Sr. Engineering Technician	\$ 80.00	3	hours	4	12	\$ 960.00
Vehicle Charge	\$ 45.00	1	trips	4	4	\$ 180.00
Sub Total						\$ 1,140.00

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase I

Terracon Proposal No. PA1161136

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
Lime Treated Subgrade - Lab, Gradation & Pickup						
Engineering Technician	\$ 70.00	3	hours	5	15	\$ 1,050.00
Standard Proctor	\$ 200.00	16	tests	1	16	\$ 3,200.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	4	tests	5	20	\$ 1,400.00
Lime Series	\$ 200.00	2	tests	1	2	\$ 400.00
pH Testing	\$ 40.00	4	tests	5	20	\$ 800.00
Tex-113-E Proctor	\$ 250.00	4	tests	1	4	\$ 1,000.00
Sieve/Gradation	\$ 35.00	4	each	5	20	\$ 700.00
Vehicle Charge	\$ 45.00	1	trips	5	5	\$ 225.00
Sub Total						\$ 8,775.00
Lime Treated Subgrade - Density Testing & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	5	15	\$ 1,200.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	5	5	\$ 375.00
Lime Treated Subgrade Depth Check	\$ 35.00	4	each	5	20	\$ 700.00
Vehicle Charge	\$ 45.00	1	trips	5	5	\$ 225.00
Sub Total						\$ 2,500.00
Base Subgrade - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	1	tests	1	1	\$ 70.00
TxDOT Wet-Ball Mill	\$ 200.00	1	tests	1	1	\$ 200.00
Modified Proctor	\$ 250.00	1	tests	1	1	\$ 250.00
Sieve Analysis	\$ 70.00	1	tests	1	1	\$ 70.00
Tex-113-E Proctor	\$ 250.00	1	tests	1	1	\$ 250.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 1,025.00
Base Subgrade - Density Test & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	3	9	\$ 720.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	3	3	\$ 225.00
Crushed Stone Base Depth Check	\$ 35.00	3	each	3	9	\$ 315.00
Vehicle Charge	\$ 45.00	1	trips	3	3	\$ 135.00
Sub Total						\$ 1,395.00

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase I

Terracon Proposal No. PA1161136

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
HMAC - Lab, Roll Pattern, Testing & Sample Pickup						
Sr. Engineering Technician	\$ 80.00	6	hours	2	12	\$ 960.00
Asphalt Cement by ignition (includes gradation)	\$ 135.00	1	tests	2	2	\$ 270.00
Hveem Stability and Density (Set of 3) (already mixed)	\$ 145.00	1	tests	2	2	\$ 290.00
Bulk Specific Gravity (Set of 3)	\$ 45.00	1	tests	2	2	\$ 90.00
Theoretical Maximum Specific Gravity	\$ 90.00	1	tests	2	2	\$ 180.00
Molding Asphalt Specimens (each)	\$ 30.00	1	tests	2	2	\$ 60.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	2	2	\$ 150.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 2,090.00
HMAC - Coring						
Sr. Engineering Technician	\$ 80.00	6	hours	1	6	\$ 480.00
Asphalt Cores (Equipment & Patching Material)	\$ 50.00	4	each	1	4	\$ 200.00
Density and Thickness of Asphaltic	\$ 35.00	4	each (per core)	1	4	\$ 140.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 865.00
Site & Paving - Concrete Testing						
Engineering Technician	\$ 70.00	143	hours	1	143	\$ 10,010.00
Compressive Strength of 4" x 8" Cylinder	\$ 20.00	475	tests	1	475	\$ 9,500.00
Vehicle Charge	\$ 45.00	1	trips	31	31	\$ 1,395.00
Initial Curing Environment	\$ 5.00	1	trips	31	31	\$ 155.00
Sub Total						\$ 21,060.00
Site & Paving - Concrete Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	31	62	\$ 4,340.00
Vehicle Charge	\$ 45.00	1	trips	31	31	\$ 1,395.00
Sub Total						\$ 5,735.00
Proposal, Project Setup & Project Management						
Assistant Project Manager	\$ 100.00	30	hours	1	30	\$ 3,000.00
Project Manager	\$ 150.00	40	hours	1	40	\$ 6,000.00
Sr. Manager (APR)	\$ 175.00	3	hours	1	3	\$ 525.00
Sub Total						\$ 9,525.00
Total						\$ 64,330.00



Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase II

Terracon Proposal No. PA1201204

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
General Fill - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Standard Proctor	\$ 200.00	2	tests	1	2	\$ 400.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	1	2	\$ 140.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	1	2	\$ 80.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 805.00
General Fill - Density Testing						
Sr. Engineering Technician	\$ 80.00	3	hours	4	12	\$ 960.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	4	4	\$ 300.00
Vehicle Charge	\$ 45.00	1	trips	4	4	\$ 180.00
Sub Total						\$ 1,440.00
Utility - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Standard Proctor	\$ 200.00	2	tests	1	2	\$ 400.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	2	tests	1	2	\$ 140.00
Sieve Analysis (Washed over #200 sieve)	\$ 40.00	2	tests	1	2	\$ 80.00
Unconfined Compressive Strength	\$ 300.00	1	tests	1	1	\$ 300.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 1,105.00
Utility - Density Testing						
Sr. Engineering Technician	\$ 80.00	5	hours	4	20	\$ 1,600.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	4	4	\$ 300.00
Vehicle Charge	\$ 45.00	1	trips	4	4	\$ 180.00
Sub Total						\$ 2,080.00
Site & Paving - Proof Roll						
Sr. Engineering Technician	\$ 80.00	3	hours	2	6	\$ 480.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 570.00

Fee Estimate

Materials Services

Capstone Drive and Barron Road Alignment - Phase II

Terracon Proposal No. PA1201204

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
Lime Treated Subgrade - Lab, Gradation & Pickup						
Engineering Technician	\$ 70.00	3	hours	2	6	\$ 420.00
Standard Proctor	\$ 200.00	3	tests	2	6	\$ 1,200.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	3	tests	2	6	\$ 420.00
Lime Series	\$ 200.00	1	tests	1	1	\$ 200.00
pH Testing	\$ 40.00	3	tests	2	6	\$ 240.00
Sieve/Gradation	\$ 35.00	3	each	2	6	\$ 210.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 2,780.00
Lime Treated Subgrade - Density Testing & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	2	6	\$ 480.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	2	2	\$ 150.00
Lime Treated Subgrade Depth Check	\$ 35.00	3	each	2	6	\$ 210.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 930.00
Base Subgrade - Lab & Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	1	2	\$ 140.00
Atterberg Limits Determination (3 pt.)	\$ 70.00	1	tests	1	1	\$ 70.00
TxDOT Wet-Ball Mill	\$ 200.00	1	tests	1	1	\$ 200.00
Modified Proctor	\$ 250.00	1	tests	1	1	\$ 250.00
Sieve Analysis	\$ 70.00	1	tests	1	1	\$ 70.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 775.00
Base Subgrade - Density Test & Depth Checks						
Sr. Engineering Technician	\$ 80.00	3	hours	2	6	\$ 480.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	2	2	\$ 150.00
Crushed Stone Base Depth Check	\$ 35.00	3	each	2	6	\$ 210.00
Vehicle Charge	\$ 45.00	1	trips	2	2	\$ 90.00
Sub Total						\$ 930.00

Fee Estimate

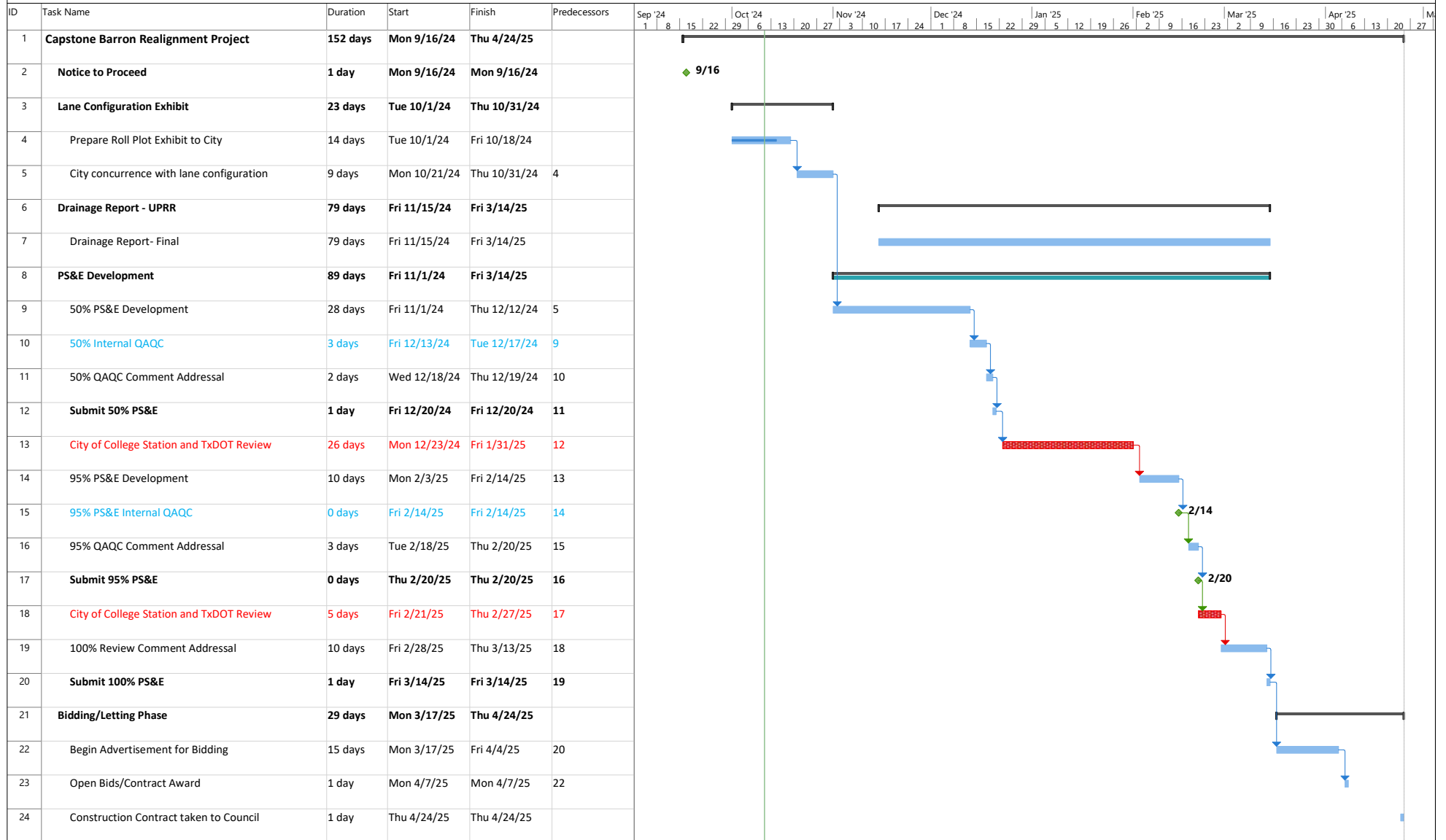
Materials Services

Capstone Drive and Barron Road Alignment - Phase II

Terracon Proposal No. PA1201204

DESCRIPTION	RATE	QUANTITY	UNITS	TRIPS	TOTAL QUANTITY	TOTAL
HMAC - Lab, Roll Pattern, Testing & Sample Pickup						
Sr. Engineering Technician	\$ 80.00	6	hours	3	18	\$ 1,440.00
Asphalt Cement by ignition (includes gradation)	\$ 135.00	1	tests	3	3	\$ 405.00
Hveem Stability and Density (Set of 3) (already mixed)	\$ 145.00	1	tests	3	3	\$ 435.00
Bulk Specific Gravity (Set of 3)	\$ 45.00	1	tests	3	3	\$ 135.00
Theoretical Maximum Specific Gravity	\$ 90.00	1	tests	3	3	\$ 270.00
Molding Asphalt Specimens (each)	\$ 30.00	1	tests	3	3	\$ 90.00
Nuclear Gauge(Equipment)	\$ 75.00	1	days	3	3	\$ 225.00
Vehicle Charge	\$ 45.00	1	trips	3	3	\$ 135.00
Sub Total						\$ 3,135.00
HMAC - Coring						
Sr. Engineering Technician	\$ 80.00	6	hours	1	6	\$ 480.00
Asphalt Cores (Equipment & Patching Material)	\$ 50.00	12	each	1	12	\$ 600.00
Density and Thickness of Asphaltic	\$ 35.00	12	each (per core)	1	12	\$ 420.00
Vehicle Charge	\$ 45.00	1	trips	1	1	\$ 45.00
Sub Total						\$ 1,545.00
Site & Paving - Concrete Testing						
Engineering Technician	\$ 70.00	22	hours	1	22	\$ 1,540.00
Compressive Strength of 4" x 8" Cylinder	\$ 20.00	60	tests	1	60	\$ 1,200.00
Vehicle Charge	\$ 45.00	1	trips	6	6	\$ 270.00
Initial Curing Environment	\$ 5.00	1	trips	6	6	\$ 30.00
Sub Total						\$ 3,040.00
Site & Paving - Concrete Sample Pickup						
Engineering Technician	\$ 70.00	2	hours	6	12	\$ 840.00
Vehicle Charge	\$ 45.00	1	trips	6	6	\$ 270.00
Sub Total						\$ 1,110.00
Proposal, Project Setup & Project Management						
Assistant Project Manager	\$ 100.00	12	hours	1	12	\$ 1,200.00
Project Manager	\$ 150.00	18	hours	1	18	\$ 2,700.00
Sr. Manager (APR)	\$ 175.00	3	hours	1	3	\$ 525.00
Sub Total						\$ 4,425.00
Total						\$ 24,670.00

Capstone and Barron Realignment
City of College Station
Fri 10/11/24



October 24, 2024
Item No. 7.3.
Release from ETJ Redman Lane

Sponsor: Anthony Armstrong, Director of Planning and Development

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an extraterritorial jurisdiction (ETJ) release petition for approximately 97.89 acres of land generally located at 14933, 14727, and 14788 Redman Lane.

Relationship to Strategic Goals:

- Good Governance
- Sustainable City

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

Staff visited with the petitioner after receiving the request. The petitioner is selling the property and not interested in further discussions with the City.

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

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

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

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

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

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

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

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

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

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

- (4) in an area designated as an industrial district under Section [42.044](#); or
 - (5) in an area subject to a strategic partnership agreement entered into under Section [43.0751](#).
- Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. [2038](#)), Sec. 1, eff. September 1, 2023.

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

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

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

Sec. 42.103. APPLICABILITY OF OTHER LAW. Chapter [277](#), Election Code, applies to a petition requesting removal under this subchapter.

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

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

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

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

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

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

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

(1) metes and bounds; or

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

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

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

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

(c) If a resident or landowner obtains the number of signatures on the petition required under Section [42.104](#) to release the area from the municipality's extraterritorial jurisdiction, the municipality shall immediately release the area from the municipality's extraterritorial jurisdiction.

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

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

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

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

ETJ area:

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

- (1) in cases of judicial apportionment of overlapping extraterritorial jurisdictions under Section [42.901](#);
- (2) in accordance with an agreement under Section [42.022](#)(d); or
- (3) as necessary to comply with Section [42.0235](#).

Budget & Financial Summary:

Attachments:

1. Redman ETJ Release Petition Resolution 10-24-24

RESOLUTION NO. _____

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

WHEREAS, on September 27, 2024, James S. Redman (“Petitioner”) submitted a petition attached as **Exhibit “A”** (“Petition”) for releasing property from the City of College Station’s extraterritorial jurisdiction (“ETJ”); and

WHEREAS, the property sought to be released are three tracts located in the approximate area of I&G Road and Koppe Bridge Road and described by metes and bounds in **Exhibit “A”**; and

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

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

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

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

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

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

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

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

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

ADOPTED this 24th day of October 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

Tract One:

Approximately 44.22 Acre Tract, James Hope League Survey, Abstract 22, Andrew McMahon Survey, Abstract 167, Brazos County, Texas

Tract Two:

Approximately 35.13 Acre Tract, James Hope League Survey, Abstract 22, Brazos County, Texas

Tract Three:

Approximately 17.64 Acre Tract, James Hope League Survey, Abstract 22, Brazos County, Texas

SEP 27 2024

JS

PETITION FOR RELEASE FROM THE CITY OF COLLEGE STATION
EXTRATERRITORIAL JURISDICTION

Petitioner, James S. Redman files this Petition for Release from the City of College Station (the "Petition"), as authorized by Texas Local Government Code § 42.101 *et seq.*, and would show the following:

1. Petitioner, as sole holder of title to land in the area described in the Petition, satisfies the minimum requirements of Texas Local Government Code (LGC) § 42.104(a).
2. As required by LGC § 42.104(d)(1), Petitioner owns and seeks removal of the following three (3) tracts of land (collectively the "Property") from the extraterritorial jurisdiction, each being identified on the map attached to this Petition as Exhibit "A," and described by metes and bounds:

Property Address:

14933 Redman Ln
 College Station, TX 77845
 Brazos CAD Parcel ID: 11662
 Metes and Bounds attached as Exhibit "B"

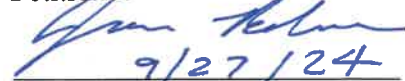
14727 Redman Ln
 College Station, TX 77845
 Brazos Parcel ID: 11672
 Metes and Bounds attached as Exhibit "C"

14788 Redman Ln
 College Station, TX 77845
 Brazos Parcel ID: 11671
 Metes and Bounds attached as Exhibit "D"

THEREFORE, having satisfied all requirements of Chapter 42 of the Texas Local Government Code, Petitioner seeks immediate release from the City of College Station Extraterritorial Jurisdiction, and requests that an agenda item be placed on the next regular meeting of the City Council of College Station to approve the Petition.

Submitted on September 27, 2024, Verified on _____, 2024:

Petitioner


9/27/24

James S. Redman
 DOB 9/26/1956
 13615 Still Bay
 Houston, TX 77077

 City Secretary

EXHIBIT "A" – Map of property



EXHIBIT "B" – Parcel ID: 11662 Metes and Bounds



44.22 ACRES

FIELD NOTES DESCRIPTION

OF A

44.22 ACRE TRACT

JAMES HOPE LEAGUE SURVEY, ABSTRACT 22

ANDREW MCMAHON SURVEY, ABSTRACT 167

BRAZOS COUNTY, TEXAS

A FIELD NOTES DESCRIPTION OF 44.22 ACRES IN THE JAMES HOPE LEAGUE SURVEY, ABSTRACT 22, AND THE ANDREW MCMAHON SURVEY, ABSTRACT 167, IN BRAZOS COUNTY, TEXAS, BEING THE REMAINDER OF A CALLED 45.63 ACRE TRACT OF LAND DESCRIBED IN A DEED TO THE JAMES S. REDMAN AND PATRICIA M. REDMAN, RECORDED IN VOLUME 2176, PAGE 304 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS (ORRCT); SAID 44.22 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an 8 inch treated fence post found at the intersection of the southwest line of I & GN Road (100' wide right-of-way per I & GN railroad right-of-way map) and the northwest line of Koppe Brde Road (right-of-way appears to be prescriptive in nature), for the east corner of said 45.63 acres and the east corner hereof.

THENCE, along the northwest line of Koppe Bridge Road and with the southeast line of said 45.63 acres, **S 41° 35' 14" W**, for a distance of **476.89 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the east corner of a 1.498 acre tract of land, also surveyed on this date, being a portion of said 45.63 acres and a southerly corner hereof.

THENCE, with the common line of said 1.498 acres and said 45.63 acres, **N 47° 08' 17" W**, for a distance of **258.43 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the north corner of said 1.498 acres and being an interior ell corner hereof.

THENCE, with the common line of said 1.498 acres, said 45.63 acres and a called 2.00 acre tract of land described in a deed to Curtis Breedlove, recorded in Volume 1384, Page 348 (ORRCT), **S 43° 02' 51" W**, passing at a distance of 249.88 feet a 1/2 inch iron rod found bent for the west corner of said 1.498 acres and the north corner of said 2.00 acres and continuing for a total distance of **465.86 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the west corner of said 2.00 acres.

THENCE, with the common line of said 2.00 acres and said 45.63 acres, **S 06° 52' 21" E**, for a distance of **348.29 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set in the northwest line of Koppe Bridge Road, for the south corner of said 2.00 acres;

THENCE, along the northwest line of Koppe Bridge Road and with the southeast line of said 45.63 acres, **S 42° 41' 12" W**, for a distance of **46.26 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the east corner of a called

1 | Page

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EXHIBIT "B" - cont

44.22 ACRES

9.07 acre tract of land described in a deed to Aggie Fiji, Inc. recorded in Volume 6528, Page 154 of the Official Public Records of Brazos County, Texas (OPRBCT) and being a southerly corner of said 45.63 acres and a southerly corner hereof;

THENCE, with the common lines of said 45.63 acres and said 9.07 acres for the following four (4) courses and distances:

- 1) **N 06° 52' 21" W**, for a distance of **348.68 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 2) **N 40° 36' 51" W**, for a distance of **105.53 feet** to a 1/2 inch iron rod found;
- 3) **N 47° 36' 24" W**, for a distance of **255.04 feet** to a 5/8 inch iron rod found for the north corner of said 9.07 acres and being an interior ell corner of said 45.63 acres and an interior ell corner hereof;
- 4) **S 42° 57' 12" W**, for a distance of **477.71 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the west corner of said 9.07 acres and being a northeasterly corner of a called 12.72 acre tract of land described in a deed to Angeletta L. Brown, recorded in Volume 1963, Page 344 (DRBCT);

THENCE, with the common lines of said 45.63 acres and said 12.72 acres for the following two (2) courses and distances:

- 1) **N 49° 44' 22" W**, for a distance of **335.27 feet** to a 1/2 inch iron rod found for the north corner of said 12.72 acres and being an interior ell corner of said 45.63 acres and an interior ell corner hereof;
- 2) **S 41° 07' 09" W**, for a distance of **863.25 feet** to a 1/2 inch iron rod found on the northeast line of a called 7.82 acre tract of land described in a deed to Rudy P. Schubert and Kathleen K. Schubert, recorded in Volume 3538, Page 275 (OPRBCT) and being the west corner of said 12.72 acres and a southerly corner of said 45.63 acres and a southerly corner hereof;

THENCE, with the common line of said 45.63 acres and said 7.82 acres, **N 44° 08' 54" W**, for a distance of **249.73 feet** to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set for the south corner of a called 17.71 acre tract of land described in a deed to the Shirley Redman Homestead Trust, recorded in Volume 18486, Page 134 (OPRBCT) and being the west corner of said 45.63 acres and the west corner hereof;

THENCE, with the common line of said 17.71 acres and said 45.63 acres, **N 41° 43' 55" E**, for a distance of **568.47 feet** to a 1/2 inch iron rod found for the east corner of said 17.71 acres and being a southerly corner of a called 34.99 acres described in a deed to Shirley Carter Redman, et al. recorded in Volume 10924, Page 263 (OPRBCT).

THENCE, with the common line of said 34.99 acres and said 45.63 acres, **S 51° 53' 32" E**, for a distance of **43.13 feet** to a 6 inch cedar fence post found for the south corner of said 34.99 acres and being an interior ell corner of said 45.63 acres and an interior ell corner hereof;

THENCE, with the common line of said 34.99 acres, said 45.63 acres, a called 2.021 acre tract of land described in a deed to Wellborn Special Utility District, recorded in Volume 18395, Page 138 (OPRBCT) and the remainder of a called 48.07 acre tract of land described in a deed to Dane Gamet Eimann and Carolyn Gibbens, recorded in Volume 12198, Page 87 (OPRBCT),

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EXHIBIT "B" - cont

44.22 ACRES

N 38° 37' 59" E, for a distance of 2,196.55 feet to a 6 inch treated fence post found on the southwest line of I & GN Road, for the east corner of said remainder of 48.07 acres and being the north corner of said 45.63 acres and the north corner hereof;

THENCE, with the common line of I & GN Road and said 45.63 acres, with a curve to the right, having a radius of 2,814.79 feet, an arc distance of 1,385.17 feet, a delta angle of 28° 11' 44", and a chord which bears S 28° 22' 38" E, a distance of 1,371.23 feet to the POINT OF BEGINNING hereof and containing 44.22 acres, more or less.

Surveyed on the ground March 2023 under my supervision. See plat prepared April 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYC52). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.00007443016152 (calculated using GEOID12B). Reference drawing 23-150 TITLE B.

Michael Kometski

4/5/23

Michael Kometski

Registered Professional Land Surveyor No. 6531



**KERR
SURVEYING**

Kerr Surveying, LLC | 409 N. Texas Ave. Bryan, TX 77803

Office: (979) 268-3195 | Web www.kerrlandsurveying.com

Surveys@kerrsurveying.net | TBPELS Firm No. 10018500

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23-150 MGB 44.22AC.docx

EXHIBIT "C" – Parcel ID: 11672 Metes and Bounds



35.03 ACRES

FIELD NOTES DESCRIPTION

OF A

35.03 ACRE TRACT

JAMES HOPE LEAGUE SURVEY, ABSTRACT 22

BRAZOS COUNTY, TEXAS

A FIELD NOTES DESCRIPTION OF 35.03 ACRES IN THE JAMES HOPE LEAGUE SURVEY, ABSTRACT 22, IN BRAZOS COUNTY, TEXAS, BEING ALL OF A CALLED 34.99 ACRE TRACT OF LAND DESCRIBED IN A DEED TO THE SHIRLEY REDMAN, ET AL., RECORDED IN VOLUME 10924, PAGE 263 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT); SAID 35.03 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set on the northwest line of a called 45.63 acre tract of land described in a deed to James S. Redman and Patricia M. Redman, recorded in Volume 2176, Page 304 of the Official Records of Brazos County, Texas (ORBCT), for the south corner of the remainder of a called 48.07 acre tract of land described in a deed to Dane Garnet Eimann and Carolyn Gibbens, recorded in Volume 12198, Page 87 (OPRBCT) and being the east corner of said 34.99 acres and the east corner hereof, from which a 6 inch treated fence post found for the north corner of said 45.63 acres bears N 38° 37' 59" E, a distance of 541.61 feet,

THENCE, with the common line of said 45.63 acres and said 34.99 acres for the following two (2) courses and distances

- 1) S 38° 37' 59" W, for a distance of 1,654.93 feet to a 6 inch cedar fence post found for an interior ell corner of said 45.63 acres and being the south corner of said 34.99 acres and the south corner hereof.
- 2) N 51° 53' 32" W, for a distance of 43.13 feet to a 1/2 inch iron rod found for the southeast corner of a called 17.71 acre tract of land described in a deed to the Shirley Redman Homestead Trust, recorded in Volume 18486, Page 134 (OPRBCT).

THENCE, with the common line of said 17.71 acres and said 34.99 acres for the following three (3) courses and distances

- 1) N 20° 35' 29" W, for a distance of 540.78 feet to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 2) N 39° 45' 26" W, for a distance of 130.93 feet to a 1/2 inch iron rod found bent;
- 3) N 54° 10' 02" W, for a distance of 431.84 feet to a 1/2 inch iron rod found on the southeast line of a called 1,530.6 acre tract of land described in a deed to Legacy GGC Brazos, LLC, recorded in Volume 17789, Page 240 (OPRBCT), for the north corner of said 17.71 acres and being the west corner of said 34.99 acres and the west corner hereof;

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23-150 MGB 35.03AC.docx

EXHIBIT "C" - cont

35.03 ACRES

THENCE, with the common occupied line of said 1,530.6 acres and said 34.99 acres for the following four (4) courses and distances

- 1) N 40° 02' 05" E, for a distance of 673.06 feet to a 6 inch treated fence post found,
- 2) N 39° 00' 23" E, for a distance of 231.33 feet to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 3) N 35° 01' 20" E, for a distance of 159.16 feet to a 24 inch tree fence post found,
- 4) N 55° 42' 53" E, for a distance of 358.78 feet to a cross tie fence post found on the southwest line of said remainder of called 48.07 acres, for the northeast corner of said 1,530.6 acres and being the north corner of said 34.99 acres and the north corner hereof;

THENCE, with the common line of said 34.99 acres and said remainder of called 48.07 acres, S 49° 24' 36" E, for a distance of 954.57 feet to the POINT OF BEGINNING hereof and containing 35.03 acres, more or less.

Surveyed on the ground March 2023 under my supervision. See plat prepared April 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.00007443016152 (calculated using GEOID12B). Reference drawing: 23-150 TITLE-D


Michael Konetski
Registered Professional Land Surveyor No. 6531



**KERR
SURVEYING**

Kerr Surveying, LLC | 409 N Texas Ave Bryan, TX 77803
Office: (979) 268-3195 | Web: www.kerrlandsurveying.com
Surveys@kerrsurveying.net | TBPELS Firm No. 10018500

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23-150 MG8 35.03AC.docx

EXHIBIT "D" – Parcel ID: 11671 Metes and Bounds



17.64 ACRES

FIELD NOTES DESCRIPTION
OF A
17.64 ACRE TRACT
JAMES HOPE LEAGUE SURVEY, ABSTRACT 22
BRAZOS COUNTY, TEXAS

A FIELD NOTES DESCRIPTION OF 17.64 ACRES IN THE JAMES HOPE LEAGUE SURVEY, ABSTRACT 22, IN BRAZOS COUNTY, TEXAS, BEING ALL OF A CALLED 17.71 ACRE TRACT OF LAND DESCRIBED IN A DEED TO THE SHIRLEY REDMAN HOMESTEAD TRUST, RECORDED IN VOLUME 18486, PAGE 134 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT); SAID 17.64 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod found for a southerly corner of a called 34.99 acre tract of land described in a deed to Shirley Carter Redman, et al. recorded in Volume 10924, Page 263 (OPRBCT) and being a northerly corner of a called 45.63 acre tract described in a deed to James S. Redman and Patricia M. Redman, recorded in Volume 2176, Page 304 of the Official Records of Brazos County, Texas (ORBCT) and being the southeast corner of said 17.71 acres and the southeast corner hereof, from which a 6 inch cedar fence post found for the south corner of said 34.99 acres bears S 51° 53' 32" E, a distance of 43.13 feet, also from which a 6 inch treated fence post found for the north corner of said 45.63 acres bears N 38° 37' 59" E, a distance of 2,196.55 feet.

THENCE, with the common line of said 45.63 acres and said 17.71 acres, S 41° 43' 55" W, for a distance of 568.47 feet to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set on the northeast line of a called 7.82 acre tract of land described in a deed to Rudy P. Schubert and Kathleen K. Schubert recorded in Volume 3538, Page 275 (OPRBCT), for the southwest corner of said 45.63 acres and being the south corner of said 17.71 acres and the south corner hereof.

THENCE, with the common line of said 7.82 acres and said 17.71 acres, N 44° 08' 54" W, for a distance of 72.68 feet to a 5/8 inch iron rod found for the north corner of said 7.82 acres and being the east corner of a called 19.745 acre tract of land described in a deed to Andrew Kyle Kutzenberger and Leslie B. Kutzenberger recorded in Volume 11532, Page 250 (OPRBCT).

THENCE, with the common line of said 17.71 acres and said 19.745 acres, N 46° 18' 15" W, for a distance of 962.76 feet to a 5/8 inch iron rod found on the southeast line of a called 1,530.6 acre tract of land described in a deed to Legacy GGC Brazos, LLC, recorded in Volume 17789, Page 240 (OPRBCT), for the north corner of said 19.745 acres and being the west corner of said 17.71 acres and the west corner hereof;

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EXHIBIT "D"- cont

17.64 ACRES

THENCE, with the common line of said 1,530.6 acres and said 17.71 acres, N 41° 29' 05" E, for a distance of 756.43 feet to a 1/2 inch iron rod found for the southwest corner of said 34.99 acres and being the north corner of said 17.71 acres and the north corner hereof,

THENCE, with the common lines of said 17.71 acres and said 34.99 acres for the following three (3) courses and distances,

- 1) S 54° 10' 02" E, for a distance of 431.84 feet to a 1/2 inch iron rod found bent,
- 2) S 39° 45' 26" E, for a distance of 130.93 feet to a 1/2 inch iron rod with a blue plastic cap stamped "KERR SURVEYING" set;
- 3) S 20° 35' 29" E, for a distance of 540.78 feet to the POINT OF BEGINNING hereof and containing 17.64 acres, more or less

Surveyed on the ground March 2023 under my supervision. See plat prepared April 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.00007443016152 (calculated using GEOID12B). Reference drawing: 23-150-TITLE-C.


Michael Konetski

4/5/23

Registered Professional Land Surveyor No. 6531



**KERR
SURVEYING**

Kerr Surveying, LLC | 409 N. Texas Ave. Bryan, TX 77803

Office (979) 268-3195 | Web www.kerrlandsurveying.com

Surveys@kerrsurveying.net | TBPELS Firm No. 10018500

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23-150 M68 17.64AC.docx

AGENCY AGREEMENT

This Agency Agreement (this “**Agreement**”) is entered into as of the date of Effective Date, described below, by, between and among James Sidney Redman, 13615 Still Bay Court, Houston, Texas 77077 (“**James Redman**”), Jerry Redman, 17337 Chevoyo Cove, College Station, Texas 77845 (“**Jerry Redman**”), and Nancy Redman Dippel, P. O. Box 170, Wellborn, Texas 77881 (“**Nancy Dippel**”). James Redman, Jerry Redman and Nancy Dippel are sometimes referred to herein as the “**Parties**”.

WHEREAS, James Redman is an owner of the property described on Exhibit A (the “**Land**”) as well as the Independent Executor of the Estate of Shirley Carter Redman (the “**Estate**”) and a beneficiary of the Estate, and is hereby acting individually and on behalf of the Estate;

WHEREAS, Jerry Redman is an owner of the Land and a beneficiary of the Estate and is acting individually and as a beneficiary of the Estate;

WHEREAS, Nancy Dippel is an owner of the Land, a beneficiary of the Estate and the Trustee of the Shirley Redman Homestead Trust, and is acting individually, as a beneficiary of the Estate, and as Trustee of the Trust;

WHEREAS, the Parties, collectively, own all right, title and interest in and to the Land and desire to appoint James Redman as their exclusive agent to sell their respective interests in the Land, for the purposes and under the conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises made by the parties hereto, the parties covenant and agree as follows:

1. The Parties hereby appoint James Redman as their exclusive agent (the “**Agent**”) to locate a buyer for the Land, to facilitate and negotiate the documents effecting such sale on behalf of the

Parties, to execute, on behalf of the Parties, a contract of sale relating to the Land as well as all other instruments, certificates and other documents as may be necessary or helpful to consummate the sale of the Land (the “**Sale Documents**”), and to distribute to the Parties each of his or her respective share of the net proceeds received from the sale of the Land.

2. As Agent, James Redman will perform the following services (the “**Services**”):

a. Promote and market the Land for sale, through advertising or such other means as Agent deems helpful and proper, and seek prospective buyers of the Land;

b. Upon receiving expression(s) of interest from prospective buyers, negotiate the terms of the sale of the Land, including negotiating the terms of all Sale Documents;

c. Execute all Sale Documents as necessary and proper on behalf of the Parties;

d. Upon a closing and funding of a sale (a “**Sale Closing**”), receive the proceeds of sale and deposit such proceeds into an account or accounts to hold such proceeds; and

d. Within fifteen (15) days after a Sale Closing, prepare an accounting of all costs, expenses and proceeds of such Sale Closing, furnish a copy of such accounting to each of the Parties, and distribute to each Party his or her respective share of the proceeds of a sale.

3. James Redman, as Agent, will be the exclusive party authorized to market the land and consummate the sale thereof and will keep Jerry Redman and Nancy Dippel reasonably advised as to his marketing efforts and any reasonable offers received by him for the Land. The Parties agree to execute the power of attorney in the form attached hereto as Exhibit A (the “**POA**”), and authorize and direct the Agent to cause the executed POA to be filed in the public records of Brazos County, Texas.

4. The Parties agree and acknowledge that the Land must be sold in one parcel or transaction, and the gross sale price of the Land shall not be less than \$ 40,000 per acre .

5. This Agreement shall be valid and binding for a term of three (3) years from the date of the last signature affixed hereto (the “**Effective Date**”), provided, however, as follows: In the event a written offer for the Land (an “**Offer**”), has been received by Agent prior to the Effective Date but such Offer has not resulted in a Sale Closing prior to the Effective Date, then this Agreement shall continue to be in full force and effect until the Sale Closing pursuant to such Offer or such Offer has been either withdrawn by the prospective buyer or abandoned by Agent.

6. Further Assurances. Each Party covenants and agrees to take such further actions and shall execute and deliver all such other agreements, certificates, instruments and documents as Agent shall reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.

7. Entire Agreement. The Agreement and the POAs signed by the Parties constitute the entire and fully integrated agreement between the Parties with respect to the subject matter hereof and supersede and replace all prior agreements between the Parties regarding such subject matter. In the event of any conflict between the provisions of this Agreement and any POA, the provisions of this Agreement shall control.

8. Modification. This Agreement may not be modified or amended except by a writing signed by all Parties.

9. Choice of Law and Venue. This Agreement and the POAs shall be governed and construed in accordance with the laws of the State of Texas, without regard to any conflicts of law rule or principle that would require application of the laws of another jurisdiction. Venue for any dispute

or controversy under this Agreement and any POA shall be mandatory and exclusively in Brazos County, Texas.

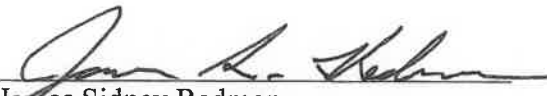
10. Attorneys' Fees. In the event of any dispute resolution action between the Parties pertaining to the subject matter of this Agreement, the Party prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' and other professional fees incurred therein.

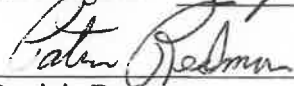
11. Severability. Any provision of this Agreement prohibited or rendered unenforceable by any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. Signatures. This Agreement may be executed in multiple counterparts, which when taken together shall constitute a single agreement. Facsimile, PDF, .jpeg and other electronic representations of signatures shall have the dignity, force and effect of an original. This Agreement shall not be binding on any Party signing same unless and until all Parties named herein have signed same.

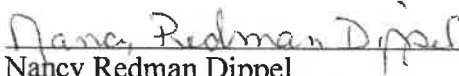
13. RELIANCE DISCLAIMER. EACH PARTY CONFIRMS AND AGREES THAT, IN DECIDING WHETHER TO SIGN THIS AGREEMENT, IT HAS NOT RELIED ON ANY STATEMENT OR REPRESENTATION BY THE OTHER PARTY OR ANYONE ACTING ON BEHALF OF SUCH OTHER PARTY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT THAT IS NOT CONTAINED HEREIN.

IN WITNESS WHEREOF, the Parties execute this Agency Agreement on the date set below their signatures.


James Sidney Redman
Date Signed: 2/16/2023


Patricia Redman
Date Signed: 2-16-2023


Jerry Redman
Date Signed: 2/17/2023


Nancy Redman Dippel
Date Signed: 2/16/2023

October 24, 2024
Item No. 7.4.
Release from ETJ Stousland Road

Sponsor: Anthony Armstrong, Director of Planning and Development

Reviewed By CBC: City Council

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

Relationship to Strategic Goals:

- Good Governance
- Sustainable City

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

This property previously petitioned for release under a different ownership and was denied. Staff has visited with the current petitioner and they are not interested in further discussions with staff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) metes and bounds; or

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

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

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

(b) The municipality shall notify the residents and landowners of the area described by the petition of the results of the petition. The

municipality may satisfy this requirement by notifying the person who filed the petition under Section [42.102](#).

(c) If a resident or landowner obtains the number of signatures on the petition required under Section [42.104](#) to release the area from the municipality's extraterritorial jurisdiction, the municipality shall immediately release the area from the municipality's extraterritorial jurisdiction.

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

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

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

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

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

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

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

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

Budget & Financial Summary:

Attachments:

1. ETJ Petition Resolution Saddle Creek 10-24-24

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, DENYING SADDLE CREEK II, LLC'S PETITION FOR REMOVAL OF PROPERTY FROM THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF COLLEGE STATION AND DENYING THE CITY'S CONSENT TO THE REDUCTION OF THE CITY'S EXTRATERRITORIAL JURISDICTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 27, 2024, Saddle Creek II, LLC ("Petitioner") submitted a petition attached as **Exhibit "A"** ("Petition") for releasing property from the City of College Station's extraterritorial jurisdiction ("ETJ"); and

WHEREAS, the property sought to be released is Lot 19, Block 5 of Saddle Creek Subdivision Phase 4 and described by metes and bounds in **Exhibit "A"** ("Property"); and

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

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

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

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

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

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

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

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

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

ADOPTED this 24th day of October 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

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

Saddle Creek II, LLC
3828 S College Ave
Bryan, TX 77801

RECEIVED
By Tanya Smith at 1:10 pm, Sep 27, 2024

September 9, 2024

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

RE: Petition to Remove Property from City's ETJ

Ms. Smith,

The ownership of the property known as a 96.52 Acre Tract in the James C. Stuteville Survey, Abstract 216, who has signed below, in accordance with Texas Local Government Code 42.102, hereby petitions that said property be removed from the City of College Station's Extra Territorial Jurisdiction (ETJ). Said property is further defined by Exhibit A, attached hereto and containing a certified survey of the property with metes and bounds description.

Sincerely,



Scott Lovett

Date of Birth: October 7, 1990

Title: ____ Managing Member of ____

____ Saddle Creek II, LLC ____

Address: ____ 3828 S College Ave ____

____ Bryan, TX 77801 ____

Date: ____ 9/9/2024 ____

UTitle No 2304554CS

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

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF BRAZOS §

Date: August 30, 2024 (effective date).

Grantors: **Bradley Camillus Wade, Independent Executor
of the Estate of Annie Belle Wade, Deceased**
5179 Wade Road
College Station, Texas 77845

Bradley Camillus Wade
5179 Wade Road
College Station, Texas 77845

Steven Ray Wade
5059 Wade Road
College Station, Texas 77845

Laura Audnette Wade Crenshaw
5445 Stousland Road
College Station, Texas 77845

Richard E. Wade aka Richard Eugene Wade
5059 Wade Road
College Station, Texas 77845

Grantee: **Saddle Creek II, LLC, a Texas limited liability company**
3828 S. College Avenue
Bryan, TX 77801-4517

Consideration:

TEN DOLLARS and other good and valuable considerations in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged; and, the further consideration of the execution and delivery by Grantee of that one certain promissory note in the original principal sum of [REDACTED] bearing interest as therein specified and being due and payable as therein provided to the order of [REDACTED] successors and/or assigns, and providing for the acceleration of maturity in event of default and for attorney's fees; and secured by the Vendor's Lien and Superior Title retained herein; and being additionally secured by a Deed of Trust of even date therewith to Scott Blount, Trustee; on the condition that this Vendor's Lien is cumulative of and without prejudice of or to said Deed of Trust.

GF No. 2304554CS

1

Subject Property (hereinafter, collectively, the "Subject Property").

The land described below (collectively, the "Land"), together with (1) all buildings, structures, fixtures and improvements located on, in or under the Land, (2) all rights, privileges and appurtenances pertaining to the Land, including, without limitation, Grantors' right, title and interest in any utilities, adjacent streets, roads, drainage facilities, easements, alleys, strips, and gores and rights of way on, in, over, under, through, adjoining, or appurtenant to the Land, and (3) Grantors' rights to all licenses, development rights and permits related to the Land:

96.52 ACRES IN THE JAMES C STUTEVILLE SURVEY, ABSTRACT 216, IN BRAZOS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF A CALLED 183.88 ACRE TRACT OF LAND DESCRIBED IN AN ESTATE PARTITION DEED TO BRADLEY CAMILLUS WADE, STEVEN RAY WADE, RICHARD E. WADE AND LAURA AUDNETTE WADE CRENSHAW RECORDED IN VOLUME 14045, PAGE 286 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS (OPRBCT); SAID 96.52 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT A, WHICH IS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN FOR ALL PURPOSES.

Exceptions to Conveyance and Warranty:

1. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records.
2. Easement:
From: J. S. Wade
To: Wellborn Water Supply Corporation
Dated: August 17, 1971
Recorded: Volume 303, Page 385, Deed Records, Brazos County, Texas.
3. Pipeline Easement:
From: Louise Wade and J. E. Wade
To: Aquila Southwest Pipeline Corporation
Dated: October 1, 1992
Recorded: Volume 1842, Page 337, Official Records, Brazos County, Texas.
4. Pipeline Easement:
From: J. C. Wade and Eugene Wade
To: Clajon Gas Company
Dated: December 12, 1980
Recorded: Volume 472, Page 225, Deed Records, Brazos County, Texas.
5. Water Line Easement:
From: Louise Wade, Individually and as Executrix of the Estate of J. C. Wade, Deceased, et al
To: Wellborn Special Utility District
Dated: September 18, 2001
Recorded: Volume 4322, Page 228, Official Records, Brazos County, Texas.
6. Easement:
From: Minnie Louise Wade
To: City of Bryan dba BTU
Dated: August 30, 2011
Recorded: Volume 10318, Page 253, Official Records, Brazos County, Texas.

GF No. 2304554CS

7. Easement:
From: Minnie Louise Wade, et al
To: Sprint Communications Co., L.P.
Dated: February 12, 2015
Recorded: Volume 12824, Page 69, Official Records, Brazos County, Texas.
8. Terms, Conditions, and Stipulations in the Easement Agreement for Access by and between:
Parties: Minnie Louise Wade a/k/a Louise S. Wade, et al and John A. Malley, et al
Dated: June 30, 2006
Recorded: Volume 7427, Page 234, Official Records, Brazos County, Texas.
9. Covenants, Rights, Terms, and Conditions as set forth in the Affidavit to the Public concerning
Certification of On-Site Sewage Facilities:
By: Louise S. Wade
Dated: April 8, 2010
Recorded: Volume 9573, Page 30, Official Records, Brazos County, Texas.
10. Grazing Lease as set forth in the Last Will and Testament of Minnie Louise Wade, deceased, under
Cause No. 16,066-PC, Brazos County Probate Records;
11. Assignment of Grazing Lease:
By: Bradley C. Wade and Steven Ray Wade
Dated: November 29, 2016
Recorded: Volume 13899, Page 277, Official Records, Brazos County, Texas;
12. Assignment of Grazing Lease:
By: Bradley C. Wade
Dated: November 29, 2016
Recorded: Volume 13899, Page 279, Official Records, Brazos County, Texas.
13. Right of First Refusal as set out in the Last Will and Testament of Annie Bell Wade, deceased, under
Cause No. 18,409-PC:
Parties: Steven Ray Wade, Bradley Camillus Wade, Richard Eugene Wade, and Laura Audnette Wade
Crenshaw
Recorded: Volume 18158, Page 215, Official Records, Brazos County, Texas.
14. Mineral Deed:
By: Estate of Minnie Louise Wade, deceased
To: Bradley Camillus Wade, et al
Dated: May 25, 2017
Recorded: Volume 14045, Page 293, Official Records, Brazos County, Texas.
15. Executor's Life Estate Mineral/Royalty Deed:
By: Estate of Minnie Louise Wade, deceased
To: Annie Belle Wade
Dated: May 25, 2017
Recorded: Volume 14045, Page 277, Official Records, Brazos County, Texas.
16. Royalty Deed:
By: Louise Wade, Individually and as Executrix of the Estate of J. C. Wade, Deceased, et al
To: Kenneth M. Robison

GF No. 2304554CS

Dated: July 7, 1983

Recorded: Volume 601, Page 417, Official Records, Brazos County, Texas.

17. Oil and Gas Lease, and all terms, conditions and stipulations therein:
Lessor: Louise Wade, et al
Lessee: Peter Paul Petroleum Company
Dated: July 1, 1983
Recorded: Volume 604, Page 437, Official Records, Brazos County, Texas.
18. Oil and Gas Lease, and all terms, conditions and stipulations therein:
Lessor: Louise S. Wade, et al
Lessee: Union Pacific Resources Company Dated: July 31, 1990
Recorded: Volume 1209, Page 244, Official Records, Brazos County, Texas.
19. Oil and Gas Lease, and all terms, conditions and stipulations therein:
Lessor: Louise S. Wade, et al
Lessee: Lometa Petroleum Corporation
Dated: February 16, 2001
Recorded: Volume 4057, Page 199, and corrected in Volume 4281, Page 268 and Volume 4313, Page 311, Official Records, Brazos County, Texas.
20. Memorandum of Oil and Gas Lease, and all terms, conditions and stipulations therein:
Lessor: Minnie Louise Wade, et al
Lessee: EOG Resources, Inc.
Dated: December 21, 2012
Recorded: Volume 11175, Page 167, Official Records, Brazos County, Texas;

Amended and Extended:
Recorded: Volume 12770, Page 220, Official Records, Brazos County, Texas.
21. The following matters as evidenced on survey prepared on April 12, 2024, under the supervision of Michael Konetski, R.P.L.S. #6531:
50' electric easement and 15' waterline easement on the Northeast side;
15' waterline easements; 60' pipeline easements and 30' pipeline easements bisecting the subject property; compressor station sites and aerial electric lines.
22. Any claim or right of adjoining property owner(s) to that strip of land lying between the fence and the boundary line on the Northwesterly side(s) of the property, as evidenced on survey prepared on April 12, 2024, under the supervision of Michael Konetski, R.P.L.S. #6531.
23. Fence lies outside the property line on the Northeast side(s) of the property, as evidenced on survey prepared on April 12, 2024, under the supervision of Michael Konetski, R.P.L.S. #6531.

Reservation of Oil, Gas, and Other Minerals:

There is reserved and excepted from this conveyance, and Grantors hereby reserve and retain for Grantors and Grantors' heirs, successors, and assigns forever, all of Grantors' right, title, and interest in and to all (i) oil, gas and other minerals or royalties in, on or under all properties located in the Subject Property; (ii) royalties and royalty interests from the Subject Property; (iii) all oil, gas and other minerals produced therefrom wherever located, whether as being stored in tanks, lines, plants or otherwise; and (iv) net profits interests, production payments or other interests in oil, gas or other minerals or other interests measured by production derived from the Subject Property, together with all rights incident thereto. In this connection, the words "oil, gas and other minerals" means

GF No. 2304554CS

all oil, gas and other liquid and gaseous hydrocarbons and such substances that may be produced with such oil, gas and other liquid and gaseous hydrocarbons. "Oil, gas and other minerals" does not mean nor does it include all other minerals and/or substances that cannot be extracted without causing destruction of the surface, in, on, or under any part of the Subject Property such as, without limitation, coal, lignite, near surface lignite, uranium, salt, vanadium, thorium and other fissionable substances, hard rock minerals and base precious metals, geothermal energy, bauxite, and iron ore. Those minerals other than "oil, gas and other minerals", along with the executive rights to negotiate and execute leases for such minerals other than "oil, gas and other minerals" are not reserved by Grantors and are expressly conveyed to Grantee.

Grantors hereby waive any and all of Grantors' rights of ingress or egress as to the surface of the Subject Property for the purposes of mining, drilling, exploring, operating, or developing the Subject Property for oil, gas, or other minerals or removing the same therefrom. Grantors agree to waive, release, surrender, and convey all rights of Grantors to use of the surface of the Subject Property unto Grantee and Grantee's heirs, successors, and assigns; subject, however, to existing oil and gas leases and third parties that have control of the rights of ingress and egress. The relinquishment of surface rights by Grantors shall not affect the rights held by any other holder of an interest in the oil, gas and other minerals in, on, and under the Subject Property or a holder of a currently valid and existing lease or the rights and interests held in minerals (including, without limitation, surface access) held by any predecessors in title to Grantors, including reserved rights of ingress and egress to the Subject Property. Nothing herein shall restrict or prohibit the pooling or unitization of the Subject Property with other land or the exploration or production of the oil, gas, and other minerals by means of activity on land other than the Subject Property but which enter or bottom under the Subject Property.

Reservation of Groundwater Rights:

There is reserved and excepted from this sale conveyance, and Grantors hereby reserve and retain for Grantors and Grantors' heirs, successors, and assigns forever, all of Grantors' right, title, and interest in and to the rights to commercial development of the Groundwater Estate as to the Subject Property ("Groundwater Estate"), as defined herein.

1. Groundwater Estate. The Groundwater Estate is hereby defined as all underground water, percolating water, artesian water, and all other waters, from any and all reservoirs, formations, depths and horizons beneath the surface of the earth in and under, and that may be produced from, the Subject Property, together with all rights and benefits accruing from the historical production of such water, and any and all claims, permits, licenses or other valuable governmental approvals that now or hereafter pertain or accrue to such groundwater ownership, production, and use.

2. Grantors' Commercial Development of Groundwater Estate. Grantors shall have and retain the exclusive right, power, and authority to execute and deliver any agreements whatsoever affecting or otherwise covering the Subject Property (including the interest in the Groundwater Estate reserved by Grantors herein) relating to the commercial exploration, drilling, production, sale, severance, transportation, or delivery of groundwater (a "Groundwater Agreement"), without fee, license, compensation, or payment to Grantee, upon such terms as Grantors may desire and without joinder by Grantee, or its heirs, successors, or assigns.

3. Grantee's Personal Use of Groundwater Estate. Notwithstanding the foregoing, Grantors grant and convey, and Grantee shall have the right to explore and drill groundwater from the Groundwater Estate on the Subject Property for Grantee's non-commercial domestic, livestock, and agricultural crop irrigation use, only, without fee, license, compensation, or payment to Grantors, and without joinder by Grantors, or their heirs, successors, or assigns. Grantee shall have no right to access the Groundwater Estate or to withdraw groundwater from the Subject Property for use off the Subject Property or to convey any right, easement, license, or consent for the withdrawal of groundwater under the Subject Property from any location outside the Subject Property.

4. Surface Use. Grantors expressly waive, release, and relinquish all right to use all or any portion of the surface of the Subject Property in connection with Grantors' interest in the Groundwater Estate. Any consideration for the use of or damage to the surface of the Subject Property that accrues or becomes payable under the terms of a Groundwater Agreement shall be paid to Grantee, and is not part of Grantors' interest in the Groundwater Estate. Grantors' interest in the Groundwater Estate shall not in any way limit Grantee's ability to use or control the use of the surface of the Subject Property. Nothing herein shall restrict or prohibit the pooling or unitization of the Subject Property with other land or the exploration or production of the Groundwater Estate by means of activity on land other than the Subject Property but which enter or bottom under the Subject Property.

5. Regulatory Authority: Further Assurances. Grantors and Grantee shall execute and deliver to the other any documents or transfer instruments that are necessary or useful to fully carry out the transactions, grants, conveyances and assignments covered by these terms, including the deed and reservation of Groundwater as contemplated herein, and any applications, amendments, or purchase of any permits relating to the Subject Property or the Groundwater Estate required by any governmental entity now or hereafter having authority over the drilling of water wells, the spacing of water wells or the production or sale of groundwater. In case any provision of this Groundwater Reservation shall be held invalid, illegal, or unenforceable, the legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.

6. Successor and Assigns. The rights of both Grantors and Grantee hereunder may be assigned in whole or in part, and the provisions hereof shall extend to their heirs, successors, and assigns, but no change in the ownership or division of the Subject Property or of the Groundwater Estate, however accomplished, shall operate to enlarge the obligations, or diminish the rights of Grantee. Grantors' interest in the Groundwater Estate shall be treated as an entirety.

7. Taxes and Governmental Assessments. Grantors shall pay all taxes and governmental assessments levied against Grantors' interest in the Groundwater Estate and its proportionate part of all taxes or other regulatory charges assessed upon or measured by the production of water from or allocated to the Subject Property.

8. Surface Water. Grantors sell, grant, bargain, and convey unto Grantee all surface water on or abutting the Subject Property and all incorporeal hereditaments appurtenant to the Subject Property, including all: riparian rights; water by prior appropriation; surface water use by certified filings, exemptions or exceptions for use of surface water for domestic or livestock purposes; and appropriation permits or certificates of adjudication, including any certificates or permits issued by the Texas Water Commission, Texas Natural Resource Conservation Commission or the Texas Commission on Environmental Quality (collectively the "Surface Water Rights"). Grantors and Grantee both acknowledge and agree that all Surface Water Rights are appurtenant to the surface estate, and shall be owned in their entirety by Grantee.

Grantors, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grant, sell, and convey to Grantee the Subject Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantors bind Grantors and Grantors' heirs and successors to warrant and forever defend all and singular the Subject Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantors but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

City Bank, at Grantee's request, has paid cash to Grantors that portion of the purchase price of the Subject Property that is evidenced by the promissory note. The first and superior vendor's lien against and superior title to the Subject Property are retained for the benefit of **City Bank**, and are transferred to **City Bank**, without recourse against Grantors. The vendor's lien against and superior title to the Subject Property herein conveyed are retained until each promissory note described herein is fully paid according to its terms, at which time this Deed shall become absolute.

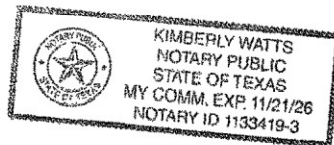
When the context requires, singular nouns and pronouns include the plural.


Bradley Camillus Wade, Independent Executor
of the Estate of Annie Belle Wade, Deceased, Grantor

STATE OF TEXAS §
 COUNTY OF BRAZOS §

Before me, the undersigned authority, on this day personally appeared Bradley Camillus Wade, Independent Executor, of the Estate of Annie Belle Wade, Deceased, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office on August 30, 2024.



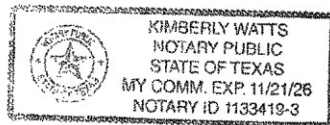

 Notary Public – State of Texas

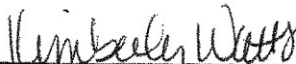

Bradley Camillus Wade, Grantor

STATE OF TEXAS §
 COUNTY OF BRAZOS §

Before me, the undersigned authority, on this day personally appeared Bradley Camillus Wade, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office on August 30, 2024.




 Notary Public – State of Texas

*Steven Ray Wade acting by and through his
duly appointed Agent*

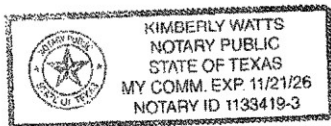
Bradley Camillus Wade

Steven Ray Wade, acting by and through his duly-appointed Agent, Bradley Camillus Wade, under Special Durable Power of Attorney for Real Estate Transactions dated July 31, 2024, Instrument No. 1508834, Official Records, Brazos County, Texas, Grantor

STATE OF TEXAS §
COUNTY OF BRAZOS §

Before me, the undersigned authority, on this day personally appeared Steven Ray Wade, acting by and through his duly-appointed Agent, Bradley Camillus Wade, under Special Durable Power of Attorney for Real Estate Transactions dated July 31, 2024, Instrument No. 1508834, Official Records, Brazos County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office on August 30, 2024.



Kimberly Watts
Notary Public - State of Texas

*Lara Audnette Wade Crenshaw acting by and
through her duly appointed Agent*

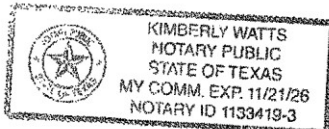
Bradley Camillus Wade

Lara Audnette Wade Crenshaw, acting by and through her duly-appointed Agent, Bradley Camillus Wade, under Special Durable Power of Attorney for Real Estate Transactions dated July 31, 2024, Instrument No. 1508833, Official Records, Brazos County, Texas, Grantor

STATE OF TEXAS §
COUNTY OF BRAZOS §

Before me, the undersigned authority, on this day personally appeared Lara Audnette Wade Crenshaw, acting by and through her duly-appointed Agent, Bradley Camillus Wade, under Special Durable Power of Attorney for Real Estate Transactions dated July 31, 2024, Instrument No. 1508833, Official Records, Brazos County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office on August 30, 2024.



Kimberly Watts
Notary Public - State of Texas

GF No. 2304554CS

8

Richard E. Wade aka Richard Eugene Wade
acting by and through his duly-appointed
Agent

Bradley Camillus Wade

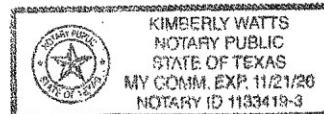
Richard E. Wade aka Richard Eugene Wade, acting by and
through his duly-appointed Agent, Bradley Camillus Wade,
under Special Durable Power of Attorney for Real Estate
Transactions dated July 31, 2024, Instrument No. 1508835,
Official Records, Brazos County, Texas, Grantor

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Before me, the undersigned authority, on this day personally appeared Richard E. Wade aka Richard Eugene Wade, acting by and through his duly-appointed Agent, Bradley Camillus Wade, under Special Durable Power of Attorney for Real Estate Transactions dated July 31, 2024, Instrument No. 1508835, Official Records, Brazos County, Texas, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office on August 30, 2024.

Kimberly Watts
Notary Public – State of Texas

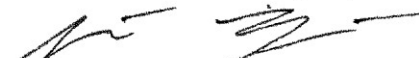


ACCEPTED:

Saddle Creek II, LLC, a Texas limited liability company, Grantee

By: Duke Cattle & Real Estate, LLC

By:


Scott Lovett, its Manager

STATE OF TEXAS §

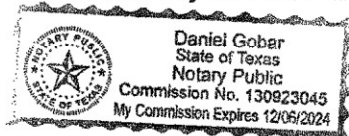
§

COUNTY OF BRAZOS §

Before me, the undersigned authority, on this day personally appeared Scott Lovett, Manager of **Saddle Creek II, LLC**, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and considerations therein expressed.

*Duke Cattle & Real Estate, LLC

Given under my hand and seal of office on Aug 30th, 2024.




Notary Public – State of Texas

PREPARED IN THE LAW OFFICE OF:
MIDDLETON & MIDDLETON
3330 Longmire Drive
College Station, Texas 77845
(979)695-2726

AFTER RECORDING RETURN TO:
University Title Company
PO Drawer DT
College Station, Texas 77841

GF No. 2304554CS

10

EXHIBIT A

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

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

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

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

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

- 1) N 05° 41' 23" E, for a distance of 90.00 feet to a 1/2 inch iron rod set;
- 2) S 84° 18' 37" E, for a distance of 191.99 feet to a 1/2 inch iron rod set; and
- 3) N 21° 58' 53" E, for a distance of 1,234.44 feet to a 1/2 inch iron rod set in the southwest line of the Union Pacific Railroad (a 200' wide railroad right-of-way, less 50' on the northeast side for the FM 2154 highway right-of-way), being 100 feet from the centerline of the main railroad tracks, for the northwest corner hereof;

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

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

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

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

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

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

**Brazos County
Karen McQueen
County Clerk**

Instrument Number: 1537979

Volume : 19413

ERecordings - Real Property

Recorded On: September 04, 2024 09:25 AM

Number of Pages: 13

" Examined and Charged as Follows: "

Total Recording: \$73.50

***** **THIS PAGE IS PART OF THE INSTRUMENT** *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 1537979
Receipt Number: 20240904000037
Recorded Date/Time: September 04, 2024 09:25 AM
User: Victoria L
Station: Victoria Limon

Record and Return To:

eRecording Partners



STATE OF TEXAS
COUNTY OF BRAZOS

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Public Records of Brazos County, Texas.

Karen McQueen
County Clerk
Brazos County, TX

**UNANIMOUS WRITTEN CONSENT IN LIEU OF
ORGANIZATIONAL MEETING OF MANAGER OF
SADDLE CREEK II, LLC
A LIMITED LIABILITY COMPANY**

The undersigned, being the Manager named in Saddle Creek II, LLC's (hereinafter the "Company") Certificate of Formation filed with the Secretary of State of Texas, hereby adopts the following resolutions in lieu of an organizational meeting of the Manager.

CERTIFICATE OF FORMATION

RESOLVED, that the acknowledgment of filing issued by the Secretary of State of Texas, and the certified copy of the Certificate of Formation filed on June 3, 2024, are accepted and approved in all respects; and the Secretary is directed to place same in the Company record book.

COMPANY AGREEMENT

RESOLVED, that the form of the company agreement for regulating and managing Company affairs submitted to the undersigned is approved and adopted as the Company Agreement of the Company.

RESOLVED, that the Secretary is directed to place the Company Agreement in the Company record book, and maintain a copy of the Company Agreement at the Company's principal office.

PRINCIPAL OFFICE

RESOLVED, that the Company's principal office be established and maintained at 3828 S. College Avenue, Bryan, Texas 77801, and that meetings of the Manager from time to time may be held either at the Company's principal office or at such other place as the Manager may select.

OFFICERS

RESOLVED, that the following persons were nominated to the office preceding their name:

<u>Office</u>	<u>Officeholder</u>
President	Scott Lovett
Secretary	Scott Lovett
Treasurer	Scott Lovett

COMPANY RECORD BOOK

RESOLVED, that the Company, through its Secretary, shall maintain and authenticate in the Company record book the appropriate business records, including but not limited to originals, copies or certified copies of the Company's Certificate of Formation, the Acknowledgment of Filing, the Company Agreement, the Membership Interest of each Member shown on Exhibit "A" to the Company Agreement (membership interests shall not be certificated), minutes of the meetings and of other proceedings of the Members, Managers, and any committee established by the Managers; and

RESOLVED FURTHER, that the Secretary is to maintain in the Company record book records pertaining to the issuance and transfer of Membership Interest by updating Exhibit “A” of the Company Agreement.

MEMBERSHIP INTEREST ISSUED

RESOLVED, that the Manager be, and hereby is, authorized to issue from time to time authorized Membership Interests of the Company for money paid, labor done, promissory note, or personal property or real estate or leases thereof actually acquired and upon such terms as the Manager in the Manager's discretion may determine; and

RESOLVED FURTHER, that an offer be issued to the following to purchase one hundred percent (100%) of the Membership Interest of the Company in the proportion and for the consideration indicated opposite each name:

<u>Member's Name</u>	<u>Member's Interest</u>	<u>Consideration</u>
Scott Lovett	230 Class B Units	\$1.00 and other amounts as reflected in the books and records of the Company
Duke Cattle & Real Estate, LLC	1 Class A Unit	\$1.00 and other amounts as reflected in the books and records of the Company

RESOLVED, that the Manager is authorized to issue additional Membership Interest to appropriately qualified purchasers.

COMMENCING BUSINESS

RESOLVED, that consideration has been received for the issuance of Membership Interest, and that the Company consequently is able to commence and transact business and to incur indebtedness.

ORGANIZATIONAL EXPENSES

RESOLVED, that the Company Treasurer be and hereby is authorized to pay all charges and expenses incident to or arising out of the organization of and to reimburse any person who has made any disbursement therefor.

BANK ACCOUNT

RESOLVED, that the Treasurer be and hereby is authorized to open a bank account on the Company's behalf with any banks the President deems appropriate.

LICENSES AND PERMITS

RESOLVED, that Company officers are directed to obtain in the Company's name such other licenses and tax permits as may be required for the conduct of Company business by any federal, state, county, or municipal governmental statute, ordinance, or regulations, and are directed and authorized to do all things necessary or convenient to qualify to transact Company

business in compliance with the laws and regulations of any appropriate federal, state, or municipal governmental authority.

OTHER STATES

RESOLVED, that for the purpose of authorizing the Company to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the Company to transact business, the proper Company officers are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Company to transact business therein.

FISCAL YEAR

RESOLVED, that the Company fiscal year shall begin on January 1, and end on December 31, subject to change by resolution, as appropriate, at the discretion of the Manager.

CARRY ON BUSINESS

RESOLVED, that the signing of these minutes shall constitute full consent, confirmation, ratification, adoption and approval of the holding of the above meeting, the actions hereby taken, the resolutions herein adopted and waiver of notice of the meeting by the signatories.

Dated: June 3, 2024

MANAGER:

Duke Cattle & Real Estate, LLC
a Texas limited liability company

By:

DocuSigned by:

Scott Lovett

12620AFCFA4245C

Scott Lovett, President

Saddle Creek II, LLC
3828 S College Ave
Bryan, TX 77801

RECEIVED

SEP 16 2023

September 9, 2024

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

RE: Petition to Remove Property from City's ETJ

Ms. Smith,

The ownership of the property known as a 96.52 Acre Tract in the James C. Stuteville Survey, Abstract 216, who has signed below, in accordance with Texas Local Government Code 42.102, hereby petitions that said property be removed from the City of College Station's Extra Territorial Jurisdiction (ETJ). Said property is further defined by Exhibit A, attached hereto and containing a certified survey of the property with metes and bounds description.

Sincerely,

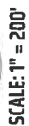


Scott Lovett

Title: Managing Member of
Saddle Creek II, LLC

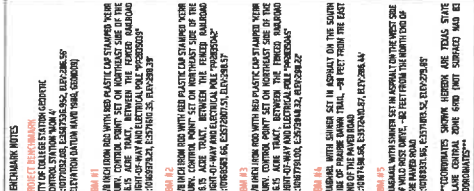
Address: 3828 S College Ave
Bryan, TX 77801

Date: 9/9/2024



BL/VE	SCOTT LUNETT AMB/DOR ASSIGNS
AMPCO (COMP) TITLE	UNIVERSITY TITLE COMPANY
S.F. No.	2304554012

1

[illegible]



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

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

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

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

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

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

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

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

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

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

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

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

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

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

Surveyed on the ground February 2023 under my supervision. See plat prepared February 2023 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.00008850284655 (calculated using GEOID12B). Reference drawing: 24-164-S.



Michael Konetski 4/12/24

Michael Konetski

Registered Professional Land Surveyor No. 6531

Revised 04-12-2024

KERR SURVEYING

Kerr Surveying, LLC | 409 N. Texas Ave. Bryan, TX 77803

Office: (979) 268-3195 | Web: www.kerrlandsurveying.com

Surveys@kerrsurveying.net | TBPELS Firm No. 10018500

October 24, 2024
Item No. 7.5.
Release from ETJ South Dowling Road

Sponsor: Anthony Armstrong, Director of Planning and Development

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an extraterritorial jurisdiction (ETJ) release petition for approximately 40.68 acres of land generally located at 14268 South Dowling Road.

Relationship to Strategic Goals:

- Good Governance
- Sustainable City

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

No contact information was provided on the petition. Staff was unable to contact the property owner to know the intention for the request.

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

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

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

- (1) within five miles of the boundary of a military base, as defined by Section [43.0117](#), at which an active training program is conducted;
- (2) in an area that was voluntarily annexed into the extraterritorial jurisdiction that is located in a county:
 - (A) in which the population grew by more than 50 percent from the previous federal decennial census in the federal decennial census conducted in 2020; and
 - (B) that has a population greater than 240,000;
- (3) within the portion of the extraterritorial jurisdiction of a municipality with a population of more than 1.4 million that is:
 - (A) within 15 miles of the boundary of a military base, as defined by Section [43.0117](#), at which an active training program is conducted; and
 - (B) in a county with a population of more than two million;

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

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

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

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

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

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

Sec. 42.103. APPLICABILITY OF OTHER LAW. Chapter [277](#), Election Code, applies to a petition requesting removal under this subchapter.

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

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

- (1) more than 50 percent of the registered voters of the area described by the petition as of the date of the preceding uniform election date; or
- (2) a majority in value of the holders of title of land in the area described by the petition, as indicated by the tax rolls of the applicable central appraisal district.

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

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

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

- (1) metes and bounds; or
- (2) lot and block number, if there is a recorded map or plat.

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

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

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

(c) If a resident or landowner obtains the number of signatures on the petition required under Section [42.104](#) to release the area from the municipality's extraterritorial jurisdiction, the municipality shall immediately release the area from the municipality's extraterritorial jurisdiction.

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

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

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

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

ETJ area:

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

- (1) in cases of judicial apportionment of overlapping extraterritorial jurisdictions under Section [42.901](#);
- (2) in accordance with an agreement under Section [42.022](#)(d); or
- (3) as necessary to comply with Section [42.0235](#).

Budget & Financial Summary:

Attachments:

1. ETJ Release Petition Resolution Eimman and Gibbens 10-24-24

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, DENYING DANE GARNET EIMANN AND CAROLYN GIBBENS' PETITION FOR REMOVAL OF PROPERTY FROM THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF COLLEGE STATION AND DENYING THE CITY'S CONSENT TO THE REDUCTION OF THE CITY'S EXTRATERRITORIAL JURISDICTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 30, 2024, Dane Garnet Eimann and Carolyn Gibbens ("Petitioner") submitted a petition attached as **Exhibit "A"** ("Petition") for releasing property from the City of College Station's extraterritorial jurisdiction ("ETJ"); and

WHEREAS, the property sought to be released is located approximately in the area of S. Dowling Road and I&G Road and described by metes and bounds in **Exhibit "A"** ("Property"); and

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

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

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

WHEREAS, the City Council finds that it has taken no action by ordinance or resolution regarding the Petition or Property; and

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

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

- PART 1:** The above recitals are adopted as findings of the City Council.
- PART 2:** The Petition for Release of the Property in **Exhibit “A”** from the City’s ETJ is denied and the Property remains in the City’s ETJ.
- PART 3:** The City denies any written consent by ordinance or resolution or action under Texas Local Government Code Chapter 42 Subchapter D (SB 2038) to remove the Property from the City’s ETJ and any reduction in size of the City’s ETJ.
- PART 4:** That this resolution shall become effective immediately after passage and approval.

ADOPTED this 24th day of October 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

Approximately 40.68 acres of land situated in the Andrew McMahan Survey, Abstract No. 167 and the James Hope League, Abstract No. 22 in Brazos County, Texas.

SEP 30 2024

PETITION FOR RELEASE FROM THE CITY OF COLLEGE STATION
EXTRATERRITORIAL JURISDICTION

Petitioners, Dane Garnet Eimann and Carolyn Gibbens, file this Petition for Release from the City of College Station (the "Petition"), as authorized by Texas Local Government Code § 42.101 *et seq.*, and would show the following:

1. Petitioners, are the holders of title to land in the area described in the Petition, satisfy he minimum requirements of Texas Local Government Code (LGC) § 42.104(a).
2. As required by LGC § 42.104(d)(1), Petitioners own and seek removal of the following tract of land (the "Property") from the extraterritorial jurisdiction, being identified on the map attached to this Petition as Exhibit "A," and described by metes and bounds:

Property Address:

14268 South Dowling Road
College Station, TX 77845
Brazos CAD Parcel ID: 15651
Metes and Bounds attached as Exhibit "B"

THEREFORE, having satisfied all requirements of Chapter 42 of the Texas Local Government Code, Petitioner seeks immediate release from the City of College Station Extraterritorial Jurisdiction, and requests that an agenda item be placed on the next regular meeting of the City Council of College Station to approve the Petition.

Submitted on 9/30, 2024, Verified on _____, 2024:

Petitioner

Dane Garnet Eimann 9/30/24

Dane Garnet Eimann

DOB 2/16/1952

4502 Laura Lane

Bryan, TX 77803

City Secretary

Carolyn Gibbens 9-30-2024

Carolyn Gibbens

DOB 5/12/1949

2526 Willow Bend

Bryan, TX 77802

EXHIBIT "A" – Map of property



EXHIBIT "B" – Parcel ID: 15651 Metes and Bounds

A **METES & BOUNDS** description of a certain 40.68 acre tract of land situated in the Andrew McMahan Survey, Abstract No. 167 and the James Hope League, Abstract No. 22 in Brazos County, Texas, and being the residue of a called 43.07 acre tract described in a deed to Dane Garnet Eimann and Carolyn Gibbens and recorded in Document No. 2014-1204088 of the Official Public Records of Brazos County (OPRBC); said 40.68 acre tract being more particularly described as follows with all bearings being based on the Texas State Plane Coordinate System of 1983, Central Zone;

BEGINNING at a 1/2-inch iron rod with cap found at the northeast corner of a called 1.00 acre tract described in a deed to Johnny L. Hayes and Brenda Hayes and recorded in Document No. 2000-706820 of the OPRBC and being in the south right-of-way line of South Dowling Road (width varies);

THENCE, along the south right-of-way line of South Dowling Road and following the meanders of a barb wire fence the following three (3) courses:

1. North 75°11'55" East, 292.11 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner;
2. North 78°41'54" East, 54.31 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner;
3. South 72°47'23" East, 10.14 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner in the southwest right-of-way line of I & GN Road (width varies);

THENCE, along the southwest right-of-way line of I & GN Road and following the meanders of a barb wire fence the following six (6) courses:

1. South 34°35'25" East, 37.21 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner;
2. South 30°48'34" East, 221.07 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner;
3. South 34°13'44" East, 96.98 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner;
4. South 36°26'29" East, 183.99 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner;
5. South 40°13'29" East, 164.72 feet to a 1/2-inch iron rod (with cap stamped "YALGO") set for corner;
6. South 43°36'15" East, 2114.36 feet to an 8-inch wood fence post found at the east corner of said 43.07 acre tract;

THENCE, South 38°27'37" West, 218.13 feet along the southeast line of said 43.07 acre tract, passing the north corner of a called 45.63 acre tract described in a deed to James S. Redman and Patricia M. Redman and recorded in Document No. 1994-560618 of the OPRBC and continuing along the common line of said

EXHIBIT "B" - cont

43.07 acre tract and said 45.63 acre tract to a 5/8-inch iron rod with cap stamped "CP&Y" found for the east corner of a called 2.021 acre tract described in a deed to Wellborn Special Utility District and recorded in Document No. 2022-1491626 of the OPRBC;

THENCE, North 47°55'24" West, 296.89 feet along the northeast line of said 2.021 acre tract to a 5/8-inch iron rod with cap stamped "CP&Y" found for the north corner of said 2.021 acre tract;

THENCE, South 38°23'04" West, 296.85 feet along the northwest line to a 5/8-inch iron rod with cap stamped "CP&Y" found for the west corner of said 2.021 acre tract;

THENCE, South 47°54'42" East, 296.98 feet along the southwest line of said 2.021 acre tract to a 60D nail found for the south corner of said 2.021 acre tract and being in the common line of said 43.07 acre tract and said 45.63 acre tract;

THENCE, South 40°42'08" West, 26.56 feet along the common line of said 43.07 acre tract and said 45.63 acre tract to an 8-inch wood fence post found for the south corner of said 43.07 acre tract and the east corner of a called 34.99 acre tract described as Second Tract in an Affidavit of Ownership to Shirley Carter Redman, et al and recorded in Document No. 2012-1133552 of the OPRBC from which a found 1/2-inch iron rod with cap stamped "Kerr Surveying" bears North 57°09'18" West, a distance of 1.41 feet;

THENCE, North 49°25'48" West, 955.63 feet along the common line of said 43.07 acre tract and said 34.99 acre tract to an 8-inch wood fence post found for the north corner of said 34.99 acre tract in the southeast line of a called 1530.6 acre tract described in a deed to Margaret Chance Evans Rael, et al and recorded in Document No. 2009-1049392 of the OPRBC;

THENCE, North 39°41'53" East, 51.72 feet along the southeast line of said 1530.6 acre tract to a 60D nail found for the east corner of said 1530.6 acre tract;

THENCE, North 47°57'46" West, 120.78 feet along the common line of said 43.07 acre tract and said 1530.6 acre tract to a 1/2-inch iron rod with cap stamped "Strong" found for the east corner of a called 5.007 acre tract described in a deed to BTU and recorded in Document No. 2011-1093123 of the OPRBC;

THENCE, North 47°57'43" West, 467.06 feet along the common line of said 43.07 acre tract and said 5.007 acre tract to a 1/2-inch iron rod with cap stamped "Strong" found for the north corner of said 5.007 acre tract;

THENCE, North 47°36'25" West, 1190.76 feet along the common line of said 43.07 acre tract and said 1530.6 acre tract to a found 8-inch wood fence post found for the south corner of a called 5 acre tract described in a deed to Charles L. Hayes and Mary E. Hayes and recorded in Volume 289, Page 1 of the Deed Records of Brazos County (DRBC);

EXHIBIT "B" - cont

THENCE, North 13°11'08" East, 605.16 feet along the east lines of said 5 acre tract and aforementioned 1.00 acre tract to the **POINT OF BEGINNING**, and containing 40.68 acres of land in Brazos County, Texas.

Note: This metes and bounds is accompanied by a plat of even date. All distances shown herein are horizontal grid distances. The combined correction factor (CCF) is 0.9999035. Surface distance = grid distance / CCF.

Yalco Engineering, LLC
109 W 2nd St., Suite 201
Georgetown, Texas 78626
Texas Board of Professional Engineers & Land Surveyors
Registration No. 10194797

Corey Shannon

S. Corey Shannon
Registered Professional Land Surveyor
No. 5967

October 24, 2024
Item No. 7.6.
Northwest Substation Control House Bid Rejection

Sponsor: Timothy Crabb, Director of Electric

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on the rejection of bids received and cancelation of Invitation to Bid (ITB) 24-085 for the construction and installation of the control house at the Northwest Electric Substation.

Relationship to Strategic Goals:

Financially Sustainable City
Core Services and Infrastructure

Recommendation(s): Staff recommends rejection of the two bids received and no award for ITB #24-085.

Summary: ITB 24-085 was formally bid and opened on September 24, 2024. Two bids were received and reviewed by Electric staff. One bid was disqualified because the submission was incomplete; the remaining bid exceeds the cost anticipated for this portion of the Northwest Substation construction project. Electric staff is reevaluating the scope for a future invitation to bid.

Budget & Financial Summary: The rejection of ITB #24-085 will have no impact on the Electrical budget.

Attachments:

1. 24-085 Bid Tabulation

ITB 24-085 BID TABULATION
Construction, Delivery, and Installation of
Control House for Northwest Substation

Description	VFP Inc.		TSG Industries LLC.	
	Unit	Extended	Unit	Extended
Meters, Relays, and Instrument Transformers		\$ 238,043.00		\$ 667,560.00
Communications and Supervisory Control Equipment		\$ 44,782.00		\$ 184,148.00
Pre-Assembled Substation Control Enclosure		\$ 532,874.00		\$ 418,980.00
Testing/Commissioning of Relays and Equipment**		\$ -		\$ 119,483.00
NOTES	**Acceptance test included at manufacturing location		UnResponsive- No bid bond	
	Total Price	\$ 815,699.00	Total Price	\$ 1,390,171.00

October 24, 2024
Item No. 7.7.
Master Purchase Agreement with the Reynolds Company

Sponsor: Gary Mechler, Director of Water

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on approving a contract with D. Reynolds Company, LLC dba The Reynolds Company, for the annual purchase of Water SCADA infrastructure products and services for an amount not to exceed \$250,000.

Relationship to Strategic Goals:

1. Financially Sustainable City
2. Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This contract establishes an annual agreement with D. Reynolds Company, LLC dba The Reynolds Company, for the procurement of Rockwell Automation products and services, with terms and pricing set forth under Contract #25300038. It also includes options for renewal for up to four additional years.

Water Services has standardized the use of Rockwell Automation hardware and software throughout its Supervisory Control and Data Acquisition (SCADA) system. As the sole distributor of these products and services in our region, The Reynolds Company, LLC provides the best value for the City of College Station's water system.

Budget & Financial Summary: Water and wastewater operational funds are budgeted and available for this agreement.

Attachments:

1. Master Agreement #25300038



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300038 PROJECT#: _____ BID/RFP/RFQ#: _____

Project Name / Contract Description: Master Purchase Agreement with Reynolds
Company to purchase Maintenance of Rockwell & SCADA products

Name of Contractor: D. Reynolds Company, LLC dba The Reynolds Company

CONTRACT TOTAL VALUE: \$ 250,000 **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)

The city is entering into a new contract for a new contract term of 1 year with the option of 4 renewals for a total of five (5) years.

Water Services standardized on Rockwell Automation SCADA software and equipment of which Reynolds Company is

Rockwell's specified distributor for this region, therefore has be classified as sole source.

CRC Approval Date*: N/A *(if required)** **Council Approval Date*:** 10/24/24 **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

<u>Gary Mechner</u>	<u>10/4/2024</u>
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT	DATE
<u>John D. Haislet</u>	<u>10/7/2024</u>
LEGAL DEPARTMENT	DATE
<u>Jim Ernst</u>	<u>10/5/2024</u>
ASST CITY MGR – CFO	DATE

APPROVED & EXECUTED

_____ CITY MANAGER	_____ DATE
<u>n/a</u>	
_____ MAYOR (if applicable)	_____ DATE
<u>n/a</u>	
_____ CITY SECRETARY (if applicable)	_____ DATE

MASTER AGREEMENT
Rockwell Automation Products and Services

This Master Agreement is by and between the **City of College Station**, a Texas Municipal Home-Rule Corporation (the “City”) and **D. Reynolds Company, LLC**, a Texas Limited Liability Company, dba **The Reynolds Company**, (the “Contractor”), whereby Contractor agrees to provide Rockwell Automation Products and Services in accordance with the terms and conditions herein.

ARTICLE I

1.01 This Master Agreement is for Rockwell Automation Products and Services as set forth in **Exhibit “A”**. The scope and details of the work to be provided to the City by Contractor shall be set forth in each Service Order, a form of which is attached as **Exhibit “B”** to this Agreement and incorporated as though fully set forth herein by reference. Contractor agrees to perform or cause the performance of all the work described in each Service Order. Each Service Order shall expressly reference this Agreement and be executed by both parties. The City Manager or his designee is authorized to sign the Service Orders on behalf of the City.

1.02 Each Service Order shall identify a project manager for each party with respect to the Services set forth therein. Each Service Order shall identify the unique scope and details for each project including location, schedules, and a not-to-exceed amount for fees and expenses.

1.03 Contractor agrees to perform the work described in each Service Order and the City agrees to pay Contractor fees set forth and defined in the applicable Service Order for the services performed by Contractor. The invoices shall be submitted to the City following the 15th day and the last day of each month. The payment terms are net payable within thirty (30) calendar days of the City’s receipt of the invoice. Upon termination of this Agreement, payments under this paragraph shall cease, provided, however, that Contractor shall be entitled to payments for work performed in accordance with this Agreement and any Service Order before the date of termination and for which Contractor has not yet been paid.

1.04 The total amount of payment, including reimbursements, by the City to Contractor for all approved Service Orders to be performed under this Contract may not, under any circumstances, exceed **Two Hundred and Fifty Thousand Dollars and no/100 (\$250,000.00)**. There is no minimum amount to be paid by the City to the Contractor under this Contract.

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

1.06 Omitted.

1.07 This contract shall become effective from date of acceptance and approval by the City of College Station. It shall remain in full force and effect with firm fixed bid prices for a period of twelve (12) months.

Thereafter, upon the mutual consent of both parties, including budget approval by the City, this Contract may be renewed on an annual basis, under the same terms and conditions, for up to **Four(4) additional years (Five (5) years total)**. If, for any reason, funds are not appropriated to continue the contract, the contract shall become null and void and shall terminate.

1.08 **Time is of the essence of this Contract.** The Contractor shall be prepared to provide the automation products and services in the most expedient and efficient manner possible in order to complete the work by the times specified.

1.09 Contractor promises to work closely with the City Manager or his designee (the "Project Manager") or other appropriate City officials. Contractor agrees to perform any and all Project-related tasks reasonably required of it by the City in order to fulfill the purposes of the work to be performed. The work of Contractor under this Contract may be authorized by the Project Manager in various phases as set forth in **Exhibit "B"**.

1.10 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 on the Project. The Contractor shall have ultimate control over the execution of the work under this Contract. 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 Contract. Contractor shall be liable for any misrepresentations. Any negotiations by the Contractor on the City's behalf are binding on the City only when within the scope of work contained herein and approved by the City.

ARTICLE II

2.01 In developing each Service Order, Contractor shall meet with the City for the purpose of determining the nature of the project, including but not limited to the following: meeting with the City's staff to coordinate project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions and methodologies; devising the format for any interim reports and the final report to the City.

2.02 The City shall direct Contractor to commence work on each project by sending Contractor a fully executed Service Order to begin work on each project.

2.03 Contractor shall consult with the City and may, in some limited circumstances, act as the City's representative, but it is understood and agreed by the parties that for all purposes

related to this Contract, Contractor shall be an independent contractor at all times and is not to be considered either an agent or an employee of the City.

ARTICLE III

3.01 As an experienced and qualified professional, Contractor warrants that the information provided by Contractor reflects high professional and industry standards, procedures, and performances. Contractor warrants the design, preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, the fitness and operation of its recommendations, and the performance of other services under this Contract, pursuant to a high standard of performance in the profession. Contractor warrants that it will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval or acceptance by the City of any of Contractor's work product under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Contractor, its employees, agents, or associates for the exercise of skill and diligence necessary to fulfill Contractor's responsibilities under this Contract. Nor shall the City's approval or acceptance be deemed to be the assumption of responsibility by the City for any defect or error in the project's work products prepared by Contractor, its employees, associates, agents, or subcontractors.

3.02 Contractor shall keep the City informed of the progress of the work by providing, at the least, monthly updates as to the status of the service being completed and shall guard against any defects or deficiencies in its work.

3.03 Contractor shall be responsible for using due diligence to correct errors, deficiencies or unacceptable work product. Contractor shall, at no cost to the City, remedy any errors, deficiencies or any work product found unacceptable, in the City's sole discretion, as soon as possible, but no longer than fifteen (15) calendar days after receiving notice of said errors, deficiencies or unacceptable work product.

3.04 Contractor's work product shall be the exclusive property of the City. Upon completion or termination of this Contract, and upon the City's request, Contractor shall promptly deliver to the City copies of all records, notes, data, memorandum, models, drawings, specifications, and equipment of any nature that are within Contractor's possession or control and that are the City's property or relate to the City or its business.

ARTICLE IV

4.01 Indemnity. The Contractor agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and volunteers (separately and collectively referred to in this paragraph as "Indemnatee"), from and against any and all claims, losses, damages, causes of action, suits, judgments, settlements made by Indemnatee, and liability of every kind, including all expenses of litigation, court costs, attorney's fees, and other reasonable costs for damage to or loss of use of any property, for injuries to, or sickness or death of any person, including but not limited to Contractor, any of its subcontractors of any tier, or of any employee or invitee of Contractor or of any such subcontractors, that is caused by, arises

out of, related to, or in connection with, the negligence of and/or negligent performance of this Contract by Contractor or by any such subcontractors of any tier, under this Contract.

4.02 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 4.01, 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.

4.03 Release. The Contractor releases, relinquishes, and discharges the City, its officers, employees, agents, 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 Contractor or its employees and any loss of or damage to any property of the Contractor or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Contractor's work to be performed hereunder. Both the City and the Contractor 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 Contractor 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 Contractor, or any third party.

ARTICLE V

Insurance

5.00 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, limits and endorsements required are as set forth on **Exhibit "C"**.

ARTICLE VI

6.01 At any time, the City may terminate the Agreement and/or each Service Order for convenience, in writing. At such time, the City shall notify Contractor, in writing, who shall cease work immediately. Contractor shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred prior to the date of termination.

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

ARTICLE VII

7.01 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.

7.02 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:

City:

City of College Station
Attn: Mark Phillips
P.O. Box 9960
College Station, Texas 77842
Phone: (979) 764-3667
mphillips@cstx.gov

Contractor:

D. Reynolds Company, LLC
dba The Reynolds Company
2680 Sylvania Cross
Fort Worth, Texas 76137
Phone: 281-851-7332
E-mail: gpeterson@reynco.com

7.03. Contractor shall perform all the work hereunder. Contractor agrees that all of its employees who work on each project shall be fully qualified and competent to do the work described hereunder. Contractor shall undertake the work and complete it in a timely manner. Contractor will not employ subcontractors in order to fulfill the obligations under this Contract without the prior written consent of the City.

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

7.05 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.

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

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

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

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

7.10 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed, unless otherwise noted in Section 1.07 of Article I.

ARTICLE VIII TECHNOLOGY REQUIREMENTS

8.01 Cloud Provider. When some or all of the Contractor's Work involve being a Cloud Provider, the following shall apply:

(a) Security Policies and Procedures. The Contractor shall provide the City with copies of its information security policies and procedures within three (3) business days upon City's request covering:

- i. Data Classification and privacy;
- ii. Security training and awareness;
- iii. Systems administration, patching and configuration;
- iv. Incident response;
- v. Managing workstations, mobile devices and antivirus applications;
- vi. Backups, disaster recovery and business partners and contractors;
- vii. Audit and testing schedules;
- viii. Requirements for third-party business partners and contractors;
- ix. Compliance with information security or privacy laws, rules, regulations or standards;
- x. Evidence of background checks that support security of sensitive or confidential information;
- xi. Disclosure of previous data breaches; and
- xii. Any other relevant information regarding security policies or procedures.

(b) Industry Best Practices. Contractor must provide all services using the best commercially-available security technology and techniques according to industry best practices and standards; the City's security standards, policies and procedures including those relating to fraud prevention and detection and any other inappropriate system and network use or access, including:

- i. Providing secure (SSL, HTTPS, or similar) access to all levels of users as defined by the City via the internet;
- ii. Having controls meeting applicable laws and the latest Framework for Improving Critical Infrastructure Cyber security from National Institute of Standards and Technology (NIST) or compatible industry security frameworks;
- iii. Completely testing and applying patches for hardware bios/firmware, bare metal operating systems (e.g. VMware ESXi), virtualized server operating systems, and software products before release; and
- iv. Having all servers providing work to the City solely physically located within the continental United States of America. Contractor must house all servers and equipment in an operational environment meeting industry standards including a climate-controlled room with a fire and security hazard detection system and a network and electrical redundancy system, including backup Uninterruptable Power Supply (UPS) and automatic fail-over stand-by generators and physical security.

(c) Data Breach.

- i. **Notice.** Contractor must immediately notify the City by telephone and email no later than twenty-four (24) hours if there is a reasonable probability of a data security incident. Contractor must send a written letter following up on the data security incident within forty-eight (48) hours following a data breach. The Contractor must:
 1. Cooperate with the City's request to investigate and resolve the incident in a timely manner;
 2. Promptly implement necessary remedial measures; and
 3. Document responsive actions taken related to the data breach, including any post-incident review and actions taken to make changes in business practices in providing the work, if necessary.
- ii. **Contractor Agreement Breach.** If a data breach results from Contractor's breach of the Contract, Contractor must:
 1. Bear any costs associated with the investigation and resolution of the data breach
 2. Notify individuals, regulators and all others required by Identity Theft Enforcement and Protection Act in the Texas Business and Commerce Code Chapter 521 Unauthorized Use of Identifying Information;

3. Engage a credit monitoring service or identity protection service;
4. Publish a website or toll-free number and call center for affected individuals as required by state or federal law;
5. Complete all corrective actions as reasonably determined based on root cause; and
6. Send the City written findings and remedial measures from the data breach.

(d) Preventive Security Procedures. Contractor must:

- i. Provide on-going software updates as they become available complying with the defined maintenance windows. The Contractor must completely test updates; including any bug fixes, patches and other improvements;
- ii. Monitor system and error logs and perform preventive maintenance to minimize and predict system problems, including initiating and completing an appropriate response;
- iii. Conduct a third-party independent security/vulnerability assessment at its own expense at least annually and submit the results of such assessment to the City;
- iv. Agree to third-party application and vulnerability security scans and schedules;
- v. Comply with the City's directions/resolutions to remediate security/vulnerability assessment results aligning with City Security Vulnerability Assessment Standards;
- vi. Limit logical and physical access to all system components and provide access only to those individuals with a business need for work provided. Individuals who have access to systems and data must have a criminal background check;
- vii. Annually audit the data center through an independent third-party auditor. Audit results must form part of the Contractor's applicable Service Organization Control (SOC) report. The audit results must comply with industry standard controls for data security and disaster recovery that the Contractor shall report to the City in writing; and
- viii. Take all necessary measures to protect the data and encryption keys including, but not limited to the off-site servers daily backup according to industry best practices and encryption techniques.

(e) Disaster Recovery. Contractor must comply with any and all City disaster recovery and resiliency protocols to prevent system interruption. In the event of system breach, Contractor shall notify the City and restore the system within twenty-four (24) hours from discovery of breach.

(f) Closeout.

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

8.02 Premise Solutions. When some or all of the Contractor's Work involve providing Premise Solutions, the following shall apply:

- a. **Requirements:** Contract must:
 - i. Provide the City with its security architecture. The security architecture must at a minimum meet applicable laws and the latest Cybersecurity Framework for Improving Critical Infrastructure from National Institute of Standards and Technology (NIST) or compatible industry security frameworks;
 - ii. Have data access limited to only required support service;
 - iii. Evidence of background checks that support security of the City's sensitive or confidential information;
 - iv. Notify the City within twenty-four (24) hours when any patches resulting from security vulnerability and threats become available;
 - v. Provide City with all applicable security assessments, audits and certifications related to system security annually;
 - vi. Train City staff on security-related procedures regarding system operation and maintenance; and

- vii. Take all necessary measures to protect the City's data and data encryption when applicable.

(b) Data Breach.

- i. **Notice.** Contractor must immediately notify the City by telephone and email no later than twenty-four (24) hours if there is a reasonable probability of a data security incident. Contractor must send a written letter following up on the data security incident within forty-eight (48) hours following a data breach. The Contractor must:
 - 1. Cooperate with the City's request to investigate and resolve the incident in a timely manner;
 - 2. Promptly implement necessary remedial measures; and
 - 3. Document responsive actions taken related to the data breach, including any post-incident review and actions taken to change business practices in providing the work, if necessary.
- ii. **Contractor Agreement Breach.** If a data breach results from Contractor's breach of this Agreement, Contractor must:
 - 1. Bear any costs associated with the investigation and resolution of the data breach;
 - 2. Notify individuals, regulators and all others required by Identity Theft Enforcement and Protection Act in the Texas Business and Commerce Code Chapter 521 Unauthorized Use of Identifying Information;
 - 3. Engage a credit monitoring service;
 - 4. Publish a website or a toll-free number and call center for affected individuals as required by state or federal law;
 - 5. Complete all corrective actions as reasonably determined based on root cause; and
 - 6. Send the City written findings and remedial measures from the data breach.

- (c) Data Removal.** At the City's request upon Agreement expiration or termination, the Contractor must remove, delete, purge, overwrite or otherwise render inaccessible within a reasonable time, all City data remaining on Contractor's servers to the extent possible based on the then-current technology available. Contractor must provide the City a written and signed statement confirming data has been deleted, purged, overwritten or otherwise rendered inaccessible. The Contractor will not otherwise delete the City's data without City's prior written consent.

8.03 Background Checks. The Consultant agrees to assume all responsibility for and to perform background checks on all its employees, agents and assigns working on the Project. Such background checks include but are not limited to, criminal records and civil judgments, professional license verifications, motor vehicle records, social security number, court records, military service records, other public records reports, and verifications of employment, and education. This must be done prior to such individuals commencing their work on the Project. Consultant agrees to produce any and all background checks information as described herein when requested to the City. To the degree allowed by applicable law, City agrees to keep such information confidential.

8.04 Work Completion. Unless explicitly provided for otherwise in this Contract or expressly mutually agreed upon by the parties in writing, the Work will be considered complete when it functions in the City's current technology environment.

**D. REYNOLDS COMPANY, LLC
dba THE REYNOLDS COMPANY**

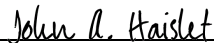
By: 
Printed Name: Ginger Peterson
Title: Account Manager
Date: 10/4/2024

CITY OF COLLEGE STATION

By: _____
City Manager

Date: _____

APPROVED:


City Attorney
Date: 10/7/2024


Asst. City Manager / CFO
Date: 10/5/2024

Exhibit A

Discount Schedule for Rockwell Automation Products 2019 Updated

Rockwell Area	Beginning Part numbers	Discount Percentage
Drives, Architecture Class up to 60 HP	20B, 20A, 20G1	15
In Cabinet Distributed IO	1734, 1794	15
Networks and Communications	1585, 1783	15
Operator Interface	2711	10
Power and Energy Management Hardware	1404, 1425, 1426, 1411	10
Power Supplies	1606, 1607, 1609	15
Programmable Automation Controllers	1756, 1768, 1769	15
Push Buttons	800	15
Software	9307, 9309, 9315, 9358, 9518, 9521, 9324, 9328, 9355, 9528, 9522, 9701	10
Terminal Blocks and Wiring Systems	1492	15
Encompass Partner Products	Dependent on Partner	0-5
Class Room Training		5
Virtual Instructor Led Training		5

SERVICES Rate Schedule

Service	Rate
Rockwell Field Service Engineer On Site	\$236.00 / Hr.
Rockwell Field Service Engineer On Site Emergency	\$305.00 / Hr.
Rockwell Field Service Engineer LV Drive Start up Assistance	\$198.00 / Hr. 305.00/Hr. Emergency
Rockwell Field Service Engineer MV Drive Start up Assistance	287.00/ Hr. \$355.00/ Hr. Emergency
Rockwell Field Service Engineer Travel Rate	\$198.00 /Hr.

Exhibit B
SERVICE ORDER FORM

This form shall be used to procure products and services from The Reynolds Company. The Master Agreement (Contract No. 14- 419) entered into by and between the City of College Station and The Reynolds Company is expressly incorporated by reference.

Services to be Performed:

Project Manager for Each Party: _____

Location for Performance of Services: _____

Schedule of Services: _____

Fees for Services: _____

Approved by:

THE REYNOLDS COMPANY

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF COLLEGE STATION

By: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit C

INSURANCE REQUIREMENTS

During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

I. Standard Insurance Policies Required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Workers' Compensation
- D. Professional Liability
- E. Cyber Liability

II. General Requirements Applicable to All Policies:

- A. Only Insurance Carriers licensed and 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.
- C. "Claims Made" policies are not accepted except for Professional Liability .
- D. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits of liability except after thirty (30) days prior written notice has been given to the City of College Station.
- F. The City of College Station, its officials, employees and volunteers, are to be listed as "Additional Insured" to the Commercial General, and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

III. Commercial General Liability

- 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 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.

IV. Business Automobile Liability

- 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. Coverage shall be at least as broad as Insurance Service's Office Number CA 00 01.
- 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 owned autos, leased or rented autos, non-owned autos, any autos and hired autos.

- VI. Those policies set forth in Paragraphs III and IV shall contain endorsements listing the City as Additional Insured, and providing evidence that the Contractor's policies are primary, and any self-insurance or insurance policies procured by the City are non-contributory. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 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 D, and approved by the City before work commences.

VII. Workers' Compensation Insurance

- A. Workers' compensation insurance shall include the following terms:
 - 1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 - 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - 3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

VIII. Professional Liability

- 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 occurrence and \$2,000,000 aggregate, with a maximum deductible of \$100,000. Financial statements shall be furnished to the City of College Station if requested
 - C. Claims-made policies require the availability of a two-year or 24-month extended reporting period, with the retroactive date shown on the certificate.
- IX. Cyber Liability. Minimum limits of \$5,000,000 for third party losses. Coverage must include:
- (a) Event Management;
 - (b) Unauthorized Access/use;
 - (c) Computer Virus;
 - (d) Denial of Service Attack;
 - (e) Libel, Cyber-libel, Slander, Product Disparagement;
 - (f) Violation of Right of Privacy;
 - (g) Regulatory Costs;
 - (h) Privacy Costs- Privacy Injury and Identity Theft;
 - (i) Programming Errors & Omissions Liability;
 - (j) Replacement or Restoration of Electronic Data (First Person);
 - (k) Extortion Threats;
 - (l) Business Income and Extra Expense (to \$1 million);
 - (m) Public Relations Expense; and
 - (n) Security Breach Expense.
- X. 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 licensed and authorized to do business in the State of Texas.
 - B. The insurance policies provided by the insurance company are underwritten on forms provided by the Texas Department of Insurance or ISO.
 - C. All endorsements and insurance coverages meet or exceed the requirements and instructions contained herein.
 - D. The form of the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
 - E. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/01/2024

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. One Towne Square Suite 1100 Southfield, MI 48076 Attn: EDIC Team - F: 313-393-6505 CN103024838--GAUWU-24-25	CONTACT NAME: PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL ADDRESS:														
INSURED D. Reynolds Company, LLC 2680 Sylvania Cross Drive Fort Worth, TX 76137	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : Zurich American Insurance Company</td><td>16535</td></tr><tr><td>INSURER B : Travelers Property Casualty Co. of America</td><td>25674</td></tr><tr><td>INSURER C : American Zurich Insurance Company</td><td>40142</td></tr><tr><td>INSURER D : Everest Insurance Company</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Zurich American Insurance Company	16535	INSURER B : Travelers Property Casualty Co. of America	25674	INSURER C : American Zurich Insurance Company	40142	INSURER D : Everest Insurance Company		INSURER E :		INSURER F :	
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INSURER D : Everest Insurance Company															
INSURER E :															
INSURER F :															

COVERAGES

CERTIFICATE NUMBER:

CHI-007473211-33

REVISION NUMBER: 31

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ CONTRACTUAL LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC ☐ OTHER:		GLO6800445-27	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		BAP6800444-27	01/01/2024	01/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$		CUP-9S428271-24-NF	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☒ N / A	WC6800442-27 '(Does not apply to Monopolistic' 'States [ND, OH, WA, and WY],' 'Puerto Rico, or the Virgin Islands)'	01/01/2024	01/01/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Excess Liability		XC5EX01229-241	01/01/2024	01/01/2025	Limit: Occ/Agg, XS \$10M 15,000,000

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

CITY OF COLLEGE STATION IS INCLUDED AS ADDITIONAL INSURED (EXCEPT FOR WORKERS COMPENSATION) WHERE REQUIRED BY WRITTEN CONTRACT. THIS INSURANCE 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. A WAIVER OF SUBROGATION APPLIES FOR WORKERS COMPENSATION, AUTOMOBILE LIABILITY, AND GENERAL LIABILITY IN FAVOR OF THE CERTIFICATE HOLDER AS REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT, PER POLICY TERMS AND CONDITIONS.

CERTIFICATE HOLDER

CANCELLATION

City of College Station Attn: Risk Management P.O. Box 9960 College Station, TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Marsh USA LLC</i>
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/04/2024

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 STERLING INSURANCE GROUP 13900 Lakeside Circle Sterling Heights MI 48313-1318	CONTACT NAME: Rebecca Zannetti PHONE (A/C, No, Ext): (586) 323-5700 FAX (A/C, No): (586) 323-5703 E-MAIL ADDRESS: rzannetti@sterlingagency.com
INSURED McNaughton-McKay Electric Company; D Reynolds Company LLC Flow-Zone; Caniff Electric; Mid-Coast Electric Supply 1357 E. Lincoln Avenue Madison Heights MI 48071	INSURER(S) AFFORDING COVERAGE INSURER A: Underwriters of Lloyds of London INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** CL2410440626 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	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		N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Cyber Liability			W1D686240801	02/15/2024	02/15/2025	\$5,000,000

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

CERTIFICATE HOLDER**CANCELLATION**City of College Station
PO Box 9960

College Station

TX 77842

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

AUTHORIZED REPRESENTATIVE

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October 24, 2024
Item No. 7.8.
Deacon Drive and General Parkway Four-way Stop Removal

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 38, "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1002 "Traffic Schedule II, Four-Way Stop Intersections" by removing the intersection of Deacon Drive W. and General Parkway and amending Chapter 38 "Traffic and Vehicles," Article VI, "Traffic Schedules," Section 38-1003, "Traffic Schedule III, Stop Signs," by adding the intersection of Deacon Drive and General Parkway, of the Code of Ordinances of the City of College Station, Texas.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

Recommendation(s): Staff recommends approval of the ordinance amendment.

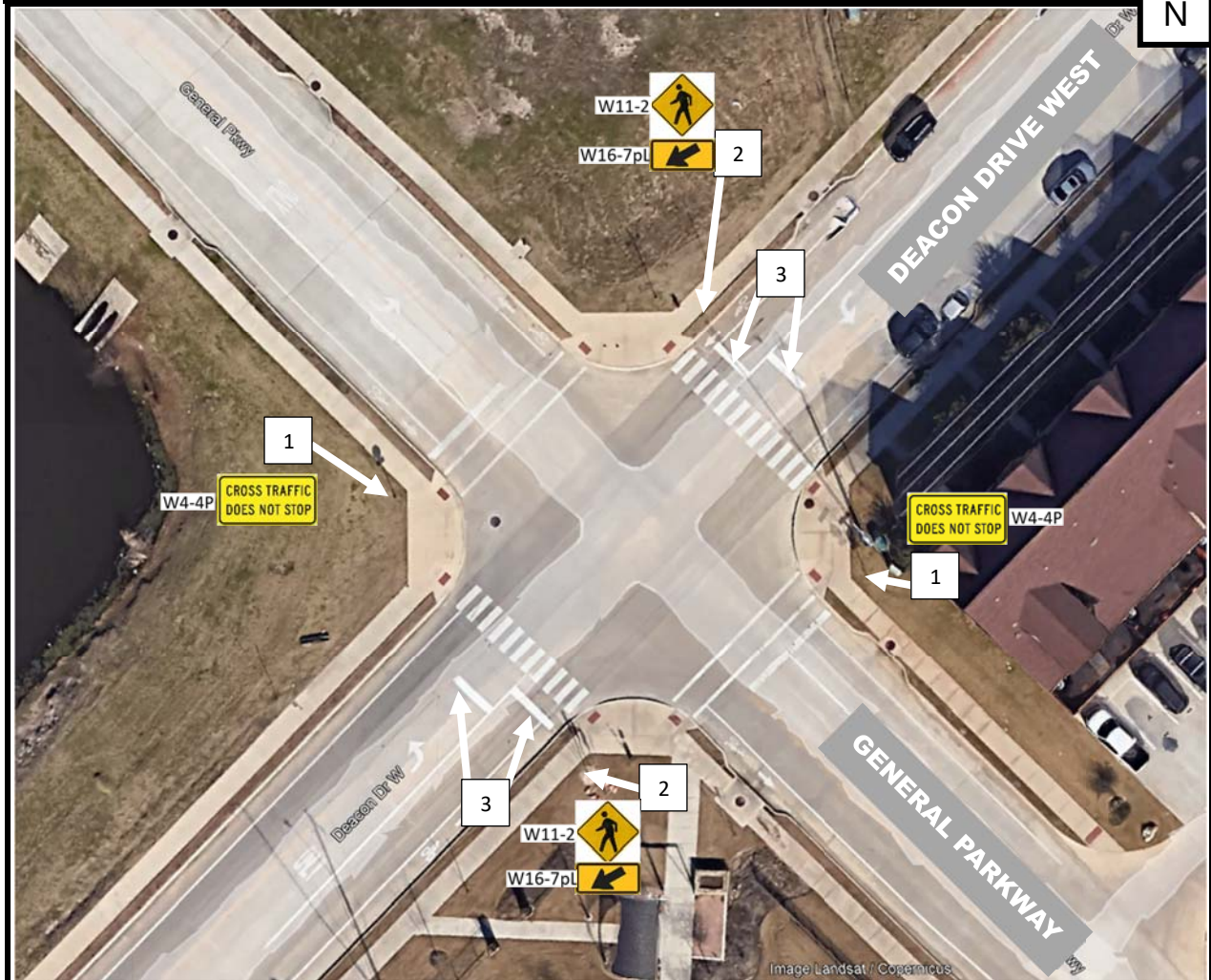
Summary: An all-way stop was implemented at the intersection of Deacon Drive and General Parkway during the Rock Prairie Road Widening project to accommodate an increase in traffic due to detours. After the completion of the Rock Prairie project and the opening of the new at-grade railroad crossing at Deacon Drive, it has been observed that the queuing southwest approach at General Parkway on Deacon Drive extends to the railroad tracks during peak times. A warrant study was conducted, and currently the intersection does not meet the volume thresholds to warrant an all-way stop. Coupled with the safety concern of the queue reaching the railroad track, the warrant not being met leads staff to recommend that this all-way stop intersection should be modified to a 2-way stop controlled intersection on both the General Parkway approaches. This will allow traffic to flow through the intersection and not queue at the railroad crossing.

Budget & Financial Summary: The signs and pavement markings removal will be funded through the Traffic Operations budget.

Attachments:

1. Exhibit General Pkwy and Deacon Dr
2. Ordinance Deacon and General Four-way Removal and Stop Sign addition

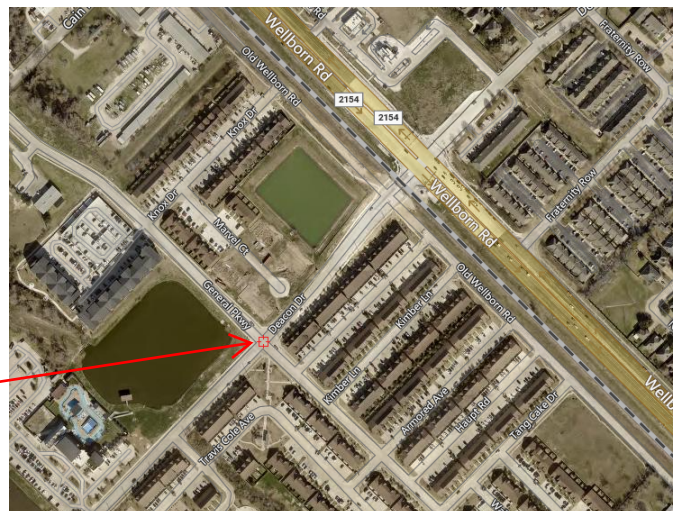
TWO WAY STOP SIGN EXHIBIT GENERAL PARKWAY AND DEACON DRIVE WEST



NOTES:

- 1 REMOVE ALL WAY SIGN AND REPLACE WITH CROSS TRAFFIC DOES NOT STOP SIGN, W4-4P.
- 2 REMOVE STOP/ALL WAY SIGNS, REPLACE WITH PEDESTRIAN CROSSING SIGNS, W11-2 & W16-7pL.
- 3 REMOVE STOPBAR.

Intersection Location



ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 38, “TRAFFIC AND VEHICLES,” ARTICLE VI “TRAFFIC SCHEDULES,” SECTION 38-1002 “TRAFFIC SCHEDULE II, FOUR-WAY STOP INTERSECTIONS,” BY REMOVING THE INTERSECTION OF DEACON DRIVE W. AND GENERAL PARKWAY AND SECTION 38-1003 “TRAFFIC SCHEDULE III, STOP SIGNS”, BY ADDING THE INTERSECTION OF DEACON DRIVE AND GENERAL PARKWAY, OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Chapter 38, “Traffic and Vehicles,” Article VI “Traffic Schedules,” Section 38-1002 “Traffic Schedule II, Four-Way Stop Intersections,” and Section 38-1003 “Traffic Schedule III, Stop Signs” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A” and Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

EXHIBIT A

That Chapter 38, “Traffic and Vehicles,” Article VI. “Traffic Schedules,” Sec. 38-1002 “Traffic Schedule II, Four-Way Stop Intersections” is hereby amended to remove the intersection at Deacon Drive W. And General Parkway and is to read as follows:

Church Avenue	College Main	
Church Avenue	First Street	
Church Avenue	Nagle Street	
Church Avenue	Second Street and the Public Way of the Northgate Surface Parking Lot	
Church Avenue	Tauber Street	
Holleman Drive S.	Deacon Drive W.	
Holleman Drive	Eleanor Street	West
Holleman Drive	Phoenix Street	East
Eleanor Street	Holleman Drive	South
Phoenix Street	Holleman Drive	North
Dominik Drive	George Bush East Drive	
Dominik Drive	Munson Avenue	
Francis Drive	Munson Avenue	
Munson Avenue	University Oaks	
Welsh Avenue	Deacon Drive	
Welsh Avenue	Park Place	
Deacon Drive	Rio Grande Boulevard	
Longmire Drive	Graham Road	
Graham Road	Victoria Avenue	
Dowling Road	Jones Butler Road	
Castlegate Drive	Ravenstone Loop	West
Castlegate Drive	Kendal Green Circle	East
Kendal Green	Castlegate Drive	East
Ravenstone Loop	Castlegate Drive	West
Rock Prairie Road	William D. Fitch Parkway	
Southwest Parkway	Langford Street	
Dartmouth Drive	Krenek Tap Road	
Rock Prairie Road W.	Jones Butler Road	
Eagle Avenue	Brandenburg Lane	
North Forest Parkway	Appomattox Drive	
Southern Plantation Drive at Newport Lane		
Fairview Avenue at Park Place		

Cross Street	Dogwood Street	
Holleman Drive	Jones-Butler Road	West
Victoria Avenue	Eagle Avenue	
Francis Drive	Walton Drive	
WS Phillips Parkway	Barron Cut-off	
WS Phillips Parkway	Brewster	
WS Phillips Parkway	Victoria	
Market Street	Cottage Lane	
Southern Plantation Drive	Alexandria Avenue	
Southern Plantation Drive	Decatur Drive	
Graham Road and Alexandria Avenue	Schaffer Road	
Eagle Avenue	Alexandria Avenue	
Thomas Street	Dexter Drive	

Exhibit B

That Chapter 38 “Traffic and Vehicles,” Article VI, “Traffic Schedules,” Section 38-1003 “Traffic Schedule III, Stop Signs” is hereby amended to add the following:

General Parkway	Deacon Drive	Northwest
General Parkway	Deacon Drive	Southeast

October 24, 2024
Item No. 7.9.
Traffic Network Switch Replacement

Sponsor: Sam Rivera

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on purchasing network switches for the Traffic Signal Network from The Personal Computer Store Inc DBA Avinext in the amount of \$445,984.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): CIO recommends approval

Summary: In the summer of 2023, the city traffic network brought online the signals at Wellborn and Deacon. Typically, adding a new signal is not a huge deal, but this additional signal overloaded the entire traffic network. IT and Traffic worked together for several weeks to balance the traffic network. We reconfigured all the network switches to ensure signal equipment was not overloaded. We found several problems with the traffic network:

Some switches were over ten years old.

There were too many switches on the same fiber optic line.

The older switches were broadcasting too many packets of data, which could have impacted the city computer network.

IT recommends replacing all 112 network switches with modern equipment that can handle video and signal communication and segregating the traffic equipment onto a separate network in order to avoid affecting the main city data network. Avinext will be installing the new hardware under supervision from IT, and Traffic and Engineering.

The total cost of the project is \$445,984 of which \$384,384 will be used to purchase the equipment and \$61,600 will be used for installation labor.

Budget & Financial Summary: Funds are available in the Traffic Switch Replacement Project.

Attachments:

1. Avinext Contract 25300067c AD



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300067 PROJECT#: CO2502 BID/RFP/RFQ#: N/A

Project Name / Contract Description: Replacement of Traffic Network Switches

Name of Contractor: The Personal Computer Store (dba Avinext)

CONTRACT TOTAL VALUE: \$ 445,984.00

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)

Funding from project number CO2502

Vendor on DIR contract number DIR-TSO-4160

CRC Approval Date*: N/A (If required)* Council Approval Date*: 10/24/2024 Agenda Item No*: N/A

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

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

SIGNATURES RECOMMENDING APPROVAL

Sam Rivera
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

10/18/2024
DATE

[Signature]
ASST CITY MGR – CFO

10/18/2024
DATE

Baron Longoria
LEGAL DEPARTMENT

10/18/2024
DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A
MAYOR (if applicable)

DATE

N/A
CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on

Scanned into Laserfiche on

Original(s) sent to Fiscal on

CITY OF COLLEGE STATION GENERAL SERVICE CONTRACT

This General Service Contract is by and between the **City of College Station**, a Texas Home-Rule Municipal Corporation (the “City”), and **The Personal Computer Store, Inc. dba Avinext** (the “Contractor”), for the following work: Traffic Network Switch Replacements
as described in the Scope of Services attached as **Exhibit “A”**.

ARTICLE I PAYMENT AND TERM

1.01 Consideration. In consideration for the services performed in the Scope of Services and Contractor’s completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Four Hundred Forty Five Thousand Nine Hundred Eighty Four and no/100 Dollars (\$445,984.00)**.

1.02 Payment Application. Within **seven (7)** calendar days of completion of the services the Contractor will submit its payment application to the City.

1.03 City’s Payment and Approval. The City will pay Contractor as shown in **Exhibit “B”** Payment Schedule, for the services performed no later than **thirty (30)** calendar days from the date of the City's receipt of the payment application and the City’s approval of the services.

☒ **1.04 Time is of the Essence.** The Contractor must complete all the services described in the Scope of Services by the following dates: April 30th, 2025.

OR

☐ **1.04 Term.** The initial term of the Contract is for one (1) year with the option to renew for two (2) additional one (1) year terms for a total of three (3) years. Any renewal must be in writing and executed by the parties.

1.05 Executed Contract. The “Notice to Proceed” will not be given nor shall any work commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to the Contract.

ARTICLE II CHANGE ORDERS

2.01 Changes will not be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid, except upon the prior written order from authorized personnel of the City. The Contractor will not execute change orders on behalf of the City or otherwise alter the financial scope of the services except in the event of a duly authorized change order approved by the City as provided in this Contract.

- (a) **City Manager Approval.** When the original Contract amount plus all change orders is \$100,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work; and
- (b) **City Council Approval.** When the original contract amount plus all change orders is greater than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000. For such contracts, when a change order exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work. The sum of all change orders may not exceed 25% of the original contract amount.
- (c) **Increase in Scope.** Any request by the Contractor for an increase in the Scope of Services and an increase in the amount named in Article II of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.
- (d) **Dispute.** If there is a dispute between the Contractor and the City respecting any service provided or to be provided hereunder by the Contractor, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Contractor agrees to continue providing on a timely basis all services to be provided by the Contractor hereunder, including any service as to which there is a dispute.

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

3.01 Independent Contractor. It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services. The City will not control the manner or the means of the Contractor's performance, but shall be entitled to a work product as in the Scope of Services. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.

3.02 Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

ARTICLE IV INSURANCE

4.01 The Contractor 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 services performed by the Contractor, its officers, agents, volunteers, and employees.

4.02 The Contractor's insurance shall list the City of College Station, its officers, agents, volunteers, and employees as additional insureds. The Required Limits of Insurance are as set forth below. Certificates of insurance evidencing the required insurance policies are attached in **Exhibit C**.

During the term of this Contract, the Contractor's insurance policies shall meet the minimum requirements of this section:

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

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

4.04 General Requirements Applicable to All Policies. The following General requirements applicable to all policies:

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

4.05 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 naming the City as Additional Insured and further providing “primary and non-contributory” language with regard to self-insurance or any insurance the City may have or obtain.
- (c) Limits of liability must be equal to or greater than \$500,000 per occurrence for bodily injury and property damage, with an annual aggregate limit of \$1,000,000.00. 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 include, but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, and Personal & Advertising Liability.

4.06 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 rating under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement naming 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.

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

- (a) Employer’s Liability minimum limits of liability not less than \$500,000 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.

- (c) TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those named in Item 3A and the States of NV, ND, OH, WA, WV, and WY".

ARTICLE V INDEMNIFICATION AND RELEASE

5.01 Indemnification. The Contractor shall indemnify, hold harmless, and defend the City, its Council members, officials, officers, agents, volunteers, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person or for damage to any property arising out of the Contractor's negligence in the work or services done by the Contractor under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City (or any other party indemnified hereunder) in relation to the hiring of Contractor. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

5.02 Release. The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, volunteers, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, or arising out of the Contractor's negligence in the work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, or the Contractor. There shall be no additional release provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

ARTICLE VI GENERAL TERMS

6.01 Performance. Contractor, its employees, associates, or subcontractors shall perform all the services described in the Scope of Services in a professional manner and be fully qualified and competent to perform those services. Contractor shall undertake the work and complete it in a timely manner.

6.02 Termination. Either Party may terminate the Project and this Contract, at any time, for any reason or no reason, upon at least thirty (30) days advance, written notice given to the other Party. In the event of such termination (which shall be effective 30 days after such written notice), the

Contractor shall cease work immediately and the City shall pay Contractor for the work or services performed and expenses incurred before the effective date of termination.

6.03 Venue. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

6.04 Amendment. This Contract may only be amended by written instrument approved and executed by the parties.

6.05 Taxes. The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

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

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

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

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

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

Contractor and City agree and understand that City is a political subdivision of the State of Texas, and as such is subject to certain laws that may conflict with some or all of the documents provided by Contractor as presented and/or as modified, including exhibits hereto. In such event, the applicable law shall apply and the terms of this document shall prevail and not any exhibits provided by Contractor. In the event of a conflict between the terms and conditions of this Agreement with

one or more of the terms and conditions of the exhibits hereto, the provisions of this Agreement and not the conflicting exhibit shall prevail. It is expressly understood and agreed that no other consideration is being provided by City to Contractor other than the monetary amount referenced elsewhere in this Agreement in conjunction with any schedules attached hereto; that there shall be no waivers of immunity, no limitations of remedies, and no modifications of the terms of the Contract other than as allowed in the section setting forth how this Agreement may be modified or otherwise amended or changed.

6.11 Agree to Terms. The parties state that they have read the terms and conditions of this Contract and agree to the terms and conditions contained in this Contract.

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

6.13 Notice. Any official notice under this Contract will be sent to the following addresses:

City of College Station

Attn: Iroshi Price

PO BOX 9960

1101 Texas Ave

College Station, TX 77842

iprice@cstx.gov

The Personal Computer Store, Inc.

dba Avinext

Attn: John Crockett

1400 University Drive E.

College Station, TX 77840

crockett@Avinext.com

6.14 Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and in lieu of each provision that is invalid, illegal or unenforceable, there shall be added a new provision to this Contract as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and yet be valid, legal and enforceable, by means of good faith negotiation by the Parties to this Contract or by reform by a court of competent jurisdiction.

6.15 Duplicate Originals. The parties may execute this Contract in duplicate originals, each of equal dignity.

6.16 Exhibits. All exhibits to this Contract are incorporated and made part of this Contract for all purposes.

6.17 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.

List of Exhibits

- A. Scope of Services
- B. Payment Schedule
- C. Certificates of Insurance

**THE PERSONAL COMPUTER STORE,
INC. dba AVINEXT**

By: John Crockett

Printed Name: John Crockett

Title: Chief operating officer

Date: 10/18/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

Aaron Longoria

City Attorney

Date: 10/18/2024

JM Costa

Assistant City Manager/CFO

Date: 10/18/2024

EXHIBIT A
SCOPE OF SERVICES

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

See Attached...

Scope of Work

City of College Station Traffic Network Switch Replacement

Project Overview

This project outlines the scope of work for replacing existing City of College Station traffic network switches with new Aruba 4100 switches. The project includes the procurement, configuration, installation, and testing of new network switches in existing traffic cabinets around the City of College Station.

Project Deliverables

- New network switches configured and installed according to network configurations provided by the City of College Station.
- Supervision of physical installation of network switches in traffic cabinets by city personnel.
- Verification of network functionality after network switch replacement.
- As-built documentation of the network configuration.

Scope of Work

1. Equipment Procurement

- Avinext will procure new Aruba 4100 network switches based on the agreed-upon specifications provided by the City of College Station. See quote.
- The City of College Station will pay Avinext for equipment on this schedule
 - 100% of equipment charges at delivery to Avinext and inspection and acceptance by the City of College Station.
 - 90% of labor charges once all switches are installed.
 - 10% of labor charges upon delivery of as-built documentation
- The City of College Station will pay Avinext monthly for installations completed, network design performed, and network segmentation assistance performed (as needed).

2. Configuration

- Avinext will configure the new network switches with network configurations provided by the City of College Station. This may include:
 - IP addressing
 - VLAN configuration
 - Security settings
 - Routing protocols
 - Other miscellaneous settings

3. Installation

- Avinext will unbox and power up the new network switches and update to the latest recommended firmware.
- Avinext will configure the new network switches with configurations supplied by the City of College Station.
- Avinext will deliver the new network switches to the pre-determined traffic cabinet site.
- Avinext will install the new network switches in the designated traffic cabinet.
- Avinext will start installations in January 2025, so they do not interfere with TAMU Football season in Fall 2024.

4. Verification and Testing

- Avinext will verify network connectivity and functionality after the new switch replacement. This will include:
 - Ping tests between devices
 - Functionality testing and proper operation of traffic cabinet equipment and devices connected to the traffic cabinet.

5. Documentation

- Avinext will provide as-built documentation of the new network configuration.
 - Network diagram showing the following:
 - Switch location name
 - IP address and name of switches
 - Port number of incoming and outgoing links

6. Project Completion and Acceptance

- Upon successful completion of the installation, configuration, and testing phases, the City of College Station will perform a final acceptance test.

Exclusions

- This SOW does not cover the disposal of old network switches.

Assumptions

- The City of College Station will be allowed 40 hours at \$200 per hour for assistance with network design. Any hours not used will not be billed and any hours over will be billed at \$200 per hour. See Service Quote.
- The City of College Station will be allowed 40 hours at \$200 per hour for assistance with network segmentation between the main city network and the traffic network (as needed). Any hours not used will not be billed and any hours over will be billed at \$200 per hour. See Service Quote

- The City of College Station will provide Avinext with a copy of the network switch configuration three business days prior to pre-determined traffic cabinet install.
- The City of College Station will ensure that a qualified IT staff member is available during the installation process to answer questions and provide support.
- The City of College Station's network environment has sufficient space, power and cooling for the new network switches.

Change Orders

Any changes to the scope of work, as outlined in this document, will require a written change order signed by both the City of College Station and Avinext. The change order will detail the specific changes, the impact on the project timeline and budget, and any adjustments to the payment schedule.



AV SAVVY. NETWORK SMART.

The Personal Computer Store, Inc.
1400 University Drive East - College Station, TX 77840
Phone 979-846-9727 Fax 979-268-1017
www.Avinext.com

Here is the quote you requested.

Quotation

Quote #	Date
208285-D	07/07/24
Sales Rep	
Robert Orzabal 979-846-9727 Ext. 220 orzabal@avinext.com	

For	Phones			
Tim Van Aken City of College Station P.O. Box 9973, 1101 Texas Ave College Station, TX 77842 United States	(979) 764-3406			
	PO #	Terms	Ship Date	Ship Via
		Net 30 days	6/14/2024	

	Part	Description	Qty	Price	Ext. Price
1		Traffic Upgrade - Hardware			
2	JL817A	ARUBA 4100I 12G CL4/6 POE 2SFP+ DIN SW	112	\$2,610.00	\$292,320.00
3	JL819A	ARUBA 4000I POE 240W AC DIN PSU	112	\$733.00	\$82,096.00
4	Q9Y68AAE	ARUBA CENTRAL 25/41/60/61/8-12PF 1YE-STU	112	\$89.00	\$9,968.00
5	COMHPEDIR2	Hewlett Packard Enterprise DIR-TSO-4160 Contract	1	\$0.00	\$0.00

SubTotal	\$384,384.00
Sales Tax	\$0.00
Shipping	\$0.00
Total	\$384,384.00

Please contact me if I can be of further assistance.

QUOTES ARE VALID FOR 30 DAYS FROM THE DATE SHOWN ABOVE. PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - ALL SERVICES TO BE BILLED AT PUBLISHED RATES



AV SAVVY. NETWORK SMART.

The Personal Computer Store, Inc.
1400 University Drive East - College Station, TX 77840
Phone 979-846-9727 Fax 979-268-1017
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Here is the quote you requested.

Quotation

Quote #	Date
208527-A	08/14/24
Sales Rep	
Robert Orzabal 979-846-9727 Ext. 220 orzabal@avinext.com	

For	Phones			
Tim Van Aken City of College Station P.O. Box 9973, 1101 Texas Ave College Station, TX 77842 United States	(979) 764-3406			
	PO #	Terms	Ship Date	Ship Via
		Net 30 days	7/7/2024	

	Part	Description	Qty	Price	Ext. Price
1		Traffic Upgrade - Installation			
2	SER35210	Avinext Network Engineer	1	\$19,600.00	\$19,600.00
3	SER35120	Avinext Field Technician	1	\$42,000.00	\$42,000.00
4		Unbox switch and verify operation Update firmware on switch Install config on switch, provided by City of College Station Assist City of College Staton employees with switch in traffic cabinet installation Verify switch in network operaton after install			
5	COMTIPS7	TIPS Contract 210101 Technology Solutions, Products and Services	1	\$0.00	\$0.00

SubTotal	\$61,600.00
Sales Tax	\$0.00
Shipping	\$0.00
Total	\$61,600.00

Please contact me if I can be of further assistance.

QUOTES ARE VALID FOR 30 DAYS FROM THE DATE SHOWN ABOVE. PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - ALL SERVICES TO BE BILLED AT PUBLISHED RATES

EXHIBIT B
PAYMENT SCHEDULE

- ☐ The Contractor must submit *monthly* invoices to the City, accompanied by an explanation of charges, fees, services, and expenses. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

-OR-

- ☒ Payment is a fixed fee in the amount named in Article I of this Contract. This amount shall be payable by the City pursuant to the schedule named below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase:

See Attached...

EXHIBIT C
CERTIFICATES OF INSURANCE

Contract No. 25300067
General Service Contract
The Personal Computer Store, Inc. dba Avinext
Form 04-12-2023



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/15/2024

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

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

PRODUCER ANCO Insurance PO Box 3889 Bryan TX 77805	CONTACT NAME: Dottie Vandagriff PHONE (A/C, No, Ext): 979-774-6277 E-MAIL ADDRESS: vandagriff@anco.com FAX (A/C, No): 979-774-5372																					
INSURED The Personal Computer Store, Inc. dba Avinext 1400 University Drive East College Station TX 77840-2335	PERSCOM-02 <table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A :</td><td>The Travelers Indemnity Compan</td><td>25658</td></tr><tr><td>INSURER B :</td><td>Travelers Property Casualty Co</td><td>36161</td></tr><tr><td>INSURER C :</td><td>The Travelers Indemnity Compan</td><td>25666</td></tr><tr><td>INSURER D :</td><td></td><td></td></tr><tr><td>INSURER E :</td><td></td><td></td></tr><tr><td>INSURER F :</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	The Travelers Indemnity Compan	25658	INSURER B :	Travelers Property Casualty Co	36161	INSURER C :	The Travelers Indemnity Compan	25666	INSURER D :			INSURER E :			INSURER F :		
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INSURER D :																						
INSURER E :																						
INSURER F :																						

COVERAGES**CERTIFICATE NUMBER:** 927778382**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:			ZLP41M704772415	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 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			BA1L8886202415G	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) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			CUP3L8669002415	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB0J58158A2415G	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
B	Professional Liability			ZPL21N848992415	1/1/2024	1/1/2025	Cyber Liability \$ 1,000,000

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

Project: Traffic Network Switch Replacement
General Liability Coverage Form CGT1000219 Xtend Endorsement for Technology Form CGD4170219 Business Auto Extension Endorsement Form CAT3530215 Texas Waiver of Our Right to Recover from Others Endorsement Form WC420304(B)-001 Designated Person or Organization-Notice of Cancellation Provided by Us 30 Day Form ILT4050519 Earlier Notice of Cancellation/Nonrenewal Provided by Us-Texas Form CAF0850215 Earlier Notice of Cancellation or Nonrenewal by Us Endorsement Form WC9906Q1(00)

CERTIFICATE HOLDER**CANCELLATION**

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

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

COMMERCIAL GENERAL 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 policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured. Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" 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" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – 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.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "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 II – 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.

e. 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".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" 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:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "bodily injury" or "property damage", provided that:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) 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; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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 Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and 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" or "property damage" 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 sub-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 produced by or originating from 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 your policy 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) If such "pollutants" 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 sub-contractor. However, this subparagraph 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

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(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 or were at any time performing operations 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 any governmental authority or any other person or organization 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".

g. Aircraft, Auto Or Watercraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

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

(a) 50 feet long or less; and

(b) Not being used to carry any person or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

(5) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify as "mobile equipment" under the definition of "mobile equipment" if such land vehicle were not subject to a compulsory or financial responsibility law, or other motor vehicle insurance law, where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or

(6) An aircraft that is:

(a) Chartered with a pilot to any insured;

(b) Not owned by any insured; and

(c) Not being used to carry any person or property for a charge.

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 for, or while being prepared for, any pre-arranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage" arising 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. 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 "premises damage". A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III - 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), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

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

k. Damage To Your Product

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

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. 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.

n. 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";

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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.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

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

However, this exclusion does not apply to liability for damages because of "bodily injury".

q. Unsolicited Communication

"Bodily injury" or "property damage" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

r. Access Or Disclosure Of Confidential Or Personal Information

"Bodily injury" or "property damage" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

s. Asbestos

(1) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the "bodily injury" or "property damage" is caused or contributed to by the hazardous properties of asbestos.

(2) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any "bodily injury" or "property damage" described in Paragraph (1) above.

(3) 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, asbestos, asbestos fibers or products containing asbestos; or

(b) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

t. Employment-Related Practices

"Bodily 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 practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "bodily injury".

Exclusions **c.** through **n.** do not apply to "premises damage". A separate limit of insurance applies to "premises damage" as described in Paragraph **6.** of Section **III** – Limits Of Insurance.

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any 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 III - Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "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.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

This exclusion does not apply to "personal injury" caused by malicious prosecution.

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, including

publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Or Used Prior To Policy Period

(1) "Personal and advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or

(2) "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Because of "personal injury" assumed by you in a contract or agreement that is an "insured contract", provided that the "personal injury" is caused by an offense committed subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed by you in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "personal injury", provided that:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed by you in the same "insured contract"; and

(b) 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.

f. Breach Of Contract

"Advertising injury" arising out of a breach of contract.

g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Intellectual Property

"Personal and advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal and advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation:

- (1) Copyright;
- (2) Patent;
- (3) Trade dress;
- (4) Trade name;
- (5) Trademark;
- (6) Trade secret; or
- (7) Other intellectual property rights or laws.

This exclusion does not apply to:

- (1) "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or
- (2) Any other "personal and advertising injury" alleged in any claim or "suit" that also alleges any such infringement or

violation of another's copyright, "title" or "slogan" in your "advertisement".

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" caused by an offense committed by an insured whose business is:

- (1) Advertising, "broadcasting" or publishing;
- (2) Designing or determining content of websites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.(1), (2) and (3)** of the definition of "personal injury".

For the purposes of this exclusion:

- (1) Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- (2) The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts or owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) 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
- (2) Claim or suit by or on behalf of any governmental authority or any other person or organization 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".

o. War

"Personal and advertising injury" arising 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.

p. Unsolicited Communication

"Personal and advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

q. Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

r. Asbestos

- (1) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the

"personal and advertising injury" is caused or contributed to by the hazardous properties of asbestos.

- (2) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any "personal and advertising injury" described in Paragraph (1) above.

- (3) 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, asbestos, asbestos fibers or products containing asbestos; or

- (b) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

s. Employment-Related Practices

"Personal 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 practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment applied to or directed at that person, regardless of whether such practice,

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policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "personal injury".

COVERAGE C - MEDICAL PAYMENTS

1. 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:
- (a) The accident takes place in the "coverage territory" and during the policy period;
 - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (c) 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.

2. Exclusions

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 within the "products-completed operations hazard".

g. **Coverage A Exclusions**

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
- a. All expenses we incur.
 - b. Up to \$2,500 for the 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.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. 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.
- g. 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.

These payments will not reduce the limits of insurance.

- 2. 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:
 - a. 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";
 - b. This insurance applies to such liability assumed by the insured;
 - c. 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";
 - d. The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. 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
 - f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) 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 **2.b.(2)** of Section **I** - Coverages - Coverage **A** - Bodily Injury And Property Damage Liability or Paragraph **2.e.** of Section **I** - Coverages - Coverage **B** - Personal And Advertising Injury Liability, such payments will not be deemed to be damages for "bodily injury", "property damage" or "personal injury", 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:

- a. We have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - 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 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 stock-holders 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. 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 injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer

workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(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. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.

- c. 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. 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 Coverage Part.
- 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) 50 feet long or less; and
 - (2) Not being used to carry any person or property for a charge.
- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, 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 until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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. An organization, other than a partnership, joint venture or limited liability company; or
 - b. A trust;
- as indicated in its name or the documents that govern its structure.
- 4. Any person or organization that is a premises owner, manager or lessor 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", "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 that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor 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 premises owner, manager or lessor does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.
- 5. Any person or organization that is an equipment lessor 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", "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. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

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- a. The limits of insurance provided to such equipment less or 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 equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense that is committed, after the equipment lease expires.

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. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Section II – Who Is An Insured.

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 or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and "advertising injury" sustained by any one person or organization.

5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C;

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will be:
 - a. The amount shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part; or
 - b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part.
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.

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.

SECTION IV – COMMERCIAL GENERAL LIABILITY 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.** 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. 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.** If a claim is made or "suit" is brought against any insured, you must:

- (1)** Immediately record the specifics of the claim or "suit" and the date received; and
- (2)** Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c.** You and any other involved insured must:

- (1)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2)** Authorize us to obtain records and other information;
- (3)** Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d.** No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

- e.** The following provisions apply to Paragraph **a.** above, but only for purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph **1.** or **2.** of Section **II** – Who Is An Insured:

- (1)** Notice to us of such "occurrence" or offense must be given as soon as

practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, or limited liability company), any of your trustees who is an individual (if you are a trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

- (2)** If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

- (a)** Any individual who is:

- (i)** A partner or member of any partnership or joint venture;
- (ii)** A manager of any limited liability company;

- (iii)** An executive officer or director of any other organization; or

- (iv)** A trustee of any trust;

that is your partner, joint venture member, manager or trustee; or

- (b)** Any employee authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

- (3)** Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraph **e.(1)** or **(2)** above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

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However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

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 Coverage Part 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. Other Insurance

If valid and collectible other insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as described in Paragraphs **a.** and **b.** below.

As used anywhere in this Coverage Part, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (i)** Another insurance company;
- (ii)** Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit provision of Paragraph **5.** of Section **III** - Limits Of Insurance or the Non cumulation of Personal and Advertising Injury Limit provision of Paragraph **4.** of Section **III** - Limits of Insurance applies because the Amendment - Non Cumulation Of Each Occurrence Limit Of Liability And Non Cumulation Of Personal And Advertising Injury Limit endorsement is included in this policy;

(iii) Any risk retention group; or

(iv) Any self-insurance method or program, in which case the insured will be deemed to be the provider of other insurance.

Other insurance does not include umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

As used anywhere in this Coverage Part, other insurer means a provider of other insurance. As used in Paragraph c. below, insurer means a provider of insurance.

a. Primary Insurance

This insurance is primary except when Paragraph 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 Paragraph **c.** below, except when Paragraph **d.** below applies.

b. Excess Insurance

(1) This insurance is excess over:

- (a)** Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i)** That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii)** That is insurance for "premises damage";
 - (iii)** If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to any exclusion in this Coverage Part that applies to aircraft, "autos" or watercraft;
 - (iv)** That is insurance available to a premises owner, manager or lessor that qualifies as an insured under Paragraph **4.** of Section **II** - Who Is An Insured, except when Paragraph **d.** below applies; or

- (v) That is insurance available to an equipment lessor that qualifies as an insured under Paragraph 5. of Section II – Who Is An Insured, except when Paragraph d. below applies.
- (b) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.
- (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.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the 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.

d. Primary And Non-Contributory Insurance If Required By Written Contract

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

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- b.** Those statements are based upon representations you made to us; and
- c.** We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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 claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment 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.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - 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 purposes of this definition:
 - a.** Notices that are published include material placed on the Internet or on similar electronic means of communication; and

- b.** Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Advertising injury":

- a.** Means injury caused by one or more of the following offenses:
 - (1)** Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (2)** Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a)** Appropriates a person's name, voice, photograph or likeness; or
 - (b)** Unreasonably places a person in a false light; or
 - (3)** Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
- b.** Includes "bodily injury" caused by one or more of the offenses described in Paragraph **a.** above.

3. "Auto" means:

- a.** A land motor vehicle, trailer or semitrailer 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 law, where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

4. "Bodily injury" means:

- a.** Physical harm, including sickness or disease, sustained by a person; or

- b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.
- 5. "Broadcasting" means transmitting any audio or visual material for any purpose:
 - a. By radio or television; or
 - b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1) Radio or television programming being transmitted;
 - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3) Advertising transmitted with any of such programming.
- 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 Paragraph **a.** above; or
 - 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 Paragraph **a.** above;
 - (2) The activities of a person whose home is in the territory described in Paragraph **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 a "suit" on the merits in the territory described in Paragraph **a.** above, or in a settlement we agree to.
- 7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 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, bylaws or any other similar governing document.
- 10. "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.
- 11. "Hostile fire" means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- 12. "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 the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.
- 13. "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 "premises damage" is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;

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- 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", "property damage" or "personal injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1)** That indemnifies 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, roadbeds, tunnel, underpass or crossing;
- (2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3)** 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 Paragraph **(2)** above and supervisory, inspection, architectural or engineering activities.

- 14.** "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".

- 15.** "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".

- 16.** "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, maintained primarily to provide mobility to 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 Paragraph **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, geo-physical exploration, lighting and well servicing equipment; or
 - (2)** Cherry pickers and similar devices used to raise or lower workers;
- f.** Vehicles not described in Paragraph **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 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, geo-physical 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 law, where it is licensed or principally garaged. Such land vehicles are considered "autos".

17. "Occurrence" means:

- a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions; or
- b. An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

18. "Personal and advertising injury" means "personal injury" or "advertising injury".

19. "Personal injury":

- a. Means injury, other than "advertising injury", caused by one or more of the following offenses:
 - (1) False arrest, detention or imprisonment;
 - (2) Malicious prosecution;
 - (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's

or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or

(5) Oral or written publication, including publication by electronic means, of material that:

(a) Appropriates a person's name, voice, photograph or likeness; or

(b) Unreasonably places a person in a false light.

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.

20. "Pollutants" mean 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.

21. "Premises damage" means:

- a. With respect to the first paragraph of the exceptions in Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability, "property damage" to any premises while rented to you for a period of seven or fewer consecutive days, including the contents of such premises; or
- b. With respect to the exception to Exclusions c. through n. in the last paragraph of Paragraph 2. of Section I - Coverage A - Bodily Injury And Property Damage Liability, "property damage" to any premises while rented to you for a period of more than seven consecutive days, or while temporarily occupied by you with permission of the owner, caused by:
 - (1) Fire;
 - (2) Explosion;
 - (3) Lightning;
 - (4) Smoke resulting from fire, explosion or lightning; or
 - (5) Water.

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But "premises damage" under this Paragraph b. does not include "property damage" to any premises caused by:

- (1) Rupture, bursting, or operation of pressure relief devices;
- (2) Rupture or bursting due to expansion or swelling of the contents of any building or structure caused by or resulting from water; or
- (3) Explosion of steam boilers, steam pipes, steam engines or steam turbines.

22. "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 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.

- 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;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

23. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will 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 will be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

24. "Slogan":

- a. Means a phrase that others use for the purpose of attracting attention in their advertising.
- b. Does not include a phrase used as, or in, the name of:
 - (1) Any person or organization, other than you; or
 - (2) Any business, or any of the premises, goods, products, services or work, of any person or organization, other than you.

25. "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.

26. "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.

27. "Title" means a name of a literary or artistic work.

28. "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.

29. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

30. "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.

31. "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.

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.

- 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
- 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.

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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 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

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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 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

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 the 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. Limitations and exclusions may apply to these coverages. 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. BROAD FORM NAMED INSURED B. BLANKET ADDITIONAL INSURED C. EMPLOYEE HIRED AUTO D. EMPLOYEES AS INSURED E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS G. WAIVER OF DEDUCTIBLE – GLASS | <ul style="list-style-type: none"> H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT J. PERSONAL PROPERTY K. AIRBAGS L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS M. BLANKET WAIVER OF SUBROGATION N. UNINTENTIONAL ERRORS OR OMISSIONS |
|---|---|

PROVISIONS

A. BROAD FORM NAMED INSURED

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

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c. in A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

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

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. The following replaces Paragraph **b. in B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

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

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.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for 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.

2. The following replaces Paragraph **A.2.a.(4)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(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.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph **B.7., Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph **A.4.b.**, **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph **B.3.**, **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
 - b. The airbags are not covered under any warranty; and
 - c. The airbags were not intentionally inflated.
- We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

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 signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

POLICY NUMBER: UB-0J58158A-24-I5-G

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.

1. ☐ Specific Waiver

☒ 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: \$ **SEE SCHEDULE**

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 _____

DATE OF ISSUE: 12-26-23

ST ASSIGN:

Page 1 of 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION - NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THE POLICY

SCHEDULE

Cancellation:

Number of Days Notice: 30

Person or organization:

Any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured receives notice from us of the cancellation of this policy; and

2. We receive such written request at least 14 days before the beginning of the applicable number of days shown in this endorsement.

Address:

The address for that person or organization included in such written request from you to us.

PROVISIONS

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 to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARLIER NOTICE OF CANCELLATION/NONRENEWAL PROVIDED BY US – TEXAS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

CANCELLATION:

Number of Days Notice: 30

WHEN WE DO NOT RENEW (Nonrenewal):

Number of Days Notice: 30

PROVISIONS:

- A.** For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state cancellation endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.
- B.** For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of When We Do Not Renew (Nonrenewal), as provided in the CONDITIONS Section of this insurance, or as amended by any applicable state When We Do Not Renew (Nonrenewal) endorsement applicable to this insurance, is increased to the number of days shown in the SCHEDULE above.

POLICY NUMBER: UB-0J58158A-24-I5-G

EARLIER NOTICE OF CANCELLATION OR NONRENEWAL BY US ENDORSEMENT

The following modifies the **Cancellation** condition in **PART SIX – CONDITIONS** or in any endorsement forming a part of this policy that amends such condition:

If we cancel or do not renew this policy for any reason other than nonpayment of premium, we will increase the number of days advance notice for cancellation or nonrenewal from the number of days required by applicable law to the number of days shown in the Schedule.

SCHEDULE

NUMBER OF DAYS 30

All other terms and conditions of this policy remain unchanged.

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 _____

DATE OF ISSUE: 12-26-23

ST ASSIGN:

Page 1 of 1

October 24, 2024
Item No. 7.10.
Fire Mobile Data Terminal Purchase

Sponsor: Sam Rivera

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on the purchase of new Panasonic Toughbook Rugged Mobile Data Terminals (MDTs), Cradlepoint Routers, and Airgain Antennas from Baycom Inc. for the Fire Department in the amount of \$177,664.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): CIO recommends approval

Summary: The College Station Fire Department uses Panasonic Toughbook Rugged Mobile Data Terminals (MDTs), Cradlepoint Routers, and Antennas in all Fire vehicles to access various maps and view dispatch information. This purchase will replace twenty-four MDTs and nineteen Docking Stations that attaches the MDT to the vehicle for vehicles, twenty-two Cradlepoints and Antennas, two mounting brackets for the new Docking Stations to attach to, and add a warranty for the fifth year of expected use. The current equipment has been in service for over five years, has reached the end of life, and will become unsupported by the manufacturer later this year. In the future, this equipment will be replaced every four years.

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

Attachments:

1. Fire MDT Upgrades Quote (1)



A Lifeline in the
Moments that Matter

Corporate Office
2040 Radisson St.
Green Bay, WI 54302

IT Replacements
10019100-6200

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

City of College Station
Larry Vierus
1101 Texas Ave.
College Station, TX 77840
9/18/2024
(979) 764-6319

Quote No. TS20240918BRrev1 - CP R1900 5G

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

QTY	MODEL AND DESCRIPTION	UNIT PRICE	TOTAL PRICE
State DIR Contract CPO 5225			
24	Panasonic Toughbook FZ-40 Rugged Laptop Intel Core Ultra 5 135H < 4.6GHz Pro Processor 14" Full FHD Gloved Touch Display w/ Digitizer 16GB Memory 512GB SSD Storage Infrared Hello Webcam Intel Dual Band WiFi 7 and Bluetooth 1GB Ethernet Port Windows 11 Pro Emissive Backlit Keyboard 3-Yr Standard Parts & Labor Warranty	\$3,678.00	\$88,272.00
19	Havis FZ40 Docking Stations Screen Support Brace No RF Pass Trough at this time DC Power Supply	\$885.00	\$16,815.00
1	Havis Motion Slide Rail Mount	\$512.00	\$512.00
1	Havis Dodge RAM Pedestal Mount Kit - 2009 HD Base Plate w/Angle Bracket 8.5" Adjusting Vertical Mount Pole HD Support Brack Slide Out Locking Motion Arm	\$606.00	\$606.00
22	Cradlepoint R1900 5G Mobile Router 5-Yr NCM License	\$2,556.00	\$56,232.00
22	Airgain Recon13 8n1 5G Antenna 19' Cables for Fire Apparatus's	\$427.00	\$9,394.00

Continued on Next Page

QTY	MODEL AND DESCRIPTION	UNIT PRICE	TOTAL PRICE
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State DIR Contract CPO 5225

Warranty and Other Options:

19	4th-Yr Extended Standard Warranty: \$198.00		
	5th-Yr Extended Standard Warranty: \$321.00	\$307.00	\$5,833.00
	3-Yr No Fault Warranty Upgrade: \$319.00		
	4-Yr No Fault Warrant Upgrade: \$469.00		
	5-Yr No Fault Warranty Upgrade: \$719.00		

	EQUIPMENT COST:	\$177,664.00
Payment Terms: Net 30 Days	SHIPPING:	Included
Quotation Good for 90 Days	TAX:	Exempt
<i>We impose a surcharge of 2% on credit card purchases over \$1,000.00 which is not greater than our cost of acceptance.</i>	TOTAL:	\$177,664.00

Your signature is an agreement to purchase and an acceptance of DIRs & Conditions

Approved By: _____ / _____
 AUTHORIZED CUSTOMER SIGNATURE DATE

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

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

www.baycominc.com

info@baycominc.com

(800) 726-5426



October 24, 2024
Item No. 7.11.
BVWACS FY2025 Budget

Sponsor: Sam Rivera

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action to the BVWACS Annual Operating & Maintenance and Capital Budget.

Relationship to Strategic Goals:

- Good Governance
- Financially Sustainable City
- Core Services and Infrastructure

Recommendation(s): CIO recommends approval of the budget for \$200,605.88 for the City of College Station portion of the BVWACS FY2025 Budget

Summary: The Brazos Valley Wide Area Communications System (BVWACS) is an interoperable radio system that allows public safety (and supporting) agencies to communicate throughout the Brazos Valley. The City of College Station is the biggest BVWACS partner with 1039 radios in use. The BVWACS budget allocation is based on the number of radios an agency uses.

The BVWACS budget of \$904,174.54 was proposed and approved by the BVWACS Governing Board. The City of College Station portion of this cost is 22.19% of the BVWACS system. This amount is an increase of \$18,746.98 from FY2024. This is due to increase in Maintenance fees (Motorola/Harris County) and the addition of 12 radios.

Budget & Financial Summary: Funds are budgeted and available through IT Communications Professional Services account

Attachments:

1. BVWACS FY25
2. BVWACS FY2025 Budget 2

BVWACS FY2025 PROPOSED Budget				
Description	FY2024	FY2025	FY24/25 Change	
Capital Fund Contributions				
Expenses				
Salary - System Manager	\$ 109,781.52	\$ 113,623.87		\$0.00
Salary - BVCOG Misc	\$ 7,819.85	\$ 8,289.04		\$3,842.35
				\$469.19
Salary Total	\$ 117,601.37	\$ 121,912.91		\$4,311.54
Benefits Total	\$ 33,885.00	\$ 36,256.95		\$2,371.95
General, Administrative, & Maintenance Expense				
Consulting Fees	\$ -	\$ -		\$0.00
Other Admin	\$ 4,500.00	\$ 4,500.00		\$ -
Professional Fees	\$ 2,791.89	\$ 4,000.00		\$1,208.11
Audit Expense	\$ 8,500.00	\$ 12,000.00		\$3,500.00
Travel Expense	\$ 245,055.55	\$ 298,124.87		\$53,069.32
Maintenance, Motorola	\$ 77,395.64	\$ 84,326.44		\$6,930.80
Maintenance, Harris County	\$ 45,000.00	\$ 55,000.00		\$10,000.00
Maintenance, General	\$ -	\$ 2,000.00		\$2,000.00
Supply Expense	\$ 400.00	\$ 400.00		\$0.00
Copier Expense	\$ 70,000.00	\$ 70,000.00		\$0.00
Maintenance, Data Connectivity	\$ 3,500.00	\$ 4,000.00		\$500.00
Telephone Expense	\$ 75.00	\$ 200.00		\$125.00
Postage Expense	\$ 15,000.00	\$ 19,000.00		\$4,000.00
Insurance, General	\$ 4,500.00	\$ 4,500.00		\$0.00
Training and Meeting Expense	\$ 476,718.08	\$ 558,051.31		\$81,333.23
Other Admin				
General, Admin, & Maintenance Expense Total	\$ 476,718.08	\$ 558,051.31		\$81,333.23
Indirect				
Indirect Cost Expense	\$ 29,554.72	\$ 31,328.00		\$1,773.28
ISF				
Accounting Service ISF	\$ 10,756.00	\$ 11,401.36		\$645.36
System Administration ISF	\$ 12,108.57	\$ 12,835.08		\$726.51
Copy/Fax Service ISF	\$ 553.91	\$ 587.14		\$33.23
Human Resource Management ISF	\$ 9,145.96	\$ 9,694.72		\$548.76
Office Space ISF	\$ 9,017.02	\$ 9,558.04		\$541.02
Receptionist/Internet/Local Phone ISF	\$ 8,652.80	\$ 9,171.97		\$519.17
ISF Total	\$ 50,234.26	\$ 53,248.32		\$3,014.06
Annual Operating & Maintenance Total	\$ 707,993.43	\$ 800,797.49		\$92,804.06
Annual Operating, Maintenance, & Capital Total	\$ 811,370.48	\$ 904,174.54		\$92,804.06

FY2024									
	Count	%	O&M	Capital	Total				
College Station	1027	22.41%	\$ 158,688.18	\$ 23,170.72	\$ 181,858.90				
Bryan	560	12.22%	\$ 86,529.10	\$ 12,634.47	\$ 99,163.57				
Brazos	603	13.16%	\$ 93,173.30	\$ 13,604.62	\$ 106,777.91				
TAMU	336	7.33%	\$ 51,917.46	\$ 7,580.68	\$ 59,498.14				
Washington	814	17.77%	\$ 125,776.22	\$ 18,365.11	\$ 144,141.33				
Brenham	288	6.29%	\$ 44,500.68	\$ 6,497.73	\$ 50,998.41				
Grimes	394	8.60%	\$ 60,879.40	\$ 8,889.25	\$ 69,768.65				
Madison	257	5.61%	\$ 39,710.67	\$ 5,798.32	\$ 45,508.99				
Burleson	303	6.61%	\$ 46,818.42	\$ 6,836.15	\$ 53,654.57				
Total	4582	100.00%	\$ 707,993.43	\$ 103,377.05	\$ 811,370.48				
FY2025 Proposed									
	Count	%	O&M	Capital	Total	Change			
College Station	1039	22.19%	\$ 177,670.00	\$ 22,935.89	\$ 200,605.88	\$ 18,746.98			
Bryan	580	12.39%	\$ 99,180.56	\$ 12,803.48	\$ 111,984.03	\$ 12,820.47			
Brazos	608	12.98%	\$ 103,968.58	\$ 13,421.58	\$ 117,390.16	\$ 10,612.25			
TAMU	335	7.15%	\$ 57,285.32	\$ 7,395.11	\$ 64,680.43	\$ 5,182.29			
Washington	870	18.58%	\$ 148,770.83	\$ 19,205.22	\$ 167,976.05	\$ 23,834.72			
Brenham	288	6.15%	\$ 49,248.28	\$ 6,357.59	\$ 55,605.87	\$ 4,607.46			
Grimes	434	9.27%	\$ 74,214.42	\$ 9,580.53	\$ 83,794.95	\$ 14,026.30			
Madison	273	5.83%	\$ 46,683.26	\$ 6,026.46	\$ 52,709.73	\$ 7,200.73			
Burleson	256	5.47%	\$ 43,776.25	\$ 5,651.19	\$ 49,427.44	\$ (4,227.14)			
Total	4683	100.00%	\$ 800,797.49	\$ 103,377.05	\$ 904,174.54	\$ 92,804.06			
Annual (Includes Capital) Per Radio									
Per Radio/Year							\$ 177.08		
Per Radio/Month							\$ 14.76		

FY25 PROPOSED																						
Capital Equipment Replacement Reserve (CERRF)																						
Current Balance			\$	2,085,793.10																		
Contributions <table><tr><td>FY20</td><td>\$</td><td>206,754.09</td></tr><tr><td>FY21</td><td>\$</td><td>103,377.05</td></tr><tr><td>FY22</td><td>\$</td><td>103,377.05</td></tr><tr><td>FY23</td><td>\$</td><td>103,377.05</td></tr><tr><td>FY24</td><td>\$</td><td>103,377.05</td></tr><tr><td>FY25</td><td>\$</td><td>103,377.05</td></tr></table>					FY20	\$	206,754.09	FY21	\$	103,377.05	FY22	\$	103,377.05	FY23	\$	103,377.05	FY24	\$	103,377.05	FY25	\$	103,377.05
					FY20	\$	206,754.09															
					FY21	\$	103,377.05															
					FY22	\$	103,377.05															
					FY23	\$	103,377.05															
					FY24	\$	103,377.05															
					FY25	\$	103,377.05															
FY2025 Projected Balance After 10/1/2024			\$	2,189,170.15																		
Proposed Allocations																						
College St	1039	22.19%	\$	22,935.89																		
Bryan	580	12.39%	\$	12,803.48																		
Brazos Co	608	12.98%	\$	13,421.58																		
TAMU	335	7.15%	\$	7,395.11																		
Washington Co	870	18.58%	\$	19,205.22																		
Brenham	288	6.15%	\$	6,357.59																		
Grimes Co	434	9.27%	\$	9,580.53																		
Madison Co	273	5.83%	\$	6,026.46																		
Burleson Co	256	5.47%	\$	5,651.19																		
Total	4,683	100.00%	\$	103,377.05																		

FY2025 APPROVED									
	Count	%	O&M	Capital	Total	Change			
College Station	1039	22.19%	\$ 177,670.00	\$ 22,935.89	\$ 200,605.88	\$ 18,746.98			
Bryan	580	12.39%	\$ 99,180.56	\$ 12,803.48	\$ 111,984.03	\$ 12,820.47	Annual (Includes Capital) Per Radio		
Brazos	608	12.98%	\$ 103,968.58	\$ 13,421.58	\$ 117,390.16	\$ 10,612.25	Per Radio/Year	\$	193.08
TAMU	335	7.15%	\$ 57,285.32	\$ 7,395.11	\$ 64,680.43	\$ 5,182.29	Per Radio/Month	\$	16.09
Washington	870	18.58%	\$ 148,770.83	\$ 19,205.22	\$ 167,976.05	\$ 23,834.72			
Brenham	288	6.15%	\$ 49,248.28	\$ 6,357.59	\$ 55,605.87	\$ 4,607.46			
Grimes	434	9.27%	\$ 74,214.42	\$ 9,580.53	\$ 83,794.95	\$ 14,026.30			
Madison	273	5.83%	\$ 46,683.26	\$ 6,026.46	\$ 52,709.73	\$ 7,200.73			
Burleson	256	5.47%	\$ 43,776.25	\$ 5,651.19	\$ 49,427.44	\$ (4,227.14)			
Total	4683	100.00%	\$ 800,797.49	\$ 103,377.05	\$ 904,174.54	\$ 92,804.06			

October 24, 2024
Item No. 7.12.
Contract for Convention Center Feasibility Study

Sponsor: Jeremiah Cook, Tourism Manager

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on a contract with Hunden Strategic Partners Inc. for a Convention Center Feasibility Study in the amount of \$80,000.

Relationship to Strategic Goals:

- Financial Sustainability
- Diverse & Growing Economy

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

Summary: A Request for Proposals was released in August 2024, for a feasibility study for a convention center in College Station. Six (6) responses were received. Based on the evaluation criteria, Hunden Strategic Partners Inc. provided the most comprehensive proposal to address a multi-faceted feasibility study for the City of College Station.

Budget & Financial Summary: The total cost of the project is \$80,000. The contract is broken into multiple tasks, but ultimately two phases. Phase I will determine the market demand based on the facility and program recommendations. Phase II will include site evaluation, feasibility, financing, economic impact, and return on investment. At the conclusion of Phase I, the City will have the option of either continuing onto Phase II, or ceasing any further work efforts and concluding the contract at the completion of Phase I. The cost for Phase I is \$40,050, plus applicable travel expenses. The cost for Phase II is \$32,875, plus applicable travel expenses.

Phase I - \$40,050

Phase II - \$32,875

Maximum Reimbursable Travel Expenses - \$7,075

Total - \$80,000

Attachments:

1. Contract 24300054 - Hunden Partners

CONSULTANT CONTRACT

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

ARTICLE I SCOPE OF SERVICES

1.01 This Contract is for Convention Center Feasibility Analysis (the “Project”). The scope and details of the work to be provided to the City by Consultant are set forth in **Exhibit “A”** to this Contract and are incorporated as though fully set forth herein by reference. Consultant agrees to perform or cause the performance of all the work described in **Exhibit “A.”**

1.02 Consultant agrees to perform the work described in **Exhibit “A”** hereto and the City agrees to pay Consultant a fee based on the rates set forth in **Exhibit “B”** to this Contract for the services performed by Consultant. The invoices shall be submitted to the City following the 15th day and the last day of each month. The payment terms are net payable within thirty (30) calendar days of the City’s receipt of the invoice. Upon termination of this Contract, payments under this paragraph shall cease, provided, however, that Consultant shall be entitled to payments for work performed in accordance with this Contract before and including the date of termination and for which Consultant has not yet been paid.

ARTICLE II PAYMENT

2.01 The total amount of payment, including reimbursements, by the City to Consultant for all services to be performed under this Contract may not, under any circumstances, exceed **EIGHTY THOUSAND AND 00/ 100 DOLLARS (\$80,000.00)**.

ARTICLE III CHANGE ORDERS

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

- (a) When the original Contract amount plus all change orders is \$100,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work; and
- (b) When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or his designee may approve the written change order

provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work. Thereafter, any additional change orders exceeding \$50,000 or any additional change orders totaling 25 percent following such council approval, must be approved by City Council; and

- (c) **Any request by the Consultant for an increase in the Scope of 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.

ARTICLE IV TIME OF PERFORMANCE

4.01 Except as provided in Article X herein below, the Consultant shall complete all of the work described in Exhibit "A" by the dates set forth below:

Phase I Completion is eight (8) weeks after contract execution.

Phase II Draft Report Completion is four (4) weeks after receiving written authorization by City to proceed with Phase II.

Phase II Final Report Completion is two (2) weeks after receiving final written comments on the Draft Report from the City.

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

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

ARTICLE V INDEPENDENT CONSULTANT

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

ARTICLE VI AUTHORIZATION

6.01 The City shall direct Consultant to commence work on the Project by sending Consultant a "letter of authorization" to begin work on the Project.

6.02 Upon receipt of the letter of authorization to begin work on the implementation of the Project, Consultant shall meet with the City for the purpose of determining the nature of the Project, including but not limited to the following: meeting with the City's staff to coordinate Project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions and methodologies; devising the format for any interim reports and the final report to the City, if needed.

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

ARTICLE VII WARRANTY

7.01 As an experienced and qualified professional, Consultant warrants that the information provided by Consultant reflects high professional and industry standards, procedures, and performances. Approval or acceptance by the City of any of Consultant's work product under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Consultant, its employees, agents, or associates for the exercise of skill and diligence necessary to fulfill Consultant's responsibilities under this Contract. Nor shall the City's approval or acceptance be deemed to be the assumption of responsibility by the City for any defect or error in the work products prepared by Consultant, its employees, associates, agents, or subconsultants.

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

7.03 Consultant shall be responsible for using due diligence to correct errors, deficiencies or unacceptable work product. Consultant shall, at no cost to the City, remedy any errors, deficiencies

or any work product found unacceptable, in the City's sole discretion, as soon as possible, but no later than fifteen (15) calendar days after receiving notice of said errors, deficiencies, or unacceptable work product.

7.04 Any and all of Consultant's work product ("Work Product") hereunder shall be the exclusive property of the City. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all records, notes, data, memorandum, 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.

7.05 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.

7.06 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 VII of the Contract.

ARTICLE VIII INDEMNIFICATION & RELEASE

8.01 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 breach of contract including failure to pay a subconsultant, or supplier occurring in the course of performance of professional services pursuant to this Contract by Consultant, its employees, subconsultants, 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 named in section 8.01 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) It is mutually understood and agreed that the indemnification provided for in this section shall indefinitely survive any expiration, completion or termination of this Contract.**
- (d) 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 this section, 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. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.**

8.02 Release. The Consultant releases, relinquishes, and discharges the City, its council members, officials, 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, 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.

ARTICLE IX INSURANCE

9.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the

Consultant, its agents, representatives, volunteers, employees or subconsultants. The policies, limits and endorsements required are as set forth below:

During the term of this Contract all Consultant's insurance policies shall meet the minimum requirements of this section:

9.02 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.

9.03 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 or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as **Exhibit C**, and approved by the City before any letter of authorization to commence project will issue or any work on the Project commences.

9.04 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 named 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 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 company or its authorized agent on the most current State of Texas Department of Insurance-approved forms.

9.05 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.

9.06 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.

9.07 Workers' Compensation/Employer's Liability Insurance requirements. The Workers' Compensation/Employer's Liability Insurance shall include the following terms:

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

9.08 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 X TERMINATION

10.01 At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Consultant, in writing, who shall cease work immediately. Consultant shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Consultant for the services properly performed and expenses incurred before and including the date of termination.

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

ARTICLE XI MISCELLANEOUS TERMS

11.01 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.

11.02 Any official notice under this Contract will be sent to the following addresses below. Day to day communication may be done by email.

CITY:

City of College Station
Attn: Michael Ostrowski
P.O. Box 9960
College Station, Texas 77842
Email: mostrowski@cstx.gov

CONSULTANT:

Hunden Strategic Partners, Inc.
Attn: Rob Hunden
213 W. Institute Pl. Ste. 707
Chicago, IL 60610-3125
Email: rob@hunden.com

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

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

11.05 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.

11.06 This Contract and all rights and obligations contained herein may not be assigned by Consultant without the prior written approval of the City.

11.07 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.

11.08 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.

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

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

11.11 This Contract goes into effect when duly approved by all parties hereto.

11.12 Notice of Indemnification. City and Consultant hereby acknowledge and agree this Contract contains certain indemnification obligations and covenants.

11.13 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, Consultant 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, Consultant 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 Consultant herein verifies that it i) does not boycott energy companies; and ii) will not boycott energy companies during the term of this Contract.

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

List of Exhibits

- A. Scope of Services
- B. Payment Schedule
- C. Certificates of Insurance

HUNDEN STRATEGIC PARTNERS, INC.

CITY OF COLLEGE STATION

By: Rob Hunden
Printed Name: Rob Hunden
Title: CEO
Date: 10/18/2024

By: _____
City Manager
Date: _____

APPROVED:

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

Exhibit A

Scope of Services

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

Scope of Services attached below are incorporated herein.

Project Scope of Work

Hunden's work plan is organized as follows:

Phase I

- Task I. Market Demand Analysis
 - Task I.A – In-Person Kickoff and Project Orientation
 - Task I.B – Economic, Demographic and Tourism Analysis
 - Task I.C – Convention and Meetings Market Analysis
 - Task I.D – Hotel and Walkable Package Analysis
 - Task I.E – Case Studies and Best Practices
- Task II. Facility and Program Recommendations

Phase II

- Task III. Site Evaluation
- Task IV. Feasibility Study
- Task V. Financing Options
- Task VI. Economic Impact Analysis
- Task VII. Return on Investment

Project Methodology

Phase I

Task I. Market Demand Analysis

Task I.A – In-Person Kickoff and Project Orientation

The Team will perform the following orientation and due-diligence oriented tasks:

- Obtain information and data from the City of College Station, City and County officials, additional key stakeholders, and any other appropriate agencies.
- Tour College Station, any potential sites, surrounding demand generators, and support amenities, both operational and under construction.
- Interview stakeholders from a variety of local private and public organizations, including Texas A&M facilities management, other convention/conference and hospitality venue management, and perform fieldwork as appropriate.
- Inventory meeting spaces and hotels in College Station and the surrounding area.
- Gather and review available economic, demographic, and financial data.

Task I.B – Economic, Demographic and Tourism Analysis

Hunden will evaluate College Station’s position as a center of economic activity related to various demographics, including resident population and growth, business location and growth, accessibility, and as a destination for visitors. This analysis will provide a realistic SWOT assessment for the local and regional area. Among the data gathered and analyzed will be:

- Geographic attributes, accessibility, and transportation links, especially those that influence the ability to host conventions and other events,
- Trends in population growth and income,
- Corporate presence, major employers and any significant recent or likely future changes,
- Tourism attractions and visitation, and those that contribute to the City’s attractiveness as a destination for conventions and meetings.

Hunden utilizes the latest market data, visitor origin data, demographic data, psychographic data and other resources to determine a comprehensive view of your marketplace.

Task I.C – Convention and Meetings Market Analysis

Industry Trends. Hunden will profile the health of the convention, conference, and meetings industry and discuss the various factors influencing the industry trends and affecting meeting facilities in communities

similar to College Station. This will provide the Client with a strong grasp on the current forces shaping building development, including trends for various types of event growth.

Local Market Profile. Hunden will map and profile local facilities in and around College Station, noting their capacity, utilization rate, and operating revenues and expenses, as available.

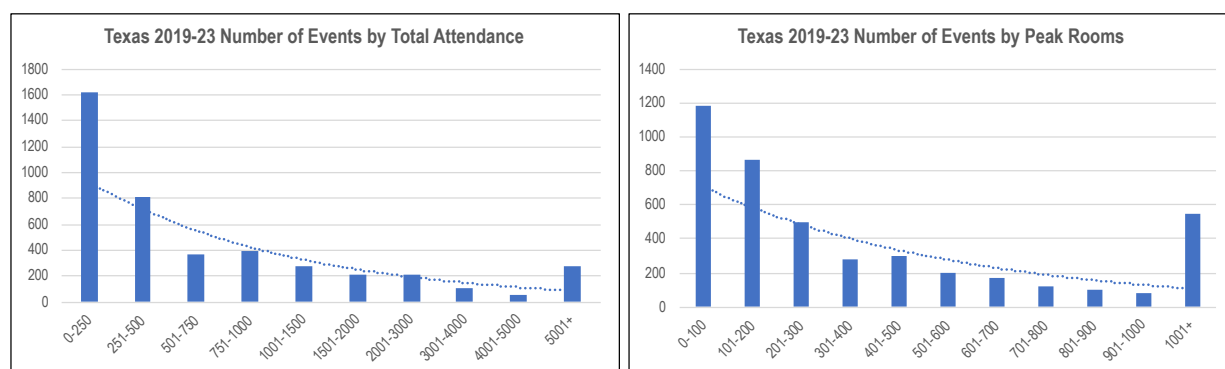
Competitive Market Analysis. Hunden will assess the relevant local, regional (paying particular attention to the Texas Triangle), and national convention/conference and events markets to determine relevant competitive venues. Hunden will compare them as part of a competitive set selected for the Project.

This analysis will document, as data is available and relevant:

- Location,
- Physical traits, including size and quality of ballroom, meeting rooms, and others,
- Year built,
- Flexibility of spaces,
- Hotel, and/or walkable and proximate hotel package,
- Demand data, as available or estimated using Placer.ai cell-phone tracking technology,
- Walkable restaurants, bars, retailers, and surrounding districts and amenities, and
- Critical factors of success or failure.

Hunden will also profile the relevant meeting facility projects underway or imminent and consider those as part of the future competitive set absorption dynamic. Hunden will identify gaps in the College Station market and discern whether new facilities would fill those gaps. Hunden will consider events, corporate trainings, conferences, corporate meetings, local cultural, sporting, and performing arts events, banquets, meetings and any other event types that may make sense.

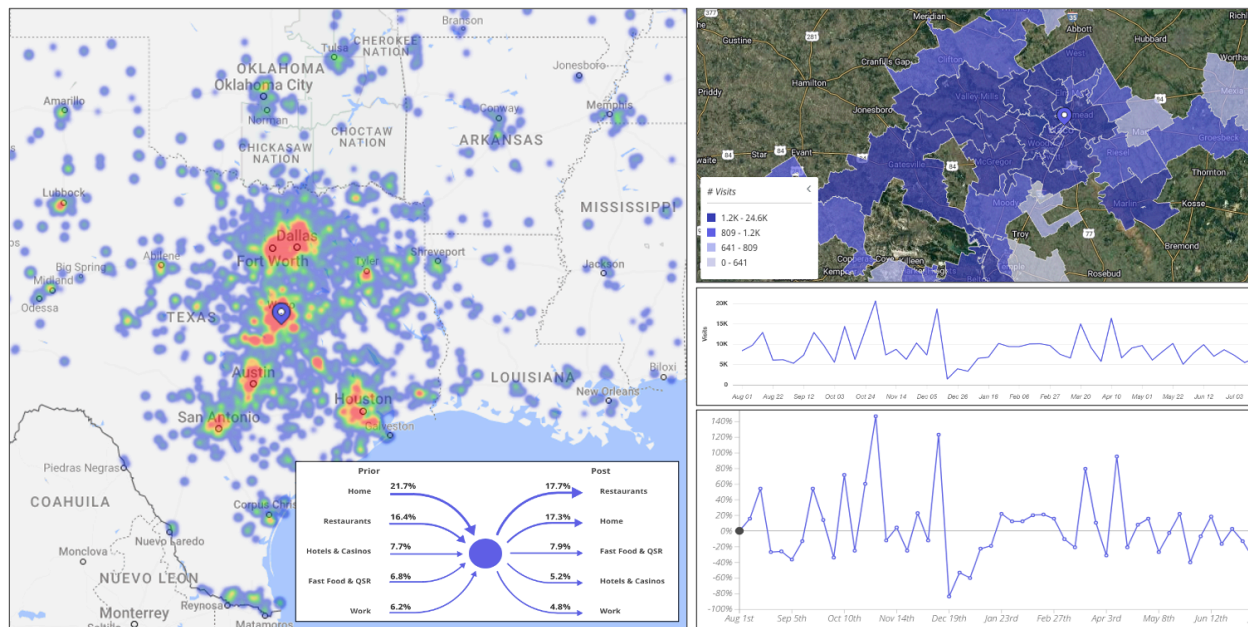
Mint+ Database Assessment. Hunden has access to the Mint+ meetings and group business database that compiles historical meetings activity by state to help determine the function space and hotel rooms needed to accommodate groups at a convention facility. The graphics below show an example of data collected from Mint+ for the state of Texas from 2019 to 2023.



Knowland Database Assessment. Hunden has access to the Knowland database of meetings activity occurring in many markets, primarily sourcing data about meetings and events occurring at conference and convention hotels. Hunden will access this data as available and relevant to understand the level and type of business occurring at competitive properties. The following figure shows sample output and findings using this tool for the Phoenix market.

Number of Groups at Competitive Meetings Hotels (Most Relevant Year*)										
Group Type	The Camby	DoubleTree Phoenix Gilbert	DoubleTree Phoenix Mesa	DoubleTree Phoenix Tempe	Marriott Phoenix Chandler	Marriott Tempe Buttes	Sheraton Mesa @ Wrigleyville	The Wigwam	Westin Tempe	Total
Association	23	4	28	37	9	17	2	45	8	173
Corporate	197	31	67	159	146	171	20	368	73	1,232
Government	2	2	0	5	1	4	1	28	1	44
SMERF	14	8	26	37	13	18	6	83	22	227
Total	236	45	121	238	169	210	29	524	104	1,676
*2019 or 2022, showing most relevant data set available Source: Knowland										
Estimated Group Attendance at Competitive Meetings Hotels (Most Relevant Year*)										
Group Type	The Camby	DoubleTree Phoenix Gilbert	DoubleTree Phoenix Mesa	DoubleTree Phoenix Tempe	Marriott Phoenix Chandler	Marriott Tempe Buttes	Sheraton Mesa @ Wrigleyville	The Wigwam	Westin Tempe	Total
Association	4,133	790	5,371	5,671	1,437	1,670	520	13,696	455	33,743
Corporate	25,982	4,424	11,672	17,600	14,992	28,602	2,886	84,263	3,851	194,272
Government	127	494	–	1,097	39	1,194	60	5,674	–	8,685
SMERF	2,041	2,864	5,577	5,217	1,243	3,780	1,707	17,433	1,856	41,718
Total	32,283	8,572	22,620	29,585	17,711	35,246	5,173	121,066	6,162	278,418
<i>Attendance Per Event</i>	<i>137</i>	<i>190</i>	<i>187</i>	<i>124</i>	<i>105</i>	<i>168</i>	<i>178</i>	<i>231</i>	<i>59</i>	<i>166</i>
*2019 or 2022, showing most relevant data set available Source: Knowland										

Demand Generator Profiles. Hunden has invested in **geofencing research technology** as a key resource to study customer origin and traffic analytics. This research technology provides data on consumer behaviors and visitor origins back to 2017. The Team can also determine demographics and other datapoints that provide insight into user group behaviors. The performance models are then used to support economic impact projections. Hunden creates custom data analytics and maps for any geographic place in the U.S., as exhibited by the following figures of the Waco Convention Center.



Demand Interviews. Hunden will conduct interviews with meeting planners that have used the various spaces for conventions, meetings, conferences and events in the area. Hunden will get its most informed responses from phone/virtual interviews with these planners. Interviews will include planners from many sectors and types, including industry trade groups, associations, corporations, government groups, educational groups, religious groups, and others as appropriate. Implications will be discussed.

Task I.D – Headquarter Hotel and Walkable Package Analysis

Industry Trends. Simply put, a walkable hotel package anchored by a convention headquarters hotel is critical to the success of convention venues. Hunden will provide an overview of the industry trends that influence headquarter and convention-oriented hotel developments and performance and how recent macro events have impacted them. In addition, Hunden will cover key drivers of demand, financial realities, including typical metrics and cap rates, and others as relevant.

Local Market. Hunden will survey the area supply of hotels, as well as the key nodes or clusters of hotels in the College Station marketplace. Hunden will interview local hotel and tourism management representatives to determine the sources of demand for the market generally and for individual hotels in and around the College Station area. Hunden will gather local and regional tourism data from specific hotel, event, and meeting facilities and organizations. Hunden will consider annual events and seasonal tourism waves to examine how the existing hotels are or are not accommodating the demand that is driven by such events and seasonal tourism waves.

Regional Competitive Market. Any recommended hotel will compete for business against other large conference hotels and hotels paired with small convention centers around the region. Hunden will assess relevant regional markets for similar conference-oriented hotels that would be of similar size and function space (ballrooms, meeting rooms, etc.). Hunden will profile these and may consider these to be the competitive set instead of relying on a local set of hotels.

Competitive Set. Hunden will analyze the local and regional markets to determine the competitive set of hotels. Hunden will consider location, size, quality, age, brand, concept, and amenities including retail/restaurant and other factors. Hunden will obtain data through interviews and STR (Smith Travel Research) statistical database and reports, and a variety of industry resources.

Proposed and Under Construction Projects. Hunden will survey the relevant hotel projects underway or imminent and consider those as part of the future competitive set absorption dynamic.

Comp Set Performance. The analysis will include tracking of occupancy, monthly room night demand, average daily rate (ADR), and Revenue per Available Room (RevPAR), and performance by year, month, day of week, unaccommodated demand and demand type/market mix.

Hunden will discuss how new hotels have been absorbed into the market and how any additions or renovations have impacted the performance of the hotel market. Hunden will provide conclusions on the ability of these improvements to induce more demand from each major market segment. Market segmentation within the set will also be shown in three primary categories:

- Commercial transient,
- Group (both corporate group, association, and other), and
- Leisure.

Interviews. Hunden will interview competitive set hotel management to understand what business they are accommodating and the type of business that they believe may be going to other hotels outside of College Station due to quality, space availability and other issues. These interviews are critical to a true understanding of the market beyond what historical statistics show and portend. *This is a step that Hunden always includes that many firms do not.*

Task I.E – Case Studies and Best Practices

The previous tasks will lead to understanding of most relevant comparable convention center and hotel case studies. Hunden will profile case studies, including the physical offerings and performance of facilities that the Client can learn from. Like the competitive analysis, profiles will include interviews with management, data collection via Knowland, Placer.ai and STR Host analytics, as available and relevant.

Best Practices. Hunden believes that a career’s worth of experience should result in wisdom and best practices, and shares this knowledge with the Client.

Task II. Facility and Program Recommendations

Hunden takes an internal iterative approach to refine recommendations, scenarios, and financial modeling. At the conclusion of the in-depth market research and analysis and after internal iterations of scenarios, Hunden will provide the Client with preliminary findings and recommended scenarios in order to facilitate a dialogue about the direction of the study.

Hunden will provide recommendations and details on the optimal program and needs for the development of a new convention/conference center and other amenities, such as a hotel, in College Station based on an understanding of what product the market is able to absorb. Recommendations will include:

- Number, size, quality, and type of meeting space/function rooms (ballrooms, breakout meeting rooms, special event spaces, etc.),
- Number, size and quality of restaurants/food and beverage options,
- Number, quality and mix of guest rooms and suites,
- Implications for brand or chain level as appropriate,
- Recommended support amenities/retail space,
- Site parameters as appropriate, and
- Other amenities and technical requirements.

Hunden will present preliminary findings in-person to the City of College Station, which will mark the completion of Task II.

At the conclusion of Task II, the City of College Station will have the option of either continuing onto Phase II, Tasks III thru VII, or ceasing any further work efforts and concluding the contract at the completion of Phase I. If the City of College Station opts to not continue to Phase II, then the study will end, Hunden will send the final Phase I PowerPoint style deliverable as-is to the city and the last invoice submitted for the Project will be for the completion of Task II.

If the City of College Station opts to continue on with Phase II, Hunden will execute the following scope of services.

Phase II

Task III. Site Evaluation

Site Assessment. Hunden Partners prioritizes synergistic districts and destination placemaking, rather than single building developments. The site assessment and recommendations will be based, in part, on areas that will best take advantage of the City's assets, as well as generate the most demand.

The Hunden team will determine the amount of land required for the development of the recommended Project.

Hunden will assess up to five (5) sites, including:

- Location,
- Current site conditions,
- Site size and configuration,
- Site development/site preparation needed,

- Visibility,
- Vehicular and pedestrian access,
- Existing amenities and infrastructure, and
- Ability to stimulate future development.

Amenities and District Analysis. Hunden will also profile the current and proposed commercial market assets and developments surrounding the proposed sites. Hunden will determine strengths and weaknesses of the site and how those will may influence future developments.

Layouts. For the top-rated site, TVS will create a high-level site plan and concept layout for the recommended Project, as determined by the Market Findings presentation recommendations.

Cost Estimates. The Team will use the top ranked site option as the basis for the order-of-magnitude cost analysis. This will include estimated construction and operating costs for the recommended facility.

Task IV. Feasibility Study

Demand Projections. Hunden will comprehensively research and explain the market area's demand for each of the uses over the next twenty years using the best available data and employing appropriate research from the prior tasks to provide a robust understanding of the demand for each use. Our approach and data presentation aligns with industry-standard reporting for private sector real estate demand modeling.

Hunden will conduct a demand model, including a penetration analysis. This will then lead to assumptions that will be used to determine the detailed financial projections for each use. These will include major line-item detail of revenue and expense for each component, which will then result in net operating income (NOI) that will support debt service. Hunden will present projections from each component and then combine these results into a mixed-use financial projection.

Financial Projections. In order to determine financial feasibility, the net operating income must be shown against a development cost. Hunden will show the supportable equity and debt that the net cash flows support. From these financial analytics, the feasibility will be determined. If there is a feasibility gap, the modeling from Hunden will determine the amount and what key items led to the gap (costs, absorption, rents, etc.).

Based on the projection of demand and applying a number of assumptions Hunden will prepare a financial projection for each of the recommended uses, this will include the following:

- Estimated revenues for at least twenty years of operations. Expenses directly related to the Project will also be projected for the period. The model will generate a pro-forma operating statement that includes the revenue and expense items, including the following:
 - Revenues: revenues, rentals (as appropriate), sales, reimbursed expenses, and other income, as relevant to each use.

- Direct operating expenses: wages and salaries, contract services, utilities, maintenance and repair, supplies, and other expenses,
- Unallocated expenses: administrative salaries, employee benefits, advertising and promotion, general and administrative, professional services, insurance, maintenance reserves, and other expenses,
- Debt service related to developing the Project.
- One-time and recurring revenue opportunities and expenses should be considered. The results will be presented with full discussion of assumptions and projections.
- Provide a projection of the annual surplus or subsidy needed for each of the twenty years in the period.

Task V. Financing Options

College Station is interested in exploring the potential for public/private cooperation in the development and/or operation of the convention/conference center to create a financing plan with maximum benefits to the community. Based on similar case studies, best practices, and interviews with the City and key stakeholders, Hunden will provide the Client with financing options and funding strategies to support the proposed Project. Options may include public/private partnerships/operating agreements with private management companies, operating agreements with hotel management companies, and/or development agreements with potential hotel and convention facility developers. Hunden will identify the pros and cons of various public and private financing methods and funding sources.

Hunden will also evaluate the local, state and federal funding options as identified by the Client to determine the optimal solutions/options that also support the Project's feasibility.

Task VI. Economic Impact Analysis

Hunden will conduct an economic, fiscal and employment impact analysis to determine the direct, indirect, and induced impacts, including the tax revenues that are generated by the Project.

Based on the above analysis, a projection of net new direct spending will be tabulated. New spending is spending that is new to the community due to new residents, visitors to retail/restaurant, new employees in offices and other spending impacts associated with the development. The model will consider net new recaptured and induced spending only (versus gross spending) to ensure that substitution spending is netted out of the impacts. Spending categories primarily include food/beverage, retail, transportation, lodging and entertainment/other. The net new and recaptured spending is considered to be the **Direct Impact**.

From the direct spending figures, further impact analyses will be completed.

- **Indirect Impacts** are the supply of goods and services resulting from the initial direct spending.

- **Induced Impacts** embody the change in local spending due to the personal expenditures by employees whose incomes are affected by direct and indirect spending.
- **Fiscal Impacts** represent the incremental tax revenue collected by the City due to the net new economic activity related to a development. The fiscal impact represents the government's share of total economic benefit. There will be distinct tax impacts for each governmental entity. Fiscal impacts provide an offset to the potential public expenditures required to induce the development of the Project. Hunden will identify the taxes affected and conduct an analysis of the impact on these accounts and governmental units.
- **Employment Impacts** include the incremental employment provided not only onsite, but due to the spending associated with the Project.

Hunden uses one of the industry's most relied upon multiplier models, IMPLAN. This input-output model estimates the indirect and induced impacts, as well as employment impacts, based on the local economy. An input-output model generally describes the commodities and income that normally flow through the various sectors of the economy. The indirect and induced expenditure, payroll, and employment result from the estimated changes in the flow of income and goods caused by the projected direct impacts. The model data are available by various jurisdictional levels, including counties.

Task VII. Return on Investment

Depending on if the recommended development is a single convention/conference center hotel, or one or two separate facilities (conference center with or without a hotel), Hunden will develop models detailing the performance of the recommended program. The model will include an absorption/penetration model for the hotel, followed by a demand and financial model for the conference center and hotel components.

Hunden will provide a net operating income statement incorporating the operating revenues and expenditures to arrive at a projected surplus or loss, which may or may not require an ongoing subsidy.

Milestones and Touchpoints

Phase I Touchpoints and Deliverables

- **Kickoff Organizing Call** – Once the administrative engagement paperwork process is complete, Hunden will schedule an initial kickoff organizing call/Zoom with the Client team for introductions and to schedule the in-person site visit, tours, and meetings. Hunden will send a kickoff memo outlining requests for data, scheduling arrangements, and key contact information.
- **Site Visit/Local Discovery** – Members of the Hunden key personnel team will travel to College Station to conduct an in-person kickoff trip with the Client, including stakeholder meetings and interviews, a site tour, and tours of surrounding demand generators.
- **Circle Back Call** – After the kickoff trip, Hunden will schedule a 'circle-back call' with the Client to wrap up data requests and any outstanding discovery phase items.
- **Check-In Calls** – Throughout the market research tasks, Hunden can schedule check-in calls with the Client to ensure timely forward direction through the study process.
- **In-Person Recommendations Presentation** – At the completion of Task II Facility and Program Recommendations, Hunden will submit a PowerPoint-style deliverable of market findings electronically to the Client. This will include our recommendations and scenarios as appropriate. Hunden will also travel to College Station to present the preliminary findings in-person.

Phase II Touchpoints and Deliverables

- **Draft Report** – At the completion of Task VII Return on Investment, Hunden will complete all financial and impact modeling elements of the scope of work and compile the results into a PowerPoint-style draft analysis of its financial outputs, which will be presented to the Client electronically for review and comment.
- **Final Report** – After receiving comments from the Client on the draft analysis, Hunden will issue its final analysis. At an agreed upon time after issuance of the final analysis by Hunden to the Client, Hunden will travel to College Station to present the final deliverable in-person.

Project Timeline

We expect the overall timeline for both phases of work to be fourteen (14) weeks, assuming Client responsiveness, availability and prompt authorization to proceed with Phase II.

Timeline & Deliverable Milestones	Week #													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Task I. Market Demand Analysis														
Task I.A – In-Person Kickoff and Project Orientation														
Task I.B – Economic, Demographic and Tourism Analysis														
Task I.C – Convention and Meetings Market Analysis														
Task I.D – Hotel and Walkable Package Analysis														
Task I.E – Case Studies and Best Practices														
Task II. In-Person Facility and Program Recommendations								X						
Task III. Site Evaluation														
Task IV. Feasibility Study														
Task V. Financing Options														
Task VI. Economic Impact Analysis														
Task VII. Return on Investment														
Draft Report												X		
Client Edits														
Final Report														X

Exhibit B Payment Terms

Payment is a fixed fee for each Task and not to exceed the amount listed in Article II of this Contract. This amount shall be payable by the City pursuant to the payment schedule below and upon satisfactory completion of the services by Task, as described below, and written acceptance by the City, which will not be unreasonably withheld.

Notwithstanding the foregoing, the City will have sole discretion in choosing whether to cease work of Consultant after Phase I and continue to Phase II Tasks, as described below, and written authorization by the City will be required for Consultant to perform Phase II Tasks under this Contract. For the avoidance of doubt, the City will not owe payments to Consultant for Tasks not performed and fully completed.

Upon Task completion, Consultant may submit invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such undisputed invoices according to its normal payment procedures. The City will reimburse Consultant for agreed upon reasonable travel expenses up to the not to exceed amount of \$7,705. Consultant may invoice City monthly for travel expenses as incurred. The City will not reimburse for alcohol expenses and may ask for a detailed explanation or receipts for travel reimbursement.

Schedule of Payment for each Task completion:

Phase I:

Task I – Market Demand Analysis: \$31,350

Task II – Facility & Program Recommendations: \$ 8,700

Phase I Total Payment: \$40,050

Phase II:

Task III – Site Evaluation: \$ 7,050

Task IV – Feasibility Study: \$ 8,600

Task V – Financing Options: \$ 4,200

Task VI – Economic Impact Study: \$ 8,600

Task VII – Return on Investment, Draft Report Completion and
Final Report Completion: \$ 4,425

Phase II Total Payment: \$32,875

Maximum Reimbursable Travel Expenses: \$ 7,075

TOTAL CONTRACT NOT TO EXCEED AMOUNT: \$80,000

Exhibit C
Certificates of Insurance

Contract No. 24300054
Professional Services -
Consultant Form 04-20-2023
CRC 10/17/2024



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/17/2024

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 Shepherd Insurance, LLC. 111 Congressional Boulevard Suite 200 Carmel IN 46032	CONTACT NAME: Alan Schulte PHONE (A/C, No, Ext): (317) 846-5554 E-MAIL ADDRESS: aschulte@shepherdins.com FAX (A/C, No): (317) 846-5444																					
INSURED Hunden Strategic Partners, Inc 15185 Hawthorne Ln Suite 707 Lakeside MI 49116	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Hartford Underwriters Ins Co</td><td>30104</td></tr><tr><td>INSURER B:</td><td>Valley Forge Insurance Company</td><td>20508</td></tr><tr><td>INSURER C:</td><td>The Continental Insurance Co</td><td>35289</td></tr><tr><td>INSURER D:</td><td>Continental Casualty Company</td><td>20443</td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Hartford Underwriters Ins Co	30104	INSURER B:	Valley Forge Insurance Company	20508	INSURER C:	The Continental Insurance Co	35289	INSURER D:	Continental Casualty Company	20443	INSURER E:			INSURER F:		
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INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:** CL24101745262**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:			36SBAAF7H9Z	03/06/2024	03/06/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			6020828538	03/13/2024	03/13/2025	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			36SBAAF7H9Z	03/06/2024	03/06/2025	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☒ N	N / A	6020998933	03/13/2024	03/13/2025	☒ 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	Errors and Omissions Retroactive Date: 4/24/2015			652205693	03/13/2024	03/13/2026	Limit: per occurrence 2,000,000 Aggregate limit 2,000,000

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

City of College Station is included as an Additional Insured which applies to General and Auto Liability coverages on a Primary & Non-Contributory Basis where required by written contract subject to policy terms, conditions & exclusions. Automatic Additional Insured applies to Umbrella coverage where required by written contract subject to policy terms, conditions & exclusions. Waiver of Subrogation applies to General Liability, Auto Liability, & Workers Compensation coverages where required by written contract subject to policy terms, conditions & exclusions. The coverage extensions referenced on this certificate are achieved through the following forms which are included on the policy & attached to this certificate: SL3032 06 21, SL 00 00 10 18, SL 30 18 10 18, SU 00 02 10 18, SU 00 06 10 18, CA 04 43 11 20, WC 00 03 13 04 1984. A 30 day notice of cancellation applies.

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
Attention 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

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A ENDMEN - GRE A E LI ITS (PE P JEC)

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 changes are made to Section D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE:

1. The following provision is added to Paragraph 2. Aggregate Limits:

The General Aggregate Limit under Section D. LIABILITY AND MEDICAL EXPENSES LIMIT OF INSURANCE applies separately to each of your "projects".

2. The following provision is added to Paragraph 2. Aggregate Limits:

When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit.

B. The following changes are made to Section F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:

1. The following definition is added:

"Project" means a premises, site or location that is away from a premises, site or location owned or rented to you and at which "your work" at said premises, site or location has not yet been completed, as completion is described in the "products-completed operation hazard". All of "your work" at such premises, site or location is deemed to involve a single project, regardless of whether "your work" is abandoned, delayed, or restarted, or if "your work" deviates from plans, blueprints, designs, specifications or timetables.



Workers Compensation And Employers Liability Insurance Policy Endorsement

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 anyone not named in the Schedule.

Schedule

Any Person or Organization on whose behalf you are required to obtain this waiver of our right to recover from under a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC 00 03 13 (04-1984)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 5; Page: 1 of 1

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: WC 6 20998933

Policy Effective Date: 03/13/2023

Policy Page: 39 of 59



BLANKET ADDITIONAL INSURED BY CONTRACT – UMBRELLA

This endorsement modifies insurance provided under the following:

UMBRELLA LIABILITY SUPPLEMENTAL POLICY

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

A. The following is added to Paragraph 2. of Section C. WHO IS AN INSURED:

- a. Any person or organization when you have agreed, because of 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, to provide insurance such as is afforded under this Supplemental Policy, but only with respect to your operations performed by you or on your behalf, "your work" or facilities owned or used by you.

This provision does not apply:

- (1) Unless the written contract or written agreement has been executed, or the permit has been issued, prior to the "bodily injury," "property damage," or "personal and advertising injury";
- (2) Unless the limits of liability specified in such written contract, written agreement or permit are greater than the limits of liability provided by the "underlying insurance"; and
- (3) Beyond the period of time required by the written contract, written agreement or permit;

However, no such person or organization is an "insured" under this provision if such person or organization qualifies as an "insured" by any other provision of this Supplemental Policy.

- b. With respect to the insurance afforded to the persons or organizations qualifying as an "insured" in Paragraph a. above, the following additional exclusion applies:

- (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 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.

- c. The insurance afforded to such "insured" will not be broader than that which you are required by the contract, agreement or permit to provide for such "insured".
- d. The insurance afforded to such "insured" only applies to the extent permitted by law.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



GENERAL AGGREGATE LIMIT REVISION

This endorsement modifies insurance provided under the following:

UMBRELLA LIABILITY SUPPLEMENTAL POLICY

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

The following is added to Section **D. LIMITS OF INSURANCE**:

The General Aggregate Limit, shown in the Declarations, under Limits of Insurance, applies separately in excess of each General Aggregate Limit afforded by the Business Liability Coverage Part shown in the Extension Schedule of Underlying Insurance.



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

READ YOUR POLICY CAREFULLY

QUICK REFERENCE

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- 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



WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF
SUBROGATION) – AUTOMATIC WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

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

The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to any person(s) or organization(s) for whom you are required to waive subrogation with respect to the coverage provided under this Coverage Form, but only to the extent that subrogation is waived:

- A. Under a written contact or agreement with such person(s) or organization(s); and
- B. Prior to the "accident" or the "loss."

Form No: CA 04 43 11 20
Endorsement Effective Date:
Endorsement No: 4; Page: 1 of 1
Underwriting Company: Valley Forge Insurance Company, 151 N Franklin St, Chicago, IL 60606

Endorsement Expiration Date:

Policy No: BUA 6020828538
Policy Effective Date: 03/13/2024
Policy Page: 45 of 99

October 24, 2024

Item No. 7.13.

Rejection of ITB 24-068 Stonebridge Drive and Scarborough Drive Roundabout.

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on the rejection of the received proposals and cancelation of ITB 24-068 for construction of the Stonebridge Drive and Scarborough Drive roundabout.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Neighborhood Integrity
3. Improving Mobility

Recommendation(s): Staff recommends rejection of ITB 24-068.

Summary: In 2021, the residents of the Stonebridge neighborhood in Woodcreek applied for the Traffic Calming Program and were approved as part of the FY 2022 cycle. The working group agreed on a roundabout at the intersection of Stonebridge Drive and Scarborough Drive as the preferred traffic calming method and the neighborhood voted in favor of the project 16-8. Design and bidding for the roundabout commenced. However, residents voiced concern regarding construction of the roundabout after bids were opened. The increase in traffic anticipated from development in the area did not materialize and residents felt there was not a need for the roundabout at this time. After corresponding with the working group, another neighborhood vote was taken and the project was struck down 30-0. Since bids have already opened, the Council will need to reject all bids to formally withdraw the project. The neighborhood will not be eligible for the traffic calming program for five (5) years. Staff is currently drafting changes to the Traffic Calming Policy to better define this process and will bring these revisions to the Council for adoption at a later date.

Budget & Financial Summary: Funds for the traffic calming program are available in the Traffic Engineering operations budget and will no longer be needed for this project. The funds will be allocated to traffic calming projects currently under design.

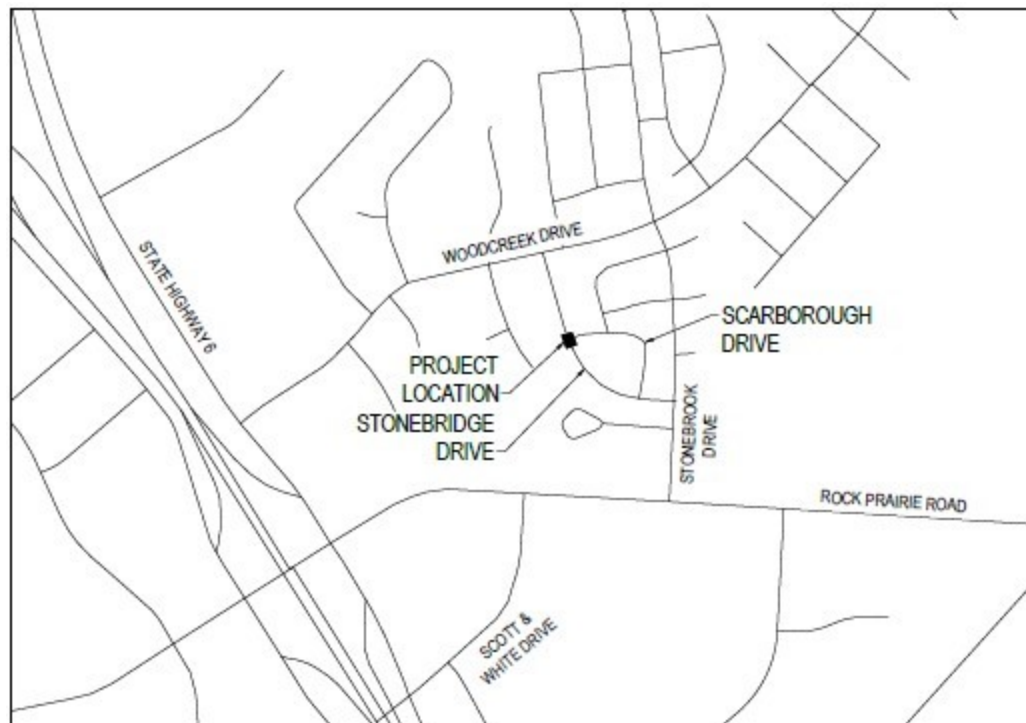
Attachments:

1. Tabulation 24-068
2. Stonebridge Location Map

CITY OF COLLEGE STATION - PURCHASING DIVISION
"CONSTRUCTION OF STONEBRIDGE AND SCARBOROUGH DRIVE ROUNDABOUT"
Opening Date: Tuesday, July 30, 2024 @ 2:00 pm CT

				Brazos Paving, Inc. (Bryan, TX)		Jerdon Enterprise, L.P. (Stafford, TX)		Solid Bridge Construction (New Waverly, TX)		Palomares Construction, Inc. (Bryan, TX)		Knife River Corp - South (Bryan TX)		Norman Construction Services, LLC (Wellborn, TX)		Brazos Valley L4 LLC (Madisonville, TX)		Texas Materials (Cedar Park, TX)		Tucker Construction (Bryan, TX)	
A. GENERAL CONSTRUCTION ITEMS																					
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Mobilization	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 8,000.00	\$ 8,000.00	\$ 20,000.00	\$ 20,000.00	\$ 17,000.00	\$ 17,000.00	\$ 90,560.00	\$ 90,560.00	\$ 24,350.00	\$ 24,350.00	\$ 20,000.00	\$ 20,000.00	\$ 58,175.00	\$ 58,175.00	\$ 7,930.00	\$ 7,930.00
2	Traffic Control	1	LS	\$ 4,600.00	\$ 4,600.00	\$ 7,450.00	\$ 7,450.00	\$ 20,000.00	\$ 20,000.00	\$ 2,500.00	\$ 2,500.00	\$ 10,950.00	\$ 10,950.00	\$ 18,750.00	\$ 18,750.00	\$ 1.00	\$ 1.00	\$ 9,500.00	\$ 9,500.00	\$ 12,110.00	\$ 12,110.00
3	Erosion and Sedimentation Control	1	LS	\$ 810.00	\$ 810.00	\$ 3,400.00	\$ 3,400.00	\$ 7,500.00	\$ 7,500.00	\$ 2,000.00	\$ 2,000.00	\$ 1,900.00	\$ 1,900.00	\$ 9,350.00	\$ 9,350.00	\$ 2,000.00	\$ 2,000.00	\$ 6,500.00	\$ 6,500.00	\$ 4,270.00	\$ 4,270.00
4	Trench Safety	1	LS	\$ 500.00	\$ 500.00	\$ 1,200.00	\$ 1,200.00	\$ 6,500.00	\$ 6,500.00	\$ 3,000.00	\$ 3,000.00	\$ 1,250.00	\$ 1,250.00	\$ 50.00	\$ 50.00	\$ 1,000.00	\$ 1,000.00	\$ 570.00	\$ 570.00	\$ 2,940.00	\$ 2,940.00
5	Tree Protection	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 1,400.00	\$ 1,400.00	\$ 5,000.00	\$ 5,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,185.00	\$ 1,185.00	\$ 5,500.00	\$ 5,500.00	\$ 1,000.00	\$ 1,000.00	\$ 4,500.00	\$ 4,500.00	\$ 820.00	\$ 820.00
TOTAL SECTION A - GENERAL CONSTRUCTION ITEMS				\$ 26,910.00		\$ 21,450.00		\$ 59,000.00		\$ 25,500.00		\$ 105,845.00		\$ 58,000.00		\$ 24,001.00		\$ 79,245.00		\$ 28,070.00	
B. DEMOLITION ITEMS																					
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
6	Removal of Existing Concrete Pavement	514	SY	\$ 22.50	\$ 11,565.00	\$ 25.00	\$ 12,850.00	\$ 35.00	\$ 17,990.00	\$ 36.00	\$ 18,504.00	\$ 46.80	\$ 24,055.20	\$ 38.00	\$ 19,532.00	\$ 10.00	\$ 5,140.00	\$ 39.00	\$ 20,046.00	\$ 22.86	\$ 11,750.04
7	Removal of Existing Sign	1	EA	\$ 500.00	\$ 500.00	\$ 175.00	\$ 175.00	\$ 250.00	\$ 250.00	\$ 500.00	\$ 500.00	\$ 125.00	\$ 125.00	\$ 550.00	\$ 550.00	\$ 500.00	\$ 500.00	\$ 185.00	\$ 185.00	\$ 240.13	\$ 240.13
8	Salvage and Relocate Existing Fire Hydrant	1	EA	\$ 3,500.00	\$ 3,500.00	\$ 10,000.00	\$ 10,000.00	\$ 5,500.00	\$ 5,500.00	\$ 9,230.00	\$ 9,230.00	\$ 3,750.00	\$ 3,750.00	\$ 6,500.00	\$ 6,500.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 12,690.00	\$ 12,690.00
9	Sawcut Existing Pavement	113	LF	\$ 7.00	\$ 791.00	\$ 18.00	\$ 2,034.00	\$ 25.00	\$ 2,825.00	\$ 8.00	\$ 904.00	\$ 26.65	\$ 3,011.45	\$ 6.00	\$ 678.00	\$ 5.00	\$ 565.00	\$ 25.00	\$ 2,825.00	\$ 5.49	\$ 620.37
TOTAL SECTION B - DEMOLITION ITEMS				\$ 16,356.00		\$ 25,059.00		\$ 26,565.00		\$ 29,138.00		\$ 30,941.65		\$ 27,260.00		\$ 16,205.00		\$ 33,056.00		\$ 25,300.54	
C. ROADWAY CONSTRUCTION ITEMS																					
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
10	Subgrade Preparation, Stabilization and Compaction (2" Oil BOC)	566	SY	\$ 20.00	\$ 11,320.00	\$ 19.00	\$ 10,754.00	\$ 15.00	\$ 8,490.00	\$ 27.80	\$ 15,734.80	\$ 9.15	\$ 5,178.90	\$ 10.00	\$ 5,660.00	\$ 10.00	\$ 5,660.00	\$ 28.00	\$ 15,848.00	\$ 15.85	\$ 8,971.10
11	6" Cement Stabilized Sand	566	SY	\$ 25.00	\$ 14,150.00	\$ 33.00	\$ 18,678.00	\$ 70.00	\$ 39,620.00	\$ 49.00	\$ 27,734.00	\$ 41.33	\$ 23,392.78	\$ 12.00	\$ 6,792.00	\$ 16.00	\$ 9,056.00	\$ 30.00	\$ 16,980.00	\$ 38.64	\$ 21,870.24
12	Concrete Pavement	490	SY	\$ 78.00	\$ 38,220.00	\$ 140.00	\$ 68,600.00	\$ 90.00	\$ 44,100.00	\$ 88.47	\$ 43,350.30	\$ 150.45	\$ 73,720.50	\$ 68.00	\$ 33,320.00	\$ 100.00	\$ 49,000.00	\$ 130.00	\$ 63,700.00	\$ 65.06	\$ 31,879.40
13	Laydown Curb and Gutter	95	LF	\$ 10.00	\$ 950.00	\$ 32.00	\$ 3,040.00	\$ 26.00	\$ 2,470.00	\$ 36.00	\$ 3,420.00	\$ 112.40	\$ 10,678.00	\$ 19.00	\$ 1,805.00	\$ 25.00	\$ 2,375.00	\$ 45.00	\$ 4,275.00	\$ 22.63	\$ 2,149.85
14	6" Concrete Curb and Gutter	230	LF	\$ 9.00	\$ 2,070.00	\$ 30.00	\$ 6,900.00	\$ 25.00	\$ 5,750.00	\$ 30.00	\$ 6,900.00	\$ 72.90	\$ 16,767.00	\$ 15.00	\$ 3,450.00	\$ 25.00	\$ 5,750.00	\$ 17.00	\$ 3,910.00	\$ 8.26	\$ 1,899.80
15	Common Bermuda	590	SF	\$ 3.50	\$ 2,065.00	\$ 10.00	\$ 5,900.00	\$ 2.00	\$ 1,180.00	\$ 3.00	\$ 1,770.00	\$ 2.10	\$ 1,239.00	\$ 4.00	\$ 2,360.00	\$ 1.00	\$ 590.00	\$ 3.00	\$ 1,770.00	\$ 2.37	\$ 1,398.30
16	4" Raised Mountable Median Stamped Concrete	368	SF	\$ 24.00	\$ 8,832.00	\$ 30.00	\$ 11,040.00	\$ 22.00	\$ 8,096.00	\$ 17.00	\$ 6,256.00	\$ 45.20	\$ 16,633.60	\$ 27.00	\$ 9,936.00	\$ 100.00	\$ 36,800.00	\$ 29.00	\$ 10,672.00	\$ 17.17	\$ 6,318.56
17	4" Thermoplastic Striping Solid Yellow Line w/ sealant	270	LF	\$ 1.65	\$ 445.50	\$ 2.50	\$ 675.00	\$ 20.00	\$ 5,400.00	\$ 4.50	\$ 1,215.00	\$ 2.00	\$ 540.00	\$ 5.00	\$ 1,350.00	\$ 5.50	\$ 1,485.00	\$ 5.00	\$ 1,350.00	\$ 3.53	\$ 953.10
18	6" Thermoplastic Striping Solid White Line w/ sealant	74	LF	\$ 2.20	\$ 162.80	\$ 3.00	\$ 222.00	\$ 20.00	\$ 1,480.00	\$ 8.50	\$ 629.00	\$ 2.50	\$ 185.00	\$ 10.00	\$ 740.00	\$ 19.50	\$ 1,443.00	\$ 7.00	\$ 518.00	\$ 5.88	\$ 435.12
19	Street Sign	15	EA	\$ 142.00	\$ 2,130.00	\$ 250.00	\$ 3,750.00	\$ 1,100.00	\$ 16,500.00	\$ 250.00	\$ 3,750.00	\$ 161.00	\$ 2,415.00	\$ 900.00	\$ 13,500.00	\$ 95.50	\$ 1,432.50	\$ 1,300.00	\$ 19,500.00	\$ 217.40	\$ 3,261.00
20	Install Bronze Street Sign Post with Wedge Anchor System	6	EA	\$ 858.50	\$ 5,151.00	\$ 1,050.00	\$ 6,300.00	\$ 2,000.00	\$ 12,000.00	\$ 650.00	\$ 3,900.00	\$ 976.00	\$ 5,856.00	\$ 1,200.00	\$ 7,200.00	\$ 239.00	\$ 1,434.00	\$ 1,100.00	\$ 6,600.00	\$ 787.33	\$ 4,723.98
21	36" White Yield Markers	11	EA	\$ 61.05	\$ 671.55	\$ 75.00	\$ 825.00	\$ 1,000.00	\$ 11,000.00	\$ 300.00	\$ 3,300.00	\$ 70.00	\$ 770.00	\$ 525.00	\$ 5,775.00	\$ 130.00	\$ 1,430.00	\$ 90.00	\$ 990.00	\$ 205.64	\$ 2,262.04
22	Type I Solid White Pavement Marking w/ sealant- Turn Arrow	1	EA	\$ 325.00	\$ 325.00	\$ 400.00	\$ 400.00	\$ 1,000.00	\$ 1,000.00	\$ 375.00	\$ 375.00	\$ 400.00	\$ 400.00	\$ 525.00	\$ 525.00	\$ 1,430.00	\$ 1,430.00	\$ 345.00	\$ 345.00	\$ 588.00	\$ 588.00
23	Type I Solid White Pavement Marking w/ sealant- Double Turn Arrow	3	EA	\$ 401.50	\$ 1,204.50	\$ 490.00	\$ 1,470.00	\$ 1,000.00	\$ 3,000.00	\$ 600.00	\$ 1,800.00	\$ 465.00	\$ 1,395.00	\$ 750.00	\$ 2,250.00	\$ 477.00	\$ 1,431.00	\$ 425.00	\$ 1,275.00	\$ 910.66	\$ 2,731.98
24	Unclassified Roadway Excavation	0	CY	\$ 25.00	\$ -	\$ 14.00	\$ -	\$ 20.00	\$ -	\$ 500.00	\$ 500.00	\$ 44.00	\$ -	\$ 30.00	\$ -	\$ 20.00	\$ -	\$ 150.00	\$ -	\$ 33.75	\$ -
25	Unclassified Roadway Embankment	0	CY	\$ 32.00	\$ -	\$ 30.00	\$ -	\$ 220.00	\$ -	\$ 500.00	\$ 500.00	\$ 25.00	\$ -	\$ 40.00	\$ -	\$ 20.00	\$ -	\$ 150.00	\$ -	\$ 46.45	\$ -
TOTAL SECTION C - ROADWAY CONSTRUCTION ITEMS				\$ 87,697.35		\$ 138,554.00		\$ 160,086.00		\$ 121,134.10		\$ 159,170.78		\$ 94,663.00		\$ 119,316.50		\$ 147,733.00		\$ 89,442.47	
GRAND TOTAL				\$ 130,963.35		\$ 185,063.00		\$ 245,651.00		\$ 175,772.10		\$ 295,957.43		\$ 179,923.00		\$ 159,522.50		\$ 260,034.00		\$ 142,813.01	
Certification received				Y		Y		Y		Y		Y		Y		Y		Y		Y	
Addendum Acknowledged				Y		Y		Y		Y		Y		Y		Y		Y		Y	
Bid Bond				Y		Y		Y		Y		Y		Y		Y		Y		Y	

Should there be discrepancies between unit prices and totals, the unit price shall prevail.



VICINITY MAP
N.T.S.

October 24, 2024

Item No. 7.14.

Presentation, possible action, and discussion on approval of the 2024 Property Tax Roll in the amount of \$74,435,521.40.

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on approval of the 2024 Property Tax Roll in the amount of \$74,435,521.40.

Relationship to Strategic Goals:

Good Governance
Financial Sustainability
Core Services & Infrastructure
Neighborhood Integrity
Diverse & Growing Economy
Improving Mobility
Sustainable City

Recommendation(s): Staff recommends approval of the 2024 Property Tax Roll in the amount of \$74,435,521.40.

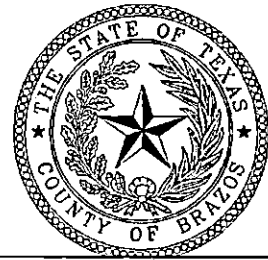
Summary: Section 26.09 (e) of the Texas Property Tax Code mandates formal approval of the Tax Roll by the City Council as the final step in the process of establishing the tax roll for the new year. The tax roll consists of the Maintenance and Operations levy and the Interest and Sinking fund levy.

Budget & Financial Summary: The tax roll that will be generated by the tax rate of \$0.513086 per \$100 assessed valuation is \$74,435,521.40. This tax rate was adopted by the City Council on August 22, 2024.

Attachments:

1. City Of College Station Signed Levy Notification
2. City of College Station Levy Totals

Melissa Leonard, PAC
Brazos County Tax Assessor/Collector
4151 County Park Ct.
Bryan, TX 77802
979-775-9930
979-775-9938 - Fax



October 15, 2024

Honorable John Nichols, Mayor
City of College Station
P. O. Box 9960
College Station, TX 77842

RE: Certification of 2024 Levy

Dear Mayor Nichols:

Please place approval of the 2024 tax levy on the next city council agenda. Enclosed with this correspondence is the calculated 2024 levy for the City of College Station.

Approval of the Levy as provided in Sec. 26.09 (e) is the final step in the creation of the tax rolls for the county. Please contact me if you have any questions concerning the information.

Respectfully,

A handwritten signature in black ink, appearing to read "Melissa Leonard", is written over a horizontal line.

Melissa Leonard, PCAC
Tax Assessor/Collector
Brazos County, Texas

2024 LEVY TOTALS

C2 - CITY OF COLL. STAT.

Property Count: 34,892

Grand Totals

10/8/2024

9:48:21AM

Land			Value		
Homesite:		2,027,612,047			
Non Homesite:		1,930,226,549			
Ag Market:		121,969,298			
Timber Market:		0	Total Land	(+)	4,079,807,894
Improvement			Value		
Homesite:		7,539,759,297			
Non Homesite:		6,027,515,601	Total Improvements	(+)	13,567,274,898
Non Real		Count	Value		
Personal Property:	3,277	1,004,060,661			
Mineral Property:	1,277	8,625,581			
Autos:	0	0	Total Non Real	(+)	1,012,686,242
			Market Value	=	18,659,769,034
Ag	Non Exempt		Exempt		
Total Productivity Market:	121,496,517	472,781			
Ag Use:	785,638	2,220	Productivity Loss	(-)	120,710,879
Timber Use:	0	0	Appraised Value	=	18,539,058,155
Productivity Loss:	120,710,879	470,561			
			Homestead Cap	(-)	377,064,119
			23.231 Cap	(-)	32,497,381
			Assessed Value	=	18,129,496,655
			Total Exemptions Amount (Breakdown on Next Page)	(-)	3,075,724,981
			Net Taxable	=	15,053,771,674

Freeze	Assessed	Taxable	Actual Tax	Ceiling	Count			
DP	28,883,775	26,166,292	94,553.34	95,537.38	85			
OV65	1,694,802,377	1,446,710,969	4,659,301.43	4,706,146.12	4,022			
Total	1,723,686,152	1,472,877,261	4,753,854.77	4,801,683.50	4,107	Freeze Taxable	(-)	1,472,877,261
Tax Rate	0.5130860							
Transfer	Assessed	Taxable	Post % Taxable	Adjustment	Count			
OV65	6,708,464	6,069,867	4,204,710	1,865,157	10			
Total	6,708,464	6,069,867	4,204,710	1,865,157	10	Transfer Adjustment	(-)	1,865,157
						Freeze Adjusted Taxable	=	13,579,029,256

Levy Info			
M&O Rate:	0.3016450	M&O Tax:	43,760,895.48
I&S Rate:	0.2114410	I&S Tax:	30,674,625.92
Protected I&S Rate:	0.0000000	Protected I&S Tax:	0.00
		Ag Penalty:	0.00
		PP Late Penalty:	0.00
		Late Correction	0.00
		Penalty:	
		Total Levy	74,435,521.40
Tax Increment Finance Value:	0		
Tax Increment Finance Levy:	0.00		

2024 LEVY TOTALS

C2 - CITY OF COLL. STAT.

Property Count: 34,892

Grand Totals

10/8/2024

9:48:26AM

Exemption Breakdown

Exemption	Count	Local	State	Total
CHODO (Partial)	12	18,575,712	0	18,575,712
DP	87	0	0	0
DV1	98	0	903,000	903,000
DV1S	5	0	25,000	25,000
DV2	67	0	624,750	624,750
DV2S	3	0	22,500	22,500
DV3	84	0	872,000	872,000
DV3S	5	0	50,000	50,000
DV4	413	0	1,968,745	1,968,745
DV4S	36	0	222,000	222,000
DVHS	283	0	118,158,948	118,158,948
DVHSS	24	0	8,121,618	8,121,618
EX	4	0	1,116,565	1,116,565
EX-XG	1	0	182,744	182,744
EX-XJ	1	0	10,510	10,510
EX-XL	2	0	298,006	298,006
EX-XN	11	0	11,845,329	11,845,329
EX-XR	1	0	13,190	13,190
EX-XU	7	0	21,667,712	21,667,712
EX-XV	628	0	2,246,598,633	2,246,598,633
EX-XV (Prorated)	4	0	1,280,841	1,280,841
EX366	1,327	0	568,793	568,793
FR	5	5,912,286	0	5,912,286
FRSS	3	0	1,138,269	1,138,269
HS	12,379	269,810,913	0	269,810,913
MASSS	2	0	526,910	526,910
MED	1	0	232,175,827	232,175,827
OV65	4,556	132,099,187	0	132,099,187
OV65S	6	150,000	0	150,000
PC	7	243,636	0	243,636
SO	17	541,357	0	541,357
Totals		427,333,091	2,648,391,890	3,075,724,981

October 24, 2024
Item No. 7.15.
Redmond Drive Area Parking Removal

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an ordinance amending Chapter 38 "Traffic and Vehicles," Article VI "Traffic Schedules," Section 38-1014 "Traffic Schedule XIV, No Parking Here to Corner and No Parking Any Time," of the Code of Ordinances of the City of College Station, Texas, by amending parking on Milliff Road, Rosemary Lane, Redmond Drive, and Armistead Street.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Neighborhood Integrity
3. Improving Mobility

Recommendation(s): Staff recommends approval of the ordinance amendment.

Summary: A citizen concern was received regarding street parking along Redmond Drive. This area is the last remaining area containing signs that manually flip down during special events to prohibit parking on one side of the street. During the investigation into the concern, Public Works staff discovered that ordinance language did not match signage in the field. Furthermore, the width of the street along with the curve of Redmond Drive did cause a safety issue due to sight distance. Finally, the manual flip down signs are worn and in need of replacement.

To address all of these findings, staff is recommending amending the ordinance to prohibit parking along one side of Redmond Drive between George Bush Drive and Lenert Circle and between Rosemary Lane and Texas Avenue. The section of Redmond Drive between Lenert Circle and Rosemary Lane is curved and limits sight distance, so staff recommends removing parking on both sides. Staff also recommends removing parking on one side of Armistead Street and one side of Milliff Road. Finally, staff recommends removing parking 100 feet from the intersection of Rosemary Lane and Armistead Street in both directions to alleviate sight distance issues.

This ordinance also removes language that is no longer needed, including the prohibition of parking along the southwest side of Rosemary Lane. This portion of the street is not currently signed for no parking, so there should be no change for residents.

If this ordinance is passed, staff will remove the old flip down signs and replace them with standard no-parking signs. There will be no need for staff to manually flip down the signs prior to special events in the future.

A public meeting was held on August 14 at City Hall. Seven residents responded to the public meeting, either by attending or corresponding with Public Works staff directly. Five residents were in favor of the parking removal and two were against.

This item was presented at the September 17 Council Transportation and Mobility Committee meeting. There was discussion regarding the number of residents in the area and the concerns received prior to the public meeting and at the public meeting.

Budget & Financial Summary: The installation and removal of the “No Parking” signs is accounted for in the Public Works Traffic Signs and Markings operations budget.

Attachments:

1. Parking Ordinance - Redmond Drive Area
2. Exhibit - Existing No Parking Signage
3. Exhibit - Redmond Dr Area Existing No Parking
4. Exhibit - Redmond Dr Area Parking Removal Proposed

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 38, “TRAFFIC AND VEHICLES,” ARTICLE VI “TRAFFIC SCHEDULES,” SECTION 38-1014 “TRAFFIC SCHEDULE XIV, NO PARKING HERE TO CORNER AND NO PARKING AT ANY TIME,” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING PARKING ON MILLIFF ROAD, ROSEMARY LANE, REDMOND DRIVE, AND ARMISTEAD STREET AND BY AMENDING CERTAIN SECTIONS AS SET FORTH BELOW, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Chapter 38, “Traffic and Vehicles,” Article VI “Traffic Schedules,” Section 38-1014 “Traffic Schedule XIV, No Parking Here to Corner and No Parking at Any Time,” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A” and Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance upon a finding of liability thereof shall be deemed liable for a civil offense and punished with a civil penalty of not less than one dollar (\$1.00) and not more than two thousand dollars (\$2,000.00) or upon conviction thereof guilty of a misdemeanor, shall be punished by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit “A”

That Chapter 38, “Traffic and Vehicles,” Article VI. “Traffic Schedules”, Section 38-1014 “Traffic Schedule XIV, No Parking Here to Corner and No Parking at Any Time,” is hereby amended by **adding the following:**

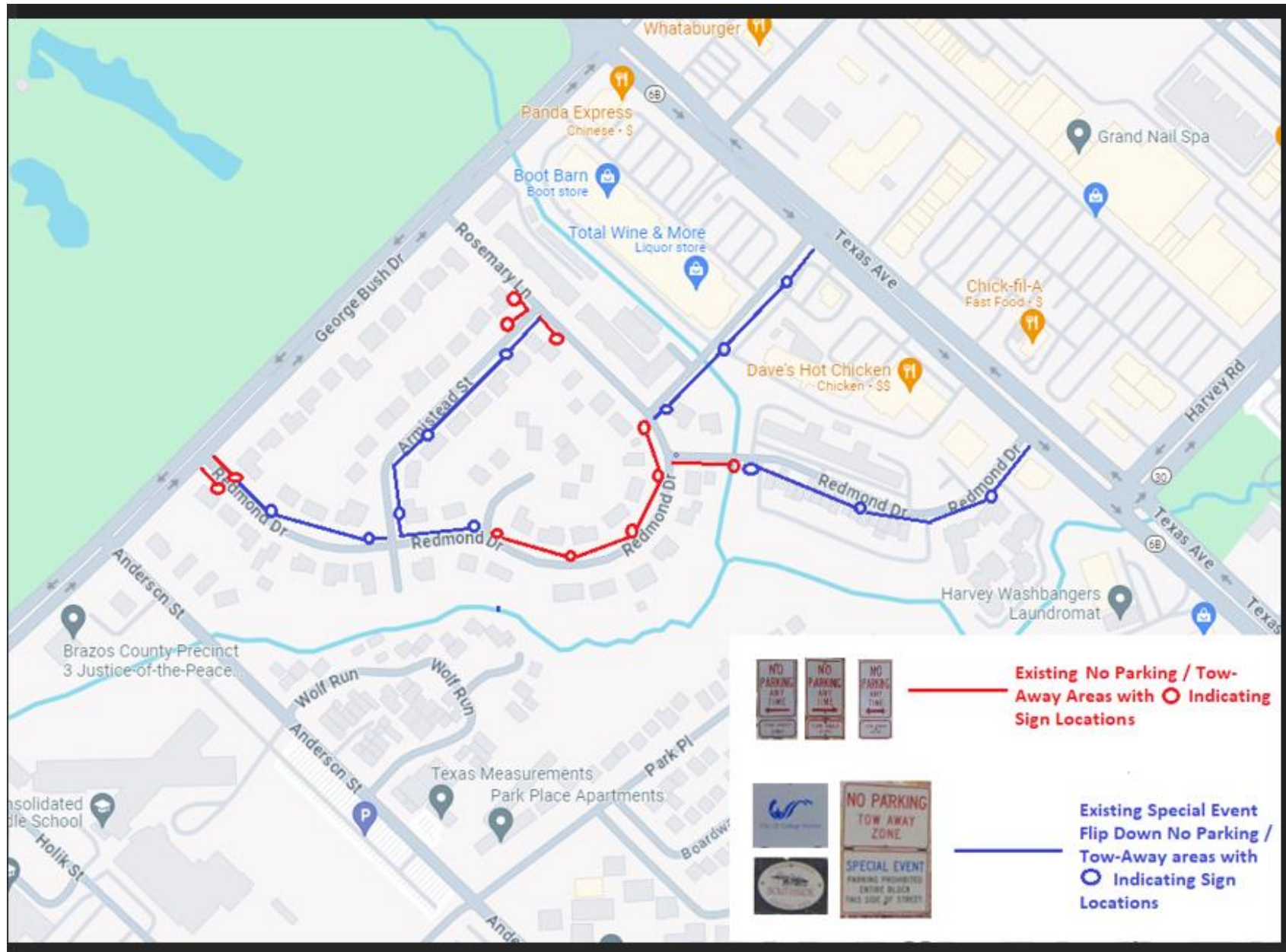
<i>Traveling on</i>	<i>Between</i>	<i>Travel Direction</i>	
Armistead Street	Redmond Drive and Rosemary Lane	Northeast	No parking any time
Milliff Road	Rosemary Lane and Texas Avenue	Northeast	No parking any time
Redmond Drive	Rosemary Lane and Texas Avenue	East	No parking any time
Redmond Drive	Lenert Circle and Rosemary Lane	Northeast	No parking any time
Redmond Drive	Rosemary Lane and Lenert Circle	Southwest	No parking any time
Redmond Drive	Lenert Circle and George Bush Drive	West	No parking any time
Rosemary Lane	Armistead Street to 100 feet southeast of Armistead Street	Southeast	No parking any time
Rosemary Lane	Milliff Road and Redmond Drive	Southeast	No parking any time
Rosemary Lane	Redmond Drive and Milliff Road	Northwest	No parking any time

Exhibit “B”

That Chapter 38, “Traffic and Vehicles,” Article VI. “Traffic Schedules”, Section 38-1014 “Traffic Schedule XIV, No Parking Here to Corner and No Parking at Any Time,” is hereby amended by **removing the following:**

<i>Traveling on</i>	<i>Between</i>	<i>Travel Direction</i>	
Armistead Street	Rosemary Lane and Redmond Drive	East	No parking any time
Redmond Drive	Armistead Street and George Bush Drive	Southeast	No parking any time
Redmond Drive	Texas Avenue and Redmond Drive	Southeast	No parking any time
Redmond Drive	Lenert Circle and Rosemary Lane	North	No parking any time
Redmond Drive	Rosemary Lane and Lenert Circle	West	No parking any time
Rosemary Lane	Armistead and George Bush Drive	South	No parking any time
Rosemary Lane	Milliff Road and George Bush Drive	South	No parking any time
Rosemary Lane	Milliff Road and Redmond Drive	South	No parking any time
Rosemary Lane	Redmond Drive and Milliff Road	West	No parking any time

EXISTING NO PARKING SIGNAGE



EXISTING NO PARKING ORDINANCE



PROPOSED NO PARKING ORDINANCE



October 24, 2024
Item No. 7.16.
William D. Fitch Parkway Rehabilitation Project, Phase 1

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Larry Young Paving, Inc., in the amount of \$5,140,781 for the rehabilitation of William D. Fitch Parkway from SH30 to Tonkaway Lake Drive, plus the City's contingency in the amount of \$514,078; for a total appropriation of \$5,654,859. 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 Larry Young Paving, Inc., for the rehabilitation of William D. Fitch Parkway from SH30 to Tonkaway Lake Drive in the amount of \$5,654,859.

Summary: Under this contract, the existing paving would be demolished, removed, and that area would be backfilled/compacted to grade as required and new hot mix asphaltic concrete (HMAC) would be installed. Signage and pavement markings are also included. Driveways that are connected to this portion of road will have the culverts replaced and a gravel pavement approach over those culverts installed. The project originated from the slow degradation of the existing asphalt road surface to the point that maintenance activities could no longer properly address the rough and uneven portions of the road surface. An Alternate was bid and accepted for the use of an automated flagger system for a more efficient traffic control system to save time for the overall construction schedule and to save money from the overall budget. This project was bid as an Invitation to Bid (ITB) and 4 responses were received of which Larry Young Paving, Inc. is the lowest qualified responsible and responsive bid with the fastest construction time of 300 days.

Budget & Financial Summary: Budget in the amount of \$7,150,000.00 is included for this project in the Streets Capital Improvement Projects Fund. A total of \$454,260 has been expended or committed to date, leaving a balance of \$6,695,740 for this construction contract and future costs.

Attachments:

1. WD Fitch Phase 1 Bid Tabulation
2. WD Fitch Phase 1 Project Map
3. WD Fitch Phase 1 Vendor Signed Contract

City of College Station
 Bid Tabulation 24-087
 William D Fitch Rehabilitation - Phase 1
 Tuesday, September 24, 2024 @ 2:00 PM

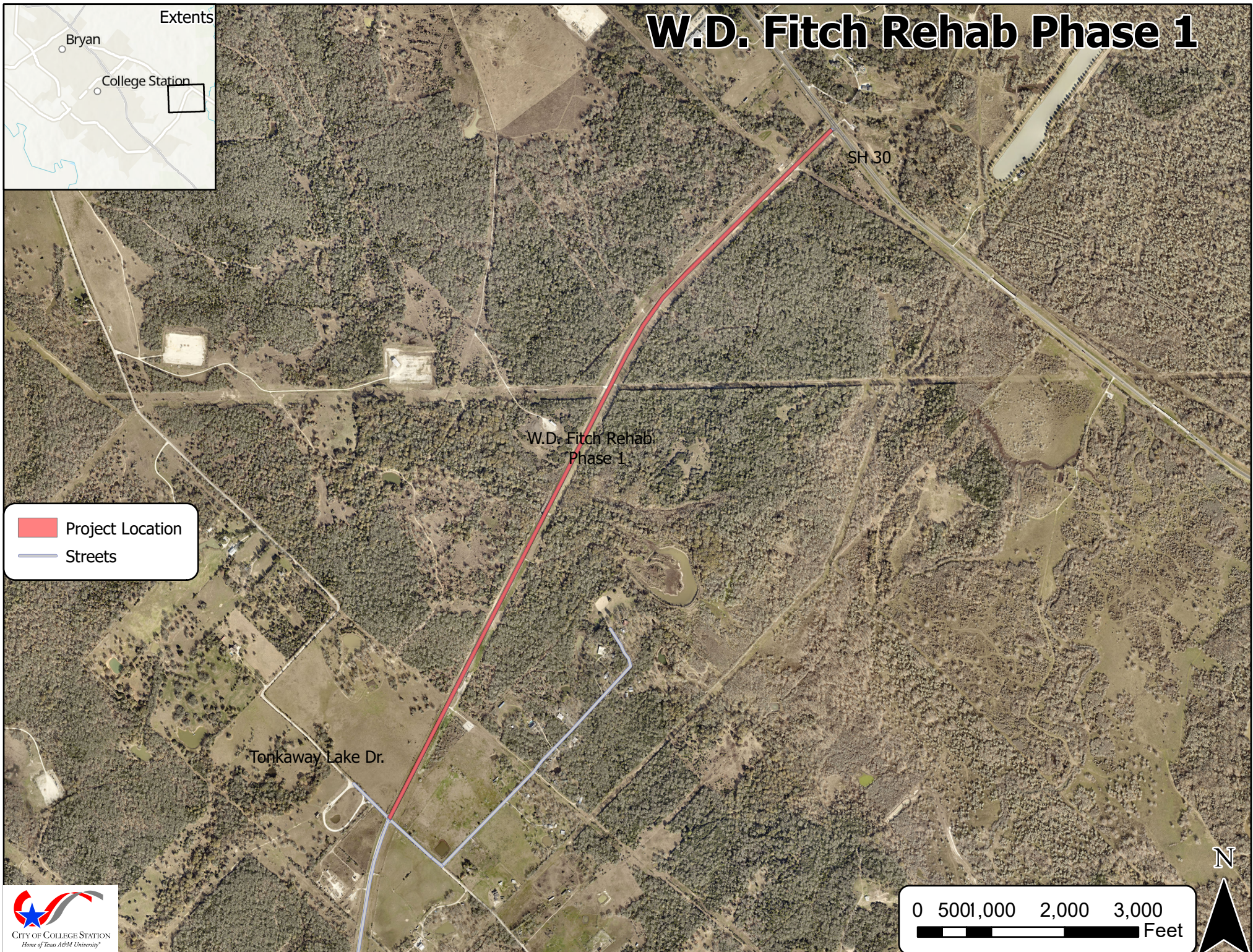
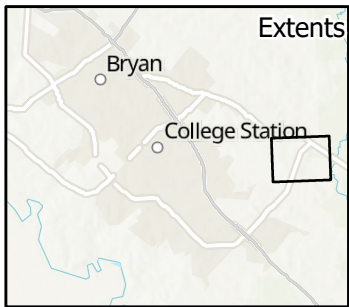
				Brazos Paving, Inc. (Bryan, TX)		Knife River (Bryan, TX)		Larry Young Paving Inc. (College Station, TX)		Texas Materials Group (Navasota, TX)	
ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
A. GENERAL CONSTRUCTION ITEMS											
1	Mobilization	1	LS	\$275,340.00	\$275,340.00	\$869,700.00	\$869,700.00	\$266,000.00	\$266,000.00	\$570,000.00	\$570,000.00
2	Erosion and Sedimentation	1	LS	\$59,820.00	\$59,820.00	\$104,000.00	\$104,000.00	\$59,000.00	\$59,000.00	\$56,000.00	\$56,000.00
3	Broadcast seeding	14	AC	\$3,820.00	\$53,480.00	\$1,705.00	\$23,870.00	\$2,300.00	\$32,200.00	\$1,000.00	\$14,000.00
4	ROW Preparation	97	STA	\$2,400.00	\$232,800.00	\$1,205.00	\$116,885.00	\$830.00	\$80,510.00	\$1,700.00	\$164,900.00
TOTAL SECTION A - GENERAL CONSTRUCTION ITEMS				\$621,440.00		\$1,114,455.00		\$437,710.00		\$804,900.00	
B. DEMOLITION ITEMS											
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
5	Removal of Existing Stabilized Base and Asphalt Pavement	47757	SY	\$7.50	\$358,177.50	\$8.95	\$427,425.15	\$7.00	\$334,299.00	\$10.00	\$477,570.00
6	Removal of Existing Asphalt Driveways	83	SY	\$65.00	\$5,395.00	\$23.10	\$1,917.30	\$7.50	\$622.50	\$30.00	\$2,490.00
7	Removal of Existing Gravel Driveways	482	SY	\$47.00	\$22,654.00	\$23.00	\$11,086.00	\$7.50	\$3,615.00	\$20.00	\$9,640.00
8	Excavation	10436	CY	\$12.60	\$131,493.60	\$17.60	\$183,673.60	\$19.00	\$198,284.00	\$47.00	\$490,492.00
9	Embankment	16844	CY	\$8.30	\$139,805.20	\$15.62	\$263,103.28	\$11.00	\$185,284.00	\$23.00	\$387,412.00
10	Removal of Existing Storm Drain and Driveway Culverts	491	LF	\$20.80	\$10,212.80	\$23.75	\$11,661.25	\$26.00	\$12,766.00	\$20.00	\$9,820.00
TOTAL SECTION B - DEMOLITION ITEMS				\$667,738.10		\$898,866.58		\$734,870.50		\$1,377,424.00	
C. ROADWAY CONSTRUCTION ITEMS											
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
11	Subgrade Preparation and Compaction Driveways	469	SY	\$25.00	\$11,725.00	\$20.00	\$9,380.00	\$4.00	\$1,876.00	\$40.00	\$18,760.00
12	Tensar NX750 Geogrid	52590	SY	\$8.00	\$420,720.00	\$7.20	\$378,648.00	\$8.25	\$433,867.50	\$6.00	\$315,540.00
13	5" Asphaltic Concrete (Type D)	13106	Ton	\$122.00	\$1,598,932.00	\$127.29	\$1,668,262.74	\$130.00	\$1,703,780.00	\$125.00	\$1,638,250.00
14	12" Base Material (Type A or D Gade 1-2)	17530	CY	\$74.15	\$1,299,849.50	\$55.34	\$970,110.20	\$87.00	\$1,525,110.00	\$93.00	\$1,630,290.00
15	Gravel Driveway	449	SY	\$35.00	\$15,715.00	\$51.00	\$22,899.00	\$58.00	\$26,042.00	\$24.00	\$10,776.00
16	Asphalt Driveway	20	SY	\$163.50	\$3,270.00	\$221.25	\$4,425.00	\$330.00	\$6,600.00	\$200.00	\$4,000.00
17	Street Signs (New)	9	EA	\$1,260.00	\$11,340.00	\$1,107.00	\$9,963.00	\$1,300.00	\$11,700.00	\$1,000.00	\$9,000.00
18	24" Thermoplastic Striping Solid White Line w/sealant	74	LF	\$10.35	\$765.90	\$9.09	\$672.66	\$11.00	\$814.00	\$10.00	\$740.00
19	4" Thermoplastic Striping Solid White Line w/sealant	19635	LF	\$0.88	\$17,278.80	\$0.77	\$15,118.95	\$1.00	\$19,635.00	\$0.60	\$11,781.00
20	4" Thermoplastic Striping Broken White Line w/sealant	164	LF	\$0.88	\$144.32	\$1.00	\$164.00	\$1.00	\$164.00	\$1.30	\$213.20
21	4" Thermoplastic Striping Solid Yellow Line w/sealant	9704	LF	\$0.88	\$8,539.52	\$0.77	\$7,472.08	\$1.00	\$9,704.00	\$1.30	\$12,615.20
22	4" Thermoplastic Striping Broken Yellow Line w/sealant	1588	LF	\$0.88	\$1,397.44	\$1.00	\$1,588.00	\$1.00	\$1,588.00	\$1.30	\$2,064.40
TOTAL SECTION C - ROADWAY CONSTRUCTION ITEMS				\$3,389,677.48		\$3,088,703.63		\$3,740,880.50		\$3,654,029.80	

City of College Station
Bid Tabulation 24-087
William D Fitch Rehabilitation - Phase 1
Tuesday, September 24, 2024 @ 2:00 PM

				Brazos Paving, Inc. (Bryan, TX)		Knife River (Bryan, TX)		Larry Young Paving Inc. (College Station, TX)		Texas Materials Group (Navasota, TX)	
D. STORM DRAIN CONSTRUCTION ITEMS											
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
23	18" HDPP	252	LF	\$91.00	\$22,932.00	\$110.45	\$27,833.40	\$110.00	\$27,720.00	\$100.00	\$25,200.00
24	24" HDPP	295	LF	\$110.00	\$32,450.00	\$131.85	\$38,895.75	\$120.00	\$35,400.00	\$120.00	\$35,400.00
25	Driveway Culvert SET	24	EA	\$1,932.00	\$46,368.00	\$1,760.00	\$42,240.00	\$1,200.00	\$28,800.00	\$1,500.00	\$36,000.00
TOTAL SECTION D - GENERAL CONSTRUCTION ITEMS				\$101,750.00		\$108,969.15		\$91,920.00		\$96,600.00	
E. TRAFFIC CONTROL - BASE BID											
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
26	Traffic Control	1	LS	\$1,119,300.00	\$1,119,300.00	\$609,000.00	\$609,000.00	\$620,000.00	\$620,000.00	\$257,000.00	\$257,000.00
TOTAL SECTION E - TRAFFIC CONTROL - BASE BID				\$1,119,300.00		\$609,000.00		\$620,000.00		\$257,000.00	
ALTERNATE 1											
F. TRAFFIC CONTROL - ALTERNATE 1											
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
27	Traffic Control Alternate 1	1	LS	\$247,600.00	\$247,600.00	\$10.00	\$10.00	\$85,000.00	\$85,000.00	\$115,000.00	\$115,000.00
28	Automated Flagger	18	MOS	\$1,850.00	\$33,300.00	\$2,020.00	\$36,360.00	\$2,800.00	\$50,400.00	\$2,700.00	\$48,600.00
TOTAL SECTION F - TRAFFIC CONTROL - ALTERNATE 1				\$280,900.00		\$36,370.00		\$135,400.00		\$163,600.00	
BASE BID TOTAL (SECTIONS A - E):				\$5,899,905.58		\$5,819,994.36		\$5,625,381.00		\$6,189,953.80	
DESIGN ALTERNATE 1 TOTAL (SECTIONS A - D + F):				\$5,061,505.58		\$5,247,364.36		\$5,140,781.00		\$6,096,553.80	
DIFFERENCE WITH ALT 1				\$838,400.00		\$572,630.00		\$484,600.00		\$93,400.00	
CONSTRUCTION TIME (Calendar Days)				630		630		350		630	
ALTERNATE 1 CONSTRUCTION TIME DEDUCTION (Calendar Days)				210		150		50		210	
TOTAL CONSTRUCTION TIME ALT 1 (Calendar Days)				420		480		300		420	
Addendum Acknowledged				Y		Y		Y		Y	
Certification Received				Y		Y		Y		Y	
Bond				Y		Y		Y		Y	

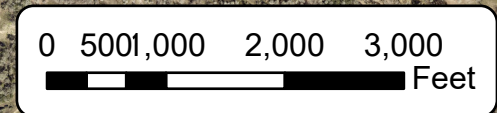
Should there be discrepancies between unit prices and totals, the unit price shall prevail.

W.D. Fitch Rehab Phase 1



Project Location

Streets





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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300055 PROJECT#: ST2000 BID/RFP/RFQ#: 24-087

Project Name / Contract Description: William D. Fitch Parkway Rehabilitation Project, Phase 1
as described in ITB 24-087

Name of Contractor: Larry Young Paving, Inc.

CONTRACT TOTAL VALUE: \$ 5,140,781.00

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)

This project was advertised as an Invitation to Bid (ITB) and opened on September 24th. Four (4) bids were received with Larry Young Paving, Inc. being the lowest, qualified, responsible and responsive bidder. Budget in the amount of \$7,150,000.00 is included for this project in the Streets Capital Improvement Projects Fund.

A total of \$454,260 has been expended or committed to date, leaving a balance of \$6,695,740 for this construction contract and future costs.

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

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

10/14/2024
DATE

LEGAL DEPARTMENT

DATE

ASST CITY MGR – CFO

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

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

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Larry Young Paving, Inc. (the "Contractor") for the construction and/or installation of the following:
William D. Fitch Rehabilitation - Phase 1; as described in ITB-24-087.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Five Hundred Fourteen Thousand Seventy-Eight and no /**100 Dollars (\$514,078.00)**).

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: Five Million One Hundred Forty Thousand Seven Hundred Eighty One and no/**100 Dollars (\$5,140,781.00)**.

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

LARRY YOUNG PAVING INC.

CITY OF COLLEGE STATION

By: Herbert L. Young Jr.

By: _____

Printed Name: Herbert L. Young Jr.

City Manager

Date: _____

Title: President

Date: 10/12/2024

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

"General Decision Number: TX20240007 01/05/2024

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, McClellon and Williamson Counties) and HIGHWAY Construction Projects

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

SUTX2011-006 08/03/2011

Rates Fringes

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

ELECTRICIAN.....\$ 26.35

FORM BUILDER/FORM SETTER
Paving & Curb.....\$ 12.94 **
Structures.....\$ 12.87 **

LABORER
Asphalt Raker.....\$ 12.12 **
Flagger.....\$ 9.45 **
Laborer, Common.....\$ 10.50 **
Laborer, Utility.....\$ 12.27 **
Pipelayer.....\$ 12.79 **
Work Zone Barricade
Servicer.....\$ 11.85 **

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

POWER EQUIPMENT OPERATOR:
Agricultural Tractor.....\$ 12.69 **
Asphalt Distributor.....\$ 15.55 **
Asphalt Paving Machine.....\$ 14.36 **
Boom Truck.....\$ 18.36
Broom or Sweeper.....\$ 11.04 **
Concrete Pavement
Finishing Machine.....\$ 15.48 **
Crane, Hydraulic 80 tons
or less.....\$ 18.36
Crane, Lattice Boom 80
tons or less.....\$ 15.87 **
Crane, Lattice Boom over
80 tons.....\$ 19.38
Crawler Tractor.....\$ 15.67 **
Directional Drilling
Locator.....\$ 11.67 **
Directional Drilling
Operator.....\$ 17.24
Excavator 50,000 lbs or
Less.....\$ 12.88 **
Excavator over 50,000 lbs...\$ 17.71
Foundation Drill, Truck
Mounted.....\$ 16.93 **
Front End Loader, 3 CY or
Less.....\$ 13.04 **
Front End Loader, Over 3 CY.\$ 13.21 **
Loader/Backhoe.....\$ 14.12 **
Mechanic.....\$ 17.10 **
Milling Machine.....\$ 14.18 **
Motor Grader, Fine Grade....\$ 18.51
Motor Grader, Rough.....\$ 14.63 **
Pavement Marking Machine...\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88 **

Roller, Asphalt.....\$ 12.78 **
 Roller, Other.....\$ 10.50 **
 Scraper.....\$ 12.27 **
 Spreader Box.....\$ 14.04 **
 Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....\$ 14.00 **
 Structural.....\$ 19.29

TRAFFIC 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 (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. 4478437

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Larry Young Paving, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto Markel Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of five million one hundred forty thousand seven hundred eighty one and 00 /100 Dollars (\$ 5,140,781.00) 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 William D. Fitch Rehabilitation - Phase 1: as described in ITB-24-087

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. 25300055
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. 4478437

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

Larry Young Paving, Inc.

(Name of Contractor)

By: [Signature]

By: [Signature]

Name: Tracy Lang

Name: Herbert L. Young, Jr.

Title: Witness

Title: President

Date: 10/24/2024

Date: 10/24/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

Markel Insurance Company

(Full Name of Surety)

By: [Signature]

9500 Arboretum Blvd, Suite 400

Name: Teresa Martin

Austin, TX 78759

Title: Witness

(Address of Surety for Notice)

Date: 10/24/2024

By: [Signature]

Name: Alexandria Petroski

Title: Attorney-In-Fact

Date: 10/24/2024

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. 4478437

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

THE COUNTY OF BRAZOS

§

THAT WE, Larry Young Paving, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto Markel Insurance Company, a corporation organized and existing under the laws of the State of Texas, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of five million one hundred forty thousand seven hundred eighty one and 00 /100 Dollars (\$ 5,140,781.00) 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 24th day of October, 20 24, for William D. Fitch Rehabilitation - Phase 1: as described in ITB-24-087, 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. 4478437

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

Larry Young Paving, Inc.

(Name of Contractor)

By: [Signature]

Name: Tracy Lang

Title: Witness

Date: 10/24/2024

By: [Signature]

Name: Herbert L. Young, Jr.

Title: President

Date: 10/24/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

Markel Insurance Company

(Full Name of Surety)

By: [Signature]

Name: Teresa Martin

Title: Witness

Date: 10/24/2024

9500 Arboretum Blvd, Suite 400

Austin, TX 78759

(Address of Surety for Notice)

By: [Signature]

Name: Alexandria Petroski

Title: Attorney-In-Fact

Date: 10/24/2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

Contract No. 25300055

Construction Agreement Over \$50,000

Form 04-20-2023

JOINT LIMITED POWER OF ATTORNEY

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

Connie Grocholski, Alexandria Petroski, Teresa Martin, Sally White

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

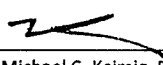
Fifty Million and 00/100 Dollars (\$50,000,000.00)

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

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

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 23rd day of August, 2024.

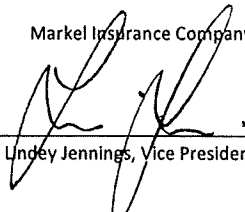
SureTec Insurance Company

By: 

Michael C. Keimig, President



Markel Insurance Company

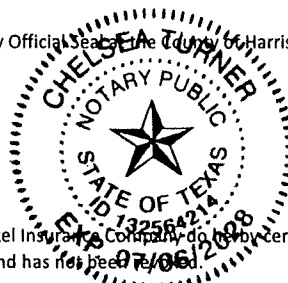
By: 

Lindsey Jennings, Vice President

State of Texas
County of Harris:

On this 23rd day of August, 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 to the foregoing instrument, this 24th day of August, 2024.



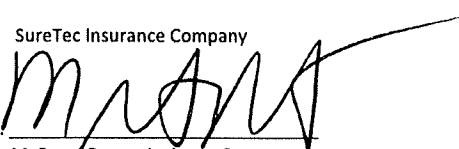
By: 

Chelsea Turner, Notary Public
My commission expires 7/6/2028

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.

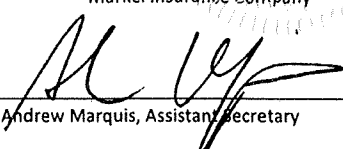
IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 24th day of October, 2024.

SureTec Insurance Company

By: 

M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: 

Andrew Marquis, Assistant Secretary

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

Statutory Complaint Notice/Filing of Claims

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

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

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

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

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

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



LARRYOU-01

TSOUTH1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/3/2024

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 Rollo Insurance Group, Inc 1500 Earl Rudder Freeway S College Station, TX 77840	CONTACT NAME:		
	PHONE (A/C, No, Ext): (979) 307-7700	FAX (A/C, No):	
	E-MAIL ADDRESS: jon.ellison@rolloinsurance.com		
INSURED Larry Young Paving, Inc Silver Hill Equipment Co, LLC PO Box 11779 College Station, TX 77842	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Allied World Surplus Lines Ins Co		24319
	INSURER B : Axis Surplus Insurance Co		26620
	INSURER C : Texas Mutual Insurance Company		22945
	INSURER D : Endurance American Specialty Insurance Company		41718
	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:			6004-1871	8/23/2024	8/23/2025	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 \$ 2,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			6000-1744	8/23/2024	8/23/2025	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 \$			P-001-003796890-01	8/23/2024	8/23/2025	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
C	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	0001311091	8/23/2024	8/23/2025	☒ 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
A	Excess Liability			0314-3893	8/23/2024	8/23/2025	Excess Liability \$ 3,000,000
D	Excess Liability			ELD30043365101	8/23/2024	8/23/2025	Excess Liab \$5M X \$5M \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Contract No. ITB-24-087 William D. Fitch Rehabilitation Phase 1 project

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

CERTIFICATE HOLDER

CANCELLATION

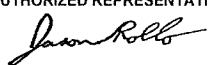
City of College Station P.O. Box 9960 College Station, TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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.

In addition, if plans and specifications from ITB 24-087 are not physically inserted here, then they become fully incorporated into this contract by reference.

EXHIBIT E
CONSTRUCTION SCHEDULE

EXHIBIT F
SCHEDULE OF VALUES

Construction project will consist of Alternate 1 bid of \$5,140,781 with 300 days of construction time calendar days to substantial completion from notice to proceed.

CONTRACTOR'S PROPOSAL
AND
ALTERNATES (if applicable)

BID SUMMARY
BID NO. 24-087

Date: 9.24.24

PROPOSAL FROM: Larry Young Paving, Inc.

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

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for William D. Fitch Rehabilitation Phase 1 project and to perform the work required for the construction of said project at the location set out by the project 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:

William D. Fitch Rehabilitation Phase 1

BASE BID TOTAL (SECTIONS A - E): ~~\$5,525,381.00~~ 5,625,381.00 *W*
DESIGN ALTERNATE 1 TOTAL (SECTIONS A - D, F): ~~\$5,040,781.00~~ 5,140,781.00 *D*

CALENDAR DAYS: TOTAL number of calendar days to substantial completion is 630 days.
Number of Addenda is hereby acknowledged 1 - 2

CONTRACTOR NAME: Larry Young Paving, Inc.

CONTRACTOR SIGNATURE: Mark Schineter COO

CITY OF COLLEGE STATION
 BID #24-087
 WILLIAM D FITCH REHABILITATION - PHASE 1
 Bid Opening: Tuesday, September 24, 2024 @ 2:00 pm CT

The undersigned proposes to furnish all labor, services, materials, tools, and necessary equipment for the Work. Type or write legibly in blue or black ink. A unit price is required for all bid items. If there are discrepancies between unit prices and totals, the unit price will prevail. Initial all corrections and do not round totals.

A. GENERAL CONSTRUCTION ITEMS

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
1	Mobilization	1	LS	\$ 266,000.00	\$ 266,000.00
2	Erosion and Sedimentation Control	1	LS	\$ 59,000.00	\$ 59,000.00
3	Broadcast seeding complete	14	AC	\$ 2,300.00	\$ 32,200.00
4	ROW Preparation (Within Limits of Disturbance)	97	STA	\$ 830.00	\$ 80,510.00
TOTAL SECTION A - GENERAL CONSTRUCTION ITEMS				\$	437,710.00

B. DEMOLITION ITEMS

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
5	Removal of Existing Base Material and Asphalt Pavement (Estimated at a 11-Inch Depth)	47757	SY	\$ 7.00	\$ 334,299.00
6	Removal of Existing Asphalt Driveways	83	SY	\$ 7.50	\$ 622.50
7	Removal of Existing Gravel Driveways	482	SY	\$ 7.50	\$ 3,615.00
8	Excavation	10436	CY	\$ 19.00	\$ 198,284.00
9	Embankment	16844	CY	\$ 11.00	\$ 185,284.00
10	Removal of Existing Storm Drain and Driveway Culverts	491	LF	\$ 26.00	\$ 12,766.00
TOTAL SECTION B - DEMOLITION ITEMS				\$	634,870.50 734,870.50

C. ROADWAY CONSTRUCTION ITEMS

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
11	Subgrade Preparation and Compaction Driveways	469	SY	\$ 4.00	\$ 1,876.00

CITY OF COLLEGE STATION
 BID #24-087
 WILLIAM D FITCH REHABILITATION - PHASE 1
 Bid Opening: Tuesday, September 24, 2024 @ 2:00 pm CT

12	Tensar NX750 Geogrid and Subgrade Preparation	52590	SY	\$ 8.25	\$ 433,867.50
13	5" Asphaltic Concrete (Type D)	13106	Ton	\$ 130.00	\$ 1,703,780.00
14	12" Base Material (Type A or D Gade 1-2)	17530	CY	\$ 87.00	\$ 1,525,110.00
15	Gravel Driveway	449	SY	\$ 58.00	\$ 26,042.00
16	Asphalt Driveway	20	SY	\$ 330.00	\$ 6,600.00
17	Street Signs (New)	9	EA	\$ 1,300.00	\$ 11,700.00
18	24" Thermoplastic Striping Solid White Line w/sealant	74	LF	\$ 11.00	\$ 814.00
19	4" Thermoplastic Striping Solid White Line w/sealant	19635	LF	\$ 1.00	\$ 19,635.00
20	4" Thermoplastic Striping Broken White Line w/sealant	164	LF	\$ 1.00	\$ 164.00
21	4" Thermoplastic Striping Solid Yellow Line w/sealant	9704	LF	\$ 1.00	\$ 9,704.00
22	4" Thermoplastic Striping Broken Yellow Line w/sealant	1588	LF	\$ 1.00	\$ 1,588.00
TOTAL SECTION C - ROADWAY CONSTRUCTION ITEMS				\$	3,740,880.50
D. STORM DRAIN CONSTRUCTION ITEMS					
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
23	18" HDPP	252	LF	\$ 110.00	\$ 27,720.00
24	24" HDPP	295	LF	\$ 120.00	\$ 35,400.00
25	Driveway Culvert SET	24	EA	\$ 1,200.00	\$ 28,800.00
TOTAL SECTION D - STORM DRAIN CONSTRUCTION ITEMS				\$	91,920.00
E. TRAFFIC CONTROL - BASE BID					
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
26	Traffic Control	1	LS	\$ 620,000.00	\$ 620,000.00
TOTAL SECTION E - TRAFFIC CONTROL - BASE BID				\$	620,000.00

CITY OF COLLEGE STATION
 BID #24-087
 WILLIAM D FITCH REHABILITATION - PHASE 1
 Bid Opening: Tuesday, September 24, 2024 @ 2:00 pm CT

F. TRAFFIC CONTROL - ALTERNATE 1					
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
27	Traffic Control Alternate 1	1	LS	\$ 85,000.00	\$ 85,000.00
28	Automated Flagger	18	MOS	\$ 2,800.00	\$ 50,400.00
TOTAL SECTION F - TRAFFIC CONTROL - ALTERNATE 1				\$	135,400.00
BASE BID TOTAL (SECTIONS A - E):					5,525,381.00
DESIGN ALTERNATE 1 TOTAL (SECTIONS A - D, F):					5,040,781.00
CONSTRUCTION TIME (Calendar Days)					350 Days
ALTERNATE 1 CONSTRUCTION TIME DEDUCTION (Calendar Days)					-50
					Total 300 Days
CONTRACTOR NAME: _____ Larry Young Paving Inc. _____					
CONTRACTOR SIGNATURE: _____					
Total Number of Addenda is hereby acknowledged <u>1</u>					

October 24, 2024
Item No. 7.17.
Public Works Facility – Design phase 1

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a design contract with Marmon Mok Architecture, in the amount of \$372,319 for the pre-design work required for space programming, needs assessment, and site feasibility studies for the Public Works Facility Project.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval and award of the design contract with Marmon Mok Architecture for the initial design efforts of space programming, needs assessment, and site feasibility studies for the Public Works Facility Project in the amount of \$372,319.

Summary: Under this contract, the design team would assist with the initial design requirements of the Public Works Department's programming of spaces, process a full needs assessment, and develop specific site feasibility reports for the City's use in determining the correct property to place this project upon. Also included in this contract would be participation in the selection process of the Construction Manager at Risk (CMAR) for the project. Finally, after the critical scope items have been identified, the Architect would provide a few conceptual drawings of some potential layouts of the building footprint with adjacencies of departments, shared spaces and access locations shown. This phase of work was advertised via a Request for Qualifications (RFQ) process. Eight firms submitted Statement of Qualifications (SOQ) packages on August 29, 2024. All packages were carefully reviewed by a selection committee and two firms were then shortlisted for interviews. Interviews with both firms were made on October 3, 2024 and the final recommendation from the selection committee is Marmon Mok Architecture for this phase of work.

Budget & Financial Summary: Budget in the amount of \$5,000,000 is included for this project in the Facilities and IT Capital Improvement Projects Fund. A total of \$1,828 has been expended or committed to date, leaving a balance of \$4,998,172 for this design contract and future costs.

Attachments:

1. MarmonMok Cost Proposal
2. PW Facility CMAR Prof Serv Contract MarmonMok Vendor Signed



October 14, 2024

Jon Hall
City of College Station
Public Works Project Manager
300 Krenak Tap Road
College Station, Texas 77840

VIA Email: jhall@cstx.gov

Re: AE Pre-Design Services Fee Proposal
Public Works Complex Project
College Station, Texas

Dear Mr. Hall,

Thank you for selecting Marmon Mok Architecture to design the new campus for the City of College Station Public Works Department. Our team is ready to go, and we know your department is similarly excited at the prospect of creating a new work environment that honors the workforce of your organization that represents the City of College Station. Our approach will be collaborative, transparent and focused on achieving the right solutions that meet your goals and support your needs as a functional and effective workplace for your employees and the citizens you serve.

Since notice of award, our team has coordinated with consultants and based on our scope meeting on October 8th, we have developed a two phased approach to the design of College Station Public Works new facilities. We have formed a reasonable understanding of the project and scope of services required for the design of your project.

For the first phase of the project, at your request, attached is a scope of services statement and hourly task breakdown for Marmon Mok.

Our proposed fee for AE pre-design services to accomplish the proposed scope of services is provided as a hourly not to exceed total. This proposal includes all anticipated consultants required to complete the scope as currently defined.

We understand your intent and desire is for Marmon Mok to provide an initial scope of services to provide programming, site evaluation, conceptual site and building studies, and participate in selection of an eventual Construction Manager at Risk, and we have included those services as we understand their requirements at this time.

Pre-Design Services

Pre-Design services include traditional AE design related services that are comprehensive from Schematic Design through Construction Administration to produce plans and specifications to construct the work.

The following disciplines and consultants and related fee comprise the services for Pre-Design

<u>Discipline</u>	<u>Consultant</u>	<u>Fee</u>
Architecture & Interior Design	Marmon Mok Architecture	\$ 242,360
Civil Engineering	Kimley Horn	\$ 39,450
MEP Consultation	Cleary Zimmermann Engineers	\$ 10,420
Fuel System & Fluid Distribution	CDS Muery	\$ 12,845
Geotechnical Review	Terracon	\$ 28,050
Total Pre-Design Services:		\$ 333,125

Pre-Design services will be invoiced monthly based on percentage of phase complete per the following schedule:

<u>Task</u>	<u>Milestone</u>	<u>Percentage</u>
Programming	Program Draft	50%
	Program Document	50%
Site Evaluation	Site Evaluation Completion	100%
Site & Building Conceptual Design	Site Fit Studies	50%
	Conceptual Building Configurations	50%
CMAR Selection		100%

Optional Services

Optional Supplemental Services include specific task-based services to support the Pre-Design services listed above. As task-based services, these services will be invoiced as completed over the course of the project work. Consultant supplemental fees are marked up 1.1 times for management and administration of the work.

These services include the following:

<u>Service</u>	<u>Consultant</u>	<u>Allowance</u>
Preliminary Geotechnical Evaluation:	Terracon	\$ 15,480
Site Survey Allowance:	Kimley Horn	\$ 5,500
Program Level Cost Estimate:	Project Cost Resource	\$ 13,414
Systems Narrative for Program	FPCG	\$ 2,400
Document:	Datacom	\$ 2,400
Total Supplemental Services:		\$ 39,194

Total Contract Fee Proposal:

\$ 372,319

Exclusions

Schematic Design, Design Development, Construction Documents, Permitting, Contract Administration

Municipal plan review and construction permit review fees.

Comprehensive Energy Model Analysis of facilities beyond code required energy analysis. Upon request, may be added as an additional service.

Platting or Zoning activities of the property and performing a Traffic Impact Analysis.

Certification of environmental design standards through USGBC (LEED) or other similar certifying bodies.

Please call if you have any questions regarding this proposal. We remain available to discuss further and look forward to a very successful project outcome.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edgar Farrera', with a stylized flourish extending from the end.

Edgar Farrera
Partner
Marmon Mok Architecture

Cc:

Encl.

Attachment A: Scope of Work Description
Attachment B: Team Breakdown of Work
Attachment C: Architecture Hourly Breakdown

ATTACHMENT A SCOPE OF WORK

PROJECT OVERVIEW

The City of College Station has initiated a project (“**the Project**”) that will construct a new campus of facilities for the Public Works Department to meet the expanding service demand for this rapidly growing municipality. This campus will comprise multiple structures including administration and operations office building(s), potential operational structures may include, a vehicle maintenance building, equipment storage and shop buildings and material storage buildings. Vehicle fueling services and vehicle wash facilities will also be planned for. The Administrative and Operations building(s) may be one multi-story structure or separate structures as determined through detailed programming and master planning of the proposed site. Site development will provide parking facilities for the employees, visitors, and the department fleet vehicles.

Marmon Mok shall provide an initial Pre-Design phase of the new campus to include Programming, Site Analysis, Conceptual Building and Site Plan Studies, and CMAR Evaluation and Selection.

Our approach will be collaborative, transparent and focused on achieving the right solutions that meet your goals and support your needs as a functional and effective workplace for your employees and the citizens you serve.

ARCHITECTURE AND ENGINEERING PRE-DESIGN PHASE SERVICES

1. Pre-Design: Consultant shall work with City PM, and other Project Team members to develop building and site space planning requirements, and the relationships between the various building elements and functions to facilitate interactions between buildings, (horizontal and vertical elements) and Campus personnel.
 - a. Space Programing and Functional Requirements
 - i. Consultant shall provide the resources and expertise to effectively assist City’s PM in formalizing a thorough and detailed Space Program and Functional Use Requirements (“SPFR”).
 - ii. Consultant shall work closely with stakeholders, City’s PM and other interested parties to evaluate detailed space requirements that respond to the functional needs of the Department.
 - iii. The Consultant shall review the requirements necessary for the various project functions, relationships or operations, such as those for existing and projected personnel, space allocations, furnishings and equipment, operating procedures and communications.
 - iv. The Consultant shall gather information furnished by the City to aid the Consultant in understanding City’s present, short-term and long-term personnel and space requirements, including special equipment needs, organizational structure, adjacencies and workflow.
 - v. The Consultant shall conduct interviews with the City’s representatives and shall observe existing conditions at City’s facilities.
 - vi. The consultant shall assist in scheduling tours of similar facilities around the region if desired, that might offer ideas on things that work well in this type of facility and things that do not.

- vii. The Consultant shall provide recommendations that address and satisfy multiple objectives including maximizing space; minimizing cost; providing flexible spaces capable of adapting to changing programs and technological requirements, and efficiency, and achieving overall quality.
 - viii. The Consultant will work with City to create the goals and objectives with respect to their impact on City's space requirements.
 - ix. The Consultant shall develop personnel space standards as required based upon an evaluation of existing standards and the functional requirements and standards of the City. Personal space standards shall take into consideration the design and layout of furniture.
 - x. The Consultant shall develop a general understanding of the Owner's equipment requirements, including maintenance and shop equipment, data and telecommunications equipment, and reproduction equipment. Consultant shall rely upon the Departments Operations staff identifying equipment needs, equipment relocations, new equipment requirements and connections required thereof.
 - xi. Once the initial program requirements are determined based upon City's current requirements and the initial program has been accepted by City's PM, Consultant shall incorporate the findings and requirements into the final program for approval by City's PM before proceeding to the Schematic Design Phase.
2. Site Evaluation: Consultant will coordinate with City PM to review, evaluate and provide a report of findings for a list of sites (4-6) to be provided by the City.
- i. Consultant shall conduct a complete and thorough analysis of the site to program requirements, context, and site planning guidelines. Investigation areas include soils, topography, site utilities (either on site or available to the site), access and circulation, urban design context, and zoning/ city requirements.
 - ii. Consultant shall conduct site fit studies, investigating each sites suitability in terms of programmatic requirements, vehicular movements, future expansion, and parking needs.
 - iii. Consultant shall evaluate candidate sites and prepare an evaluation report or matrix to the city containing the pros and cons of candidate sites along with recommendations regarding the most suitable site(s) for the project.
3. Conceptual Building and Site Plan Studies
- i. Consultant shall utilize the topography of the site, and shall identify with massing studies potential building sites, and circulation paths (pedestrian and vehicular), and present the pros and cons of the various studies by using the appropriate graphical representation techniques to the City for approval.
 - ii. Based on approved site development scheme, Consultant will develop a selected site plan depicting building massing studies based upon program requirements, site parking and circulation, roadways and improvements including utilities, stormwater management features, and site enhancement opportunities as determined with the City.
 - iii. Based on program needs and interviews, the consultant shall prepare preferred options for division adjacencies and resulting stacking diagrams.

4. Construction Manager at Risk (CMAR) Evaluation and Selection
 - i. Consultant will assist the city in evaluating CMAR submittals, including reviewing qualifications and providing input as appropriate
 - ii. Consultant shall participate in CMAR candidate evaluation discussions and CMAR selection interviews as required.

ATTACHMENT B
Team Breakdown of Work

City of College Station Public Works Complex										
Fee/Price Proposal Breakdown for Professional Services - Full Team										
Project Name:		City of College Station- Public Works Complex								
Date Proposal Submitted:		10/14/2024								
Position/Personnel Title	Marmon Mok Architect & Interior Designer	Kimley-Horn Civil Engineer	Cleary Zimmermann MEP Engineer	CDS Muery Fuel Design	Terracon Geotechnical Engineer & Environmental	FPCG Fire Protection Engineer & Code Consultant	Datacom Technology, AV, Acoustic & Security Designer	Project Cost Resource Cost Estimator		
Pre-Design Phase										
1. Programming	\$51,980.00	\$3,750.00	\$1,200.00	\$2,650.00	\$3,300.00				\$62,880.00	
2. Site Evaluation/Investigation	\$49,860.00	\$22,450.00	\$2,000.00	\$4,275.00	\$24,750.00				\$103,335.00	
3. Conceptual Building & Site Studies	\$97,400.00	\$12,650.00	\$6,420.00	\$5,520.00					\$121,990.00	
4. CMAR Evaluation & Selection	\$43,120.00	\$600.00	\$800.00	\$400.00					\$44,920.00	
Sub Total- Pre Design Fee (Not to Exceed): \$242,360.00 \$39,450.00 \$10,420.00 \$12,845.00 \$28,050.00 \$333,125.00										
Optional Services										
1. Preliminary Geotechnical Engineering (Selected Site)		Allowance				Allowance			\$15,480.00	
2. Site Survey Allowance		\$5,500.00							\$5,500.00	
3. Program Level Cost Estimate								\$13,414.00	\$13,414.00	
4. Systems Narrative for Program Document						\$2,400.00	\$2,400.00		\$4,800.00	
Sub Total Optional Services (Not to Exceed): \$5,500.00 \$15,480.00 \$2,400.00 \$13,414.00 \$39,194.00										
Total Pre-Design & Optional Services										
										\$372,319.00

ATTACHMENT C Architecture Hourly Breakdown

City of College Station Public Works Complex									
Fee/Price Proposal Breakdown for Professional Services- Architect Only									
Project Name:		City of College Station- Public Works Complex							
Name of Firm/Subconsultant:		Marmon Mok Architecture							
Date Proposal Submitted:		10/14/2024							
Project Manager:									
Position/Personnel Title		Partner	Senior Project Manager	Professional Architect II	Interior Designer	Graphic Designer	Architectural Intern I	Admin/Clerical	
Fully-Loaded Hourly Wage Rates * (as defined below)		\$275.00	\$180.00	\$170.00	\$120.00	\$140.00	\$75.00	\$90.00	
Task to be performed/Phase Description (including Sub-consultant work)		Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total Hours
Pre-Design Phase									
Programming		60	100	40	48	12	24	16	300
Site Evaluation		48	112	60			60	20	300
Conceptual Building & Site Studies		116	156	92	94	30	60	20	568
CMAR Evaluation & Selection		40	96	64			24	24	248
Total Hours:		264	464	256	142	42	168	80	1416
Total Fee Proposal (Not to Exceed):		\$72,600.00	\$83,520.00	\$43,520.00	\$17,040.00	\$5,880.00	\$12,600.00	\$7,200.00	\$242,360.00
* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).									



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300061 PROJECT#: GG2505 BID/RFP/RFQ#: 24-080

Project Name / Contract Description: New Public Works Facility

Name of Contractor: Marmon Mok Architecture, LP

CONTRACT TOTAL VALUE: \$ 372,319.00

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)

Design Engineer chosen as best qualified from RFQ (CMAR)-24-080

Funding available in Project Code GG2505

CRC Approval Date*: N/A (If required)* Council Approval Date*: 10/24/2024 Agenda Item No*: TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

10/18/2024
DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A
MAYOR (if applicable)

DATE

N/A
CITY SECRETARY (if applicable)

DATE

Original(s) sent to CSO on _____

Scanned into Laserfiche on _____

Original(s) sent to Fiscal on _____

**CITY OF COLLEGE STATION
PROFESSIONAL SERVICES CONTRACT
(REGARDING CONSTRUCTION MANAGER AT RISK PROJECT)**

This Contract (“Contract” or “Agreement”) is between the **City of College Station**, a Texas home-rule municipal corporation, (the “City”) and Marmon Mok Architecture, LP, a Texas Limited Partnership (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
Scope of Services**

1.01 In consideration of the compensation stated in paragraph 2.01 hereinbelow, the Consultant agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: Project programming, preparing schematics, design development, preparing construction documents and construction administration for: new Public Works facility to include administrative offices, fleet shops and storage located at (to be determined) for the City of College Station, Texas (the “Project”).

1.02 As used in this Contract unless otherwise designated (and whether the term or phrase appears in capital letters, quotations, or bold or italicized print): (a) **“City”** means the City of College Station, Texas, a Texas home-rule municipality, including its elected officials (including its City Council), appointed officials, employees, agents and consultants (other than the Consultant and the Construction Manager), volunteers, assigns, and successors in interest; (b) **“Construction Manager”** means a Construction Manager at Risk as described in this Contract; (c) **“Consultant”** means the Texas licensed architect or Texas architectural firm and/or the Texas licensed engineer or engineering firm which sign this Contract as a Party providing the herein described professional services for the Project, including their directors, partners, officers, members, managers, employees, consultants or subconsultants, agents, permitted assigns, and successors in interest; (d) **“Party”** means a signing Party to this Contract; and (e) the past, present, or future tense shall each include the other, the masculine or feminine gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning. All documents attached to or referenced by this Contract are incorporated by reference for all purposes.

**ARTICLE II
Payment and Construction Cost**

2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **Three Hundred Seventy-Two Thousand Three Hundred Nineteen and no/100 Dollars (\$372,319.00)**.

2.02 Consultant’s evaluations of the City’s project budget and the preliminary estimates of

construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.

2.03 The construction budget for this Project, which is established as a condition of this Contract is **\$35 million**. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE III Time of Performance

3.01 The Consultant shall perform with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant shall perform all professional services necessary for the complete design and construction documentation of the Project within the times set forth below and in Section 3.02. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

- (a) Conceptual Design:(to be determined) calendar days** after the authorization to commence planning.
- (b) Preliminary Design:(to be determined) calendar days** after authorization to commence development.
- (c) Final Design:(to be determined) 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): November 1, 2025.

3.03 Time is of the essence of this Contract. The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule, over which Consultant has control and agrees are as expeditious as are prudent considering the ordinary professional skill and care of a competent engineer or architect, shall not be exceeded without written approval from the City.

3.04 The Consultant's services for the Project shall consist of all the services required to be performed by Consultant, Consultant's employees and Consultant's consultants under the terms of this Contract. Such services include: (a) normal or basic civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services; (b) any other design services that are normally or customarily furnished and reasonably necessary for the

Project; (c) (i) schematic (or conceptual) design phase services, (ii) design development phase services, (iii) construction document phase services, (iv) procurement phase services, (v) construction phase services, (vi) evaluation of work services, including the review and certification of requests for and payments proposed to contractors or other service, equipment, or material providers, (vii) project completion services, and (viii) supplemental and/or additional services requested by the City; and (d) all other services herein described to be provided by the Consultant to the City for the Project. The Consultant shall contract and employ at its expense consultants (or subconsultants) necessary for the design of the Project, and such consultants shall be licensed as required by the State of Texas and approved in writing by the City.

3.05 The Consultant shall designate a principal of the firm satisfactory to the City who shall, so long as employed by Consultant and acceptable to the City, remain in charge of professional services through completion and be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

3.06 Consultant shall be responsible for the coordination of its services with those of its subconsultants, the City, and the City's consultants, including the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for their compliance with all applicable state, federal, or local (including the City) codes, ordinances, regulations, laws and statutes. Upon receipt from the City, the Consultant shall review the services and information furnished by the City and the City's consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

ARTICLE IV

Conceptual Design

4.01 Upon the Consultant's receipt from the City of a Letter of Authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal Projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design,

design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the project budget, if applicable.

4.03 The Consultant shall prepare a Conceptual Design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the City's Program, the Project Schedule and budget. The Consultant shall reach an understanding with the City regarding the requirements of the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and the City Council to make a presentation of its report.

ARTICLE V

Preliminary Design

5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a "letter of authorization" to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the Letter of Authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design including any material changes and deviations that have taken place from the Conceptual Design cost estimate, and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the project budget and schedule.

ARTICLE VI

Final Design

6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a "letter of authorization" to begin work on the final design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the contract documents, drawings, and specifications, to fix and describe the size and character of the

Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.

6.02 Notwithstanding the City’s approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project.

6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City’s current pre-approved, “City of College Station Standard Form of Agreement Between City and Construction Manager at Risk” (“CMAR Agreement”) for the construction contract between the City and the Construction Manager. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City’s standard form without the prior written approval of the City. The Consultant shall assist the City with all phases of the procurement and engagement of the Construction Manager, including assistance with the review of, consultation regarding, and any proposed modifications regarding the CMAR Agreement.

6.04 The Consultant shall provide the City and Construction Manager at Risk (“CMAR”) with complete contract documents sufficient to be advertised for bids by the CMAR. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City Staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design, including identification of all material changes and deviations that have taken place from the Preliminary Design Documents and a cost estimate. The Consultant shall verify that, to the best of Consultant’s belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VII

Bid Preparations & Evaluation for Subcontractors

7.01 The Consultant shall assist the Construction Manager in advertising for and obtaining bids or negotiating proposals for the construction of the Project, in compliance with state law. Upon request, the Consultant shall meet with City Staff and the City Council to present, and make recommendations on, the bids and proposals submitted for the construction of the Project.

7.02 The Consultant shall review the Construction Manager’s bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid.

7.03 Where substitutions are requested by a Construction Manager, the Consultant shall review the substitution requested with the City and make a recommendation to the City to either approve or disapprove such substitution(s).

ARTICLE VIII

Construction

8.01 The Consultant shall be a representative of, and shall advise and consult with, the City **(a)** during construction, and **(b)** at the City's direction from time to time during the correction or warranty period described in the construction contract or CMAR Agreement. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.

8.02 The Consultant shall make visits to the Project site, to inspect the progress and quality of the executed work of the Construction Manager and its contractors and subcontractors and to determine if such work is proceeding in accordance with the contract documents. The minimum number of site visits and their frequency shall be established by the City and Consultant prior to commencement of construction. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.

8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall exercise the utmost care and diligence in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform with the contract documents.

8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that the Construction Manager or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by the Construction Manager or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the Construction Manager in accordance with the contract documents.

8.06 The Consultant shall issue all instructions of the City to the Construction Manager as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, but not later than twenty (20) calendar days after a written request, render such interpretations and clarifications in writing as it may deem necessary for the proper execution and progress of the Work. Consultant shall receive no additional compensation for providing clarification of the Drawings and Specifications.

8.07 The Consultant shall review the amounts owing to the Construction Manager and recommend to the City, in writing, payments to the Construction Manager of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and its experience and qualifications as a design professional, shall constitute a recommendation

by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.

8.08 Upon notification from the Construction Manager that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the Construction Manager that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project site to verify final completion.

8.09 The Consultant shall not be responsible for the work of the Construction Manager or any of its subcontractors, except that the Consultant shall be responsible for the Construction Manager's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

8.10 The Consultant shall conduct at least two on-site inspections during the warranty period and shall report to the City as to the continued acceptability of the work.

8.11 The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

8.12 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

8.13 The Consultant shall assist the Construction Manager and City in obtaining an Occupancy Permit by accompanying governing officials during inspections of the Project if requested to do so by the City.

8.14 The Standard Form of Agreement between City and Construction Manager at Risk is attached hereto as **Exhibit "D"** and incorporated herein by reference. The Consultant shall comply with all terms and conditions pertaining to the Architect as set out in the final and executed version of said agreement. In the event of an inconsistency between a term or condition in this Contract and the agreement between City and Construction Manager at Risk, the agreement between City and Construction Manager at Risk shall control.

ARTICLE IX

Change Orders, Documents & Materials

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized City personnel. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.

9.02 When the original Contract amount plus all change orders is less than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work.

9.03 When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or its designee may approve the written change order provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work.

9.04 Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in Article II of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.05 The Consultant shall furnish the City with two (2) sets of physical hard-copy plans and specifications, and digital files of the same. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City one (1) sets of reproducible, mylar-record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the Construction Manager to the Consultant. The Consultant shall provide copies of Work Product including documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's Work Product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall also furnish one set of digital files representing the final as-built mylars.

ARTICLE X

Warranty, Indemnification & Release

10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant warrants that the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the

responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

10.02 The Consultant shall promptly correct any defective Work Product, including designs or specifications furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final Work Product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of its professional services. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project site or any of the work being done on the site or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

10.05 Indemnity and Release. Pursuant to Section 271.904 of the Texas Local Government Code and other authority, the Parties agree as follows:

(a) The Consultant, as the indemnitor, shall indemnify, defend, and hold harmless the City against liability for all damage or liability (including all monetary damages and judgments, legal or equitable relief, costs, expenses, court costs, interest, reasonable attorney's fees, and just and lawful offsets and credits) regarding the Project to the extent that said damage or liability is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier, and committed by said indemnitor or said indemnitor's agent, consultant under contract, or another entity over which said indemnitor exercises control; however, this indemnitor obligation expressly does not apply when the damage, liability, claim or judgment is based wholly or partly on the negligence of, fault of, or breach of contract by the City, the City's employee or agent, or other person or entity over which the City exercises control.

(b) Regarding this RELEASE, the Consultant (as the Indemnitor) assumes full responsibility for the Work to be performed hereunder, and hereby releases, relinquishes,

and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either Party or other third Parties) and any loss of or damage to any property (whether property of either of the Parties hereto, their employees, or of third Parties) that is caused by or alleged to be caused by, arising out of, or in connection with the work on the Project performed by the Consultant, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance. In the event of injury, death, property damage, or loss suffered by the Consultant, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall not apply when such injury, death, loss, or damage was caused in whole or in part by the intentional or willful act, negligence, or gross negligence of the City.

(c) Notwithstanding anything stated to the contrary in this Paragraph 10.05, it is required that: (a) the City shall be included as an additional insured under the Consultant's general liability insurance policy, and the Consultant shall provide any and all defenses to the City as provided by that policy; and (b) the Consultant, and a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Consultant, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

(d) The Consultant's indemnification and release obligations in this Paragraph 10.05 shall survive termination, completion, abandonment and final payment.

10.06 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05 and 10.06, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI

Insurance

11.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth below. During the term of this Contract all of Consultant's insurance shall meet the minimum requirements of this section.

11.02 Types. Consultant shall have the following types of insurance:

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

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

(a) Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.

(b) Self-insured retentions must be declared to and approved by the City in writing. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention ("SIR") or deductible that exceeds \$25,000 unless approved in writing by City. All deductibles and SIRs shall be the sole responsibility of Consultant or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Consultant to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements.

(c) "Claims Made" policies are not accepted, except for Professional Liability.

(d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.

(e) For any claims related to this project, the Consultant's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.

(f) Consultant hereby agrees to waive rights of subrogation which any insurer of Consultant

may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

(g) Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(h) Consultant shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

(i) If applicable, CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.

(j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

(k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance, at least as broad as ISO Form:

1. CG 20 10 and CG 11 85; or
2. both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms (if later revisions used).

11.04 Commercial (General) Liability Requirements. The following Commercial (General) Liability requirements shall apply:

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- (a) Minimum Limit of \$2,000,000 per occurrence for bodily injury and property damage with a \$4,000,000 annual aggregate.
- (b) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- (c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (d) The coverage shall not exclude: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), Host Liquor Liability and where exposures exist, "Explosion Collapse and Underground" (XCU) coverage.

11.05 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

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

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

- (a) The Consultant may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.
- (b) The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant's primary and excess liability policies are exhausted.

11.07 Additional Insured. Those policies set forth in Paragraphs 11.04 Commercial (General) Liability, 11.05 Business Automobile Liability and 11.06 Excess Liability shall contain an endorsement listing the City as Additional Insured and further providing that the Consultant's

policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Consultant in compliance with the terms of this Agreement. Consultant shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit "C"**, and approved by the City before Work commences.

11.08 Workers' Compensation/Employer's Liability Insurance requirements. The following Workers' Compensation requirements shall apply; and whenever the term "Contractor" is used same shall be construed to refer to "Consultant" herein:

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

(b) The worker's compensation insurance shall include the following terms:

1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84),

showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

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

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

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

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

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

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

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

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

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

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all

persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

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

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

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

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

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

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

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

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

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

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

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

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the

contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

11.08 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A: VII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum of \$2,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$200,000.00. Financial statements shall be furnished to the City of College Station when requested.
- (c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of three (3) years after completion of the Project or termination of this Contract, as may be amended and whichever occurs later. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.
- (d) Retroactive date must be shown on certificate.

ARTICLE XII

Use of Drawings, Specifications and Other Documents

12.01 Any and all Project drawings, specifications and other documents prepared, furnished, or both prepared and furnished by Consultant or any subconsultant or other designer contracted under Consultant pursuant to this Contract (including, without limitation, the Construction Documents) (said total documents called “Work Product”), shall be the exclusive property of the City whether the Project is completed or not. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all Work Product, records, notes, data, memoranda, models, and equipment of any nature that are within Consultant’s possession or control and that are the City’s property or relate to the City or its business regarding the Project. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant’s Work Product and other aforesaid and related documents and information pertaining to the Project.

12.02 Consultant warrants to City that (i) Consultant has the full power and authority to enter into this Contract, (ii) Consultant has not previously assigned, transferred or otherwise encumbered the rights conveyed herein, (iii) Work Product is an original work of authorship created by Consultant’s employees or subconsultants during the course of their employment by Consultant, and does not infringe on any copyright, patent, trademark, trade secret, contractual right, or any other proprietary right of any person or entity, (iv) Consultant has not published the Work Product (including any derivative works) or any portion thereof outside of the United States, and (v) to the best of the Consultant’s knowledge, no other person or entity, except City, has any claim of any right, title, or interest in or to the Work Product.

12.03 Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this Article XII of the Contract. The drawings, specifications and other documents prepared by the Consultant and Consultant's sub-consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's drawings, specifications and other documents.

12.04 The Project documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its subconsultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect to perform the site adaptation and other architectural services involved in reuse of the prototype, that architect will be entitled to use Consultant's 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 will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect. The Consultant shall commit its sub-consultants to the terms of this subparagraph.

12.05 In the event of termination of this Contract for any reason, the City shall receive all original Project documents (as described in this Article XII) prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

12.06 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII

Termination and Liquidated Damages

13.01 The City may, through the exercise of its sole discretion and best business judgment, terminate this Contract, with or without cause, at any time upon **thirty (30)** calendar days written notice to the Consultant. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant, in the event of said termination, shall be compensated pursuant to this Agreement for the Project services satisfactorily performed prior to the termination date, provided Consultant is not in default of this Contract regarding the provision of said services.

13.02 If the Consultant commits conduct, an act, or omission which constitutes a breach or default of the Contract, the City may: (a) terminate this Contract, and if so, the Consultant will be

compensated for its Contract approved Project services satisfactorily performed prior to the termination date, provided Consultant is not in default of this Contract regarding the provision of said services; and/or (b) initiate and complete litigation against the Consultant, and against all other necessary or desired Parties (including Consultant's sureties), for the City's recovery, upon the exercise of its discretion, of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Contract, including without limitation Contract termination, the recovery of all actual and consequential damages, and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

13.03 Regarding the application of liquidated damages, upon the exercise of the City's discretion, the Parties agree as follows:

(a) The time for the completion of all work described in this Agreement is reasonable times for the completion of each task by the agreed upon days or dates, taking into consideration all conditions, including but not limited to the usual industry conditions prevailing in this locality. The amount of liquidated damages for the Consultant's failure to meet contractual deadlines specifically set forth in the Consultant's scope of services and schedule are fixed and agreed on by the Consultant because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be deducted by the City from current amounts owed to Consultant for payment or from final payment.

(b) As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Consultant to achieve timely completion of the work, if the Consultant should neglect, or fail, or refuse to complete the work within the times specified in the Consultant's scope of services and schedule, or any proper extension thereof granted by the City's Representative pursuant to this Agreement, then the Consultant does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Consultant's total compensation the sum of **Two Hundred Fifty and 00/100 DOLLARS (\$250.00)** for each and every calendar day that the Consultant shall be in default after the time(s) stipulated for completion of the task(s) in question, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet any of the deadlines specified in the Consultant's scope of services and schedule for completion in this Agreement.

13.04 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for all damages and recoveries sustained by the City because of any breach of this Contract committed by the Consultant in performing this Contract, or because of the intentional act, omission and/or negligence or gross negligence committed by the Consultant in performing this Contract. Notwithstanding anything to the contrary stated in this Contract, the City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages or other recoveries due the City from the Consultant are determined and paid.

**ARTICLE XIV
Dispute Resolution**

14.01 No suit shall be filed by a Party regarding a dispute arising under or related to this Contract unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Contract, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509, ((800) 733-9529 telephone).

**ARTICLE XV
Miscellaneous Terms**

15.01 Choice of Laws and Venue. The Parties expressly agree that: (a) this Contract shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the performance and work performed under this Contract for the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue for any lawsuit or legal proceeding regarding or relating to this Contract or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United States of America, or the appropriate United States District Court designated for said county.

15.02 Notice. Written notice required under this Contract shall be deemed to have been served only if in writing and hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

CITY OF COLLEGE STATION

Attn: Jon Hall_
P.O. Box 9960
College Station, Texas 77842

Marmon Mok Architecture, LP

Edgar Farrera
Attn: 900 E. 6th Street, Suite 105
Austin, TX 78702

A Party may change its notice address by providing written notice to the other Party in the manner described above.

15.03 No Waiver. No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

Notwithstanding anything to the contrary stated in this Contract, no waiver of a default of this Contract occurs if the non-defaulting Party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting Party of this Contract.

15.04 Entire Agreement. This Contract with all attached exhibits and incorporated by reference documents represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the Parties. Copies of this fully executed Contract shall be effective as the original.

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

15.06 Invalidity. If any provision of this Contract shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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

15.08 Governmental Immunity. Notwithstanding anything to the contrary stated in this Contract, the Parties acknowledge and agree that this Contract is subject to the proper application of, and to all protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

15.09 Compliance with Laws. The Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national governments, boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

15.10 Acknowledgement. The Parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

15.11 Effective Date. The effective date of this Contract is the date the last signing Party executes this Contract.

15.12 Notice of Indemnification and Release. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification and release obligations and covenants.

15.13 Verification of No Boycott and Conflicts Disclosure. To the extent made applicable by controlling law, this Contract is subject to the following:

(a) No Boycott of Israel. Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (i) does not boycott Israel, and (ii) will not boycott Israel during the term of this Agreement;

(b) No Boycott of Firearms. Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the Contractor verifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association;

(c) No Boycott of Energy Companies. Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (i) does not boycott energy companies, and (ii) will not boycott energy companies during the term of this Agreement; and

(d) Conflicts Disclosure. Before the approval of this Contract, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (i) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (ii) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

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

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

List of Exhibits

- A. Scope of Services
- B. Payment Terms
- C. Certificates of Insurance
- D. Construction Manager at Risk Agreement

MARMON MOK ARCHITECTURE, LP

CITY OF COLLEGE STATION

By: Edgar Farrera

By: _____

Printed Name: Edgar Farrera

City Manager

Date: _____

Title: General Partner, Marmon Mok Management Group, LLC.

Date: 10/18/2024

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

Exhibit “A”
Scope of Services

1. Consultant shall prepare for City’s review and approval the following service deliverables:

- 1.1 Conceptual Design**

1.1.01 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.

1.1.02 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.

1.1.03 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.

- 1.2 Preliminary Design**

1.2.01 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.

1.2.02 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.

1.2.03 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.

1.3 Final Design

1.3.01 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.

1.3.02 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.

1.3.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's current pre-approved, "City of College Station Standard Form of Agreement Between City and Construction Manager at Risk" for the construction contract between the City and the Construction Manager. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City. The Consultant shall assist the City with all phases of the procurement and engagement of the Construction Manager, including assistance with the review of, consultation regarding, and any proposed modifications regarding the CMAR Agreement.

1.3.04 The Consultant shall provide the City and Construction Manager at Risk ("CMAR") with complete contract documents sufficient to be advertised for bids by the CMAR. The contract documents shall include the design and specifications and other

changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design, including identification of all material changes and deviations that have taken place from the Preliminary Design Documents and a cost estimate. The Consultant shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

1.3.05 The Construction Documents shall include or be included with the following: (a) the Consultant's (or other design professional's) seal thereon, as the drafter of such drawings and specifications, and (b) a written certification stating that to the best of the Consultant's knowledge, the Construction Documents conform to Contract Documents as well as the Design Development Documents for the Project. The Consultant shall also provide renderings of all public spaces and exterior finishes to facilitate the Parties' review of the Construction Documents.

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 \$see attached proposal 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 see attached proposal 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 (\$372,319.00).

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.

Exhibit “C”
Certificate(s) of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/16/2024

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

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

PRODUCER Marsh & McLennan Agency LLC 711 Broadway, Suite 505 San Antonio TX 78215	CONTACT NAME: Ramon Tristan PHONE (A/C, No, Ext): 210-223-9171 FAX (A/C, No): E-MAIL ADDRESS: ramon.tristan@marshmma.com
INSURED Marmon Mok LP Metroplan, Inc. Brian Greenwell 1020 NE Loop 410 #201 San Antonio TX 78209	INSURER(S) AFFORDING COVERAGE INSURER A: Travelers Property Casualty Co of Amer INSURER B: Travelers Indemnity Company INSURER C: Phoenix Insurance Company INSURER D: INSURER E: INSURER F:
	NAIC # 25674 25658 25623

COVERAGES**CERTIFICATE NUMBER:** 197779715**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:			6800P8561622447	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 \$ 2,000,000 \$
B	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☒ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BA5R1865152447G	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) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			CUP0P8564512447	1/1/2024	1/1/2025	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$
C	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☒ N	N/A	UB0P8563832447G	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

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

RE: RFQ No. 24-080; Brazos Valley e-Marketplace.

Certificate Holder Includes: The City of College Station, its officers, officials, employees, agents, and volunteers.

City of College Station is an additional insured on the CGL and Auto policies and includes primary-contributory language.

CERTIFICATE HOLDER**CANCELLATION**City of College Station
P.O. Box 9960
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

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.

- | | |
|--|--|
| <p>A. Non-Owned Watercraft - 75 Feet Long Or Less</p> <p>B. Who Is An Insured - Unnamed Subsidiaries</p> <p>C. Who Is An Insured - Retired Partners, Members, Directors And Employees</p> <p>D. Who Is An Insured - Employees And Volunteer Workers - Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees</p> <p>E. Who Is An Insured - Newly Acquired Or Formed Limited Liability Companies</p> <p>F. Blanket Additional Insured - Controlling Interest</p> <p>G. Blanket Additional Insured - Mortgagees, Assignees, Successors Or Receivers</p> | <p>H. Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Premises</p> <p>I. Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Operations</p> <p>J. Incidental Medical Malpractice</p> <p>K. Medical Payments - Increased Limit</p> <p>L. Amendment Of Excess Insurance Condition - Professional Liability</p> <p>M. Blanket Waiver Of Subrogation - When Required By Written Contract Or Agreement</p> <p>N. Contractual Liability - Railroads</p> |
|--|--|

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.

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 - RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of **SECTION II - WHO IS AN INSURED:**

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director 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 Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" 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 current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(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 Paragraph (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (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 retired partners, members or directors, your current or retired "employees" or "volunteer workers", any current partner or member (if you are a partnership or joint venture), or any current member (if you are a limited liability company) or current director.

D. WHO IS AN INSURED - EMPLOYEES AND VOLUNTEER WORKERS - BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

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 current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. 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.

F. 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.

G. 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 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.

H. 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.

I. 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".

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II - WHO IS AN INSURED:**

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a), (b), (c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- 3. The following replaces the last sentence of Paragraph 5. of **SECTION III - LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

- 4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

- 5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

- 6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II - Who Is An Insured.

K. 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.

L. AMENDMENT OF EXCESS INSURANCE CONDITION - PROFESSIONAL LIABILITY

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

M. BLANKET WAIVER OF SUBROGATION - WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

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 written 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 signing of that 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

The following is added to Paragraph c. in **A.1., Who Is An Insured**, of **SECTION II - COVERED AUTOS LIABILITY COVERAGE** in the **BUSINESS AUTO COVERAGE FORM** and Paragraph e. in **A.1., Who Is An Insured**, of **SECTION II - COVERED AUTOS LIABILITY COVERAGE** in the **MOTOR CARRIER COVERAGE FORM**, whichever Coverage Form is part of your policy:

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".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION - 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: 30

WHEN WE DO NOT RENEW (Nonrenewal): Number of Days Notice: 30

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OR NONRENEWAL OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OR NONRENEWAL OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

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 to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above 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 to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above 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.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization :

SEE FORM: CGT801

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II - Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with

such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II - WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the 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 requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization: or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III - Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed:

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

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

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.

POLICY NUMBER: UB-0P856383-24-47-G

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.

1- ☐ Specific Waiver

☒ 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: \$ see schedule

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 _____

DATE OF ISSUE: 11-21-23

ST ASSIGN:

Page 1 of 1

ENDORSEMENT WC 42 06 01 (00) - 001

POLICY NUMBER: UB-0P856383-24-47-G

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 cancelation 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 (or**)**
- 2. NOTICE WILL BE MAILED TO:**

**ANY PERSON OR ORGANIZATION TO WHOM YOU
HAVE AGREED IN A WRITTEN CONTRACT THAT
NOTICE OF CANCELLATION OF THIS POLICY
WILL BE GIVEN, BUT ONLY IF:**

- 1. YOU SEND US A WRITTEN REQUEST TO
PROVIDE SUCH NOTICE, INCLUDING THE NAME
AND ADDRESS OF SUCH PERSON OR
ORGANIZATION, AFTER THE FIRST NAMED
INSURED RECEIVES NOTICE FROM US OF THE
CANCELLATION OF THIS POLICY, AND**
- 2. WE RECEIVED SUCH WRITTEN REQUEST AT
LEAST 14 DAYS BEFORE THE BEGINNING OF
THE APPLICABLE NUMBER OF DAYS SHOWN IN
THIS SCHEDULE.**

ADDRESS:
THE ADDRESS FOR THAT PERSON OR
ORGANIZATION INCLUDED IN SUCH WRITTEN
REQUEST FROM YOU TO US.

**** Number of days Notice specified in the Certificate of Insurance to all holders of such certificates.**

EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE

THIS POLICY, INPART, PROVIDES FOLLOW-FORM LIABILITY COVERAGE. COVERAGE WILL APPLY ON A CLAIMS-MADE BASIS WHEN FOLLOWING CLAIMS-MADE UNDERLYING INSURANCE.

COVERAGE WILL APPLY ON A DEFENSE-WITHIN-LIMITS BASIS WHEN FOLLOWING UNDERLYING INSURANCE UNDER WHICH DEFENSE EXPENSES ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMITS OF INSURANCE. WHEN FOLLOWING SUCH UNDERLYING INSURANCE, PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE, AND MAY EXHAUST, THE LIMITS OF INSURANCE OF THIS POLICY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

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 policy, the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED.**

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION VI - DEFINITIONS.**

SECTION I - COVERAGES

A. COVERAGE A - EXCESS FOLLOW-FORM LIABILITY

1. We will pay on behalf of the insured those sums, in excess of the "applicable underlying limit", that the insured becomes legally obligated to pay as damages to which Coverage A of this insurance applies, provided that the "underlying insurance" would apply to such damages but for the exhaustion of its applicable limits of insurance. If a sublimit is specified in any "underlying insurance", Coverage A of this insurance applies to damages that are in excess of that sublimit only if such sublimit is shown for that "underlying insurance" in the Schedule Of Underlying Insurance.
2. Coverage A of this insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance", except with respect to any

provisions to the contrary contained in this insurance.

3. The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE.**
4. For the purposes of Paragraph 1. above:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance will be considered to be reduced or exhausted only by the following payments:
 - (1) Payments of judgments or settlements for damages that are covered by that "underlying insurance". However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for damages that would not be covered by this Excess Follow-Form And Umbrella Liability

Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance";

- (2) Payments of "medical expenses" that are covered by that "underlying insurance" and are incurred for "bodily injury" caused by an accident that takes place during the policy period of this Excess Follow-Form And Umbrella Liability Insurance; or
- (3) Payments of defense expenses that are covered by that "underlying insurance", only if such "underlying insurance" includes such payments within the limits of insurance. However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for defense expenses that would not be covered by this Excess Follow-Form And Umbrella Liability Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance".

If the applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance is actually reduced or exhausted by other payments, Coverage A of this insurance is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had such limit not been actually reduced or exhausted by such other payments.

- b. If any "underlying insurance" has a limit of insurance greater than the amount shown for that insurance in the Schedule of Underlying Insurance, this insurance will apply in excess of that greater amount. If any "underlying insurance" has a limit of insurance, prior to any reduction or exhaustion by payment of damages, "medical expenses" or defense expenses described in Paragraph a. above, that is less than the amount shown for that insurance in the Schedule Of Underlying Insurance, this insurance will apply in excess of the amount shown for such insurance in the Schedule Of Underlying Insurance.
5. When the "underlying insurance" applies on a claims-made basis and includes a retroactive

date provision, the retroactive date for Coverage A of this insurance is the same as the retroactive date of that "underlying insurance".

B. COVERAGE B - UMBRELLA LIABILITY

1. We will pay on behalf of the insured those sums in excess of the "self-insured retention" that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which Coverage B of this insurance applies.
2. Coverage B of this insurance applies to "bodily injury" or "property damage" only if:
 - a. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place anywhere in the world;
 - 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. in Paragraph B., **COVERAGE B - UMBRELLA LIABILITY**, of **SECTION II - 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, in whole or in part, 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.
3. Coverage B of this insurance applies to "personal injury" or "advertising injury" caused by an offense arising out of your business, but only if the offense was committed during the policy period anywhere in the world.
4. The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**.
5. "Bodily injury" or "property damage":
 - a. Which occurs during the policy period; and
 - b. Which was not prior to, but was during, the policy period known to have occurred by any insured listed under Paragraph 1. in Paragraph B., **COVERAGE B - UMBRELLA LIABILITY** of **SECTION II - WHO IS AN INSURED**, or any "employee" authorized by you to give notice of an "occurrence" or claim;

includes any continuation, change or resumption of the "bodily injury" or "property damage" after the end of the policy period.

6. "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. in Paragraph B., **COVERAGE B - UMBRELLA LIABILITY**, of **SECTION II - WHO IS AN INSURED** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - c. Becomes aware by any other means that the "bodily injury" or "property damage" has occurred or has begun to occur.
7. 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".
8. Coverage B of this insurance does not apply to damages covered by any "underlying insurance" or that would have been covered by any "underlying insurance" but for the exhaustion of its applicable limit of insurance.

C. **COVERAGE C - CRISIS MANAGEMENT SERVICE EXPENSES**

1. We will reimburse the insured, or pay on the insured's behalf, "crisis management service expenses" to which Coverage C applies.
2. Coverage C of this insurance applies to "crisis management service expenses" that:
 - a. Arise out of a "crisis management event" that first commences during the policy period;
 - b. Are incurred by the insured, after a "crisis management event" first commences and before such event ends; and
 - c. Are submitted to us within 180 days after the "crisis management advisor" advises you that the "crisis management event" no longer exists.
3. A "crisis management event" will be deemed to:
 - a. First commence at the time when any "executive officer" first becomes aware of an "event" or "occurrence" that leads to that "crisis management event"; and
 - b. End when we decide that the crisis no longer exists or when the Crisis

Management Service Expenses Limit has been exhausted, whichever occurs first.

4. The amount we will pay for "crisis management service expenses" is limited as described in **SECTION III - LIMITS OF INSURANCE**.
5. A "self-insured retention" does not apply to "crisis management service expenses".
6. Any payment of "crisis management service expenses" that we make will not be determinative of our obligations under this insurance with respect to any claim or "suit" or create any duty to defend or indemnify any insured for any claim or "suit".

D. **DEFENSE AND SUPPLEMENTARY PAYMENTS**

1. We will have the right and duty to defend the insured:
 - a. Under Coverage A, against a "suit" seeking damages to which such coverage applies, if:
 - (1) The "applicable underlying limit" is the applicable limit of insurance stated for a policy of "underlying insurance" in the Schedule Of Underlying Insurance and such limit has been exhausted solely due to payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY** of **SECTION I - COVERAGES**; or
 - (2) The "applicable underlying limit" is the applicable limit of any "other insurance" and such limit has been exhausted by payments of judgments, settlements or medical expenses, or related costs or expenses (if such costs or expenses reduce such limits).

For any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance"; or

- b. Under Coverage B, against a "suit" seeking damages to which such coverage applies.
2. We have no duty to defend any insured against any "suit":
 - a. Seeking damages to which this insurance does not apply; or
 - b. If any other insurer has a duty to defend.

3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. The cost of:
 - (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
 - (2) Appeal bonds and bonds to release attachments;

but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of such claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.
 - d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - e. 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.
 - f. All interest that accrues on the full amount of any judgment 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. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B - UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II - WHO IS AN INSURED

A. COVERAGE A - EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:
 - a. The limits of insurance afforded to such person or organization will be:
 - (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
 - (2) The limits of insurance of this policy; whichever is less; and
 - b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

B. COVERAGE B - UMBRELLA LIABILITY

With respect to Coverage B:

1. The Named Insured shown in the Declarations is an insured.
2. If you are:
 - a. An individual, your spouse is also an insured, but only with respect to the conduct of a business of which you are the sole owner.

- b. A partnership or joint venture, 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, your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, your "officers" and directors are also 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, your trustees are also insureds, but only with respect to their duties as trustees.
3. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "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 injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay

damages because of the injury described in Paragraph (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (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" or "volunteer workers", any of your partners or members (if you are a partnership or joint venture), or any of your members (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.
- c. 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. 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.

- 4. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you

maintain an ownership interest of more than 50%, on the first day of the policy period is an insured and will qualify as a Named Insured. No such organization is an insured or will qualify as a Named Insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.

5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, is an insured and 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 for such organization does not apply to:
 - (1) "Bodily injury" or "property damage" that occurred; or
 - (2) "Personal injury" or "advertising injury" arising out of an offense committed;

before you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named 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. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Paragraph B. of **SECTION II - WHO IS AN INSURED.**

C. COVERAGE C - CRISIS MANAGEMENT SERVICE EXPENSES

With respect to Coverage C, the following persons and organizations are insureds and will qualify as Named Insureds:

1. The Named Insured shown in the Declarations.
2. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period. No such organization is an insured or will qualify as a Named Insured for "crisis management service expenses" arising out of a "crisis management event" that first commences after

the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, 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 for such organization does not apply to "crisis management service expenses" arising out of a "crisis management event" that occurred before you acquired or formed the organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named 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

A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay for the amounts described below to which this insurance applies regardless of the number of:

1. Insureds;
2. Claims made or "suits" brought;
3. Number of vehicles involved;
4. Persons or organizations making claims or bringing "suits"; or
5. Coverages provided under this insurance.

As indicated in Paragraph D.1. of **SECTION I - COVERAGES**, for any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance".

B. The General Aggregate Limit is the most we will pay for the sum of all:

1. Damages; and
2. Defense expenses if such expenses are within the limits of insurance of this policy;

except:

1. Damages and defense expenses because of "bodily injury" or "property damage" included in the "auto hazard";
 2. Damages and defense expenses because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; or
 3. Damages and defense expenses for which insurance is provided under any Aircraft Liability coverage included as "underlying insurance" to which no aggregate limit applies.
- C. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all:
1. Damages; and
 2. Defense expenses if such expenses are within the limits of insurance of this policy; because of "bodily injury" or "property damage" included in the "products-completed operations hazard".
- D. Subject to Paragraph B. or C. above, whichever applies, the Occurrence Limit is the most we will pay for the sum of all:
1. Damages, and defense expenses if such expenses are within the limits of insurance of this policy, under Coverage A arising out of any one "event" to which the "underlying insurance" applies a limit of insurance that is separate from any aggregate limit of insurance; and
 2. Damages under Coverage B because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence".
- For the purposes of determining the applicable Occurrence Limit, all related acts or omissions committed in the providing or failing to provide first aid or "Good Samaritan services" to any one person will be considered one "occurrence".
- E. The Crisis Management Service Expenses Limit is the most we will pay for the sum of all "crisis management service expenses" arising out of all "crisis management events". Payment of such "crisis management service expenses" is in addition to, and will not reduce, any other limit of insurance of this policy.
- F. The limits of insurance of this policy 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. If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

SECTION IV- EXCLUSIONS

This insurance does not apply to:

- A. With respect to Coverage A and Coverage B:

1. Asbestos

- a. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the damages are caused or contributed to by the hazardous properties of asbestos.
- b. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any damages described in Paragraph a. above.
- c. Any loss, cost or expense arising out of any:
 - (1) 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, asbestos, asbestos fibers or products containing asbestos; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

2. Employment-Related Practices

Damages because of injury to:

- a. A person arising out of any:
 - (1) Refusal to employ that person;
 - (2) Termination of that person's employment; or
 - (3) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment, applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is

committed before, during or after the time of that person's employment; or

- b. The spouse, child, parent, brother or sister of that person as a consequence of injury to that person as described in Paragraphs a.(1), (2) or (3) above.

This exclusion applies:

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

3. ERISA, COBRA And Similar Laws

Any obligation of the insured under:

- a. The Employees Retirement Income Security Act Of 1974 (ERISA) or any of its amendments;
- b. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or any of its amendments; or
- c. Any similar common or statutory law of any jurisdiction.

4. Medical Expenses Or Payments

Any obligation of the insured under any "medical expenses" or medical payments coverage.

5. Nuclear Material

Damages arising out of:

- a. The actual, alleged or threatened exposure of any person or property to; or
- b. The "hazardous properties" of; any "nuclear material".

As used in this exclusion:

- a. "Hazardous properties" includes radioactive, toxic or explosive properties;
- b. "Nuclear material" means "source material", "special nuclear material" or "by-product material"; and
- c. "Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or any of its amendments.

6. Uninsured or Underinsured Motorists, No-Fault And Similar Laws

Any liability imposed on the insured, or the insured's insurer, under any of the following laws:

- a. Uninsured motorists;
- b. Underinsured motorists;

- c. Auto no-fault or other first-party personal injury protection (PIP);
- d. Supplementary uninsured/underinsured motorists (New York); or
- e. Medical expense benefits and income loss benefits (Virginia).

7. War

Damages arising out of:

- a. War, including undeclared or civil war; or
- b. 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
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

8. Workers Compensation And Similar Laws

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

B. With respect to Coverage B:

1. Expected Or Intended Bodily Injury Or Property Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. Contractual Liability

"Bodily injury", "property damage", "personal injury" or "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 that the insured would have in the absence of the contract or agreement.

3. Liquor Liability

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

- a. Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises for consumption on your premises;

- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

4. Employers Liability

"Bodily injury" to:

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

This exclusion applies:

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

5. Pollution

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".
- b. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or any other person or organization test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization 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".

6. Aircraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is owned or operated by or rented or loaned to any insured.

7. Auto

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "auto".

This exclusion does not apply to "bodily injury" or "property damage" caused by an "occurrence" that takes place outside of the United States of America (including its territories and possessions), Puerto Rico and Canada.

8. Watercraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to a watercraft:

- a. While ashore on premises owned by or rented to any insured; or
- b. That is 50-feet long or less and that:
 - (1) You own; or

- (2) You do not own and is not being used to carry any person or property for a charge.

9. Electronic Data

Damages claimed for the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

10. Damage To Property, Products Or Work

"Property damage" to:

- a. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person or organization, 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;
- b. Premises you sell, give away or abandon if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. 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;
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it;
- g. "Your product" arising out of "your product" or any part of it; or
- h. "Your work" arising out of "your work" or any part of it and included in the "products-completed operations hazard".

11. 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:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you, or anyone acting on your behalf, to fulfill the terms of a contract or agreement.

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.

12. 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:

- a. "Your product";
- b. "Your work"; or
- c. "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.

13. Violation Of Consumer Financial Protection Laws

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of a "consumer financial protection law", or any other "bodily injury", "property damage", "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such violation.

14. Unsolicited Communication

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

15. Access Or Disclosure Of Confidential Or Personal Information

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

16. Knowing Violation Of Rights Of Another

"Personal injury" or "advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal injury" or "advertising injury".

17. Material Published With Knowledge Of Falsity

"Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

18. Material Published Or Used Prior To Policy Period

- a. "Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or
- b. "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

19. Criminal Acts

"Personal injury" or "advertising injury" arising out of a criminal act committed by or at the direction of the insured.

20. Breach Of Contract

"Personal injury" or "advertising injury" arising out of a breach of contract.

21. Quality Or Performance Of Goods - Failure To Conform To Statements

"Advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

22. Wrong Description Of Prices

"Advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

23. Intellectual Property

"Personal injury" or "advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation:

- a. Copyright;
- b. Patent;
- c. Trade dress;
- d. Trade name;
- e. Trademark;
- f. Trade secret; or
- g. Other intellectual property rights or laws.

This exclusion does not apply to:

- a. "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or

- b. Any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

24. Insureds In Media And Internet Type Business

"Personal injury" or "advertising injury" arising out of an offense committed by an insured whose business is:

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

This exclusion does not apply to Paragraphs **a.(1), (2) and (3)** of the definition of "personal injury".

For the purposes of this exclusion:

- a. Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- b. The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

25. Electronic Chatrooms Or Bulletin Boards

"Personal injury" or "advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control.

26. Unauthorized Use Of Another's Name Or Product

"Personal injury" or "advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

C. With respect to Coverage C:

Newly Acquired, Controlled Or Formed Entities

"Crisis management service expenses" arising out of a "crisis management event" that involves any organization you newly acquire or form and that occurred prior to the date you acquired or formed that organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis

management event" after the date you acquired or formed such organization.

SECTION V - CONDITIONS

A. APPEALS

1. If the insured or the insured's "underlying insurer" elects not to appeal a judgment which exceeds the "applicable underlying limit" or "self-insured retention", we may do so.
2. If we appeal such a judgment, we will pay all costs of the appeal. These payments will not reduce the applicable limits of insurance. In no event will our liability exceed the applicable limit of insurance.

B. BANKRUPTCY

1. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.
2. In the event of bankruptcy or insolvency of any "underlying insurer", this insurance will not replace such bankrupt or insolvent "underlying insurer's" policy, and this insurance will apply as if such "underlying insurer" had not become bankrupt or insolvent.

C. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this insurance by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this insurance by mailing or delivering to such first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to such first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this insurance is cancelled, we will send such first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If such first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

D. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. No change can be made in the terms of this insurance except with our consent. The terms of this insurance can be amended or waived only by endorsement issued by us and made a part of this policy.

E. CURRENCY

Payments for damages or expenses described in Paragraph 5. of Paragraph D., **DEFENSE AND SUPPLEMENTARY PAYMENTS**, of **SECTION I - COVERAGES** will be in the currency of the United States of America. At our sole option, we may make these payments in a different currency. Any necessary currency conversion for such payments will be calculated based on the rate of exchange published in the Wall Street Journal immediately preceeding the date the payment is processed.

F. DUTIES REGARDING AN EVENT, OCCURRENCE, CLAIM OR SUIT

1. You must see to it that we are notified as soon as practicable of an "event" or "occurrence" which may result in a claim under this insurance. To the extent possible, notice should include:
 - a. How, when and where the "event" or "occurrence" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the names and addresses of any witnesses; and
 - c. The nature and location of any injury or damage arising out of the "event" or "occurrence".
2. If a claim is made or "suit" is brought against any insured which may result in a claim under this insurance, you must see to it that we receive written notice of the claim or "suit" as soon as practicable.
3. With respect to Coverage A, the insured must:
 - a. Cooperate with us in the investigation, settlement or defense of any claim or "suit";
 - b. Comply with the terms of the "underlying insurance"; and
 - c. Pursue all rights of contribution or indemnity against any person or organization who may be liable to the insured because of the injury, damage or loss for which insurance is provided under

this policy or any policy of "underlying insurance".

4. With respect to Coverage **B**, the insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - b. Authorize us to obtain necessary records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of any claim or "suit"; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which Coverage **B** may apply.
5. No insured will, except at that insured's own expense, voluntarily make a payment, assume any obligation, make any admission or incur any expense, other than for first aid for "bodily injury" covered by this insurance, without our consent.
6. Knowledge of an "event", "occurrence", claim or "suit" by your agent, servant or "employee" will not constitute knowledge by you, unless your insurance or risk manager, or anyone working in the capacity as your insurance or risk manager, or anyone you designate with the responsibility of reporting an "event", "occurrence", claim or "suit":
 - a. Has received notice of such "event", "occurrence", claim or "suit" from such agent, servant or "employee"; or
 - b. Otherwise has knowledge of such "event", "occurrence", claim or "suit".

G. DUTIES REGARDING A CRISIS MANAGEMENT EVENT

You must:

1. Notify us within 30 days of a "crisis management event" that may result in "crisis management service expenses".
2. Provide written notice of the "crisis management event" as soon as practicable. To the extent possible, notice should include:
 - a. How, when and where that "crisis management event" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the named and addresses of any witnesses;

- c. The nature and location of any injury or damage arising out of that "crisis management event"; and
- d. The reason that "crisis management event" is likely to involve damages covered by this insurance in excess of the "applicable underlying limit" or "self-insured retention" and involve regional or national media coverage.

H. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this insurance:

1. At any time during the policy period;
2. Up to three years after the end of the policy period; and
3. Within one year after final settlement of all claims under this insurance.

I. EXTENDED REPORTING PERIOD OPTION

1. When the "underlying insurance" applies on a claims-made basis, any automatic or basic "extended reporting period" in such "underlying insurance" will apply to this insurance.
2. When the "underlying insurance" applies on a claims-made basis and you elect to purchase an optional or supplemental "extended reporting period" in such "underlying insurance," that "extended reporting period" will apply to this insurance only if:
 - a. A written request to purchase an Extended Reporting Period endorsement for this insurance is made by you and received by us within 90 days after the end of the policy period;
 - b. You have paid all premiums due for this policy at the time you make such request;
 - c. You promptly pay the additional premium we charge for the Extended Reporting Period endorsement for this insurance when due. We will determine that additional premium after we have received your request for the Extended Reporting Period endorsement for this insurance. That additional premium is not subject to any limitation stated in the "underlying insurance" on the amount or percentage of additional premium that may be charged for the "extended reporting period" in such "underlying insurance"; and

- d. That Extended Reporting Period endorsement is issued by us and made a part of this policy.
- 3. Any Extended Reporting Period endorsement for this insurance will not reinstate or increase the Limits of Insurance or extend the policy period.
- 4. Except with respect to any provisions to the contrary contained in Paragraphs 1., 2. or 3. above, all provisions of any option to purchase an "extended reporting period" granted to you in the "underlying insurance" apply to this insurance.

J. INSPECTIONS AND SURVEYS

- 1. We have the right but are not obligated to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
- 2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

K. LEGAL ACTION AGAINST US

- 1. No person or organization has a right under this insurance:
 - 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 insurance unless all of its terms have been fully complied with.
- 2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:
 - a. Are not payable under the terms of this insurance; or
 - b. 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.

L. MAINTENANCE OF UNDERLYING INSURANCE

- 1. The insurance afforded by each policy of "underlying insurance" will be maintained for

the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY** of **SECTION I - COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance. If you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.

- 2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:
 - a. Coverage;
 - b. Limits of insurance;
 - c. Termination of any coverage; or
 - d. Exhaustion of aggregate limits.
- 3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing, excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4. below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of **SECTION II - WHO IS AN INSURED.**

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5. of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE - UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to

provide insurance in such country or jurisdiction; or

- b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE - TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and 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, and with respect to Coverage A, the "underlying insurer", enforce them.

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 that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the

execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:
 - a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
 - b. Next, to us; and
 - c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.
3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

V. UNINTENTIONAL OMISSION OR ERROR

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

W. WHEN LOSS IS PAYABLE

If we are liable under this insurance, we will pay for injury, damage or loss after:

1. The insured's liability is established by:
 - a. A court decision; or
 - b. A written agreement between the claimant, the insured, any "underlying insurer" and us; and
2. The amount of the "applicable underlying limit" or "self-insured retention" is paid by or on behalf of the insured.

SECTION VI - DEFINITIONS

A. With respect to all coverages of this insurance:

1. "Applicable underlying limit" means the sum of:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance subject to the provisions in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY OF SECTION I - COVERAGES**; and
 - b. The applicable limit of insurance of any "other insurance" that applies.

The limits of insurance in any policy of "underlying insurance" will apply even if:

- a. The "underlying insurer" claims the insured failed to comply with any term or condition of the policy; or
 - b. The "underlying insurer" becomes bankrupt or insolvent.
2. "Auto hazard" means all "bodily injury" and "property damage" to which liability insurance afforded under an auto policy of "underlying insurance" would apply but for the exhaustion of its applicable limits of insurance.
 3. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 4. "Event" means an "occurrence", offense, accident, act, error, omission, wrongful act or loss.
 5. "Extended reporting period" means any period of time, starting with the end of the policy period of your claims-made insurance, during which claims or "suits" may be first made, brought or reported for that insurance.
 6. "Medical expenses" means expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" applies.
 7. "Other insurance" means insurance, or the funding of losses, that is provided by, through or on behalf of:
 - a. Another insurance company;
 - b. Us or any of our affiliated insurance companies;
 - c. Any risk retention group;

- d. Any self-insurance method or program, in which case the insured will be deemed to be the provider of such insurance; or
- e. Any similar risk transfer or risk management method.

"Other insurance" does not include:

- a. Any "underlying insurance"; or
 - b. Any policy of insurance specifically purchased to be excess of the limits of insurance of this policy shown in the Declarations.
8. "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 completed at the earliest of the following times:
 - (a) When all the work called for in your contract has been completed;
 - (b) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (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.

- 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;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification listed in a policy of

Commercial General Liability "underlying insurance" states that products-completed operations are subject to the General Aggregate Limit.

- 9. "Suit" means a civil proceeding which alleges damages. "Suit" includes:
 - a. An arbitration proceeding in which damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding to which the insured submits with our consent.
- 10. "Underlying insurance":
 - a. Means the policy or policies of insurance listed in the Schedule Of Underlying Insurance.
 - b. Includes any renewal or replacement of such policies if such renewal or replacement is during the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
 - c. Does not include any part of the policy period of any of the policies described in Paragraphs a. or b. above that began before, or that continues after, the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
- 11. "Underlying insurer" means any insurer which provides a policy of insurance listed in the Schedule Of Underlying Insurance.

B. With respect to Coverage B and, to the extent that the following terms are not defined in the "underlying insurance", to Coverage A:

- 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 purposes 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 purposes of attracting customers or supporters is considered an advertisement.
- 2. "Advertising injury":

- a. Means injury, other than "personal injury", caused by one or more of the following offenses:
 - (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light; or
 - (3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.
3. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer 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 law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".
4. "Bodily injury" means:
 - a. Physical harm, including sickness or disease, sustained by a person; or
 - b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.
5. "Broadcasting" means transmitting any audio or visual material for any purpose:
 - a. By radio or television; or
 - b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1) Radio or television programming being transmitted;
 - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3) Advertising transmitted with any such programming.
6. "Consumer financial identity information" means any of the following information for a person that is used or collected for the purpose of serving as a factor in establishing such person's eligibility for personal credit, insurance or employment or for the purpose of conducting a business transaction:
 - a. Part or all of the account number, the expiration date or the balance of any credit, debit, bank or other financial account;
 - b. Information bearing on a person's credit worthiness, credit standing or credit capacity;
 - c. Social security number;
 - d. Driver's license number; or
 - e. Birth date.
7. "Consumer financial protection law" means:
 - a. The Fair Credit Reporting Act (FCRA) and any of its amendments, including the Fair and Accurate Credit Transactions Act (FACTA);
 - b. California's Song-Beverly Credit Card Act and any of its amendments; or
 - c. Any other law or regulation that restricts or prohibits the collection, dissemination, transmission, distribution or use of "consumer financial identity information".
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.
10. "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 the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

- 11. "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".

- 12. "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".

- 13. "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, maintained primarily to provide mobility to 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 Paragraph 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 Paragraph 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 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 law, where it is licensed or principally garaged. Such land vehicles are considered "autos".

- 14. "Occurrence" means:

- a. With respect to "bodily injury" or "property damage":

- (1) An accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in "bodily injury" or "property damage". All "bodily injury" or "property damage" caused by such exposure to substantially the same general harmful conditions will be deemed to be caused by one "occurrence"; or

- (2) An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor, unless you are in the business or occupation of providing professional health care services;

- b. With respect to "personal injury", an offense arising out of your business that results in "personal injury". All "personal injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits"; and
 - c. With respect to "advertising injury", an offense committed in the course of advertising your goods, products and services that results in "advertising injury". All "advertising injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits".
- 15. "Officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- 16. "Personal injury":
 - a. Means injury, other than "advertising injury", caused by one or more of the following offenses:
 - (1) False arrest, detention or imprisonment;
 - (2) Malicious prosecution;
 - (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
 - (5) Oral or written publication, including publication by electronic means, of material that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light.
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.
- 17. "Pollutants" mean 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.
- 18. "Property damage" means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will 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 will be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.
- 19. "Self-insured retention" is the greater of:
 - a. The amount shown in the Declarations which the insured must first pay under Coverage B for damages because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence"; or
 - b. The applicable limit of insurance of any "other insurance" that applies.
- 20. "Slogan":
 - a. Means a phrase that others use for the purpose of attracting attention in their advertising.
 - b. Does not include a phrase used as, or in, the name of:
 - (1) Any person or organization other than you; or
 - (2) Any business, or any of the premises, goods, products, services or work, of any person or organization other than you.

21. "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.
 22. "Title" means the name of a literary or artistic work.
 23. "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.
 24. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed by 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.
- C. With respect to Coverage C:
1. "Crisis management advisor" means any public relations firm or crisis management firm approved by us that is hired by you to perform "crisis management services" in connection with a "crisis management event".
 2. "Crisis management event" means an "event" or "occurrence" that your "executive officer" reasonably determines has resulted, or may result, in:
 - a. Damages covered by this Coverage A or Coverage B that are in excess of the total applicable limits of the "underlying insurance" or "self-insured retention"; and
 - b. Significant adverse regional or national media coverage.
 3. "Crisis management service expenses" means amounts incurred by you, after a "crisis management event" first commences and before such event ends:
 - a. For the reasonable and necessary:
 - (1) Fees and expenses of a "crisis management advisor" in the performance for you of "crisis management services" solely for a "crisis management event"; and
 - (2) Costs for printing, advertising, mailing of materials or travel by your directors, officers, employees or agents or a "crisis management advisor" solely for a "crisis management event"; and
 - b. For the following expenses resulting from such "crisis management event", provided that such expenses have been approved by us:
 - (1) Medical expenses;
 - (2) Funeral expenses;
 - (3) Psychological counseling;
 - (4) Travel expenses;
 - (5) Temporary living expenses;
 - (6) Expenses to secure the scene of a "crisis management event"; or
 - (7) Any other expenses pre-approved by us.

UMBRELLA

4. "Crisis management services" means those services performed by a "crisis management advisor" in advising you or minimizing potential harm to you from a "crisis management event" by maintaining or restoring public confidence in you.
5. "Executive officer" means your:
 - a. Chief Executive Officer;
 - b. Chief Operating Officer;
 - c. Chief Financial Officer;
 - d. President;
 - e. General Counsel;
 - f. General partner (if you are a partnership); or
 - g. Sole proprietor (if you are a sole proprietorship);or any person acting in the same capacity as any individual listed above.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/10/2024

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 Marsh & McLennan Agency LLC 131 Interpark Blvd. San Antonio TX 78216	CONTACT NAME: Sally Fitzsimon PHONE (A/C, No, Ext): 210-223-9171 FAX (A/C, No): E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE INSURER A : Endurance American Specialty Ins Co NAIC # 41718
INSURED Marmon Mok LP Brian Greenwell 1020 NE Loop 410 #201 San Antonio TX 78209	INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES**CERTIFICATE NUMBER:** 735026975**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Contractors Prof/Pollution Claims Made Coverage			DPL30001807404	6/30/2024	6/30/2025	Each Claim Aggregate Retention \$2,000,000 \$2,000,000 \$50,000

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

RE: RFQ No. 24-080; Brazos Valley e-Marketplace.

Certificate Holder Includes: The City of College Station, its officers, officials, employees, agents, and volunteers.

CERTIFICATE HOLDER**CANCELLATION**City of College Station
P.O. Box 9960
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

PRODUCT WITHDRAWAL COVERAGE PART

The following is added to Paragraph **9. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

The following is added to Paragraph c. in **A.1., Who Is An Insured**, of **SECTION II - COVERED AUTOS LIABILITY COVERAGE** in the **BUSINESS AUTO COVERAGE FORM** and Paragraph e. in **A.1., Who Is An Insured**, of **SECTION II - COVERED AUTOS LIABILITY COVERAGE** in the **MOTOR CARRIER COVERAGE FORM**, whichever Coverage Form is part of your policy:

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".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION - 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: 30

WHEN WE DO NOT RENEW (Nonrenewal): Number of Days Notice: 30

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OR NONRENEWAL OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OR NONRENEWAL OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

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 to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above 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 to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above 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.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization :

SEE FORM: CGT801

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II - Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with

such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II - WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the 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 requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization: or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III - Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed:

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

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

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.

POLICY NUMBER: UB-0P856383-24-47-G

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.

1- ☐ Specific Waiver

☒ 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: \$ see schedule

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 _____

DATE OF ISSUE: 11-21-23

ST ASSIGN:

Page 1 of 1

POLICY NUMBER: UB-0P856383-24-47-G

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 cancelation 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 (or**)
2. NOTICE WILL BE MAILED TO:

ANY PERSON OR ORGANIZATION TO WHOM YOU
HAVE AGREED IN A WRITTEN CONTRACT THAT
NOTICE OF CANCELLATION OF THIS POLICY
WILL BE GIVEN, BUT ONLY IF:
1. YOU SEND US A WRITTEN REQUEST TO
PROVIDE SUCH NOTICE, INCLUDING THE NAME
AND ADDRESS OF SUCH PERSON OR
ORGANIZATION, AFTER THE FIRST NAMED
INSURED RECEIVES NOTICE FROM US OF THE
CANCELLATION OF THIS POLICY, AND
2. WE RECEIVED SUCH WRITTEN REQUEST AT
LEAST 14 DAYS BEFORE THE BEGINNING OF
THE APPLICABLE NUMBER OF DAYS SHOWN IN
THIS SCHEDULE.

ADDRESS:
THE ADDRESS FOR THAT PERSON OR
ORGANIZATION INCLUDED IN SUCH WRITTEN
REQUEST FROM YOU TO US.

** Number of days Notice specified in the Certificate of Insurance to all holders of such certificates.

EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE

THIS POLICY, INPART, PROVIDES FOLLOW-FORM LIABILITY COVERAGE. COVERAGE WILL APPLY ON A CLAIMS-MADE BASIS WHEN FOLLOWING CLAIMS-MADE UNDERLYING INSURANCE.

COVERAGE WILL APPLY ON A DEFENSE-WITHIN-LIMITS BASIS WHEN FOLLOWING UNDERLYING INSURANCE UNDER WHICH DEFENSE EXPENSES ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMITS OF INSURANCE. WHEN FOLLOWING SUCH UNDERLYING INSURANCE, PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE, AND MAY EXHAUST, THE LIMITS OF INSURANCE OF THIS POLICY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

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 policy, the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED.**

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION VI - DEFINITIONS.**

SECTION I - COVERAGES

A. COVERAGE A - EXCESS FOLLOW-FORM LIABILITY

1. We will pay on behalf of the insured those sums, in excess of the "applicable underlying limit", that the insured becomes legally obligated to pay as damages to which Coverage A of this insurance applies, provided that the "underlying insurance" would apply to such damages but for the exhaustion of its applicable limits of insurance. If a sublimit is specified in any "underlying insurance", Coverage A of this insurance applies to damages that are in excess of that sublimit only if such sublimit is shown for that "underlying insurance" in the Schedule Of Underlying Insurance.
2. Coverage A of this insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance", except with respect to any

provisions to the contrary contained in this insurance.

3. The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE.**
4. For the purposes of Paragraph 1. above:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance will be considered to be reduced or exhausted only by the following payments:
 - (1) Payments of judgments or settlements for damages that are covered by that "underlying insurance". However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for damages that would not be covered by this Excess Follow-Form And Umbrella Liability

Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance";

- (2) Payments of "medical expenses" that are covered by that "underlying insurance" and are incurred for "bodily injury" caused by an accident that takes place during the policy period of this Excess Follow-Form And Umbrella Liability Insurance; or
- (3) Payments of defense expenses that are covered by that "underlying insurance", only if such "underlying insurance" includes such payments within the limits of insurance. However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for defense expenses that would not be covered by this Excess Follow-Form And Umbrella Liability Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance".

If the applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance is actually reduced or exhausted by other payments, Coverage A of this insurance is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had such limit not been actually reduced or exhausted by such other payments.

- b. If any "underlying insurance" has a limit of insurance greater than the amount shown for that insurance in the Schedule of Underlying Insurance, this insurance will apply in excess of that greater amount. If any "underlying insurance" has a limit of insurance, prior to any reduction or exhaustion by payment of damages, "medical expenses" or defense expenses described in Paragraph a. above, that is less than the amount shown for that insurance in the Schedule Of Underlying Insurance, this insurance will apply in excess of the amount shown for such insurance in the Schedule Of Underlying Insurance.
5. When the "underlying insurance" applies on a claims-made basis and includes a retroactive

date provision, the retroactive date for Coverage A of this insurance is the same as the retroactive date of that "underlying insurance".

B. COVERAGE B - UMBRELLA LIABILITY

1. We will pay on behalf of the insured those sums in excess of the "self-insured retention" that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which Coverage B of this insurance applies.
2. Coverage B of this insurance applies to "bodily injury" or "property damage" only if:
 - a. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place anywhere in the world;
 - 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. in Paragraph B., **COVERAGE B - UMBRELLA LIABILITY**, of **SECTION II - 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, in whole or in part, 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.
3. Coverage B of this insurance applies to "personal injury" or "advertising injury" caused by an offense arising out of your business, but only if the offense was committed during the policy period anywhere in the world.
4. The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**.
5. "Bodily injury" or "property damage":
 - a. Which occurs during the policy period; and
 - b. Which was not prior to, but was during, the policy period known to have occurred by any insured listed under Paragraph 1. in Paragraph B., **COVERAGE B - UMBRELLA LIABILITY** of **SECTION II - WHO IS AN INSURED**, or any "employee" authorized by you to give notice of an "occurrence" or claim;

includes any continuation, change or resumption of the "bodily injury" or "property damage" after the end of the policy period.

6. "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. in Paragraph B., **COVERAGE B - UMBRELLA LIABILITY**, of **SECTION II - WHO IS AN INSURED** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - c. Becomes aware by any other means that the "bodily injury" or "property damage" has occurred or has begun to occur.
7. 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".
8. Coverage B of this insurance does not apply to damages covered by any "underlying insurance" or that would have been covered by any "underlying insurance" but for the exhaustion of its applicable limit of insurance.

C. COVERAGE C - CRISIS MANAGEMENT SERVICE EXPENSES

1. We will reimburse the insured, or pay on the insured's behalf, "crisis management service expenses" to which Coverage C applies.
2. Coverage C of this insurance applies to "crisis management service expenses" that:
 - a. Arise out of a "crisis management event" that first commences during the policy period;
 - b. Are incurred by the insured, after a "crisis management event" first commences and before such event ends; and
 - c. Are submitted to us within 180 days after the "crisis management advisor" advises you that the "crisis management event" no longer exists.
3. A "crisis management event" will be deemed to:
 - a. First commence at the time when any "executive officer" first becomes aware of an "event" or "occurrence" that leads to that "crisis management event"; and
 - b. End when we decide that the crisis no longer exists or when the Crisis

Management Service Expenses Limit has been exhausted, whichever occurs first.

4. The amount we will pay for "crisis management service expenses" is limited as described in **SECTION III - LIMITS OF INSURANCE**.
5. A "self-insured retention" does not apply to "crisis management service expenses".
6. Any payment of "crisis management service expenses" that we make will not be determinative of our obligations under this insurance with respect to any claim or "suit" or create any duty to defend or indemnify any insured for any claim or "suit".

D. DEFENSE AND SUPPLEMENTARY PAYMENTS

1. We will have the right and duty to defend the insured:
 - a. Under Coverage A, against a "suit" seeking damages to which such coverage applies, if:
 - (1) The "applicable underlying limit" is the applicable limit of insurance stated for a policy of "underlying insurance" in the Schedule Of Underlying Insurance and such limit has been exhausted solely due to payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY** of **SECTION I - COVERAGES**; or
 - (2) The "applicable underlying limit" is the applicable limit of any "other insurance" and such limit has been exhausted by payments of judgments, settlements or medical expenses, or related costs or expenses (if such costs or expenses reduce such limits).

For any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance"; or

- b. Under Coverage B, against a "suit" seeking damages to which such coverage applies.
2. We have no duty to defend any insured against any "suit":
 - a. Seeking damages to which this insurance does not apply; or
 - b. If any other insurer has a duty to defend.

3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. The cost of:
 - (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
 - (2) Appeal bonds and bonds to release attachments;

but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of such claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.
 - d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - e. 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.
 - f. All interest that accrues on the full amount of any judgment 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. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B - UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II - WHO IS AN INSURED

A. COVERAGE A - EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:
 - a. The limits of insurance afforded to such person or organization will be:
 - (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
 - (2) The limits of insurance of this policy; whichever is less; and
 - b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

B. COVERAGE B - UMBRELLA LIABILITY

With respect to Coverage B:

1. The Named Insured shown in the Declarations is an insured.
2. If you are:
 - a. An individual, your spouse is also an insured, but only with respect to the conduct of a business of which you are the sole owner.

- b. A partnership or joint venture, 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, your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, your "officers" and directors are also 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, your trustees are also insureds, but only with respect to their duties as trustees.
3. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "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 injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay

damages because of the injury described in Paragraph (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (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" or "volunteer workers", any of your partners or members (if you are a partnership or joint venture), or any of your members (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.
- c. 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. 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.

- 4. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you

maintain an ownership interest of more than 50%, on the first day of the policy period is an insured and will qualify as a Named Insured. No such organization is an insured or will qualify as a Named Insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.

5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, is an insured and 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 for such organization does not apply to:
 - (1) "Bodily injury" or "property damage" that occurred; or
 - (2) "Personal injury" or "advertising injury" arising out of an offense committed;

before you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named 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. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Paragraph B. of **SECTION II - WHO IS AN INSURED.**

C. COVERAGE C - CRISIS MANAGEMENT SERVICE EXPENSES

With respect to Coverage C, the following persons and organizations are insureds and will qualify as Named Insureds:

1. The Named Insured shown in the Declarations.
2. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period. No such organization is an insured or will qualify as a Named Insured for "crisis management service expenses" arising out of a "crisis management event" that first commences after

the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, 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 for such organization does not apply to "crisis management service expenses" arising out of a "crisis management event" that occurred before you acquired or formed the organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named 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

A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay for the amounts described below to which this insurance applies regardless of the number of:

1. Insureds;
2. Claims made or "suits" brought;
3. Number of vehicles involved;
4. Persons or organizations making claims or bringing "suits"; or
5. Coverages provided under this insurance.

As indicated in Paragraph D.1. of **SECTION I - COVERAGES**, for any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance".

B. The General Aggregate Limit is the most we will pay for the sum of all:

1. Damages; and
2. Defense expenses if such expenses are within the limits of insurance of this policy;

except:

1. Damages and defense expenses because of "bodily injury" or "property damage" included in the "auto hazard";
 2. Damages and defense expenses because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; or
 3. Damages and defense expenses for which insurance is provided under any Aircraft Liability coverage included as "underlying insurance" to which no aggregate limit applies.
- C. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all:
1. Damages; and
 2. Defense expenses if such expenses are within the limits of insurance of this policy; because of "bodily injury" or "property damage" included in the "products-completed operations hazard".
- D. Subject to Paragraph B. or C. above, whichever applies, the Occurrence Limit is the most we will pay for the sum of all:
1. Damages, and defense expenses if such expenses are within the limits of insurance of this policy, under Coverage A arising out of any one "event" to which the "underlying insurance" applies a limit of insurance that is separate from any aggregate limit of insurance; and
 2. Damages under Coverage B because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence".
- For the purposes of determining the applicable Occurrence Limit, all related acts or omissions committed in the providing or failing to provide first aid or "Good Samaritan services" to any one person will be considered one "occurrence".
- E. The Crisis Management Service Expenses Limit is the most we will pay for the sum of all "crisis management service expenses" arising out of all "crisis management events". Payment of such "crisis management service expenses" is in addition to, and will not reduce, any other limit of insurance of this policy.
- F. The limits of insurance of this policy 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. If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

SECTION IV- EXCLUSIONS

This insurance does not apply to:

- A. With respect to Coverage A and Coverage B:

1. Asbestos

- a. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the damages are caused or contributed to by the hazardous properties of asbestos.
- b. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any damages described in Paragraph a. above.
- c. Any loss, cost or expense arising out of any:
 - (1) 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, asbestos, asbestos fibers or products containing asbestos; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

2. Employment-Related Practices

Damages because of injury to:

- a. A person arising out of any:
 - (1) Refusal to employ that person;
 - (2) Termination of that person's employment; or
 - (3) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment, applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is

committed before, during or after the time of that person's employment; or

- b. The spouse, child, parent, brother or sister of that person as a consequence of injury to that person as described in Paragraphs a.(1), (2) or (3) above.

This exclusion applies:

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

3. ERISA, COBRA And Similar Laws

Any obligation of the insured under:

- a. The Employees Retirement Income Security Act Of 1974 (ERISA) or any of its amendments;
- b. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or any of its amendments; or
- c. Any similar common or statutory law of any jurisdiction.

4. Medical Expenses Or Payments

Any obligation of the insured under any "medical expenses" or medical payments coverage.

5. Nuclear Material

Damages arising out of:

- a. The actual, alleged or threatened exposure of any person or property to; or
- b. The "hazardous properties" of; any "nuclear material".

As used in this exclusion:

- a. "Hazardous properties" includes radioactive, toxic or explosive properties;
- b. "Nuclear material" means "source material", "special nuclear material" or "by-product material"; and
- c. "Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or any of its amendments.

6. Uninsured or Underinsured Motorists, No-Fault And Similar Laws

Any liability imposed on the insured, or the insured's insurer, under any of the following laws:

- a. Uninsured motorists;
- b. Underinsured motorists;

- c. Auto no-fault or other first-party personal injury protection (PIP);
- d. Supplementary uninsured/underinsured motorists (New York); or
- e. Medical expense benefits and income loss benefits (Virginia).

7. War

Damages arising out of:

- a. War, including undeclared or civil war; or
- b. 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
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

8. Workers Compensation And Similar Laws

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

B. With respect to Coverage B:

1. Expected Or Intended Bodily Injury Or Property Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. Contractual Liability

"Bodily injury", "property damage", "personal injury" or "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 that the insured would have in the absence of the contract or agreement.

3. Liquor Liability

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

- a. Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises for consumption on your premises;

- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

4. Employers Liability

"Bodily injury" to:

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

This exclusion applies:

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

5. Pollution

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".
- b. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or any other person or organization test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization 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".

6. Aircraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is owned or operated by or rented or loaned to any insured.

7. Auto

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "auto".

This exclusion does not apply to "bodily injury" or "property damage" caused by an "occurrence" that takes place outside of the United States of America (including its territories and possessions), Puerto Rico and Canada.

8. Watercraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to a watercraft:

- a. While ashore on premises owned by or rented to any insured; or
- b. That is 50-feet long or less and that:
 - (1) You own; or

- (2) You do not own and is not being used to carry any person or property for a charge.

9. Electronic Data

Damages claimed for the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

10. Damage To Property, Products Or Work

"Property damage" to:

- a. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person or organization, 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;
- b. Premises you sell, give away or abandon if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. 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;
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it;
- g. "Your product" arising out of "your product" or any part of it; or
- h. "Your work" arising out of "your work" or any part of it and included in the "products-completed operations hazard".

11. 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:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you, or anyone acting on your behalf, to fulfill the terms of a contract or agreement.

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.

12. 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:

- a. "Your product";
- b. "Your work"; or
- c. "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.

13. Violation Of Consumer Financial Protection Laws

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of a "consumer financial protection law", or any other "bodily injury", "property damage", "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such violation.

14. Unsolicited Communication

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

15. Access Or Disclosure Of Confidential Or Personal Information

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

16. Knowing Violation Of Rights Of Another

"Personal injury" or "advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal injury" or "advertising injury".

17. Material Published With Knowledge Of Falsity

"Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

18. Material Published Or Used Prior To Policy Period

- a. "Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or
- b. "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

19. Criminal Acts

"Personal injury" or "advertising injury" arising out of a criminal act committed by or at the direction of the insured.

20. Breach Of Contract

"Personal injury" or "advertising injury" arising out of a breach of contract.

21. Quality Or Performance Of Goods - Failure To Conform To Statements

"Advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

22. Wrong Description Of Prices

"Advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

23. Intellectual Property

"Personal injury" or "advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation:

- a. Copyright;
- b. Patent;
- c. Trade dress;
- d. Trade name;
- e. Trademark;
- f. Trade secret; or
- g. Other intellectual property rights or laws.

This exclusion does not apply to:

- a. "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or

- b. Any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

24. Insureds In Media And Internet Type Business

"Personal injury" or "advertising injury" arising out of an offense committed by an insured whose business is:

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

This exclusion does not apply to Paragraphs **a.(1), (2) and (3)** of the definition of "personal injury".

For the purposes of this exclusion:

- a. Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- b. The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

25. Electronic Chatrooms Or Bulletin Boards

"Personal injury" or "advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control.

26. Unauthorized Use Of Another's Name Or Product

"Personal injury" or "advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

C. With respect to Coverage C:

Newly Acquired, Controlled Or Formed Entities

"Crisis management service expenses" arising out of a "crisis management event" that involves any organization you newly acquire or form and that occurred prior to the date you acquired or formed that organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis

management event" after the date you acquired or formed such organization.

SECTION V - CONDITIONS

A. APPEALS

1. If the insured or the insured's "underlying insurer" elects not to appeal a judgment which exceeds the "applicable underlying limit" or "self-insured retention", we may do so.
2. If we appeal such a judgment, we will pay all costs of the appeal. These payments will not reduce the applicable limits of insurance. In no event will our liability exceed the applicable limit of insurance.

B. BANKRUPTCY

1. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.
2. In the event of bankruptcy or insolvency of any "underlying insurer", this insurance will not replace such bankrupt or insolvent "underlying insurer's" policy, and this insurance will apply as if such "underlying insurer" had not become bankrupt or insolvent.

C. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this insurance by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this insurance by mailing or delivering to such first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to such first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this insurance is cancelled, we will send such first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If such first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

D. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. No change can be made in the terms of this insurance except with our consent. The terms of this insurance can be amended or waived only by endorsement issued by us and made a part of this policy.

E. CURRENCY

Payments for damages or expenses described in Paragraph 5. of Paragraph D., **DEFENSE AND SUPPLEMENTARY PAYMENTS**, of **SECTION I - COVERAGES** will be in the currency of the United States of America. At our sole option, we may make these payments in a different currency. Any necessary currency conversion for such payments will be calculated based on the rate of exchange published in the Wall Street Journal immediately preceeding the date the payment is processed.

F. DUTIES REGARDING AN EVENT, OCCURRENCE, CLAIM OR SUIT

1. You must see to it that we are notified as soon as practicable of an "event" or "occurrence" which may result in a claim under this insurance. To the extent possible, notice should include:
 - a. How, when and where the "event" or "occurrence" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the names and addresses of any witnesses; and
 - c. The nature and location of any injury or damage arising out of the "event" or "occurrence".
2. If a claim is made or "suit" is brought against any insured which may result in a claim under this insurance, you must see to it that we receive written notice of the claim or "suit" as soon as practicable.
3. With respect to Coverage A, the insured must:
 - a. Cooperate with us in the investigation, settlement or defense of any claim or "suit";
 - b. Comply with the terms of the "underlying insurance"; and
 - c. Pursue all rights of contribution or indemnity against any person or organization who may be liable to the insured because of the injury, damage or loss for which insurance is provided under

this policy or any policy of "underlying insurance".

4. With respect to Coverage **B**, the insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - b. Authorize us to obtain necessary records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of any claim or "suit"; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which Coverage **B** may apply.
5. No insured will, except at that insured's own expense, voluntarily make a payment, assume any obligation, make any admission or incur any expense, other than for first aid for "bodily injury" covered by this insurance, without our consent.
6. Knowledge of an "event", "occurrence", claim or "suit" by your agent, servant or "employee" will not constitute knowledge by you, unless your insurance or risk manager, or anyone working in the capacity as your insurance or risk manager, or anyone you designate with the responsibility of reporting an "event", "occurrence", claim or "suit":
 - a. Has received notice of such "event", "occurrence", claim or "suit" from such agent, servant or "employee"; or
 - b. Otherwise has knowledge of such "event", "occurrence", claim or "suit".

G. DUTIES REGARDING A CRISIS MANAGEMENT EVENT

You must:

1. Notify us within 30 days of a "crisis management event" that may result in "crisis management service expenses".
2. Provide written notice of the "crisis management event" as soon as practicable. To the extent possible, notice should include:
 - a. How, when and where that "crisis management event" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the named and addresses of any witnesses;

- c. The nature and location of any injury or damage arising out of that "crisis management event"; and
- d. The reason that "crisis management event" is likely to involve damages covered by this insurance in excess of the "applicable underlying limit" or "self-insured retention" and involve regional or national media coverage.

H. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this insurance:

1. At any time during the policy period;
2. Up to three years after the end of the policy period; and
3. Within one year after final settlement of all claims under this insurance.

I. EXTENDED REPORTING PERIOD OPTION

1. When the "underlying insurance" applies on a claims-made basis, any automatic or basic "extended reporting period" in such "underlying insurance" will apply to this insurance.
2. When the "underlying insurance" applies on a claims-made basis and you elect to purchase an optional or supplemental "extended reporting period" in such "underlying insurance," that "extended reporting period" will apply to this insurance only if:
 - a. A written request to purchase an Extended Reporting Period endorsement for this insurance is made by you and received by us within 90 days after the end of the policy period;
 - b. You have paid all premiums due for this policy at the time you make such request;
 - c. You promptly pay the additional premium we charge for the Extended Reporting Period endorsement for this insurance when due. We will determine that additional premium after we have received your request for the Extended Reporting Period endorsement for this insurance. That additional premium is not subject to any limitation stated in the "underlying insurance" on the amount or percentage of additional premium that may be charged for the "extended reporting period" in such "underlying insurance"; and

- d. That Extended Reporting Period endorsement is issued by us and made a part of this policy.
- 3. Any Extended Reporting Period endorsement for this insurance will not reinstate or increase the Limits of Insurance or extend the policy period.
- 4. Except with respect to any provisions to the contrary contained in Paragraphs 1., 2. or 3. above, all provisions of any option to purchase an "extended reporting period" granted to you in the "underlying insurance" apply to this insurance.

J. INSPECTIONS AND SURVEYS

- 1. We have the right but are not obligated to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
- 2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

K. LEGAL ACTION AGAINST US

- 1. No person or organization has a right under this insurance:
 - 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 insurance unless all of its terms have been fully complied with.
- 2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:
 - a. Are not payable under the terms of this insurance; or
 - b. 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.

L. MAINTENANCE OF UNDERLYING INSURANCE

- 1. The insurance afforded by each policy of "underlying insurance" will be maintained for

the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY** of **SECTION I - COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance. If you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.

- 2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:
 - a. Coverage;
 - b. Limits of insurance;
 - c. Termination of any coverage; or
 - d. Exhaustion of aggregate limits.
- 3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing, excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4. below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of **SECTION II - WHO IS AN INSURED.**

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5. of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE - UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to

provide insurance in such country or jurisdiction; or

- b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE - TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and 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, and with respect to Coverage A, the "underlying insurer", enforce them.

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 that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the

execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:
 - a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
 - b. Next, to us; and
 - c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.
3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

V. UNINTENTIONAL OMISSION OR ERROR

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

W. WHEN LOSS IS PAYABLE

If we are liable under this insurance, we will pay for injury, damage or loss after:

1. The insured's liability is established by:
 - a. A court decision; or
 - b. A written agreement between the claimant, the insured, any "underlying insurer" and us; and
2. The amount of the "applicable underlying limit" or "self-insured retention" is paid by or on behalf of the insured.

SECTION VI - DEFINITIONS

A. With respect to all coverages of this insurance:

1. "Applicable underlying limit" means the sum of:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance subject to the provisions in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY OF SECTION I - COVERAGES**; and
 - b. The applicable limit of insurance of any "other insurance" that applies.

The limits of insurance in any policy of "underlying insurance" will apply even if:

- a. The "underlying insurer" claims the insured failed to comply with any term or condition of the policy; or
 - b. The "underlying insurer" becomes bankrupt or insolvent.
2. "Auto hazard" means all "bodily injury" and "property damage" to which liability insurance afforded under an auto policy of "underlying insurance" would apply but for the exhaustion of its applicable limits of insurance.
 3. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 4. "Event" means an "occurrence", offense, accident, act, error, omission, wrongful act or loss.
 5. "Extended reporting period" means any period of time, starting with the end of the policy period of your claims-made insurance, during which claims or "suits" may be first made, brought or reported for that insurance.
 6. "Medical expenses" means expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" applies.
 7. "Other insurance" means insurance, or the funding of losses, that is provided by, through or on behalf of:
 - a. Another insurance company;
 - b. Us or any of our affiliated insurance companies;
 - c. Any risk retention group;

- d. Any self-insurance method or program, in which case the insured will be deemed to be the provider of such insurance; or
- e. Any similar risk transfer or risk management method.

"Other insurance" does not include:

- a. Any "underlying insurance"; or
 - b. Any policy of insurance specifically purchased to be excess of the limits of insurance of this policy shown in the Declarations.
8. "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 completed at the earliest of the following times:
 - (a) When all the work called for in your contract has been completed;
 - (b) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (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.
 - 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;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification listed in a policy of

Commercial General Liability "underlying insurance" states that products-completed operations are subject to the General Aggregate Limit.

- 9. "Suit" means a civil proceeding which alleges damages. "Suit" includes:
 - a. An arbitration proceeding in which damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding to which the insured submits with our consent.
 - 10. "Underlying insurance":
 - a. Means the policy or policies of insurance listed in the Schedule Of Underlying Insurance.
 - b. Includes any renewal or replacement of such policies if such renewal or replacement is during the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
 - c. Does not include any part of the policy period of any of the policies described in Paragraphs a. or b. above that began before, or that continues after, the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
 - 11. "Underlying insurer" means any insurer which provides a policy of insurance listed in the Schedule Of Underlying Insurance.
- B. With respect to Coverage B and, to the extent that the following terms are not defined in the "underlying insurance", to Coverage A:
- 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 purposes 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 purposes of attracting customers or supporters is considered an advertisement.
 - 2. "Advertising injury":

- a. Means injury, other than "personal injury", caused by one or more of the following offenses:
 - (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light; or
 - (3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.
3. "Auto" means:
- a. A land motor vehicle, trailer or semitrailer 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 law where it is licensed or principally garaged.
- However, "auto" does not include "mobile equipment".
4. "Bodily injury" means:
- a. Physical harm, including sickness or disease, sustained by a person; or
 - b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.
5. "Broadcasting" means transmitting any audio or visual material for any purpose:
- a. By radio or television; or
 - b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1) Radio or television programming being transmitted;
 - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3) Advertising transmitted with any such programming.
6. "Consumer financial identity information" means any of the following information for a person that is used or collected for the purpose of serving as a factor in establishing such person's eligibility for personal credit, insurance or employment or for the purpose of conducting a business transaction:
- a. Part or all of the account number, the expiration date or the balance of any credit, debit, bank or other financial account;
 - b. Information bearing on a person's credit worthiness, credit standing or credit capacity;
 - c. Social security number;
 - d. Driver's license number; or
 - e. Birth date.
7. "Consumer financial protection law" means:
- a. The Fair Credit Reporting Act (FCRA) and any of its amendments, including the Fair and Accurate Credit Transactions Act (FACTA);
 - b. California's Song-Beverly Credit Card Act and any of its amendments; or
 - c. Any other law or regulation that restricts or prohibits the collection, dissemination, transmission, distribution or use of "consumer financial identity information".
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.
10. "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 the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

- 11. "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".

- 12. "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".

- 13. "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, maintained primarily to provide mobility to 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 Paragraph 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 Paragraph 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 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 law, where it is licensed or principally garaged. Such land vehicles are considered "autos".

- 14. "Occurrence" means:

- a. With respect to "bodily injury" or "property damage":

- (1) An accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in "bodily injury" or "property damage". All "bodily injury" or "property damage" caused by such exposure to substantially the same general harmful conditions will be deemed to be caused by one "occurrence"; or

- (2) An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor, unless you are in the business or occupation of providing professional health care services;

- b. With respect to "personal injury", an offense arising out of your business that results in "personal injury". All "personal injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits"; and
 - c. With respect to "advertising injury", an offense committed in the course of advertising your goods, products and services that results in "advertising injury". All "advertising injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits".
- 15. "Officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- 16. "Personal injury":
 - a. Means injury, other than "advertising injury", caused by one or more of the following offenses:
 - (1) False arrest, detention or imprisonment;
 - (2) Malicious prosecution;
 - (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
 - (5) Oral or written publication, including publication by electronic means, of material that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light.
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.
- 17. "Pollutants" mean 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.
- 18. "Property damage" means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will 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 will be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.
- 19. "Self-insured retention" is the greater of:
 - a. The amount shown in the Declarations which the insured must first pay under Coverage B for damages because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence"; or
 - b. The applicable limit of insurance of any "other insurance" that applies.
- 20. "Slogan":
 - a. Means a phrase that others use for the purpose of attracting attention in their advertising.
 - b. Does not include a phrase used as, or in, the name of:
 - (1) Any person or organization other than you; or
 - (2) Any business, or any of the premises, goods, products, services or work, of any person or organization other than you.

21. "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.
 22. "Title" means the name of a literary or artistic work.
 23. "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.
 24. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed by 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.
- C. With respect to Coverage C:
1. "Crisis management advisor" means any public relations firm or crisis management firm approved by us that is hired by you to perform "crisis management services" in connection with a "crisis management event".
 2. "Crisis management event" means an "event" or "occurrence" that your "executive officer" reasonably determines has resulted, or may result, in:
 - a. Damages covered by this Coverage A or Coverage B that are in excess of the total applicable limits of the "underlying insurance" or "self-insured retention"; and
 - b. Significant adverse regional or national media coverage.
 3. "Crisis management service expenses" means amounts incurred by you, after a "crisis management event" first commences and before such event ends:
 - a. For the reasonable and necessary:
 - (1) Fees and expenses of a "crisis management advisor" in the performance for you of "crisis management services" solely for a "crisis management event"; and
 - (2) Costs for printing, advertising, mailing of materials or travel by your directors, officers, employees or agents or a "crisis management advisor" solely for a "crisis management event"; and
 - b. For the following expenses resulting from such "crisis management event", provided that such expenses have been approved by us:
 - (1) Medical expenses;
 - (2) Funeral expenses;
 - (3) Psychological counseling;
 - (4) Travel expenses;
 - (5) Temporary living expenses;
 - (6) Expenses to secure the scene of a "crisis management event"; or
 - (7) Any other expenses pre-approved by us.

UMBRELLA

4. "Crisis management services" means those services performed by a "crisis management advisor" in advising you or minimizing potential harm to you from a "crisis management event" by maintaining or restoring public confidence in you.
5. "Executive officer" means your:
 - a. Chief Executive Officer;
 - b. Chief Operating Officer;
 - c. Chief Financial Officer;
 - d. President;
 - e. General Counsel;
 - f. General partner (if you are a partnership); or
 - g. Sole proprietor (if you are a sole proprietorship);or any person acting in the same capacity as any individual listed above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

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.

- | | |
|--|---|
| A. Non-Owned Watercraft - 75 Feet Long Or Less | H. Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Premises |
| B. Who Is An Insured - Unnamed Subsidiaries | |
| C. Who Is An Insured - Retired Partners, Members, Directors And Employees | I. Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Operations |
| D. Who Is An Insured - Employees And Volunteer Workers - Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees | J. Incidental Medical Malpractice |
| E. Who Is An Insured - Newly Acquired Or Formed Limited Liability Companies | K. Medical Payments - Increased Limit |
| F. Blanket Additional Insured - Controlling Interest | L. Amendment Of Excess Insurance Condition - Professional Liability |
| G. Blanket Additional Insured - Mortgagees, Assignees, Successors Or Receivers | M. Blanket Waiver Of Subrogation - When Required By Written Contract Or Agreement |
| | N. Contractual Liability - Railroads |

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.

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 - RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of **SECTION II - WHO IS AN INSURED:**

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director 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 Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" 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 current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(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 Paragraph (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (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 retired partners, members or directors, your current or retired "employees" or "volunteer workers", any current partner or member (if you are a partnership or joint venture), or any current member (if you are a limited liability company) or current director.

D. WHO IS AN INSURED - EMPLOYEES AND VOLUNTEER WORKERS - BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

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 current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. 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.

F. 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.

G. 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 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.

H. 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.

I. 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".

j. INCIDENTAL MEDICAL MALPRACTICE

- 1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

- 2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II - WHO IS AN INSURED:**

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a), (b), (c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- 3. The following replaces the last sentence of Paragraph 5. of **SECTION III - LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

- 4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

- 5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

- 6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II - Who Is An Insured.

K. 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.

L. AMENDMENT OF EXCESS INSURANCE CONDITION - PROFESSIONAL LIABILITY

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

M. BLANKET WAIVER OF SUBROGATION - WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

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 written 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 signing of that 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.

Exhibit “D”
City of College Station
Standard Form of Agreement between
City and Construction Manager at Risk

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



October 14, 2024

Jon Hall
City of College Station
Public Works Project Manager
300 Krenak Tap Road
College Station, Texas 77840

VIA Email: jhall@cstx.gov

Re: AE Pre-Design Services Fee Proposal
Public Works Complex Project
College Station, Texas

Dear Mr. Hall,

Thank you for selecting Marmon Mok Architecture to design the new campus for the City of College Station Public Works Department. Our team is ready to go, and we know your department is similarly excited at the prospect of creating a new work environment that honors the workforce of your organization that represents the City of College Station. Our approach will be collaborative, transparent and focused on achieving the right solutions that meet your goals and support your needs as a functional and effective workplace for your employees and the citizens you serve.

Since notice of award, our team has coordinated with consultants and based on our scope meeting on October 8th, we have developed a two phased approach to the design of College Station Public Works new facilities. We have formed a reasonable understanding of the project and scope of services required for the design of your project.

For the first phase of the project, at your request, attached is a scope of services statement and hourly task breakdown for Marmon Mok.

Our proposed fee for AE pre-design services to accomplish the proposed scope of services is provided as a hourly not to exceed total. This proposal includes all anticipated consultants required to complete the scope as currently defined.

We understand your intent and desire is for Marmon Mok to provide an initial scope of services to provide programming, site evaluation, conceptual site and building studies, and participate in selection of an eventual Construction Manager at Risk, and we have included those services as we understand their requirements at this time.

Pre-Design Services

Pre-Design services include traditional AE design related services that are comprehensive from Schematic Design through Construction Administration to produce plans and specifications to construct the work.

The following disciplines and consultants and related fee comprise the services for Pre-Design

<u>Discipline</u>	<u>Consultant</u>	<u>Fee</u>
Architecture & Interior Design	Marmon Mok Architecture	\$ 242,360
Civil Engineering	Kimley Horn	\$ 39,450
MEP Consultation	Cleary Zimmermann Engineers	\$ 10,420
Fuel System & Fluid Distribution	CDS Muery	\$ 12,845
Geotechnical Review	Terracon	\$ 28,050
Total Pre-Design Services:		\$ 333,125

Pre-Design services will be invoiced monthly based on percentage of phase complete per the following schedule:

<u>Task</u>	<u>Milestone</u>	<u>Percentage</u>
Programming	Program Draft	50%
	Program Document	50%
Site Evaluation	Site Evaluation Completion	100%
Site & Building Conceptual Design	Site Fit Studies	50%
	Conceptual Building Configurations	50%
CMAR Selection		100%

Optional Services

Optional Supplemental Services include specific task-based services to support the Pre-Design services listed above. As task-based services, these services will be invoiced as completed over the course of the project work. Consultant supplemental fees are marked up 1.1 times for management and administration of the work.

These services include the following:

<u>Service</u>	<u>Consultant</u>	<u>Allowance</u>
Preliminary Geotechnical Evaluation:	Terracon	\$ 15,480
Site Survey Allowance:	Kimley Horn	\$ 5,500
Program Level Cost Estimate:	Project Cost Resource	\$ 13,414
Systems Narrative for Program	FPCG	\$ 2,400
Document:	Datacom	\$ 2,400
Total Supplemental Services:		\$ 39,194

Total Contract Fee Proposal:

\$ 372,319

Exclusions

Schematic Design, Design Development, Construction Documents, Permitting, Contract Administration

Municipal plan review and construction permit review fees.

Comprehensive Energy Model Analysis of facilities beyond code required energy analysis. Upon request, may be added as an additional service.

Platting or Zoning activities of the property and performing a Traffic Impact Analysis.

Certification of environmental design standards through USGBC (LEED) or other similar certifying bodies.

Please call if you have any questions regarding this proposal. We remain available to discuss further and look forward to a very successful project outcome.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edgar Farrera', with a stylized flourish extending from the end.

Edgar Farrera
Partner
Marmon Mok Architecture

Cc:

Encl.

Attachment A: Scope of Work Description
Attachment B: Team Breakdown of Work
Attachment C: Architecture Hourly Breakdown

ATTACHMENT A SCOPE OF WORK

PROJECT OVERVIEW

The City of College Station has initiated a project (“**the Project**”) that will construct a new campus of facilities for the Public Works Department to meet the expanding service demand for this rapidly growing municipality. This campus will comprise multiple structures including administration and operations office building(s), potential operational structures may include, a vehicle maintenance building, equipment storage and shop buildings and material storage buildings. Vehicle fueling services and vehicle wash facilities will also be planned for. The Administrative and Operations building(s) may be one multi-story structure or separate structures as determined through detailed programming and master planning of the proposed site. Site development will provide parking facilities for the employees, visitors, and the department fleet vehicles.

Marmon Mok shall provide an initial Pre-Design phase of the new campus to include Programming, Site Analysis, Conceptual Building and Site Plan Studies, and CMAR Evaluation and Selection.

Our approach will be collaborative, transparent and focused on achieving the right solutions that meet your goals and support your needs as a functional and effective workplace for your employees and the citizens you serve.

ARCHITECTURE AND ENGINEERING PRE-DESIGN PHASE SERVICES

1. Pre-Design: Consultant shall work with City PM, and other Project Team members to develop building and site space planning requirements, and the relationships between the various building elements and functions to facilitate interactions between buildings, (horizontal and vertical elements) and Campus personnel.
 - a. Space Programing and Functional Requirements
 - i. Consultant shall provide the resources and expertise to effectively assist City’s PM in formalizing a thorough and detailed Space Program and Functional Use Requirements (“SPFR”).
 - ii. Consultant shall work closely with stakeholders, City’s PM and other interested parties to evaluate detailed space requirements that respond to the functional needs of the Department.
 - iii. The Consultant shall review the requirements necessary for the various project functions, relationships or operations, such as those for existing and projected personnel, space allocations, furnishings and equipment, operating procedures and communications.
 - iv. The Consultant shall gather information furnished by the City to aid the Consultant in understanding City’s present, short-term and long-term personnel and space requirements, including special equipment needs, organizational structure, adjacencies and workflow.
 - v. The Consultant shall conduct interviews with the City’s representatives and shall observe existing conditions at City’s facilities.
 - vi. The consultant shall assist in scheduling tours of similar facilities around the region if desired, that might offer ideas on things that work well in this type of facility and things that do not.

- vii. The Consultant shall provide recommendations that address and satisfy multiple objectives including maximizing space; minimizing cost; providing flexible spaces capable of adapting to changing programs and technological requirements, and efficiency, and achieving overall quality.
 - viii. The Consultant will work with City to create the goals and objectives with respect to their impact on City's space requirements.
 - ix. The Consultant shall develop personnel space standards as required based upon an evaluation of existing standards and the functional requirements and standards of the City. Personal space standards shall take into consideration the design and layout of furniture.
 - x. The Consultant shall develop a general understanding of the Owner's equipment requirements, including maintenance and shop equipment, data and telecommunications equipment, and reproduction equipment. Consultant shall rely upon the Departments Operations staff identifying equipment needs, equipment relocations, new equipment requirements and connections required thereof.
 - xi. Once the initial program requirements are determined based upon City's current requirements and the initial program has been accepted by City's PM, Consultant shall incorporate the findings and requirements into the final program for approval by City's PM before proceeding to the Schematic Design Phase.
2. Site Evaluation: Consultant will coordinate with City PM to review, evaluate and provide a report of findings for a list of sites (4-6) to be provided by the City.
- i. Consultant shall conduct a complete and thorough analysis of the site to program requirements, context, and site planning guidelines. Investigation areas include soils, topography, site utilities (either on site or available to the site), access and circulation, urban design context, and zoning/ city requirements.
 - ii. Consultant shall conduct site fit studies, investigating each sites suitability in terms of programmatic requirements, vehicular movements, future expansion, and parking needs.
 - iii. Consultant shall evaluate candidate sites and prepare an evaluation report or matrix to the city containing the pros and cons of candidate sites along with recommendations regarding the most suitable site(s) for the project.
3. Conceptual Building and Site Plan Studies
- i. Consultant shall utilize the topography of the site, and shall identify with massing studies potential building sites, and circulation paths (pedestrian and vehicular), and present the pros and cons of the various studies by using the appropriate graphical representation techniques to the City for approval.
 - ii. Based on approved site development scheme, Consultant will develop a selected site plan depicting building massing studies based upon program requirements, site parking and circulation, roadways and improvements including utilities, stormwater management features, and site enhancement opportunities as determined with the City.
 - iii. Based on program needs and interviews, the consultant shall prepare preferred options for division adjacencies and resulting stacking diagrams.

4. Construction Manager at Risk (CMAR) Evaluation and Selection

- i. Consultant will assist the city in evaluating CMAR submittals, including reviewing qualifications and providing input as appropriate
- ii. Consultant shall participate in CMAR candidate evaluation discussions and CMAR selection interviews as required.

ATTACHMENT B
Team Breakdown of Work

City of College Station Public Works Complex										
Fee/Price Proposal Breakdown for Professional Services - Full Team										
Project Name:		City of College Station- Public Works Complex								
Date Proposal Submitted:		10/14/2024								
Position/Personnel Title	Marmon Mok Architect & Interior Designer	Kimley-Horn Civil Engineer	Cleary Zimmermann MEP Engineer	CDS Muery Fuel Design	Terracon Geotechnical Engineer & Environmental	FPCG Fire Protection Engineer & Code Consultant	Datacom Technology, AV, Acoustic & Security Designer	Project Cost Resource Cost Estimator		
Pre-Design Phase										
1. Programming	\$51,980.00	\$3,750.00	\$1,200.00	\$2,650.00	\$3,300.00				\$62,880.00	
2. Site Evaluation/Investigation	\$49,860.00	\$22,450.00	\$2,000.00	\$4,275.00	\$24,750.00				\$103,335.00	
3. Conceptual Building & Site Studies	\$97,400.00	\$12,650.00	\$6,420.00	\$5,520.00					\$121,990.00	
4. CMAR Evaluation & Selection	\$43,120.00	\$600.00	\$800.00	\$400.00					\$44,920.00	
Sub Total- Pre Design Fee (Not to Exceed):										
	\$242,360.00	\$39,450.00	\$10,420.00	\$12,845.00	\$28,050.00				\$333,125.00	
Optional Services										
Allowance										
1. Preliminary Geotechnical Engineering (Selected Site)					\$15,480.00				\$15,480.00	
2. Site Survey Allowance		\$5,500.00							\$5,500.00	
3. Program Level Cost Estimate								\$13,414.00	\$13,414.00	
4. Systems Narrative for Program Document						\$2,400.00	\$2,400.00		\$4,800.00	
Sub Total Optional Services (Not to Exceed):										
		\$5,500.00			\$15,480.00	\$2,400.00	\$2,400.00	\$13,414.00	\$39,194.00	
Total Pre-Design & Optional Services										
										\$372,319.00

ATTACHMENT C Architecture Hourly Breakdown

City of College Station Public Works Complex									
Fee/Price Proposal Breakdown for Professional Services- Architect Only									
Project Name:		City of College Station- Public Works Complex							
Name of Firm/Subconsultant:		Marmon Mok Architecture							
Date Proposal Submitted:		10/14/2024							
Project Manager:									
Position/Personnel Title		Partner	Senior Project Manager	Professional Architect II	Interior Designer	Graphic Designer	Architectural Intern I	Admin/Clerical	
Fully-Loaded Hourly Wage Rates * (as defined below)		\$275.00	\$180.00	\$170.00	\$120.00	\$140.00	\$75.00	\$90.00	
Task to be performed/Phase Description (including Sub-consultant work)		Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total Hours
Pre-Design Phase									
Programming		60	100	40	48	12	24	16	300
Site Evaluation		48	112	60			60	20	300
Conceptual Building & Site Studies		116	156	92	94	30	60	20	568
CMAR Evaluation & Selection		40	96	64			24	24	248
Total Hours:		264	464	256	142	42	168	80	1416
Total Fee Proposal (Not to Exceed):		\$72,600.00	\$83,520.00	\$43,520.00	\$17,040.00	\$5,880.00	\$12,600.00	\$7,200.00	\$242,360.00
* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).									

October 24, 2024
Item No. 7.18.
Pickleball and Futsal Courts at Anderson Park

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Jon Tucker Construction, Ltd., dba Tucker Construction, for the Pickleball and Futsal Courts at Anderson Park in the amount of \$1,075,911.41, plus the City's contingency in the amount of \$108,000 for a total appropriation of \$1,183,911.41. 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 Tucker Construction for the construction of the Pickleball and Futsal Courts at Anderson Park.

Summary: The project in Anderson Park will install 4 outdoor courts for pickleball and 2 multi-use courts to be used for futsal, bike polo, roller hockey and other sports with full LED lighting, lines, and surfacing. The project also includes additional parking, a detention pond, and all other related work required to complete the construction.

This project was procured using the Competitive Sealed Proposal (CSP) Method. Six proposals were received and reviewed and the proposal by Tucker Construction was found to provide the best value to the City of College Station.

Court lighting for pickleball and multi-use courts will be provided through a Buy Board contract with Musco Sports Lighting in the amount of \$313,068. This contract will be presented to council under separate cover.

The multi-use courts rink systems and goals will be provided through a Buy Board contract with Becker Arena Systems in the amount of \$229,440. This contract will be presented at a future council meeting.

The Bid Alternate 1 shade structure will be provided through a Buy Board contract with USA Shade in the amount of \$23,350.

Budget & Financial Summary:

Budget in the amount of \$1,700,000 is included for this project in the Parks Capital Improvement Projects Fund with an additional \$350,000 included in the Parkland Zone 1 Fund for a total budget of \$2,050,000. A total of \$195,980 has been expended or committed to date, leaving a combined balance of \$1,854,020 for this contract, Buy Board Contracts with Musco Sports Lighting, Becker Arena Systems, USA Shade and future expenses. The \$1,700,000 for this project was approved via the City of College Station's November 2022 General Obligation Bond Election under Proposition D Parks Improvements and Redevelopment.

Budget

\$1,700,000 Parks Capital Improvements Projects Fund Approved via City of College Station's November 2022 General Obligation

\$350,000 Parkland Dedication Zone 1

Total Budget: \$2,050,000

Budget Expended or Committed to Date: \$195,980

Budget Remaining: \$1,854,020

Contracts

Tucker Construction Contract with City Contingency: \$1,183,941.41

Musco Sports Lighting Buy Board Contract: \$313,068

Becker Arena Systems Buy Board Contract: \$229,440

USA Shade Buy Board Contract: \$23,350

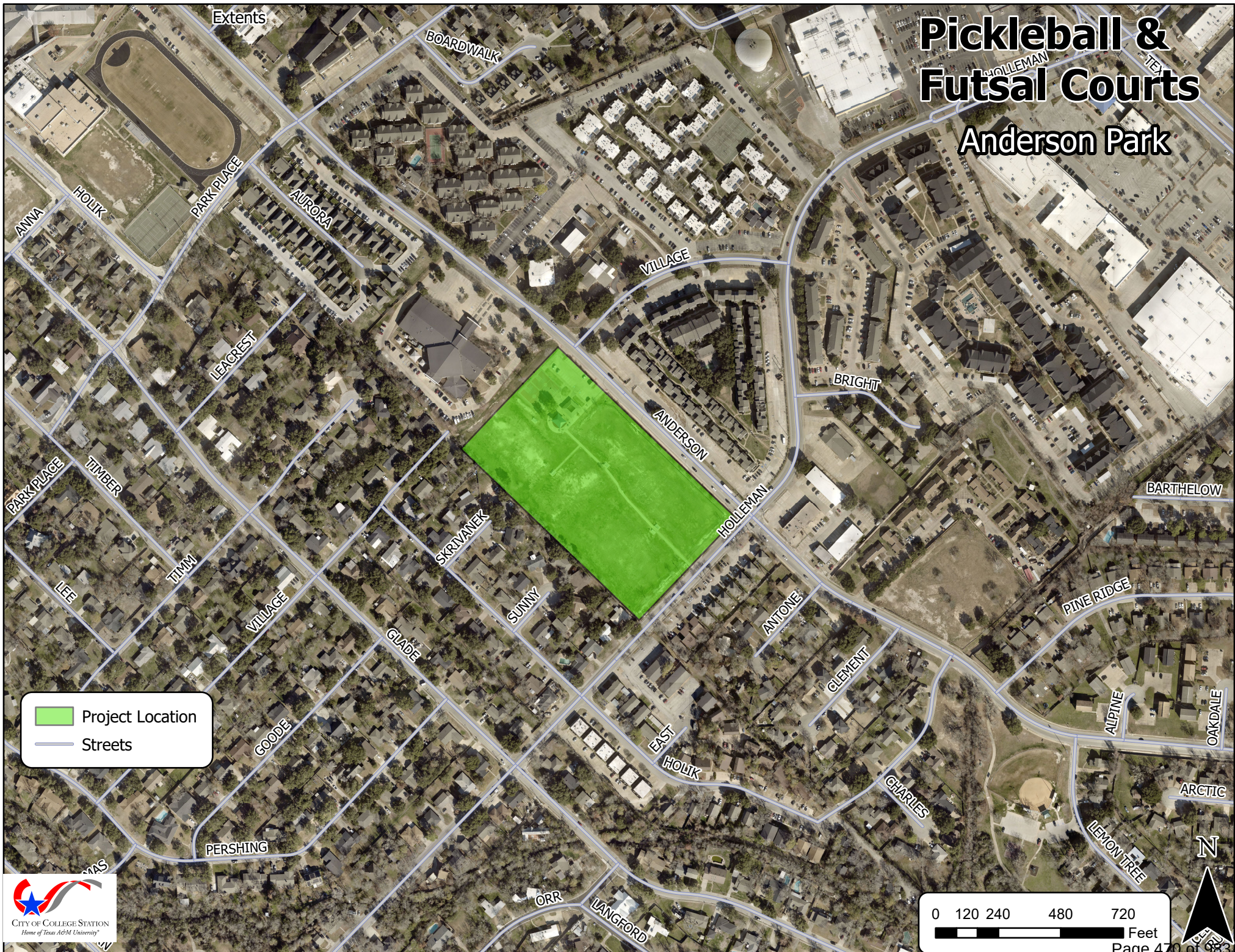
Total Construction Contracts: \$1,749,799.41

Attachments:

1. Pickleball Futsal at Anderson Project Location Map
2. Pickleball Futsal at Anderson Vendor Signed Contract

Pickleball & Futsal Courts

Anderson Park





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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300788 PROJECT#: PK2305 BID/RFP/RFQ#: 24-086

Project Name / Contract Description: New Pickleball and Futsal Courts at Anderson Park

Name of Contractor: Jon Tucker Construction, LTD., dba Tucker Construction

CONTRACT TOTAL VALUE: \$ 1,075,911.42 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)

Most qualified bidder from RFP (CSP) 24-086.

Account code 41389000-4040

CRC Approval Date*: N/A (If required)* Council Approval Date*: 10/24/2024 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

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 Jon Tucker Construction, LTD., dba Tucker Construction (the "Contractor") for the construction and/or installation of the following:
New Pickleball and Futsal Courts at Anderson Park.

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 Eight Thousand and no /100 Dollars (\$108,000.00).

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 Seventy Five Thousand Nine Hundred Eleven and 42 /100 Dollars (\$1,075,911.42).

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

**JON TUCKER CONSTRUCTION,
LTD., dba Tucker Construction**

By: Jeremy Baker

Printed Name: Jeremy Baker

Title: Chief Estimator

Date: 10/16/2024

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

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.

=====
 ** 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.

=====

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

TEXAS STATUTORY PAYMENT BOND

Bond No. GSB9900097

THE STATE OF TEXAS

§

THE COUNTY OF BRAZOS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Jon Tucker Construction, LTD., as Principal, hereinafter called "Principal" and the other subscriber hereto The Gray Casualty & Surety Company, a corporation organized and existing under the laws of the State of Louisiana, 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 Seventy-five Thousand Nine Hundred Eleven Dollars and 42/100 Dollars (\$ 1,075,911.42) 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 24th day of October, 20 24, for New Pickleball and Futsal Courts at Anderson Park, 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. GSB9900097

FOR THE CONTRACTOR:

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

Jon Tucker Construction, LTD.

(Name of Contractor)

By: [Signature]

Name: Cullen Turney

Title: Project Engineer

Date: 10/24/2024

By: [Signature]

Name: CHRISTIAN ROOSE

Title: OPERATIONS MANAGER

Date: 10/24/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

The Gray Casualty & Surety Company
(Full Name of Surety)

By: [Signature]

Name: Savannah Smith

Title: Witness

Date: 10/24/2024

P.O. Box 6202

Metairie, LA 70009

(Address of Surety for Notice)

By: [Signature]

Name: Jennifer J. Biehle

Title: Attorney-In-Fact

Date: 10/24/2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

PERFORMANCE BOND

Bond No. GSB9900097

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Jon Tucker Construction, LTD., as Principal, hereinafter called "Contractor" and the other subscriber hereto The Gray Casualty & Surety 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 Seventy-five Thousand Nine Hundred Eleven Dollars and 42 /100 Dollars (\$ 1,075,911.42) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for New Pickleball and Futsal Courts at Anderson Park

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. GSB9900097

FOR THE CONTRACTOR:

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

Jon Tucker Construction, LTD.

(Name of Contractor)

By: Cullen Turney

By: Christian Roobe

Name: Cullen Turney

Name: CHRISTIAN ROOBE

Title: Project Engineer

Title: OPERATIONS MANAGER

Date: 10/24/2024

Date: 10/24/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

The Gray Casualty & Surety Company
(Full Name of Surety)

By: Savannah Smith

P.O. Box 6202

Name: Savannah Smith

Metairie, LA 70009

Title: Witness

(Address of Surety for Notice)

Date: 10/24/2024

By: Jennifer J. Biehle

Name: Jennifer J. Biehle

Title: Attorney-In-Fact

Date: 10/24/2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

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

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: GSB9900097

Principal: Jon Tucker Construction, LTD.

Project: New Pickleball and Futsal Courts at Anderson Park

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Robert James Nitsche, Robert Nitsche, Jennifer J. Biehle, Kenneth Nitsche, Craig Parker, Gary Nitsche, and Nina K. Smith of Giddings, Texas jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$25,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 24th day of October, 2024.

Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 24th day of October, 2024.

Leigh Anne Henican





The Gray Insurance Company
The Gray Casualty & Surety Company

Statutory Complaint Notice

To obtain information or to make a complaint:

You may contact the Surety via telephone for information or to make a complaint at: 1-504-754-6711.

You may also write to the Surety at:

Gray Surety
P.O. Box 6202
Metairie, LA 70009-6202

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

P.O. Box 149104
Austin, TX 78714-9104
Fax: 512-475-1771

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 part of condition of the attached document. This notice is written under a complete reservation of rights. Nothing herein shall be deemed to be an estoppel, waiver or modification of any of Gray's rights or defenses, and Gray hereby reserves all of its rights and defenses under any general agreement of indemnity, contracts, agreements, bonds, or applicable law.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/08/2024

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 CHICAGOJONES INSURANCE AGENCY WILLIAM LLOYD JONES DBA 2454 NEWARK CIRCLE COLLEGE STATION TX 77845	CONTACT NAME: WILLIAM LLOYD JONES PHONE (A/C, No, Ext): (979) 820-0375 FAX (A/C, No): E-MAIL ADDRESS: CHICAGOJONESINSURANCE@GMAIL.COM
INSURED JON TUCKER CONSTRUCTION, LTD. 7425 MIZE ROAD BRYAN TX 77808	INSURER(S) AFFORDING COVERAGE INSURER A: Progressive County Mutual Insurance Company INSURER B: Texas Mutual Insurance Company INSURER C: Hartford Fire Insurance Company 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.

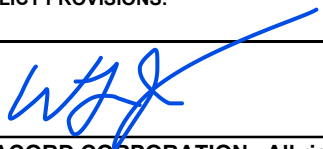
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG \$ \$ \$ \$ \$ \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY	X	X	955527300	01/25/2024	01/25/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) \$ 1,000,000 \$ \$ \$ \$
	UMBRELLA LIAB EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ Y	N/A	X	0001177373	01/25/2024	01/25/2025 ☒ PER STATUTE E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT \$ 1,000,000 \$ 1,000,000 \$ 1,000,000
C	Contractor's Equipment Leased or Rented from Others			46MSEI3860	01/25/2024	01/25/2025	Limit per Occurrence Limit per Item Deductible \$250,000 \$250,000 \$1,000

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

Partners Jon and Allison Tucker are excluded on the Workers Compensation Policy.

Project: Anderson Park Pickleball & multiuse courts

CERTIFICATE HOLDER**CANCELLATION**

CITY OF COLLEGE STATION 1101 TEXAS AVE COLLEGE STATION TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/08/2024

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	CHICAGOJONES INS AGENCY WILLIAM LLOYD JONES DBA 2454 NEWARK CIRCLE COLLEGE STATION TX 77845	CONTACT NAME: WILLIAM JONES PHONE (A/C, No, Ext): (979) 820-0375 FAX (A/C, No): (000) 000-0000 E-MAIL: ADDRESS:
INSURED	JON TUCKER CONSTRUCTION, LTD. 7425 MIZE RD BRYAN TX 77808	INSURER(S) AFFORDING COVERAGE INSURER A: KINSALE INSURANCE CO INSURER B: WESTCHESTER SURPLUS LINES INSURER C: LLOYDS OF LONDON INSURER D: EVANSTON INSURANCE CO INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: 00076230 REVISION NUMBER: 00076641

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	0100026264-9	1/25/2024	1/25/2025	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
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	☐ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☐ RETENTION \$ ☒ OCCUR ☐ CLAIMS-MADE			SCX1506824	1/25/2024	1/25/2025	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	☒ POLLUTION			G28244071-004	1/25/2024	1/25/2025	\$2MILL/\$2MILL
D	☒ 2ND EXCESS			MKL4EUE100872	1/25/2024	1/25/2025	\$5MILL/\$5MILL

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

THE ABOVE POLICIES INCLUDE A BLANKET ADDITIONAL INSURED ENDORSEMENT THAT PROVIDES ADDITIONAL INSURED STATUS TO THE CERTIFICATE HOLDER AS WELL AS A BLANKET WAIVER OF SUBROGATION ENDORSEMENT BOTH PROVIDED WHEN THERE IS A WRITTEN CONTRACT BETWEEN THE NAMED INSURED AND CERTIFICATE HOLDER REQUIRING SUCH. EXCESS FOLLOWS FORM. NOTICE OF CANCELLATION IS FURNISHED TO THE CERTIFICATE HOLDER.
PROJECT: Anderson Park Pickleball & multiuse courts

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

<i>Attached To and Forming Part of Policy</i> 0100026264-9	<i>Effective Date of Endorsement</i> 01/25/2024 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i> Jon Tucker Construction Ltd
<i>Additional Premium:</i> \$0	<i>Return Premium:</i> \$0	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Insured Person(s) or Organization(s)	Location and Description of Completed Operations
Blanket, as required by written contract, executed prior to the start of work on the project.	Locations as required and specified by written contract, executed prior to the start of work on the project.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable limits of insurance;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY 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) - AUTOMATIC

<i>Attached To and Forming Part of Policy</i> 0100026264-9	<i>Effective Date of Endorsement</i> 01/25/2024 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i> Jon Tucker Construction Ltd
<i>Additional Premium:</i> \$0		<i>Return Premium:</i> \$0

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY LIMITATION - AMENDED AGGREGATE PER PROJECT OR LOCATION

Attached To and Forming Part of Policy 0100026264-9	Effective Date of Endorsement 01/25/2024 12:01AM at the Named Insured address shown on the Declarations	Named Insured Jon Tucker Construction Ltd
Additional Premium: \$0	Return Premium: \$0	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

SCHEDULE	
General Aggregate applies to EACH LOCATION in the amount of:	
Total ALL LOCATIONS Aggregate Limit:	
General Aggregate applies to EACH PROJECT in the amount of:	\$2,000,000
Total ALL PROJECTS Aggregate Limit:	\$6,000,000

SECTION III – LIMITS OF INSURANCE – 2, is amended by the addition of the following:

- d. The General Aggregate Limit applies separately to each "project" of the Named Insured or to each "location" of the Named Insured as indicated in the Schedule above.

Notwithstanding the application of the General Aggregate Limit to each "project" or each "location" of the Named Insured, under no circumstances will we pay more than the TOTAL **ALL LOCATIONS** AGGREGATE LIMIT or the TOTAL **ALL PROJECTS** AGGREGATE LIMIT shown in the Schedule above for all claims arising out of all "locations" or all "projects" as applicable under this policy.

The following are added to the DEFINITIONS section of this policy:

"Project" means all work done by you or on your behalf, away from premises owned or rented to you, to complete an individual bid or negotiated contract to provide services for a specified period of time. Multiple jobs, work orders, purchase orders, change orders or work done at multiple locations under one contract are not separate "projects" within the meaning of this coverage.

"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.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

<i>Attached To and Forming Part of Policy</i> 0100026264-9	<i>Effective Date of Endorsement</i> 01/25/2024 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i> Jon Tucker Construction Ltd
<i>Additional Premium:</i> \$0		<i>Return Premium:</i> \$0

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE	
Name of Additional Insured Person(s) or Organization(s)	Location(s) of Covered Operations
Blanket, as required by written contract, executed prior to the start of work on the project.	Locations as required and specified by written contract, executed prior to the start of work on the project.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

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(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the 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.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Named Insured: Jon Tucker Construction
Policy Number: SCX1506824
Effective Date: 01/25/2024

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
CAREFULLY.

SCHEDULE OF UNDERLYING INSURANCE

Line of Business: Carrier: Policy Number: Policy Period: Each Occurrence: General Aggregate: Products/Completed-Ops Aggregate: Personal and Advertising Injury: Comments:	General Liability Kinsale Insurance Company 0100026264-9 01/25/2024 - 01/25/2025 \$1,000,000 \$2,000,000 \$2,000,000 \$1,000,000
Line of Business: Carrier: Policy Number: Policy Period: Combined Single Limit: Comments:	Auto Liability Progressive Casualty Insurance Company 955527300 01/25/2024 - 01/25/2025 \$1,000,000
Line of Business: Carrier: Policy Number: Policy Period: Bodily Injury - Each Accident: Bodily Injury - Each Disease: Bodily Injury - Policy Limit: Comments:	Employers Liability Texas Mutual Insurance Company 0001177373 01/25/2024 - 01/25/2025 \$1,000,000 \$1,000,000 \$1,000,000



EVANSTON INSURANCE COMPANY

SCHEDULE OF UNDERLYING INSURANCE

Type of Policy / Carrier	Type of Limits	Limits Of Liability	Excess Of
Lead Excess Carrier: Lloyd's of London	Occurrence	\$5,000,000	Underlying Or Self Insured Retention
Effective Date: 01/25/2024 Expiration Date: 01/25/2025	Aggregate	\$5,000,000	

All Limits Of Insurance are Each Occurrence and Aggregate, if applicable.

TEXAS PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT

The policy does not cover bodily injury to any person described in the Schedule.

The premium basis for the policy does not include the remuneration of such persons.

You will reimburse us for any payment we must make because of bodily injury to such persons.

Schedule

Name, title

JON TUCKER, Limited partner

ALLISON TUCKER, Limited partner

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 1/25/24 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001177373 of Texas Mutual Insurance Company effective on 1/25/24

Issued to: JON TUCKER CONSTRUCTION LTD

DBA: TUCKER CONSTRUCTION

This is not a bill

NCCI Carrier Code: 29939



Authorized representative

1/25/24

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

(X) 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 1/25/24 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001177373 of Texas Mutual Insurance Company effective on 1/25/24

Issued to: JON TUCKER CONSTRUCTION LTD

DBA: TUCKER CONSTRUCTION

This is not a bill



Authorized representative

NCCI Carrier Code: 29939

1/25/24

PROGRESSIVE
PO BOX 94739
CLEVELAND, OH 44101

Policy Holder:

Jon Tucker Construction LTD
7425 Mize Road
Bryan, TX 77808

The attached endorsements listed below applies to policy number: 955527300

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

Endorsement effective: January 25, 2024

Endorsements listed above are effective until policy cancellation date.

Blanket Additional Insured Endorsement

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

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

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

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

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

Blanket Waiver of Subrogation Endorsement

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

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

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

ANY AUTOMOBILE LEGAL LIABILITY COVERAGE ENDORSEMENT

Except as specifically modified by this endorsement, all provisions of the Commercial Auto Policy apply.

We agree with **you** that the insurance provided under **your** Commercial Auto Policy is modified as follows:

CHANGES TO PART I – LIABILITY TO OTHERS

I. The following changes are made to the Additional Definitions Used in This Part Only section:

A. The definition of “**insured auto**” is modified to include:

1. **Hired autos**;
2. **Non-owned autos**; and
3. Any other **autos** owned by **you**:
 - a. only while being used in the conduct of **your** business; and
 - b. that do not qualify as either **hired autos** or as **non-owned autos**.

However, this modification to the definition of **insured auto** does not apply to any **auto** acquired prior to the current policy period. But, for any type of **auto** that **you** acquire during the current policy period, this modification extends coverage to that **auto** during the remainder of the policy period.

B. The following definitions are added:

1. “**Hired auto**” means an **auto**:
 - a. **you** lease, hire, rent or borrow; or
 - b. **your employee** leases, hires or rents:
 - i. under a contract in that individual **employee's** name;
 - ii. at **your** direction and with your express permission; and
 - iii. only while being used in the conduct of **your** business.

However, this does not include any **auto you** or an **employee** leases, hires, rents or borrows from any of **your employees**, partners (if **you** are a partnership), members (if **you** are a limited liability company), or member of their households.

2. “**Non-owned auto**” means an **auto**:
 - a. that **you** do not own;
 - b. that is not a **hired auto**; and
 - c. that is being used by **you** in connection with **your** business.

This includes **autos** owned by **your employees**, partners (if **you** are a partnership), members (if **you** are a limited liability company), or members of their households, but only while such **autos** are used in **your** business.

- II. The first paragraph under the Limit of Liability section is deleted and replaced by the following:

Regardless of the number of premiums paid, or the number of **insured autos** or **trailers**, or the number of policies issued by **us**, or the number of vehicles or **insureds** involved in an **accident**, or the number of claims or lawsuits arising out of an **accident**, **we** will pay no more than the limit of liability shown on the **declarations page** for the coverage provided by this endorsement.

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

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.

PROPOSAL FORM

Date: September 24, 2024

PROPOSAL FROM: Tucker 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 New Pickleball and Futsal Courts and to perform the work required of said construction at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

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

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

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

BASE PROPOSAL: Stipulated Total Bid of: (\$ ~~1,045,771.42~~ ^{1,046,314.29}) JDB

CALENDAR DAYS: Total number of calendar days to substantial completion is 305 days.

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: 6

CONTRACTOR NAME: Tucker Construction

CONTRACTOR SIGNATURE: 

Anderson Park Pickleball & Multiuse Courts

Bid Proposal Form

Item #	Quantity	Units	Description	Unit Price	Total
Site Preparation					
1	1	L.S.	Mobilization/Preparation	\$ 61,570.00	\$ 61,570.00 -
2	3.50	AC	Clearing and Grubbing	\$ 3,630.75	\$ 12,707.63 -
3	1	L.S.	Demolition	\$ 2,662.55	\$ 2,662.55 -
4	1,284	C.Y.	Earthwork (does not include earthwork under PT slabs)	\$ 24.61	\$ 31,599.24 -
5	1	L.S.	SWPPP & Erosion Control	\$ 15,041.81	\$ 15,041.81 JDB
6	1,425	S.Y.	Hydromulch	\$ 2.07	\$ 2,949.75 3,804.75
7	1	L.S.	Tree Protection	\$ 970.19	\$ 970.19 JDB
Site Preparation Subtotal				\$	128,370.92 JDB -0
					128,364.17
Multi-Use Courts					
8	1	L.S.	Court Paint Striping	\$ 8,930.00	\$ 8,930.00 -
9	799	S.Y.	4 inch Sidewalk (3000 psi) w/ stabilized subgrade	\$ 19.20	\$ 15,340.80 -
Futsal/Multiuse Courts Subtotal				\$	24,270.80 -0
Pickleball Court					
10	7,200	S.F.	Court Surface/Paint Striping	\$ 2.20	\$ 15,840.00 15,840.00
11	356	L.F.	10' High Chain Link Fence	\$ 71.78	\$ 25,553.68 JDB 25,553.96
12	4	EACH	Net Post & Nets	\$ 1,733.13	\$ 6,932.52 JDB 6,932.50
13	396	S.Y.	Armormesh Fabric (14 oz /sq. yd) (8ft)	\$ 15.53	\$ 6,149.88 JDB 6,151.13
Pickleball Court Subtotal				\$	54,457.58 JDB -0
					54,476.08
Detention Pond					
14	2	EACH	21" Sloped Headwall	\$ 2,232.50	\$ 4,465.00 -
15	19	L.F.	21" HDPE Pipe	\$ 55.66	\$ 1,057.54 -
16	1,643	S.Y.	Hydromulch Detention Pond Area	\$ 3.00	\$ 4,929.00 JDB 4,929.00
17	1	EACH	Connect to Existing Storm Drain Box	\$ 1,880.00	\$ 1,880.00 -
18	75	S.Y.	Concrete Overflow Weir 25ft wide @ 299.75'	\$ 164.24	\$ 12,318.00 JDB 12,317.96
19	138	L.F.	4 ft Wide Flume 3000 psi	\$ 76.42	\$ 10,545.96 JDB 10,546.29
20	12	S. Y.	Concrete Flume Slab (6" Thick) 3000 psi	\$ 284.25	\$ 3,411.00 -
Detention Pond Subtotal				\$	38,072.79 JDB -0
					38,606.50
Site Improvements					
21	913	S.Y.	6" Concrete Pavement (3500 psi)	\$ 83.63	\$ 76,354.19 JDB 76,350.00
22	1,021	S.Y.	6" Subgrade Stabilization	\$ 21.30	\$ 21,744.93 JDB 21,747.20
23	115	S.Y.	4 inch Sidewalk (3000 psi) w/ stabilized subgrade	\$ 601.52	\$ 69,174.80 JDB 69,175.50
24	56	L.F.	Trench Drains w/ Extensions (site drainage)	\$ 394.27	\$ 22,079.12 JDB 22,080.00
25	4	Each	ADA Ramps with out Truncated Domes	\$ 300.00	\$ 1,200.00 -
26	1	L.S.	Parking Lot Striping	\$ 765.00	\$ 765.00 -
27	1	EACH	ADA -Van Accessible Sign	\$ 275.66	\$ 275.66 -
28	2	EACH	ADA - Standard Accessible Sign	\$ 275.66	\$ 551.32 -
29	2	EACH	Water Fountain Replacement	\$ 11,750.00	\$ 23,500.00 -

30	264	L.F.	4" PVC Sanitary Sewer Service Reroute	\$ 70.50	\$ 18,612.00	-
31	2	EACH	4" PVC Sewer Cleanouts	\$ 176.25	\$ 352.50	-
32	15	S.Y.	Rock Rip Rap Grouted in Place (D50 = 6")	\$ 175.63	\$ JDB 2,634.40	2,634.45
33	2	EACH	Concrete Wheel Stops	\$ 205.50	\$ 411.00	-
34	2	EACH	Modify & Relocate Existing Iron Fence Panels	\$ 3,010.00	\$ 6,020.00	-
Site Improvements Subtotal				\$	JDB 243,674.68	- 0
					243,674.97	
Structural Items - Pickleball Court						
35	1,175	CY	Select Fill Import (4')	\$ 20.70	\$ 24,322.50	-
36	880	CY	Cut Export (~3.0' avg assumed)	\$ 21.69	\$ JDB 19,087.20	19,087.20
37	100	CY	Concrete Slab - 4 1/2"	\$ 539.45	\$ JDB 53,945.69	53,945.00
38	20	CY	Perimeter Turndown Beam	\$ 692.20	\$ JDB 13,844.20	13,844.00
39	96	CY	Perimeter Mow Strip / Fence Beam	\$ 672.29	\$ JDB 64,539.84	64,539.84
Structural Items - Pickleball Court Subtotal				\$	JDB 175,739.70	- 0
					175,738.54	
Structural Items - Multiuse Court #1						
40	1,175	CY	Select Fill Import (4')	\$ 36.81	\$ JDB 43,254.98	43,251.75
41	808	CY	Cut Export (2.75' avg assumed)	\$ 27.53	\$ 22,244.24	-
42	100	CY	Concrete Slab - 4 1/2"	\$ 491.40	\$ 49,140.00	-
43	20	CY	Perimeter Turndown Beam	\$ 639.00	\$ 12,780.00	-
Structural Items - Multiuse Court #1 Subtotal				\$	JDB 127,419.22	- 0
					127,415.99	
Structural Items - Multiuse Court #2						
44	1,525	CY	Select Fill Import (4')	\$ 39.12	\$ 59,658.00	-
45	1,144	CY	Cut Export (4.0' avg assumed)	\$ 31.65	\$ 36,207.60	-
46	143	CY	Concrete Slab - 4 1/2"	\$ 489.68	\$ JDB 70,024.00	70,024.24
47	24	CY	Perimeter Turndown Beam	\$ 639.00	\$ 15,336.00	-
Structural Items - Multiuse Court #2 Subtotal				\$	JDB 181,225.60	- 0
					181,225.84	
Electrical Items						
48	1	Each	Demolition	\$ 3,463.50	\$ 3,463.50	-
49	0.6	CLF	#12 Conductors	\$ 915.80	\$ JDB 549.50	549.48
50	2	CLF	#10 Conductor	\$ 111.00	\$ 222.00	-
51	5.4	CLF	#4 Conductor	\$ 238.72	\$ JDB 1,505.00	1,505.09
52	1.8	CLF	#8 Conductors	\$ 154.64	\$ JDB 278.00	278.35
53	1.6	CLF	#2 Conductors	\$ 464.25	\$ JDB 742.00	742.80
54	2	CLF	#1 Conductors	\$ 188.00	\$ 376.00	-
55	10.4	CLF	#250 Conductors	\$ 1,170.00	\$ 12,168.00	-
56	50	LF	3/4" Rigid Steel Conduit	\$ 44.15	\$ 2,207.50	-
57	180	LF	1" PVC Conduit	\$ 5.26	\$ 946.80	-
58	100	LF	2 1/2" PVC Conduit	\$ 9.89	\$ JDB 989.35	989.00
59	160	LF	3" PVC Conduit	\$ 47.74	\$ 7,638.00	-
60	500	LF	4" PVC Conduit	\$ 16.32	\$ 8,160.00	-
61	2	Each	Rack	\$ 1,468.50	\$ 2,937.00	-
62	340	LF	Conduit Trenching	\$ 12.00	\$ 4,080.00	-
63	250	LF	Service Trench	\$ 8.65	\$ 2,162.50	-
64	1	Each	Transformer Pad	\$ 721.50	\$ 721.50	-
65	1	Each	225 Amp Panelboard	\$ 4,230.00	\$ 4,230.00	-
66	1	Each	400 Amp Panelboard	\$ 4,384.00	\$ 4,384.00	-
67	2	Each	"In use" GFI Receptacle	\$ 223.48	\$ 446.96	-
Electrical Improvements Subtotal				\$	JDB 58,207.61	- 0
					58,208.88	

EXHIBIT E
CONSTRUCTION SCHEDULE

October 24, 2024

Item No. 8.1.

Update from Texas A&M Off Campus Student Services Office

Sponsor: Barbara Moore, Assistant to the City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an update from the Texas A&M Off-Campus Student Services Office.

Relationship to Strategic Goals:

Neighborhood Integrity

Good Governance

Recommendation(s): Staff recommends that council receive an update on the activities and operations of the Texas A&M Off Campus Services.

Summary: Staff from the Texas A&M Off Campus Student Services Office will provide an update on the activities, programs and operations since its re-establishment in 2023.

Budget & Financial Summary: N/A

Attachments:

None

October 24, 2024
Item No. 9.1.
Rental Inspection and 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 and 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 and certification program.

Summary: In April 2023, City Council directed staff to develop a proactive rental inspection program aimed at addressing rental property maintenance concerns. The Council specified that the program should be multi-phased beginning with a voluntary program. Program development was placed on hold to allow Texas A&M University to open the Off Campus Student Services (OCSS) office.

On October 7, 2024, Council considered an ordinance creating a voluntary Rental Inspection and Certification Program. The City Council tabled this item until the October 24th meeting.

Budget & Financial Summary: N/A

Attachments:

1. Voluntary Rental Inspection Cert. Ordinance 10-24-24
2. Voluntary Rental Inspection Checklist10-24-24

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 built 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) Application and Inspection Fee.** The City may charge a fee as established in Sec. 2-117 for each inspection report or application.
- (c) 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.
- (d) 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.

(e) Units Required to be Inspected. The number of units to be inspected are as follows:

Total Dwelling Units per Building	Number of Units to be Inspected for Certification	Inspection Timeframe
1 – 6	100%	Every 2 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.

(f) 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 two (2) years from the date of certification unless revoked.

(g) 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

(h) 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.

Residential Rental Inspection Checklist

Date of Inspection

Type of Inspection

	Initial	Special	Reinspection

Property Address

Year Constructed

Housing Type

--

--

	Single Family Detached
	Duplex
	Townhome
	Condo
	Multi-Family
	Manufactured Home

Contact Name

Owner:

Local Contact:

Address of Owner or Local Contact

--

Phone Number / Email Address

--

No.	Inspection Checklist	Pass	Fail	Required Action
1	Address identification. The address identification shall be legible and in a position that is visible from the street or road fronting the property. Section 502.1 (2021 IBC, as amended).			
2	No large cracks or holes in foundations, roof, floor, or walls that may be a structural or infestation concern. Maintained weatherproof and proper surface coated to prevent deterioration. Section 304 (IPMC)			
3	Walls, roof, floors, and foundation appear structurally sound and free from defects. Section 304 (IPMC).			
4	Stairs, treads, and stringers are not broken or cracked and have relatively uniform riser height. Section 304.10 (IPMC).			
5	Decks/stairways have hand and/or guard rails in place. Section 304.12 & 307 (IPMC).			
6	Stormwater discharge, downspouts, and site grading adequate to avoid drainage issues. Section 302.2 & 304.7 (IPMC).			
7	All exterior doors are in good working order and have functional locks, including a deadbolt and sliding glass door lock. Section 304.15 & 304.18.1 (IPMC).			
8	Exterior light fixtures illuminating each entrance and operational. Section 402.3 (IPMC)			
9	Trash containers properly stored and adequate for number of tenants. Section 308.3 (IPMC) & Sec.40-389 (CoCS Code of Ord.).			
10	Windows or screens are not broken or missing/damaged. Sect 304.13, 304.13.1, & 304.14 (IPMC).			
11	Adequate and defined off street parking (CoCS Code of Ord. UDO Sec. 7.3)			
12	Exterior sidewalks & driveways to be kept in good repair, free of trip hazards. Section 302.2 (IPMC).			
13	Defacement of exterior property - no markings, carving, graffiti, or willful damage. (302.9 (IPMC).			

14	Controlled access locked gates on the premises are equipped with a KNOX Rapid Entry System (CoCS Code of Ord. Sec. 14-147).			
15	Interior			
16	Smoke detectors installed and functioning properly in each bedroom and on each level. 704.6 0 704.7 (IPMC).			
17	Carbon monoxide detectors installed on each level and functioning, if required. 705 (IPMC).			
18	Plumbing system functioning properly and no visible leaks. (sinks, bath tub/shower, toilets, supply lines, etc.) 504, 505, & 506 (IPMC).			
19	Hot water reaches adequate temperature. 504.4 (IPMC).			
20	No missing electrical cover plates. 605.2 (IPMC)			
21	No bare, exposed, or unsupported wiring. 604.3 (IPMC).			
22	Electrical receptacles and fixtures function properly. 605.2 (IPMC).			
23	No excessive number of electrical appliances plugged into a single outlet that may overload circuit. 605.1 (IPMC).			
24	Bathroom(s) have openable window or functioning exhaust fan free from lint accumulation. 403.2 (IPMC).			
25	Minimum ceiling height of 7' throughout over 50% of each livable area within dwelling. 404.3 (IPMC).			
26	Adequate exits and windows open fully and meet egress requirements 702.4 (IPMC).			
27	Stairs, treads, and stringers are not broken or cracked and have relatively uniform riser height 305.4 (IPMC).			
28	Stairways have hand and/or guard rails in place 307 (IPMC).			
29	Floor is free of trip hazards. 305.4 (IPMC).			
30	Heating adequate to maintain 67 degrees or higher throughout the livable area 602.3 (as Amended)(IPMC).			
31	Furnace is properly vented 603.2 (IPMC).			
32	Clothes dryer is properly vented 403.5 (IPMC).			
33	No evidence of uncorrected water leakage from the foundations, ceiling, or walls 305.1 (IPMC)			
34	No accumulation that may pose an infestation, exit, or fire risk 702.1 (IPMC).			
35	No evidence of rodent or pest infestation 302.5 (IPMC).			
36	Fire separation is met between dwelling and garage 703 (IPMC).			
37	Where required, fire extinguishers are present and function properly.			

Inspector

I attest that neither I nor my company have a financial, ownership, or business interest in, or work directly as an employee of the owner/ property manager/ local contact responsible for the properties inspected.

Printed Name

Date

Signature

Inspector Credentials (Attach Copy)

October 24, 2024
Item No. 9.2.
UDO Amendment - CUPs in NG

Sponsor: Molly Hitchcock, Assistant Director of Planning and Development

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Section 3.6 “Conditional Use Permits,” Section 6.3.C “Use Table,” and Section 9.2.C “Abandonment” of the Code of Ordinances of the City of College Station, Texas, regarding conditional use permits, the abandonment of nonconforming uses, and requiring conditional use permits for new and expanding bars, nightclubs, and taverns in the NG-1 Core Northgate and NG-2 Transitional Northgate zoning districts.

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): The Planning and Zoning Commission heard this item at their meeting on October 3, 2024 and unanimously recommended approval of the amendment with the exception of conditional use permits being required for bars in NG-1 Core Northgate.

Summary: This proposed Unified Development Ordinance amendment affects all Conditional Use Permits (CUPs) in the City; nightclubs, bars and tavern uses in Northgate; and non-conforming uses that are discontinued. Specifically, the amendment:

1. Provides additional criteria based on increased occupancy loads that further define when a new or revised CUP must be requested;
2. Clarifies and adds language that extends the expiration date of a CUP that is a part of a larger project under construction;
3. Provides a stronger basis for the revocation of a CUP;
4. Requires proposed nightclubs, bars, and taverns in Northgate to pursue a CUP, similar to everywhere else in the city; and
5. Doubles the time that a non-conforming use or conditional use may be discontinued before the right to continue the former use no longer exists and/or a new CUP must be requested.

Background: The Northgate district and future options for its improvement were discussed at an August 2022 City Council workshop. Re-implementing the conditional use permit process for bars in Northgate was presented as a tool that could help improve the Northgate environment in the long-term. This topic was discussed at a meeting with Northgate bar owners in November 2023.

An ordinance amendment was drafted, taking into account feedback provided from Northgate bar owners. A second in-person meeting and an on-line meeting were held in July 2024 where virtually all current CUP business owners and CUP property owners in the city, Northgate bar owners, and Northgate bar property owners were invited to hear about the proposed Unified Development Ordinance amendment and provide feedback. The meetings were primarily attended by Northgate interests and there was consensus opposing additional regulations.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance
2. Section 3.6 Conditional Use Permits redlines
3. Section 6.3 Use Table redlines
4. Section 9.2 Nonconforming Uses redlines
5. Northgate Zoning Boundaries

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A, "UNIFIED DEVELOPMENT ORDINANCE," ARTICLE 3, "DEVELOPMENT REVIEW PROCEDURES," SECTION 3.6.G, "ENLARGEMENT, MODIFICATION, OR STRUCTURAL ALTERATION," SECTION 3.6.H.2, "EXPIRATION," SECTION 3.6.H.5, "REVOCATION," ARTICLE 6, "USE REGULATIONS," SECTION 6.3.C, "USE TABLE," AND ARTICLE 9, "NONCONFORMITIES," SECTION 9.2.C, "ABANDONMENT" OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO CONDITIONAL USE PERMITS; BARS, TAVERN, AND NIGHTCLUB USES IN NORTHGATE ZONING DISTRICTS; AND NONCONFORMING USES; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Appendix A, "Unified Development Ordinance," Article 3, "Development Review Procedures," Section 3.6.G, "Enlargement, Modification, or Structural Alteration," Section 3.6.H.2, "Expiration," Section 3.6.H.5, "Revocation," Article 6, "Use Regulations," Section 6.3.C, "Use Table," And Article 9, "Nonconformities," Section 9.2.C, "Abandonment" of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit "A," Exhibit "B," Exhibit "C," Exhibit "D," and Exhibit "E,"** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this _____ day of _____,
20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Appendix A, “Unified Development Ordinance,” Article 3, “Development Review Procedures,” Section 3.6.G, “Enlargement, Modification, or Structural Alteration,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

G. Enlargement, Modification, or Structural Alteration.

1. A building, premise, or use under a conditional use permit may be enlarged, modified, structurally altered, or otherwise changed without applying for a new conditional use permit provided the Administrator determines that the changes do not:
 - a. Increase the height of structures;
 - b. Increase building square footage from its size at the time the original conditional use permit was granted by greater than ten (10) percent;
 - c. Increase the approved occupancy load from the date the original conditional use permit was granted by greater than ten (10) percent for combined indoor occupancies;
 - d. Increase the approved occupancy load from the date the original conditional use permit was granted by greater than ten (10) percent for combined outdoor occupancies;
 - e. Reduce the distance between a building or noise-generating activity on the property and an adjacent, off-site residential use. This provision shall not apply should the property and the residential use be separated by a major thoroughfare depicted on the Comprehensive Plan Functional Classification & Context Class Map; or
 - f. Reduce the buffer yard or buffer plantings as indicated on the previously approved site plan.
2. The Administrator may require a new application for a conditional use permit for any reason when an enlargement, modification, or structural alteration is proposed.
3. All other enlargements, modifications, structural alterations, or changes shall require the approval of a new conditional use permit.

Exhibit B

That Appendix A, “Unified Development Ordinance,” Article 3 “Development Review Procedures,” Section 3.6.H.2, “Expiration,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

2. Expiration.

A conditional use permit shall expire if:

- a. A construction permit, if any, for the conditional use has not been issued within one (1) year of the date of approval of the conditional use permit;

If the conditional use will be for a tenant within a new multi-tenant building that is not yet constructed or is under construction, the conditional use permit shall expire if a building permit to finish out the tenant space has not been issued before the building receives its first certificate of occupancy;

- b. The construction permit subsequently expires for the building or the tenant finish out;
- c. The conditional use has been discontinued for a period exceeding six (6) months; or
- d. A termination date attached to the conditional use permit has passed.

Exhibit C

That Appendix A, “Unified Development Ordinance,” Article 3 “Development Review Procedures,” Section 3.6.H.5, “Revocation,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

5. Revocation.

The revocation of a conditional use permit shall follow the following revocation procedure:

- a. If the Administrator determines, based on inspection or investigation by the City, that there are reasonable grounds for revocation of a conditional use permit, a public hearing shall be set before the Planning and Zoning Commission for a recommendation and a public hearing before the City Council for the consideration of an ordinance amendment. Circumstances that warrant revocation of an approved conditional use permit application shall include but not be limited to the following:
 - 1) There is a conviction of a violation of any of the provisions of state law, this UDO, the ordinance approving the conditional use, or any ordinance of the City of College Station that occurs on the property for which the conditional use permit is granted;
 - 2) The property is found to be in violation of state laws or City ordinance resulting in a history of arrests or criminal activity on the property;
 - 3) The building, premise, or uses under the conditional use permit is enlarged, modified, structurally altered, or otherwise significantly changed without the approval of a separate conditional use permit for such enlargement, modification, structural alteration, or change, unless the Administrator had determined that such enlargement, modification, or structural alteration did not require a new conditional use permit, as described in the Applicability Subsection above;
 - 4) Violation of any provision of the site plan encompassing the property for which the conditional use permit was issued, terms, or conditions of a conditional use permit;
 - 5) The conditional use permit was obtained by fraud or deception; or
 - 6) The use of the property is detrimental to the public health, safety, or general welfare of the City.
- b. The revocation process shall be conducted as for the conditional use permit, including giving notice to the holder of the conditional use permit and property owners within 200 feet of the public hearings in the manner provided in the Required Public Notice Subsection of the General Approval Procedures Section above.
- c. The City Council may revoke the conditional use permit, deny the revocation and allow the conditional use to continue, or deny the revocation and amend the conditional use permit to attach conditions to assure that the terms, conditions, and requirements of the conditional use permit be met.

Upon the effective date of the revocation set by the City Council, it shall be unlawful to undertake or perform any activity that was previously authorized by the conditional use permit. The property subject to the conditional use permit may be used for any permitted use within the base zoning district.

Exhibit D

That Appendix A, “Unified Development Ordinance,” Article 6, “Use Regulations,” Section 6.3.C, “Use Table,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

C. Use Table.

Except where otherwise specifically provided herein, regulations governing the use of land and structures with the various zoning districts and classifications of planned developments are hereby established as shown in the following Use Table.

1. Permitted Uses.

A "P" indicates that a use is allowed by right in the respective district. Such uses are subject to all other applicable regulations of this UDO.

2. Permitted Uses Subject to Specific Standards.

A "P*" indicates a use that will be permitted, provided that the use meets the provisions in the Specific Use Standards Section below. Such uses are also subject to all other applicable regulations of this UDO.

3. Conditional Uses.

A "C" indicates a use that is allowed only where a conditional use permit is approved by the City Council. The Council may require that the use meet the additional standards enumerated in the Specific Use Standards Section below. Conditional uses are subject to all other applicable regulations of this UDO.

USE TABLE	Residential Districts													Non-Residential Districts								Retired Districts						Design Districts									
Specific Uses	R	WE	E	WRS	RS	CS	T**	D**	MH***	MF**	MU**	MHP**	P-MUD**	O	SC	WC	CC	CI	BP	BPI	CU	NAP	R-1B	R-4**	R-6**	C-3**	M-1	M-2	R&D**	WPC**	NG-1**	NG-2**	NG-3**				
KEY: P = Permitted by Right; P* = Permitted Subject to Specific Use Standards C = Conditional Use; ** = District with Supplemental Standards (refer to Article 5) ***Commercial, Office, and Retail Uses in MH Middle Housing are allowed in Live-Work Units only																																					
RESIDENTIAL																																					
Assisted Living/Residential Care Facility														P	P		P																				
Boarding and Rooming House										P			P											P	P									P			
Courtyard Houses									P*																												
Dormitory										P	P		P											P	P							P	P	P			
Duplex								P	P				P											P	P												
Extended Care Facility/Convalescent/Nursing Home										P			P		P		P	P						P	P						P						
Fraternity/Sorority										P														P	P							P	P	P			
Manufactured Home	P*		P*									P*																									
Mixed-Use Structure										P	P		P																		P	P	P	P			
Multi-Family										P	P		P											P	P						C ¹	P	P	P			
Multi-Family built prior to January 2002										P	P													P	P						P	P	P	P			

Multi-plex, Medium									P	P																							
Multi-plex, Small									P	P																							
Shared Housing									P	P																				P	P	P	
Single-Family Detached	P	P	P	P	P	P	P	P	P				P								P												
Single-Unit Dwelling										P																							
Split-Lot Duplexes								P	P																								
Townhouse							P		P	P		P									P	P										P	
Two-Unit Dwelling										P																							
Live-Work Unit									P*					P*	P*																		
PUBLIC, CIVIC AND INSTITUTIONAL																																	
Educational Facility, College and University																				P													
Educational Facility, Indoor Instruction									P	P	P		P	P	P	P	P						P					P	P	P	P		
Educational Facility, Outdoor Instruction	P	C	C										P			P	P	P															
Educational Facility, Primary and Secondary	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	
Educational Facility, Tutoring									P	P	P		P	P	P	P	P											P	P	P	P		
Educational Facility, Vocational/Trade													P	P			P	P	P	P					P	P							
Governmental Facilities	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P	P	P*	P*	P	P	P	P		P*	P*	P*	P	P	P	P	P	P	P	P*	

Health Care, Hospitals																	P	P																		
Health Care, Medical Clinics										P	P			P	P	P	P	P							P						P	P				
Parks	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Places of Worship	P +	P +	P +	P +	P +	P +	P +	P +	P +	P +	P +	P +	P	P	P	P	P +	P	P	P	P	P		P +	P +	P +	P	P	P	P	P	P	P	P	P	P
COMMERCIAL, OFFICE AND RETAIL																																				
Agricultural Use, Barn or Stable for Private Stock	P	P	P																																	
Agricultural Use, Farm or Pasturage	P	P	P																																	
Agricultural Use, Farm Product Processing	P																																			
Animal Care Facility, Indoor										P	P		P	P	P	P	P	P							P				P	P	P					
Animal Care Facility, Outdoor	P +																P																			
Art Studio/Gallery									P	P	P		P	P	P	P	P							P				P	P	P	P					
Car Wash																	P +																			
Commercial Garden/Greenhouse/Landscape Maint.	P +																P +	P +	P +	P +							P +									
Commercial Amusements										P	P		P		C	C	P +	P +						C				P	P	P						
Conference/ <u>Convention Center</u>										P	P		P				P	P										P	P	P						
Country Club	P	P	P	P	P	P							P				P	P					P													
Day Care, Commercial									P	P	P	C	P	P	P	P	P							C	C	P					P	P	P			

Retail Sales and Service									P	P	P		P		P*	P*	P*	P*											P				P	P	P	P
Retail Sales and Service - Alcohol											C		P				P*	P*											P				C	P	P	
Sexually Oriented Business (SOB)	P*	P*	P*	P*	P*	P*	P*	P*		P*	P*	P*	P*	P*			P*	P*	P*	P*	P*		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	
Shooting Range, Indoor													P				P	P		P												P				
Theater										P	P		P				P															P	P	P	P	
Retail Sales, Manufactured Homes																				P											P*					
Storage, Self Service															P*	P*	P	P		P									P*		P					
Vehicular Sales, Rental, Repair and Service																	P*	P*		P											P*					
Wholesales/Services																	P*	P*	P	P										P	P					
INDUSTRIAL AND MANUFACTURING																																				
Bulk Storage Tanks/Cold Storage Plant																		P		P										P						
Micro-Industrial																	P*	P*		P													P*	P*		
Industrial, Light																		P	P	P									P	P	P					
Industrial, Heavy																				P											P					
Recycling Facility - Large																		P*		P											P					
Salvage Yard																				P*											P*					
Scientific Testing/Research Laboratory																		P	P	P										P		P				

Exhibit E

That Appendix A, “Unified Development Ordinance,” Article 9, “Nonconformities,” Section 9.2.C, “Abandonment” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

C. Abandonment.

Whenever a nonconforming use has been discontinued and changed to a conforming use, or whenever a nonconforming use has been discontinued or abandoned for more than six (6) months, an intent to abandon said use shall have been established and the right to continue the former nonconforming use shall no longer exist. Subsequent operation as a nonconforming use shall be unlawful.

Sec. 3.6. Conditional Use Permits.

Conditional Use Permit Review Process



A. **Purpose.**

Conditional use permits allow City Council discretionary approval of uses with unique or widely varying operating characteristics or unusual site development features, subject to the terms and conditions set forth in this UDO.

B. **Applicability.**

Conditional uses are generally compatible with those uses permitted by right in a zoning district, but require individual review of their location, design, configuration, density, and intensity and may require the imposition of additional conditions to ensure the appropriateness and compatibility of the use at a particular location.

C. **Applications.**

A complete application for a conditional use permit shall be submitted to the Administrator as set forth in the General Approval Procedures Section above. A complete site plan must accompany all applications for a conditional use permit.

D. **Approval Process.**

1. **Pre-Application Conference.**

Prior to the submission of an application for a conditional use permit, applicants are encouraged to schedule and attend an optional pre-application conference in accordance with the Pre-Application Conference Subsection of the General Approval Procedures Section above.

2. **Review and Report by Administrator.**

Once the application is complete, the Administrator shall review the proposed development subject to the criteria enumerated in the Conditional Use Review Criteria Subsection below and give a report to the Planning and Zoning Commission on the date of the scheduled public hearing.

3. **Planning and Zoning Commission Recommendation.**

a. **Notice.**

The Planning and Zoning Commission shall publish, post, and mail notices in accordance with the General Approval Procedures Section above.

b. **Public Hearing.**

After review of the conditional use permit application, subject to the criteria enumerated in the Conditional Use Review Criteria Subsection below, the Planning and Zoning Commission shall hold a public hearing and recommend to the City Council such action as the Planning and Zoning Commission deems proper.

4. **City Council Action.**

a. **Notice.**

The City Council shall publish, post, and mail notices in accordance with the General Approval Procedures Section above.

b. **Public Hearing.**

The City Council shall hold a public hearing after review of the conditional use permit application, subject to the criteria enumerated in the Conditional Use Review Criteria Subsection below. With consideration of the recommendation provided by the Planning and Zoning Commission, the City Council shall approve, approve with modifications or conditions, or disapprove the conditional use permit application.

E. **Conditional Use Review Criteria.**

The City Council may approve an application for a conditional use permit where it reasonably determines that there will be no significant negative impact upon residents of surrounding properties or the general public. The City Council shall consider the following criteria in its review:

1. **Purpose and Intent of the Unified Development Ordinance.**

The proposed use shall meet the purpose and intent of this UDO and the use shall meet all the minimum standards established in this UDO for this type of use.

2. **Consistency with the Comprehensive Plan.**

The proposed use shall be consistent with the development policies and goals and objectives as embodied in the Comprehensive Plan.

3. **Compatibility with the Surrounding Area.**

The proposed use shall not be detrimental to the health, welfare, or safety of the surrounding neighborhood or its occupants, nor be substantially or permanently injurious to neighboring property.

4. **Harmonious with the Character of the Surrounding Area.**

The proposed site plan and circulation plan shall be harmonious with the character of the surrounding area.

5. **Infrastructure Impacts Minimized.**

The proposed use shall not negatively impact existing uses in the area or the city through impacts on public infrastructure such as roads, parking facilities, electrical, or water and sewer systems, or on public services such as police and fire protection, solid waste collection, or the ability of existing infrastructure and services to adequately provide services.

6. Effect on the Environment.

The proposed use shall not negatively impact existing land uses in the area or the city.

F. Additional Conditions.

The City Council may impose additional reasonable restrictions or conditions to carry out the spirit and intent of this UDO and to mitigate adverse effects of the proposed use. These requirements may include but are not limited to increased open space, loading and parking requirements, additional landscaping, and additional improvements such as curbing, utilities, drainage facilities, sidewalks, and screening.

G. Enlargement, Modification, or Structural Alteration.

1. A building, premise, or use under a conditional use permit may be enlarged, modified, structurally altered, or otherwise changed without applying for a new conditional use permit provided the Administrator determines that the changes do not:
 - a. Increase the height of structures;
 - b. Increase building square footage from its size at the time the original conditional use permit was granted by greater than ten (10) percent;
 - c. Increase the approved occupancy load from the date the original conditional use permit was granted by greater than ten (10) percent for combined indoor occupancies;
 - d. Increase the approved occupancy load from the date the original conditional use permit was granted by greater than ten (10) percent for combined outdoor occupancies;
 - e. Reduce the distance between a building or noise-generating activity on the property and an adjacent, off-site residential use. This provision shall not apply should the property and the residential use be separated by a major thoroughfare depicted on the Comprehensive Plan Functional Classification & Context Class Map; or
 - df. Reduce the buffer yard or buffer plantings as indicated on the previously approved site plan.
2. The Administrator may require a new application for a conditional use permit for any reason when an enlargement, modification, or structural alteration is proposed.
3. All other enlargements, modifications, structural alterations, or changes shall require the approval of a new conditional use permit.

H. Duration; Expiration; Suspension; Violation; Revocation.

1. Duration.

A conditional use permit shall remain in effect until it expires, is suspended, or is revoked in accordance with this Section.

2. Expiration.

A conditional use permit shall expire if:

- a. A construction permit, if any, for the conditional use has not been ~~approved~~issued within one (1) year of the date of approval of the conditional use permit;

If the conditional use will be for a tenant within a new multi-tenant building that is not yet constructed or is under construction, the conditional use permit shall expire if a building permit to finish out the tenant space has not been issued before the building receives its first certificate of occupancy;

- b. The construction permit subsequently expires for the building or the tenant finish out;
- c. The conditional use has been discontinued for a period exceeding ~~three (3)~~six (6) months; or
- d. A termination date attached to the conditional use permit has passed.

3. **Suspension.**

In accordance with the authority granted to municipalities by the state, the City shall have the right to immediately suspend the conditional use permit for any property where the premises are determined to be an immediate hazard to the health and safety of any person or an immediate danger to any adjacent property. The suspension shall be for a period not to exceed twenty-four (24) hours or until the danger or hazard is removed.

4. **Violation.**

It is unlawful for any person to violate or to cause or permit to be violated any terms or conditions of a conditional use permit or upon which a conditional use permit was issued.

5. **Revocation.**

The revocation of a conditional use permit shall follow the following revocation procedure:

- a. If the Administrator determines, based on inspection or investigation by the City, that there are reasonable grounds for revocation of a conditional use permit, a public hearing shall be set before the Planning and Zoning Commission for a recommendation and a public hearing before the City Council for the consideration of an ordinance amendment. Circumstances that warrant revocation of an approved conditional use permit application shall include but not be limited to the following:
 - 1) There is a conviction of a violation of any of the provisions of state law, this UDO, the ordinance approving the conditional use, or any ordinance of the City of College Station that occurs on the property for which the conditional use permit is granted;
 - 2) The property is found to be in violation of state laws or City ordinance resulting in a history of arrests or criminal activity on the property;
 - 3) The building, premise, or uses under the conditional use permit is enlarged, modified, structurally altered, or otherwise significantly changed without the approval of a separate conditional use permit for such enlargement, modification, structural alteration, or change, unless the Administrator had determined that such enlargement, modification, or structural alteration did not require a new conditional use permit, as described in the Applicability Subsection above;
 - ~~34)~~ Violation of any provision of the site plan encompassing the property for which the conditional use permit was issued, terms, or conditions of a conditional use permit; ~~or~~
 - ~~45)~~ The conditional use permit was obtained by fraud or deception; or
 - 6) The use of the property is detrimental to the public health, safety, or general welfare of the City.
- b. The revocation process shall be conducted as for the conditional use permit, including giving notice to the holder of the conditional use permit and property owners within 200 feet of the

public hearings in the manner provided in the Required Public Notice Subsection of the General Approval Procedures Section above.

- c. The City Council may revoke the conditional use permit, deny the revocation and allow the conditional use to continue, or deny the revocation and amend the conditional use permit to attach conditions to assure that the terms, conditions, and requirements of the conditional use permit be met.

Upon the effective date of the revocation set by the City Council, it shall be unlawful to undertake or perform any activity that was previously authorized by the conditional use permit. The property subject to the conditional use permit may be used for any permitted use within the base zoning district.

(Ord. No. 2023-4453 , Pt. 1(Exh. A), 8-10-2023)

USE TABLE	Residential Districts													Non-Residential Districts									Retired Districts								Design Districts						
Specific Uses	R	WE	E	WRS	RS	GS	T**	D**	MH***	MF**	MU**	MHP**	P-MUD**	O	SC	WC	GC	CI	BP	BPI	CU	NAP	R-1B	R-4**	R-6**	C-3**	M-1	M-2	R&D**	WPC**	NG-1**	NG-2**	NG-3**				
KEY: P = Permitted by Right; P* = Permitted Subject to Specific Use Standards C = Conditional Use; ** = District with Supplemental Standards (refer to Article 5) ***Commercial, Office, and Retail Uses in MH Middle Housing are allowed in Live-Work Units only																																					
RESIDENTIAL																																					
Assisted Living/Residential Care Facility														P	P		P																				
Boarding and Rooming House										P			P											P	P									P			
Courtyard Houses									P*																												
Dormitory										P	P		P											P	P							P	P	P			
Duplex								P	P				P											P	P												
Extended Care Facility/Convalescent/Nursing Home										P			P		P		P	P						P	P						P						
Fraternity/Sorority										P														P	P							P	P	P			
Manufactured Home	P *		P *									P *																									
Mixed-Use Structure										P	P		P																		P	P	P	P			
Multi-Family										P	P		P											P	P					C ¹	P	P	P				
Multi-Family built prior to January 2002										P	P													P	P					P	P	P	P				

College Station, TX Code of Ordinances																																	
Multi-plex, Medium									P	P																							
Multi-plex, Small									P	P																							
Shared Housing									P	P																				P	P	P	
Single-Family Detached	P	P	P	P	P	P	P	P	P				P									P											
Single-Unit Dwelling										P																							
Split-Lot Duplexes								P	P																								
Townhouse							P		P	P			P										P	P								P	
Two-Unit Dwelling										P																							
Live-Work Unit									P*					P*	P*																		
PUBLIC, CIVIC AND INSTITUTIONAL																																	
Educational Facility, College and University																				P													
Educational Facility, Indoor Instruction									P	P	P		P	P	P	P	P	P							P					P	P	P	P
Educational Facility, Outdoor Instruction	P	C	C										P			P	P	P															
Educational Facility, Primary and Secondary	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P
Educational Facility, Tutoring									P	P	P		P	P	P	P	P	P												P	P	P	P
Educational Facility, Vocational/Trade													P	P			P	P	P	P						P	P						
Governmental Facilities	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P	P	P*	P*	P	P	P	P	P		P*	P*	P*	P	P	P	P	P	P	P	P*

Health Care, Hospitals																	P	P															
Health Care, Medical Clinics										P	P			P	P	P	P	P								P					P	P	
Parks	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	
Places of Worship	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P	P	P	P *	P	P	P	P	P		P *	P *	P *	P	P	P	P	P	P	P	
COMMERCIAL, OFFICE AND RETAIL																																	
Agricultural Use, Barn or Stable for Private Stock	P	P	P																														
Agricultural Use, Farm or Pasturage	P	P	P																														
Agricultural Use, Farm Product Processing	P																																
Animal Care Facility, Indoor										P	P		P	P	P	P	P	P							P				P	P	P		
Animal Care Facility, Outdoor	P *																	P															
Art Studio/Gallery									P	P	P		P	P	P	P	P								P				P	P	P	P	
Car Wash																	P *																
Commercial Garden/Greenhouse/Landscape Maint.	P *																P *	P *	P *	P *						P *							
Commercial Amusements										P	P		P		C	C	P *	P *							C				P	P	P		
Conference/Convention Center										P	P		P				P	P											P	P	P		
Country Club	P	P	P	P	P	P							P				P	P					P										
Day Care, Commercial									P	P	P	C	P	P	P	P	P							C	C	P					P	P	P

College Station, TX Code of Ordinances																																	
Drive-in/thru window														P *		P												C		P *			
Dry Cleaners and Laundry										P	P		P *	P *	P	P *	P	P									P *			P *	P *	P *	P *
Fraternal Lodge													P				P	P												P	P	P	
Fuel Sales													P *				P *									P *		P					
Funeral Homes																	P	P	P									P					
Golf Course or Driving Range	P *												P *				P *	P *															
Health Club/Sports Facility, Indoor										P	P		P		P	P	P	P									P			P	P	P	P
Health Club/Sports Facility, Outdoor										P	P *		P				P	P											P	P *	P		
Hotels	C ²									P	P		P		P		P												P	P	P		
Mobile Food Court										C ⁴	C ⁴		C ⁴				C ⁴											C ⁴	C ⁴	C ⁴			
Night Club, Bar or Tavern										C	C		C				C												C	PC	PC		
Offices									P	P	P		P	P	P	P	P	P	P	P							P	P	P	P	P	P	
Parking as a Primary Use											P		P	C			P	P										P		P *			
Personal Service Shop									P	P	P		P	P	P	P	P										P			P	P	P	P
Printing/CopyShop										P	P		P	P	P	P	P	P	P	P							P			P	P	P	
Radio/TV Station/Studios										P	P		P	P			P	P	P	P							P	P	P			P *	
Recreational Vehicle (RV) Park	C ³																C ³																
Restaurants										P	P		P		P *	P *	P										P *			P	P	P	P *
Retail Sales - Single Tenant over 50,000 SF											P						P														P		

Retail Sales and Service									P	P	P		P		P*	P*	P*	P*										P				P	P	P	P
Retail Sales and Service - Alcohol											C		P				P*	P*									P				C	P	P		
Sexually Oriented Business (SOB)	P*	P*	P*	P*	P*	P*	P*	P*		P*	P*	P*	P*	P*			P*	P*	P*	P*	P*		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*		
Shooting Range, Indoor													P				P	P		P											P				
Theater										P	P		P				P														P	P	P	P	
RetailSales, Manufactured Homes																				P									P*						
Storage, Self Service															P*	P*	P	P		P							P*		P						
Vehicular Sales, Rental, Repair and Service																	P*	P*		P									P*						
Wholesales/Services																	P*	P*	P	P								P	P						
INDUSTRIAL AND MANUFACTURING																																			
Bulk Storage Tanks/Cold Storage Plant																		P		P									P						
Micro-Industrial																	P*	P*		P											P*	P*			
Industrial, Light																		P	P	P							P	P	P						
Industrial, Heavy																				P								P							
Recycling Facility - Large																		P*		P								P							
Salvage Yard																				P*								P*							
Scientific Testing/Research Laboratory																		P	P	P							P		P						

Storage, Outdoor - Equipment or Materials																		P	P *	P															
Truck Stop/Freight or Trucking Terminal																				P															
Utility	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *
Warehousing/Distribution																		P	C	P															
Waste Services																				P															
Wireless Telecommunication Facilities - Intermediate	P *												P *	P *			P *	P *	P *	P			P *						P *	P *	P *	P *	P *	P *	P *
Wireless Telecommunication Facilities-Major	C										P *			C			C	C	C	P			C					C	C	P *	C				
Wireless Telecommunication Facilities-Unregulated	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	P	P	P	P	P	P	P			P	P	P

Sec. 9.2. - Nonconforming Uses.

A. Continuance.

An existing use that is not in compliance with this UDO or subsequent amendments applicable to the use shall not be enlarged, extended, reconstructed, substituted or structurally altered unless the use is brought into compliance with this UDO, except as follows:

1. Expansion.

- a. For properties designated as Neighborhood Conservation in the Comprehensive Plan Future Land Use and Character Map: When authorized by the Zoning Board of Adjustment in accordance with the provisions of this Article, enlargement or completion of a building devoted to a nonconforming use may be made upon the lot occupied by such building, where such extension is necessary and incidental to the existing use of such building and does not exceed twenty-five (25) percent of the original area of nonconformity.
- b. For properties in all other areas: Buildings and structures devoted to nonconforming uses may be enlarged, extended, or structurally altered provided such enlargement, extension, or structural alteration is incidental to the existing use of existing buildings and does not exceed fifty (50) percent of the original area of nonconformity. Enlargements greater than fifty (50) percent of the original area of nonconformity shall require approval of the Zoning Board of Adjustment.

2. Conditional Use.

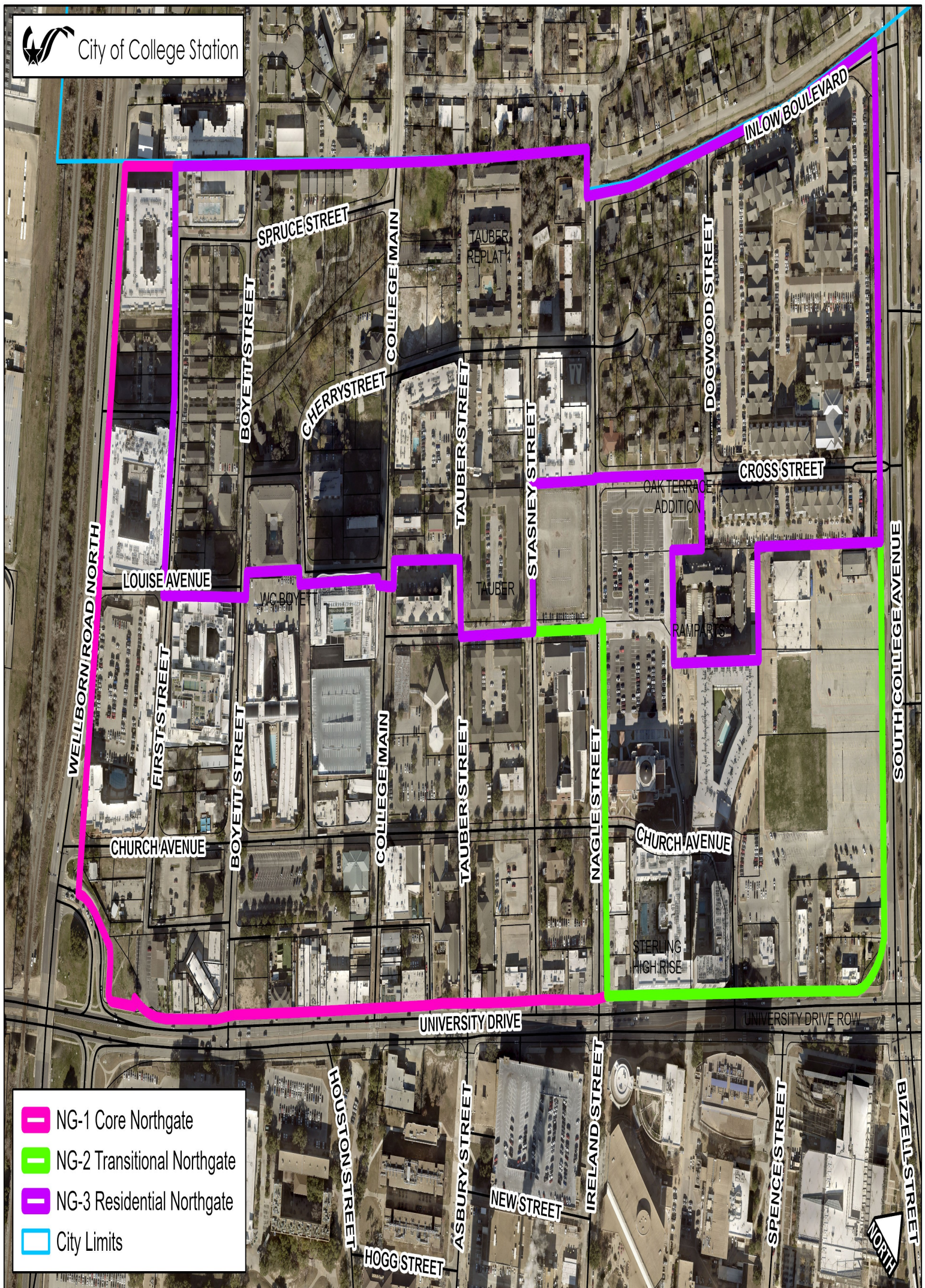
A use existing on the effective date of this UDO, or subsequent amendment applicable to its use, which would only be permitted as a conditional use, shall be a lawful nonconforming use until altered pursuant to the Conditional Use Permit section of this UDO. In the event of issuance of a conditional use permit, such use becomes a permitted and lawful use.

B. Termination.

The City Council shall have the authority to initiate, on its motion, action to bring about the discontinuance of a nonconforming use under any plan whereby full value of the structure can be amortized within a definite period of time, taking into consideration the general character of the area and the necessity for all property to conform to the regulations of this UDO.

C. Abandonment.

Whenever a nonconforming use has been discontinued and changed to a conforming use, or whenever a nonconforming use has been discontinued or abandoned for more than ~~three (3)~~six (6) months, an ~~presumption of~~ intent to abandon said use shall have been established and the right to continue the former nonconforming use shall no longer exist. Subsequent operation as a nonconforming use shall be unlawful.



- NG-1 Core Northgate
- NG-2 Transitional Northgate
- NG-3 Residential Northgate
- City Limits

October 24, 2024

Item No. 9.3.

Baylor Scott and White PDD Concept Plan Amendment - Master Signage Plan

Sponsor: Gabriel Schrum

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from PDD Planned Development District to PDD Planned Development District to amend the Concept Plan for approximately 45 acres generally located at 600 Scott & White Drive.

Relationship to Strategic Goals:

- Diverse Growing Economy

Recommendation(s): This item was heard at the October 3rd Planning and Zoning Commission Meeting, where approval was recommended 6-0. Staff is also recommending approval for this rezoning request for the proposed changes to the Concept Plan.

Summary: This request is to amend the Concept Plan for the existing PDD Planned Development District zoning located at 600 Scott & White Drive. The original PDD (Ordinance No. 2010-3300) had a meritorious modification granted to Section 7.5 "Signs" of the College Station UDO, to allow for 29 freestanding signs to be installed at locations shown in the campus wayfinding master sign plan (Exhibit G). The applicant proposes to amend the Concept Plan to allow for a total of 33 signs to provide adequate wayfinding for patients within the expanded medical facilities on the hospital campus. This Concept Plan amendment will be adding this modification for Tracts 1 and 3 that have now been developed.

REVIEW OF CONCEPT PLAN:

The Concept Plan provides an illustration of the general layout of the building areas with the existing or constructed signage in red, and the newly proposed signage in green as well as other site related features. The proposed Concept Plan changes the amount and location of signage for the campus, which has now expanded since the original PDD Concept Plan.

In proposing a PDD, an applicant may also request variations to the general platting and site development standards provided that those variations are outweighed by demonstrated community benefits of the proposed development. The Unified Development Ordinance provides the following review criteria as the basis for reviewing PDD Concept Plans:

1. The proposal will constitute an environment of sustained stability and will be in harmony with the character of the surrounding area;
2. The proposal is in conformity with the policies, goals, and objectives of the Comprehensive Plan, and any subsequently adopted Plans, and will be consistent with the intent and purpose of this Section;
3. The proposal is compatible with existing or permitted uses on abutting sites and will not adversely affect adjacent development;
4. Every dwelling unit need not front on a public street but shall have access to a public street

- directly or via a court, walkway, public area, or area owned by a homeowners association;
5. The development includes provision of adequate public improvements, including, but not limited to, parks, schools, and other public facilities;
 6. The development will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity; and
 7. The development will not adversely affect the safety and convenience of vehicular, bicycle, or pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area.

Purpose, Intent and Community Benefit:

The adopted Planned Development District for this property outlines the purpose, intent, and community benefit of the proposed development, which is to promote and encourage innovative development that is sensitive to surrounding land uses and to the natural environment. The intent is to provide medically related uses that support the nearby Baylor Scott & White hospital and the surrounding areas. This benefits the community as a whole as the need for a strong healthcare industry continues to grow.

The last update for this property in 2022, adopted a conceptual PDD site plan showing a new Medical Office Building and the associated parking located on Tract 3. The applicant is proposing an amendment to the adopted concept plan to provide additional signage to allow for adequate way finding.

Base Zoning and Meritorious Modifications:

The PDD Planned Development District zoning includes the base zoning district of GC General Commercial, with modifications. The adopted modifications that apply to Tracts 1 and 3 are shown below:

Section 7. 5 " Signs" of the Unified Development Ordinance:

A special sign package is permitted for Tract 1, the hospital property, and is attached as a part of "EXHIBIT G." The proposal originally included 29 signs that, due to their size, are considered freestanding signs by the Unified Development Ordinance. In addition, the hospital is permitted to utilize their corporate logo flag alongside the Country and State flags.

Each tract (Tracts 2- 7 4-7) is permitted only one freestanding sign and the maximum height is 16 feet (relating to the height of the primary sign for the hospital tract). All other sign standards will be those of the C- 1 General Commercial zoning district, with the exception that freestanding signs will not be permitted on Tracts 4 and 5 low profile only), and roof signs will not be permitted on Tracts 2- 5.

The updated concept plan delineates signage that has been permitted and located around the Baylor Scott and White Campus, as well as newly proposed signage. The applicant's sole intent in updating and amending the concept plan is to provide signs that will be essential in navigating the newly developed portion of the campus. They will be consistent with other signage that has been permitted throughout the rest of this PDD and locations can be seen in the Proposed Concept Plan Exhibit.

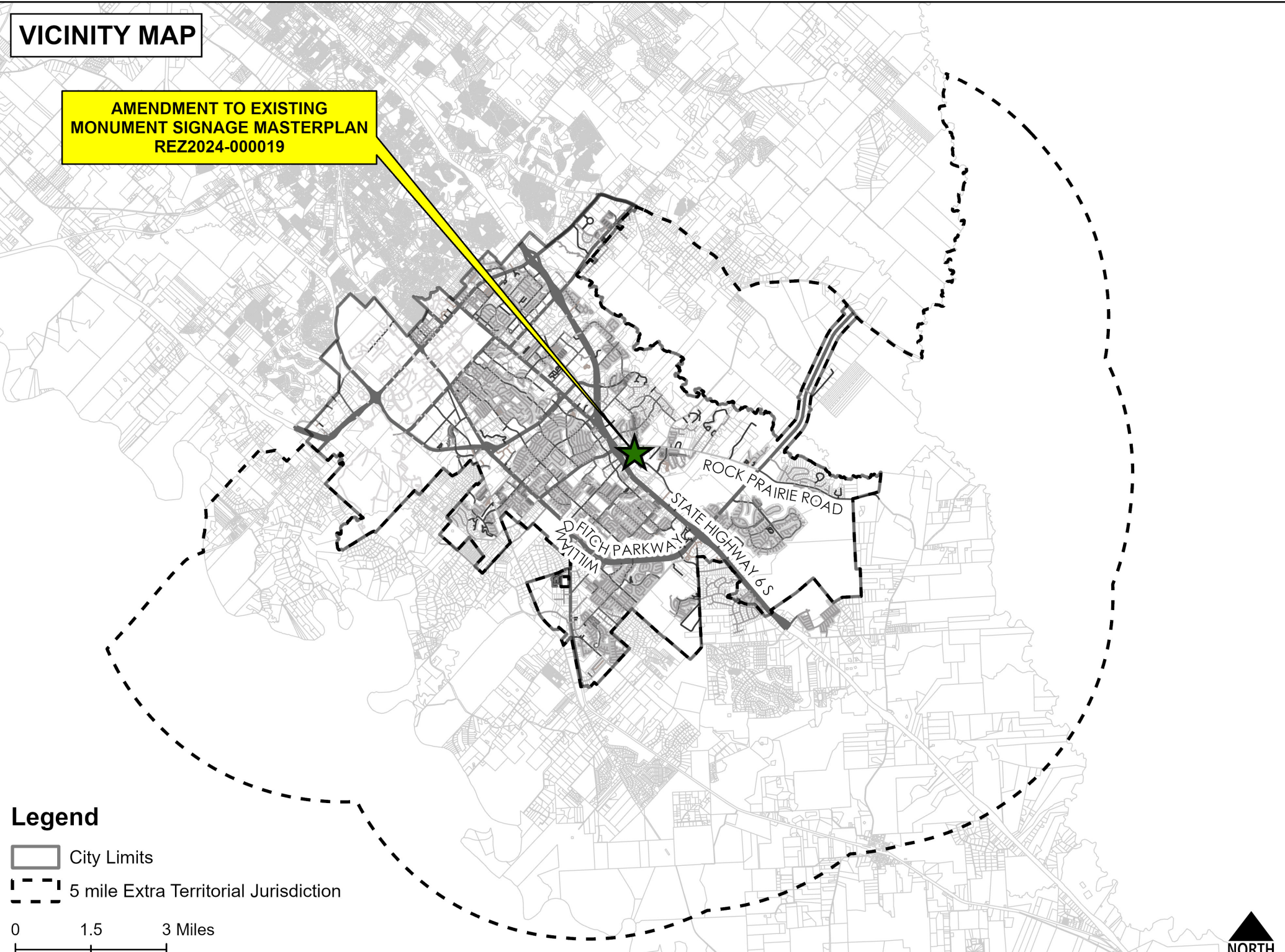
Budget & Financial Summary:

Attachments:

1. Vicinity Map, Aerial, and Small Area Map
2. Background Information
3. Applicant's Supporting Information
4. Ordinance No. 2010-3300
5. Exhibit G - Campus Wayfinding Master Plan
6. Rezoning Exhibit
7. Adopted Concept Plan
8. Proposed Concept Plan
9. PDD Concept Plan Ordinance

VICINITY MAP

AMENDMENT TO EXISTING
MONUMENT SIGNAGE MASTERPLAN
REZ2024-000019

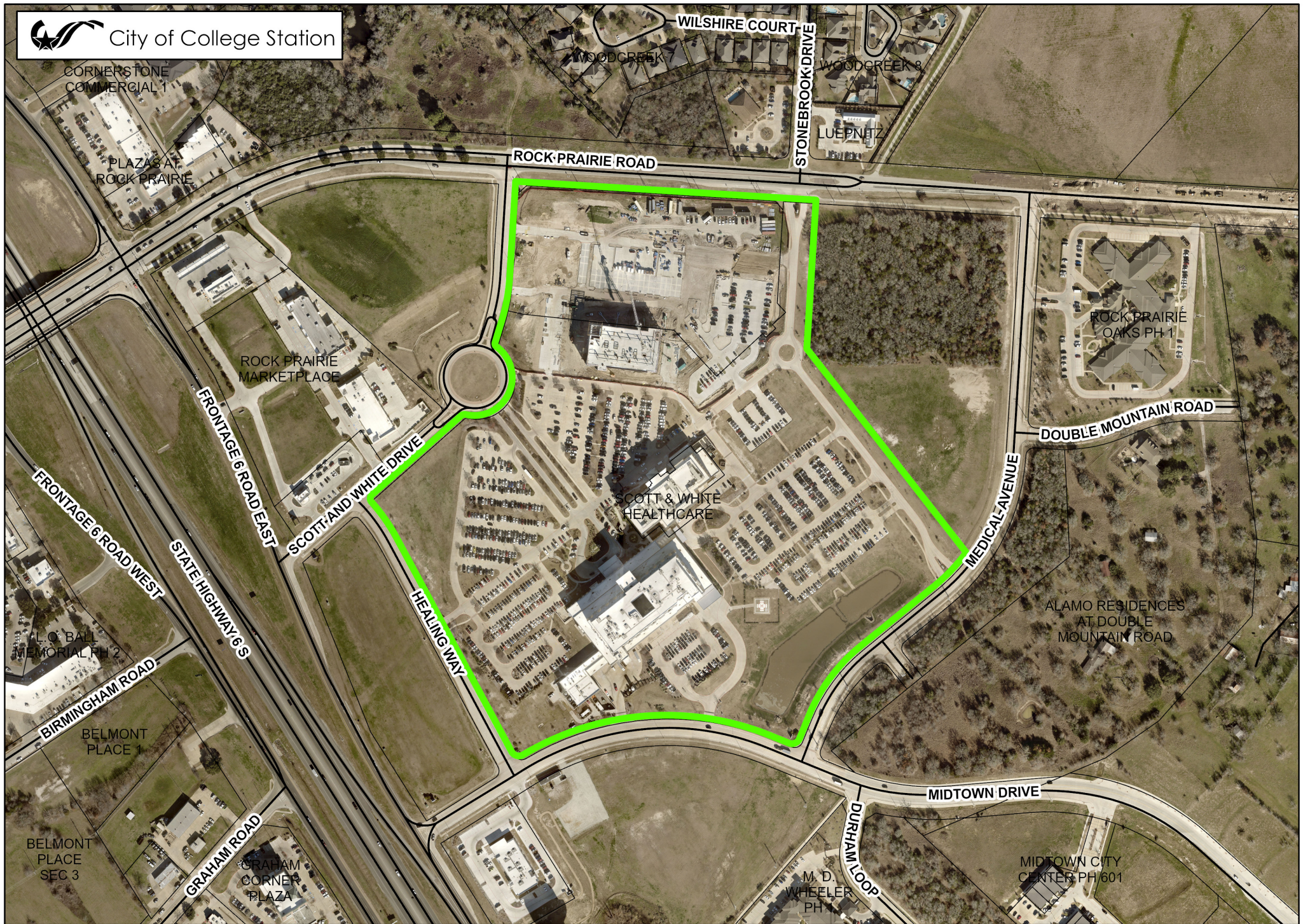


Legend

- City Limits
- 5 mile Extra Territorial Jurisdiction

0 1.5 3 Miles



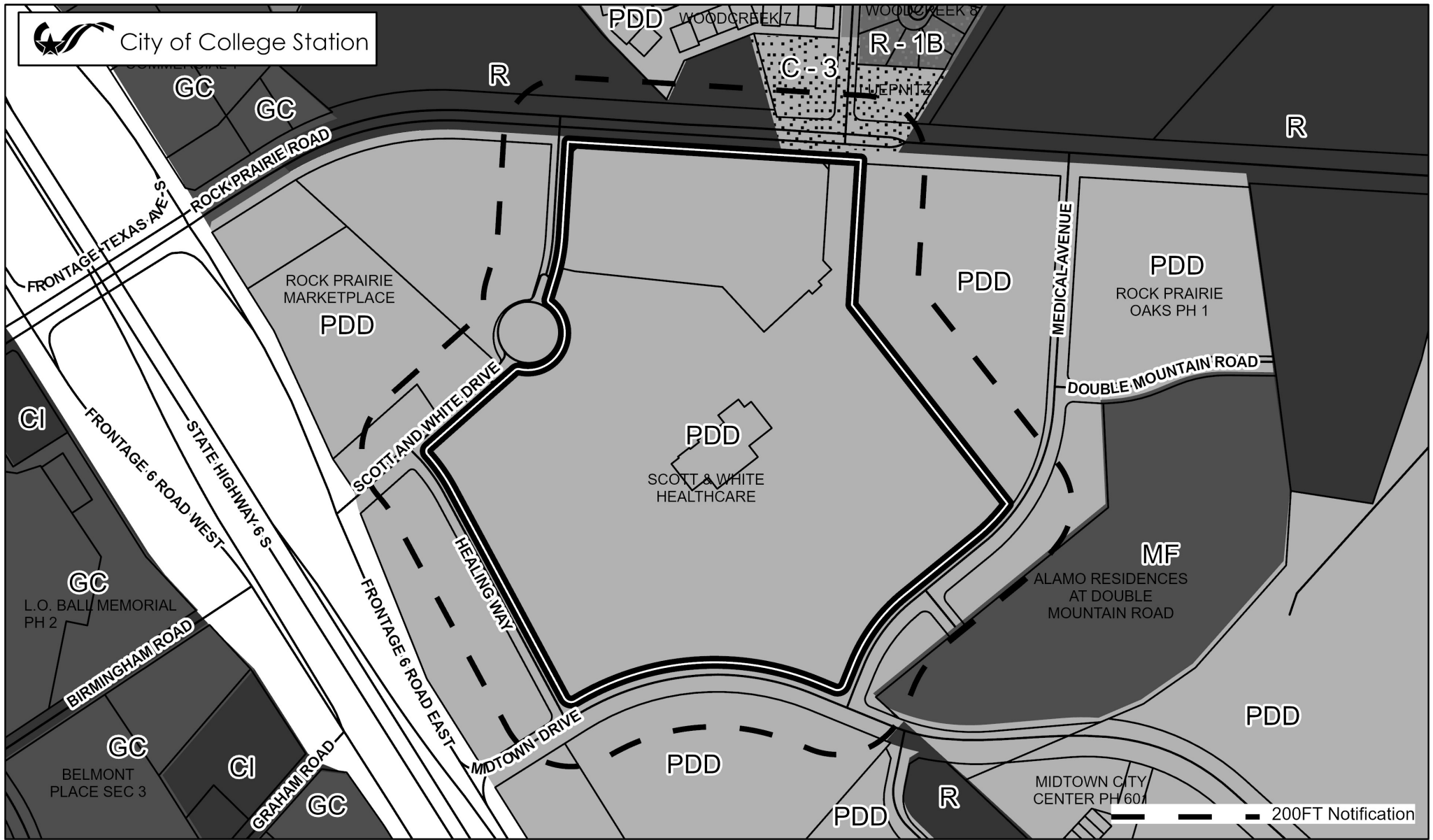


0 370 740 Feet

AMENDMENT TO EXISTING
MONUMENT SIGNAGE MASTERPLAN

Case:
REZ2024-000019

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		
R	Rural	MH Middle Housing
WE	Wellborn Estate	MF Multi-Family
E	Estate	MU Mixed-Use
WRS	Wellborn Restricted Suburban	MHP Manufactured Home Pk.
RS	Restricted Suburban	
GS	General Suburban	
D	Duplex	
T	Townhome	

Non-Residential	
NAP	Natural Area Protected
O	Office
SC	Suburban Commercial
WC	Wellborn Commercial
GC	General Commercial
CI	Commercial Industrial
BP	Business Park
BPI	Business Park Industrial
C-U	College and University

Planned Districts	
P-MUD	Planned Mixed-Use Dist.
PDD	Planned Develop. Dist.

Design Districts	
WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts	
OV	Corridor Ovr.
RDD	Redevelopment District
HOO	High Occupancy Ovr.
ROO	Restricted Occupancy Ovr.
NPO	Nbrhd. Prevailing Ovr.
NCO	Nbrhd. Conservation Ovr.
HP	Historic Preservation Ovr.

Retired Districts	
R-1B	Single Family Residential
R-4	Multi-Family
R-6	High Density Multi-Family
C-3	Light Commercial
RD	Research and Dev.
M-1	Light Industrial
M-2	Heavy Industrial



0 420 840 Feet

**AMENDMENT TO EXISTING
MONUMENT SIGNAGE MASTERPLAN**

Case:
REZ2024-000019

REZONING

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: October 6, 2024

Advertised Council Hearing Date: October 24, 2024

Property owner notices mailed: 13
Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Neighborhood Commercial	R Rural and C-3 Light Commercial	Galleria Spa Salon Boutique
South	General Commercial	PDD Planned Development District	New Baylor Scott and White Clinic and undeveloped land
East	Medical Use	PDD Planned Development District and O Office	Accel Nursing Home and undeveloped land
West	Medical Use and General Commercial	PDD Planned Development District	Gas stations, restaurants, spas and undeveloped land

DEVELOPMENT HISTORY

Annexation: 1983

Zoning: A-O Agricultural Open upon annexation
A-O rezoned C-1 General Commercial (2009)
C-1 General Commercial rezoned PDD Planned Development District (2010)

Final Plat: Scott & White Healthcare Subdivision Block 4, Lot 1 (2011)

Site development: Tract 3 now developed and Tract 1 has the main hospital building



REZONING PDD APPLICATION SUPPORTING INFORMATION

Name of Project: AMENDMENT TO EXISTING MONUMENT SIGNAGE MASTERPLAN. (REZ2024-000019)

Address: 600 SCOTT AND WHITE DR

Legal Description: SCOTT & WHITE HEALTHCARE, BLOCK 1, LOT 1 (PT OF)

Total Acreage: 44.94

Applicant: WALTER P MOORE

Property Owner: SCOTT & WHITE HEALTHCARE

List the changed or changing conditions in the area or in the City which make this zone change necessary.

CPMA

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

CPMA

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

CPMA

Explain the suitability of the property for uses permitted by the rezoning district requested.

CPMA

Explain the suitability of the property for uses permitted by the current zoning district.

CPMA

Explain the marketability of the property for uses permitted by the current zoning district.

CPMA

List any other reasons to support this zone change.

This new signage is needed to support the expanded medical facilities on the hospital campus to provide adequate wayfinding for patients.

Maximum Building Height.

N/A

Proposed Drainage.

N/A

Variations Sought.

N/A

Community Benefits.

Added signage will help the community better navigate and access the medical facilities.

Sustained Stability.

New signage proposed will match the existing character of signage on the hospital campus.

Conformity.

Signage supports the expanded medical facilities that are in alignment with the overall PDD.

Compatibility with use.

Signage is in keeping with existing campus signage standards.

Access to Streets.

N/A

Public Improvements.

N/A

Public Health.

N/A

Safety.

Additional signage will only increase safety and access to the medical facilities.

ORDINANCE NO. 2010-3300

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 4.2, "OFFICIAL ZONING MAP," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES AS DESCRIBED BELOW; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

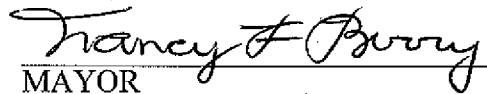
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A" attached hereto and made a part of this ordinance for all purposes.

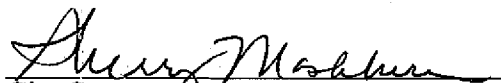
PART 2: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 22nd day of November, 2010

APPROVED:


MAYOR

ATTEST:


City Secretary

APPROVED:

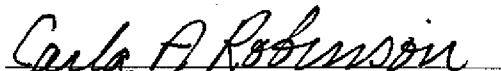

City Attorney

EXHIBIT "A"

That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from A-O Agricultural Open, C-1 General Commercial, C-2 Commercial Industrial, and R-4 Multi-Family to PDD Planned Development District, with the restrictions listed in Exhibit "B" and in accordance with the Concept Plan shown in Exhibit "C" and Exhibit "D" and the Concept Plan Notes listed in Exhibit "E", and as shown graphically in Exhibit "F":

PROPERTY DESCRIPTION

DESCRIPTION OF A 97.932 ACRE TRACT IN THE THOMAS CARUTHERS LEAGUE ABSTRACT NUMBER 9, AND THE ROBERT STEVENSON LEAGUE ABSTRACT NUMBER 54 IN BRAZOS COUNTY, TEXAS BEING ALL OF A CALL 4.31 ACRE TRACT AS DESCRIBED IN A WARRANTY DEED TO WEINGARTEN INVESTMENTS INC., AND RECORDED IN VOLUME 7583 PAGE 108 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALL 6.566 ACRE TRACT AS DESCRIBED IN A WARRANTY DEED TO WEINGARTEN INVESTMENTS INC., AND RECORDED IN VOLUME 7282 PAGE 72 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALL 17.21 ACRE TRACT AS DESCRIBED IN A WARRANTY DEED TO WEINGARTEN INVESTMENTS INC., AND RECORDED IN VOLUME 8948 PAGE 46 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALL 5.576 ACRE TRACT AS DESCRIBED IN A CONTRIBUTION DEED TO WEINGARTEN INVESTMENTS INC., AND RECORDED IN VOLUME 7488 PAGE 256 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALL 19.1 ACRE TRACT AS DESCRIBED IN A CONTRIBUTION DEED TO WEINGARTEN INVESTMENTS INC., AND RECORDED IN VOLUME 7488 PAGE 248 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALL 7.158 ACRE TRACT AS DESCRIBED IN A CONTRIBUTION DEED TO WEINGARTEN INVESTMENTS INC., AND RECORDED IN VOLUME 7680 PAGE 227 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALL 5.917 ACRE TRACT AS DESCRIBED IN A WARRANTY DEED TO WEINGARTEN INVESTMENTS INC., AND RECORDED IN VOLUME 7310 PAGE 98 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, AND ALL OF A CALL 30.00 ACRE TRACT AS DESCRIBED IN A WARRANTY DEED TO COLLEGE STATION INDEPENDENT SCHOOL DISTRICT AS RECORDED IN VOLUME 1033 PAGE 534 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, SAID 97.932 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS WITH ALL BEARINGS BEING GRID AND REFERENCE TO THE TEXAS COORDINATE SYSTEM NAD 83 CENTRAL ZONE AND THE SURVEY CONTROL NETWORK OF THE CITY OF COLLEGE STATION, TEXAS:

BEGINNING at a TXDOT Type 1 concrete monument found in the easterly right-of way line of State Highway 6, and the northwesterly right-of-way line of Old Rock Prairie Road, being the southerly corner of a call 0.9877 acre tract as described in a deed to Weingarten Investments Inc., and recorded in Volume 7819 Page 266 of the Official Public Records of Brazos County, Texas, same being the southerly corner of Lot 1, Block 1, of Rock Prairie Marketplace, a subdivision of record in Volume 9506 Page 205 of the Official Public Records of Brazos County, Texas and being a westerly corner of Old Rock Prairie Road right-of-way and of the herein described tract;

THENCE departing the said easterly right-of-way of State Highway 6 **N 48°24'40" E** with a line common to the said 0.9877 acre tract, of Lot 1 Block 1 of Rock Prairie Marketplace, and the said northwest right-of-way line for a distance of **595.11** feet to an iron rod with cap stamped "JACOBS" set monumenting the easterly corner of the said Lot 1 Block 1 and the southerly corner of the said 4.31 acre tract;

THENCE departing the said northwest right-of-way line of Old Rock Prairie Road with the common line of the said Lot 1 Block 1 Rock Prairie Market Place and the 4.31 acre tract **N 47°41'31" W** for a distance of **868.04** to an iron rod with cap stamped Pate Eng RPLS 5647 found in the arc of a curve to the right in the southerly right-of-way line of Rock Prairie Road as described in a Right-of-Way Agreement to the City of College Station and recorded in Volume 4123 Page 1 of the Deed Records of Brazos County, Texas, said iron rod with cap being the most westerly corner of the herein described tract;

THENCE with the said southerly and southeasterly right-of-way line of Rock Prairie Road and with the arc of said curve to the right passing through a central angle of **34°06'14"** to an iron rod with cap stamped Strong RPLS 4961 found at the Point of Tangency, said curve having a radius of **955.00** feet, an arc length of **568.44** feet, and a long chord bearing **N 76°29'39" E** for a distance of **560.08** feet;

THENCE continuing with the south right-of-way line of the said Rock Prairie Road **S 86°27'05" E** a distance of **1,203.23** feet to an iron rod with cap stamped Strong RPLS 4961 found monumenting the northeast corner of the said 17.21 acre tract and being in the west line of the said College Station Independent School District 30.00 acre tract;

THENCE with the said west line of the 30.00 acre tract **N 03°21'05" E** for a distance of **13.12** feet to a calculated point for the northwest corner of the said 30.00 acre tract and being in the south right-of-way line of Rock Prairie Road (same being Old Rock Prairie Road right-of-way);

THENCE with the said south right-of-way line **S 86°38'36" E** for a distance of **737.90** feet to a calculated point for the northeast corner of the said 30.00 acre tract and the northwest corner of a call 25.79 acre tract as described in a General Warranty Deed to Perry Brian Howard and recorded in Volume 1980 Page 272 of the Deed Records of Brazos County, Texas;

THENCE departing the said south right-of-way line and with a line common to the said 30.00 acre tract and the 25.79 acre tract the following two (2) courses and distances;

1. **S 02°42'50" E** for a distance of **1054.75** feet to a calculated angle point the said common line,
2. **S 50°49'56" W** for a distance of **930.53** feet to a calculated point in the northeasterly line of the aforementioned 5.576 acre Weingarten Investments Inc., tract same being the southerly corner of the said 30.00 acre tract,

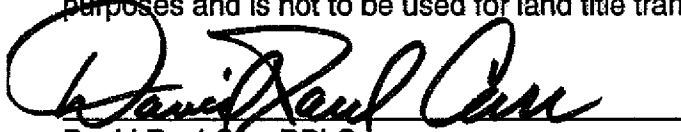
THENCE with a line common to the said 5.576 acre tract and the 25.79 acre tract **S 47°37'11" E** a distance of **128.13** feet to a 1" inch iron pipe found in the westerly line of a call 61.48 acre tract as described in a deed to M.D. Wheeler LTD., as recorded in Volume 3007 Page 341 of the Deed Records of Brazos County, Texas, said iron pipe being the most easterly corner of the said 5.576 acre tract and a easterly corner of the herein described tract,

THENCE with a line common to the said 61.48 acre tract **S 41°15'39" W** passing at a distance of 366.35 feet an 1" inch iron pipe found monumenting the southerly corner of the said 5.576 acre tract and the most easterly corner of the said 19.10 acre tract, in all **1224.85** feet to an iron rod with cap stamped "JACOBS" set in the east right-of-way line of State Highway 6 and monumenting the most southerly corner of the said 19.10 acre tract and the southerly corner of the herein described tract;

THENCE with the said east right-of-way line of State Highway 6 the following four (4) courses and distances;

1. **N 34°26'19" W** for a distance of **228.75** feet to a calculated point, from which a disturbed TXDOT Type 1 concrete monument bears **N 89°47'02" E** for a distance of 0.38 feet,
2. **N 32°11'00" W** for a distance of **1033.48** feet to a calculated point, from which a disturbed TXDOT Type 1 concrete monument bears **S 10°54'36" W** for a distance of 0.24 feet,
3. **N 21°52'19" W** for a distance of **554.64** feet to a punch hole set in a broken TXDOT Type 1 concrete monument found, said monument being the west corner of the said 5.917 acre tract and the southerly corner of Old Rock Prairie Road right-of-way,
4. **N 13°01'53" W** with the west line of Old Rock Prairie Road for a distance of **66.50** feet to the **POINT OF BEGINNING** of the herein described tract and containing 97.932 acres of land more or less.

The foregoing metes and bounds description was generated from and on the ground survey by Jacobs Engineering Group of the Weingarten Tracts and an office survey of the deed description of the College Station Independent School District tract for zoning purposes and is not to be used for land title transfer.



David Paul Carr RPLS
Texas Registration No. 3997

7/26/10
Date

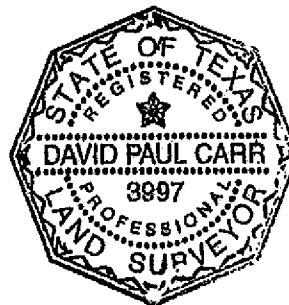


EXHIBIT "B"

Purpose & Intent:

Hospital, Medical Clinic, Medical Office, and future development."

Permitted Uses:

Tract 1:

- Extended Care Facility / Convalescent / Nursing Home
- Educational Facility, College & University
- Educational Facility, Indoor Instruction
- Educational Facility, Outdoor Instruction
- Educational Facility, Vocational / Trade
- Health Care, Hospitals
- Health Care, Medical Clinics
- Offices
- Scientific Testing / Research Laboratory
- Wireless Telecommunication Facilities- Intermediate*

Tract 2:

- Extended Care Facility / Convalescent / Nursing Home
- Educational Facility, College & University
- Educational Facility, Indoor Instruction
- Educational Facility, Primary & Secondary
- Government Facilities
- Health Care, Medical Clinics
- Parks
- Places of Worship
- Animal Care Facility, Indoor
- Art Studio / Gallery
- Commercial Amusements (C)
- Daycare, Commercial
- Drive-in / thru window # (drive-thru with a restaurant only permitted on the portion of the property previously zoned C-1 General Commercial, as indicated on the Concept Plan).
- Dry Cleaners & Laundry*
- Health Club / Sports Facility, Indoor#
- Offices
- Personal Service Shop
- Printing / Copy Shop
- Restaurants
- Retail Sales & Service*
- Retail Sales & Service – Alcohol*
- Scientific Testing / Research Laboratory
- Utility *
- Wireless Telecommunication Facilities- Intermediate*
- Wireless Telecommunication Facilities- Unregulated

Tract 3:

- Extended Care Facility / Convalescent / Nursing Home
- Educational Facility, College & University
- Educational Facility, Indoor Instruction
- Educational Facility, Primary & Secondary
- Government Facilities
- Health Care, Medical Clinics
- Parks
- Places of Worship
- Animal Care Facility, Indoor
- Art Studio / Gallery
- Commercial Amusements (C)
- Daycare, Commercial
- Drive-in / thru window*+
- Dry Cleaners & Laundry*
- Health Club / Sports Facility, Indoor+
- Offices
- Personal Service Shop
- Printing / Copy Shop
- Restaurants
- Retail Sales & Service*
- Retail Sales & Service -- Alcohol*
- Scientific Testing / Research Laboratory
- Utility *
- Wireless Telecommunication Facilities- Intermediate*
- Wireless Telecommunication Facilities- Unregulated

Tract 4:

- Extended Care Facility / Convalescent / Nursing Home
- Educational Facility, College & University
- Educational Facility, Indoor Instruction
- Educational Facility, Primary & Secondary
- Educational Facility, Tutoring
- Educational Facility, Vocational / Trade
- Government Facilities
- Health Care, Medical Clinics
- Parks
- Places of Worship
- Animal Care Facility, Indoor
- Art Studio / Gallery
- Daycare, Commercial
- Drive-in / thru window*+
- Dry Cleaners & Laundry*
- Health Club / Sports Facility, Indoor+
- Offices
- Personal Service Shop
- Printing / Copy Shop
- Radio / TV Station / Studios

- Retail Sales & Service*
- Retail Sales & Service – Alcohol*
- Scientific Testing / Research Laboratory
- Utility *
- Wireless Telecommunication Facilities- Intermediate*
- Wireless Telecommunication Facilities- Major (C)
- Wireless Telecommunication Facilities- Unregulated

Tract 5:

- Extended Care Facility / Convalescent / Nursing Home
- Educational Facility, College & University
- Educational Facility, Indoor Instruction
- Educational Facility, Primary & Secondary
- Educational Facility, Tutoring
- Educational Facility, Vocational / Trade
- Government Facilities
- Health Care, Medical Clinics
- Parks
- Places of Worship
- Animal Care Facility, Indoor
- Art Studio / Gallery
- Daycare, Commercial
- Drive-in / thru window*
- Offices
- Parking as Primary Use (C)
- Personal Service Shop
- Printing / Copy Shop
- Radio / TV Station / Studios
- Scientific Testing / Research Laboratory
- Utility *
- Wireless Telecommunication Facilities- Intermediate*
- Wireless Telecommunication Facilities- Major (C)
- Wireless Telecommunication Facilities- Unregulated

Tract 6:

- Extended Care Facility / Convalescent / Nursing Home
- Educational Facility, College & University
- Educational Facility, Indoor Instruction
- Educational Facility, Outdoor Instruction
- Educational Facility, Primary & Secondary
- Educational Facility, Tutoring
- Educational Facility, Vocational / Trade
- Government Facilities
- Health Care, Hospitals
- Health Care, Medical Clinics
- Parks
- Places of Worship
- Animal Care Facility, Indoor
- Art Studio / Gallery

- Car Wash *
- Commercial Garden / Greenhouse / Landscape Maint.*
- Commercial Amusements*
- Conference / Convention Center
- Country Club
- Daycare, Commercial
- Drive-in / thru window
- Dry Cleaners & Laundry
- Fraternal Lodge
- Fuel Sales*
- Health Club / Sports Facility, Indoor+
- Health Club / Sports Facility, Outdoor
- Hotels
- Night Club, Bar or Tavern (C)
- Offices
- Parking as Primary Use
- Personal Service Shop
- Printing / Copy Shop
- Radio / TV Station / Studios
- Restaurants
- Retail Sales – Single Tenant over 50,000 SF
- Retail Sales & Service*
- Retail Sales & Service – Alcohol*
- Theater
- Storage, Self Service
- Vehicular Sales, Rental, Repair and Service*
- Scientific Testing / Research Laboratory
- Utility *
- Wireless Telecommunication Facilities- Intermediate*
- Wireless Telecommunication Facilities- Major (C)
- Wireless Telecommunication Facilities- Unregulated

Tract 7:

- Extended Care Facility / Convalescent / Nursing Home
- Educational Facility, College & University
- Educational Facility, Indoor Instruction
- Educational Facility, Primary & Secondary
- Educational Facility, Tutoring
- Educational Facility, Vocational / Trade
- Government Facilities
- Health Care, Medical Clinics
- Parks
- Places of Worship
- Animal Care Facility, Indoor
- Art Studio / Gallery
- Car Wash *
- Commercial Garden / Greenhouse / Landscape Maint.*
- Commercial Amusements*
- Daycare, Commercial

- Drive-in / thru window*
- Dry Cleaners & Laundry
- Fuel Sales*
- Health Club / Sports Facility, Indoor+
- Hotels
- Night Club, Bar or Tavern (C)
- Offices
- Personal Service Shop
- Printing / Copy Shop
- Radio / TV Station / Studios
- Restaurants
- Retail Sales – Single Tenant over 50,000 SF
- Retail Sales & Service*
- Retail Sales & Service – Alcohol*
- Theater
- Scientific Testing / Research Laboratory
- Utility *
- Wireless Telecommunication Facilities- Intermediate*
- Wireless Telecommunication Facilities- Major (C)
- Wireless Telecommunication Facilities- Unregulated

* Land Use with Supplemental Standards (Refer to Article 5 of the Unified Development Ordinance)

+ Drive-in / thru windows shall be limited to not include restaurants and Health clubs are limited to 20,000 s.f.

Health Clubs are limited to 20,000 square feet and Restaurant Drive-Thru permitted only on portion of Tract 2 previously zoned C-1 General Commercial

(C) Conditional Use Permit

Access

Driveway locations limited to those shown on the Concept Plan for Tracts 1 and 4, and exclude any further driveway access to Rock Prairie Road or State Highway 6, except where an existing access easement is located on Tract 2 providing cross access with the adjacent property owner. All access points will have to meet any conditions required by a revised Transportation Impact Analysis.

Architectural Design

Structures on Tracts 2, 3, 5, and the first 400 feet from Rock Prairie Road on Tract 4, the buildings architecture, styles, and facades of the structures will be similar to and consist of similar materials of those present in the neighborhoods located across Rock Prairie Road. The roof pitch is 4:12.

The architectural standards for Tract 4 and along Rock Prairie Road extend a minimum of 400 feet from Rock Prairie Road and relate to the "first layer" of buildings off of Rock Prairie Road, regardless of the distance from Rock Prairie Road. The architectural and height limitations in this PDD are included to create the desired character along the Rock Prairie corridor in that area.

The Hospital buildings will meet all minimum ordinance requirements besides those granted as meritorious modifications. The following information relates to the architectural design on Tract 1 – the hospital building:

Exterior materials of the front elevation's two-story base will include stone, brick and glass. The addition of architectural metal panels will complete the material pallet for the upper three floors. A strong vertical motif is developed with the stone pillars along the two-story lobby/waiting concourse. The stone pillars are six feet wide and occur along the concourse on 15-foot centers. The space between the pillars is recessed 18 inches and in-filled with glass curtain wall providing a regular pattern of articulation along the two-story

base. The extension of the Gift Shop, Entry Vestibule and Chapel outward along the concourse will provide additional articulation elements. On the upper three floors the windows will protrude outward from the building three feet continuing the articulation of the façade of the building.

Lighting

The Concept Plan includes restrictions on site lighting such that Tracts 2-5 will be limited to a maximum mounting height of 12 feet and Tracts 1, 6, and 7 will be limited to a maximum mounting height of 30 feet. The zoning provides for a more residential scale of lighting on the tracts identified as either General Suburban or Suburban Commercial and allows for the higher intensity commercial areas to use a type of lighting more appropriate to a general commercial development.

Drainage & Stormwater

The Concept Plan includes a wet pond on site for increased water quality and includes the following information regarding the wet pond:

This best management practice (BMP) will treat the entire site of Tract 1 for water quality and provide approximately 93% total suspended solids (TCC) removal efficiency. In addition to provide water quality, the pond will also detain the 2-, 10-, 25-, and 100- year storm events. The pond will also serve as an aesthetic landscape feature and serve as the main focal point as you enter the site.

Stormwater run-off from the developed portions of the site will be collected in roof drains, area inlet and curb inlets. The captured stormwater will be conveyed in below-grade storm sewer conduit to the earth-wall wet pond providing both detention and water quality. The wet pond will also serve as a source of landscape irrigation water, ensuring the re-use of the stormwater at least once.

Base Zoning and Meritorious Modifications

C-1 General Commercial is the base, underlying zoning district for standards not identified in the PDD. At the time of site plan and plat, the project will need to meet all applicable site, architectural and platting standards required by the Unified Development Ordinance except where meritorious modifications are granted with the PDD zoning.

Meritorious Modifications Granted:

1. Section 7.2.I "Number of Off-Street Parking Spaces Required" of the Unified Development Ordinance

The following are the modified parking requirements:

Use	Unit	Spaces/Unit	UDO Requirement
Day Care Center	250 s.f.	0.8	1
Hospital	Bed	2	As determined by the Administrator
Medical or Dental Clinic < 20,000 s.f.	200 s.f.	0.8	1
Office Building	250 s.f.	0.875	1

In addition, any use not specifically listed shall refer to the Unified Development Ordinance and may be reduced by 20%.

2. Section 7.2.C "Dimensions & Access" of "Off-Street Parking Standards"

The minimum parking space size is not less than nine feet by eighteen feet six inches (9'x18.5').

3. Section 5.4 “Non-Residential Dimensional Standards” of the Unified Development Ordinance

The following are the setbacks and height limitations for Tracts 1-7:

	Tract 1	Tract 2	Tract 3	Tract 4	Tract 5	Tract 6	Tract 7
Min. Lot Area	None	None	None	None	None	None	None
Min. Lot Width	N/A	24'	24'	24'	24'	24'	24'
Min. Lot Depth	N/A	100'	100'	100'	100'	100'	100'
Min. Front Setback	50'	35'	35'	35'	24'	35'	35'
Min. Side Setback	50'	15'	15'	(A)(B)	(A)(B)	(A)(B)	(A)(B)
Min. S.S. Setback	25'	25'	25'	15'	15'	15'	15'
Min. Rear Setback	25'	25'	25'	15'	15'	15'	15'
Max. Height	6 stories (96')	2 stories (30')	2 stories (30')	4 stories (50') (D)	2 stories (30') (C)	4 stories (50')	4 stories (50')

C – Single-Family Height /Setback applies.

D – Buildings located on Tract 4 shall be limited to a maximum of 2 stories from Rock Prairie Road to a depth of 500 feet. Beyond the 500 feet heights may rise to 3 stories and buildings adjacent to Tract 1 shall be allowed to be up to 4 stories.

4. Section 7.3.C.7 “Geometric Design of Driveway Access” of the Unified Development Ordinance

The modification allows for medians within driveways. The total pavement width (minus the median) will be in the range of 24 and 36 feet. At the time of site plan, all drives will be designed to the satisfaction of the Fire Department and meet minimum sight distance requirements.

5. Section 7.4 “Signs” of the Unified Development Ordinance

A special sign package is permitted for Tract 1, the hospital property, and is attached as a part of “EXHIBIT G.” The proposal includes 29 signs that, due to their size, are considered freestanding signs by the Unified Development Ordinance. In addition, the hospital is permitted to utilize their corporate logo flag alongside the Country and State flags.

Each tract (Tracts 2-7) is permitted only one freestanding sign and the maximum height is 16 feet (relating to the height of the primary sign for the hospital tract). All other sign standards will be those of the C-1 General Commercial zoning district, with the exception that freestanding signs will not be permitted on Tracts 4 and 5 (low profile only), and roof signs will not be permitted on Tracts 2-5.

6. Section 7.9 B.3 “Building Materials” of the Unified Development Ordinance

Up to 30% high-grade architectural metal is permitted on the hospital structure on Tract 1. Metal is limited on other structures to a maximum of 15%. In addition, each tract shall meet the highest architectural standards of the Unified Development Ordinance, architectural standards for building plots over 150,000 square feet of building area (regardless of the building sizes constructed).

7. Section 7.9.E.3 “Additional Standards for 50,000 s.f. or Greater” “Landscaping” of the Unified Development Ordinance

Trees generally required to be planted in tree wells within a sidewalk along primary facades are permitted to be planted in landscape areas instead. Shade structures or plantings shall be located along the sidewalks.

8. Section 7.9.F.4 “Additional Standards for 150,000 s.f. or Greater of the Unified Development Ordinance

Parking screening berms are not required for parking areas located beyond 100 feet from the public right-of-way if the area between the parking and the right-of-way remains as open space. The parking shall be screened using another method such as landscaping.

9. Table V "Streets and Alleys" of the Bryan/College Station Unified Design Guidelines

A 2-lane Major Collector right-of-way width of 60 feet (Scott & White Drive, Medical Avenue, Healing Way) is permitted with bike lanes. The 4-Lane Major Collector (Lakeway) is permitted to have a right-of-way width of 80 feet with bike lanes.

Specific Conditions of Zoning:

- Tracts 2-7 will require approved revised Concept Plans prior to site plan approval or the issuance of permits for development of the property.
- Tracts 2-7 will need to provide proof of adequate public facilities, including sewer service, prior to approval of revised Concept Plans on those tracts.
- An additional Traffic Impact Analysis (TIA) will be required with Concept Plans for Tracts 2-7.
- Development resulting in the additional allocated trips, as described in the staff report, be limited to Tracts 6 or 7. No additional trips shall be generated by development on Tracts 2, 3, 4, or 5 without the development of a revised TIA and associated improvements on Rock Prairie Road.
- If the Spring Creek District Plan is completed prior to revised Concept Plans being approved for Tracts 2-7, those Concept Plans will need to be in compliance with the district plan.
- At the time of site plan, all drives are designed to the satisfaction of the Fire Department and meet minimum sight distance requirements.
- The alignment of Lakeway Drive will be such that it provides access to both the adjacent tracts (currently owned by Wheeler and Perry).
- The roads and utilities projecting from Medical Avenue to the adjacent property to the east (through Tract 5) will be built with the first phase of road and utility construction.

EXHIBIT "D"

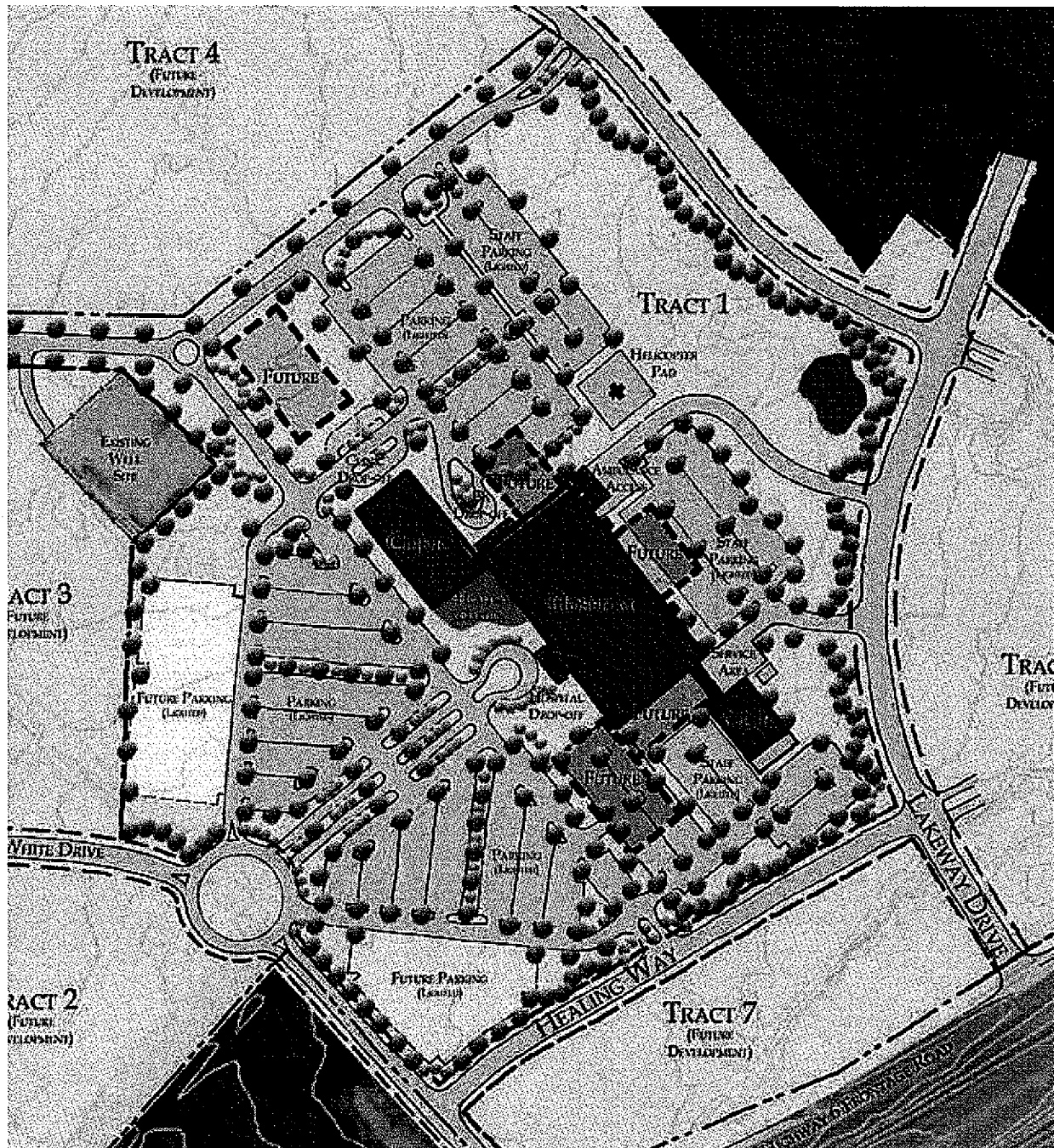


EXHIBIT "E"

SITE INFORMATION

TRACT 1: 39 +/- ACRES (PROPOSED HOSPITAL SITE)
TRACT 2: 7 +/- ACRES (FUTURE DEVELOPMENT)
TRACT 3: 8 +/- ACRES (FUTURE DEVELOPMENT)
TRACT 4: 11 +/- ACRES (FUTURE DEVELOPMENT)
TRACT 5: 3 +/- ACRES (FUTURE DEVELOPMENT)
TRACT 6: 13 +/- ACRES (FUTURE DEVELOPMENT)
TRACT 7: 5 +/- ACRES (FUTURE DEVELOPMENT)
R.O.W.: 11 +/- ACRES (PROPOSED ROAD RIGHT OF WAYS)
OVERALL: 97.9 ACRES

DEVELOPER/APPLICANT:

SCOTT & WHITE
2401 SOUTH 31ST STREET
TEMPLE, TEXAS 78508

ENGINEER/PLANNER:

JACOBS
2705 BEE CAVE RD, SUITE 300
AUSTIN, TEXAS 78746

NOTES:

- 1) EACH TRACT IS A BUILDING PLOT
- 2) NO ADDITIONAL ACCESS SHALL CONNECT TO ROCK PRAIRIE RD. OR
HWY 6 FRONTAGE RD.

Zoning Districts

A-O	Agricultural Open	C-3	Light Commercial	WPC	Wolf Pen Creek Dev. Corridor
A-O	Rural Residential Subdivision	M-1	Light Industrial	NG-1	Core Northgate
R-1	Single Family Residential	M-2	Heavy Industrial	NG-2	Transitional Northgate
R-1B	Single Family Residential	C-U	College and University	NG-3	Residential Northgate
R-2	Duplex Residential	R&D	Research and Development	OV	Corridor Overlay
		P-MUD	Planned Mixed-Use Development	RDD	Redevelopment District
		PDD	Planned Development District	KO	Kenek Tap Overlay

200 FT Notification

--- 200 FT Notification

EXHIBIT "G"
See Attached Scott & White Proposal

Planned Development District

Submitted to:



Prepared for:



2401 South 31st Street
Temple, Texas 76508

August 25, 2010

Revised:

October 11, 2010

October 25, 2010

October 28, 2010

November 12, 2010

Prepared by:

JACOBSTM
2705 Bee Cave Road, Suite 300
Austin, Texas 78746

PROJECT DESCRIPTION

EXECUTIVE SUMMARY

Tract 1

A new, 330,000-square-foot (SF), five-story (plus mechanical penthouse), freestanding, 143-bed acute care Scott & White Hospital at College Station and a 10,000-square-foot (SF) Central Utility Plant (CUP) is planned at the Southeast intersection of Rock Prairie and Highway 6. The proposed Hospital tract (Tract 1) will encompass approximately 38.9-acres of the 97.9-acre site.

A separate 150,000-square-foot (SF), five-story, Clinic building is planned to be constructed adjacent to the Hospital. The future Clinic will connect to the Hospital northwest corner of the first level only.

The facility will have five use-categorized entries to the facility including a main entrance for visitors, a staff entry, a delivery entrance, an ambulance Emergency Department (ED) entrance and a walk-in ED entrance. There will be a circulation drive around the Hospital and clinic that will provide access from these primary entry points. Much of the required parking, 880 spaces (two per bed and four per 1,000 SF of clinic) will be inside of the circulation drive with minimal crossing of driveways.

The Hospital will be designed to accommodate expansion at a later date; a one-story expansion at the east side; a two-story expansion at the south side; and a three-story addition at the west end. In addition, a future clinic and/or medical office building is proposed for up to five stories east of the clinic. This future square footage will be approximately 350,000 square feet.

The bed units will be provide for: Intensive Care (ICU) providing continuous observation of high acuity patients; Neonatal Intensive Care (NICU) providing that same level of care for infants; Post Partum Unit; Intermediate Care Unit (IMCU); and Medical/Surgical (M/S) Unit. Patient rooms will be private and there will be a minimum of one isolation room per unit and two for every 24 beds in M/S.

The Hospital will contain required ancillary and support departments. The ED will contain exam rooms and treatment bays. Imaging will contain treatment modalities required for an acute care facility, including general radiology, CT and MRI. Space is allocated in the Hospital for a PET scanner. At opening this modality will be provided with a mobile unit. Along with eight operating rooms in the Surgical Department there will be cardiac catheterization labs, endoscopic procedure rooms and a procedure center for EEG's and EKG's. Laboratory and pharmacy space will be provided to support patient needs.

The hospital will contain a full-service kitchen to support the patients, staff and visitors and a dining room. The design will include kitchen and support equipment. Administrative services and an Education/ Conference Center will also be included. The 10,000 SF CUP will be in a separate structure adjacent to the Hospital.

Exterior materials of the front elevation's 2-story base will include stone, brick and glass. The addition of architectural metal panels will complete the material pallet for the upper three floors. A strong vertical motif is developed with the stone pillars along 2 story lobby/waiting concourse. The stone pillars are 6 ft wide and occur along the concourse on 15 ft centers. The space between the pillars is recessed 18" and in-filled with glass curtain wall providing a regular pattern of articulation along the 2 story base. The extension of the Gift Shop, Entry Vestibule and Chapel outward along the concourse will provide additional articulation elements. On the upper three floors the windows will protrude outward from the building 3 ft continuing the articulation of the façade of the building.

The 30-foot horizontal module and the 16-foot floor-to-floor height allows for windows and door openings to work well with standard masonry dimensions at all levels. At the building base, the openings are recessed into the brick and stone. The 2-story lobby/waiting area will be the focal point for public interaction, with clinical patient areas designed to have animated features and varying heights working within the vertical and horizontal module.

Canopies will be simple horizontal elements with a metal panel fascia, serving as an icon that becomes recognizable at the public entries. This element will float over the length of the lobby area. Outdoor areas will include the healing garden and exterior waiting areas, featuring trellises to provide sun protection.

Tracts 2-7

These tracts will be available for future development and entitled by this PDD and will require approved revised Concept Plans prior to site plan approval or the issuance of permits for development of the property.

- Tracts 2-7 will need to provide proof of adequate public facilities, including sewer service, prior to approval of revised Concept Plans on those tracts.
- An additional Traffic Impact Analysis (TIA) will be required with Concept Plans for Tracts 2-7.
- Development resulting in the additional allocated trips, as described in the staff report, be limited to Tracts 6 or 7. No additional trips shall be generated by development on Tracts 2, 3, 4, or 5 without the development of a revised TIA and associated improvements on Rock Prairie Road.
- If the Spring Creek District Plan is completed prior to revised Concept Plans being approved for Tracts 2-7, those Concept Plans will need to be in compliance with the district plan.

CIVIL/ SITE

The development of this site will be subject to the rules and regulations established by the City of College Station except as amended here in this PDD; the Environmental Protection Agency (EPA); the Texas Commission on Environmental Quality (TCEQ); the Texas Department of Licensing and Regulation (TDLR); Rockford Energy, due to their lease rights of the existing oil well at the northeast corner of the site; Bryan Texas Utilities (BTU), College Station Electric (CS Electric) and Atmos Energy.

This project site is comprised of numerous existing tracts and an existing oil well within the site. The site has an existing road, Old Rock Prairie, which will be removed, and overhead electric lines running through the middle that will be relocated. It is covered with natural grass vegetation and has three buildings that will be demolished. No portion of the site is within existing Federal Emergency Management Agency (FEMA) floodplain.

The site topography falls from north to south with average slopes on the range of two percent to four percent. The soils and geotechnical site conditions have been described in a geotechnical report previously prepared. A revised geotechnical report and pavement recommendations will be prepared by Terracon who has been retained by the Owner.

Future neighbors include the residential subdivision to the north and undeveloped property to the east, neither of which currently have a direct connection to the proposed project.

Zoning

Current zoning will be changed to Planned Development District (PDD) utilizing a base zoning of C-1 (general commercial). The PDD zoning ordinance will be written to support variances to the base zoning of C-1 for a building height maximum of six stories, landscape, signage, lighting, thoroughfare plan and parking.

Thoroughfare Plan and Access

Access to the site will be provided from two existing roads, Rock Prairie Road and the northbound Highway 6 frontage road, as well as four proposed roads as required by the City's Thoroughfare Plan: Medical Avenue, Scott & White Drive, Healing Way, and Lakeway Drive as this site is within part of the City's Thoroughfare Plan.

Parking

Parking for the new development will be provided on surface parking lots. The main circulation drives will be heavy duty concrete or asphalt pavement and the parking areas will be light duty concrete or asphalt pavement. Driveways from public streets, loading areas, ambulance drives, service courts and paved areas under canopies will be concrete or asphalt pavement. At the time of site plan, all drives

are designed to the satisfaction of the Fire Department and meet minimum sight distance requirements.

Stormwater

Stormwater runoff from these developed portions of the site will be collected in roof drains, area inlets and curb inlets. The captured stormwater will be conveyed in below-grade storm sewer conduit to an earth-wall wet pond providing both detention and water quality. Detention is required in the City and providing water quality will be an added benefit to the environment. The wet pond will also serve as a source of landscape irrigation water thus ensuring re-use of the stormwater at least once.

Wastewater Service

Wastewater will be collected from the site through a system of gravity lines leading to a lift station, which will pump to an existing on-site manhole. The City has verified limited existing capacity for wastewater service to this site. The City is currently undertaking wastewater studies to master plan wastewater service for the entire system in this region.

Water Service

Initial meetings with City engineers have dictated the design of the water system, which is sized to serve the site with a looping water line around both the Hospital and Clinic. Proper placement of fire hydrants will meet the fire protection requirements necessary for this project. The fire lanes of at least 23 feet (face of curb) in width and parking lot radii of 25 feet will be provided to give adequate access to the new facilities. AS this site is part of a City Water Master Plan an 18 inch waterline will be installed along the Highway 6 frontage Road.

Electric Service

Routed across the site is Old Rock Prairie and overhead electric lines. The existing road will be abandoned but the overhead electric lines will be relocated. Both CS Electric and BTU have lines that must be relocated to the frontage road of Highway 6.

Natural Gas Service

This site is served by Atmos Energy. A new service line will be extended to the site along the frontage road of Highway 6. From this service line, a feed will be extended to serve the Hospital and clinic and a feed will be extended to the CUP.

Telecommunications Service

This site is served by Suddenlink and all components to serve this site will be installed to their standards.

LANDSCAPE

The design focus for the project will be to provide landscaped entries, landscape areas defining parking areas, and islands within the parking lots with shade trees and lining pedestrian isles. In addition, irrigation may be provided through the collection of rainwater harvesting and air conditioning condensation collection and distributed in best management practices for irrigation system to reduce water costs.

Project design elements include planting a Texas vernacular landscape utilizing native and adaptive native plant material, the use of indigenous hardscape materials, such as Austin Stone and decomposed granite. Other hardscape materials will be proposed, such as concrete or concrete pavers, cast stone planters of various sizes to display seasonal color, water features (either self contained pumping system or pool design), and tree grates for planting trees in pavement. These materials will create shaded walkways, benches for the exterior of the building, arbors in the courtyards and moveable tables and chairs to provide seating for the courtyard spaces.

At least two proposed courtyard spaces located adjacent to the proposed Hospital building are being planned at easily accessible locations for patients, their families and staff. The courtyards will be designed to address the needs of this special user group and pedestrian flow patterns. The main areas of this design focus include a healing garden and outdoor waiting plazas.

WAYFINDING

A complete wayfinding package will be developed to meet Scott & White standards.

Exterior sign types include, but not limited to, an illuminated entry monument, secondary monument, primary hospital building mounted identification, building top identification logo, emergency identification on building, vehicular and pedestrian directional signage, and parking lot identification.

Interior sign types include, but not limited to, information kiosk, mission statement, building directory host, directionals, room identification, room numbers, restroom identification, interpretative services sign, elevator fire evacuation and stair identification.

DEVELOPMENT STANDARDS

The development of this site will be subject to the rules and regulations established by the City of College Station for the C-1 Base Zoning except as amended here:

Article 5. District Purpose Statements and Supplemental Standards

5.3 Non-Residential Zoning Districts

B. General Commercial (C-1)

This district is designed to provide locations for general commercial purposes, that is, retail sales and service uses that function to serve the entire community and its visitors.

5.4 Non-Residential Dimensional Standards

The following table establishes dimensional standards that shall be applied within the Non-Residential Zoning Districts, unless otherwise identified in this UDO:

Non-Residential Zoning Districts	Tract 1	Tract 2	Tract 3	Tract 4	Tract 5	Tract 6	Tract 7
Min. Lot Area	None	None	None	None	None	None	None
Min. Lot Width	N/A	24'	24'	24'	24'	24'	24'
Min. Lot Depth	N/A	100'	100'	100'	100'	100'	100'
Min. Front Setback	50'	35'	35'	35'	24'	35'	35'
Min. Side Setback	50'	15'	15'	(A)(B)	(A)(B)	(A)(B)	(A)(B)
Min. St. Side Setback	25'	25'	25'	15'	15'	15'	15'
Min. Rear Setback	25'	25'	25'	15'	15'	15'	15'
Max. Height	6 Stories (96 feet)	2 Stories (30 feet)	2 Stories (30 feet)	4 Stories (50 feet) (D)	2 Stories (C)	4 Stories (50 feet)	4 Stories (50 feet)

Notes:

(A) A minimum side setback of 7.5 feet shall be required for each building or group of contiguous buildings.

(B) Lot line construction on interior lots with no side yard or setback is allowed only where the building is covered by fire protection on the site or separated by a dedicated public right-of-way or easement of at least 15 feet in width.

(C) See Section 7.1.H, Height. (below)

(D) Buildings located on Tract 4 shall be limited to a maximum of 2 stories from Rock Prairie Road to a depth of 400 feet. Beyond the 400 feet heights may rise to 3 stories and buildings adjacent to Tract 1 shall be allowed to be up to 4 stories.

5.5 Planned Districts (P-MUD and PDD)

A. The Planned Mixed-Use District (P-MUD) and the Planned Development District (PDD) are intended to provide such flexibility and performance criteria which produce:

1. A maximum choice in the type of environment for working and living available to the public;
2. Open space and recreation areas;
3. A pattern of development which preserves trees, outstanding natural topography and geologic features, and prevents soil erosion;
4. A creative approach to the use of land and related physical development;
5. An efficient use of land resulting in smaller networks of utilities and streets, thereby lowering development costs;
6. An environment of stable character in harmony with surrounding development; and

7. A more desirable environment than would be possible through strict application of other sections or districts in this UDO.

C. Planned Development District (PDD)

The purpose of the Planned Development District is to promote and encourage innovative development that is sensitive to surrounding land uses and to the natural environment. If this necessitates varying from certain standards, the proposed development should demonstrate community benefits.

The PDD is appropriate in areas where the land use plan reflects the specific commercial, residential, or mix of uses proposed in the PDD. A PDD may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts. While greater flexibility is given to allow special conditions or restrictions that would not otherwise allow the development to occur, procedures are established to insure against misuse of increased flexibility.

Article 6. Use Regulations

6.2 Types of Use

C. Use Table

Except where otherwise specifically provided herein, regulations governing the use of land and structures with the various zoning districts and classifications of planned developments are hereby established as shown in the following Use Table.

1. Permitted Uses

A "P" indicates that a use is allowed by right in the respective district. Such uses are subject to all other applicable regulations of this UDO.

2. Permitted Uses Subject to Specific Standards

A "P*" indicates a use that will be permitted, provided that the use meets the provisions in Section 6.3, Specific Use Standards. Such uses are also subject to all other applicable regulations of this UDO.

3. Conditional Uses

A "C" indicates a use that is allowed only where a conditional use permit is approved by the City Council. The Council may require that the use meet the additional standards enumerated in Section 6.2, Specific Use Standards. Conditional uses are subject to all other applicable regulations of this UDO.

USE TABLE	Non-Residential Districts						
	Tract 1	Tract 2	Tract 3	Tract 4	Tract 5	Tract 6	Tract 7
RESIDENTIAL							
Boarding & Rooming House							
Extended Care Facility / Convalescent / Nursing Home	P	P	P	P	P	P	P
Dormitory							
Duplex							
Fraternity / Sorority							
Manufactured Home							
Multi-Family							
Multi-Family built prior to January 2002							
Single-Family Detached							
Townhouse							
PUBLIC, CIVIC AND INSTITUTIONAL							
Educational Facility, College & University	P	P	P	P	P	P	P
Educational Facility, Indoor Instruction	P	P	P	P	P	P	P

Educational Facility, Outdoor Instruction	P					P	
Educational Facility, Primary & Secondary		P	P	P	P	P	P
Educational Facility, Tutoring				P	P	P	P
Educational Facility, Vocational / Trade	P			P	P	P	P
Governmental Facilities		P	P	P	P	P	P
Health Care, Hospitals	P					P	
Health Care, Medical Clinics	P	P	P	P	P	P	P
Parks		P	P	P	P	P	P
Places of Worship		P	P	P	P	P	P
COMMERCIAL, OFFICE AND RETAIL							
Agricultural Use, Barn or Stable for Private Stock							
Agricultural Use, Farm or Pasturage							
Agricultural Use, Farm Product Processing							
Animal Care Facility, Indoor		P	P	P	P	P	P
Animal Care Facility, Outdoor							
Art Studio / Gallery		P	P	P	P	P	P
Car Wash						p*	p*
Commercial Garden / Greenhouse / Landscape Maint.						p*	p*
Commercial Amusements		C	C			p*	p*
Conference / Convention Center						P	
Country Club						P	
Day Care, Commercial		P	P	P	P	P	P
Drive-in / thru window		p*#	p*+	p*+	p*	P	P
Dry Cleaners & Laundry		p*	p*	p*		P	P
Fraternal Lodge						P	
Fuel Sales						p*	p*
Funeral Homes							
Golf Course or Driving Range							
Health Club / Sports Facility, Indoor		p#	p+	p+		P	P
Health Club / Sports Facility, Outdoor						P	
Hotels						P	P
Night Club, Bar or Tavern						C	C
Offices	P	P	P	P	P	P	P
Parking as a Primary Use					C	P	
Personal Service Shop		P	P	P	P	P	P
Printing / Copy Shop		P	P	P	P	P	P
Radio / TV Station / Studios				P	P	P	P
Restaurants		P	P			P	P
Retail Sales - Single						P	P

Tenant over 50,000 SF							
Retail Sales and Service		p*	p*	p*		p*	p*
Retail Sales and Service – Alcohol		p*	p*	p*		p*	p*
Sexually Oriented Business (SOB)							
Shooting Range, Indoor							
Theater						P	P
Retail Sales, Manufactured Homes							
Storage, Self Service						P	
Vehicular Sales, Rental, Repair and Service						p*	
Wholesales / Services							
Bulk Storage Tanks / Cold Storage Plant							
Industrial, Light							
Industrial, Heavy							
Recycling Facility – Large							
Salvage Yard							
Scientific Testing / Research Laboratory	P	P	P	P	P	P	P
Storage, Outdoor - Equipment or Materials							
Truck Stop / Freight or Trucking Terminal							
Utility		p*	p*	p*	p*	p*	p*
Warehousing / Distribution							
Waste Services							
Wireless Telecommunication Facilities – Intermediate	p*	p*	p*	p*	p*	p*	p*
Wireless Telecommunication Facilities – Major				C	C	C	C
Wireless Telecommunication Facilities – Unregulated		P	P	P	P	P	P

¹ Multi-family residential uses located in stories or floors above retail commercial uses are permitted by right.

** District with Supplemental Standards (Refer to Article 5).

+ Drive-in / thru windows shall be limited to not include restaurants and Health clubs are limited to 20,000 s.f.

Health clubs are limited to 20,000 s.f. and Drive-in / thru windows shall be limited to only the area identified as C-1 Zoning.

6.4 Accessory Uses

A. Accessory Uses

Accessory uses are allowed with permitted, established primary structures and uses subject to the following:

1. The use or structure is subordinate to and serves a primary use or principal structure;
2. The accessory use shall be subordinate in area, extent, and purpose to the primary use served;
3. The accessory use shall contribute to the comfort, convenience, or necessity of occupants of the primary use served;
4. The accessory use shall be located within the same zoning district as the primary use is permitted; and

5. Accessory uses located in residential districts shall not be used for commercial purposes other than permitted home occupations.

B. Accessory Structures

1. No accessory structure shall be erected in any required setback area. Excluded from this requirement is any portable storage building or structure if the Building Official has determined that it does not require a Building Permit.
2. On lots with approved rear access all setbacks shall be measured from the nearest boundary of the access easement or alley. On all other lots rear setbacks shall be measured from the rear property line. In no event shall more than 30 percent of the rear yard area (that portion of the yard between the rear setback line of the principal structure and the rear property line) be covered with accessory buildings, structures, or uses.
3. The following restrictions shall apply to accessory buildings, structures, or uses other than garages, carports, and living quarters for family or servants:
 - a. A minimum rear setback of 15 feet; and,
 - b. A maximum building eave height of eight feet (8').

Article 7. General Development Standards

7.1 General Provisions

D. Required Yards (Setbacks)

3. Features Allowed Within Required Yards

The following features may be located within a required yard but may be subject to additional regulations applied herein:

- o. Signage as indicated on the Proposed Signage Plan Exhibit.

H. Height

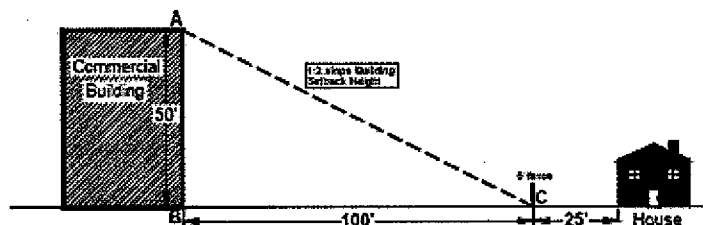
1. Building Height

Building height refers to the vertical distance measured from the finished grade, or the base flood elevation where applicable, and the following points:

- a. The average height level between the eaves and ridge line of a gable, hip, or gambrel roof;
- b. The highest point of a mansard roof; or
- c. The highest point of the coping of a flat roof.

2. Single Family Protection

- a. With the exception of Tract 1, no multi-family or nonresidential structure shall be located nearer to any property line adjacent to or across the street from a single-family use or townhouse development than a horizontal distance (B to C) of twice the vertical distance (height, A to B) of the structure as illustrated in the graphic below.



- b. No additional multi-family or non-residential structures shall penetrate an imaginary line, illustrated by the inclined plane in the graphic above, connecting points A and C.
- c. Calculation of the height limits shall be to the highest point of the structure. Equipment such as satellite dishes and heating and air conditioning units may be installed on top of buildings provided that they are screened from horizontal view and included in the height limitations.
- d. Unless otherwise stated in this PDD, the height limitations herein shall not apply to any of the following:

- 1) Utility structures such as elevated water storage tanks and electrical transmission lines;
- 2) Architectural elements such as flagpoles, belfries, cupolas, spires, domes, monuments, chimneys, bulkheads, elevators, or chimney flues; or any other similar structure extending above the roof of any building where such structure does not occupy more than 33 percent of the area of the roof; or
- 3) Residential radio/television receiving antennas.

3. Maximum Building Heights

- a. Tract 1: 6 stories (96 feet)
- b. Tract 2: 2 stories (30 feet)
- c. Tract 3: 2 stories (30 feet)
- d. Tract 4: 4 stories (50 feet); Buildings located on Tract 4 shall be limited to a maximum of 2 stories from Rock Prairie Road to a depth of 400 feet. Beyond the 400 feet heights may rise to 3 stories and buildings adjacent to tract 1 shall be allowed to be up to 4 stories.
- e. Tract 5: per UDO A-P zoning requirements.
- f. Tract 6: 4 stories (50 feet)
- g. Tract 7: 4 stories (50 feet)

7.2 Off-Street Parking Standards

B. Off-Street Parking Spaces Required

2. Where off-street parking facilities are provided in excess of the minimum amounts specified by this Section, or when off-street parking facilities are provided but not required, said off-street parking facilities shall comply with the minimum requirements for parking and maneuvering space as specified in this Section.

C. Dimensions and Access

This Section applies to any development or redevelopment of uses other than single-family residential, duplexes, or townhouses unless otherwise noted.

1. Each off-street parking space for automobiles shall have an area of not less than nine by eighteen feet six inches (9' x 18'-6") and each stall shall be striped. This standard shall apply for off-street parking for all uses.

2. An 18-foot paved space (90 degree only) may be utilized where the space abuts a landscaped island with a minimum depth of four feet (4'). An 18-foot space may also be used when adjacent to a sidewalk provided that the minimum width of the sidewalk is six feet.

5. All parking spaces, aisles, and modules shall meet the minimum requirements, as shown in the following table. All dimensions are measured from wall to wall, or stripe to stripe.

PARKING SPACE AND AISLE DIMENSIONS

	A	B	C	D		E	F	
	Angle (degrees)	Width of stall	Depth of stall 90° to aisle	Width of aisle		Width of stall parallel to aisle	Module width	
				One way	Two way		One way	Two way
All Tracts	90	9 feet	18.5 feet	23.0 feet	23.0 feet	9.0 feet	60	60

E. Interior Islands

1. All interior islands shall be evenly distributed throughout the interior of the parking area.
2. For every fifteen (15) interior parking spaces, 180 square feet of landscaping must be provided somewhere in the interior rows of the parking lot. Interior island areas may be grouped and configured as desired provided that circulation aisles remain clear and the minimum island area is not less than 180 square feet. Interior islands may have sidewalks through them.

I. Number of Off-Street Parking Spaces Required

8. When the developer of a large-scale development can demonstrate that such development will require fewer parking spaces than required by the standards of this Section, the Administrator may permit a reduction in the number of required parking spaces for the

development. Such a reduction in parking spaces shall be justified through the development of a parking study prepared by a professional engineer or transportation planner and submitted to the Administrator. The balance of the land necessary to meet these requirements shall be held in reserve as an undeveloped area, to meet any future needs generated by an expansion of the business, a change in land use, or underestimated parking demand;

MINIMUM OFF-STREET PARKING REQUIREMENTS

Use	Unit	Spaces/ Unit	Plus Spaces For:
Day Care Center	250 s.f.	.8	
Hospital	As determined by the Administrator	2/Bed	
Medical or Dental Clinic < 20,000 s.f.	200 s.f.	.8	
Office Building	250 s.f.	.875	

"s.f." = square footage.

* All unpaved spaces shall be shown on site plan and organized for efficient traffic circulation using wheel stops and other appropriate measures as required by the Administrator.

** No more than 25% of any shopping center square footage shall be utilized for intense uses (uses that, individually, have a parking requirement greater than 1:250 in C-1 or C-3 and 1:350 in C-2) unless additional parking is provided in accordance with the above requirements for that square footage of such uses in excess of 25%.

***Any allowed uses not listed above shall refer to the City's UDO for parking requirements and may be reduced by 20%.

K. Alternative Parking Plans

2. Applicability

Applicants who wish to provide fewer or more off-street parking spaces than allowed above shall be required to secure approval of an Alternative Parking Plan, in accordance with the standards of this Section. The Administrator may require that an Alternative Parking Plan be submitted in cases where the Administrator deems the listed standard to be inappropriate based on the unique nature of the use or in cases where the applicable standard is unclear.

7.3 Access Management and Circulation

C. Driveway Access Location and Design

2. Location of Driveway Access

Driveway locations shall be as shown on the PDD Concept Site Plan for Tract 1 & 4.

7. Geometric Design of Driveway Access

e. The maximum width of commercial driveway approaches for two-way operation shall not exceed thirty-six feet (36') of pavement, except that the Administrator may issue permits for driveway approaches greater than thirty-six feet (36') in width on major streets to handle special traffic conditions. The minimum width of commercial and multi-family driveway approaches for two-way operation shall be not less than twenty-four feet (24') of pavement.

7.4 Signs

C. Summary of Permitted Signs

The following signs are permitted in the relevant zoning districts of the City:

	Tract 1	Tract 2	Tract 3	Tract 4	Tract 5	Tract 6	Tract 7
Apartment/Condominium/ Manufactured Home Park Identification Signs							
Area Identification/ Subdivision Signs	X	X	X	X	X	X	X
Attached Signs	X	X	X	X	X	X	X
Commercial Banners		X	X	X	X	X	X
Development Signs	X	X	X	X	X	X	X
Directional Traffic Control Signs	X	X	X	X	X	X	X
Freestanding Signs	X	X	X			X	X
Home Occupation Signs							
Low Profile Signs	X	X	X	X	X	X	X
Non-Commercial Signs		X	X	X	X	X	X
Real Estate, Finance, and Construction Signs	X	X	X	X	X	X	X
Roof Signs	X					X	X

D. Prohibited Signs

The following signs shall be prohibited in the City of College Station:

3. Inflated signs, pennants, tethered balloons, and/or any gas filled objects for advertisement, decoration, or otherwise, except as permitted in Section 7.4.P, Grand Opening Signs and Section 7.4.U, Special Event Signs.

5. Excluding the flags of any country, state, city, or school, are prohibited in residential zones and on any residentially-developed property (except when flags are used as subdivision signs).

F. Sign Standards

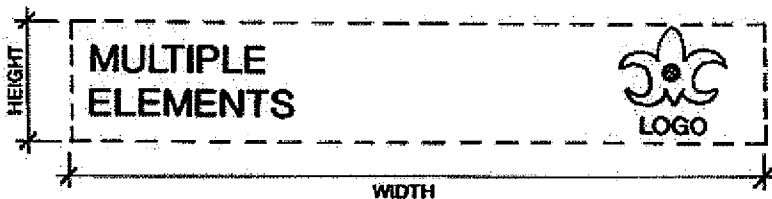
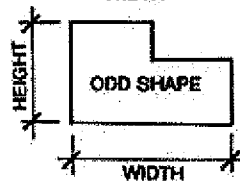
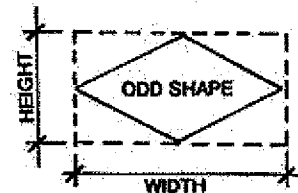
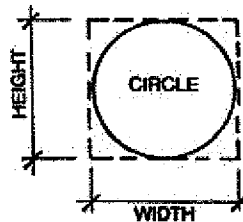
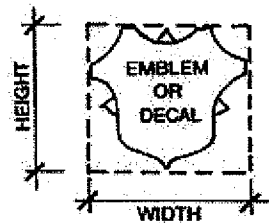
The following table summarizes the sign standards for the City of College Station:

Sign Type	Maximum Area (s.f.)*		Maximum Height (ft.)		Setback From ROW (ft.)		Number Allowed	
	Tract 1	Tracts 2-7	Tract 1	Tracts 2-7	Tract 1	Tracts 2-7	Tract 1	Tracts 2-7
Area Identification Signs	As per Preliminary Site Sign Locations Plan	per UDO	As per Preliminary Site Sign Locations Plan	16 feet.	As per Preliminary Site Sign Locations Plan	per UDO	As per Preliminary Site Sign Locations Plan	per UDO
Attached Signs								
Development Signs								
Residential /Collector Street								
Arterial Street								
Freeway (As designated on Thoroughfare Plan)								
Directional Traffic Control Signs								
Freestanding Signs								

Low Profile Signs (In lieu of permitted Freestanding Sign)								
Real Estate, Finance, and Construction Signs								
Up to 150-foot frontage								
Greater than 150-foot frontage								
Roof Signs								

* Except as provided for in Section 7.4.N.10, Freestanding Commercial Signs.

** The area of a sign is the area enclosed by the minimum imaginary rectangle or vertical and horizontal lines that fully contains all extremities (as shown in the illustration below), exclusive of supports.



G. Area Identification and Subdivision Signs

1. Area Identification Signs shall be permitted upon private property in any zone to identify multiple-lot subdivisions of 10 to 50 acres in size and subject to the requirements set forth in Section 7.4.F, Sign Standards above. Area Identification Signs may also be used within a large subdivision to identify distinct areas within that subdivision, subject to the requirements in Section 7.4.F, Sign Standards above.

3. Both Area Identification and Subdivision Signs must be located on the premises as identified by a preliminary or master preliminary plat of the subdivision. Subdivision Signs will be permitted only at major intersections on the perimeter of the subdivision (intersection of two collector or larger streets). At each intersection either one or two Subdivision Signs may be permitted so long as the total area of the signs does not exceed 150 square feet. Flags may be utilized in place of a Subdivision Identification Sign, but the overall height shall not exceed 20 feet and 25 square feet in area in a residential zone and 35 feet in height and 100 square feet in area in industrial or commercial districts.

L. Directional Traffic Control Sign

1. Directional Traffic Control Signs may be utilized as traffic control devices in off-street parking areas subject to the requirements set forth in Section 7.4.F, Sign Standards above.
2. For multiple lots sharing an access easement to public right-of-way, there shall be only one directional sign located at the curb cut.
3. Logo or copy shall be less than 50% of the sign area.
4. No Directional Traffic Control Sign shall be permitted within or upon the right-of-way of any public street unless its construction, design, and location have been approved by the City Traffic Engineer.

M. Flags

1. One freestanding corporate flag per premise, not to exceed 35 feet in height or 100 square feet in area, is allowed in multi-family, commercial, and industrial districts.
2. Flags used solely for decoration and not containing any copy or logo and located only in multi-family, commercial, and industrial districts or developments are allowed without a permit. In multi-family developments, such flags will be restricted to 16 square feet in area. In all permitted zoning districts such flags will be restricted to 30 feet in height, and the number shall be restricted to no more than 6 flags per building plot.

N. Freestanding Commercial Signs

1. Any development with over 75 linear feet of frontage will be allowed one Freestanding Commercial Sign. All Freestanding Commercial Signs shall meet the following standards:

a. Allowable Area

Allowable Area For Freestanding Signs		
Frontage (Feet)	Maximum Area (s.f.)	
	Tract 1	Tracts 2-5
0-75	As per Conceptual Site Sign Location Plan	Per UDO
76-100		
101-150		
151-200		
201-250		
251-300		
301-350		
351-400		
401-450		
451-500		
501-550		
551-600+		

d. Allowable Height

- 1) The allowable height of a Freestanding Commercial Sign is determined by measuring the distance from the closest point of the sign to the curb or pavement edge and dividing this distance by two. No Freestanding Commercial Sign shall exceed 35 feet in height.
- 2) For the purposes of this Section, height of a sign shall be measured from the elevation of the curb or pavement edge.

3) For the purposes of this Section, the distance from curb shall be measured in feet from the back of curb or pavement edge to the nearest part of the sign.

5. A premise with more than 150 feet of frontage shall be allowed to use one Freestanding Commercial Sign or any number of Low Profile Signs as long as there is a minimum separation between signs of 150 feet. In lieu of one Low Profile Sign every 150 feet, hospital uses may have one low profile sign located at each driveway.

7. No more than one Freestanding Commercial Sign shall be allowed on any premises except when the site meets one of the following sets of criteria:

- a. The building plot, as recognized on an approved Plat or Site Plan, must be 25 acres or more in area with at least 1,000 feet of continuous unsubdivided frontage on any major arterial street or higher (as classified on the Thoroughfare Plan) toward which one additional Freestanding Commercial Sign may be displayed (see diagram below); or
- b. The Building plot, as recognized on an approved Plat or Site Plan, must be 15 acres or more in area with at least 600 feet of continuous unsubdivided frontage on any major arterial street or higher (as classified on the Thoroughfare Plan) and the site must have additional frontage on a street classified as a minor arterial or greater on the Thoroughfare Plan, toward which the additional Freestanding Commercial Sign may be displayed.

T. Roof Signs

1. Signs mounted to the structural roof shall be regulated as Freestanding Commercial Signs.

7.5 Landscaping and Tree Protection

C. Landscaping Requirements

1. The landscaping requirements shall be determined on a point basis as follows:

- a. Minimum Landscape Points required: 30 points per 1,000 square feet of site area;
 - 1) Tract 1 requires 50,874 points $[(1,695,791/1000 * 30)]$
 - 2) Tracts 2-7 per UDO6 has no required landscaping

6. All new plantings must be irrigated. An irrigation system shall be designed so that it does not negatively impact existing trees and natural areas. Soaker hose and drip irrigation system designs shall be permitted.

D. Streetscape Requirements

1. The streetscaping requirements shall be determined along all major arterials, freeways, and expressways as follows:

- a. Within 50 feet of the property line along the street, one canopy tree for every 25 linear feet of frontage shall be installed. Two non-canopy trees may be substituted for each one canopy tree;

1) Tract 1:

Rock Prairie frontage requires 4 canopy trees (102 l.f./25)

2) Tracts 2-7:

Per UDO

- b. Canopy and non-canopy trees must be selected from the College Station Streetscape Plant List and may be grouped as desired; and

c. One existing tree (minimum four-inch caliper) may be substituted for a new tree. Existing trees must be of acceptable health, as determined by the Administrator.

2. The streetscaping requirements shall be determined along all other roadways by the following:

- a. Within 50 feet of the property line along the street, one canopy tree for every 32 feet of frontage shall be installed. Two non-canopy trees may be substituted for one canopy tree;

1) Tract 1:

Medical Avenue frontage requires 25 canopy trees (799 l.f./32)

Scott & White Drive frontage requires 27 canopy trees (867 l.f. /32)

Lakeway Drive frontage requires 26 canopy trees (828 l.f./32)
Healing Way frontage requires 29 canopy trees (914 l.f./32)

2) Tracts 2-7:
Per UDO

- b. Canopy and non-canopy trees must be selected from the Administrator's Streetscape Plant List and may be grouped as desired; and
- c. One existing tree (minimum four-inch caliper) may be substituted for a new tree. Existing trees must be of acceptable health, as determined by the Administrator.

3. Three hundred additional landscape points shall be required for every 50 linear feet of frontage on a right-of-way. Driveway openings, visibility triangles, and other traffic control areas may be subtracted from total frontage. The additional landscape points can be dispersed throughout the site.

- a. Tract 1 requires an additional 21,060 points $[(3,510 \text{ l.f./50}) * 300]$
- b. Tracts 2-7 per UDO

7.9 Non-Residential Architectural Standards

B. Standards for All Non-Residential Structures

The following table summarizes the Non-Residential Architectural Standards for the City of College Station:

3. Building Materials

5) Stainless steel, chrome, standing seam metal and premium grade architectural metal may be used as an architectural accent and shall not cover greater than thirty percent (30%) of any façade for Tract 1 and 15% for Tracts 2-7. For Tracts all of 2-3 & 5, and within 400 feet of Rock Prairie Road of tract 4 the building architecture, styles and façades of the structures will be similar to and consist of similar materials as those present in the subdivisions across Rock Prairie Road (Stonebrook, etc), The pitch will be a minimum of 4:12, or as approved by the City's design review board.

D. Additional Standards for 20,000 S.F. or Greater

In addition to the standards set out in Section 7.9.B, the following shall apply to any single building or combinations of buildings of 20,000 gross square feet in area, whether connected or not, but determined to be a single building plot.

E. Additional Standards for 50,000 S.F. or Greater

In addition to the standards set out in this Section 7.9.B and 7.9.D, the following shall apply to any single building or combinations of buildings of 50,000 gross square feet in area or greater, whether connected or not, but determined to be a single building plot.

3. Landscaping

These requirements are in addition to and not in lieu of the requirements established in Section 7.5 Landscaping and Tree Protection.

- a. The minimum required landscape points for a site shall be double (2 x minimum landscape points) of that required for developments of less than 50,000 gross square feet in area. The minimum allowable tree size is two inch (2") caliper. Streetscape point requirements remain the same and shall count toward the landscape point requirement.
 - 1) Tract 1 requires a total 122,808 points $(50,874*2 + 21,060)$
 - 2) Tracts 2-7 per UDO
- b. Trees are required along fifteen percent (15%) of the linear front of any façade facing a public right-of-way and shall include a minimum of one (1) canopy tree for every required six feet (6') in length. Non-canopy trees may be substituted in the tree wells provided that the number required shall be doubled. This landscaping shall count toward the overall landscape requirement.

Trees may be at grade or may be raised a maximum of thirty inches (30") in height, so long as the soil is continuous with the soil at grade. If the trees are located within interior

parking islands, then the islands shall not count toward the required interior parking islands as described in Section 7.2.E Interior Islands.

F. Additional Standards for 150,000 S.F. or Greater

In addition to the standards set out in Sections 7.9.B, 7.9.D, and 7.9.E, the following shall apply to any single building or combinations of buildings of 150,000 gross square feet in area or greater, whether connected or not but determined to be a single building plot.

3. The minimum allowable tree size is two and one half inches (2.5") caliper.

4. All parking areas must be screened from the public right-of-way using berms without exception for parking areas within 100 feet of the public right of way. Parking areas beyond 100 feet from the public right of way may choose to not provide berms so long as the area between the right of way and parking is open space area.

7.10 Outdoor Lighting Standards

It is recognized that no design can eliminate all ambient light from being reflected or otherwise being visible from any given development; however, the following requirements shall be followed to the fullest extent possible in order to limit nuisances associated with lighting and resulting glare.

All lighting within each Tract shall meet the requirements of this Section.

A. Site Lighting Design Requirements

1. Fixture (luminaire)

The light source shall not project below an opaque housing. No fixture shall directly project light horizontally.

2. Light Source (lamp)

Only incandescent, florescent, metal halide, mercury vapor, or color corrected high pressure sodium may be used. The same type must be used for the same or similar types of lighting on any one site throughout any master-planned development.

3. Mounting

Fixtures shall be mounted in such a manner that the projected cone of light does not cross any property line.

a. Tracts 2 thru 5 shall be limited to a maximum mounting height of 12 feet.

b. Tracts 1, 6 & 7 shall be limited to a maximum mounting height of 30 feet.

B. Specific Lighting Requirements

1. Façade and flagpole lighting must be directed only toward the façade or flag and shall not interfere with the night-visibility on nearby thoroughfares or shine directly at any adjacent residential use.

2. All lighting fixtures incorporated into non-enclosed structures (i.e., gas pump canopies, car washes, etc.) shall be fully recessed into the underside of such structures.

7.12 Traffic Impact Analyses

A TIA has been submitted for the Proposed PDD Concept Plan, and was prepared according to the methodology approved by the City.

Article 8. Subdivision Design and Improvements

8.2 General Requirements and Minimum Standards of Design

A. Urban Standards

17. Drainage

All drainage shall be designed and constructed in accordance with the *Bryan/College Station Unified Design Guidelines* and the *Bryan/College Station Unified Technical Specifications, Chapter 13 Flood Hazard Protection Ordinance* and all applicable state and federal requirements.

Even though the City of College Station does not have a water quality requirement, we will still be providing water quality via a Wet Pond. This best management practice (BMP) will treat the entire site of Tract 1 for water quality and provide approximately 93% total suspended solids (TSS) removal efficiency. In addition to providing water quality the pond will also detain the 2, 10, 25, and 100 year storm events. The pond will also serve as an aesthetic landscape feature, and serve as the main focal point as you enter the site.

Site Design Minimum Standards for Commercial and Multi-Family Projects

Sign Standards

Sign Visibility

As per Preliminary Site Sign Locations Plan for Tract 1.

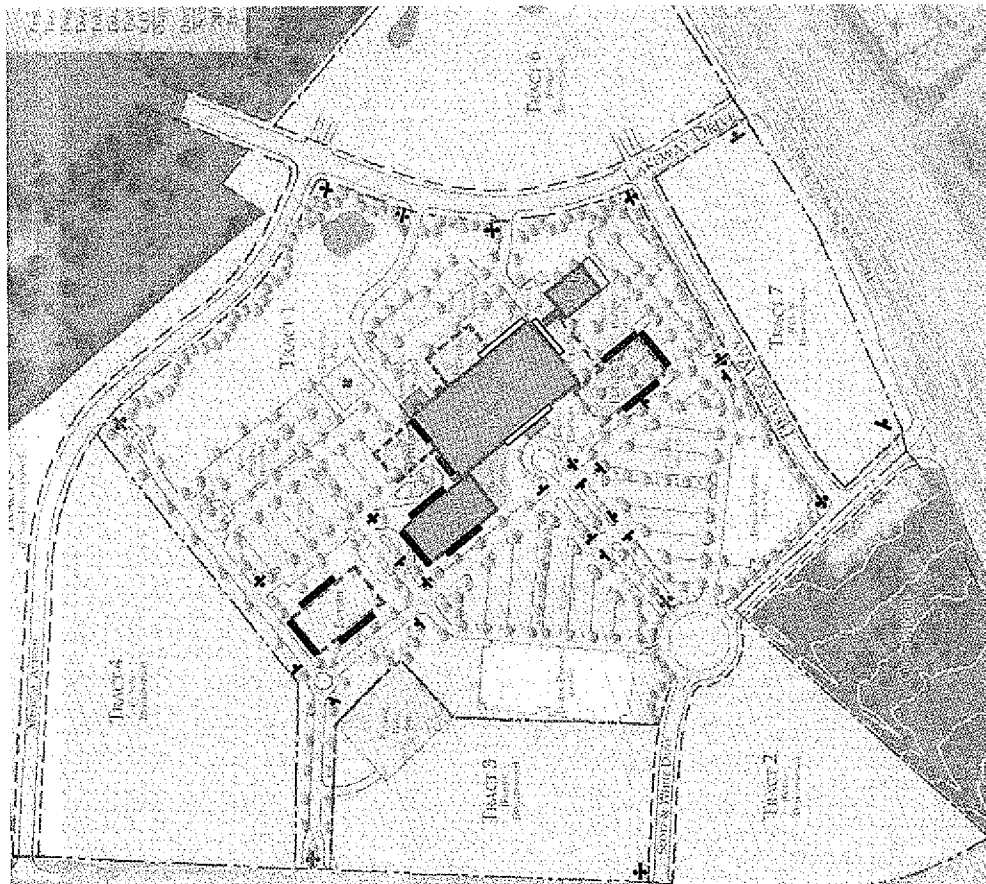
Bryan/College Station Unified Design Guidelines, 2009, Streets and Alleys

Table V

- Minor Collectors (Scott & White Drive, Medical Avenue, Healing Way) Right-of-Way width shall be 60 feet.
- Major Collector (Lakeway Drive) Right-of-Way width shall be 80 feet.

Site Plan: NTS

Note: Building footprint and sign locations shown are preliminary



Sign Type	Size	Qty.	Square Ft. per location
Primary Identification	16'h x 10'w	3	160 sq. ft. ea.
Secondary Identification	9'-9"h x 6'-6" w	4	63 sq. ft. ea.
Tertiary Identification	9'-3"h x 4'-3" w	1	40 sq. ft. ea.
Vehicular Directional	5'-3"h x 4'-9" w	4	25 sq. ft. ea.
Hospital Building Identification Logo and Name	4'-0"h x 48' Letters & 10' x 10' logo	3	600 sq. ft. ea.
Hospital Building Logo	10' x 10' logo	1	100 sq. ft. ea.
Hospital Emergency Identification	1'-6"h x 20' letters	1	30 sq. ft. ea.
Clinic & Future Building Identification	2'-0"h x 18' letters	6	36 sq. ft. ea.
Vehicular Directional (Less visible from Public Right of Way)	5'-3"h x 4'-9" w	17	25 sq. ft.

Scott & White Hospital :: Central Texas
Environmental Graphics Program

W 512 228 8443 E 512 228 6193
P 512 228 6193
F 512 228 6193

Jankadesign

Prepared for: Jacobs

Preliminary
11 Oct 2010

Issue: PDD Documentation
Date: Oct 11, 2010
Scale: NTS

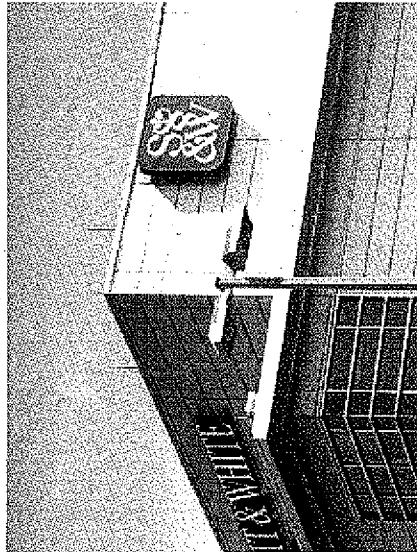
Preliminary Site Sign Locations

G | 1.0

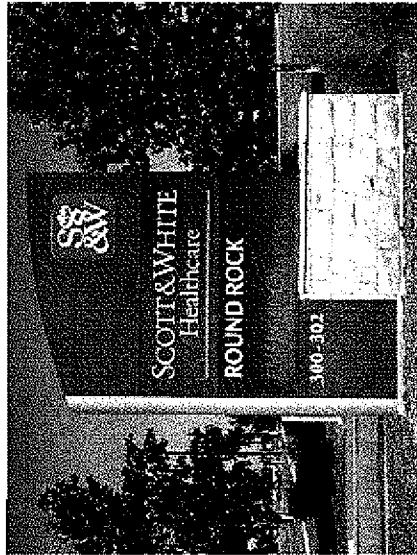
Signage Examples



Hospital Building Identification
4'-0" Cap. Ht. Letters - 162 sq. ft. (estimated)



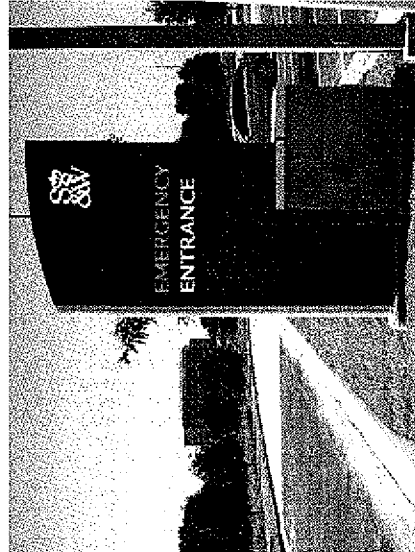
Hospital Building Logo
10' x 10' - 100 sq. ft. (estimated)



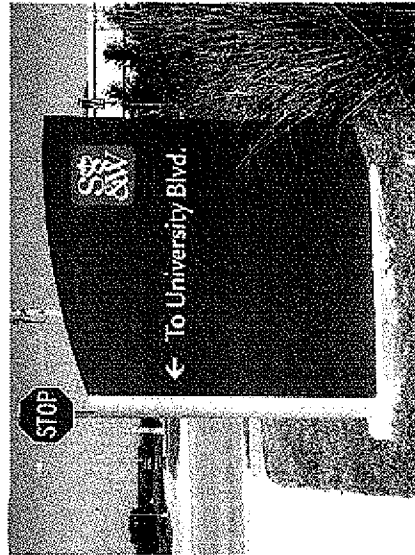
Primary Identification Sign
16 h x 10 w - 160 sq. ft.



Secondary Identification Sign
9'-8" h x 6'-6" w - 60 sq. ft.



Tertiary Identification Sign
9'-3" h x 4'-3" w - 40 sq. ft.



Vehicular Directional Sign
5'-3" h x 4'-9" w - 25 sq. ft.

Scott & White Hospital :: Central Texas
Environmental Graphics Program

Jankodesign

414.593.8345 • 612.299.0195
10000 S. Highway 170, Suite 100
Austin, Texas 78738

Notes:

1. Clinic Building Identification example not shown.
2. Wayfinding messages and project name to vary.

Issue: PRD Documentation

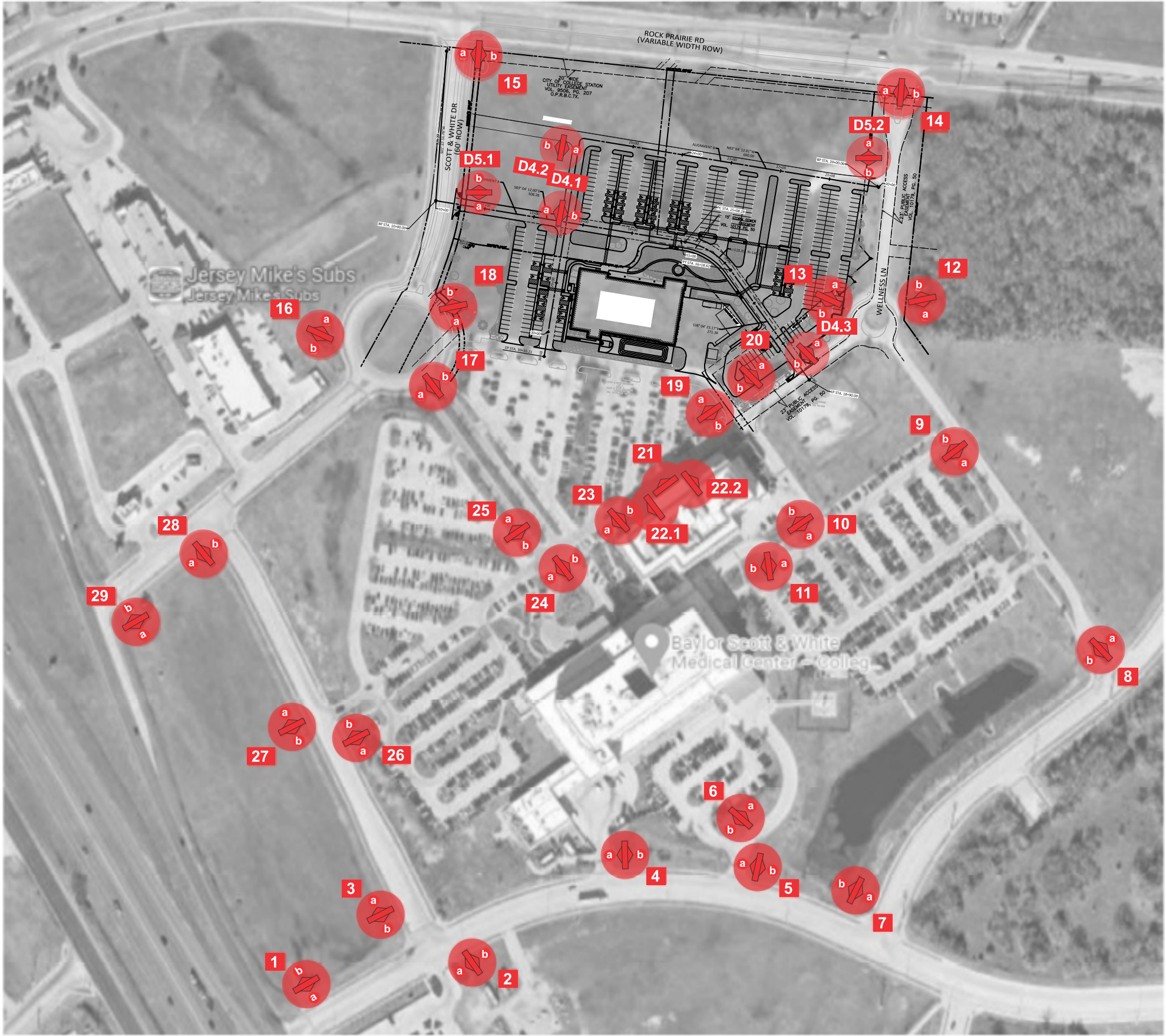
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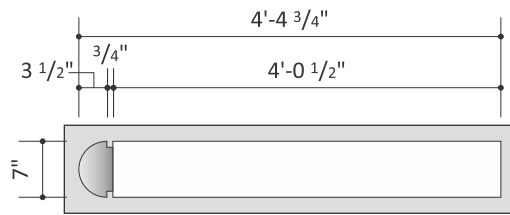
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Scott & White Signage
Examples

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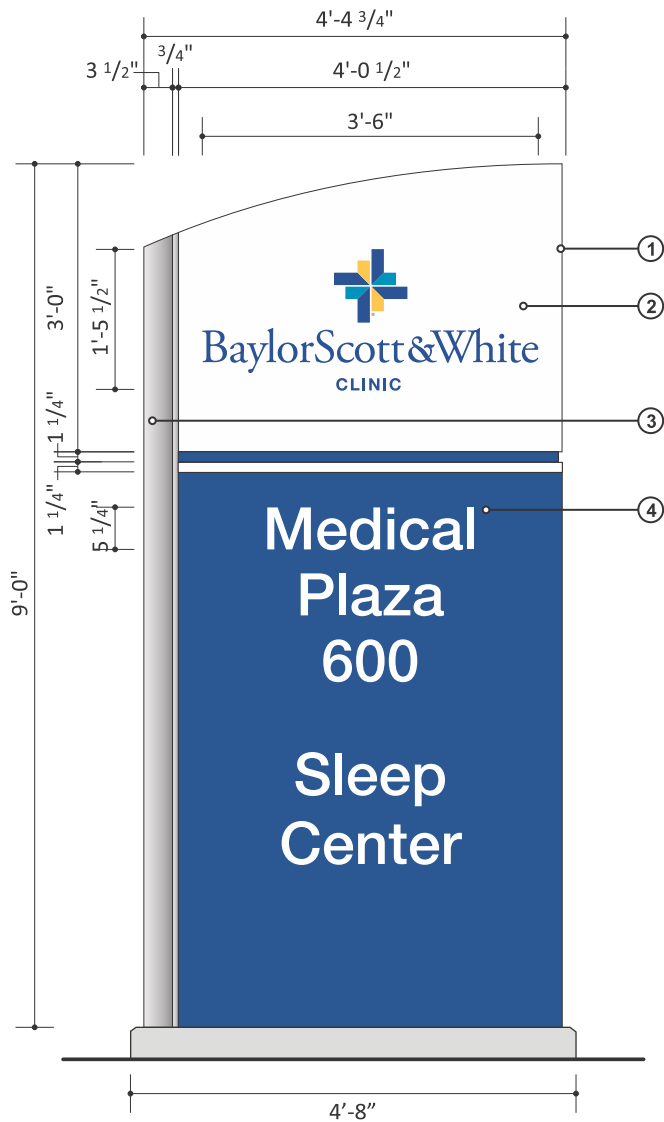
Preliminary
11 OctY 2010





Plan View

SCALE: 1/2" = 1'-0"

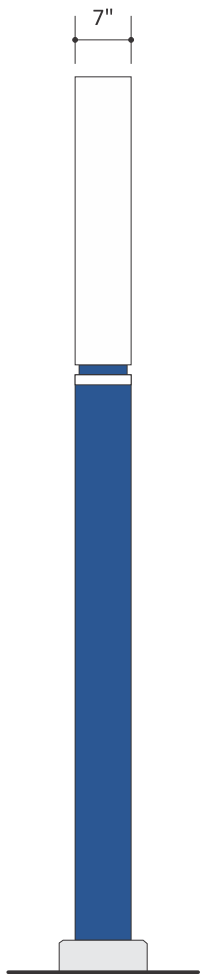


Side "A"

SCALE: 1/2" = 1'-0"

Square Footage = 39.56 ft.

1. Double-sided non-illuminated fabricated aluminum sign with sign face painted to match PMS 293C and Matthews MP32071 White Wonder in high gloss paint.
2. Logo painted in high gloss paint to match:
PMS 293C
PMS 313C
PMS 1225C



Side View

SCALE: 1/2" = 1'-0"

3. Bullnose accent painted Matthews MP18074 Sparkle Silver Metallic in semi-gloss.
4. Applied reflective vinyl text to match
3M Scotchlite 680-10 White and 3M Scotchlite 680-72 Red.
Helvetica Neue LT STD Medium



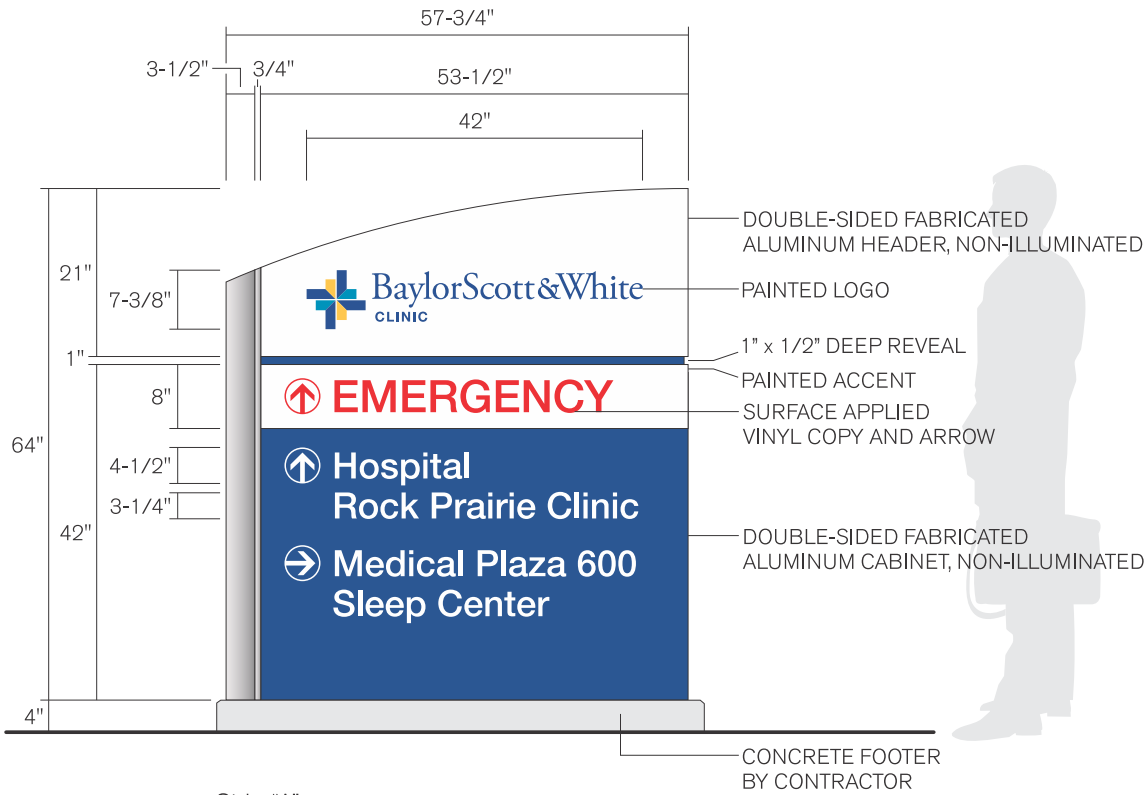
Side "B"

SCALE: 1/2" = 1'-0"



Plan View

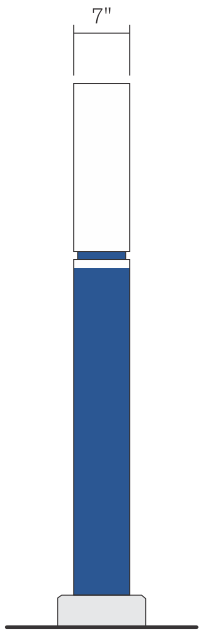
SCALE: 1/2" = 1'-0"



Side "A"

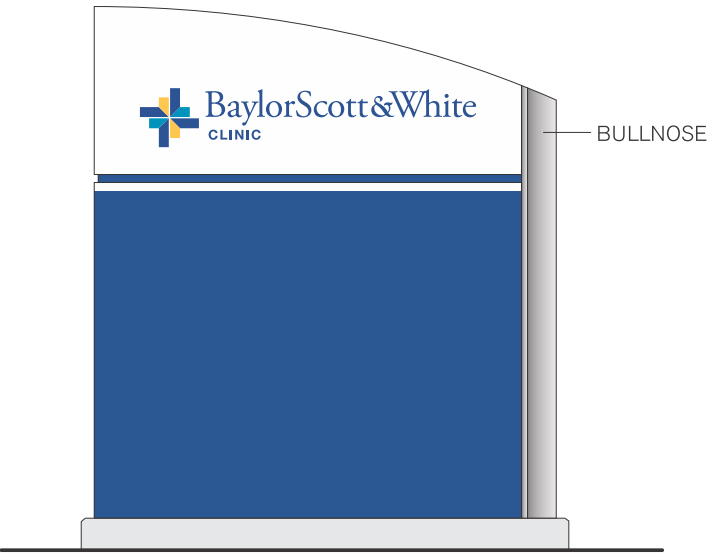
SCALE: 1/2" = 1'-0"

Square Footage = 25.67 ft.



Side View

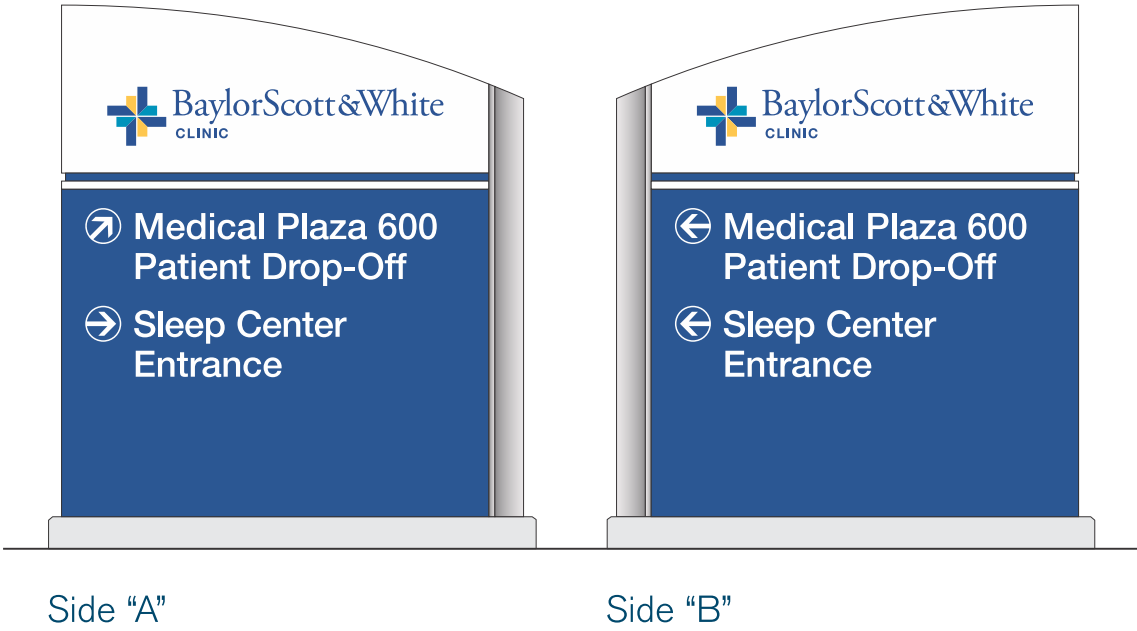
SCALE: 1/2" = 1'-0"



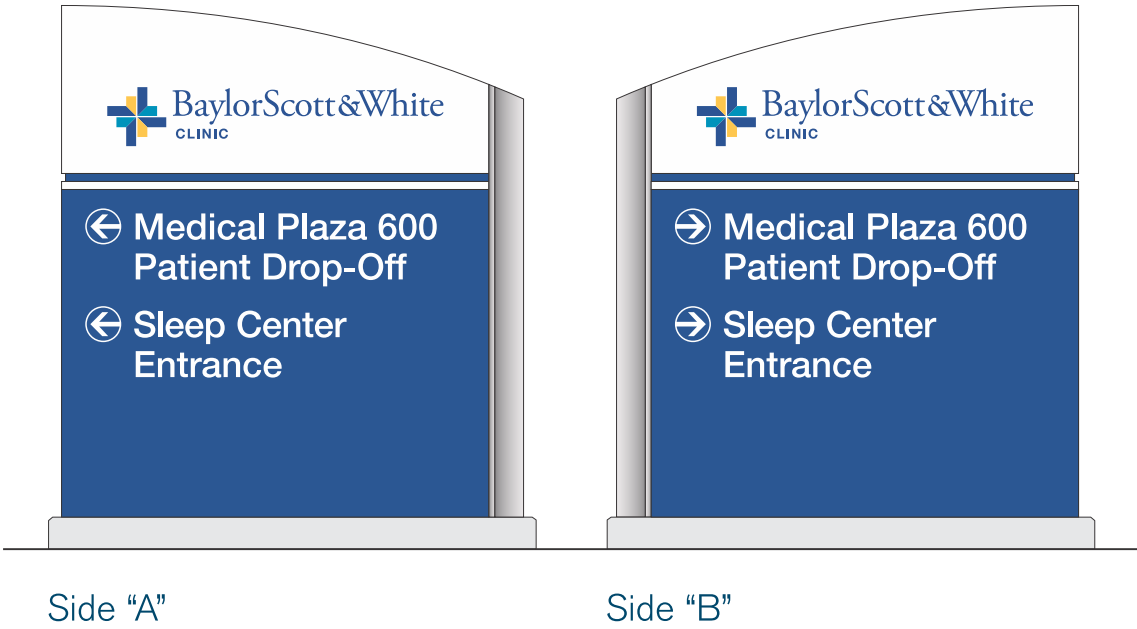
Side "B"

SCALE: 1/2" = 1'-0"

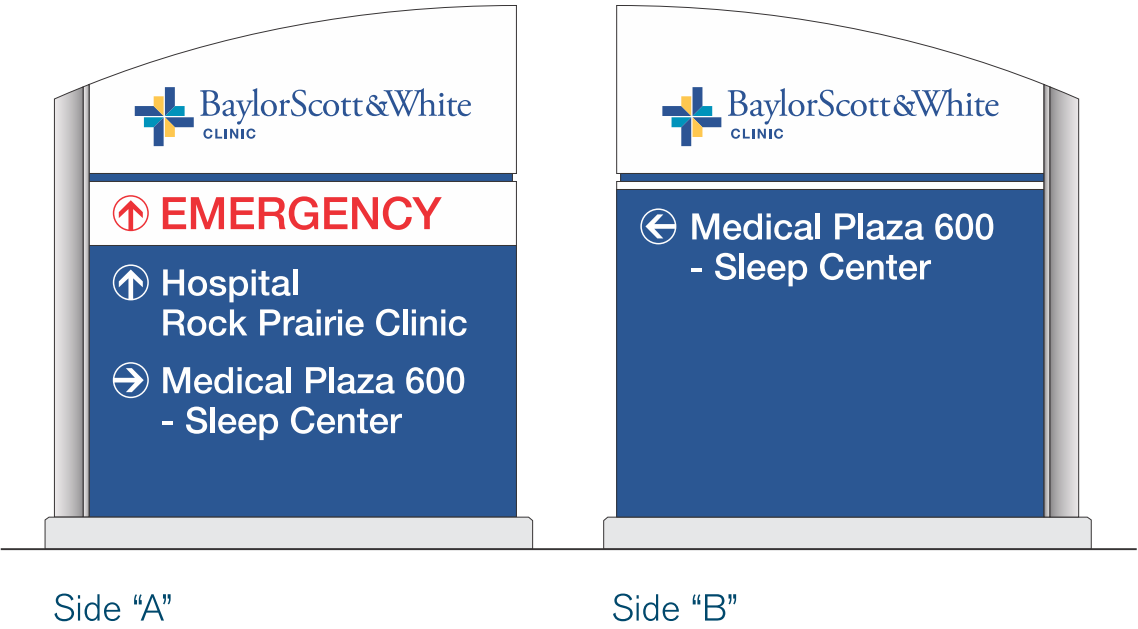
Location D4.1



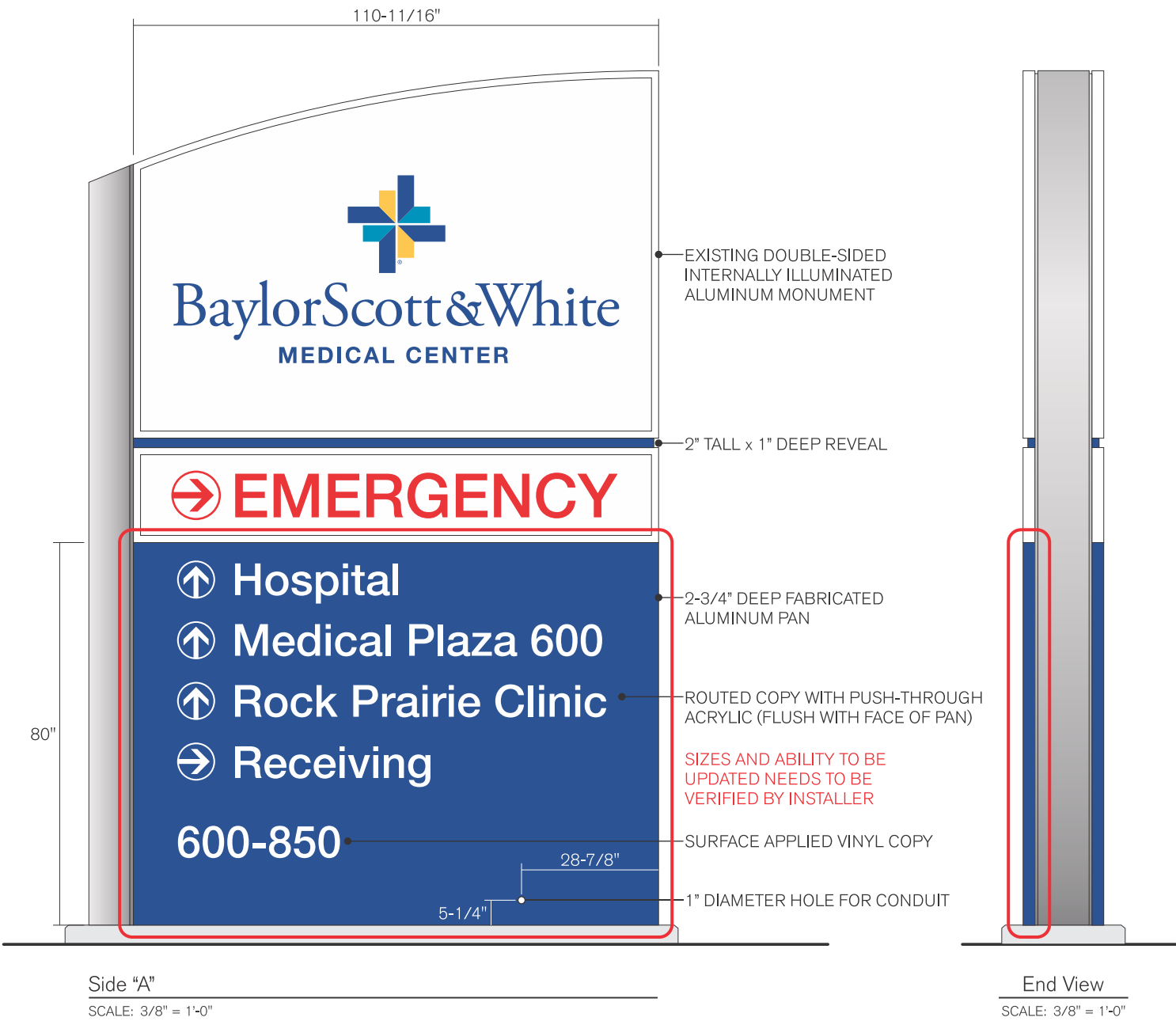
Location D4.2



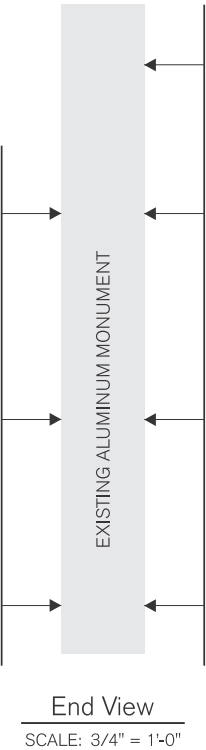
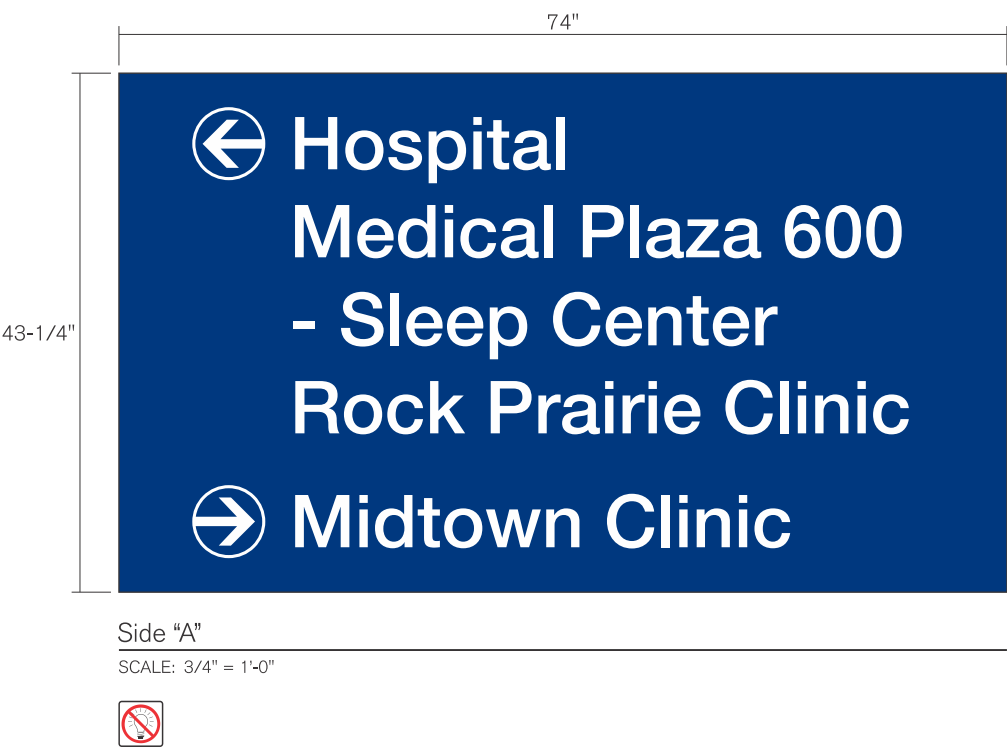
Location D4.3



LOCATION 1
SIDE A



LOCATION 2



EXISTING CONDITIONS



EXISTING CONDITIONS



LOCATION 3
NO CHANGES



LOCATION 4
NO CHANGES



LOCATION 5
NO CHANGES



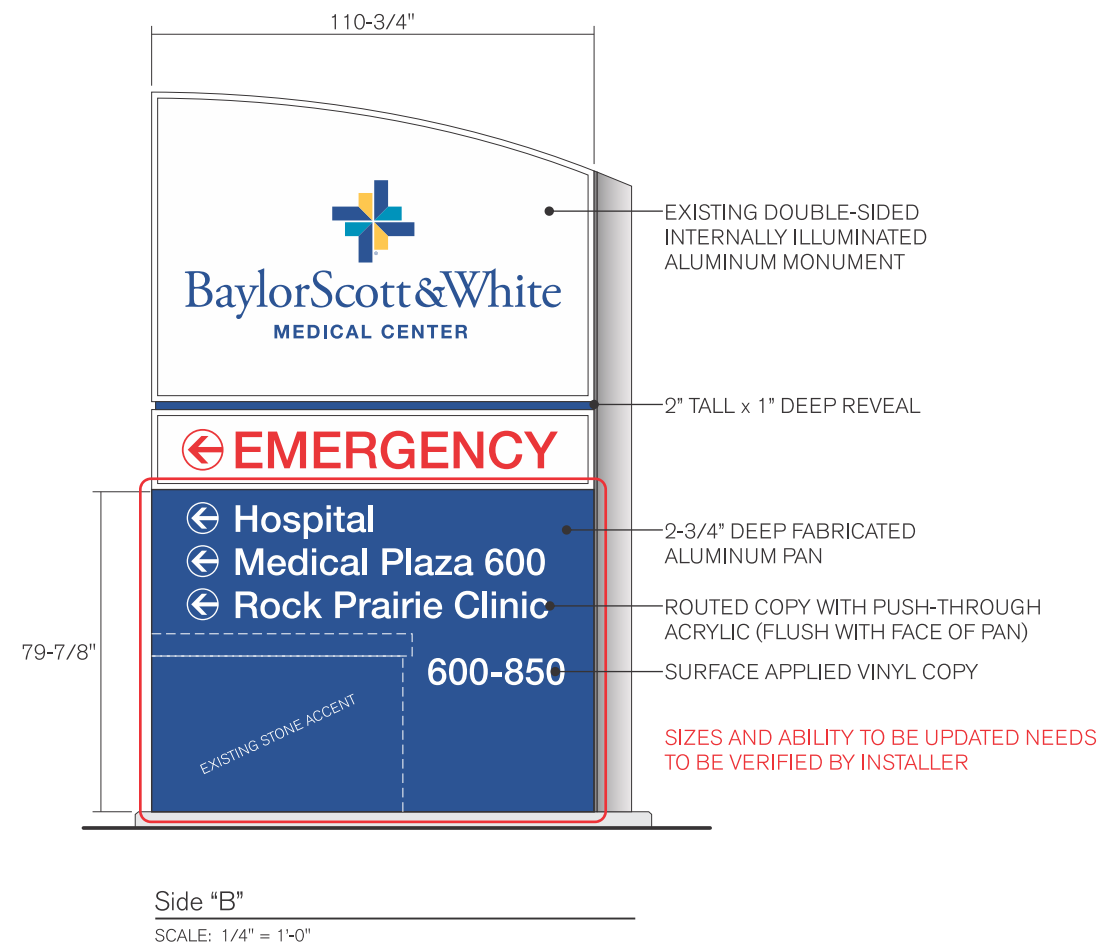
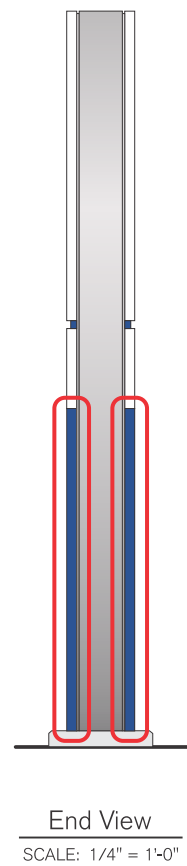
LOCATION 6
NO CHANGES





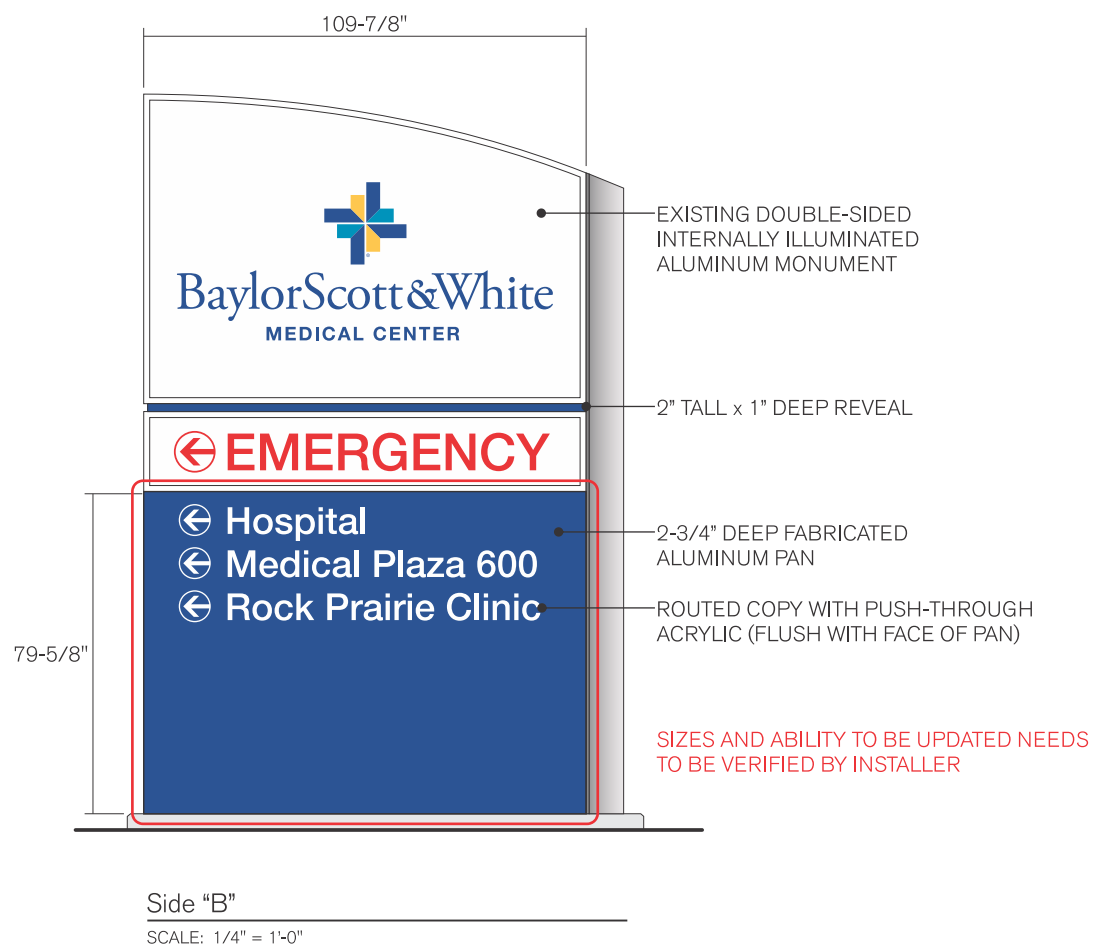
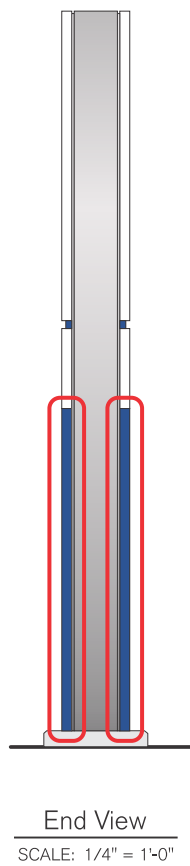
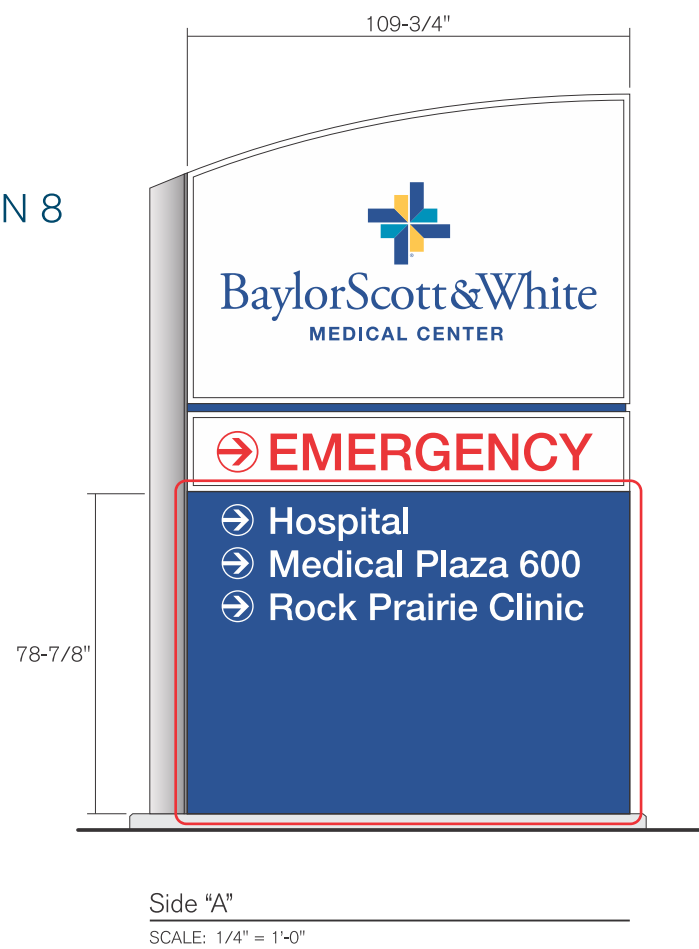
EXISTING CONDITIONS

LOCATION 7

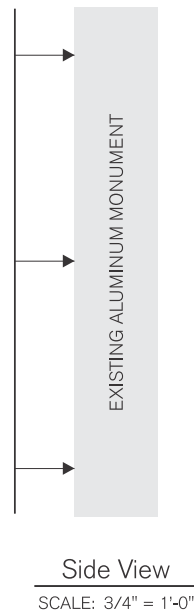
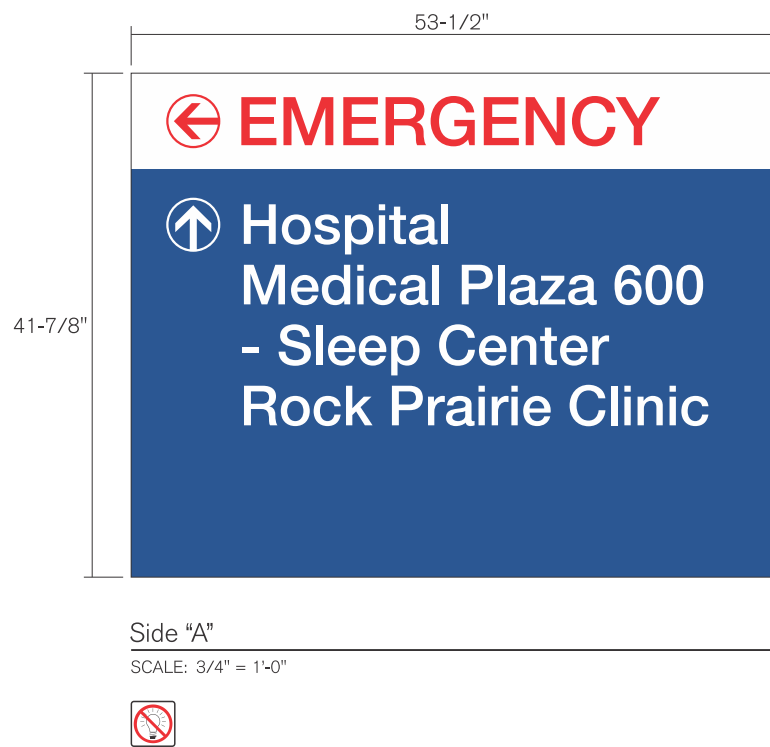




LOCATION 8



LOCATION 9



EXISTING CONDITIONS

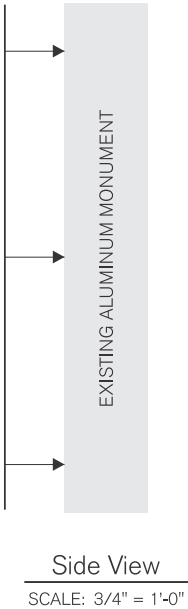
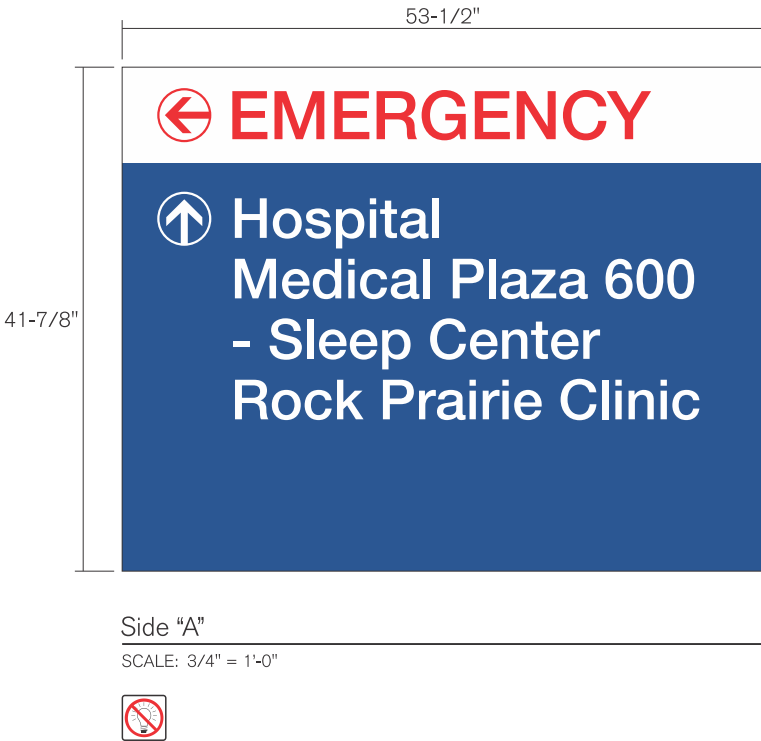


Side A

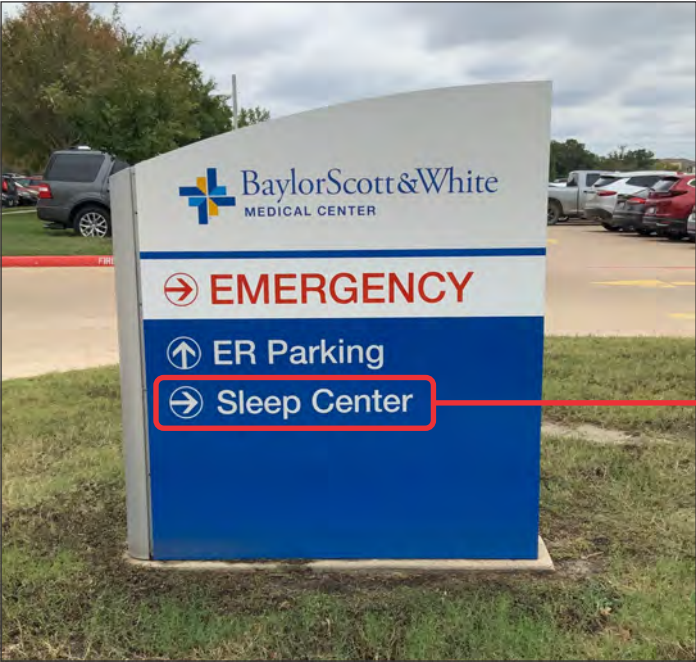


Side B

LOCATION 10



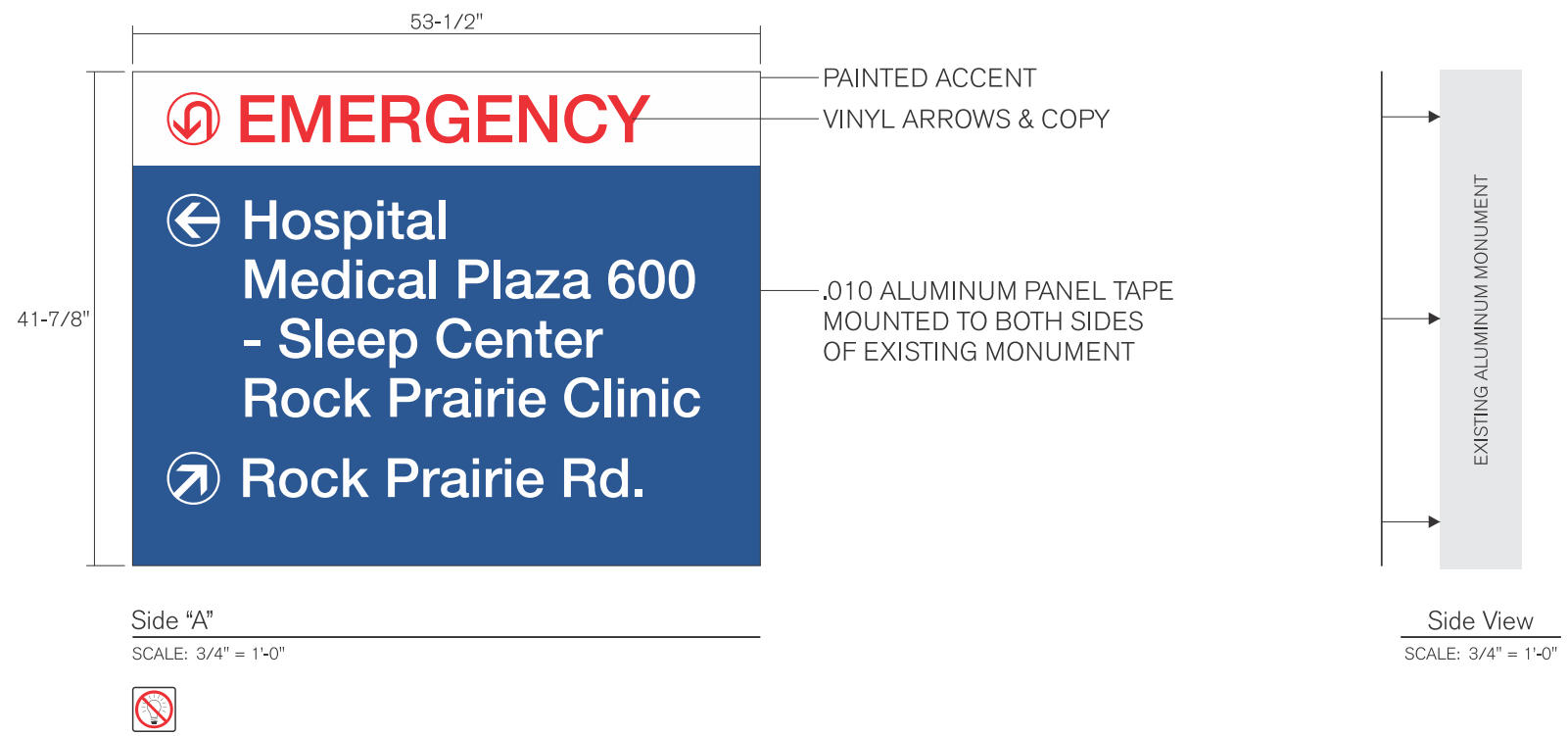
EXISTING CONDITIONS



LOCATION 11



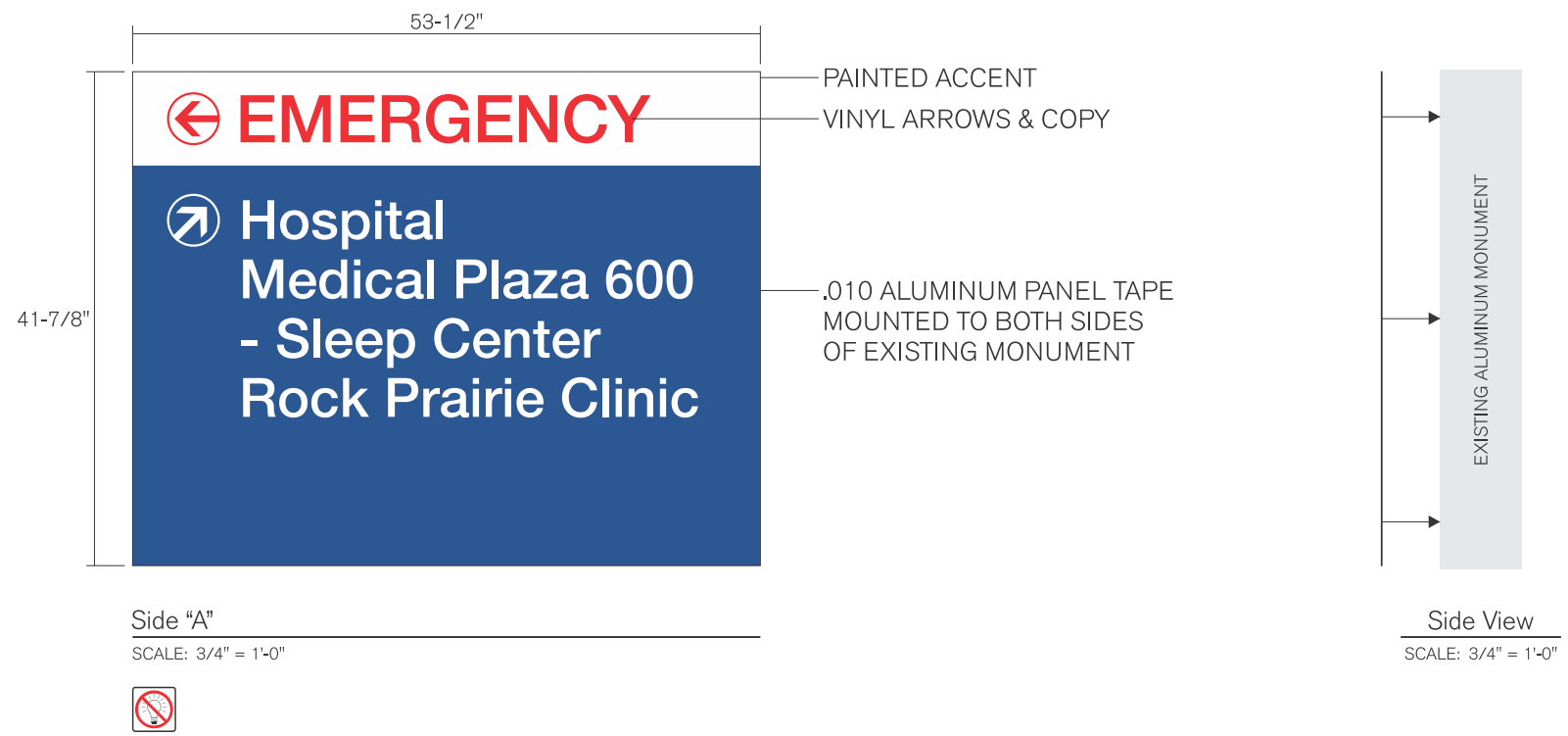
LOCATION 12



EXISTING CONDITIONS



LOCATION 13



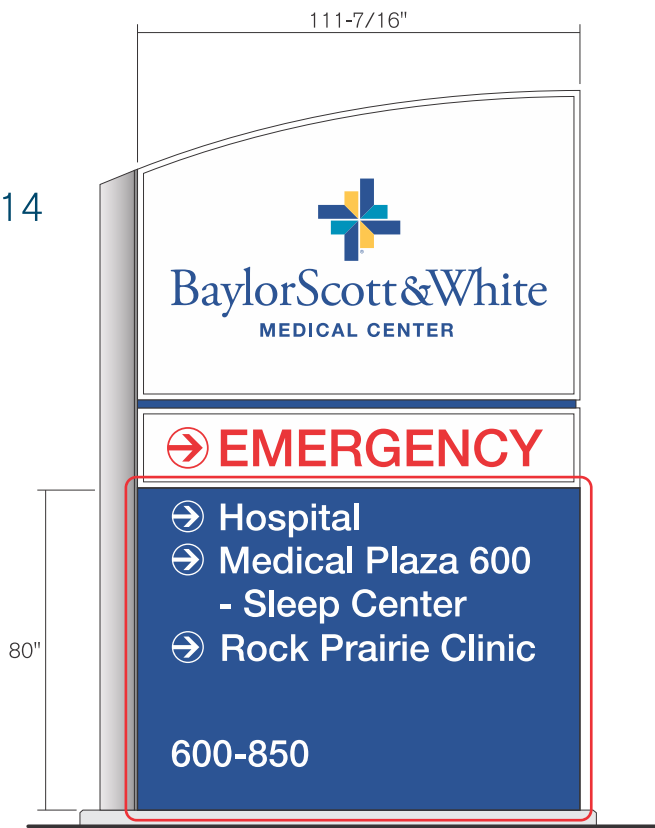
EXISTING CONDITIONS





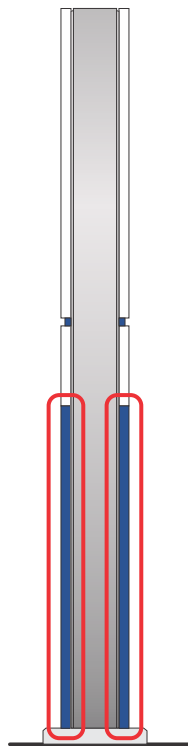
EXISTING CONDITIONS

LOCATION 14



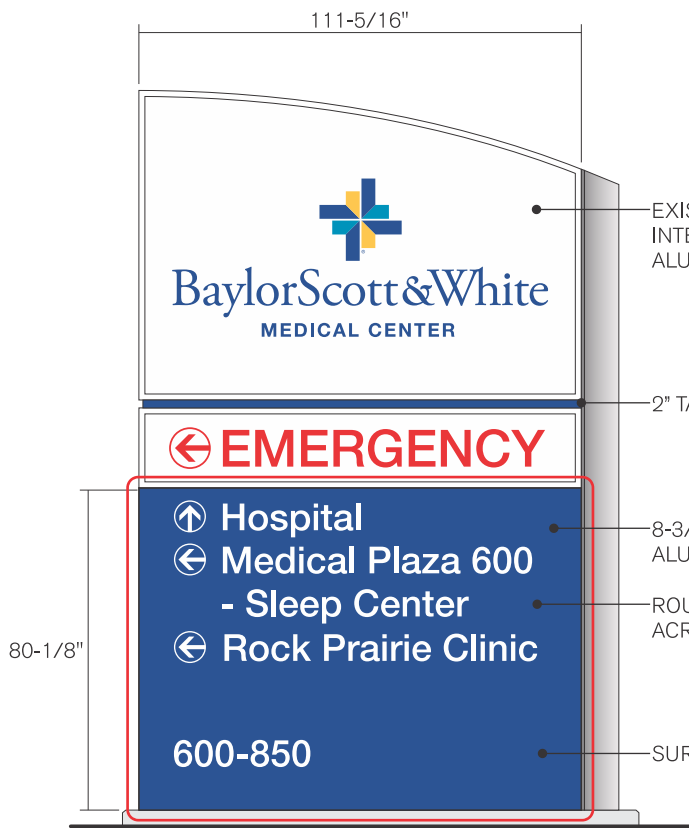
Side "A"

SCALE: 1/4" = 1'-0"



End View

SCALE: 1/4" = 1'-0"



Side "B"

SCALE: 1/4" = 1'-0"

EXISTING DOUBLE-SIDED INTERNALLY ILLUMINATED ALUMINUM MONUMENT

2" TALL x 1" DEEP REVEAL

8-3/4" DEEP FABRICATED ALUMINUM PAN

ROUTED COPY WITH PUSH-THROUGH ACRYLIC (FLUSH WITH FACE OF PAN)

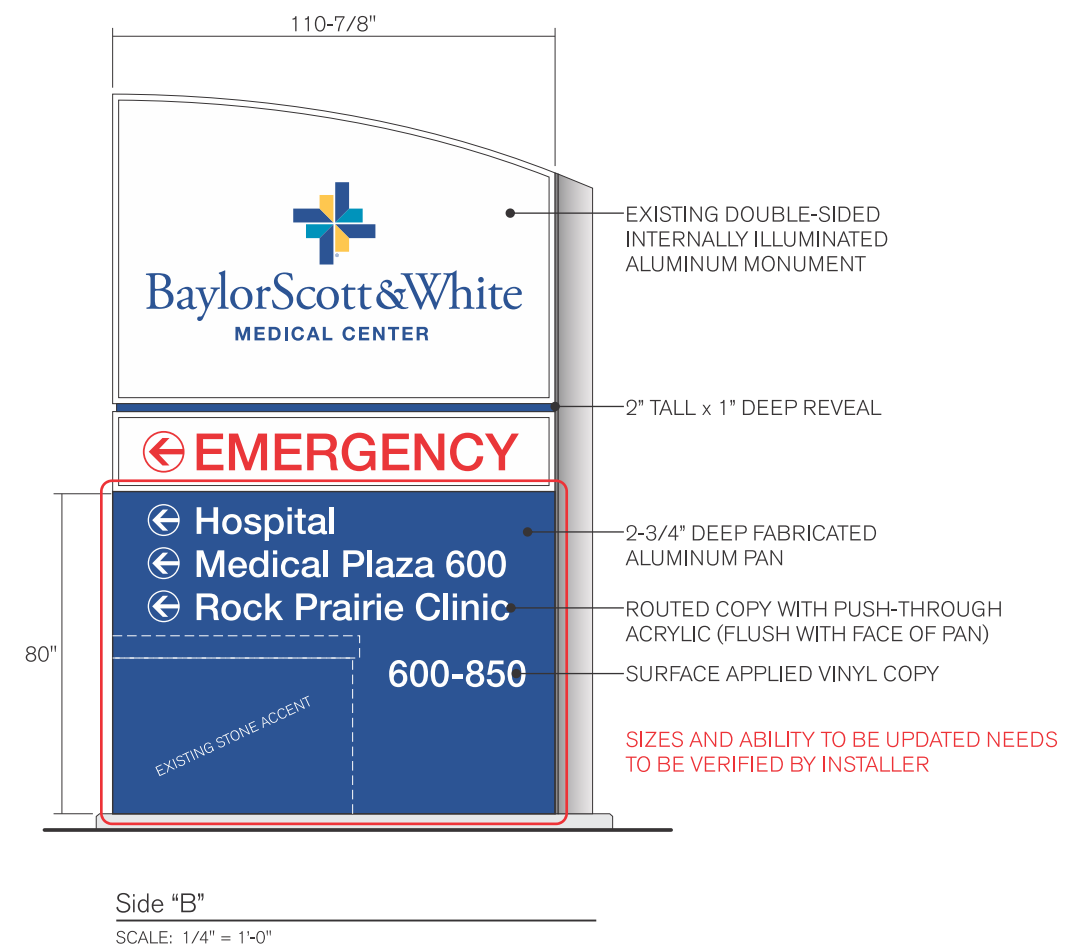
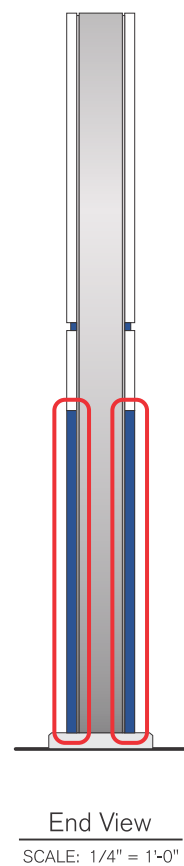
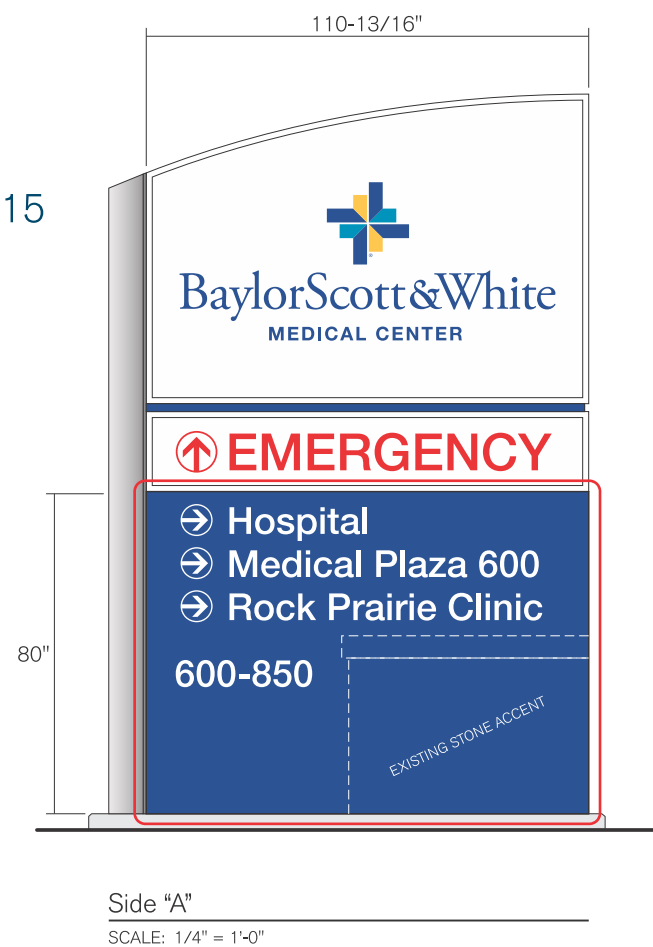
SURFACE APPLIED VINYL COPY

SIZES AND ABILITY TO BE UPDATED NEEDS TO BE VERIFIED BY INSTALLER

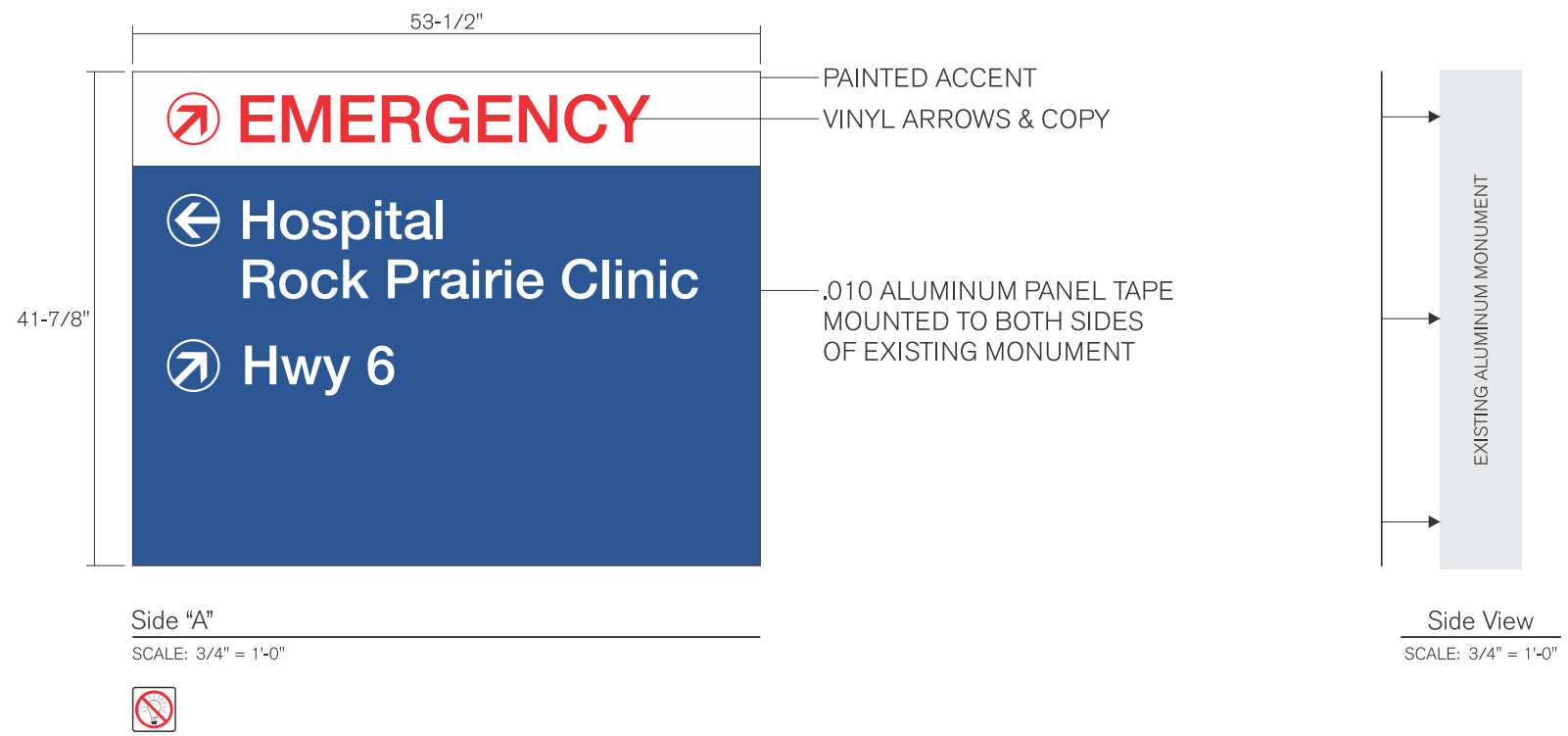


EXISTING CONDITIONS

LOCATION 15



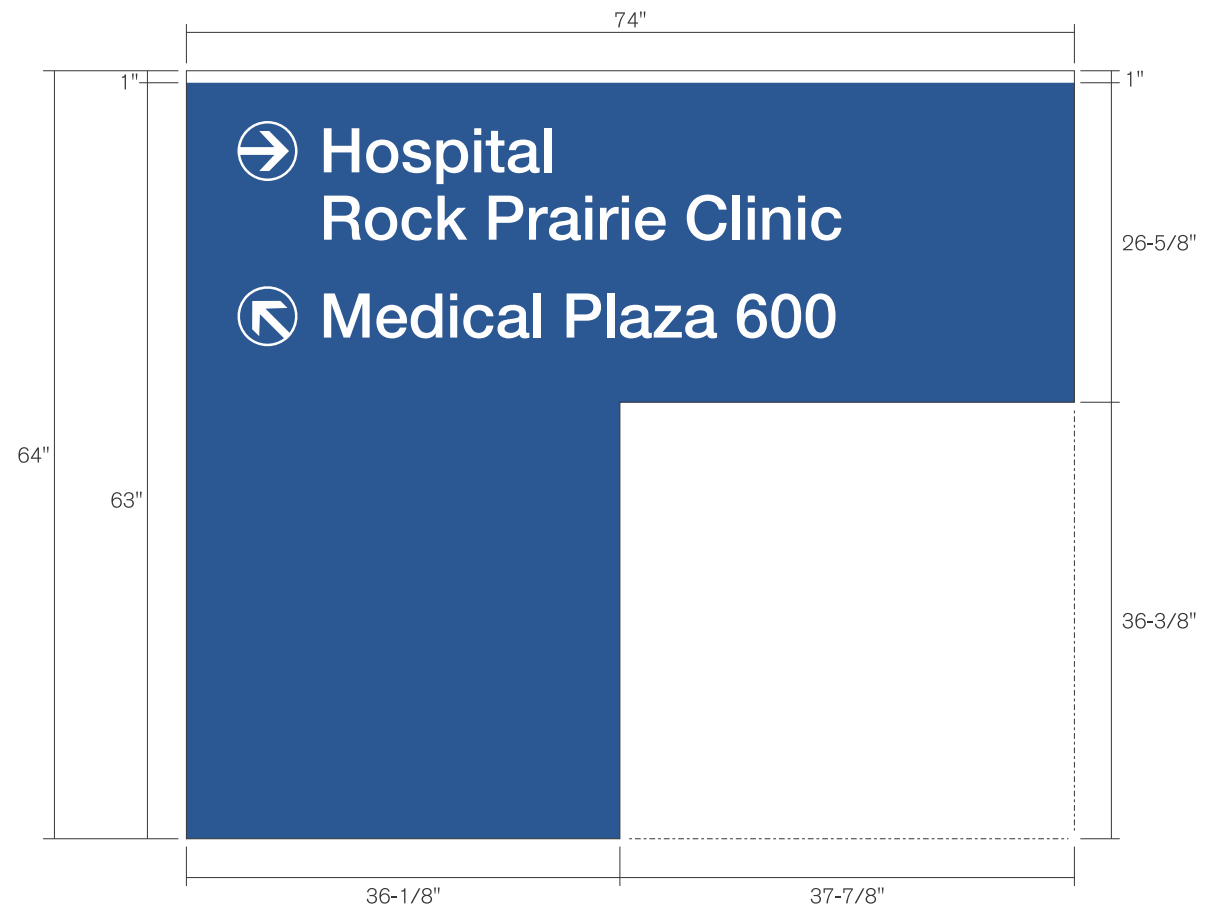
LOCATION 16



EXISTING CONDITIONS



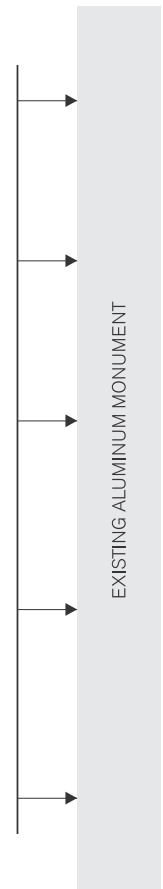
LOCATION 17



Front View

SCALE: 3/4" = 1'-0"

- (1) 64" x 74" x .010" ALUMINUM PANEL TAPE MOUNTED TO EXISTING MONUMENT.
- PAINTED ACCENT AT TOP OF PANELS
- VINYL COPY



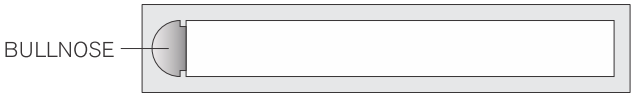
Side View

SCALE: 3/4" = 1'-0"

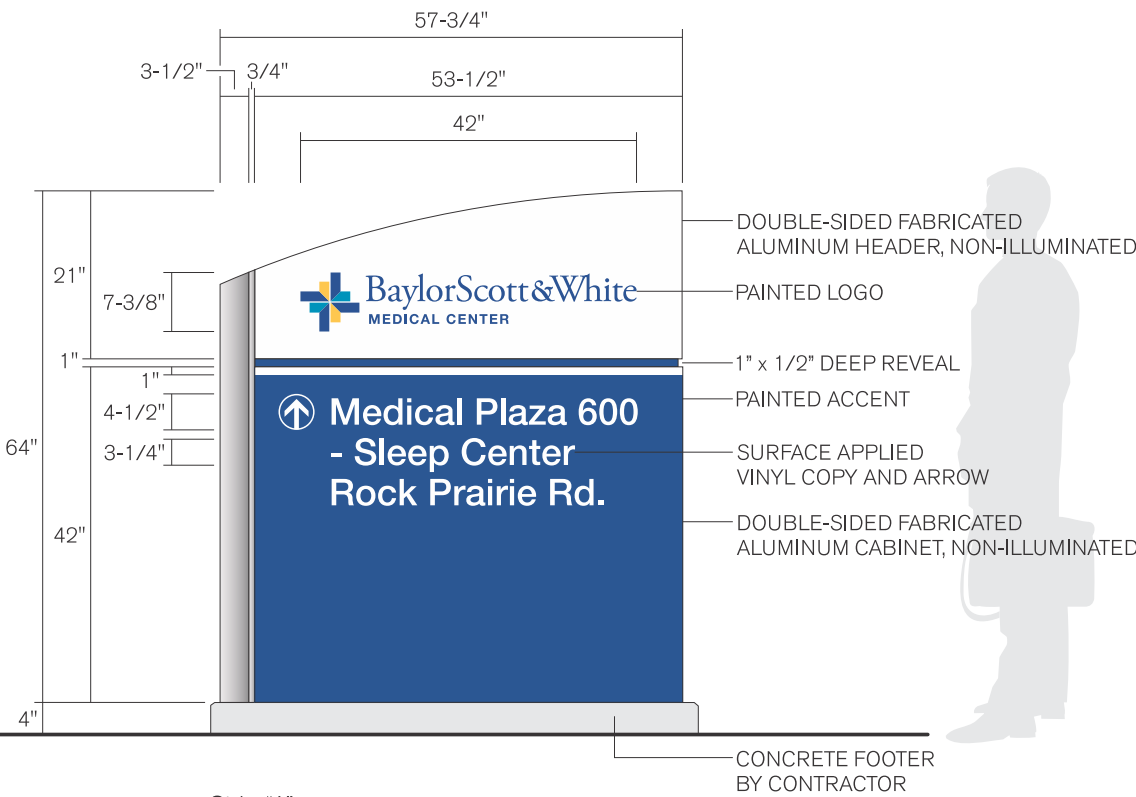


EXISTING CONDITIONS

LOCATION 18
SIGN TYPE EXT.D4



Plan View
SCALE: 1/2" = 1'-0"



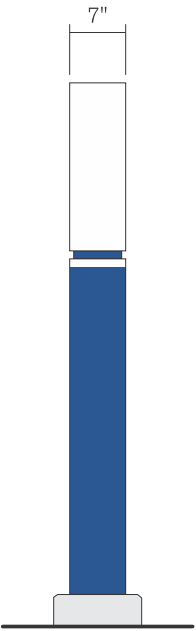
Side "A"
SCALE: 1/2" = 1'-0"



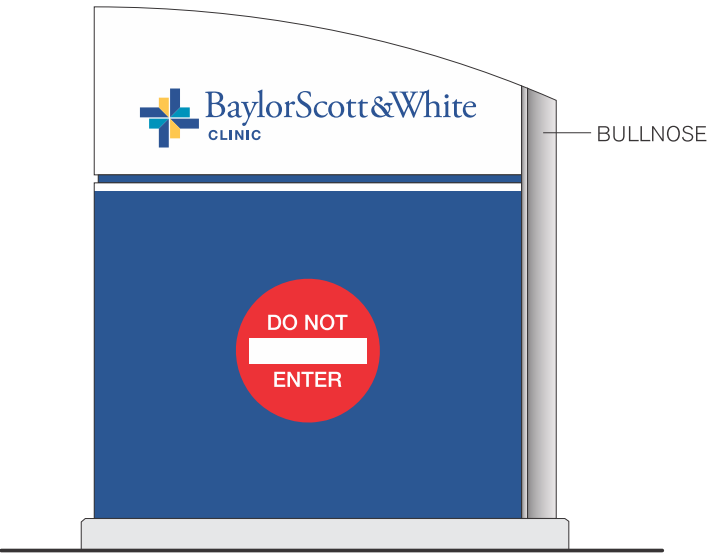
EXISTING CONDITIONS



RECOMMENDATION

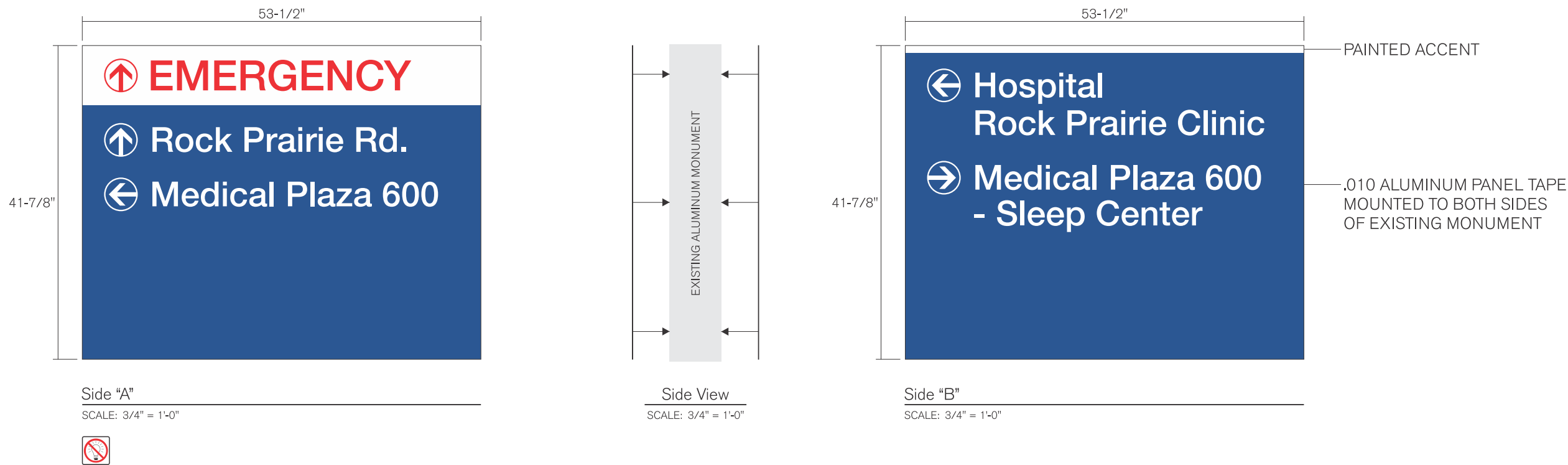


Side View
SCALE: 1/2" = 1'-0"



Side "B"
SCALE: 1/2" = 1'-0"

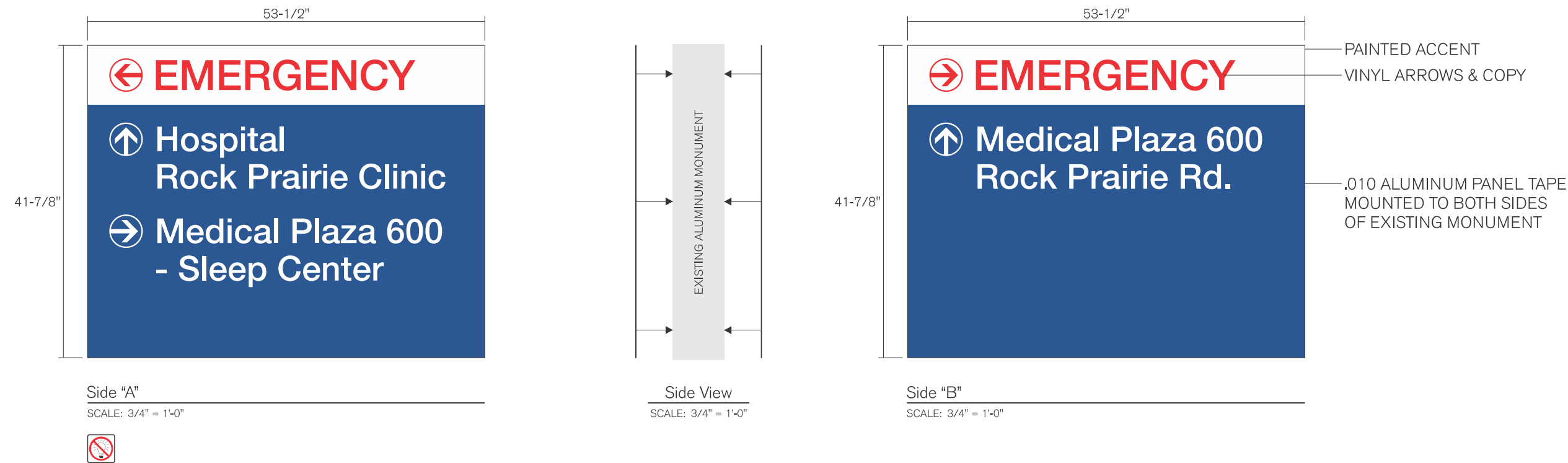
LOCATION 19



EXISTING CONDITIONS



LOCATION 20



EXISTING CONDITIONS



LOCATION 21
NO CHANGES



LOCATIONS 22.1 & 22.2
EXISTING CONDITIONS



10-1/2"

181"

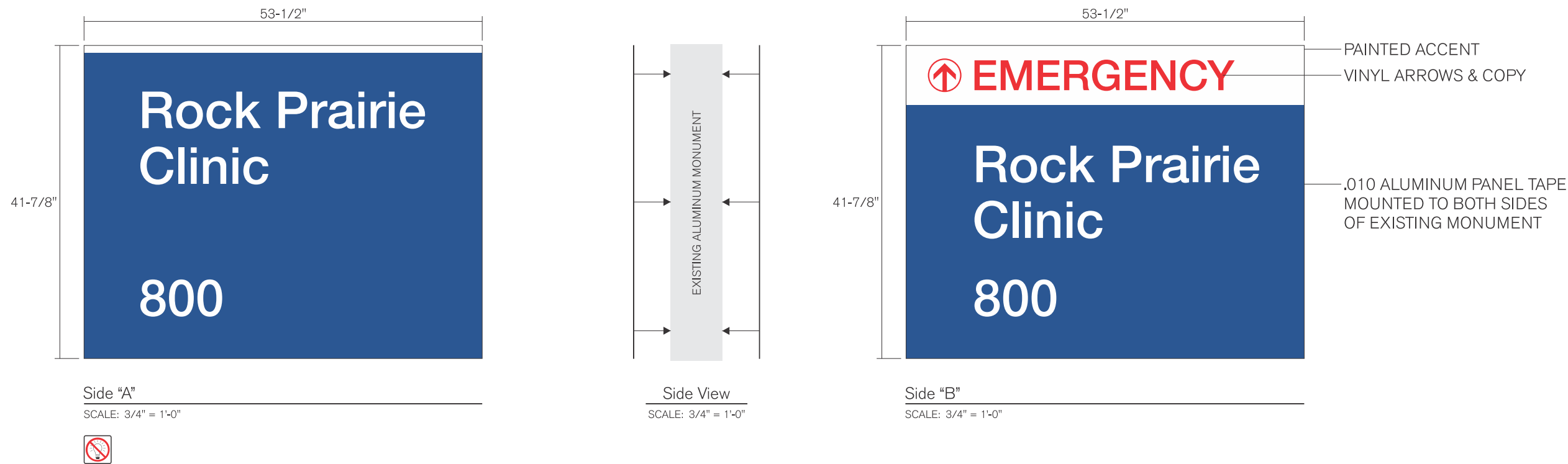
ROCK PRAIRIE CLINIC

Front View
SCALE: 1/2" = 1'-0"

(2) SETS OF 1/4" THICK ALUMINUM LETTERS MOUNTED TO METAL CANOPY

Side View
SCALE: 1/2" = 1'-0"

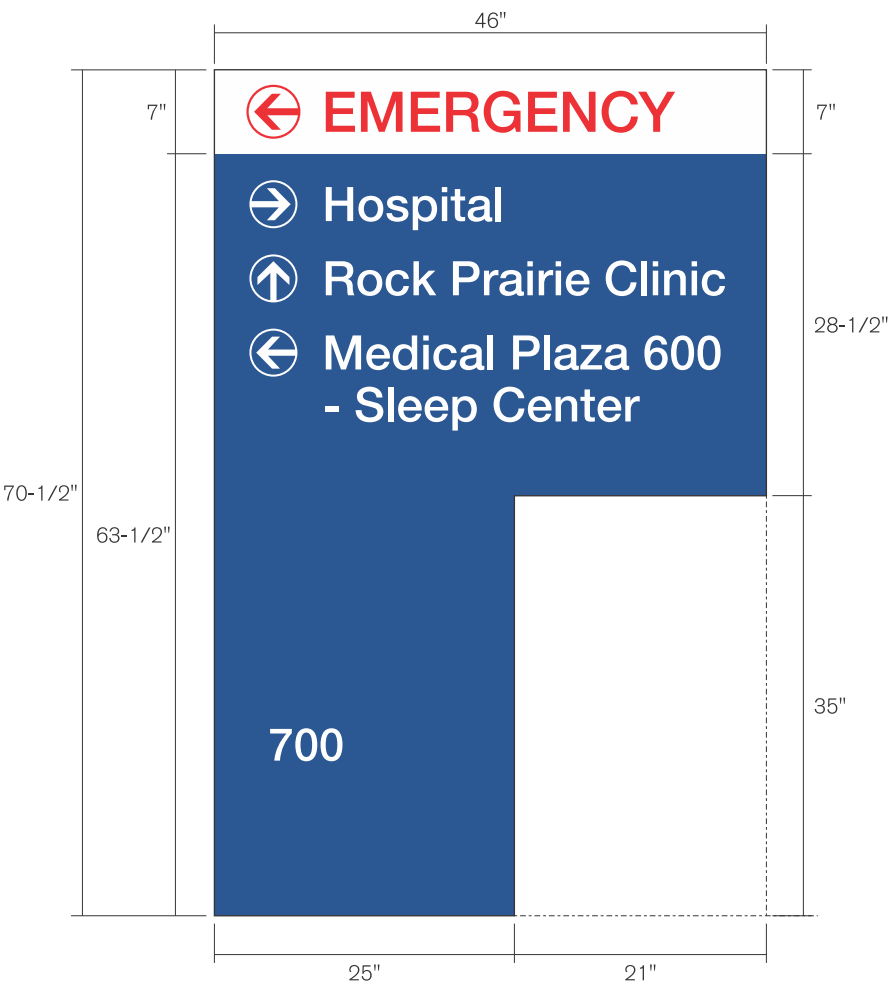
LOCATION 23



EXISTING CONDITIONS



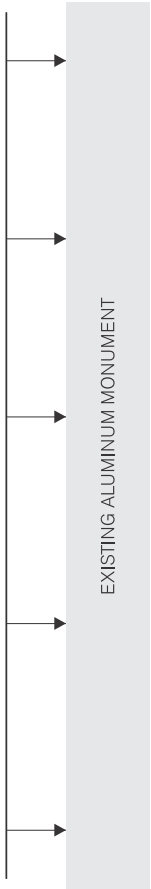
LOCATION 24



Front View

SCALE: 3/4" = 1'-0"

- (1) 70-1/2" x 46" x .010" ALUMINUM PANEL TAPE
MOUNTED TO EXISTING MONUMENT.
- PAINTED ACCENT AT TOP OF PANELS
- VINYL COPY



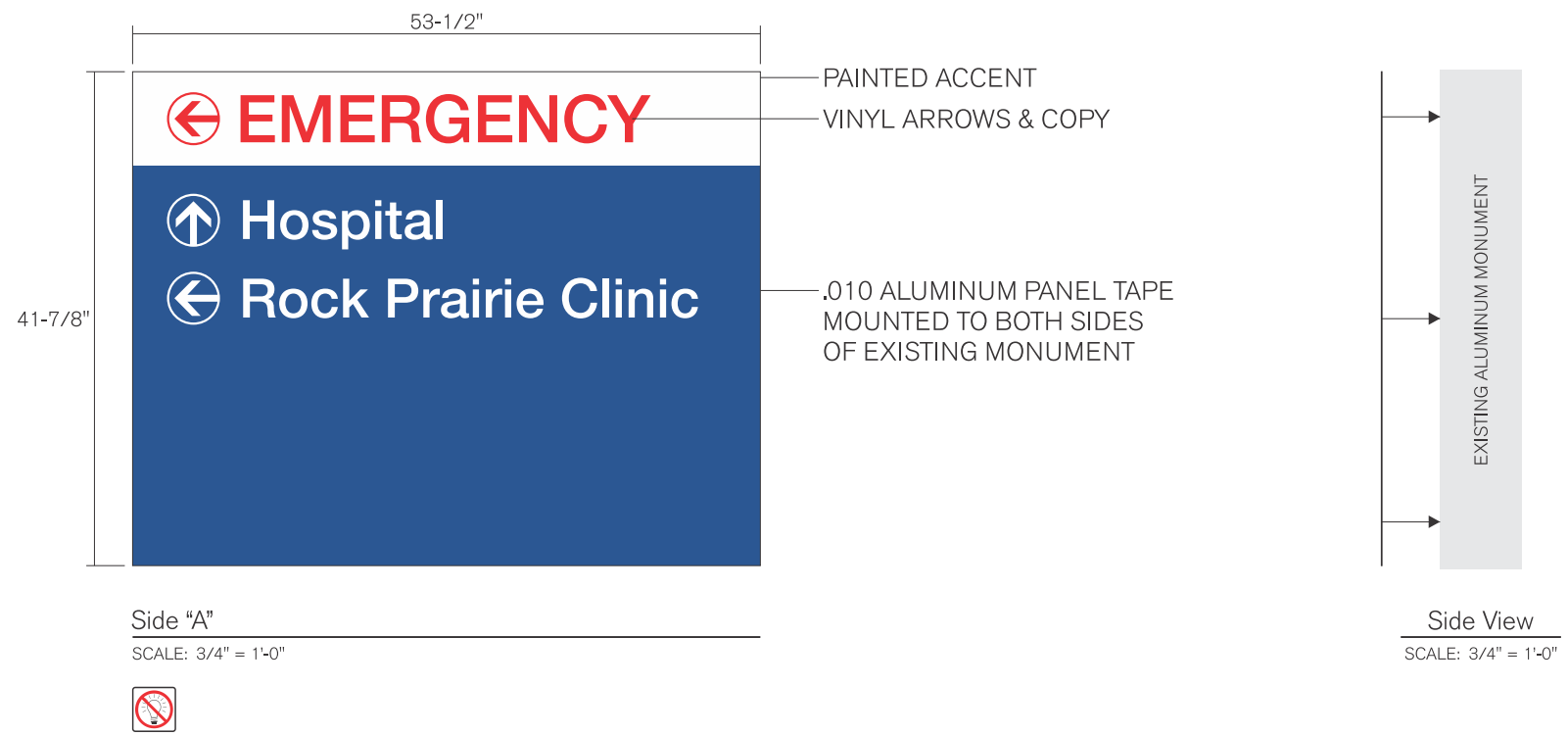
Side View

SCALE: 3/4" = 1'-0"



EXISTING CONDITIONS

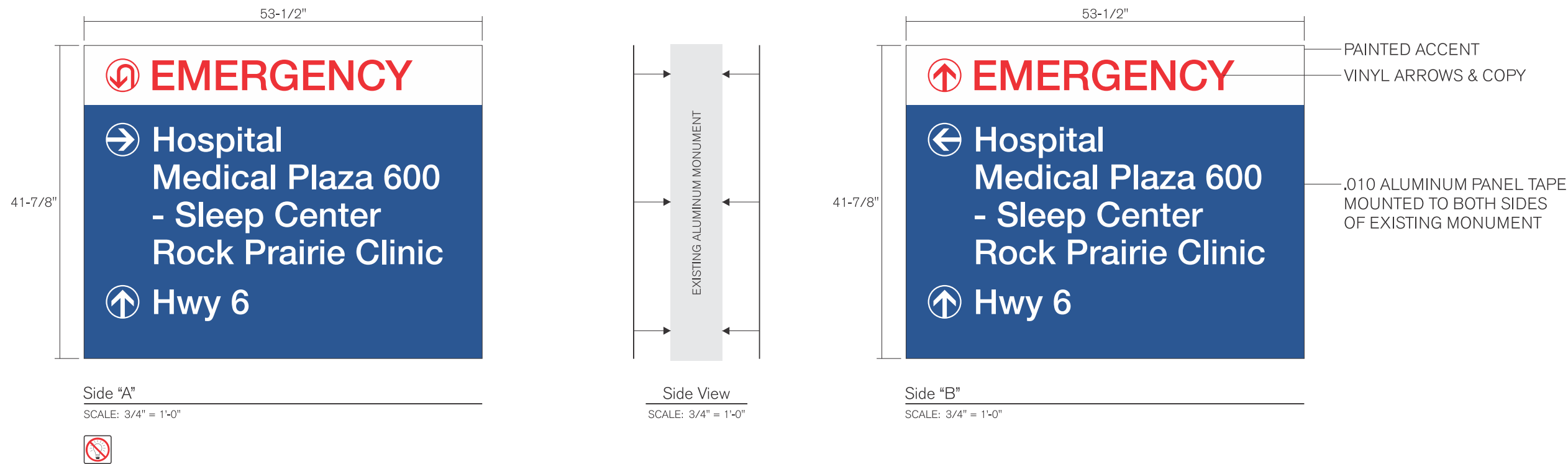
LOCATION 25



EXISTING CONDITIONS



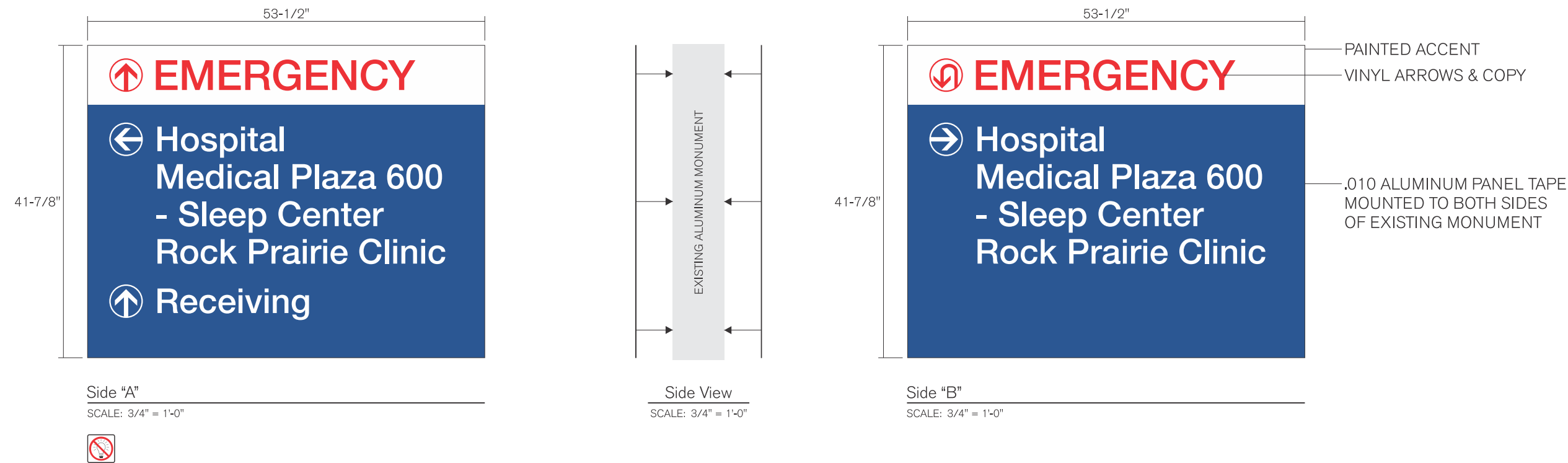
LOCATION 26



EXISTING CONDITIONS



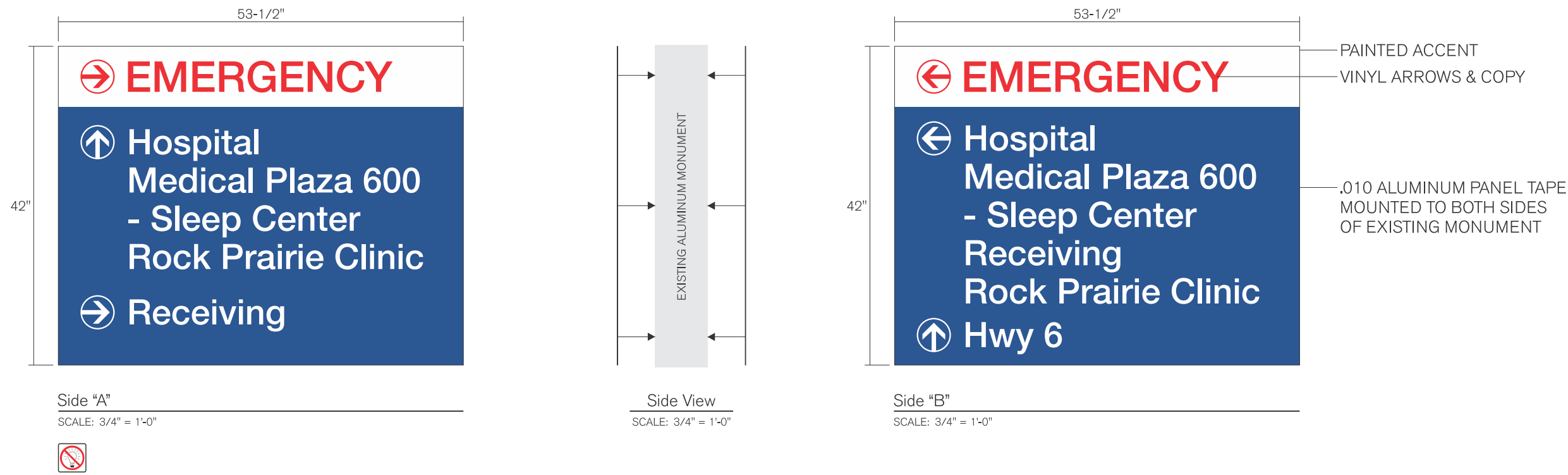
LOCATION 27



EXISTING CONDITIONS

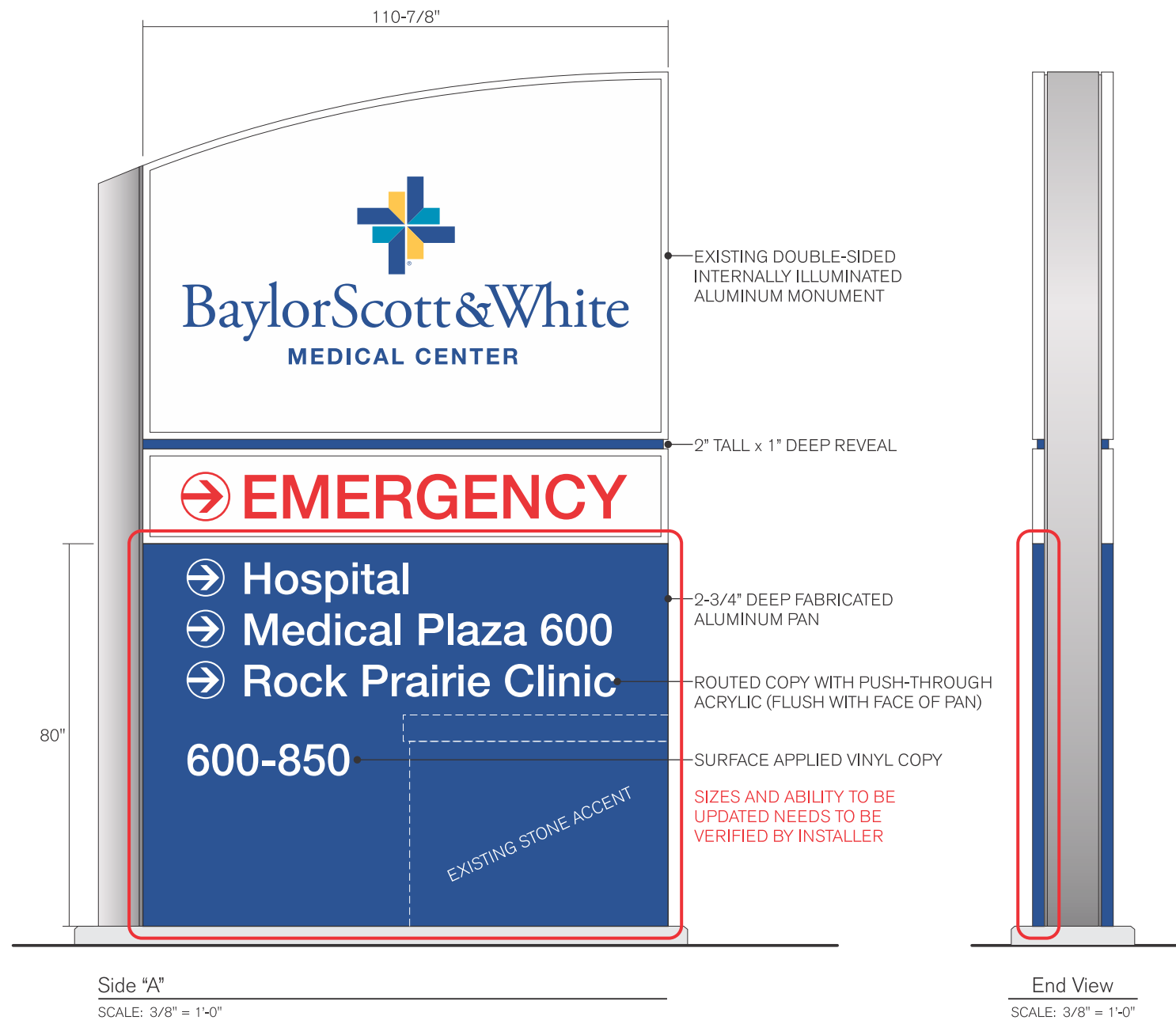


LOCATION 28



EXISTING CONDITIONS

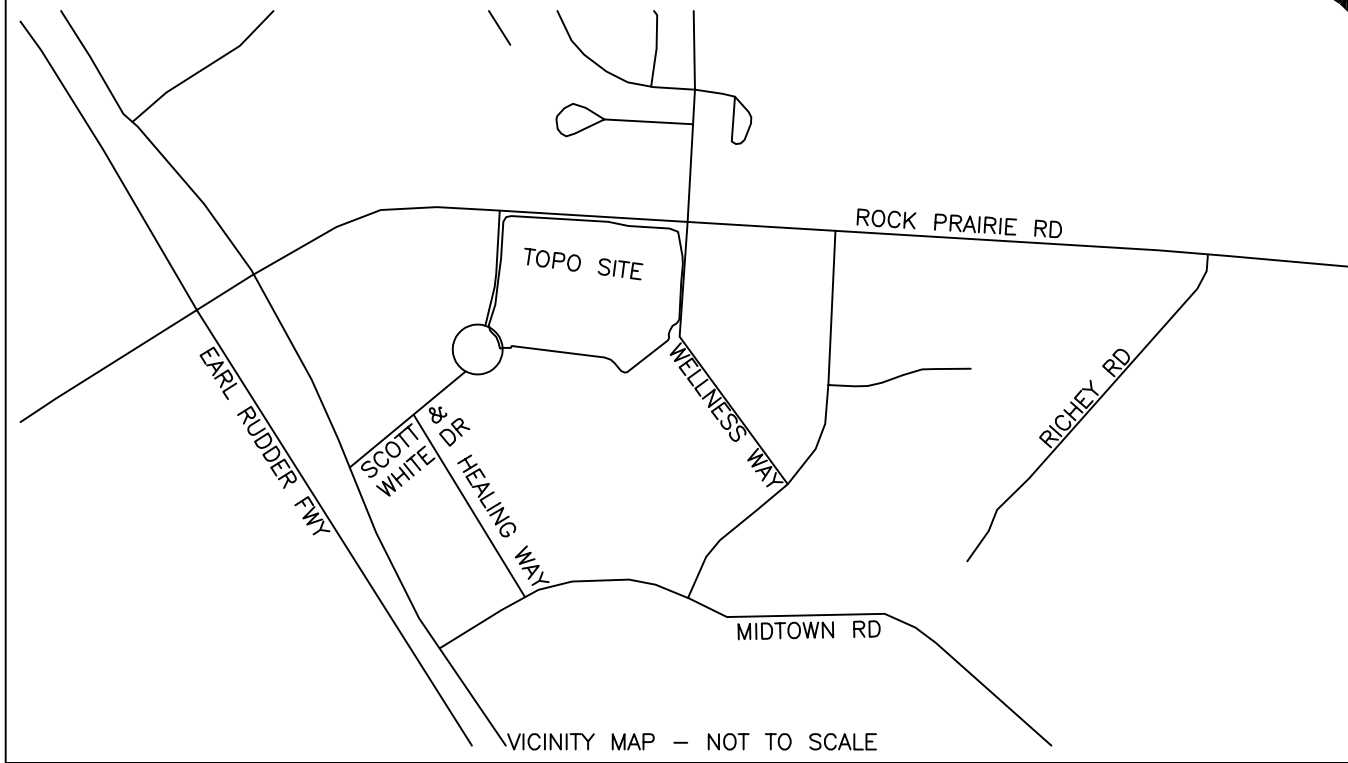
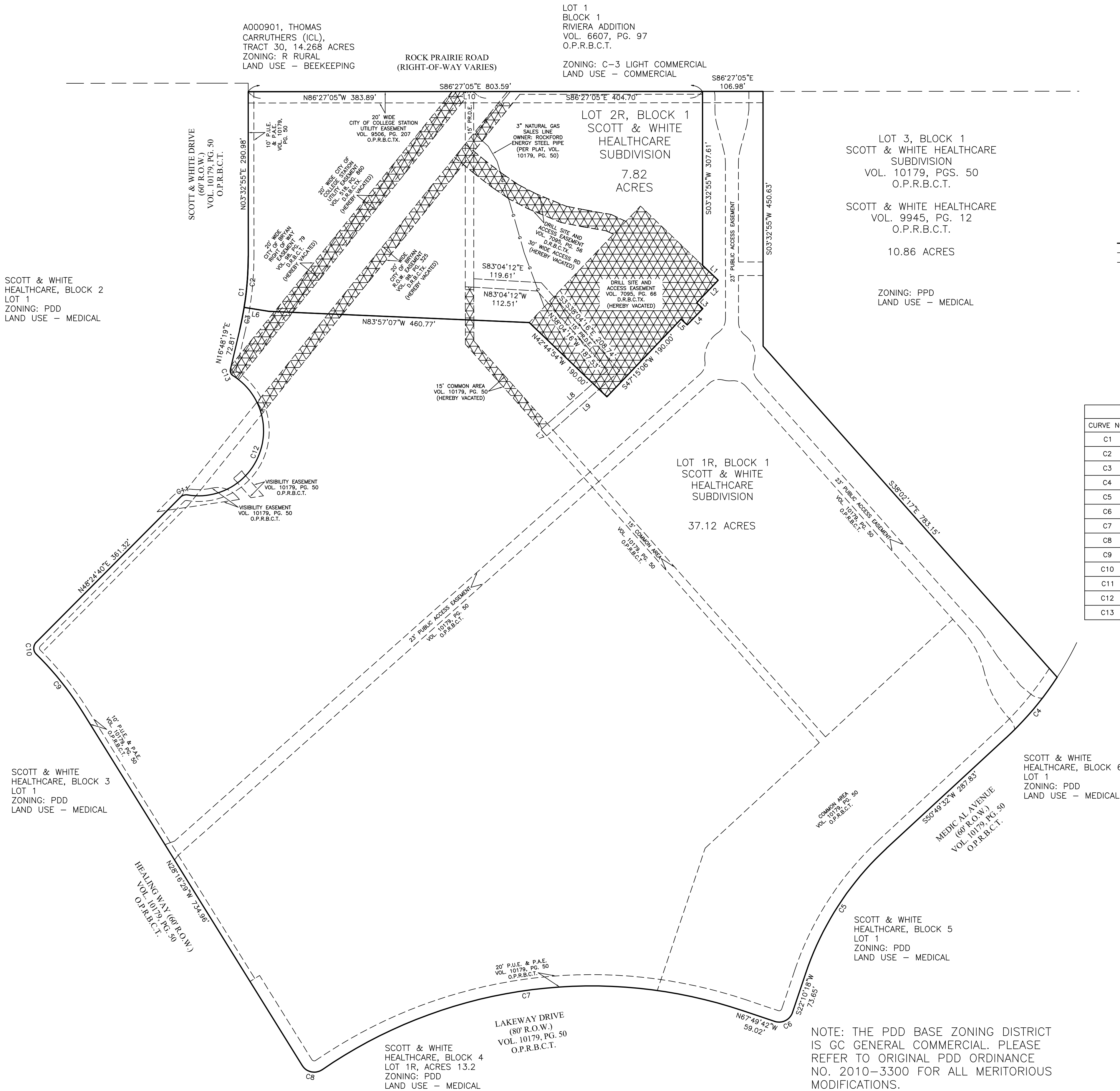
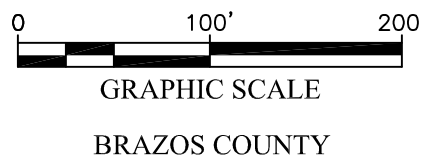




LOCATION 29 SIDE A

EXISTING CONDITIONS





- LEGEND
- PARCEL LIMITS
 - ADJOINER PROPERTY
 - EASEMENTS
 - REBAR FOUND
 - REBAR SET W/SAM CAP
 - IRON PIN FOUND
 - RECORD INFORMATION
 - DEED RECORDS, BRAZOS COUNTY, TEXAS
 - OFFICIAL PUBLIC RECORDS, BRAZOS COUNTY, TEXAS
 - P.U.E. PUBLIC UTILITY EASEMENT
 - P.A.E. PUBLIC ACCESS EASEMENT
 - PR.D.E. PRIVATE DRAINAGE EASEMENT

OWNER:
SCOTT & WHITE HEALTHCARE
BAYLOW SCOTT & WHITE HEALTH
2401 SOUTH 31ST STREET
BRYAN, TEXAS 77803

CURVE TABLE					
CURVE NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD LENGTH
C1	013°15'23"	565.00'	130.72'	N10°10'37"E	130.43'
C2	009°13'08"	565.00'	90.91'	N08°09'29"E	90.81'
C3	004°02'16"	565.00'	39.82'	N14°47'11"E	39.81'
C4	014°10'45"	570.00'	141.06'	N43°44'10"E	140.70'
C5	028°39'13"	530.00'	265.05'	S36°29'55"W	262.30'
C6	090°00'54"	25.00'	39.28'	N67°10'18"E	35.36'
C7	053°08'44"	840.00'	779.15'	S85°35'57"W	751.52'
C8	092°42'18"	25.00'	40.45'	S74°37'27"E	36.18'
C9	013°32'31"	560.00'	132.36'	N35°02'44"W	132.05'
C10	090°15'11"	15.00'	23.63'	S03°17'50"W	21.26'
C11	054°46'27"	15.00'	14.34'	S75°47'38"W	13.80'
C12	157°42'13"	115.00'	316.53'	N24°19'21"E	225.66'
C13	071°19'25"	10.00'	12.45'	S18°51'47"E	11.66'

LINE TABLE		
NUMBER	DIRECTION	LENGTH
L1	S42°44'54"E	38.11'
L2	S47°15'06"W	55.00'
L3	S42°44'54"E	15.00'
L4	S47°15'06"W	40.00'
L5	N42°44'54"W	15.00'
L6	N77°13'58"W	44.41'
L7	N38°02'17"W	15.00'
L8	N51°55'48"E	157.80'
L9	S51°55'48"W	172.81'
L10	N86°27'05"W	15.00'



4801 Southwest Parkway
Building Two, Suite 100
Austin, Texas 78735
Ofc: 512.447.0575
Fax: 512.326.3029
email: info@sam.biz

PROJECT: WALTER P. MOORE
BSW COLLEGE STATION

JOB NUMBER: 68571
DATE: 8/17/2022
SCALE: 1" = 60'
SURVEYOR: D. ZDANCEWICZ
TECHNICIAN: E. BROWN
DRAWING: BSW COLLEGE STATION_REPLAT
TRACT ID: -
PARTYCHIEF: -
FIELDBOOKS: -

REZONING EXHIBIT
SCOTT & WHITE HEALTHCARE SUBDIVISION
LOT 1 & LOT 2, BLOCK 1
VOLUME 10179, PAGE 50
O.P.R.B.C.T.
THOMAS CARUTHERS LEAGUE, ABSTRACT NO. 9
BRAZOS COUNTY, TEXAS

SHEET 2
OF 2

Oct 13, 2022, 12:25pm X:\M02\2022\220202-00 BSW College Station MOB 2\Civil2\Design\04-Exhibits\Concept Plan Exhibit\MO2-220202-00-CONCEPT PLAN EXHIBIT.dwg

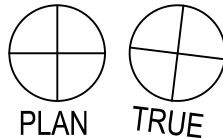
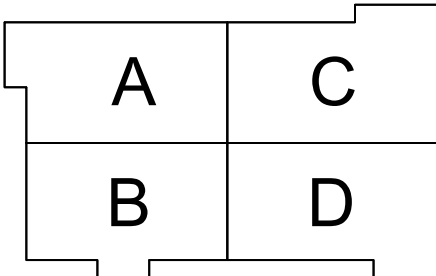


EYP, Inc.

201 West 5th St.
Suite 1100
Austin, TX 78701
512 808 1000 eypae.com



Walter P Moore and
Associates, Inc.
401 South 1st street, Suite 600
Austin, TX 78704
512.330.1270



KEY PLAN

#	Revision	Date

COLLEGE STATION MOB II



**BAYLOR SCOTT & WHITE
HEALTH**

700 Scott and White Drive
College Station, TX 77845
Total Site Area = 6.7 ACRES

SCHEMATIC DESIGN

INTERIM REVIEW ONLY

Document Incomplete: Not intended
for permit or construction.

Engineer: **DAVID S. LUNDBERG, P.E.**

P.E. Serial No.: **130058**

Date: **09-28-2022**

Walter P. Moore and Associates, Inc.
TBPE Firm Registration No. 1856

CONCEPTUAL SITE PLAN

DATE: **09/28/22**
SCALE:

DESIGNED BY: **PCC**
DRAWN BY: **MJ**
CHECKED BY: **DSL**

EYP PROJECT NUMBER : **6021180.01**

RED - Proposed Signage
GREEN - Existing Signage



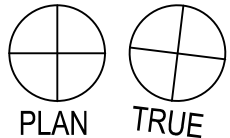
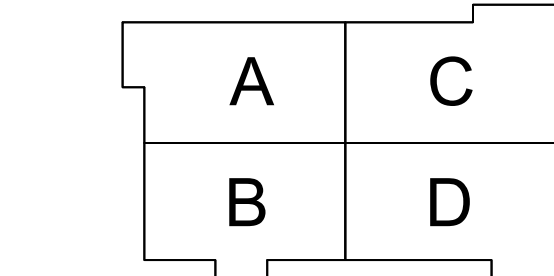
NOTE:
THE PDD BASE ZONING DISTRICT IS GC
GENERAL COMMERCIAL. PLEASE REFER TO
ORIGINAL PDD ORDINANCE NO. 2010-3300
FOR ALL MERITORIOUS MODIFICATIONS

SITE DRAINAGE CONCEPT: THE PROPOSED MEDICAL
OFFICE BUILDING SITE DRAINAGE WILL GENERALLY
FOLLOW THE EXISTING DRAINAGE PATTERNS WITH SITE
RUN-OFF DRAINING FROM NORTH AND WEST TO THE
SOUTHEAST CORNER OF THE SITE. WATER WILL BE
CONVEYED BY A 48" STORM SEWER THAT IS BEING
REROUTED AS A PART OF THIS PROJECT. DETENTION
WILL BE PROVIDED BY AN EXISTING POND THAT WAS
SIZED APPROPRIATELY FOR THE DEVELOPMENT OF THE
PROJECT SITE.



EYP, Inc.
201 West 5th St.
Suite 1100
Austin, TX 78701
512 808 1000 eypae.com

Walter P Moore and
Associates, Inc.
401 South 1st street, Suite 600
Austin, TX 78704
512.330.1270



KEY PLAN

#	Revision	Date
---	----------	------

COLLEGE STATION MOB II



BAYLOR SCOTT & WHITE
HEALTH

700 Scott and White Drive
College Station, TX 77845
Total Site Area = 6.7 ACRES

SCHEMATIC DESIGN

INTERIM REVIEW ONLY

Document Incomplete: Not intended
for permit or construction.
Engineer: DAVID S. LUNDBERG, P.E.
P.E. Serial No.: 130058
Date: 09/27/2024
Walter P. Moore and Associates, Inc.
TBPE Firm Registration No. 1856

CONCEPT PLAN
AMENDMENT 2024
(Signage)

CONCEPTUAL SITE PLAN

DATE: 09/28/2024 DESIGNED BY: PCC
SCALE: DRAWN BY: MJ
CHECKED BY: DSL

EYP PROJECT NUMBER : 6021180.01

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A “UNIFIED DEVELOPMENT ORDINANCE,” ARTICLE 4 “ZONING DISTRICTS,” SECTION 4.2, “OFFICIAL ZONING MAP” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES FROM PDD PLANNED DEVELOPMENT DISTRICT TO PDD PLANNED DEVELOPMENT DISTRICT TO AMEND THE CONCEPT PLAN FOR APPROXIMATELY 45 ACRES GENERALLY LOCATED AT 600 SCOTT AND WHITE DR.; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”, Exhibit “B”, and Exhibit “C”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED, and APPROVED this _____ day of _____, 20__.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2, “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from PDD Planned Development District to PDD Planned Development District:

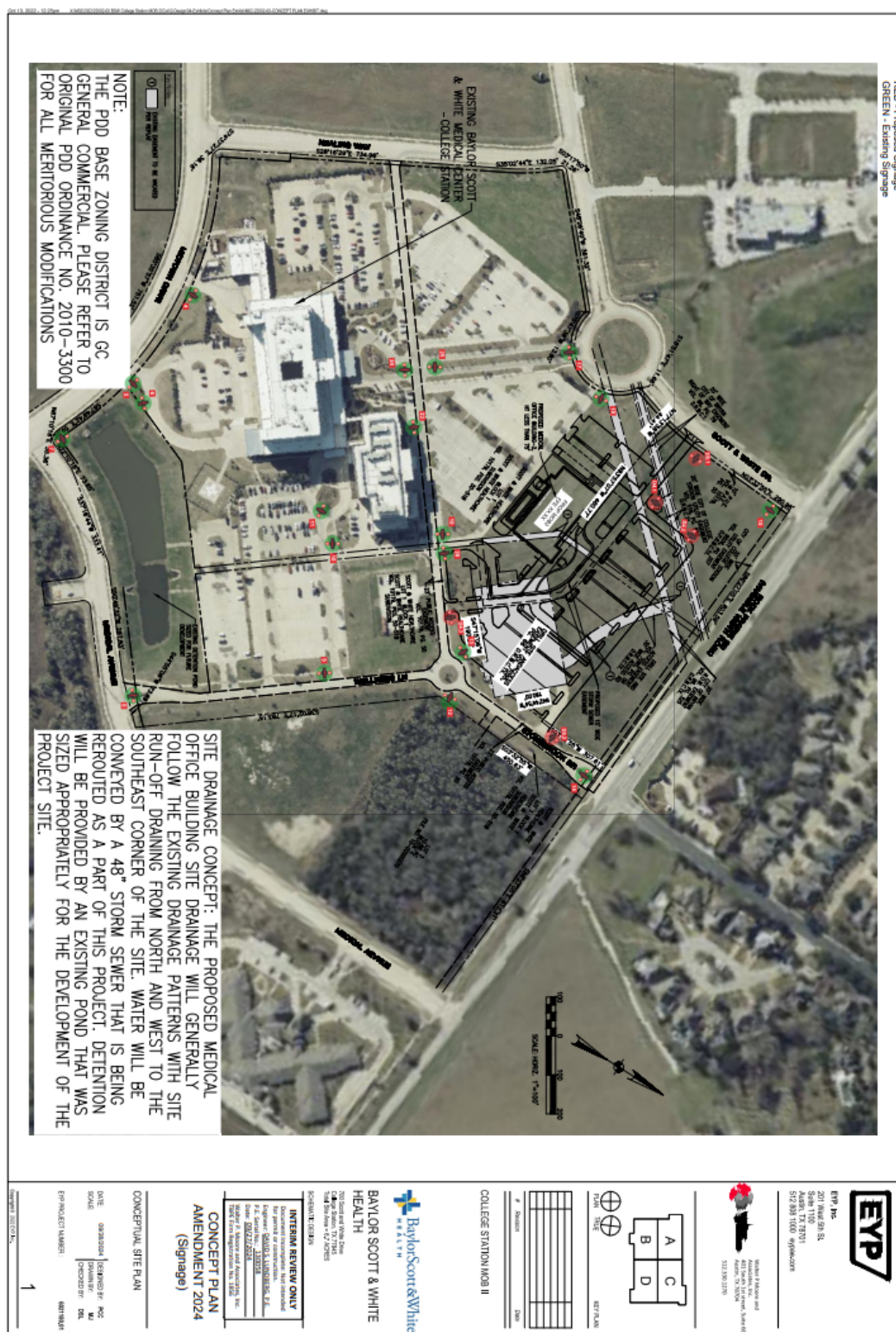


Exhibit B

[illegible]

Exhibit C

Concept Plan for Signage



October 24, 2024
Item No. 9.4.
Tourism Advisory Committee

Sponsor: Bryan Woods, City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding the Tourism Advisory Committee.

Relationship to Strategic Goals:

Recommendation(s):

Summary: On October 7th the City Council requested an item to discuss the Tourism Advisory Committee.

Budget & Financial Summary:

Attachments:

None

October 24, 2024
Item No. 9.5.
On-Street Parking Removal Policy

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding on-street parking removal policy and guidelines.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Neighborhood Integrity
3. Improving Mobility

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

Summary: Staff has developed a policy and guidelines for the removal of on-street parking based on current procedures and practices. This policy was presented to the Council Transportation and Mobility Committee on September 17, 2024. The purpose of the policy is to provide guidance when staff receive concerns and complaints regarding on-street parking. The intent is that all cases are investigated and implemented consistently city-wide.

On-street parking is generally allowed on local and some minor collector roads that are 27 feet or more wide, do not contain striped bike lanes, and do not already have an ordinance prohibiting parking. A citizen or city staff may bring a concern about vehicles parking on streets to the Traffic Engineering Division to be investigated. Staff will evaluate several factors including, but not limited to, street width, traffic patterns, emergency vehicle access, and other observations to determine whether parking should be removed. Once the investigation is complete, staff will present its findings to the Traffic Management Team, which consists of representatives from the Fire Department, Police Department, Code Enforcement, Planning and Development Services, Neighborhood Services, and Public Communications.

In most cases, if the recommendation from the TMT is to remove parking, staff will schedule a public meeting and, if needed, bring any feedback back to TMT. Finally, an ordinance is drafted and presented to the City Council for adoption. If needed, a parking removal ordinance may be brought before the Council Transportation and Mobility Committee prior to City Council for additional feedback.

This policy will be reviewed regularly, and any major revisions will be presented to the City Council for adoption.

Budget & Financial Summary: N/A

Attachments:

1. Parking Policy 10.15.24



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

ON-STREET PARKING REMOVAL POLICY AND GUIDELINES

- 1. Concerns** – All on-street parking concerns, either from staff or residents, are received by the Public Works Department Traffic Engineering Division. The Traffic Engineering Division will respond to the concern acknowledging receipt and if needed ask for more information.
- 2. Investigation** – If a valid concern is presented, the Traffic Engineering Division in coordination with City of College Station Fire Department (CSFD) may conduct an investigation. The investigation may include observing street width, traffic patterns, counting parked vehicles, taking pictures, fire hydrant locations and consulting with other City departments including, police, and the City Attorney's Office. The CSFD may evaluate the impact that the parking has on emergency vehicle access. An investigation does not need to be completed if it is determined parking needs to be removed because of a public health or safety concern. On residential streets 27 feet wide parking is permitted on one side, while residential streets 24 feet or less in width prohibit on-street parking on both sides of the street.
- 3. Recommendation and TMT** – The Traffic Engineering Division will present the investigation results to the Traffic Management Team (TMT). The TMT may give further guidance, direction, and recommend approval or denial. If the TMT recommends no parking removal no further action is needed. The Traffic Engineering Division will contact the person making the complaint of any TMT direction.
- 4. Public Meeting** – If deemed necessary for parking removal, a public meeting will be held for public input and notice. Meeting notices will be mailed to residents, including tenants and property owners adjacent to the parking removal street at least 10 days before the meeting. The meeting notice should include the streets that are proposed for parking removal, the date, time and meeting location and the City's representative's contact information. Based on feedback and input from the public meeting the parking removal may be presented back to the TMT or move forward for City Council direction.
- 5. TMT Follow-Up** – The public meeting feedback may be presented to the TMT or the City Council Transportation and Mobility Committee for further direction if needed. The TMT or Transportation and Mobility Committee may make changes to the proposed parking removal based on public feedback or may choose to proceed directly to City Council.

City Manager's Office

P.O. BOX 9960 • 1101 TEXAS AVENUE • COLLEGE STATION • TEXAS • 77842

TEL. 979.764.3510 • FAX. 979.764.6377

cstx.gov

6. City Council – The parking removal ordinance, map, public meeting feedback, and the TMT recommendation are included City Council’s agenda items. The City Manager will determine based on the TMT and the public meeting input whether to place the parking removal agenda item on consent or regular agenda.

7. City Manager – If a public health or safety concerns is present the City Manager may change or alter this policy.

Approved and Effective on October 24, 2024.

Mayor

October 24, 2024
Item No. 9.6.
Wells CMAR Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Garney Companies, Inc. for the Water Wells 10,11,12 and Collection Line project. The budget for this project is \$51,500,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project involves the design and construction three new water wells and a collection line in the well field. Each well will have a pumping capacity of 3,300 gpm and will be operated using Motor Control Cabinet, Variable Frequency drive, and a generator for backup power. The project will also building internal access roads and power distribution. The project will also build approximately 12,000 linear feet of collection line between the three wells and the tie in point along Sandy Point Road. Coordination with BTU, Union Pacific and TXDOT is needed for power, access, and utility work. Land acquisition will be needed for easements.

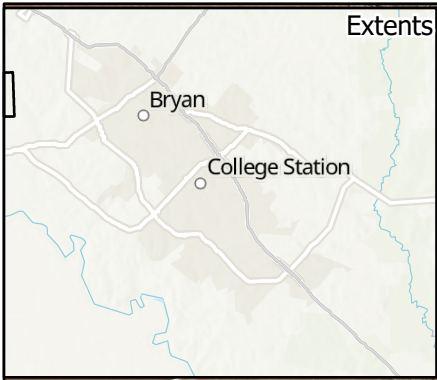
The Construction Manager at Risk (CMAR) for pre-construction and construction phase services was solicited via Request for Qualifications (RFQ) on September 12, 2024. Four (4) responses were submitted to RFQ #24-084 and two (2) were invited to submit for the RFP #24-035. Both respondents to the RFP were interviewed. After evaluation and interviews, Garney Companies, Inc. was selected as the most qualified, best value for the city based on the published selection criteria.

Garney Companies, Inc. will provide pre-construction services (construction reviews, materials coordination, cost estimating, etc.) during the design phase. Garney will also be providing construction phase services. Construction will be bid out through the CMAR and presented to City Council for approval as a Guaranteed Maximum Price (GMP) for each construction phase(s) of the project. The project is proposed to begin construction in early 2025 and will be complete before August 2028.

Budget & Financial Summary: A combined budget of \$69,300,000 is available in the Water Capital Improvement Projects Fund. A combined total of \$8,431,807 has been expended or committed to date, leaving a balance of \$60,868,193 for this CMAR Contract and any remaining project expenses.

Attachments:

1. Wells 10,11,12 and Collection Location Map
2. Wells CMAR Contract Vendor Signed



Wells 10,11,12 and Collection Line





CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300059 PROJECT #: WA2400 BID/RFP/RFQ#: RFP 24-084

Project Name / Contract Description: CMAR Contract for New Water Wells 10, 11 and 12 Project

Name of Contractor: Garney Companies, Inc.

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

If yes, what is the grant number:

Debarment Check ☐ Yes ☐ No ☒ N/A

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

Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A

Buy America Required ☐ Yes ☐ No ☒ N/A

Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

Four (4) proposals were received. The budget for this project is \$51,500,000.00.

Account code WSWOC

(If required)*

CRC Approval Date*: Council Approval Date*: 10/24/2024 Agenda Item No*: TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

DATE

ASST CITY MGR – CFO

DATE

LEGAL DEPARTMENT

DATE

APPROVED & EXECUTED

CITY MANAGER

DATE

N/A

MAYOR (if applicable)

DATE

N/A

CITY SECRETARY (if applicable)

DATE

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

This Agreement is entered into by and between the **City of College Station**, a Texas home-rule municipal corporation (the “City”) and Garney Companies, Inc., a Texas Corporation (the “Contractor”) for the delivery of Construction Manager at Risk preconstruction and construction services, and installation of the following City Project: New Water Wells 10, 11 and 12, as more particularly described in Paragraph 2.17 of this Agreement.

**ARTICLE I.
GENERAL CONDITIONS**

1. GENERAL PROVISIONS

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

1.02 Structure of the Agreement. This Agreement addresses Contractor’s preconstruction and construction phase services. Sections 1 through 22 of this Article I address primarily construction phase responsibilities. Section 23 of this Article I addresses Contractor’s general responsibilities including preconstruction phase consulting and advisory services.

2. DEFINITIONS

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

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

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

2.04 Calendar Day or Day. A “calendar day” or “day” is any day of the week or month, no

days being excepted, and further, unless specifically designated as a “working day,” a day described in this Agreement is a calendar day.

2.05 City or Owner. Whenever the word “City” is used, it shall mean and be understood as referring to the City of College Station, Texas, acting by and through its City Council or Representative. The terms “Owner” and “City” are synonymous as used in this Agreement.

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

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

2.08 Contractor. Whenever the word “Contractor” is used, it shall mean the person(s), partnership, or corporation or other business entity executing this Agreement with the City and that has agreed to perform the work described in this Agreement and the Agreement Documents. The word Contractor has the same meaning as construction manager at risk as described in Section 2269.251 of the Texas Government Code.

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

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

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

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

2.13 Interpretation of Phrases. Whenever the words “directed”, “permitted”, “designated”, “required”, “considered necessary”, “prescribed”, or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of the City’s Representative is intended. Similarly, the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean approved by, accepted by, or satisfactory to the City’s Representative. In the interest of brevity, the Agreement Documents may omit modifying words such as “all” or “any” and articles such as “the” and “an”, but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

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

2.16 Parties. The “parties” are the City and the Contractor.

2.17 Project. The term “Project” shall mean and include: (a) the City’s New Water Wells 10, 11, and 12 project; and (b) all that is required to obtain a final product that is acceptable to the City for said project. The term “Work” shall have like meaning. The Project is the total construction of which the Work performed under the Agreement and Agreement Documents may be the whole or a part and which may include construction by the City or by separate contractors. All provisions of this Agreement pertain and relate to the successful completion of the Project herein described and no other development or construction project (past or present) of the City or Contractor.

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

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

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

2.21 Substantial Completion. The terms “Substantial Completion” and “Substantially Completed” mean that in the opinion of the City’s Representative the Project (communicated through the procedure described in this section 2.21), including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and

adjustment. Substantial Completion notice shall be given in writing by the City Manager or the City's Director of Capital Projects stating the existence of the requirements of this section 2.21 and the date Substantial Completion was accomplished. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

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

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

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

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

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

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

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

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

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

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

(i) **“Product Data,”** as described in Paragraph 5.13, means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

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

(l) **“Shop Drawings,”** as described by Paragraph 5.13, mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

3. THE AGREEMENT DOCUMENTS

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

- (a) This signed Agreement.
- (b) Addendum to this Agreement.
- (c) General Conditions.

- (d) Special Conditions.
- (e) Technical specifications.
- (f) Drawings.
- (g) Instructions to Bidders and any other notices to Bidders or Contractor.
- (h) Performance bond, Payment bonds, Bid bonds and Special bonds.
- (i) Contractor's Proposal.

3.02 Distribution of Agreement Documents. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon.

3.03 Prohibition of Re-Use. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Agreement Documents, all documents, including sets of the plans and specifications and "as built" drawings, are to be returned to the City on request at the completion of the work. All Agreement Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Agreement Documents, the Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirement, either or both in accordance with the City's interpretation.

4. OWNER OR CITY

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

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

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

4.04 City's Right to Stop the Work. If the Contractor fails to correct Work which is not in accordance with the requirements of the Agreement Documents as required by Paragraph 20.02 or fails to carry out Work in accordance with the Agreement Documents, the City may: (a) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity; (b) terminate this Agreement; and/or (c) seek authorized remedies for a default of this Agreement.

4.05 City's Right to Carry out the Work.

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

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

4.06 City's Right to Use or Occupy.

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

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

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

5. CONTRACTOR

5.01 Contractor. The Contractor is the person or entity identified as such in the Agreement. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

5.04 Review of Agreement Documents and Field Conditions by Contractor.

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

(b) If the Contractor fails to perform the obligations of Paragraph 5.04(a), the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations.

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

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

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

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

5.05 Supervision And Construction Procedures.

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

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

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

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

5.06 Labor And Materials.

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

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

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

5.07 Warranty.

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

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

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

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

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

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

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

5.08 Permits, Fees and Notices.

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

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

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

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

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

5.09 Allowances.

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

(b) The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 5.09(a), and (2) changes in Contractor's costs, subject to the limitations set forth at Paragraph 13.1(a)(1).

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

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

5.11 Contractor's Construction Schedules.

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

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

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

(d) The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a Contractor's schedule does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than City would otherwise be obligated to furnish that information or material under the Agreement Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs to a minimum. The construction schedules shall be in a detailed format satisfactory to the City and the Engineer and shall also: (1) provide a graphic representation of all activities and events that will occur during performance of Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Agreement Documents (hereinafter referred to as Milestone Dates). If not accepted, the construction schedules shall be promptly revised by the Contractor in accordance with the recommendations of the City and Engineer and re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. The accepted construction schedules shall be updated to reflect actual conditions as set forth in Paragraph 5.11(a), if requested, by either the City or Engineer. In the event any schedule indicates any delays, the Contractor shall propose an

affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Agreement Time, any Milestone Date, or the Agreement Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

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

5.13 Shop Drawings, Product Data and Samples.

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

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

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

(d) Shop Drawings, Product Data, Samples, and similar submittals are not Agreement Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Agreement Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Agreement Documents. Review by the Engineer is subject to the limitations of Paragraph 9.02(g). Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the Agreement Documents. Submittals which are not required by the Agreement Documents may be returned by the Engineer without action.

(e) The Contractor shall review for compliance with the Agreement Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Agreement Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Agreement Documents and approved by the Contractor may be returned by the Engineer without action.

(f) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Agreement Documents. If, in the opinion of the

Engineer, the shop drawings indicate a lack of study and the review by the Contractor is incomplete or indicate an inadequate understanding of the Work covered by the shop drawings, prior to submittal to the Engineer, the shop drawings will be returned, unchecked, to the Contractor for correction of any/all of these deficiencies for subsequent resubmittal.

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

(h) The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Agreement Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer 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 Engineer's approval thereof.

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

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

information given and the design concept expressed in the Agreement Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Agreement Documents.

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

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

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

(n) The Contractor shall provide composite drawings within three (3) months of Agreement signing showing how all piping, ductwork, lights, conduit, equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by code, or in keeping with good construction industry standards and practice. Space for all trade elements must be considered on the same drawing. Drawings shall be at ¼ inch per foot minimum scale and shall include invert elevations and sections required to meet the intended purpose.

5.14 Use of Project Site.

(a) The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Agreement Documents and shall not unreasonably encumber the site with materials or equipment.

(b) The Contractor's access to the Project site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the City before the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without prior consent by the City.

5.15 Cutting And Patching.

(a) The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

5.16 Cleaning Up.

(a) The Contractor shall keep the premises and surrounding area mowed and free from accumulation of weeds and waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall be responsible for protection of the Work and shall repair or replace damaged work at Substantial Completion of the Work. The Contractor shall remove all temporary protections at the completion of the Work.

(b) If the Contractor fails to clean up as provided in the Agreement Documents, the City may do so, and the cost thereof shall be charged to the Contractor.

(c) Prior to the Engineer's inspection for Substantial Completion, the Contractor shall: clean exterior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean goods, equipment, and fixtures to a sanitary condition; clean roofs; clean the Project site; sweep paved areas and rake clean other surfaces; and remove trash and surplus materials from the Project site.

5.17 Access To Work. The Contractor shall provide the City and Engineer access to the Work in preparation and progress wherever located.

5.18 Royalties, Patents and Copyrights. The Contractor shall pay all royalties and license fees required for the Project. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City and Engineer harmless from loss on account thereof (as described in Section 6), but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Agreement Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City or Engineer. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

6. INDEMNIFICATION AND RELEASE

6.01 Contractor Not Providing Architectural or Engineering Services. When the Contractor is not providing architectural or engineering services for the Project (such as

when such services are not required by the Agreement Documents for a portion of the Work, or when the Contractor does not need to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions apply:

CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF AGREEMENT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY. THERE SHALL BE NO ADDITIONAL INDEMNIFICATION OTHER THAN AS SET FORTH IN THIS SECTION. ALL OTHER PROVISIONS REGARDING THE SAME SUBJECT MATTER SHALL BE DECLARED VOID AND OF NO EFFECT.

The indemnification contained above shall include but not be limited to the following specific instances:

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

Contractor's indemnification obligations in this Paragraph 6.01 shall survive termination, completion, abandonment and final payment.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE CONTRACTOR'S WORK TO BE PERFORMED HEREUNDER. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE, AND IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

6.02 Contractor Providing Architectural or Engineering Services. When the Contractor is providing architectural or engineering services for the Project (such as when those services are required by the Agreement Documents for a portion of the Work, or when the Contractor needs to provide those services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions shall apply pursuant to section 271.904 of the Texas Local Government Code, as amended, and other authority.

THE CONTRACTOR, AS THE INDEMNITOR, SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ALL DAMAGE OR LIABILITY (INCLUDING ALL MONETARY DAMAGES AND JUDGMENTS, LEGAL OR EQUITABLE RELIEF, COSTS, EXPENSES, COURT COSTS, INTEREST, REASONABLE ATTORNEY'S FEES, AND JUST AND LAWFUL OFFSETS AND CREDITS) REGARDING THE PROJECT TO THE EXTENT THAT SAID DAMAGE OR LIABILITY IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, AND COMMITTED BY SAID INDEMNITOR OR SAID INDEMNITOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH SAID INDEMNITOR EXERCISES CONTROL; HOWEVER, THIS INDEMNITOR OBLIGATION EXPRESSLY DOES NOT APPLY WHEN THE DAMAGE, LIABILITY, CLAIM OR JUDGMENT IS BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, THE CITY'S EMPLOYEE OR AGENT, OR OTHER PERSON OR ENTITY OVER WHICH THE CITY EXERCISES CONTROL.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE WORK ON THE PROJECT PERFORMED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE. IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL NOT APPLY WHEN SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

Notwithstanding anything stated to the contrary in this Paragraph 6.02, it is required that: (a) the City shall be included as an additional insured under the Contractor's general liability, business automobile liability, and excess/umbrella liability insurance policies, and the Contractor shall provide any and all defenses to the City as provided by those policies; and (b) a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Contractor, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

Contractor's indemnification obligations in this Paragraph 6.02 shall survive termination, completion, abandonment and final payment.

7. REPRODUCIBLE RECORD DRAWINGS

7.01 Drawings. Required as part of Final Completion of the Project, the Contractor shall submit one (1) complete set of drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

8. ANTITRUST VIOLATIONS

8.01 Antitrust Violations. To permit the City to recover damages suffered in antitrust violations, Contractor hereby assigns to City any and all claims for overcharges associated with this Agreement which are under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et. seq. (1973). The Contractor shall include this provision in its agreements with each Subcontractor and supplier. Each Subcontractor shall include such provision in agreements with sub-subcontractors and suppliers.

9. ADMINISTRATION OF THE CONTRACT

9.01 Engineer.

(a) The Engineer is the person lawfully licensed to practice engineering or an entity lawfully practicing engineering identified as such in the Agreement. The term “Engineer” means the Engineer or the Engineer’s authorized representative, or such successor Engineer as City may appoint by written notice to Contractor from time to time.

(b) City shall notify Contractor when the duties, responsibilities, or limitations of authority of the Engineer have been modified.

(c) If the employment of the Engineer is terminated, the City may elect to appoint a replacement Engineer, or at its option, elect to complete the Project using another consultant or representative to perform the balance of the Engineer’s functions on the Work.

(d) Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Agreement Documents by the activities or duties of the Engineer.

9.02 Engineer’s Administration of the Contract.

(a) Certain portions of the administration of the Agreement will be performed by the Engineer. The Engineer shall not have the authority to act on behalf of the City unless such authority is expressly granted in the Agreement Documents or the City’s engagement agreement with the Engineer, nor shall such authority be implied from any act or representation of the Engineer. The City is free to elect to have some of the administration duties set out for the Engineer to perform under the Agreement Documents performed by a construction manager or by employees of the City.

(b) The Engineer, as a representative of the City, will visit the site at intervals appropriate to the stage of the Contractor’s operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Agreement Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will neither have control over or charge of, nor be responsible for, the construction means, methods,

techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Agreement Documents, except as provided in Paragraph 5.05(a) In no event shall City or any other party have control over, be in charge of, or be responsible for construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibilities. City will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement Documents. City will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

(c) The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Agreement Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

(d) Communications Facilitating Agreement Administration. Except as otherwise provided in the Agreement Documents or when direct communications have been specially authorized, the City and Contractor shall endeavor to communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the City.

(e) Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

(f) The Engineer and the City (the City in consultation with the Engineer), both have the authority to reject Work that does not conform to the Agreement Documents. Whenever the City or Engineer considers it necessary or advisable for implementation of the intent of the Agreement Documents, the City or Engineer will have authority to require additional inspection or testing of the Work in accordance with Paragraph 21.01 whether or not such Work is fabricated, installed or completed. However, neither this authority of the City or Engineer, nor a decision made reasonably and in good faith either to exercise or not to exercise such authority, shall give rise to create or imply the existence of a duty or responsibility of the City or Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

(g) The Engineer will review and approve or take other appropriate action upon the Contractor's submittals regarding this Agreement for the Project, including Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Agreement Documents. The Engineer's action will be taken with such reasonable promptness, but no

longer than fifteen (15) business days, as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Agreement Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences, or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) Upon direction of the City, the Engineer will prepare Change Proposal Requests, Change Orders, and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 13.04.

(i) The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the City, for the City's review and records, written warranties and related documents required by the Agreement and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Agreement Documents.

(j) If the City and Engineer agree, the Engineer will provide one or more Project representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Agreement Documents.

(k) The Engineer will interpret and decide matters concerning performance under, and requirements of, the Agreement Documents on written request of either the City or Contractor. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Engineer shall be furnished in compliance with this Paragraph 9.02(k), then delay shall not be recognized on account of failure by the Engineer to furnish such interpretations until thirty (30) days after written request is made for them.

(l) Interpretations and decisions of the Engineer will be consistent with the intent of and reasonably inferable from the Agreement Documents and will be in writing or in the form of drawings.

10. CLAIMS AND DISPUTES

10.01 Definition. A Claim is any demand or assertion by the Contractor that it should be paid more money than the Agreement Sum, as adjusted under the Change Order provisions herein, by the City because of action or inaction on the part of City, Engineer, or any party for whom City is responsible, or any party with whom City has separately contracted for other portions of the

Project, including but not limited to any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that the Agreement Documents have been misinterpreted, that there has been a failure of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that there are problems with the Agreement Documents, or the timing of engineering or architectural approvals or decisions, that actions of the City have been intentionally wrongful or deceptive in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Agreement Documents or Work. Nothing contained in this subparagraph shall be construed as creating any Contractor right to make a claim, where no such right otherwise exists.

10.02 Notice Requirement. Within fourteen (14) calendar days of the first occurrence of an event that Contractor has any reason to believe might result in a Claim, or within fourteen (14) calendar days of Contractor's discovery of the first occurrence of the event that Contractor has any reason to believe might result in a Claim (if the first occurrence of the event was willfully hidden from the Contractor), the Contractor shall file a written document clearly captioned "Notice of Claim" with City and Engineer. The notice shall clearly set out the specific matter of complaint, and the impact of damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date that is reasonably possible. Furthermore, the following matters are required:

- (a) Any Claim or portion of a Claim that has not been made the specific subject of a notice strictly in accordance with the requirements of this Paragraph shall be waived. It is imperative that City have timely, specific notice of any subject, the impact of which City may be in a position to mitigate.
- (b) No course of conduct or dealings between the parties, nor implied acceptance of alteration or additions to the Agreement Documents or Work, or changes to the Agreement Documents or Work schedule, shall be the basis for any claim for an increase in the Agreement Sum or change in the Agreement Time.

10.03 Claims Handling During Construction. After receipt of a Notice of Claim, the City may elect to refer the matter to the Engineer or another party for review. Contractor will attend meetings called to review and discuss the Claim and mitigation of the problem and shall furnish any reasonable factual backup of the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Work during the pendency of any claim, except in the event of termination or Work stoppage directed by City. Agreements

reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, as follows regarding the alternative dispute resolution requirements of this Agreement:

No suit shall be filed by a Party regarding a dispute arising under or related to this Agreement unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Agreement, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509 (800-733-9529 telephone).

10.04 Claims Handling Following Construction. The acceptance of final payment shall constitute a waiver of Claims by the Contractor which have not previously been identified in a timely Notice of Claim and specifically reserved in the final Application for Payment.

10.05 Claims for Concealed or Unknown Conditions. Only if conditions are encountered at the Project site which are (a) subsurface and not revealed or otherwise generally documented in a geotechnical report or other engineering or professional report or document, or otherwise concealed physical conditions which differ materially from those indicated in the Agreement Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement Documents, then Contractor shall be entitled to make a Claim if it can satisfy all of the other requirements of Section 9.

10.06 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Agreement Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 18.04.

10.07 Calculating Claim Amount. In calculating the amount of any Claim, the following standards will apply:

- (a) No indirect or consequential damages will be allowed.
- (b) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of profits, or materials or labor efficiency, or on a

comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

(c) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

(d) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the Schedule of Values, divided by the total number of calendar days of Agreement Time called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by the Contractor for job overhead costs shall be used.

(e) The maximum amount of all Claims proven by the facts to be due to the Contractor against the City under this Agreement is expressly agreed by the parties not to exceed in any event or set of circumstances an aggregate total of five percent (5%) of the Agreement Sum.

10.08 Liquidated and Other Damages.

(a) The amount of liquidated damages (as hereafter described) for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the parties because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of 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 the Agreement Documents, 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 _____ Zero _____ and ___no___/100 DOLLARS (\$___00.00_____) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both deadlines specified for Substantial Completion and/or Final Completion.

(b) Regarding all other conduct, acts, or omissions of the Contractor (being separate and distinct from the liquidated damage authorizing conduct of the Contractor described in Subparagraph (a) above) which constitute a breach or default of this Agreement, the City may pursue the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages allowed by law, including without limitation: Agreement termination; the recovery of all actual and consequential damages; and the recovery of its incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

(c) Notwithstanding anything to the contrary stated in this Agreement, any conduct, act, or omission committed by the Contractor which constitutes a breach or default of this Agreement shall survive the: (1) City's acceptance of the Work performed under this Agreement; and (2) termination of the Agreement.

11. SUBCONTRACTORS

11.01 Definitions.

(a) A Subcontractor is a person or entity who has a direct agreement with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect agreement with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

11.02 Award of Subcontracts and Other Contracts for Portions of the Work.

(a) Unless otherwise stated in the Agreement Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the City through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) and copies of all executed subcontract(s) proposed for each principal portion of the Work of the Project. The Engineer will promptly reply (but in no event longer than 30 days from said written notice) to the Contractor in writing stating whether or not the City or the Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the City or Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Contractor shall not have a contractual agreement for the Project with a proposed person or entity to whom the City or Engineer has made reasonable and timely objection. The Contractor shall not be required to have a contractual agreement with anyone to whom the Contractor has made reasonable objection.

(c) If the City or Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the City or Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Agreement Sum and Agreement Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Agreement Sum or Agreement Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

- (d) The Contractor shall not change an approved Subcontractor, person or entity previously selected if the City or Engineer makes reasonable objection to such substitute.
- (e) The Contractor shall submit the list of proposed Subcontractors on a form approved by the City.
- (f) The Contractor and Subcontractors are required to visit the site and completely familiarize themselves with the existing conditions prior to the submission of Proposal(s). No additional increase in the Agreement amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Agreement Documents.

11.03 Subcontractual Relations. By appropriate written agreement with the Subcontractor, the Contractor shall require each Subcontractor, to the extent of the Work for the Project to be performed by the Subcontractor, to be bound by the terms of the Agreement Documents, and to assume all obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the City and Engineer. Each subcontract agreement shall preserve and protect the rights of the City and Engineer under the Agreement Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Agreement Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Agreement Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

11.04 Contingent Assignment of Subcontracts.

- (a) Each subcontract agreement for a portion of the Work for the Project shall be assigned in writing by the Contractor to the City provided that the:
 - 1. assignment is effective only after termination of the Agreement by the City for cause pursuant to Paragraph 22.02 and only for those subcontract agreements which the City accepts by notifying the Subcontractor and Contractor in writing; and
 - 2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.
- (b) City shall only be responsible for compensating Subcontractor for Work done or materials furnished after the date City gives written notice of its acceptance of the assigned subcontract agreement.
- (c) Each Subcontract and assignment shall provide that the City shall only be responsible to the Subcontractor for those services and materials furnished by the

Subcontractor subsequent to the City's exercise of any rights under this contingent assignment.

11.05 Responsibility. Contractor shall be fully responsible for the performance of its Subcontractor, including those selected or approved by the City.

12. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

12.01 City's Right to Perform Construction and to Award Separate Contracts.

(a) The City reserves the right to perform other construction work, maintenance, and repair work near or adjacent to the Project site during the time period of the Work. City may perform other Work with separate contractors. City shall have access to the site at all times.

(b) When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Agreement Documents in each case shall mean the Contractor who executes each separate City-Contractor Agreement.

12.02 Mutual Responsibility.

(a) The Contractor shall afford the City and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Agreement Documents.

(b) If part of the Contractor's Work depends for proper execution or results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the City's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

(c) The City shall be reimbursed by the Contractor for costs incurred by the City which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

(d) The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors as provided in Paragraph 18.02(e).

(e) The City and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 5.15.

12.03 City's Right to Clean Up. If a dispute arises among the Contractor, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the Engineer will allocate the cost among those responsible.

13. CHANGES IN THE WORK

13.01 General.

(a) Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Construction Change Directive or order for a minor change in the Work. The Agreement Sum and/or Agreement Time may be increased for changes in the Work if the provisions of this Paragraph have been met.

1. No change in the Agreement Sum and/or Agreement Time will be allowed for a change in the Work unless prior to performing the changed Work, the Contractor has provided the City in writing a proposal for any change in price and/or change in Agreement Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall not be recognized as having any impact upon the Agreement Sum or the Agreement Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within fourteen (14) calendar days of receiving the directive, submit a change proposal to the City, and a Change Order is subsequently executed, or Contractor satisfies the requirements of Paragraph 10. Contractor's proposal shall be subject to City's acceptance and remain irrevocable for a period of sixty (60) calendar days after receipt by City. Thereafter, Contractor reserves the right to resubmit such change proposal upon different pricing and time of performance terms.

(b) A Change Order shall be based upon agreement among the City, Contractor, and Engineer. A Construction Change Directive requires agreement by the City and Engineer and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Engineer alone.

(c) Changes in the Work shall be performed under applicable provisions of the Agreement Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 13.03, a change in the Agreement Sum or the Agreement Time shall be accomplished only by Change Order.

(d) The Contractor, upon receipt of written notification by the Engineer of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the City. The parties further agree as follows:

1. Each separate Change Proposal shall be numbered consecutively and shall include material costs, labor costs, fees, overhead and profit. The Change Proposal

shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.

2. The Subcontractor's itemized accounting shall be included with the Change Proposal.

3. If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the City and Engineer.

4. A revised Change Proposal shall bear the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.

5. Upon written approval of a Change Proposal by the City, the City will prepare a Change Order authorizing such Change in Work.

6. The Contractor shall request extensions of the Agreement Time due to changes in the Work only at the time of submitting its Change Proposal. **Contractor's failure to do so shall represent a waiver of any right to request a time extension.**

13.02 Change Orders.

(a) The Contractor makes a written request for a Change Order by submitting a written Change Proposal. A Change Order is a written instrument prepared by the City and reviewed by the Engineer. When finalized, a Change Order is signed by the City, Contractor and Engineer, stating their agreement upon all of the following:

1. change in the Work; and
2. the amount of the adjustment, if any, in the Agreement Sum; and
3. the extent of the adjustment, if any, in the Agreement Time.

(b) Pursuant to Section 252.048(d) of the Texas Local Government Code:

1. The Guaranteed Maximum Price ("GMP") may not be increased by more than twenty-five percent (25%). Written change orders that do not exceed twenty-five percent (25%) of the original agreement amount may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars (\$50,000.00). Changes in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the City Council prior to commencement of the services or work.

2. For construction contracts funded in whole or in part by Certificates of Obligations, an Agreement with a GMP of \$1 million or more may not be increased by more than twenty-five percent (25%). If a change order for a construction Agreement funded in whole or in part with certificates of obligation that has a GMP of less than \$1 million increases the Agreement amount to \$1 million or more, subsequent change orders may not increase the revised Agreement amount by more than twenty-five percent (25%). Written change orders may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars (\$50,000.00). Changes in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the City Council prior to commencement of the services or work.

(c) Methods used in determining adjustments to the Agreement Sum may include those named below:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in Agreement Documents or subsequently agreed upon;
3. a determination in a manner agreed upon by the parties and a mutually acceptable fixed fee, or the percentage fee established at Subparagraph 13.03(f), or
4. as provided in Subparagraph 13.3(g).

(d) Agreement on any Change Order shall constitute a final settlement of all Claims by the Contractor directly or indirectly arising out of or relating to the Change in Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs and impact costs associated with such change and any and all adjustments to the Agreement Sum and the Agreement Time.

13.03 Construction Change Directives.

(a) A Construction Change Directive is a written order prepared by the Engineer and signed by the City and Engineer, directing a change in the Work prior to an agreement on adjustment, if any, in the Agreement Sum or Agreement Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Agreement Sum and Agreement Time being adjusted accordingly.

(b) A Construction Change Directive shall be used in the absence of a total agreement on the terms of a Change Order.

(c) The Construction Change Directive shall include a unilateral change in the Agreement Sum and/or Agreement Time reflecting the City's view of the appropriate change in the Agreement Sum and/or Agreement Time for the Change in Work covered by the Construction Change Directive. Until an agreement is reached by the City and

Contractor on these issues for a Change Order, the changes in Agreement Sum and Agreement Time set out in the Construction Change Directive shall be used for Schedule of Values, payment and scheduling purposes.

(d) Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Agreement Sum or Agreement Time.

(e) A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Agreement Sum and Agreement Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(f) In the absence of an agreement between City and Contractor on the proper change to the Agreement Sum or Agreement Time because of a change in the Work, Contractor may treat the matter as a Claim under Section 10. In such event, the Contractor shall be entitled to recover only the amount by which the Cost of the Work has been reasonably increased over the Cost of Work without the change in the Work, plus five percent (5%).

(g) Pending final determination of the cost of a Construction Change Directive to the City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the City for a deletion or change which results in a net decrease in the Agreement Sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

13.04 Minor Changes in the Work. The Engineer will have authority to order minor changes in the Work not involving adjustment in the Agreement Sum or extension of the Agreement Time and not inconsistent with the intent of the Agreement Documents. Such changes shall be effected by written order and shall be binding on the City and Contractor. The Contractor shall carry out such written orders promptly.

13.05 Changes Funded by Allowances. Allowances balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead and profit mark-up when changes in the Work are funded by one of the Allowances.

14. TIME

14.01 Definitions.

(a) Unless otherwise provided, Agreement Time is the period of time, including authorized adjustments, allotted in the Agreement Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons, or entities for whom the Contractor is responsible.

(c) The date of Substantial Completion is the date certified by the Engineer in accordance with Paragraph 16.

14.02 Progress and Completion.

(a) Time limits stated in the Agreement Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Agreement Time is a reasonable period for performing the Work.

(b) The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Project site or elsewhere prior to Contractor obtaining all bonds required by the Agreement and before the effective date of insurance required by Section 19 to be furnished by the Contractor and City. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Agreement Documents or a Notice to Proceed given by the City, the Contractor shall notify the City in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

(c) The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Agreement Time.

14.03 Delays and Extensions of Time.

(a) If the Contractor is delayed in performing Work that is critical to the overall completion of the Work by an act or neglect of the City or Engineer, or a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, unavoidable casualties, including fire, or by unusually adverse weather conditions, as defined below, then the Agreement Time shall be extended for a reasonable time to reflect the impact of the delay on Work critical to achieve Substantial Completion within the Agreement Time, provided the performance of the Work was not delayed by any other cause for which the Contractor is not entitled to an extension in the Agreement Time under the Agreement Documents. Adjustments in the Agreement Time will be permitted for a delay only to the extent such delay is not caused or could not have been anticipated by the Contractor and could not be limited or avoided by the Contractor's timely notice to the City of the delay, and only if Contractor satisfies the conditions of Paragraph 14.03(b). Contractor has the burden to prove that any of the foregoing alleged causes of delay significantly impacted construction progress on the critical path, as a condition precedent to any extension of Agreement Time.

(b) Weather delays include "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for

such term for this locality, both as determined by the National Weather Service Forecast Office for Easterwood Airport in College Station, Texas (KCLL/CLL).

(c) On or before the fifteenth (15) day of each month of the Work, Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled for the preceding month, other than time extensions for changes in Work, which are to be submitted in accordance with the requirements of Paragraph 13. If Contractor's request for time extension for changes in the Work is denied and Contractor wishes to pursue the matter, Contractor shall submit in writing a request for that extension by the fifteenth (15) day of the month following the denial. **Any claim for time extension not submitted under the terms of this Subparagraph shall be waived.**

(d) City, after consultation with the Engineer, may grant time extensions to the extent it believes them to be proper. Time extensions granted by the City may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extensions beyond those granted by the City, it may make a claim for them provided it can meet the requirements of Paragraph 10.

15. PAYMENTS AND COMPLETION

15.01 Agreement Sum. The Agreement Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the City to the Contractor for performance of the Work under the Agreement Documents.

15.02 Schedule of Values. Before the first Application for Payment, the Contractor shall submit to the Engineer a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Engineer. Once approved by the Engineer and updated for changes in the Work, the Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule of Values shall not overvalue early job activities. The Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall follow the trade divisions of the Specification so far as practicable.

In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on forms approved by the City, and shall include the following:

(a) Contractor's costs for Contractor's Fee, bonds and insurance, mobilization, etc., shall be named as individual line items.

(b) Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

(c) On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule of Values shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation of fixtures, start up, etc.)

(d) Costs for subcontract Work shall be named without any addition of Contractor's costs for overhead, profit or supervisions.

(e) Where payment for stored materials may be requested prior to installation, material and labor shall be named as separate line items.

(f) Sample pages from an approved Schedule of Values are included following this document.

15.03 Applications for Payment.

(a) At the time specified in the Agreement, the Contractor shall submit to the Engineer an itemized Application for Payment for operations completed in accordance with the Schedule of Values and an updated project schedule for the Work. Such application shall be notarized and supported by such data fully evidencing and substantiating the Contractor's right to payment. The City requires the submission of copies of requisitions, billings, and invoices from the Contractor, Subcontractor(s) and material suppliers, all self-performed billings and invoices, all applicable payrolls, etc. Applications for Payment should also reflect retainage (if applicable). Unless otherwise agreed, the Contractor shall submit requests for payment in quadruplicate originals using for the "top sheets", originals of APPLICATION AND CERTIFICATE FOR PAYMENT; continuation sheets showing in detail the amounts requested, etc., may be submitted on CONTINUATION SHEET(S) in a format approved by the Engineer. All blank spaces must be completed, and the signatures of the Contractor and Notary Public shall be original on each form. By submitting its Application for Payment, the Contractor certifies that the individual signing the application is authorized to do so. Additionally, if the Contractor prepares its Application for Payment utilizing "Excel" spreadsheet software, it shall submit a "thumb drive" or otherwise make such spreadsheet available electronically with each application for payment to facilitate the City's and Engineer's review of the application.

1. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

(b) Unless otherwise provided in the Agreement Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, so long as such location, materials, and equipment also have bond and insurance coverage on Contractor's bonds and insurance policies. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site. Upon payment by the City of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the City. The Contractor warrants

that title to all materials and equipment covered by an Application for Payment will pass to City upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No work, materials or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained, or encumbrance is attached by the seller, the Contractor, or other party.

(c) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

15.04 Certificates for Payment.

(a) The Application for Payment will be reviewed first by the Engineer who will certify to the City that portion, if any, of the Application for Payment it has determined is properly due. In the event that the Engineer believes that payment should be withheld, in whole or in part, it will notify the City and Contractor of the basis of this view as provided in Subparagraph 15.05(a).

(b) The issuance of a Certificate for Payment will constitute a representation by the Engineer to the City, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Agreement Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Agreement Sum.

(c) The issuance of a Certificate of Payment shall constitute a recommendation to the City in respect to the amount to be paid. This recommendation is not binding on the City if City knows of other reasons under the Agreement why payment should be withheld.

(d) The Engineer will affix their signature to the same form described in Paragraph 15.04(a). to signify their certification of payment provided the application is otherwise satisfactory.

15.05 Decisions to Withhold Certification.

(a) The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Engineer's opinion the representations to the City required by Paragraph 15.04(b) cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and City as provided in Paragraph 15.04(a). If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the City. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the City from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 5.05(b), because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum;
5. damage to the City or another contractor;
6. reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. persistent failure to carry out the Work in accordance with the Agreement Documents.

(b) When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

15.06 Progress Payments.

(a) After the Engineer has issued a Certificate for Payment, the City, upon the City's review and written approval of the Certificate for Payment, shall endeavor to make payment in the manner and within the time provided in the Agreement Documents, and shall so notify the Engineer. If the City believes the Contractor is not current in its legitimate obligations to suppliers, laborers and/or Subcontractors on the Project, City may (but is not obligated to) withhold payment until it receives partial or final releases, or other reasonable proof from the Contractor that this situation does not exist.

(b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. City is not obligated to monitor payments to Subcontractors or Sub-subcontractors, and nothing in this paragraph shall create any right on the part of a Subcontractor or Sub-subcontractor against City.

(c) The Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and City on account of portions of the Work done by such Subcontractor.

(d) Neither the City nor Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 15.06(b), 15.06(c) and 15.06(d).

(f) A Certificate for Payment, a progress payment, the issuance of Substantial or Final Completion, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Agreement Documents.

15.07 Failure of Payment. If the City incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the City shall have an absolute right to offset such amount against the Agreement Sum under this Contract, and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the City is entitled, or (2) issue a written notice to the Contractor reducing the GMP by an amount equal to that to which the City is entitled.

16. SUBSTANTIAL COMPLETION

16.01 General. When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Engineer and City shall review the punch list prepared by Contractor and supplement the list as necessary. Failure to include an item on such

list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement Documents.

(a) The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Engineer and City for supplementation. Upon receipt, the Engineer and City shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. Should the Engineer or City determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done.

(b) Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent shall accompany the Engineer, its Consultants, and the City (at its discretion) during their inspections and the preparation of their supplements to the Contractor's punch list. The superintendent shall record or otherwise take note of all supplementary items. The Engineer shall endeavor to furnish to the Contractor typed, hand written or recorded supplements to the punch list in a prompt manner; however, any delay in the Contractor's receiving said supplements from the Engineer shall not be cause for a claim for additional cost or extension of time.

16.02 Inspection. When the Contractor notifies Engineer and City that it has completed or corrected items on the punch list, the Engineer and City at its discretion will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's and City's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Agreement Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the Contractor shall then submit a request for another inspection by the Engineer and City to determine Substantial Completion. Any further inspections by the Engineer and City for the purpose of determining the Project is Substantially Complete shall be at Contractor's cost and the City may deduct such cost from any amount payable to Contractor hereunder.

16.03 Certificate of Substantial Completion. When the Work or designated portion thereof is substantially complete, and upon the City's concurrence of the same, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Agreement Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

16.04 Approval of Certificate. The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the City, in its sole discretion, may, but is not required to, make

payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Agreement Documents. If retainage is not released at Substantial Completion, applicable retainage amounts will be released by City upon Contractor obtaining Final Completion.

16.05 Insurance. The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued, and accepted by the City in writing, regardless of the stated date of Substantial Completion. Acceptance shall not be unreasonably withheld.

16.06 Partial Occupancy or Use.

(a) The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 19.03(a) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Agreement Documents.

(b) Immediately prior to such partial occupancy or use, the City, Contractor, and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Agreement Documents.

17. FINAL COMPLETION AND FINAL PAYMENT

17.01 General. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City and Engineer shall endeavor to promptly make such inspection and, when the City and Engineer finds the Work acceptable under the Agreement Documents and the Agreement fully performed, the Engineer shall endeavor to promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Agreement Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 17.02 as precedent to the Contractor's being entitled to final payment have been fulfilled.

Prior to final payment, the Contractor shall submit digitally (mylars for all Water/Wastewater projects as specified in project specifications and bid documents) to the Engineer the following completed forms:

1. Contractor's Affidavit of Payment of Debts and Claims;
2. Contractor's Affidavit of Release of Liens;
3. Consent of Surety to Final Payment (if applicable);
4. Subcontractor's Unconditional Releases – each signed and notarized on a single piece of paper;
5. Maintenance and inspection manuals – three (3) sets of each bound in a 3 inch “D-slant” ring binder;
6. Final list of subcontractors;
7. one (1) complete set of marked-up copies of the Drawings and Specifications accurately showing the Project as constructed. Such Specifications and Drawings shall be marked to show all changes and modifications that have been incorporated into the Work as performed;
8. other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; and
9. any other “Closeout Documents” required under the Agreement Documents.

17.02 Format. Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. Upon request, the Engineer will furnish the Contractor with blank copies of the forms listed above. Final payment, constituting the entire unpaid balance of the Agreement Sum shall be endeavored to be paid by the City to the Contractor within sixty (60) days after Substantial Completion of the Work, unless otherwise stipulated in the Certificate of Completion, provided the Agreement is fully performed, and Final Certificate of Payment has been issued by the Engineer. The City may accept certain portions of the Work as being complete prior to the acceptance of the entire Project. If certain areas are accepted by the City as being completed, and if the Contractor has completed all of the requirements for final payment of the portion of Work, the City may, but is not required to, release retainage for that area/portion of Work. Amounts of retainage shall be agreed upon by both City and Contractor prior to final acceptance of these areas.

17.03 Delay. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the City shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance

due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Agreement Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

17.04 Acceptance of Payment. Acceptance of final payment by the Contractor shall constitute a waiver of claims by Contractor except for any Claims then pending that comply with the requirements of Section 10.

17.05 Time for Final Completion. Contractor shall achieve Final Completion within 30 calendar days of the date of Substantial Completion, failing which, Contractor shall provide a full-time on-site superintendent until Final Completion at its own cost and not as a cost of the Work.

18. Protection of Persons and Property.

18.01 Safety Precautions and Programs. The Contractor shall be responsible for initiating, maintaining, and supervising all necessary safety precautions and programs in connection with the performance of the Contract.

18.02 Safety of Persons and Property.

(a) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work, Project site, and other persons who may be affected thereby including but not limited to the City's employees, invitees and the general public;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (including without limitation all State, federal, and local governmental authorities or agencies with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including

posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the City and Engineer reasonable advance notice of the presence or use of such materials, equipment, or methods.

(e) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Agreement Documents) to property referred to in Paragraphs 18.02(a)(2) and 18.02(a)(3) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 18.02(a), except damage or loss attributable to acts or omissions of the City or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 6.06.

(f) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the City and Engineer.

(g) The Contractor shall not load or permit any part of the construction, Work or site to be loaded so as to endanger its safety.

(h) Suspension of all or a portion of the Work, for any reason, shall not relieve the Contractor of its obligations under Paragraph 18.02.

(i) The Contractor shall promptly report in writing to the City and Engineer all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to City and Engineer.

(j) The Contractor shall be responsible for the protection and security of the Work and the Project, until it receives written notification that the Substantial Completion of the Work has been accepted by the City unless otherwise provided in the Certificate of Substantial Completion.

18.03 Hazardous Materials. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in 18.03(c)), except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment,

including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 18.03(c)). In the event Contractor engages in any of the activities prohibited in this Paragraph 18.03. **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Engineer and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 18.03.**

(a) In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws (see special definition below), Contractor shall immediately stop work in the area affected and report the condition to City and Engineer 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, Engineer and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.

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

(c) For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with Paragraph 18 based on the law in effect at the time its services are rendered and to comply with any

amendments to those laws for all services rendered after the effective date of any such amendments.

18.04 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 10 and Paragraph 13.

19. INSURANCE AND BONDS

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

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

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

- (a) Commercial General Liability ("CGL").
- (b) Business Automobile Liability.
- (c) Excess Liability – required for Agreement amounts exceeding \$1,000,000.
- (d) Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage, builder's risk policy shall be written on "all risks" form.
- (e) Workers' Compensation/Employer's Liability.
- (f) Professional Liability
- (g) Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions coverage.
- (h) Surety bonds as required and described in this Agreement.

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

- (a) Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.
- (b) Self-insured retentions must be declared to and approved by the City in writing. The City may require the Contractor to purchase coverage with a lower retention

or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention ("SIR") or deductible that exceeds \$25,000 unless approved in writing by City. All deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements.

- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.
- (e) For any claims related to this project, the Contractor's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.
- (f) Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents, and subcontractors.
- (g) Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- (h) Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.
- (i) CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.
- (j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.
- (k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, at least as broad as ISO Form:
 - a. CG 20 10 and CG 11 85; **or**
 - b. **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms (if later revisions used).
- (l) Contractor shall provide the following Surety Bonds:
 - a. Bid Bond
 - b. Performance Bond
 - c. Payment Bond
 - d. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the Guaranteed Maximum Price (GMP) or the final total dollar value of the Project, whichever is greater, and shall be increased by rider if Project value increases. If the Performance Bond provides for a two-year warranty and provides coverage for other warranty terms as required by the Agreement, then a separate Maintenance Bond is not necessary. If the warranty period specified in the Agreement is for longer than two years, a Maintenance Bond equal to 10% of the final total dollar value of the Project is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of Texas, secured through an authorized agent with an office in Texas, and approved by the City.

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

- (a) Limit of \$5,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$10,000,000.00 which limits shall be endorsed to be per Project.
- (b) Coverage shall be at least as broad as ISO form GC 00 01.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.
- (d) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

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

- (a) Business Automobile Liability insurance shall be written by a carrier rated "A: VII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$5,000,000.00 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00 and \$2,000,000.00 policy aggregate where such exposures exist.

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

- (a) The Contractor may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.
- (b) The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also

apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

19.07 Additional Insured.

Those policies set forth in Paragraphs 19.04 Commercial (General) Liability, 19.05 Business Automobile Liability and 19.06 Excess Liability shall contain an endorsement listing the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit C**, and approved by the City before Work commences.

19.08 Builder's Risk

Until the Work is completed and accepted by the City, the Contractor shall purchase and maintain builder's risk insurance upon the entire Work at the Project site to the full insurable value thereof. The Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. The builder's risk insurance shall also cover portions of the Work stored off site after written approval of the City of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the City, the Contractor, subcontractors, and sub-subcontractors in the Work and shall insure against the perils of fire, wind, storm, hail, lightning, and extended coverage including flood and earthquake and shall include all-risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. The insurance shall cover reasonable compensation for City's Consultant's services and expenses required as a result of an insured loss. This must be an all-risk policy incorporating the following language:

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

The insurance policy and related Certificate of Insurance must specifically state that the: (a) Contractor is a named insured party for the insurance coverage described; and (b) City is an additional and named insured party for the insurance coverage described. The deductible under the policy, including that for flood shall not exceed \$100,000.00 without the written approval of the City.

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction

coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the Project does not involve new or major reconstruction, at the option of the City, an Installation Floater insurance policy coverage, and/or an endorsement for such coverage, may be acceptable. For such projects, a Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, and the related Certificate of Insurance, shall: (a) provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site; and (b) comply with the above provision in this Paragraph 19.08 which require that the: (i) Contractor is a named insured party for the insurance coverage described; and (ii) City is an additional and named insured party for the insurance coverage described.

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

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have their own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) Workers' Compensation/Employer's Liability insurance shall include the following terms:
 - 1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 - 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - 3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following

language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

“A. Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A certificate of coverage, prior to the other person beginning

work on the project; and

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

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

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

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

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

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

19.10 Professional Liability.

Professional liability with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.11 Contractors' Pollution Legal Liability.

Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions liability coverage with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.12 Property Insurance.

- (a)** Partial occupancy or use in accordance with Paragraph 16.06 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.
- (b)** The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused.
- (c)** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the City shall, at City's option, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- (d)** If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the City shall waive all rights for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.
- (e)** A loss insured under City's property insurance shall be adjusted by the City and made payable to the City for the insureds, as their interests may appear, subject to requirements of Paragraph 19.03. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.
- (f)** If after such loss no other special agreement is made and unless the City terminates the Agreement for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Section 13.
- (g)** The City shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the City's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Section 10.
- (h)** If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

19.12 Performance Bond and Payment Bond.

(a) Pursuant to applicable provisions of Chapters, 2253, 2254, and 2269 of the Texas Government Code, for all public works contracts with governmental entities: a payment bond is required if the Agreement Amount exceeds \$50,000, a performance bond is required if the Agreement Amount exceeds \$100,000, and below those amounts, the City may require payment and/or performance bonds for the Project in the exercise of its lawful discretion and best business judgment. The City and Contractor agree that, both a performance and payment bond are required to be properly obtained by the Contractor and timely delivered to the City as described by this Agreement, and such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, as amended, the authority described in this Agreement, and all other applicable law, and furthermore, the following is required regarding said bonds:

1. The Contractor shall execute the required performance and payment bonds:
(a) for the full Agreement Amount in the form and scope described in the bond forms attached hereto as **Exhibit B**; or (b) pursuant to Section 2269.258(a) of the Texas Government Code, if a fixed Agreed Amount or Guaranteed Maximum Price has not been determined at the time the Agreement is awarded, the penal sums of said performance and payment bonds delivered to the City must each be in an amount equal to the construction budget for the Project, as specified in the City's request for proposals or qualifications.
2. The bond surety on said bonds shall be authorized under the laws of the State of Texas to provide a performance and payment bond, and each bond shall have attached proof of authorization of the surety to act regarding all obligations described in each respective bond.
3. The Contractor shall provide original, sealed, and complete counterparts of said executed bonds in the forms required by the Agreement Documents, which are attached as **Exhibit B**, together with valid original powers of attorney, at the time of execution of this Agreement and prior to the commencement of Work. Copies of said executed bonds shall be attached hereto as **Exhibit B**.
4. The required performance and payment bonds shall remain in effect for a minimum period of two (2) years after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.
5. If at any time during the performance of this Agreement in the required period thereafter, either or both of said bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days of such invalidity or ineffectiveness a full and complete replacement bond or bonds as the case may be, that shall assure performance or payment as required by this Agreement.
6. Regarding the delivery of said bonds by the Contractor to the City, and pursuant to Section 2269.258(b) of the Texas Government Code: (a) the Contractor shall deliver said bonds not later than the 10th day after the date the Contractor

executes the Agreement; or (b) alternatively and subject to the lawful discretion and best business judgment of the City, the Contractor may be allowed by the City to furnish and deliver to the City a bid bond or other financial security which is acceptable to the City to ensure that the Contractor will furnish the required performance and payment bonds when a guaranteed maximum price is established under this Agreement.

(b) The Contractor may make such changes and alterations as the City may require in the Work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity or quality of the Work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any Work already done or material already used in said Work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, provided that said compensation does not constitute additional compensation to that which has been already paid by the City to the Contractor for any Work associated with said changes or alterations.

20. UNCOVERING AND CORRECTION OF WORK

20.01 Uncovering of Work.

(a) If a portion of the Work is covered contrary to the City's or Engineer's request or to requirements specifically expressed in the Agreement Documents, it must, if required in writing by the City or Engineer, be uncovered for the City's and Engineer's examination and be replaced at the Contractor's expense without change in the Agreement Time.

(b) If a portion of the Work has been covered which the City or Engineer has not specifically requested to examine prior to its being covered, the City or Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Agreement Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Agreement Documents, correction shall be at the Contractor's expense.

20.02 Correction of Work.

(a) Before or After Substantial Completion. The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Agreement Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

(b) After Substantial Completion. In addition to the Contractor's obligations under Paragraph 5.07, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 16.06(a), or by terms of an applicable special warranty required by the Agreement Documents, any of the Work is found to be not in accordance with the requirements of the Agreement Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such specific condition. The City shall endeavor to give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City or Engineer, the City may correct it in accordance with Paragraph 4.05. The "prompt" correction of defective work by the Contractor after receipt of notification from the City as described above shall be defined as follows:

1. The Contractor shall make written response to the City within twenty-four (24) hours of receipt of the City's notice acknowledging receipt of the notice and providing the proposed schedule to conduct corrective work. Corrective work shall not interfere with the City's normal operation and use of the Project, unless expressly approved by the City;
2. For corrective work which is not a life safety issue, or which will not, by the nature of the defect, cause subsequent damage to the Project, corrective work shall be completed within fourteen (14) calendar days;
3. For corrective work which by its nature may cause subsequent damage to the Project, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days. The Contractor shall also correct all subsequent damage caused by such corrective work;
4. For corrective work which affects services to, and ordinary use of the Project, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days; and
5. The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control.
6. The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.
7. These obligations under Subparagraph 20.02(b) shall survive acceptance of the Work under the Agreement and termination of the Contract. The period for any

Work corrected pursuant to Paragraph 20.02 shall be extended for a period of two years after the date said corrective work is completed.

(c) The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Agreement Documents and are neither corrected by the Contractor nor accepted by the City.

(d) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Agreement Documents.

1. Where non-conforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Engineer's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming Work shall be at the Contractor's expense, and performed by the City's testing laboratory if such services are reasonably required by the Engineer. All corrected Work shall be retested at the Contractor's expense. Extra architectural or other services required to analyze non-conforming Work shall be paid for by the Contractor.

(e) Nothing contained in Paragraph 20.02 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Agreement Documents. Nothing contained in Paragraph 20.02 is intended to limit or modify any obligations under the law or under the Agreement Documents, including any warranty obligations, expressed or implied.

20.03 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Agreement Documents, the City may do so instead of requiring its removal and correction, in which case the Agreement Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

21. TEST AND INSPECTIONS

21.01 Tests and Inspections.

(a) Tests, inspections, and approvals of portions of the Work required by the Agreement Documents (or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdictional, regulatory, or supervisory authority regarding the land or activities of the Project) shall be made at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory employed by the City for this purpose, or with the

appropriate public authority. City shall bear the normal costs of these services, but not any excess costs attributable to Contractor-caused scheduling problems, or other Contractor error. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so the Engineer may observe such procedures.

(b) If the Engineer, City or said public authorities determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 21.01, the Engineer will, upon written authorization from the City, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in this Paragraph 21.01, shall be at the City's expense.

(c) If such procedures for testing, inspection, or approval under this Section 21 reveal failure of the portions of the Work to comply with requirements established by the Agreement Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Agreement Documents, be secured by the Contractor, and promptly delivered to the Engineer.

(e) If the Engineer is to observe tests, inspections or approvals required by the Agreement Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

(f) Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the Work.

22. TERMINATION OR SUSPENSION OF THE CONTRACT

22.01 Termination by the Contractor.

(a) The Contractor may terminate the Agreement if the Work is stopped for a period of one hundred-twenty (120) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, for any of the following reasons:

1. issuance of an order or decision of a court or other public authority (including without limitation any State, federal, or local governmental authority or agency with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) having jurisdiction which requires all Work to be stopped;

2. an act of government, such as a declaration of national emergency which requires all Work to be stopped; or

3. because the Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 15.04(a), or because the City has not made payment on a Certificate for Payment within the time stated in the Agreement Documents, provided notice is given as required under Subparagraph 15.04(a).

(b) The Contractor may terminate the Agreement if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the City as described in Paragraph 22.03 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

(c) If the Work is stopped for one hundred-twenty (120) consecutive days for any reason described in Paragraph 22.01(a) or 22.01(b), the Contractor may, upon sixty (60) days' written notice to the City and Engineer, terminate the Agreement and recover from the City payment for Work already satisfactorily performed by Contractor.

(d) Notwithstanding anything to the contrary contained herein or in the other Agreement Documents, the City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 22.01(a), 22.01(b) and 22.01(c).

22.02 Termination by the City with or without Cause.

(a) The City may terminate the Agreement if the Contractor:

1. refuses or fails to timely supply enough properly skilled workers, or proper materials or equipment, to perform the Work of the Project;

2. fails to make a payment to Subcontractors for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the Subcontractors for the Work of the Project;

3. disregards or fails to comply with any law, ordinance, rule, regulation, decision, or order regarding the Project that is issued by a court or other public authority (including without limitation a State, federal, or local governmental authority or agency, including the City) with regulatory, supervisory, or jurisdictional authority regarding the land or activities of the Project;

4. commits conduct, an act, or omission which constitutes a breach or default of the Agreement or the Agreement Documents;

5. fails to furnish the City, upon request, with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Agreement or Agreement Documents;

6. fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Agreement or Agreement Documents; or

7. fails to provide all policies of insurance, permits, and/or bonds required to be obtained by the Contractor for the Project pursuant to the Agreement or Agreement Documents.

(b) When any of the above Paragraph 22.02(a) reasons exist, the City may, without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any and applicable, seven (7) days' written notice, terminate the engagement and appointment of the Contractor under this Agreement, and may, subject to any prior rights of an applicable surety:

1. take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned or possessed by the Contractor;

2. accept assignment of subcontracts pursuant to Paragraph 11.04;

3. make demand upon Contractor's applicable surety, if any, to complete the Work;

4. finish the Work by whatever reasonable method the City may deem, in its sole discretion and best business judgment, to be expedient or advisable; and/or

5. initiate and complete litigation against the Contractor, and against all other necessary or desired parties (including Contractor's sureties and insurance carriers), for the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Agreement, including without limitation: Agreement termination; the recovery of all actual and consequential damages; the recovery of certain liquidated damages under this Agreement; and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits

(c) When the City terminates the Agreement for a reason stated in Paragraph 22.02(a), the Contractor shall not be entitled to receive further payment until the Work is finished.

(d) If the unpaid balance of the Agreement Sum exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, including attorney's fees, such excess shall be paid to the Contractor. If such costs and damages exceed the

unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Contract.

(e) If a Performance Bond has been furnished and the Contractor is declared by the City to be in default under the Agreement, the Surety shall promptly, and in no event more than 30 days, remedy the default by commencing and continuing to perform the remaining work of the Agreement in accordance with its terms and conditions, or by obtaining a bid or bids for the Work in accordance with the Agreement's terms and conditions. At City's election, upon determination by the City and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for an Agreement between such bidder and the City and make available sufficient funds to pay the cost of completion less the balance of the Agreement Sum, but not exceeding the Penal Sum of the bond. The phrase "balance of the Agreement Sum" as used herein shall mean the total amount payable by the City to the Contractor under the Agreement, including any adjustments thereto made in accordance with the terms and conditions of this Agreement, and amendments thereto less the amount previously paid by the City to the Contractor.

(f) Also, notwithstanding anything to the contrary herein stated, the City may terminate this Agreement pursuant to one or more of the circumstances and procedures stated in Paragraph 30 for City termination of this Agreement.

22.03 Suspension by the City for Convenience.

(a) The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

(b) If City suspends the Contractor's performance for convenience, an adjustment shall be made to the Agreement Sum as calculated under Section 13 and shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Agreement.

22.04 Termination by the City for Convenience.

(a) The City may, at any time, terminate the Agreement, in whole or in part, for the City's convenience and without cause.

(b) Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. cease operations as directed by the City in the notice;

2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and

3. except for Work not so terminated and/or directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts, and purchase orders and enter into no further subcontracts and purchase orders.

(c) In the event of a termination under Paragraph 22.04, the Contractor shall be paid the value of its Work to the date of termination plus such sums as are reasonably required to cover the cost to Contractor, its Subcontractors, and suppliers, to shut down the Project. City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.

(d) Upon determination by a court of competent jurisdiction that termination of the Contract, pursuant to Paragraph 22.02 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 22.04, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 22.04.

23. GENERAL CONTRACTOR'S RESPONSIBILITIES.

23.01 General. The Contractor shall perform all services described in this Agreement to be performed by the Contractor. The services to be provided under Paragraphs 23.02 and 23.03 constitute the Preconstruction Phase services. If the City and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

23.02 Preconstruction Phase.

(a) Preliminary Evaluation. The Contractor shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other.

(b) Consultation. The Contractor with the Engineer shall jointly schedule and attend regular meetings with the City. The Contractor shall consult with the City and Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Contractor shall provide constructability reviews to include recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies. The Contractor shall provide bidability reviews to include recommendations on design discipline coordination and clarifications that will improve the ability of the City to receive competitive bids for the complete cost to construct the Project.

(c) Preliminary Project Schedule. When Project requirements described in Paragraph 24.01(a) have been sufficiently identified, the Contractor shall prepare, and periodically

update, a preliminary Project schedule for the Engineer's review and the City's approval. The Contractor shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Engineer and Contractor. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, Milestone Dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Contractor shall make appropriate recommendations to the City and Engineer.

(d) Phased Construction. The Contractor shall make recommendations to the City and Engineer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

(e) Preliminary Cost Estimates. When the City has sufficiently identified the Project requirements and the Engineer has prepared other basic design criteria, the Contractor shall prepare, for the review of the Engineer and approval of the City, a preliminary cost estimate of the complete and fully functional Project utilizing area, volume, or similar conceptual estimating techniques.

1. When preliminary design documents have been prepared by the Engineer and approved by the City, the Contractor shall prepare, for the review of the Engineer and approval of the City, a more detailed estimate with supporting data. During the preparation of the detailed design documents, the Contractor shall update and refine this estimate in real time with the design's development through the use of a trend log or other tool.

2. The Contractor shall prepare a detailed estimate with supporting data for review by the Engineer and approval by the City when the detailed design documents are fifty percent (50%) complete, ninety percent (90%) complete (unless the Guaranteed Maximum Price has been established), and at any other appropriate intervals agreed to by the City, Engineer and Contractor.

3. If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Contractor shall make appropriate recommendations to the City and Engineer.

4. All cost estimates shall include the references and attachments captured in Paragraph 23.03(d).

(f) Subcontractors and Suppliers. The Contractor shall seek to develop subcontractor interest in the Project and shall furnish to the City and Engineer for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment

fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Engineer will promptly reply in writing to the Contractor if the Engineer or City know of any objection to such subcontractor or supplier. The receipt of such list shall not require the City or Engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City or Engineer later to object to or reject any proposed subcontractor or supplier.

(g) Long-Lead-Time Items. The Contractor shall recommend to the City and Engineer a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the City, they shall be procured on terms and conditions acceptable to the Contractor. Upon the City's acceptance of the Contractor's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the City to the Contractor, who shall accept responsibility for such items as if procured by the Contractor. The Contractor shall expedite the delivery of long-lead-time items.

(h) Extent of Responsibility. The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. It is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Engineer and City in writing.

(i) Equal Employment Opportunity and Affirmative Action. The Contractor shall comply with applicable laws, regulations, and special requirements of the Agreement Documents regarding equal employment opportunity and affirmative action programs.

23.03 Guaranteed Maximum Price Proposal and Agreement Time.

(a) When the Drawings and Specifications are sufficiently complete, the Contractor shall propose a Guaranteed Maximum Price (depending on Project requirements, at the City's request, multiple Guaranteed Maximum Price packages may be provided to phase or group the work, however, all packages shall be totaled together to arrive at the final Guaranteed Maximum Price), which shall be the sum of the estimated Cost of the Work and the Contractor's Fee. Provided, however, Contractor understands such estimates are relied upon by the City in making various Project determinations, and, therefore, should Contractor's Guaranteed Maximum Price proposal exceed the City's applicable budget by more than 10%, all pre-construction services rendered thereafter to render the Project within 10% of the budget by Contractor shall be at the sole cost of the Contractor.

(b) As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Engineer that is consistent with the Agreement Documents and reasonably inferable

therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

(c) The estimated Cost of the Work shall include the Contractor's contingency, being a sum established by the Contractor for its exclusive use to cover costs arising under Paragraph 23.03(b) and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

(d) Basis of Guaranteed Maximum Price. The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
2. A list of allowances and a statement of their basis.
3. A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
6. A list of any exclusions.

(e) The Contractor shall meet with the City and Engineer to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the City or Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

(f) Unless the City accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Contractor and the City.

(g) Prior to the City's acceptance of the Contractor's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.

(h) Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Agreement Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Agreement Documents.

(i) The City shall authorize and cause the Engineer to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Contractor in accordance with schedules agreed to by the City, Engineer and Contractor. The Contractor shall promptly notify the Engineer and City if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

23.04 Construction Phase.

(a) General. The Construction Phase shall commence on:

1. the City's acceptance of the Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, and
2. the City's first authorization to the Contractor to:
 - (i) award a subcontract, or
 - (ii) undertake construction Work with the Contractor's own forces, or
 - (iii) issue a purchase order for materials or equipment required for the Work.

(b) Administration.

1. Notwithstanding anything to the contrary stated in this Agreement, and regarding any Contractor self-performed work authorized for the Project pursuant to this Agreement, it is expressly agreed by the parties that any Contractor self-performed work for the Project must be awarded, if at all, pursuant to the following procedure: (i) first, a written proposal must be submitted by the Contractor to the City for said work, before any competitive bid procedure is thereafter conducted for that proposed and subject work of the Project; (ii) next, a lawful competitive bid procedure shall be conducted to third-parties (not the Contractor) for that proposed and subject work of the Project; (iii) next, an analysis shall be conducted by the City and the Contractor regarding the Contractor's written proposal for the proposed self-performed work and the competitive bids received from third-parties for the proposed and subject Project work, in order for the City, using its discretion and best business judgment, to determine the lowest cost and best construction solution for said work; and (iv) finally and upon the aforesaid analysis conducted by the City, an award by the City in writing is made to the Contractor for the

proposed Contractor self-performed work because that solution was determined by the City to represent the lowest cost and best construction solution for said proposed work for the Project.

2. Those portions of the Work that the Contractor does not customarily perform with its own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain public bids in accordance with the applicable requirements of Chapter 2269 of the Texas Government Code from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Engineer. The City will then determine, with the non-binding advice and comment of the Contractor and Engineer, which bids will be accepted. The City may designate specific persons or entities from whom the Contractor shall obtain bids; however, if the Guaranteed Maximum Price has been established, the City may not prohibit the Contractor from obtaining bids from other qualified bidders.

3. If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the City and Engineer (1) is recommended to the City by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Agreement Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Contractor may require that a change in the Work be issued to adjust the Agreement Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

4. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Paragraphs 28.01(h) and 28.01(i) and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

5. The Contractor shall schedule and conduct meetings with appropriate Subcontractors at which the City, Engineer, Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

6. Promptly after the City's acceptance of the Guaranteed Maximum Price proposal, the Contractor shall prepare a schedule in accordance with Paragraph 5.11, General Conditions, including the City's occupancy requirements.

7. The Contractor shall provide monthly written reports to the City and Engineer on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and

Engineer. The Contractor shall promptly inform City in writing of any circumstance or development that is likely to delay Substantial Completion of the Project in accordance with the schedule.

8. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the City and Engineer at regular intervals.

(c) Professional Services. Paragraph 5.013(j), General Conditions shall apply to both the Preconstruction and Construction Phase.

(d) Hazardous Materials. Paragraph 18.03, General Conditions shall apply to both the Preconstruction and Construction Phases.

END OF GENERAL CONDITIONS

ARTICLE II.
ADDITIONAL CONDITIONS

24. CITY'S RESPONSIBILITIES

24.01 Information And Services

- (a) The City shall provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- (b) The City shall establish and update an overall budget for the Project, based on consultation with the Contractor and Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.
- (c) Structural And Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Contractor knows of any inaccuracy, or should have reasonably discovered such error or inaccuracy, the Contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Paragraphs 24.01(d) through 24.01(g) but shall exercise customary precautions relating to the performance of the Work.
- (d) Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.
- (e) Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site.
- (f) The services of a geotechnical engineer when such services are requested by the Contractor and are reasonably required by the scope of the Project, as determined by the City or Engineer. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- (g) Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
- (h) The services of other consultants when such services are reasonably required by the scope of the Project, as determined by the City or Engineer, and are requested by the Contractor.

24.02 City's Designated Representative. The City shall designate in writing City's Representative who shall have express authority, subject to the limitations set forth in the General Conditions, to bind the City with respect to all matters requiring the City's approval or authorization. This City's Representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. Except as otherwise provided in Paragraph 9.02(a), General Conditions, the Engineer does not have such authority.

24.03 Engineer. The City shall retain an Engineer to provide basic services, including normal civil, process mechanical, architectural, structural, mechanical, instrumentation, and electrical engineering services, and any other disciplines as required. The City must authorize, in writing, and cause the Engineer to provide additional service, requested by the Contractor which must necessarily be provided by the Engineer for the Preconstruction and Construction Phases of the Work. The Contractor has no authority to request services from the Engineer on the City's behalf. Such services shall be provided in accordance with time schedules agreed to by the City, Engineer and Contractor. Upon request of the Contractor, the City shall furnish to the Contractor a copy of the City's Agreement with the Engineer.

25. COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

The City shall compensate and make payments to the Contractor for Preconstruction Phase services as follows:

25.01 Compensation.

(a) For the services described in Paragraphs 23.02 and 23.03, the Contractor's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Stipulated lump sum of \$324,450.00

(b) If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Contractor's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

25.02 Payments.

(a) The City shall endeavor to make payments monthly (as described below) following presentation of the Contractor's invoice and supporting documents and, where applicable, shall be in proportion to services performed and the amounts of Work substantiated by Contractor's supporting documentation.

(b) The City will endeavor to make payments no later than thirty (30) calendar days from the date the Contractor's invoice is approved by the City, unless otherwise agreed in writing by the parties.

(c) The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Agreement. The Contractor shall issue exemption certificates to its Subcontractors and suppliers in lieu of said sales tax for all such materials and supplies, complying with all applicable State Comptroller's Rulings.

26. **COMPENSATION FOR CONSTRUCTION PHASE SERVICES.**

The City shall compensate the Contractor for Construction Phase services as follows:

26.01 Compensation. For the Contractor's performance of the Work as described in Paragraph 23.04, the City shall pay the Contractor in current funds the Agreement Sum consisting of the Cost of the Work as defined in Paragraph 28 and the Contractor's Fee determined as follows:

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Contractor's Fee and explain how said Fee is to be adjusted for changes in the Work.)

General Conditions – 8% of the Cost of the Work

Construction Manager at Risk Fee– 9% of the Cost of the Work

26.02 Guaranteed Maximum Price. The sum of the Cost of the Work and the Contractor's Fee for the Work are guaranteed by the Contractor not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Agreement Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Agreement Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement paid by the City. In the event the Cost of Work plus the Contractor's Fee is less than the Guaranteed Maximum Price ("GMP"), the savings shall accrue one hundred percent (100%) to the City.

(Insert specific provisions if the Contractor is to participate in any savings.)

The parties agree that any cost savings shall accrue one hundred percent (100%) to the City.

26.03 Changes in the Work.

(a) Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods named in Paragraph 13.01(b), General Conditions, subject to the limitations provided in the General Conditions.

(b) In calculating adjustments to subcontracts (except those awarded with the City's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Paragraph 13.01(b)(3), General Conditions and the term "costs" as used in Paragraph 13.03(f), General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by this Section 26. Adjustments to subcontracts awarded with the City's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

(c) In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Section 27 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 26.01 of this Agreement.

(d) If no specific provision is made in Paragraph 26.01 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 26.01 will cause substantial inequity to the City or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

27. COST OF THE WORK FOR CONSTRUCTION PHASE.

27.01 Costs to be Reimbursed. The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Section 27.

27.02 Labor Costs.

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

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

(c) Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

(d) Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the City's agreement.

Classification

Name

N/A

N/A

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified above)

(e) Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Further, the time for performance does not necessitate overtime work and the City shall not be required to reimburse the "premium time" portion of any overtime payments by Contractor, unless otherwise approved, in writing, in advance by the City.

(f) Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Paragraphs 27.02(a) through 27.02(d).

27.03 Subcontract Costs. Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

27.04 Costs of Materials and Equipment Incorporated in the Completed Construction.

(a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

(b) Costs of materials described in the preceding Paragraph 27.04(a) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

27.05 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

(a) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

(b) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.

(c) Costs of removal of debris from the site.

(d) Reproduction costs, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

(e) That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

27.06 Miscellaneous Costs.

(a) That portion directly attributable to this Agreement of premiums for insurance and bonds.

(If charges for self-insurance are to be included, specify the basis of reimbursement.)

(b) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Agreement Documents to pay.

(c) Fees of testing laboratories for tests required by the Agreement Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph 27.08.

(d) Royalties and license fees paid for the use of a particular design, process or product required by the Agreement Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Agreement Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the City's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Paragraph 6.01, General Conditions or other provisions of the Agreement Documents.

(e) Data processing costs related to the Work.

(f) Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

27.07 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

27.08 Included. The costs described in Paragraphs 27.01 through 27.07 shall be included in the Cost of the Work notwithstanding any provision of General Conditions of the Agreement which may require the Contractor to pay such costs, unless such costs are excluded by the provisions of Paragraph 27.09.

27.09 Costs not to be Reimbursed.

(a) The Cost of the Work shall not include:

1. Salaries and other compensation of the Contractor's personnel stationed at its principal office or offices other than the site office, except as specifically provided in Paragraphs 27.02(a) and 27.02(b).
2. Expenses of the Contractor's principal office and offices other than the site office, except as specifically provided in Paragraph 27.01.
3. Overhead and general expenses, except as may be expressly included in Paragraph 27.01.
4. The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided in Paragraph 27.05(b).
6. Costs due to the negligence of the Contractor or to its failure to fulfill a specific responsibility to the City set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Phase Services.
8. Except as provided in Paragraph 27.07, any cost not specifically and expressly described in Paragraph 27.01.
9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

27.10 Discounts, Rebates and Refunds.

(a) Cash discounts obtained on payments made by the Contractor shall accrue to the City if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the City, or (2) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be secured.

(b) Amounts which accrue to the City in accordance with the provisions of Paragraph 27.010(a) shall be credited to the City as a deduction from the Cost of the Work.

27.11 Accounting Records. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the Contractor shall preserve these for a period of four (4) years after final payment, or for such longer period as may be required by law.

28. CONSTRUCTION PHASE.

28.01 Progress Payments.

(a) Based upon Applications for Payment submitted to the Engineer by the Contractor, in a form acceptable to City and the Engineer, and Certificates for Payment approved by the City and issued by the Engineer, the City shall endeavor to make progress payments on account of the Agreement Sum to the Contractor as provided below and elsewhere in the Agreement Documents.

(b) The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

(c) Provided an Application for Payment is received by the Engineer not later than the 30th day of a month, the City, upon approval of the Application for Payment, shall endeavor to make payment to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Engineer after the application date fixed above, payment shall endeavor to be made by the City not later than thirty (30) days

after the Engineer receives the Application for Payment and after the City approves the Application for Payment.

(d) With each Application for Payment, the Contractor shall submit detailed payrolls, detailed petty cash accounts, detailed receipted invoices or detailed invoices with check vouchers attached and any other evidence required by the City or Engineer to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

(e) Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Agreement Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City and Engineer may require. This schedule, unless objected to by the City or Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

(f) Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which it has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

(g) Subject to other provisions of the Agreement Documents, the amount of each progress payment shall be computed as follows:

1. First, take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Next, pending final determination of cost to the City of changes in the Work, amounts not in dispute may be included as provided in Paragraph 13.03(g), General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order;

2. Next, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing;

3. Next, add the Contractor's Fee, less retainage of: (i) ten percent (10%) where the GMP is less than \$400,000; or (ii) five percent (5%) where the GMP is

\$400,000 or more. Next, the Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Paragraphs at the rate stated in Paragraph 25.01(a) or, if said Fee is stated as a fixed sum in that Paragraph, said Fee shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Paragraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion;

4. Next, subtract the aggregate of previous payments made by the City;

5. Next, subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 28.01(d) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation;

6. Next, subtract amounts, if any, for which the City or Engineer has withheld or nullified a Certificate for Payment as provided in Paragraph 15.05, General Conditions.

(h) Except with the City's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The City and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

(i) Except with the City's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(j) In taking action on the Contractor's Applications for Payment, the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 28.01(d) or other supporting data, that the Engineer has made exhaustive or continuous on-site inspections or that the Engineer has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

28.02 Final Payment.

(a) Final payment shall be made by the City to the Contractor when (1) the Agreement has been fully performed by the Contractor except for its responsibility to correct punch list items or nonconforming Work, as provided in Paragraph 20.02(b), General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a

final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the City's accountants; and (3) a final Certificate for Payment has then been approved by the City and issued by the Engineer; such final payment shall endeavor to be made by the City not more than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

(b) The amount of the final payment shall be calculated as follows:

1. First, take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price;
2. Next, subtract amounts, if any, for which the Engineer withholds or the City is entitled to withhold under this Agreement, in whole or in part, a final Certificate for Payment as provided in Paragraph 15.05(a), General Conditions or other provisions of the Agreement Documents;
3. Next, subtract the aggregate of previous payments made by the City.

If the aggregate of previous payments made by the City exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the City.

(c) The City's accountants will endeavor to review and report in writing on the Contractor's final accounting within sixty (60) days after delivery of the final accounting to the Engineer by the Contractor, together with all backup documentation reasonably required by the City. Based upon such Cost of the Work as the City's accountants shall report to be substantiated by the Contractor's final accounting, and provided the other conditions of Paragraph 28.02(a) have been met, the Engineer will endeavor within seven days after receipt of the written report of the City's accountants, either issue to the City a final Certificate for Payment with a copy to the Contractor or notify the Contractor and City in writing of the Engineer's reasons for withholding a certificate as provided in Paragraph 15.05(a), General Conditions. The time periods stated in this Section 28 supersedes those stated in Paragraph 15.04(a), General Conditions.

(d) If the City's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to proceed in accordance with Section 29 without a further decision of the Engineer. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Engineer's final Certificate for Payment. Failure to make such demand within this 30-day period shall result in the substantiated amount reported by the City's accountants becoming binding on the Contractor. Pending a final resolution of the disputed amount, the City shall pay the Contractor the amount certified in the Engineer's final Certificate for Payment.

If, subsequent to final payment and at the City's request, the Contractor incurs costs described in Paragraph 27.01 and not excluded by Paragraph 27.09(a) to correct nonconforming Work or (2) arising from the resolution of disputes, the City shall reimburse

the Contractor such costs and the Contractor's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings, the amount of such savings shall be recalculated, and appropriate credit given to the City in determining the net amount to be paid by the City to the Contractor.

29. DISPUTE RESOLUTION.

29.01 Dispute Resolution. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Paragraph 10, General Conditions, except that, during the Preconstruction Phase, no decision by the Engineer shall be a condition precedent to mediation.

30. TERMINATION OR SUSPENSION.

30.01 Termination Before Establishing Guaranteed Maximum Price.

(a) Before execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the City may terminate this Agreement at any time without cause, and the Contractor may terminate this Agreement for any of the reasons described in Paragraph 22.01(a), General Conditions.

(b) If the City or Contractor terminates this Agreement pursuant to Paragraph 9.01 prior to commencement of the Construction Phase, the Contractor shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Paragraph 25.01(a).

(c) If the City or Contractor terminates this Agreement pursuant to Paragraph 30.01 after commencement of the Construction Phase, the Contractor shall be paid, in addition to the compensation provided in Paragraph 30.1(b), an amount calculated as follows:

1. First, take the Cost of the Work incurred by the Contractor;
2. Next, add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 26.01 or, if said Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Next, subtract the aggregate of previous payments made by the City on account of the Construction Phase.

The City shall also pay the Contractor fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Contractor which the City elects to retain and which is not otherwise included in the Cost of the Work under Paragraph 30.01(c)(1). To the extent that the City elects to take

legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Section 30, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the City may require for the purpose of fully vesting in the City the rights and benefits of the Contractor under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Contractor with the City's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the City as described above. If the City accepts such assignment, the City shall reimburse the Contractor with respect to all valid and properly payable costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the agreement had not been terminated. If the City elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement and the City shall pay the Contractor the costs necessarily and reasonably incurred by the Contractor by reason of such termination, but in no event to include any overhead or profit on work not performed.

30.02 Termination Subsequent to Establishing Guaranteed Maximum Price. Subsequent to execution by both parties of Amendment No. 1, the Agreement may be terminated as provided in Section 22, General Conditions.

(a) In the event of such termination by the City, the amount payable to the Contractor pursuant to Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive pursuant to Paragraphs 30.01(a) and 30.01(c) of this Agreement.

(b) In the event of such termination by the Contractor, the amount to be paid to it under Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive under Paragraphs 30.01(b) and 30.01(c) above. In no event shall Contractor nor any supplier or subcontractor be entitled to any fee or lost profits for work not performed.

30.03 Suspension. The Work may be suspended by the City as provided in Paragraph 22, General Conditions, and in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Paragraph 22.03(b), General Conditions, except that the term "cost of performance of the Contract" in that Paragraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Paragraphs 26.01 and 26.03(d) of this Agreement.

31. OTHER CONDITIONS AND SERVICES.

31.01 Licensing, Permits, Registrations, and Approvals. Contractor represents to the City that it has, and will keep in effect at all times during the term of this Agreement, any licenses, permits, registrations, and approvals which are legally required for the Contractor to practice its trade.

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

31.03 Authority to Contract. Each party represents that it has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entity. However, notwithstanding anything stated to the contrary in this Agreement, the parties acknowledge and agree that this Agreement is subject to the proper application of, and to all protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

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

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

31.06 Presumption Against Waiver. No waiver by either party hereto of any one or more defaults by the other party hereto in the performance of this Agreement shall be construed as a waiver of any future defaults whether of a like or different character. No waiver of a default of this Agreement occurs if the non-defaulting party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting party of this Agreement.

31.07 City's Reserved Rights. The City shall have the rights by its officers, employees, or agents to examine and inspect the Contractor Work regarding the Project and the business records and financial records of the Contractor regarding the Project, at any time, to verify Contractor's compliance with the terms of this Agreement. Any approval by City or acceptance of the Contractor's Work shall not waive any obligation of the Contractor to correct defective work or to later provide additional business records or financial records regarding portions of the Project approved or accepted by the City.

31.08 Benefit. Subject to a proper application of the doctrine of governmental immunity under Texas law, this Agreement shall be binding upon and inure to the benefit of the parties hereto and

their respective successors and assigns where permitted by this Agreement. Nothing in this Paragraph shall be construed to waive the conditions elsewhere contained in this Agreement applicable to assignment by the Contractor. Nothing contained in this Agreement shall be construed to confer any benefit upon any subcontractor or any other third party.

31.09 Headings, Gender, Number. The headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

31.10 Agreement Read. The parties acknowledge that they have had the opportunity to consult with counsel of their choice, have read, understand, and intend to be bound (subject to the proper application of the doctrine of governmental immunity under Texas Law) by the terms and conditions of this Agreement.

31.11 Written Notice. Written notice shall be deemed to have been served only if the writing is hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

City: City of College Station
Capital Projects: Casey Rhodes
P.O. Box 9960, C.S. TX 77842

Contractor: Garney Companies, Inc.
Chad Sharbono
1772 W. Sam Houston Prkwy N. Houston, TX 77043

31.12 Extent of Contract. This Agreement (and its attached or incorporated documents and exhibits) represents the entire and integrated agreement between the City and the Contractor regarding the Project and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Contractor. If anything in any document or exhibit attached to or incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Ownership and Use of Documents. Article I, General Conditions, shall apply to both the Preconstruction and Construction Phases.

31.13 Governing Law. The parties expressly agree that: (a) this Agreement shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the Performance, Work, and all matters pertaining to this Agreement and the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue in any lawsuit or legal proceeding regarding or relating to this Agreement or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for Brazos County.

31.14 Assignment. Subject to a proper application of the doctrine of governmental immunity under Texas law, the City and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Agreement Documents. Neither party to the Agreement shall assign the Agreement in whole or in part without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

31.15 Effective Date. This Agreement goes into effect when duly approved by all the parties hereto and is contingent upon Contractor obtaining and maintaining the insurance and bonds required herein throughout the duration of the Project and applicable warranty periods.

31.16 Verification or Representations Regarding Certain Statutory Matters. To the extent applicable, this Agreement is subject to the following:

(a) **No Boycott of Israel.** Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (1) does not boycott Israel, and (2) will not boycott Israel during the term of this Agreement;

(b) **No Boycott of Firearms.** Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association;

(c) **No Boycott of Energy Companies.** Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (1) does not boycott energy companies, and (2) will not boycott energy companies during the term of this Agreement; and

(d) **Conflicts Disclosure.** Before the approval of this Agreement, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (1) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (2) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

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

31.18 Fraud Reporting. To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at

VendorInvoiceEntry@cstx.gov if the Contractor reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

List of Exhibits

- A. Davis Bacon Wage Rates
- B. Performance and Payment Bonds
- C. Certificates of Insurance and Endorsements
- D. Technical Specifications & Plans

GARNEY COMPANIES, INC.

By: BILL WILLIAMS
Printed Name: BILL WILLIAMS
Title: Executive Vice President
Date: 10/17/2024

CITY OF COLLEGE STATION

By: _____
City Manager: _____
Date: _____

APPROVED:

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

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.

=====

END OF GENERAL DECISION"

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

EXHIBIT B
PERFORMANCE AND PAYMENT BONDS

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR (Contractor) did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR (Contractor) has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

PERFORMANCE BOND

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
THE COUNTY OF BRAZOS	§	

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, Texas ("City"), a municipal corporation, in the sum of _____ (\$ _____) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally pursuant to the obligations and payment of this Performance Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed an Agreement (as used herein including the Agreement Documents) in writing with the City of College Station for the following City Project ("Project"):

_____, with all of the work ("Work") for the Project to be done as set out in full in said Agreement therein referred to and adopted by the City Council of the City of College Station, Texas, all of which documents, as amended, are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

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

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

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom. Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this bond, and Surety does hereby waive notice of any such change in the Agreement Time or Agreement Sum.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party. A copy of the Surety agent "Power of Attorney" also must be attached to this Bond instrument.

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

Contract No. 25300059
CMAR- Civil Construction
Form 7-29-24

CONTRACTOR EXECUTION:

ATTEST, SEAL OF CONTRACTOR: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Contractor: _____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

(Name of Surety)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Surety: _____

**ACCEPTANCE BY CITY:
REVIEWED:**

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

City Attorney's Office

Date: _____

City Manager

Date: _____

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR (Contractor) did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR (Contractor) has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

TEXAS STATUTORY PAYMENT BOND

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do business in the State of Texas and admitted to write bonds, as Surety, hereinafter called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, Texas ("City"), a municipal corporation, in the sum of _____ (\$ _____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, pursuant to the obligations and payment of this Texas Statutory Payment Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain Agreement ("Agreement" including the Agreement Documents, as amended) in writing with the City of College Station for the following City Project ("Project") dated the ____ day of _____, 20____: _____, with all of the work ("Work") for the Project to be done as set out in full in said Agreement, as amended, therein referred to and adopted by the City Council of the City of College Station, Texas, all of which documents are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, the condition of this Bond obligation is such that if Principal shall pay all claimants supplying labor, equipment, and/or material to Principal for the Project, or to a subcontractor for the Project, regarding he performance and prosecution of the Work of the Project provided for in the Agreement, as amended, then, this Bond obligation shall be null and void; otherwise this Bond obligation is to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this Bond, and Surety does hereby waive notice of any such change in the Agreement Time or Agreement Sum. A copy of the Surety agent "Power of Attorney" also must be attached to this Bond instrument.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached a current Power of Attorney as required by this Bond.

PRINCIPAL EXECUTION:

ATTEST, SEAL OF PRINCIPAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Principal)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Principal: _____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

(Name of Surety)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Surety: _____

**ACCEPTANCE BY CITY:
REVIEWED:**

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

City Attorney's Office

Date: _____

City Manager

Date: _____

EXHIBIT C

CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/9/2024

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

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

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 595 Market Street Suite 2100 San Francisco CA 94105	CONTACT NAME: PHONE (A/C, No, Ext): 415-391-1500 FAX (A/C, No): 415-391-1882 E-MAIL ADDRESS: CertRequests@ajg.com
INSURED Garney Holding Company/Garney Companies, Inc./ Garney Construction/Garney Pacific, Inc./Garney Federal, Inc, 1700 Swift Street, Suite 200 North Kansas City MO 64116	INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual Fire Insurance Company INSURER B: Travelers Property Casualty Co of America INSURER C: Berkley Assurance Company INSURER D: XL Insurance America, Inc. INSURER E: Starr Indemnity & Liability Company INSURER F:

License#: 0D69293
GARNCOM-02**COVERAGES****CERTIFICATE NUMBER:** 198789889**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC ☐ OTHER:	Y	Y	TB2641426942724	10/1/2024	10/1/2025	EACH OCCURRENCE \$5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$5,000,000 GENERAL AGGREGATE \$10,000,000 PRODUCTS - COMP/OP AGG \$10,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	AS2641426942714	10/1/2024	10/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D E	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$	Y	Y	US00143952LI24A 1000588640241	10/1/2024 10/1/2024	10/1/2025 10/1/2025	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 Each Occ/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	Y N/A	WA264D426942734	10/1/2024	10/1/2025	☒ 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
B C	Inland Marine Professional Liability Pollution Liability	Y Y	Y Y	QT6301L164501TIL24 PCADB50260061024	10/1/2024 10/1/2024	10/1/2025 10/1/2025	Leased/Rented Equip. \$3,000,000 Ea. Claim-Occ./Agg. \$10,000,000 Ea. Claim-Occ./Agg. \$10,000,000

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

Garney Job #7488/7489

RE: City of College Station's Water Wells 10, 11, and 12

ADDITIONAL INSURED(S): The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor.

CERTIFICATE HOLDER**CANCELLATION**

City of College Station, Texas
P.O. Box 9960
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

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

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(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the 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.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; 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.

SCHEDULE

**Name Of Additional Insured Person(s)
Or Organization(s):**

Location(s) Of Covered Operations

Any owner, lessee, or contractor for whom you have agreed in writing prior to a loss to provide liability insurance

Any location listed in such agreement

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

SCHEDULE

**Name Of Additional Insured Person(s)
Or Organization(s):**

Location And Description Of Completed Operations

Any owner, lessee, or contractor for whom you have agreed in writing prior to a loss to provide liability insurance

Any location listed in such agreement

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

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.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

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

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SCHEDULE

Designation Of Premises (Part Leased To You):

Where required by contract or written agreement, prior to an "occurrence" or offense, to provide additional insured status

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

All person(s) or organization(s) leasing premises to you where required by written contract or agreement entered into prior to loss

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY – RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the **Definitions** section is replaced by the following:

9. "Insured Contract" means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b.** A sidetrack agreement;
- c.** Any easement or license agreement;
- d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e.** An elevator maintenance agreement;
- f.** That part of any other contract or agreement pertaining to 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.** does not include that part of any contract or agreement:

- (1)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2)** Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph **(1)** above and supervisory, inspection, architectural or engineering activities.

SCHEDULE

Scheduled Railroad:

Any railroad for which you are performing operations and for which no Railroad Protective Liability Policy has been purchased for the railroad by you, or any railroad for which "your work" has been completed or put to its intended use.

Designated Job Site:

All jobsites.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION - PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II – Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:
1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.
However:
 - a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
 - b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
 2. 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".
- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**
- If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
1. Required by the contract or agreement; or
 2. Available under the applicable limits of insurance;
- whichever is less.
- This endorsement shall not increase the applicable limits of insurance.

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

Where required by contract or written agreement, prior to an "occurrence" or offense, to provide additional insured status

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SCHEDULE

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

All persons or organizations leasing equipment to you.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to operations at a single designated "location" shown in the Schedule below:
1. A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" shown in the Schedule below.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to operations at a single designated "location" shown in the Schedule below:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Location General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.
- D.** For the purposes of this endorsement, the **Definitions** Section is amended by the addition of the following definition:
- "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.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

SCHEDULE

Designated Location(s):

All locations with a total aggregate for all construction locations of \$20,000,000

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

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

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

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name Of Person(s) Or Organization(s):
Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no event to exceed either the scope of coverage or the limits of insurance provided in this policy.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** - Covered Autos Coverages of the Auto Dealers Coverage Form.

Policy Number: AS2641426942714
Issued by: Liberty Mutual Fire Insurance Co.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED - NONCONTRIBUTING

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIERS COVERAGE FORM
TRUCKERS COVERAGE FORM

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

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage form.

Schedule

Name of Person(s) or Organizations(s):

Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no event to exceed either the scope of coverage or the limits of insurance provided in this policy.

Regarding Designated Contract or Project:

Each person or organization shown in the Schedule of this endorsement is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

The following is added to the **Other Insurance Condition:**

If you have agreed in a written agreement that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the agreement was executed prior to the "bodily injury" or "property damage", then this insurance will be primary and we will not seek contribution from such insurance.

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:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

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

As required by written contract or agreement entered into prior to loss.

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

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

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:

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

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

SCHEDULE

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

Any person or organization for whom you perform work under a written contract if the contract requires you to obtain this agreement from us, but only if the contract is executed prior to the injury or damage occurring.

Premium: \$ INCL

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.

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 anyone not named in the Schedule.

Not applicable in Kentucky.

Schedule

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.

Where required by contract or written agreement prior to loss and allowed by law.

In the states of Alabama, Arizona, Arkansas, Colorado, District of Columbia, Georgia, Indiana, Kansas, New Mexico, Oklahoma, South Carolina, Tennessee, Vermont and West Virginia, the premium charge is 0% of the total manual premium, subject to a minimum premium of \$0 per policy.

In the state of North Carolina, the premium charge is 2% of the total manual premium, subject to a minimum premium of \$100 per policy.

In the state of Virginia, the premium charge is 5% of the total manual premium, subject to a minimum premium of \$250 per policy.

In the states of Florida, Iowa, Maryland, Mississippi, and Nebraska, the premium charge is 1% of the total manual premium, subject to a minimum premium of \$250 per policy.

In the state of Hawaii, the premium charge is \$250 and determined as follows: The premium charge for this endorsement is 1% of the total manual premium, subject to a minimum premium of \$250 per policy.

In the state of Louisiana, the premium charge is 2% of the total standard premium, subject to a minimum premium of \$250 per policy.

Issued by Liberty Mutual Fire Insurance Company 16586

For attachment to Policy No. WA264D426942734 Effective Date Premium \$

Issued to Garney Companies, Inc.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT -
CALIFORNIA**

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.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Additional premium is a percent of the California Manual Workers Compensation premium. Subject to a minimum premium charge of \$ 250 per policy

Person or Organization
Where required by contract or
written agreement prior to loss and
allowed by law.

Job Description

Issued by Liberty Mutual Fire Insurance Company 16586

For attachment to Policy No. WA264D426942734 Effective Date

Premium \$

Issued to Garney Companies, Inc.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET LOSS PAYEES

This endorsement modifies insurance provided under the IM PAK COVERAGE FORM.

The following is added to Section E – ADDITIONAL COVERAGE CONDITIONS:

Loss Payable Provision

In the event of a Covered Cause of Loss to Covered Property in which both you and a Loss Payee share an insurable interest, we will:

a. Adjust the loss or damage with you; and

b. Pay any claim for loss or damage jointly to you and the Loss Payee as your interests may appear.

This endorsement applies to all Covered Property for which a Loss Payee is on file with us or your insurance agent or insurance broker.

COMMERCIAL INLAND MARINE

their financial interest in the Covered Property.

4. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
5. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss if you have complied with all the terms of this Coverage Part and:
 - a. We have reached agreement with you on the amount of the loss; or
 - b. An appraisal award has been made.
6. We will not be liable for any part of a loss that has been paid or made good by others.

F. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

G. Pair, Sets Or Parts**1. Pair Or Set**

In case of loss or damage to any part of a pair or set we may:

- a. Repair or replace any part to restore the pair or set to its value before the loss or damage; or
- b. Pay the difference between the value of the pair or set before and after the loss or damage.

2. Parts

In case of loss or damage to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

H. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

I. Reinstatement Of Limit After Loss

The Limit of Insurance will not be reduced by the payment of any claim, except for total loss or damage of a scheduled item, in which event we will refund the unearned premium on that item.

J. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property.
2. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
 - a. Someone insured by this insurance; or
 - b. A business firm:
 - (1) Owned or controlled by you; or
 - (2) That owns or controls you.

This will not restrict your insurance.

GENERAL CONDITIONS**A. Concealment, Misrepresentation Or Fraud**

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

Affirmation of Automatic Additional Insured Status & Primary/Non-Contributory Applicability under Coverage C and Waiver of Subrogation Endorsement

In consideration of the premium paid, it is understood and agreed that Item 5. of Section IV.O. is deleted in its entirety and replaced with the following:

5. with regard to Coverage C only, any client of the **Named Insured**, or other entity or person, that the **Named Insured** is obligated to name as an additional insured (including those listed in Table A, below) on this Policy pursuant to a written contract, agreement, or permit, executed prior to when the **Pollution Claim** was first made, and solely as respects **Pollution Conditions** resulting from the **Named Insured's** performance of **Contractor Activities**; or

Solely as respects the coverage provided within this Endorsement, Section V.L. shall be deleted in its entirety and replaced with the following:

- L. **First Party Claims** or **Claims** made by any **Insured** against any other **Insured**. However, this Exclusion shall not apply as respects **Claims** made by any entity or person only qualifying as an **Insured** under Paragraph 5. of the Definition of **Insured** in this Policy.

Solely as respects the coverage provided within this Endorsement, Section XI.C. Subrogation shall be deleted in its entirety and replaced with the following:

C. Subrogation

In the event of any payment under this Policy, we shall be subrogated to all of your rights of recovery thereof. You shall execute and deliver all requested instruments and papers in furtherance of such rights to us and do whatever else is reasonably necessary to secure such rights. You shall do nothing to waive or prejudice such rights. We shall have priority in any recovery, and any amounts recovered in excess of our total payment and the cost to us of recovery shall be paid to you. However, we waive our rights of subrogation under this Policy, to the extent such a waiver is required by a written contract with you executed prior to the **Claim**, against any of the following that is not a **Responsible Entity**: your clients, their parents or other affiliates, and your client's designees; and your co-participants in an entity for which your participation is insured under Definition O.4. of this Policy.

For Coverage A only, we will not subrogate against a **Responsible Entity** in excess of its collectible insurance, provided it has maintained **Recoverable Insurance**, regardless of whether or not such **Recoverable Insurance** is exhausted or reduced.

Solely as respects the coverage provided within this Endorsement, Section XI.M. Other Insurance shall be deleted in its entirety and replaced with the following:

M. Other Insurance

This Policy is excess over the Self-Insured Retention and any other valid and collectible liability insurance available to you, whether such other insurance is stated to be primary, pro-rata, contributory, excess, contingent, self-insured or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to the Policy number in this Policy's Declarations. When any other insurance has a duty to defend a **Claim**, we will have no duty to defend the **Claim**; if no such other insurance defends the **Claim**, we will have the right but not the duty to defend the **Claim**.

Under Coverage C only, when you are required by written contract, written agreement, or permit, executed prior to when the **Pollution Claim** was first made, to include any person or entity as an additional **Insured**, such coverage will be provided on a primary and non-contributory basis to the extent so required.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Garney Holding Company Effective		Policy Number PCADB50260061024	
Date of This Endorsement 10/1/2024		Authorized Representative	

EXHIBIT D

TECHNICAL SPECIFICATIONS AND PLANS

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

ELECTRONIC

SEPTEMBER 12, 2024

PROPOSAL FOR:

CITY OF COLLEGE STATION

RFP # 24-084
CONSTRUCTION MANAGER AT RISK FOR
WATER WELLS 10, 11, AND 12 AND PIPELINES

SUBMITTED TO:

CITY OF COLLEGE STATION, TEXAS
PO BOX 9960
1101 TEXAS AVE.
COLLEGE STATION, TX 77840

SUBMITTED BY:

GARNEY CONSTRUCTION, INC.
BILL WILLIAMS
1772 W. SAM HOUSTON PARKWAY N
HOUSTON, TX 77043



**BUILDING SUSTAINABLE FUTURES WITH THE
WORLD'S MOST PRECIOUS RESOURCES—**

WATER AND PEOPLE.®

TAB A

RATES AND EXPENSES

RATES AND EXPENSES

1// Proposed cost for the anticipated general conditions costs over an anticipated 28-month construction period.

Garney’s proposed GC cost are 8.0% of the Cost of Work. These costs are projected out over a 28-month construction period for Phase 2 of the proposed project. The project team is highlighted in the **Organizational Chart (Tab B) and Attachment A (Tab C)** included in this proposal. This GC fee covers all expenses related to oversight, equipment, office facilities and jobsite needs to facilitate the construction management team specifically proposed for this project. All insurance and bonds including Builders Risk are included in this 8.0% GC fee as seen in Attachment A and in the Appendices as well.

Garney, also, proposes a preconstruction (Phase 1) costs of \$324,450.00 for the proposed project for a 6-month period spanning from November 2024 to April 2025. As of April 2025, the Phase 2 GC’s costs will begin. This preconstruction cost includes a team including all Garney team members as included in the organizational chart as well as two team members from Weisinger Inc. **The Weisinger Inc. team members bring great value to the preconstruction phase due to their expertise in well drilling and development.**

MANHOURS INCLUDED IN THE GENERAL CONDITIONS	
TEAM MEMBERS	MANHOURS
Chad Sharbono	1,213
Daniel Murray	2,427
Sam Parrack	4,853
Blake Rabel	4,853
Marcus Kirk	1,213
Ben Snider	1,213

2// Proposed CMAR fee to cover all non-project related overhead and profit associated with delivery of this project.

Garney’s proposed CMAR fee is 9% of the Cost of Work. This fee covers all the non-project related overhead and profit associated with the project delivery. In addition to profit, this fee covers all corporate overhead to support the project such as invoice processing and payment, weekly payroll processing, AR expenses to process and track owner payments, and all additional corporate support including but not limited to IT and technical GPS/ Drone support.

3// General conditions and construction fee is presented as a % of the total anticipated construction cost below.

PRECONSTRUCTION FEE	\$324,450.00	0.74%
COST OF WORK ITEMS	\$44,003,228.72	83.0%
GENERAL CONDITIONS COSTS	\$3,536,480.69	8.0%
CMAR FEE	\$3,960,290.59	9.0%
TOTAL CONSTRUCTION COST	\$51,500,00.00	100%



TAB C

TIMELINE

TIMELINE NARRATIVE

The preliminary schedule that follows outlines the current anticipated activities, durations, and necessary sequence.

IMMEDIATE PRECONSTRUCTION ACTIVITIES KICKOFF

Preconstruction activities will begin immediately after the award to Garney. From there, the preconstruction services will be kicked off with pointed and focused meetings centered around any pending permits, land acquisitions with a common goal of finalizing the 30% plans and specifications. Timely identification of the aforementioned items and understanding any gaps in permitting, land acquisitions, and specifications will enable the project team to refocus and maximize their efficiencies on items which will drive the projects budget and schedule.

EARLY WORK FOR WELL SITES

With the creation of the 30% plans and specifications, we intend to solicit the necessary scopes of work to break ground on the well sites which include the survey, BMP's, site and easement clearing, site access and access roads, earthen plateau well pads, and electrical utilities with their construction beginning the end of March 2025. These scopes directly follow the contract execution of the 30% early work packages and with enough time to secure and approve the necessary submittals. Procurement and release of these works early in the design carries no risk to the Project Team but enables the overall program schedule to be condensed. Early progress on the well sites enables the drilling subcontractor to initiate the three (3) 3,000 minimum LF drills by July of 2025.

60% DESIGN UNDERWAY, EARLY RELEASES

Concurrent to the 30% work packages executing work on site, the 60% design will be well underway, which will further condense the overall schedule and enable early release of the longer lead items, previously identified within the initial stages of the preconstruction phase as seen in the Design Workshop and Long Lead Item activities.

DETAILED DESIGN MINIMIZES CHANGES

The rest of the packages will be constructed around requiring more detailed design to minimize any unforeseen changes and subsequent change orders. After a thorough review of the overall COCS timeline, coupled with the various stages of design progress, the remaining work packages are able to be released and phased in a manner that optimizes and streamlines the more critical scopes of works being tunnels and both the collection and primary pipeline construction.

COST MODEL, SCHEDULE UPDATES

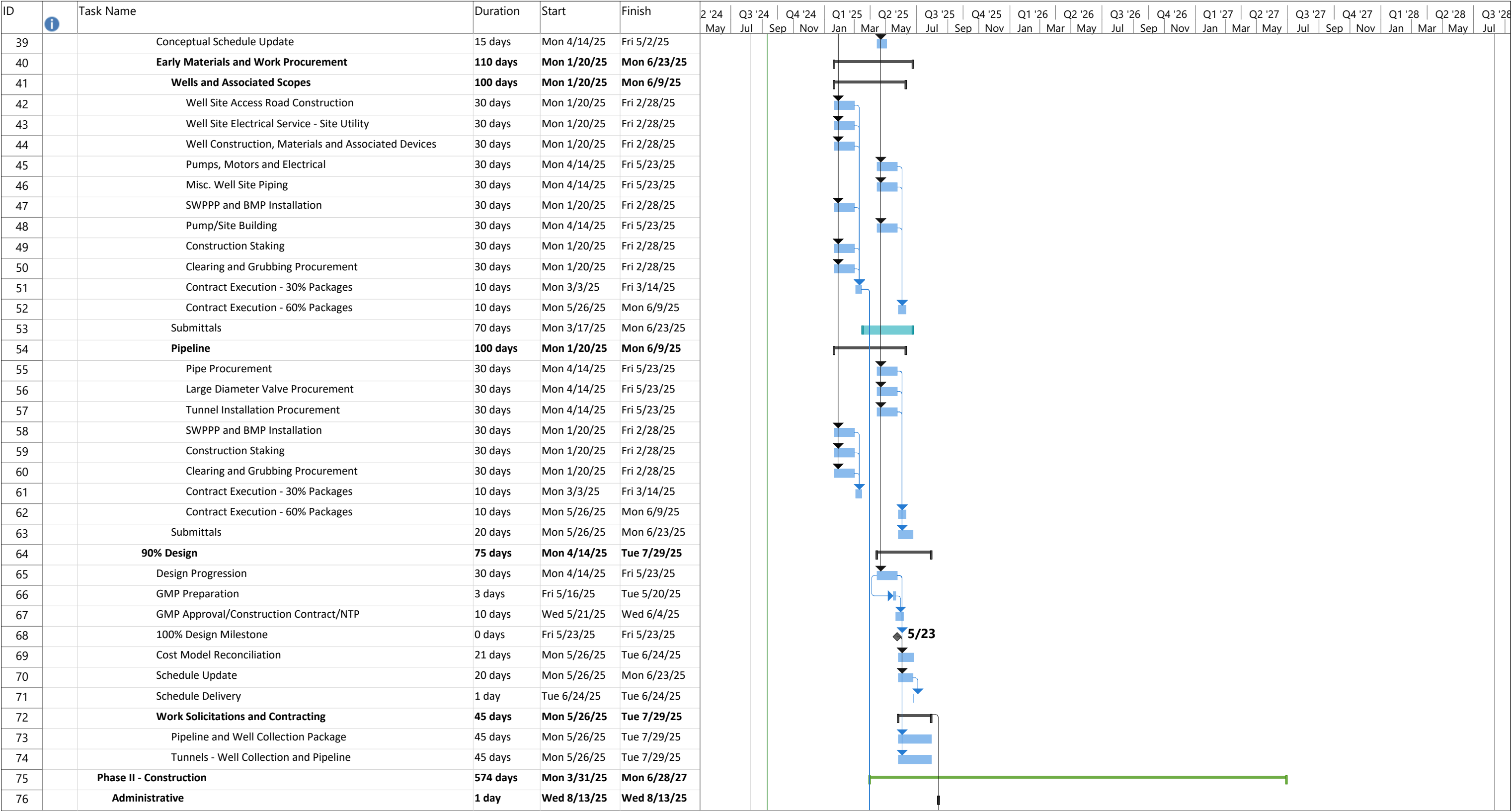
Throughout the various levels of design, both the cost model and the program schedule will be updated and shared with the COCS. At the 90% design milestone, and prior to the design reaching 100%, the GMP for the project will be developed as will the schedule. With our current forecast, we anticipate the GMP to submitted and approved by June 4, 2025.

MANAGING CONSTRUCTION RISKS EFFECTIVELY

One item which is not easy to convey within the project schedule is how the construction risks are managed and minimized within each construction package. A good example of how Garney will manage quality and schedule risks and reduce exposure to the Project Team is by generating the well drilling package to also capture the scope of procuring and setting the pumps and motors after the well drilling is complete. Crafting this specific package and others with a similar approach will put more scope on a single entity but will control the risk of schedule and budgetary delays due to unforeseen and unexpected conditions. Crafting bid packages with this approach will create an atmosphere where contractors are held accountable for their quality while providing a more turn-key scope of work.

CMAR PROPOSAL SCHEDULE





Project:
COCS - Preliminary CMAR Schedule

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

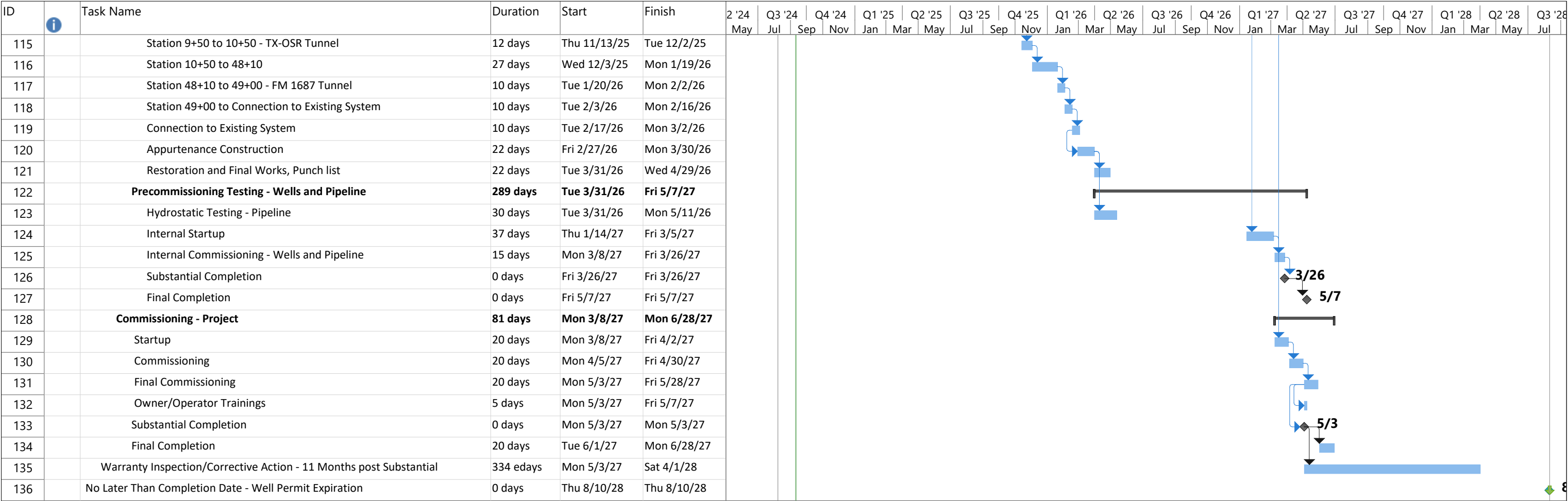
External Milestone

Deadline

Progress

Manual Progress

ID	i	Task Name	Duration	Start	Finish	2 '24	Q3 '24	Q4 '24	Q1 '25	Q2 '25	Q3 '25	Q4 '25	Q1 '26	Q2 '26	Q3 '26	Q4 '26	Q1 '27	Q2 '27	Q3 '27	Q4 '27	Q1 '28	Q2 '28	Q3 '28		
						May	Jul	Sep	Nov	Jan	Mar	May	Jul	Sep	Nov	Jan	Mar	May	Jul	Sep	Nov	Jan	Mar	May	Jul
77		Notice to Proceed	1 day	Wed 8/13/25	Wed 8/13/25																				
78		Manufacturing	250 days	Thu 8/28/25	Wed 8/26/26																				
79		Electrical Submittal	30 days	Thu 8/28/25	Thu 10/9/25																				
80		Electrical/Process Equipment	200 days	Fri 10/10/25	Wed 7/29/26																				
81		Pump, VFD and Motor Submittals	21 days	Fri 10/10/25	Fri 11/7/25																				
82		Well Pump Manufacturing	220 days	Fri 10/10/25	Wed 8/26/26																				
83		VFD Manufacturing	220 days	Fri 10/10/25	Wed 8/26/26																				
84		Motor Manufacturing	200 days	Fri 10/10/25	Wed 7/29/26																				
85		Site Work	60 days	Mon 3/31/25	Mon 6/23/25																				
86		Construction Staking	30 days	Mon 3/31/25	Fri 5/9/25																				
87		Site Utilities/Electrical	45 days	Mon 3/31/25	Mon 6/2/25																				
88		Site Access, Access Roads and Related Construction	60 days	Mon 3/31/25	Mon 6/23/25																				
89		Clearing, Temporary Entrances and Temporary Access gates	50 days	Mon 3/31/25	Mon 6/9/25																				
90		SWPPP Installation	30 days	Mon 3/31/25	Fri 5/9/25																				
91		Tunnels	69 days	Thu 8/14/25	Wed 11/19/25																				
92		Little Brazos River Tunnel	30 days	Thu 8/14/25	Thu 9/25/25																				
93		UPRR Tunnel	15 days	Fri 9/26/25	Thu 10/16/25																				
94		TX-OSR Tunnel	12 days	Fri 10/17/25	Mon 11/3/25																				
95		FM 1687 (Sandy Point Road)	12 days	Tue 11/4/25	Wed 11/19/25																				
96		Well Sites and Well Construction	433 days	Tue 6/24/25	Fri 3/5/27																				
97		Pad Construction - Elevated Earth Plateaus - Three (3) Sites	40 days	Tue 6/24/25	Tue 8/19/25																				
98		Well Sites - Exterior Improvements	50 days	Wed 8/20/25	Wed 10/29/25																				
99		Well Drilling - Three Wells (3,000' min depth)	175 days	Wed 7/23/25	Tue 4/7/26																				
100		Process Equipment and Electrical	180 days	Wed 4/8/26	Tue 12/15/26																				
101		Setting Pumps and Motors	21 days	Wed 12/16/26	Wed 1/13/27																				
102		Mechanical Piping Installation	37 days	Thu 1/14/27	Fri 3/5/27																				
103		Well Collection Lines	46 days	Mon 9/15/25	Mon 11/17/25																				
104		Well 11 Collection Line (2,200 LF Approx.)	12 days	Mon 9/15/25	Tue 9/30/25																				
105		Well 12 Collection Line - Bart Rd. Junction (3,000 LF Approx.)	25 days	Wed 10/1/25	Tue 11/4/25																				
106		Well 10 Collection Line (1,100 LF Approx.)	9 days	Wed 11/5/25	Mon 11/17/25																				
107		Pipeline Construction	421 days	Mon 9/15/25	Fri 5/7/27																				
108		Mobilization	7 days	Mon 9/15/25	Tue 9/23/25																				
109		Prove-outs and Trainings	7 days	Wed 9/24/25	Thu 10/2/25																				
110		Remove Topsoil, Pipe Delivery and Staging	20 days	Fri 10/3/25	Thu 10/30/25																				
111		Pipeline Installation (6,500 LF Approx.)	133 days	Tue 10/14/25	Wed 4/29/26																				
112		Station 0+00 to 5+30	5 days	Tue 10/14/25	Mon 10/20/25																				
113		Station 5+30 to 6+30 - UPRR Tunnel	12 days	Tue 10/21/25	Wed 11/5/25																				
114		Station 6+30 to 9+50	5 days	Thu 11/6/25	Wed 11/12/25																				
Project: COCS - Preliminary CMAR Schedule		Task		Project Summary		Manual Task		Start-only		Deadline															
		Split		Inactive Task		Duration-only		Finish-only		Progress															
		Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress															
		Summary		Inactive Summary		Manual Summary		External Milestone																	
Page 3																									



Project:
COCS - Preliminary CMAR Schedule

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Progress

Manual Progress

APPENDICES

APPENDICES

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Financial Conditions

Bid Bond

Offerer's Proposal Form

Receipt of Addenda

Certification Form

Attachment A - General Conditions Details



FINANCIAL CONDITIONS // CAPABLE OF DELIVERING AUDITED FINANCIAL STATEMENTS WITHIN 30 DAYS

Garney has the financial strength and stability you can trust to successfully execute this project. We acknowledge the requirement to provide audited financial statements within 90 days if requested by the COCS. Additionally, we have provided a letter of reference from our bank certifying our financial strengths.



April 15, 2024

RE: Garney Holding Company & its Subsidiaries

To whom it may concern;

At the request of our customer, Garney Holding Company, we have obtained the following information for you. Garney and its subsidiary companies has been a customer of Commerce Bank since 2009.

Recent balances in the deposit and related investment accounts of those entities have been maintained at a low 9-figure average, and the accounts have been handled in a proper manner. Our experience with Garney, which includes the extension of credit in a low 8-figure range, has been excellent.

We have a favorable opinion of Garney Holding Company and its subsidiary companies and consider them in good standing on all accounts.

If you have any questions or wish to receive additional information, please let me know. I can be reached directly at (816) 234-2124, or by email at brett.gray@commercebank.com.

Best Regards,

A handwritten signature in blue ink, appearing to read "Brett Gray", with a stylized flourish at the end.

Brett Gray
Sr Vice President

ANY STATEMENT MADE HERIN BY OR ON BAHALF OF COMMERCE BANK REGARDING THE RESPONSIBILITY OR STANDING OF ANY PERSON OR ENTITY, OR REGARDING THE VALUE OF ANY SECURITIES OR THER PROPERTY, IS FOR INFORMATIONAL PURPOSES ONLY AND IS **MADE WITHOUT ANY WARRANTIES OR REPRESENTATIONS WHATSOEVER**, INCLUDING WARRANTIES AND REPRESENTATIONS CONCERNING COMPLETENESS OR ACCURACY. COMMERCE BANK SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR COMPLETING, CORRECTING OR UPDATING ANY OF THE INFORMATION CONTAINED HEREIN.

BID BOND

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

That we, Garney Companies, Inc., as Principal (the CMAR), and The Continental Insurance Company / Liberty Mutual *, as Surety, a corporation organized and existing under the laws of the State of PA / MA, licensed to do business in the State of Texas and admitted to write bonds, as a Surety, (the Surety), are hereby held and firmly bound unto the City of College Station, Texas, as the Obligee (the City), and its successors and assigns, in the Penal Sum of Five Percent (5%) of Fifty One Million Five Hundred Thousand and no/100 Dollars (\$ 51,500,000.00 -----), the Construction Budget, for a total Penal Sum of Two Million Five Hundred Seventy Five Thousand and no/100 Dollars (\$ 2,575,000.00 -----), for the City's Construction Manager at Risk (the CMAR) contract to build: the City's Water Wells 10, 11, and 12 and related pipelines to the tie-in location with the City's water transmission system (the Project), for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, pursuant to the obligations and payment of this Bid Bond (the Bond) as follows:

Principal has submitted a proposal to City for the construction of the Project in accordance with plans and specifications in the bid documents on file with the City and under an invitation for bids or proposals; and

The condition of this obligation is if the Principal's bid or proposal is accepted, and the CMAR contract for the work be awarded to Principal by the City, and if Principal enters into the CMAR contract and submits for the performance of the work and payment for the work as required by law, Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price as detailed in the agreement documents with bond riders that increases the amount of all Payment and Performance Bonds is required for each additional Guaranteed Maximum Price that is issued, then this obligation will be null and void. Otherwise, it will remain in full force and effect.

The Surety is not liable for a greater amount under this agreement than the difference between the amount of Principal's bid or proposal and the lowest amount in excess of that bid or proposal for which the City may be able to award the contract within a reasonable time.

The Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached a current Power of Attorney as required by this Bond.

***Insurance Company**

PRINCIPAL EXECUTION:

ATTEST, SEAL OF Principal: (if a corporation)

WITNESS: (if not a corporation)

By: Nikia Steppins

Name: Nikia Steppins

Title: Assistant Secretary

Date: 10/11/24

Garney Companies, Inc.
(Name of Principal)

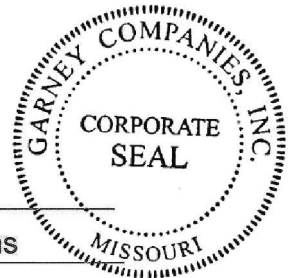
By: [Signature]

Name: William D. Williams

Title: Executive Vice President

Date: 10/11/24

Address of Principal: _____
1772 W. Sam Houston Pkwy N
Houston, TX 77043



SURETY EXECUTION:

~~ATTEST, SEAL OF SURETY: (if a corporation)~~

WITNESS: (if not a corporation)

By: Debbie Lewis

Name: Debbie Lewis

Title: Witness

Date: October 10, 2024

The Continental Insurance Company /
Liberty Mutual Insurance Company
(Name of Surety)

By: [Signature]

Name: K. Zerounian

Title: Attorney-In-Fact

Date: October 10, 2024

Address of Surety: _____
Continental: 151 N. Franklin Street, Chicago, IL 60606
Liberty: 175 Berkeley Street, Boston, MA 02116



**ACCEPTANCE BY CITY:
REVIEWED:**

City Attorney's Office

Date: _____

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

City Manager

Date: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco)

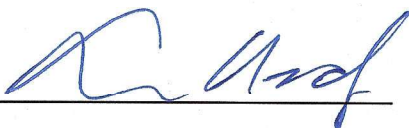
On OCTOBER 10, 2024 before me, M. Moody, Notary Public
(insert name and title of the officer)

personally appeared K. Zerounian,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

M Moody, Susan Hecker, K Zerounian, Janet C Rojo, Betty L Tolentino, Kevin Re, Brian F Cooper, Robert P Wrixon, Virginia L Black, Maureen O'Connell, Susan M Exline, Julia Ortega, Thuyduong Le, Brittany Kavan, Misty R Henje, Courtney Chew, Maria De Los Angeles Reynoso, Tina K Nierenberg

of Walnut Creek, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 3rd day of November, 2023.



The Continental Insurance Company

Larry Kasten

Vice President

State of South Dakota, County of Minnehaha, ss:

On this 3rd day of November, 2023, before me personally came Larry Kasten to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires March 2, 2026

M. Bent

Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolutions of the Board of Directors of the insurance company printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 10th day of October, 2024.



The Continental Insurance Company

D. Johnson

Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 10, 1995.

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of The Continental Insurance Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012.

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"), Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.



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: **8212015 - 024125**

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, Betty L. Tolentino, Brian Cooper, Brittany Kavan, Courtney Chew, Forrest Chamberlain, Janet C. Rojo, Julia Ortega, K. Zerounian, Kevin Re, M. Moody, Maria D. Reynoso, Maureen O'Connell, Misty R. Hemje, Robert P. Wrixon, Susan Hecker, Susan M. Exline, Thuyduong Le, Tina K. Nierenberg, Virginia L. Black

all of the city of Walnut Creek state of CA 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 24th day of June, 2024.



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 24th day of June, 2024 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 Plymouth Meeting, Pennsylvania, on the day and year first above written.



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

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-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 10th day of October, 2024.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

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

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

OFFEROR'S PROPOSAL FORM

Date: September 12, 2024

PROPOSAL FROM: Garney Companies, Inc.

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

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for Water Wells 10, 11, and 12 and related project components, and to perform the work required for the construction of said project at the location set out by the Plans and Specifications, in strict accordance with the Proposal/Contract Documents.

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

The Undersigned certifies that this proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering proposals on this work, for the following sums:

1. GENERAL CONDITIONS

List Offeror's proposed cost for General Conditions to accommodate the onsite staff as percentage of construction cost. These items will include, but not be limited to, office trailers, phones, furniture, copiers, computers, software, supplies, cleaning, move in/move out, printing expenses, site personnel's radios, pagers, phones, etc., required equipment, insurance premiums, and other items specifically provided for in **Attachment 1**:

Percent % 8.0%

2. CONSTRUCTION MANAGER AT RISK FEE

List Offeror's proposed fee as a percentage of construction cost, including all overhead and profit:

Percent % 9.0%

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: Addendum No. 1 - RFP (CMAR) No. 24-084

by submitting a proposal, each offeror authorizes city to perform all investigations into the offeror's background, capabilities, prior experience and other factors pertaining to offeror's performance of the work, as city deems necessary in its sole discretion, and for that purpose, submission of a proposal shall act as offeror's specific authorization to persons and entities contacted by city in connection with such investigations ("evaluating parties") to provide city with the information requested by city and to discuss and express opinions concerning offeror. further, by submission of a proposal, offeror agrees to fully and forever waive and release any claim (known or unknown) it has or may have against the city, architect, engineer, the evaluating parties and their respective attorneys, employees, consultants, representatives, and agents which in any way arise out of or are connected to the: (i) administration, evaluation, or recommendation (or lack thereof) of any proposal; (ii) waiver of any requirements under the proposal/contract documents; and (iii) acceptance or rejection of any proposal and award of the contract.

OFFEROR'S NAME: William D. Williams

OFFEROR'S SIGNATURE: 

Bill D. Williams

CERTIFICATION

The undersigned affirms that they are duly authorized to execute the City of College Station Construction Agreement, that this proposal has not been prepared in collusion with any other Offeror, and that the contents of this proposal have not been communicated to any other Offeror prior to the official opening of this proposal. Additionally, subject to Section 2269.254 of the Code, the undersigned affirms that the firm is willing to sign the enclosed City of College Station Construction Agreement.

Signed By:  Title: Executive Vice President

Typed Name: William D. Williams Company Name: Garney Companies, Inc.

Phone No.: (816) 741-4600 Fax No.: (816) 741-4488

Email: bwilliams@garney.com

Proposal Address:	<u>1772 W. Sam Houston Parkway, N.</u>	<u>Houston</u>	<u>TX</u>	<u>77043</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Order Address:	<u>1772 W. Sam Houston Parkway, N.</u>	<u>Houston</u>	<u>TX</u>	<u>77043</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Remit Address:	<u>1772 W. Sam Houston Parkway, N.</u>	<u>Houston</u>	<u>TX</u>	<u>77043</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Federal Tax ID No.: 44-0658613

Date: September 12, 2024

NOTE: This form and acknowledged addendums (*if applicable*) must be submitted with final proposals.

END OF RFP NO. 24-084

*****DO NOT MODIFY THIS FORM*****

**ATTACHMENT A
GENERAL CONDITIONS DETAIL**

DESCRIPTION	QTY	UNIT	\$ Cost/Unit Including All Burden & Insurance, Etc.	TOTAL
On Site Project Management				
Project Executive	7	MO	\$39,173.33	\$274,213.33
Project Manager	14	MO	\$33,280.00	\$465,920.00
Superintendent(s)	28	MO	\$27,560.00	\$771,680.00
Asst. Superintendent		MO		
Office Engineer(s)	28	MO	\$27,386.67	\$766,826.67
Project Expeditor		MO		
Scheduler	7	MO	\$25,133.33	\$175,933.33
Project Support Staff		MO		
Cost Engineer		MO		
Safety Manger	7	MO	\$25,826.67	\$180,786.67
Bonds and Insurance				
GL, Auto, WC & Builders Risk	1	LS	\$133,900.00	\$133,900.00
Payment & Performance Bonds	1	LS	\$ 355,670.69	\$355670.69
Temporary Project Construction and Utilities for CM Staff				
Dumpsters or CM staff	28	MO	\$500.00	\$14,000.00
Monthly Telephone Service		MO		
Project Water	28	MO	\$250.00	\$4,200.00
Temporary Toilets	28	MO	\$1,000.00	\$28,000.00
Temporary Fire Protection	14	MO	\$3000.00	\$42,000.00
Telephone System Installation		LS		
Ceremonies		LS		
Field Offices & Office Supplies for CM Staff				
Job Photos and Videos	28	MO	\$1,500.00	\$42,000.00
CM Project Specific Signage	1	LS	\$3750.00	\$3750.00
Postage and Deliveries		MO		
Mobilization for Office Trailers	1	LS	\$5000.00	\$5,000.00
Monthly Office Rental Costs	28	MO	\$4500.00	\$126,000.00
Storage Trailers	28	MO	\$1,000.00	\$28,000.00
Field Office Equipment	28	MO		
Vehicles including Fuel, Maintenance & Ins		MO		
Safety Equipment	28	MO	\$1,500.00	\$42,000.00
First Aid Supplies		MO		
Job Office Supplies	28	MO	\$250.00	\$7,000.00
Janitorial Supplies	28	MO	\$200.00	\$5,600.00
Project Computers and Software		MO		
Field Office Furniture	28	MO	\$500.00	\$14,000.00
Copy Machine and Supplies	28	MO	\$250.00	\$7,000.00
Communications Equipment	28	MO	\$1,500.00	\$42,000.00
Advertising	5	MO	\$200.00	\$1,000.00
TOTAL GENERAL CONDITIONS				\$3,536,480.69



October 24, 2024
Item No. 9.7.
Veterans Park Baseball Fields CMAR Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Crain Group, LLC., for the Veterans Park Baseball Fields Project. The budget for this Project is \$20,000,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval

Summary: This project involves the design, and construction of three (3) new, fully synthetic baseball fields at Veterans Park, located at 3101 Harvey Road. All three fields will be 365' to center field, with the capability of playing different age groups on them. In addition, one of the three fields will be designed as a championship field. The championship field will have increased sitting, locker rooms, and more, that will set it apart from the other two fields.

The Construction Manager at Risk (CMAR) for pre-construction and construction phase services was solicited via Request for Proposal (RFP) on July 31, 2024. A total of five (5) RFPs were received for RFP 24-069. Of the five proposals received, two were invited for interviews. After evaluations and interviews, Crain Group, LLC was selected as the most qualified, best value to the city based on the published selection criteria.

Crain Group, LLC will provide pre-construction services (construction reviews, material coordination, cost estimating, etc.) during the design phase, in coordination with the design team. Crain Group, LLC, will also provide construction phase services. Construction will be bid out through the CMAR, following all applicable procurement laws, and presented to the City Council for approval as a Guaranteed Maximum Price (GMP) for each construction phase(s) of the project.

Budget & Financial Summary: Budget in the amount of \$12,000,000 is included for this project in the Parks Capital Improvement Projects Fund. A total of \$357 has been expended or committed to date, leaving \$11,999,643 for this CMAR contract and related costs.

Attachments:

1. VPAC BB Fields Crain Group Vendor Signed



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300062 PROJECT #: PK2502 BID/RFP/RFQ#: RFP 24-069

Project Name / Contract Description: CMAR Contract for Baseball Fields at Veterans Park

Name of Contractor: Crain Group, LLC

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

If yes, what is the grant number:

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

Section 3 Plan Incl. ☐ Yes ☐ No ☒ N/A Buy America Required ☐ Yes ☐ No ☒ N/A

Transparency Report ☐ Yes ☐ No ☒ N/A

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

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

PK2505 / 41389971-6561

Five (5) proposals were received. \$12,000,000 is included in the Parks Capital Project Funds. Nothing has been expended or committed to date, leaving \$12,000,000 for this CMAR contract and related costs.

(If required)*

CRC Approval Date*: Council Approval Date*: 10/24/24 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
STANDARD FORM OF AGREEMENT
BETWEEN CITY AND CONSTRUCTION MANAGER AT RISK**

This Agreement is entered into by and between the **City of College Station**, a Texas home-rule municipal corporation (the “City”) and Crain Group, LLC, a Texas limited liability company (the “Construction Manager” or Contractor”) for the construction and/or installation of the following City Project: Baseball Fields at Veterans Park, as more particularly described in Paragraph 2.17 of this Agreement.

**ARTICLE I.
GENERAL CONDITIONS**

1. GENERAL PROVISIONS

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

2. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

2.13 Interpretation of Phrases. Whenever the words “directed”, “permitted”, “designated”, “required”, “considered necessary”, “prescribed”, or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of the City’s Representative is intended. Similarly, the words “approved”, “acceptable”, “satisfactory”, or

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

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

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

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

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

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

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

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

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

including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

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

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

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

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

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

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

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

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

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

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

(i) “**Product Data**,” as described in Paragraph 5.13, means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

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

(l) “**Shop Drawings**,” as described by Paragraph 5.13, mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

3. THE AGREEMENT DOCUMENTS

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

- (a) This signed Agreement.
- (b) Addendum to this Agreement.
- (c) General Conditions.
- (d) Special Conditions.
- (e) Technical specifications.
- (f) Drawings.
- (g) Instructions to Bidders and any other notices to Bidders or Contractor.
- (h) Performance bond, Payment bonds, Bid bonds and Special bonds.

(i) Contractor's Proposal.

3.02 Distribution of Agreement Documents. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon.

3.03 Prohibition of Re-Use. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Agreement Documents, all documents, including sets of the plans and specifications and "as built" drawings, are to be returned to the City on request at the completion of the work. All Agreement Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Agreement Documents, the Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirement, either or both in accordance with the City's interpretation.

4. OWNER

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

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

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

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

4.05 Owner's Right to Carry out the Work.

(a) If the Contractor defaults or neglects to carry out the Work in accordance with the Agreement Documents and fails within a seven-day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may

have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

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

4.06 Owner's Right to Use or Occupy.

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

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

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

5. CONTRACTOR

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

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

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

5.04 Review of Agreement Documents and Field Conditions by Contractor.

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

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

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

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

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

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

5.05 Supervision And Construction Procedures.

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

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

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

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

5.06 Labor And Materials.

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

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

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

5.07 Warranty.

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

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

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

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

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

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

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

5.08 Permits, Fees and Notices.

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

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

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

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

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

5.09 Allowances.

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

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

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

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

5.11 Contractor's Construction Schedules.

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

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

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

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

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

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

5.13 Shop Drawings, Product Data and Samples.

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

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

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

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

(e) The Contractor shall review for compliance with the Agreement Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Agreement Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Agreement Documents and approved by the Contractor may be returned by the Architect without action.

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

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

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

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

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

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

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

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

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

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

(n) The Contractor shall provide composite drawings within three (3) months of Agreement signing showing how all piping, ductwork, lights, conduit, equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by code, or in keeping with good construction industry standards and practice. Space for all trade elements must be considered on the same drawing. Drawings shall be at ¼ inch per foot minimum scale and shall include invert elevations and sections required to meet the intended purpose.

5.14 Use of Project Site.

(a) The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Agreement Documents and shall not unreasonably encumber the site with materials or equipment.

(b) The Contractor's access to the Project site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the City before the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without prior consent by the Owner.

5.15 Cutting And Patching.

(a) The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or

otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

5.16 Cleaning Up.

(a) The Contractor shall keep the premises and surrounding area mowed and free from accumulation of weeds and waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall be responsible for protection of the Work and shall repair or replace damaged work at Substantial Completion of the Work. The Contractor shall remove all temporary protections at the completion of the Work.

(b) If the Contractor fails to clean up as provided in the Agreement Documents, the City may do so, and the cost thereof shall be charged to the Contractor.

(c) Prior to the Architect's inspection for Substantial Completion, the Contractor shall: clean exterior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean goods, equipment, and fixtures to a sanitary condition; clean roofs; clean the Project site; sweep paved areas and rake clean other surfaces; and remove trash and surplus materials from the Project site.

5.17 Access To Work. The Contractor shall provide the City and Architect access to the Work in preparation and progress wherever located.

5.18 Royalties, Patents and Copyrights. The Contractor shall pay all royalties and license fees required for the Project. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City and Architect harmless from loss on account thereof (as described in Paragraph 6), but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Agreement Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City or Architect. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

6. INDEMNIFICATION AND RELEASE

6.01 Contractor Not Providing Architectural or Engineering Services. When the Contractor is not providing architectural or engineering services for the Project (such as when such services are not required by the Agreement Documents for a portion of the Work, or when the Contractor does not need to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions apply:

CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF AGREEMENT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY. THERE SHALL BE NO ADDITIONAL INDEMNIFICATION OTHER THAN AS SET FORTH IN THIS SECTION. ALL OTHER PROVISIONS REGARDING THE SAME SUBJECT MATTER SHALL BE DECLARED VOID AND OF NO EFFECT.

The indemnification contained above shall include but not be limited to the following specific instances:

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

Contractor's indemnification obligations in this Paragraph 6.01 shall survive termination, completion, abandonment and final payment.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST

OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE CONTRACTOR'S WORK TO BE PERFORMED HEREUNDER. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE, AND IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

6.02 Contractor Providing Architectural or Engineering Services. When the Contractor is providing architectural or engineering services for the Project (such as when those services are required by the Agreement Documents for a portion of the Work, or when the Contractor needs to provide those services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions shall apply pursuant to section 271.904 of the Texas Local Government Code, as amended, and other authority.

THE CONTRACTOR, AS THE INDEMNITOR, SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ALL DAMAGE OR LIABILITY (INCLUDING ALL MONETARY DAMAGES AND JUDGMENTS, LEGAL OR EQUITABLE RELIEF, COSTS, EXPENSES, COURT COSTS, INTEREST, REASONABLE ATTORNEY'S FEES, AND JUST AND LAWFUL OFFSETS AND CREDITS) REGARDING THE PROJECT TO THE EXTENT THAT SAID DAMAGE OR LIABILITY IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, AND COMMITTED BY SAID INDEMNITOR OR SAID INDEMNITOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH SAID INDEMNITOR EXERCISES CONTROL; HOWEVER, THIS INDEMNITOR OBLIGATION EXPRESSLY DOES NOT APPLY WHEN THE DAMAGE, LIABILITY, CLAIM OR JUDGMENT IS BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, THE CITY'S EMPLOYEE OR AGENT, OR OTHER PERSON OR ENTITY OVER WHICH THE CITY EXERCISES CONTROL.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND

CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE WORK ON THE PROJECT PERFORMED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE. IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL NOT APPLY WHEN SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

Notwithstanding anything stated to the contrary in this Paragraph 6.02, it is required that: (a) the City shall be included as an additional insured under the Contractor's general liability, business automobile liability, and excess/umbrella liability insurance policies, and the Contractor shall provide any and all defenses to the City as provided by those policies; and (b) a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Contractor, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

Contractor's indemnification obligations in this Paragraph 6.02 shall survive termination, completion, abandonment and final payment.

7. REPRODUCIBLE RECORD DRAWINGS

7.01 Drawings. Required as part of Final Completion of the Project, the Contractor shall submit one (1) complete set of drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

8. ANTITRUST VIOLATIONS

8.01 Antitrust Violations. To permit the City to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Agreement which are under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et. seq. (1973). The Contractor shall include this provision in its agreements with each Subcontractor and

supplier. Each Subcontractor shall include such provision in agreements with sub-subcontractors and suppliers.

9. ADMINISTRATION OF THE CONTRACT

9.01 Architect.

(a) The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement. The term “Architect” means the Architect or the Architect’s authorized representative, or such successor Architect as City may appoint by written notice to Contractor from time to time.

(b) City shall notify Contractor when the duties, responsibilities, or limitations of authority of the Architect have been modified.

(c) If the employment of the Architect is terminated, the City may elect to appoint a replacement Architect, or at its option, elect to complete the Project using another consultant or representative to perform the balance of the Architect’s functions on the Work.

(d) Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Agreement Documents by the activities or duties of the Architect.

9.02 Architect’s Administration of the Contract.

(a) Certain portions of the administration of the Agreement will be performed by the Architect. The Architect shall not have the authority to act on behalf of the City unless such authority is expressly granted in the Agreement Documents or the City’s engagement agreement with the Architect, nor shall such authority be implied from any act or representation of the Architect. The City is free to elect to have some of the administration duties set out for the Architect to perform under the Agreement Documents performed by a Construction Manager or by employees of the City.

(b) The Architect, as a representative of the City, will visit the site at intervals appropriate to the stage of the Contractor’s operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Agreement Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Agreement Documents, except as provided in Paragraph 5.05(a) In no event shall City or any other party have control over, be in charge of, or be responsible for construction

means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibilities. City will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement Documents. City will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

(c) The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Agreement Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

(d) Communications Facilitating Agreement Administration. Except as otherwise provided in the Agreement Documents or when direct communications have been specially authorized, the City and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the City.

(e) Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect and the City (the City in consultation with the Architect), both have the authority to reject Work that does not conform to the Agreement Documents. Whenever the City or Architect considers it necessary or advisable for implementation of the intent of the Agreement Documents, the City or Architect will have authority to require additional inspection or testing of the Work in accordance with Paragraph 21.1 whether or not such Work is fabricated, installed or completed. However, neither this authority of the City or Architect, nor a decision made reasonably and in good faith either to exercise or not to exercise such authority, shall give rise to create or imply the existence of a duty or responsibility of the City or Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

(g) The Architect will review and approve or take other appropriate action upon the Contractor's submittals regarding this Agreement for the Project, including Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Agreement Documents. The Architect's action will be taken with such reasonable promptness, but no longer than fifteen (15) business days, as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other

details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Agreement Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of its obligations. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) Upon direction of the City, the Architect will prepare Change Proposal Requests, Change Orders, and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 13.04.

(i) The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the City, for the City's review and records, written warranties and related documents required by the Agreement and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Agreement Documents.

(j) If the City and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Agreement Documents.

(k) The Architect will interpret and decide matters concerning performance under, and requirements of, the Agreement Documents on written request of either the City or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 9.02(k), then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until thirty (30) days after written request is made for them.

(l) Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Agreement Documents and will be in writing or in the form of drawings.

10. CLAIMS AND DISPUTES

10.01 Definition. A Claim is any demand or assertion by the Contractor that it should be paid more money than the Agreement Sum, as adjusted under the Change Order provisions herein, by the City because of action or inaction on the part of City, Architect, or any party for whom City is responsible, or any party with whom City has separately contracted for other portions of the Project, including but not limited to any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that the Agreement Documents have been misinterpreted, that there has been a failure

of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that there are problems with the Agreement Documents, or the timing of Architectural approvals or decisions, that action of the City have been intentionally wrongful or deceptive in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Agreement Documents or Work. Nothing contained in this subparagraph shall be construed as creating any Contractor right to make a claim, where no such right otherwise exists.

10.02 Notice Requirement. Within fourteen (14) calendar days of the first occurrence of an event that Contractor has any reason to believe might result in a Claim, or within fourteen (14) calendar days of Contractor's discovery of the first occurrence of the event that Contractor has any reason to believe might result in a Claim (if the first occurrence of the event was willfully hidden from the Contractor), the Contractor shall file a written document clearly captioned "Notice of Claim" with City and Architect. The notice shall clearly set out the specific matter of complaint, and the impact of damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date that is reasonably possible. Furthermore, the following matters are required:

- (a) Any Claim or portion of a Claim that has not been made the specific subject of a notice strictly in accordance with the requirements of this Paragraph shall be waived. It is imperative that City have timely, specific notice of any subject, the impact of which City may be in a position to mitigate.
- (b) No course of conduct or dealings between the parties, nor implied acceptance of alteration or additions to the Agreement Documents or Work, or changes to the Agreement Documents or Work schedule, shall be the basis for any claim for an increase in the Agreement Sum or change in the Agreement Time.

10.03 Claims Handling During Construction. After receipt of a Notice of Claim, the City may elect to refer the matter to the Architect or another party for review. Contractor will attend meetings called to review and discuss the Claim and mitigation of the problem and shall furnish any reasonable factual backup of the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Work during the pendency of any claim, except in the event of termination or Work stoppage directed by City. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, as follows regarding the alternative dispute resolution requirements of this Agreement:

No suit shall be filed by a Party regarding a dispute arising under or related to this Agreement unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Agreement, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509 (800-733-9529 telephone).

10.04 Claims Handling Following Construction. The acceptance of final payment shall constitute a waiver of Claims by the Contractor which have not previously been identified in a timely Notice of Claim and specifically reserved in the final Application for Payment.

10.05 Claims for Concealed or Unknown Conditions. Only if conditions are encountered at the Project site which are (a) subsurface and not revealed or otherwise generally documented in a geotechnical report or other engineering or professional report or document, or otherwise concealed physical conditions which differ materially from those indicated in the Agreement Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement Documents, then Contractor shall be entitled to make a Claim if it can satisfy all of the other requirements of Paragraph 9.

10.06 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Agreement Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 18.04.

10.07 Calculating Claim Amount. In calculating the amount of any Claim, the following standards will apply:

- (a) No indirect or consequential damages will be allowed.
- (b) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of profits, or materials or labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

(c) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

(d) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the Schedule of Values, divided by the total number of calendar days of Agreement Time called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by the Contractor for job overhead costs shall be used.

(e) The maximum amount of all Claims proven by the facts to be due to the Contractor against the City under this Agreement is expressly agreed by the parties not to exceed in any event or set of circumstances an aggregate total of five percent (5%) of the Agreement Sum.

10.08 Liquidated and Other Damages.

(a) The amount of liquidated damages (as hereafter described) for the Construction Manager's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the parties because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Construction Manager to achieve timely completion of the Work, if the Construction Manager should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of the Agreement Documents, then the Construction Manager does hereby agree as part of the consideration for the awarding of this Agreement that the Owner may permanently withhold from the Construction Manager's total compensation the sum of Two Thousand Five Hundred _ and NO/100 DOLLARS (\$2,500.00) for each and every calendar day that the Construction Manager shall be in default after the time stipulated for Substantial Completion not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both deadlines specified for Substantial Completion and/or Final Completion.

(b) Regarding all other conduct, acts, or omissions of the Contractor (being separate and distinct from the liquidated damage authorizing conduct of the Contractor described in Subparagraph (a) above) which constitute a breach or default of this Agreement, the City may pursue the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages allowed by law, including without limitation: Agreement termination; the recovery of all actual and consequential damages; and the recovery of its incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

(c) Notwithstanding anything to the contrary stated in this Agreement, any conduct, act, or omission committed by the Contractor which constitutes a breach or default of this

Agreement shall survive the: (1) City's acceptance of the Work performed under this Agreement; and (2) termination of the Agreement.

11. SUBCONTRACTORS

11.01 Definitions.

(a) A Subcontractor is a person or entity who has a direct agreement with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect agreement with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

11.02 Award of Subcontracts and Other Contracts for Portions of the Work.

(a) Unless otherwise stated in the Agreement Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the City through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) and copies of all executed subcontract(s) proposed for each principal portion of the Work of the Project. The Architect will promptly reply (but in no event longer than 30 days from said written notice) to the Contractor in writing stating whether or not the City or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the City or Architect to reply promptly shall constitute notice of no reasonable objection.

(b) The Contractor shall not have a contractual agreement for the Project with a proposed person or entity to whom the City or Architect has made reasonable and timely objection. The Contractor shall not be required to have a contractual agreement with anyone to whom the Contractor has made reasonable objection.

(c) If the City or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the City or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Agreement Sum and Agreement Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Agreement Sum or Agreement Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

(d) The Contractor shall not change an approved Subcontractor, person or entity previously selected if the City or Architect makes reasonable objection to such substitute.

(e) The Contractor shall submit the list of proposed Subcontractors on a form approved by the City.

(f) The Contractor and Subcontractors are required to visit the site and completely familiarize themselves with the existing conditions prior to the submission of Proposal(s). No additional increase in the Agreement amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Agreement Documents.

11.03 Subcontractual Relations. By appropriate written agreement with the Subcontractor, the Contractor shall require each Subcontractor, to the extent of the Work for the Project to be performed by the Subcontractor, to be bound by the terms of the Agreement Documents, and to assume all obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the City and Architect. Each subcontract agreement shall preserve and protect the rights of the City and Architect under the Agreement Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Agreement Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Agreement Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

11.04 Contingent Assignment of Subcontracts.

(a) Each subcontract agreement for a portion of the Work for the Project shall be assigned in writing by the Contractor to the City provided that the:

1. assignment is effective only after termination of the Agreement by the City for cause pursuant to Paragraph 22.02 and only for those subcontract agreements which the City accepts by notifying the Subcontractor and Contractor in writing; and

2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

(b) City shall only be responsible for compensating Subcontractor for Work done or materials furnished after the date City gives written notice of its acceptance of the assigned subcontract agreement.

(c) Each Subcontract and assignment shall provide that the City shall only be responsible to the Subcontractor for those services and materials furnished by the Subcontractor subsequent to the City's exercise of any rights under this contingent assignment.

11.05 Responsibility. Contractor shall be fully responsible for the performance of its Subcontractor, including those selected or approved by the City.

12. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

12.01 Owner's Right to Perform Construction and to Award Separate Contracts.

(a) The City reserves the right to perform other construction work, maintenance, and repair work near or adjacent to the Project site during the time period of the Work. Owner may perform other Work with separate contractors. City shall have access to the site at all times.

(b) When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Agreement Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

12.02 Mutual Responsibility.

(a) The Contractor shall afford the City and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Agreement Documents.

(b) If part of the Contractor's Work depends for proper execution or results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the City's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

(c) The City shall be reimbursed by the Contractor for costs incurred by the City which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

(d) The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors as provided in Paragraph 18.02(e).

(e) The City and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 5.15.

12.03 Owner's Right to Clean Up. If a dispute arises among the Contractor, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises

and surrounding area free from waste materials and rubbish, the City may clean up and the Architect will allocate the cost among those responsible.

13. CHANGES IN THE WORK

13.01 General.

(a) Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Construction Change Directive or order for a minor change in the Work. The Agreement Sum and/or Agreement Time may be increased for changes in the Work if the provisions of this Paragraph have been met.

1. No change in the Agreement Sum and/or Agreement Time will be allowed for a change in the Work unless prior to performing the changed Work, the Contractor has provided the City in writing a proposal for any change in price and/or change in Agreement Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall not be recognized as having any impact upon the Agreement Sum or the Agreement Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within fourteen (14) calendar days of receiving the directive, submit a change proposal to the City, and a Change Order is subsequently executed, or Contractor satisfies the requirements of Paragraph 10. Contractor's proposal shall be subject to City's acceptance and remain irrevocable for a period of sixty (60) calendar days after receipt by City. Thereafter, Contractor reserves the right to resubmit such change proposal upon different pricing and time of performance terms.

(b) A Change Order shall be based upon agreement among the City, Contractor, and Architect. A Construction Change Directive requires agreement by the City and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

(c) Changes in the Work shall be performed under applicable provisions of the Agreement Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 13.03, a change in the Agreement Sum or the Agreement Time shall be accomplished only by Change Order.

(d) The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the City. The parties further agree as follows:

1. Each separate Change Proposal shall be numbered consecutively and shall include material costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.

2. The Subcontractor's itemized accounting shall be included with the Change Proposal.
3. If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the City and Architect.
4. A revised Change Proposal shall bear the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.
5. Upon written approval of a Change Proposal by the City, the City will prepare a Change Order authorizing such Change in Work.
6. The Contractor shall request extensions of the Agreement Time due to changes in the Work only at the time of submitting its Change Proposal. **Contractor's failure to do so shall represent a waiver of any right to request a time extension.**

13.02 Change Orders.

(a) The Contractor makes a written request for a Change Order by submitting a written Change Proposal. A Change Order is a written instrument prepared by the City and reviewed by the Architect. When finalized, a Change Order is signed by the City, Contractor and Architect, stating their agreement upon all of the following:

1. change in the Work; and
2. the amount of the adjustment, if any, in the Agreement Sum; and
3. the extent of the adjustment, if any, in the Agreement Time.

(b) Pursuant to Section 252.048(d) of the Texas Local Government Code:

1. The Guaranteed Maximum Price ("GMP") may not be increased by more than twenty-five percent (25%). Written change orders that do not exceed twenty-five percent (25%) of the original agreement amount may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars (\$50,000.00). Changes in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the City Council prior to commencement of the services or work.
2. For construction contracts funded in whole or in part by Certificates of Obligations, an Agreement with a GMP of \$1 million or more may not be increased

by more than twenty-five percent (25%). If a change order for a construction Agreement funded in whole or in part with certificates of obligation that has a GMP of less than \$1 million increases the Agreement amount to \$1 million or more, subsequent change orders may not increase the revised Agreement amount by more than twenty-five percent (25%). Written change orders may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars (\$50,000.00). Changes in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the City Council prior to commencement of the services or work.

(c) Methods used in determining adjustments to the Agreement Sum may include those named below:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in Agreement Documents or subsequently agreed upon;
3. a determination in a manner agreed upon by the parties and a mutually acceptable fixed fee, or the percentage fee established at Subparagraph 13.3(f), or
4. as provided in Subparagraph 13.3(g).

(d) Agreement on any Change Order shall constitute a final settlement of all Claims by the Contractor directly or indirectly arising out of or relating to the Change in Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs and impact costs associated with such change and any and all adjustments to the Agreement Sum and the Agreement Time.

13.03 Construction Change Directives.

(a) A Construction Change Directive is a written order prepared by the Architect and signed by the City and Architect, directing a change in the Work prior to an agreement on adjustment, if any, in the Agreement Sum or Agreement Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Agreement Sum and Agreement Time being adjusted accordingly.

(b) A Construction Change Directive shall be used in the absence of a total agreement on the terms of a Change Order.

(c) The Construction Change Directive shall include a unilateral change in the Agreement Sum and/or Agreement Time reflecting the City's view of the appropriate change in the Agreement Sum and/or Agreement Time for the Change in Work covered by the Construction Change Directive. Until an agreement is reached by the City and Contractor on these issues for a Change Order, the changes in Agreement Sum and

Agreement Time set out in the Construction Change Directive shall be used for Schedule of Values, payment and scheduling purposes.

(d) Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Agreement Sum or Agreement Time.

(e) A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Agreement Sum and Agreement Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(f) In the absence of an agreement between City and Contractor on the proper change to the Agreement Sum or Agreement Time because of a change in the Work, Contractor may treat the matter as a Claim under Paragraph 10. In such event, the Contractor shall be entitled to recover only the amount by which the Cost of the Work has been reasonably increased over the Cost of Work without the change in the Work, plus five percent (5%).

(g) Pending final determination of the cost of a Construction Change Directive to the City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the City for a deletion or change which results in a net decrease in the Agreement Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

13.04 Minor Changes in the Work. The Architect will have authority to order minor changes in the Work not involving adjustment in the Agreement Sum or extension of the Agreement Time and not inconsistent with the intent of the Agreement Documents. Such changes shall be effected by written order and shall be binding on the City and Contractor. The Contractor shall carry out such written orders promptly.

13.05 Changes Funded by Allowances. Allowances balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead and profit mark-up when changes in the Work are funded by one of the Allowances.

14. TIME

14.01 Definitions.

(a) Unless otherwise provided, Agreement Time is the period of time, including authorized adjustments, allotted in the Agreement Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons, or entities for whom the Contractor is responsible.

(c) The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 16.

14.02 Progress and Completion.

(a) Time limits stated in the Agreement Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Agreement Time is a reasonable period for performing the Work.

(b) The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Project site or elsewhere prior to Contractor obtaining all bonds required by the Agreement and before the effective date of insurance required by Paragraph 19 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Agreement Documents or a Notice to Proceed given by the City, the Contractor shall notify the City in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

(c) The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Agreement Time.

14.03 Delays and Extensions of Time.

(a) If the Contractor is delayed in performing Work that is critical to the overall completion of the Work by an act or neglect of the City or Architect, or a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, unavoidable casualties, including fire, or by unusually adverse weather conditions, as defined below, then the Agreement Time shall be extended for a reasonable time to reflect the impact of the delay on Work critical to achieve Substantial Completion within the Agreement Time, provided the performance of the Work was not delayed by any other cause for which the Contractor is not entitled to an extension in the Agreement Time under the Agreement Documents. Adjustments in the Agreement Time will be permitted for a delay only to the extent such delay is not caused or could not have been anticipated by the Contractor and could not be limited or avoided by the Contractor's timely notice to the City of the delay, and only if Contractor satisfies the conditions of Paragraph 14.03(b). Contractor has the burden to prove that any of the foregoing alleged causes of delay significantly impacted construction progress on the critical path, as a condition precedent to any extension of Agreement Time.

(b) Weather delays include "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for

such term for this locality, both as determined by the National Weather Service Forecast Office for Easterwood Airport in College Station, Texas (KCLL/CLL).

(c) On or before the fifteenth (15) day of each month of the Work, Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled for the preceding month, other than time extensions for changes in Work, which are to be submitted in accordance with the requirements of Paragraph 13. If Contractor's request for time extension for changes in the Work is denied and Contractor wishes to pursue the matter, Contractor shall submit in writing a request for that extension by the fifteenth (15) day of the month following the denial. **Any claim for time extension not submitted under the terms of this Subparagraph shall be waived.**

(d) City, after consultation with the Architect, may grant time extensions to the extent it believes them to be proper. Time extensions granted by the City may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extensions beyond those granted by the City, it may make a claim for them provided it can meet the requirements of Paragraph 10.

15. PAYMENTS AND COMPLETION

15.01 Agreement Sum. The Agreement Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the City to the Contractor for performance of the Work under the Agreement Documents

15.02 Schedule of Values. Before the first Application for Payment, the Contractor shall submit to the Architect a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Architect. Once approved by the Architect and updated for changes in the Work, the Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule of Values shall not overvalue early job activities. The Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall follow the trade divisions of the Specification so far as practicable.

In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on forms approved by the Owner, and shall include the following:

(a) Contractor's costs for Contractor's Fee, bonds and insurance, mobilization, etc., shall be named as individual line items.

(b) Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

(c) On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule of Values shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation of fixtures, start up, etc.)

(d) Costs for subcontract Work shall be named without any addition of Contractor's costs for overhead, profit or supervisions.

(e) Where payment for stored materials may be requested prior to installation, material and labor shall be named as separate line items.

(f) Sample pages from an approved Schedule of Values are included following this document.

15.03 Applications for Payment.

(a) At the time specified in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values and an updated project schedule for the Work. Such application shall be notarized and supported by such data fully evidencing and substantiating the Contractor's right to payment. The City requires the submission of copies of requisitions, billings, and invoices from the Contractor, Subcontractor(s) and material suppliers, all self-performed billings and invoices, all applicable payrolls, etc. Applications for Payment should also reflect retainage (if applicable). Unless otherwise agreed, the Contractor shall submit requests for payment in quadruplicate originals using for the "top sheets", originals of APPLICATION AND CERTIFICATE FOR PAYMENT; continuation sheets showing in detail the amounts requested, etc., may be submitted on CONTINUATION SHEET(S) in a format approved by the Architect. All blank spaces must be completed, and the signatures of the Contractor and Notary Public shall be original on each form. By submitting its Application for Payment, the Contractor certifies that the individual signing the application is authorized to do so. Additionally, if the Contractor prepares its Application for Payment utilizing "Excel" spreadsheet software, it shall submit a "thumb drive" or otherwise make such spreadsheet available electronically with each application for payment to facilitate the City's and Architect's review of the application.

1. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

(b) Unless otherwise provided in the Agreement Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, so long as such location, materials, and equipment also have bond and insurance coverage on Contractor's bonds and insurance policies. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site. Upon payment by the City of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the City. The Contractor warrants

that title to all materials and equipment covered by an Application for Payment will pass to City upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No work, materials or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained, or encumbrance is attached by the seller, the Contractor, or other party.

(c) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

15.04 Certificates for Payment.

(a) The Application for Payment will be reviewed first by the Architect who will certify to the City that portion, if any, of the Application for Payment it has determined is properly due. In the event that the Architect believes that payment should be withheld, in whole or in part, it will notify the City and Contractor of the basis of this view as provided in Subparagraph 15.05(a).

(b) The issuance of a Certificate for Payment will constitute a representation by the Architect to the City, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Agreement Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Agreement Sum.

(c) The issuance of a Certificate of Payment shall constitute a recommendation to the City in respect to the amount to be paid. This recommendation is not binding on the City if City knows of other reasons under the Agreement why payment should be withheld.

(d) The Architect will affix their signature to the same form described in Paragraph 15.04(a). to signify their certification of payment provided the application is otherwise satisfactory.

15.05 Decisions to Withhold Certification.

(a) The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Architect's opinion the representations to the City required by Paragraph 15.04(b) cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and City as provided in Paragraph 15.04(a). If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the City. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the City from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 5.05(b), because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum;
5. damage to the City or another contractor;
6. reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. persistent failure to carry out the Work in accordance with the Agreement Documents.

(b) When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

15.06 Progress Payments.

(a) After the Architect has issued a Certificate for Payment, the City, upon the City's review and written approval of the Certificate for Payment, shall endeavor to make payment in the manner and within the time provided in the Agreement Documents, and

shall so notify the Architect. If the City believes the Contractor is not current in its legitimate obligations to suppliers, laborers and/or Subcontractors on the Project, City may (but is not obligated to) withhold payment until it receives partial or final releases, or other reasonable proof from the Contractor that this situation does not exist.

(b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. City is not obligated to monitor payments to Subcontractors or Sub-subcontractors, and nothing in this paragraph shall create any right on the part of a Subcontractor or Sub-subcontractor against City.

(c) The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and City on account of portions of the Work done by such Subcontractor.

(d) Neither the City nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 15.06(b), 15.06(c) and 15.06(d).

(f) A Certificate for Payment, a progress payment, the issuance of Substantial or Final Completion, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Agreement Documents.

15.07 Failure of Payment. If the City incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the City shall have an absolute right to offset such amount against the Agreement Sum under this Contract, and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the Owner is entitled, or (2) issue a written notice to the Contractor reducing the GMP by an amount equal to that to which the Owner is entitled.

16. SUBSTANTIAL COMPLETION

16.01 General. When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Architect and City shall review the punch list prepared by Contractor and supplement the list as necessary. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement Documents.

(a) The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and City for supplementation. Upon receipt, the Architect and City shall perform a spot review to determine the adequacy

and completeness of the Contractor's punch list. Should the Architect or City determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done.

(b) Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent shall accompany the Architect, its Consultants, and the City (at its discretion) during their inspections and the preparation of their supplements to the Contractor's punch list. The superintendent shall record or otherwise take note of all supplementary items. The Architect shall endeavor to furnish to the Contractor typed, hand written or recorded supplements to the punch list in a prompt manner; however, any delay in the Contractor's receiving said supplements from the Architect shall not be cause for a claim for additional cost or extension of time.

16.02 Inspection. When the Contractor notifies Architect and City that it has completed or corrected items on the punch list, the Architect and City at its discretion will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and City's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Agreement Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect and City to determine Substantial Completion. Any further inspections by the Architect and City for the purpose of determining the Project is Substantially Complete shall be at Contractor's cost and the City may deduct such cost from any amount payable to Contractor hereunder.

16.03 Certificate of Substantial Completion. When the Work or designated portion thereof is substantially complete, and upon the City's concurrence of the same, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Agreement Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

16.04 Approval of Certificate. The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the City, in its sole discretion, may, but is not required to, make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Agreement Documents. If retainage is not released at Substantial Completion, applicable retainage amounts will be released by City upon Contractor obtaining Final Completion.

16.05 Insurance. The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued, and accepted by the City in writing, regardless of the stated date of Substantial Completion. Acceptance shall not be unreasonably withheld.

16.06 Partial Occupancy or Use.

(a) The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 19.03(a) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Agreement Documents.

(b) Immediately prior to such partial occupancy or use, the City, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Agreement Documents.

17. FINAL COMPLETION AND FINAL PAYMENT

17.01 General. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City and Architect shall endeavor to promptly make such inspection and, when the City and Architect finds the Work acceptable under the Agreement Documents and the Agreement fully performed, the Architect shall endeavor to promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Agreement Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 17.02 as precedent to the Contractor's being entitled to final payment have been fulfilled.

Prior to final payment, the Contractor shall submit digitally (mylars for all Water/Wastewater projects as specified in project specifications and bid documents) to the Architect the following completed forms:

1. Contractor's Affidavit of Payment of Debts and Claims;
2. Contractor's Affidavit of Release of Liens;

3. Consent of Surety to Final Payment (if applicable);
4. Subcontractor's Unconditional Releases – each signed and notarized on a single piece of paper;
5. Maintenance and inspection manuals – three (3) sets of each bound in a 3 inch “D-slant” ring binder;
6. Final list of subcontractors;
7. one (1) complete set of marked-up copies of the Drawings and Specifications accurately showing the Project as constructed. Such Specifications and Drawings shall be marked to show all changes and modifications that have been incorporated into the Work as performed;
8. other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; and
9. any other “Closeout Documents” required under the Agreement Documents.

17.02 Format. Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment, constituting the entire unpaid balance of the Agreement Sum shall be endeavored to be paid by the City to the Contractor within sixty (60) days after Substantial Completion of the Work, unless otherwise stipulated in the Certificate of Completion, provided the Agreement is fully performed, and Final Certificate of Payment has been issued by the Architect. The City may accept certain portions of the Work as being complete prior to the acceptance of the entire Project. If certain areas are accepted by the City as being completed, and if the Contractor has completed all of the requirements for final payment of the portion of Work, the City may, but is not required to, release retainage for that area/portion of Work. Amounts of retainage shall be agreed upon by both City and Contractor prior to final acceptance of these areas.

17.03 Delay. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the City shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Agreement Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

17.04 Acceptance of Payment. Acceptance of final payment by the Contractor shall constitute a waiver of claims by Contractor except for any Claims then pending that comply with the requirements of Paragraph 10.

17.05 Time for Final Completion. Contractor shall achieve Final Completion within 30 calendar days of the date of Substantial Completion, failing which, Contractor shall provide a full-time on-site superintendent until Final Completion at its own cost and not as a cost of the Work.

18. Protection of Persons and Property.

18.01 Safety Precautions and Programs. The Contractor shall be responsible for initiating, maintaining, and supervising all necessary safety precautions and programs in connection with the performance of the Contract.

18.02 Safety of Persons and Property.

(a) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work, Project site, and other persons who may be affected thereby including but not limited to the City's employees, invitees and the general public;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (including without limitation all State, federal, and local governmental authorities or agencies with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual

construction methods are necessary, the Contractor shall give the City and Architect reasonable advance notice of the presence or use of such materials, equipment, or methods.

(e) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Agreement Documents) to property referred to in Paragraphs 18.02(a)(2) and 18.02(a)(3) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 18.02(a), except damage or loss attributable to acts or omissions of the City or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 6.06.

(f) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

(g) The Contractor shall not load or permit any part of the construction, Work or site to be loaded so as to endanger its safety.

(h) Suspension of all or a portion of the Work, for any reason, shall not relieve the Contractor of its obligations under Paragraph 18.02.

(i) The Contractor shall promptly report in writing to the City and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to City and Architect.

(j) The Contractor shall be responsible for the protection and security of the Work and the Project, until it receives written notification that the Substantial Completion of the Work has been accepted by the City unless otherwise provided in the Certificate of Substantial Completion.

18.03 Hazardous Materials. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in 18.03(c)), except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 18.03(c)). In the event Contractor engages in any of the activities prohibited in this Paragraph 18.03. **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Architect and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited**

to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 18.03.

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

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

(c) For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with Paragraph 18 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

18.04 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional

compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 10 and Paragraph 13.

19. INSURANCE AND BONDS

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

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

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

- (a) Commercial General Liability ("CGL").
- (b) Business Automobile Liability.
- (c) Excess Liability – required for Agreement amounts exceeding \$1,000,000.
- (d) Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage, builder's risk policy shall be written on "all risks" form.
- (e) Workers' Compensation/Employer's Liability.
- (f) Professional Liability
- (g) Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions coverage.
- (h) Surety bonds as required and described in this Agreement.

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

- (a) Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.
- (b) Self-insured retentions must be declared to and approved by the City in writing. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention ("SIR") or

deductible that exceeds \$25,000 unless approved in writing by City. All deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements.

- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.
- (e) For any claims related to this project, the Contractor's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.
- (f) Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents, and subcontractors.
- (g) Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (h) Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

- (i) CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.
- (j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.
- (k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, at least as broad as ISO Form:
 - a. CG 20 10 and CG 11 85; or
 - b. both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms (if later revisions used).
- (l) Contractor shall provide the following Surety Bonds:
 - a. Bid Bond
 - b. Performance Bond
 - c. Payment Bond
 - d. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the Guaranteed Maximum Price (GMP) or the final total dollar value of the Project, whichever is greater, and shall be increased by rider if Project value increases. If the Performance Bond provides for a two-year warranty and provides coverage for other warranty terms as required by the Agreement, then a separate Maintenance Bond is not necessary. If the warranty period specified in the Agreement is for longer than two years, a Maintenance Bond equal to 10% of the final total dollar value of the Project is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of Texas, secured through an authorized agent with an office in Texas, and approved by the City.

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

- (a) Limit of \$5,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$10,000,000.00 which limits shall be endorsed to be

per Project.

- (b) Coverage shall be at least as broad as ISO form GC 00 01.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.
- (d) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

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

- (a) Business Automobile Liability insurance shall be written by a carrier rated "A: VII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$5,000,000.00 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00 and \$2,000,000.00 policy aggregate where such exposures exist.

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

- (a) The Contractor may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.
- (b) The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

19.07 Additional Insured.

Those policies set forth in Paragraphs 19.04 Commercial (General) Liability, 19.05 Business Automobile Liability and 19.06 Excess Liability shall contain an endorsement listing the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit C**, and approved by the City before Work commences.

19.08 Builder's Risk

Until the Work is completed and accepted by the City, the Contractor shall purchase and maintain builder's risk insurance upon the entire Work at the Project site to the full insurable value thereof. The Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. The builder's risk insurance shall also cover portions of the Work stored off site after written approval of the City of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the City, the Contractor, subcontractors, and sub-subcontractors in the Work and shall insure against the perils of fire, wind, storm, hail, lightning, and extended coverage including flood and earthquake and shall include all-risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. The insurance shall cover reasonable compensation for City's Consultant's services and expenses required as a result of an insured loss. This must be an all-risk policy incorporating the following language:

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

The insurance policy and related Certificate of Insurance must specifically state that the: (a) Contractor is a named insured party for the insurance coverage described; and (b) City is an additional and named insured party for the insurance coverage described. The deductible under the policy, including that for flood shall not exceed \$100,000.00 without the written approval of the City.

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the Project does not involve new or major reconstruction, at the option of the City, an Installation Floater insurance policy coverage, and/or an endorsement for such coverage, may be acceptable.

For such projects, a Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, and the related Certificate of Insurance, shall: (a) provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site; and (b) comply with the above provision in this Paragraph 19.08 which require that the: (i) Contractor is a named insured party for the insurance coverage described; and (ii) City is an additional and named insured party for the insurance coverage described.

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

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have their own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) Workers' Compensation/Employer's Liability insurance shall include the following terms:
 - 1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 - 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - 3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

“A. Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

duration of the project;

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

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

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

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

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

19.10 Professional Liability.

Professional liability with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.11 Contractors' Pollution Legal Liability.

Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions liability coverage with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.12 Property Insurance.

(a) Partial occupancy or use in accordance with Paragraph 16.06 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City and the Contractor

shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

(b) The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused.

(c) If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the City shall, at City's option, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

(d) If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the City shall waive all rights for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

(e) A loss insured under City's property insurance shall be adjusted by the City and made payable to the City for the insureds, as their interests may appear, subject to requirements of Paragraph 19.03. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

(f) If after such loss no other special agreement is made and unless the City terminates the Agreement for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Paragraph 13.

(g) The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the City's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraph 10.

(h) If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

19.12 Performance Bond and Payment Bond.

(a) Pursuant to applicable provisions of Chapters, 2253, 2254, and 2269 of the Texas Government Code, for all public works contracts with governmental entities: a payment

bond is required if the Agreement Amount exceeds \$50,000, a performance bond is required if the Agreement Amount exceeds \$100,000, and below those amounts, the City may require payment and/or performance bonds for the Project in the exercise of its lawful discretion and best business judgment. The City and Contractor agree that, both a performance and payment bond are required to be properly obtained by the Contractor and timely delivered to the City as described by this Agreement, and such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, as amended, the authority described in this Agreement, and all other applicable law, and furthermore, the following is required regarding said bonds:

1. The Contractor shall execute the required performance and payment bonds: (a) for the full Agreement Amount in the form and scope described in the bond forms attached hereto as **Exhibit B**; or (b) pursuant to Section 2269.258(a) of the Texas Government Code, if a fixed Agreed Amount or Guaranteed Maximum Price has not been determined at the time the Agreement is awarded, the penal sums of said performance and payment bonds delivered to the City must each be in an amount equal to the construction budget for the Project, as specified in the City's request for proposals or qualifications.
2. The bond surety on said bonds shall be authorized under the laws of the State of Texas to provide a performance and payment bond, and each bond shall have attached proof of authorization of the surety to act regarding all obligations described in each respective bond.
3. The Contractor shall provide original, sealed, and complete counterparts of said executed bonds in the forms required by the Agreement Documents, which are attached as **Exhibit B**, together with valid original powers of attorney, at the time of execution of this Agreement and prior to the commencement of Work. Copies of said executed bonds shall be attached hereto as **Exhibit B**.
4. The required performance and payment bonds shall remain in effect for a minimum period of two (2) years after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.
5. If at any time during the performance of this Agreement in the required period thereafter, either or both of said bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days of such invalidity or ineffectiveness a full and complete replacement bond or bonds as the case may be, that shall assure performance or payment as required by this Agreement.
6. Regarding the delivery of said bonds by the Contractor to the City, and pursuant to Section 2269.258(b) of the Texas Government Code: (a) the Contractor shall deliver said bonds not later than the 10th day after the date the Contractor executes the Agreement; or (b) alternatively and subject to the lawful discretion and best business judgment of the City, the Contractor may be allowed by the City to furnish and deliver to the City a bid bond or other financial security which is acceptable to the City to ensure that the Contractor will furnish the required

performance and payment bonds when a guaranteed maximum price is established under this Agreement.

(b) The Contractor may make such changes and alterations as the City may require in the Work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity or quality of the Work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any Work already done or material already used in said Work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, provided that said compensation does not constitute additional compensation to that which has been already paid by the City to the Contractor for any Work associated with said changes or alterations.

20. UNCOVERING AND CORRECTION OF WORK

20.01 Uncovering of Work.

(a) If a portion of the Work is covered contrary to the City's or Architect's request or to requirements specifically expressed in the Agreement Documents, it must, if required in writing by the City or Architect, be uncovered for the City's and Architect's examination and be replaced at the Contractor's expense without change in the Agreement Time.

(b) If a portion of the Work has been covered which the City or Architect has not specifically requested to examine prior to its being covered, the City or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Agreement Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Agreement Documents, correction shall be at the Contractor's expense.

20.02 Correction of Work.

(a) Before or After Substantial Completion. The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Agreement Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

(b) After Substantial Completion. In addition to the Contractor's obligations under Paragraph 5.07, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 16.06(a), or by terms of an applicable special warranty required by the Agreement Documents, any of the Work is found to be not in accordance with the requirements of the Agreement Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously

given the Contractor a written acceptance of such specific condition. The City shall endeavor to give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City or Architect, the City may correct it in accordance with Paragraph 4.05. The “prompt” correction of defective work by the Contractor after receipt of notification from the City as described above shall be defined as follows:

1. The Contractor shall make written response to the City within twenty-four (24) hours of receipt of the City’s notice acknowledging receipt of the notice and providing the proposed schedule to conduct corrective work. Corrective work shall not interfere with the City’s normal operation and use of the Project, unless expressly approved by the City;
 2. For corrective work which is not a life safety issue, or which will not, by the nature of the defect, cause subsequent damage to the Project, corrective work shall be completed within fourteen (14) calendar days;
 3. For corrective work which by its nature may cause subsequent damage to the Project, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days. The Contractor shall also correct all subsequent damage caused by such corrective work;
 4. For corrective work which affects services to, and ordinary use of the Project, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days; and
 5. The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor’s direct control.
 6. The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.
 7. These obligations under Subparagraph 20.02(b) shall survive acceptance of the Work under the Agreement and termination of the Contract. The period for any Work corrected pursuant to Paragraph 20.02 shall be extended for a period of two years after the date said corrective work is completed.
- (c) The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Agreement Documents and are neither corrected by the Contractor nor accepted by the City.

(d) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Agreement Documents.

1. Where non-conforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Architect's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming Work shall be at the Contractor's expense, and performed by the City's testing laboratory if such services are reasonably required by the Architect. All corrected Work shall be retested at the Contractor's expense. Extra architectural or other services required to analyze non-conforming Work shall be paid for by the Contractor.

(e) Nothing contained in Paragraph 20.02 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Agreement Documents. Nothing contained in Paragraph 20.02 is intended to limit or modify any obligations under the law or under the Agreement Documents, including any warranty obligations, expressed or implied.

20.03 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Agreement Documents, the City may do so instead of requiring its removal and correction, in which case the Agreement Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

21. TEST AND INSPECTIONS

21.01 Tests and Inspections.

(a) Tests, inspections, and approvals of portions of the Work required by the Agreement Documents (or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdictional, regulatory, or supervisory authority regarding the land or activities of the Project) shall be made at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory employed by the City for this purpose, or with the appropriate public authority. City shall bear the normal costs of these services, but not any excess costs attributable to Contractor-caused scheduling problems, or other Contractor error. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures.

(b) If the Architect, City or said public authorities determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 21.1, the Architect will, upon written authorization from the City, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such

procedures. Such costs, except as provided in this Paragraph 21.01, shall be at the City's expense.

(c) If such procedures for testing, inspection, or approval under this Paragraph 21 reveal failure of the portions of the Work to comply with requirements established by the Agreement Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Agreement Documents, be secured by the Contractor, and promptly delivered to the Architect.

(e) If the Architect is to observe tests, inspections or approvals required by the Agreement Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

(f) Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the Work.

22. TERMINATION OR SUSPENSION OF THE CONTRACT

22.01 Termination by the Contractor.

(a) The Contractor may terminate the Agreement if the Work is stopped for a period of one hundred-twenty (120) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, for any of the following reasons:

1. issuance of an order or decision of a court or other public authority (including without limitation any State, federal, or local governmental authority or agency with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) having jurisdiction which requires all Work to be stopped;
2. an act of government, such as a declaration of national emergency which requires all Work to be stopped; or
3. because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 15.04(a), or because the City has not made payment on a Certificate for Payment within the time stated in the Agreement Documents, provided notice is given as required under Subparagraph 15.04(a).

(b) The Contractor may terminate the Agreement if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other

persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the City as described in Paragraph 22.03 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

(c) If the Work is stopped for one hundred-twenty (120) consecutive days for any reason described in Paragraph 22.01(a) or 22.01(b), the Contractor may, upon sixty (60) days' written notice to the City and Architect, terminate the Agreement and recover from the City payment for Work already satisfactorily performed by Contractor.

(d) Notwithstanding anything to the contrary contained herein or in the other Agreement Documents, the City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 22.01(a), 22.01(b) and 22.01(c).

22.02 Termination by the City with or without Cause.

(a) The City may terminate the Agreement if the Contractor:

1. refuses or fails to timely supply enough properly skilled workers, or proper materials or equipment, to perform the Work of the Project;
2. fails to make a payment to Subcontractors for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the Subcontractors for the Work of the Project;
3. disregards or fails to comply with any law, ordinance, rule, regulation, decision, or order regarding the Project that is issued by a court or other public authority (including without limitation a State, federal, or local governmental authority or agency, including the City) with regulatory, supervisory, or jurisdictional authority regarding the land or activities of the Project;
4. commits conduct, an act, or omission which constitutes a breach or default of the Agreement or the Agreement Documents;
5. fails to furnish the City, upon request, with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Agreement or Agreement Documents;
6. fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Agreement or Agreement Documents; or
7. fails to provide all policies of insurance, permits, and/or bonds required to be obtained by the Contractor for the Project pursuant to the Agreement or Agreement Documents.

(b) When any of the above Paragraph 22.02(a) reasons exist, the City may, without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any and applicable, seven (7) days' written notice, terminate the engagement and appointment of the Contractor under this Agreement, and may, subject to any prior rights of an applicable surety:

1. take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned or possessed by the Contractor;
2. accept assignment of subcontracts pursuant to Paragraph 11.04;
3. make demand upon Contractor's applicable surety, if any, to complete the Work;
4. finish the Work by whatever reasonable method the City may deem, in its sole discretion and best business judgment, to be expedient or advisable; and/or
5. initiate and complete litigation against the Contractor, and against all other necessary or desired parties (including Contractor's sureties and insurance carriers), for the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Agreement, including without limitation: Agreement termination; the recovery of all actual and consequential damages; the recovery of certain liquidated damages under this Agreement; and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits

(c) When the City terminates the Agreement for a reason stated in Paragraph 22.02(a), the Contractor shall not be entitled to receive further payment until the Work is finished.

(d) If the unpaid balance of the Agreement Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, including attorney's fees, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Contract.

(e) If a Performance Bond has been furnished and the Contractor is declared by the City to be in default under the Agreement, the Surety shall promptly, and in no event more than 30 days, remedy the default by commencing and continuing to perform the remaining work of the Agreement in accordance with its terms and conditions, or by obtaining a bid or bids for the Work in accordance with the Agreement's terms and conditions. At City's election, upon determination by the City and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for an Agreement between such bidder and the City, and make available sufficient funds to pay the cost of completion less the balance of the Agreement Sum, but not exceeding the Penal Sum of the bond. The phrase "balance of the Agreement Sum" as used herein shall mean the total amount payable by

the City to the Contractor under the Agreement, including any adjustments thereto made in accordance with the terms and conditions of this Agreement, and amendments thereto less the amount previously paid by the City to the Contractor.

(f) Also, notwithstanding anything to the contrary herein stated, the City may terminate this Agreement pursuant to one or more of the circumstances and procedures stated in Paragraph 30 for City termination of this Agreement.

22.03 Suspension by the City for Convenience.

(a) The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

(b) If City suspends the Contractor's performance for convenience, an adjustment shall be made to the Agreement Sum as calculated under Paragraph 13 and shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Agreement.

22.04 Termination by the City for Convenience.

(a) The City may, at any time, terminate the Agreement, in whole or in part, for the City's convenience and without cause.

(b) Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. cease operations as directed by the City in the notice;
2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. except for Work not so terminated and/or directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts, and purchase orders and enter into no further subcontracts and purchase orders.

(c) In the event of a termination under Paragraph 22.04, the Contractor shall be paid the value of its Work to the date of termination plus such sums as are reasonably required to cover the cost to Contractor, its Subcontractors, and suppliers, to shut down the Project. City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.

(d) Upon determination by a court of competent jurisdiction that termination of the Contract, pursuant to Paragraph 22.02 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 22.04, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 22.04.

23. GENERAL CONSTRUCTION MANAGER'S RESPONSIBILITIES.

23.01 General. The Contractor (or Construction Manager) shall perform all services described in this Agreement to be performed by the Contractor. The services to be provided under Paragraphs 23.02 and 23.03 constitute the Preconstruction Phase services. If the City and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

23.02 Preconstruction Phase.

(a) Preliminary Evaluation. The Contractor shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other.

(b) Consultation. The Contractor with the Architect shall jointly schedule and attend regular meetings with the City. The Contractor shall consult with the City and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Contractor shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

(c) Preliminary Project Schedule. When Project requirements described in Paragraph 24.01(a) have been sufficiently identified, the Contractor shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the City's approval. The Contractor shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Architect and Contractor. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, Milestone Dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Contractor shall make appropriate recommendations to the City and Architect.

(d) Phased Construction. The Contractor shall make recommendations to the City and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking

into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

(e) Preliminary Cost Estimates. When the City has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Contractor shall prepare, for the review of the Architect and approval of the City, a preliminary cost estimate utilizing area, volume, or similar conceptual estimating techniques.

1. When Schematic Design Documents have been prepared by the Architect and approved by the City, the Contractor shall prepare, for the review of the Architect and approval of the City, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Contractor shall update and refine this estimate at appropriate intervals agreed to by the City, Architect and Contractor.

2. When Design Development Documents have been prepared by the Architect and approved by the City, the Contractor shall prepare a detailed estimate with supporting data for review by the Architect and approval by the City. During the preparation of the Construction Documents, the Contractor shall update and refine this estimate when the Construction Documents are fifty percent (50%) complete, ninety percent (90%) complete (unless the Guaranteed Maximum Price has been established), and at any other appropriate intervals agreed to by the City, Architect and Contractor.

3. If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Contractor shall make appropriate recommendations to the City and Architect.

(f) Subcontractors and Suppliers. The Contractor shall seek to develop subcontractor interest in the Project and shall furnish to the City and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Contractor if the Architect or City know of any objection to such subcontractor or supplier. The receipt of such list shall not require the City or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City or Architect later to object to or reject any proposed subcontractor or supplier.

(g) Long-Lead-Time Items. The Contractor shall recommend to the City and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the City, they shall be procured on terms and conditions acceptable to the Contractor. Upon the City's acceptance of the Contractor's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the City to the Contractor, who shall accept responsibility for such items as if procured by the Contractor. The Contractor shall expedite the delivery of long-lead-time items.

(h) Extent of Responsibility. The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. It is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Architect and City in writing.

(i) Equal Employment Opportunity and Affirmative Action. The Contractor shall comply with applicable laws, regulations, and special requirements of the Agreement Documents regarding equal employment opportunity and affirmative action programs.

23.03 Guaranteed Maximum Price Proposal and Agreement Time.

(a) When the Drawings and Specifications are sufficiently complete, the Contractor shall propose a Guaranteed Maximum Price (depending on Project requirements, at the City's request, multiple Guaranteed Maximum Price packages may be provided to phase or group the work, however, all packages shall be totaled together to arrive at the final Guaranteed Maximum Price), which shall be the sum of the estimated Cost of the Work and the Contractor's Fee. Provided, however, Contractor understands such estimates are relied upon by the City in making various Project determinations, and, therefore, should Contractor's Guaranteed Maximum Price proposal exceed the City's applicable budget by more than 10%, all pre-construction services rendered thereafter to render the Project within 10% of the budget by Contractor shall be at the sole cost of the Contractor.

(b) As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Agreement Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

(c) The estimated Cost of the Work shall include the Contractor's contingency, being a sum established by the Contractor for its exclusive use to cover costs arising under Paragraph 23.03(b) and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

(d) Basis of Guaranteed Maximum Price. The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- 1.** A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

2. A list of allowances and a statement of their basis.
 3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
 4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
 5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
 6. A list of any exclusions.
- (e) The Contractor shall meet with the City and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the City or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- (f) Unless the City accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Contractor and the City.
- (g) Prior to the City's acceptance of the Contractor's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.
- (h) Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Agreement Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Agreement Documents.
- (i) The City shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Contractor in accordance with schedules agreed to by the City, Architect and Contractor. The Contractor shall promptly notify the Architect and City if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

23.04 Construction Phase.

(a) General. The Construction Phase shall commence on:

1. the City's acceptance of the Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, and
2. the City's first authorization to the Contractor to:
 - (i) award a subcontract, or
 - (ii) undertake construction Work with the Contractor's own forces, or
 - (iii) issue a purchase order for materials or equipment required for the Work.

(b) Administration.

1. Notwithstanding anything to the contrary stated in this Agreement, and regarding any Contractor self-performed work authorized for the Project pursuant to this Agreement, it is expressly agreed by the parties that any Contractor self-performed work for the Project must be awarded, if at all, pursuant to the following procedure: (i) first, a written proposal must be submitted by the Contractor to the City for said work, before any competitive bid procedure is thereafter conducted for that proposed and subject work of the Project; (ii) next, a lawful competitive bid procedure shall be conducted to third-parties (not the Contractor) for that proposed and subject work of the Project; (iii) next, an analysis shall be conducted by the City and the Contractor regarding the Contractor's written proposal for the proposed self-performed work and the competitive bids received from third-parties for the proposed and subject Project work, in order for the City, using its discretion and best business judgment, to determine the lowest cost and best construction solution for said work; and (iv) finally and upon the aforesaid analysis conducted by the City, an award by the City in writing is made to the Contractor for the proposed Contractor self-performed work because that solution was determined by the City to represent the lowest cost and best construction solution for said proposed work for the Project.

2. Those portions of the Work that the Contractor does not customarily perform with its own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain public bids in accordance with the applicable requirements of Chapter 2269 of the Texas Government Code from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Architect. The City will then determine, with the non-binding advice and comment of the Contractor and Architect, which bids will be accepted. The City may designate specific persons or entities from whom the Contractor shall obtain bids;

however, if the Guaranteed Maximum Price has been established, the City may not prohibit the Contractor from obtaining bids from other qualified bidders.

3. If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the City and Architect (1) is recommended to the City by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Agreement Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Contractor may require that a change in the Work be issued to adjust the Agreement Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

4. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Paragraphs 28.01(h) and 28.01(i) and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

5. The Contractor shall schedule and conduct meetings with appropriate Subcontractors at which the City, Architect, Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

6. Promptly after the City's acceptance of the Guaranteed Maximum Price proposal, the Contractor shall prepare a schedule in accordance with Paragraph 5.11, General Conditions, including the City's occupancy requirements.

7. The Contractor shall provide monthly written reports to the City and Architect on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Architect. The Contractor shall promptly inform City in writing of any circumstance or development that is likely to delay Substantial Completion of the Project in accordance with the schedule.

8. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the City and Architect at regular intervals.

(c) Professional Services. Paragraph 5.013(j), General Conditions shall apply to both the Preconstruction and Construction Phase.

(d) Hazardous Materials. Paragraph 18.03, General Conditions shall apply to both the Preconstruction and Construction Phases.

END OF GENERAL CONDITIONS

ARTICLE II.
ADDITIONAL CONDITIONS

24. OWNER'S RESPONSIBILITIES

24.01 Information And Services

- (a) The City shall provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- (b) The City shall establish and update an overall budget for the Project, based on consultation with the Contractor and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.
- (c) Structural And Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Contractor knows of any inaccuracy, or should have reasonably discovered such error or inaccuracy, the Contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Paragraphs 24.01(d) through 24.01(g) but shall exercise customary precautions relating to the performance of the Work.
- (d) Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.
- (e) Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site.
- (f) The services of a geotechnical engineer when such services are requested by the Contractor and are reasonably required by the scope of the Project, as determined by the City or Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- (g) Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
- (h) The services of other consultants when such services are reasonably required by the scope of the Project, as determined by the City or Architect, and are requested by the Contractor.

24.02 Owner's Designated Representative. The City shall designate in writing City's Representative who shall have express authority, subject to the limitations set forth in the General Conditions, to bind the City with respect to all matters requiring the City's approval or authorization. This City's Representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. Except as otherwise provided in Paragraph 9.02(a), General Conditions, the Architect does not have such authority.

24.03 Architect. The City shall retain an Architect to provide basic services, including normal structural, mechanical, and electrical engineering services, and any other disciplines as required. The City must authorize, in writing, and cause the Architect to provide additional service, requested by the Contractor which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. The Contractor has no authority to request services from the Architect on the City's behalf. Such services shall be provided in accordance with time schedules agreed to by the City, Architect and Contractor. Upon request of the Contractor, the City shall furnish to the Contractor a copy of the City's Agreement with the Architect.

25. COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

The City shall compensate and make payments to the Contractor for Preconstruction Phase services as follows:

25.01 Compensation.

(a) For the services described in Paragraphs 23.02 and 23.03, the Contractor's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Stipulated Sum of \$30,000.00

(b) If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Contractor's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee

benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

25.02 Payments.

(a) The City shall endeavor to make payments monthly (as described below) following presentation of the Contractor's invoice and supporting documents and, where applicable, shall be in proportion to services performed and the amounts of Work substantiated by Contractor's supporting documentation.

(b) The City will endeavor to make payments no later than thirty (30) calendar days from the date the Contractor's invoice is approved by the City, unless otherwise agreed in writing by the parties.

(c) The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Agreement. The Contractor shall issue exemption certificates to its Subcontractors and suppliers in lieu of said sales tax for all such materials and supplies, complying with all applicable State Comptroller's Rulings.

26. COMPENSATION FOR CONSTRUCTION PHASE SERVICES.

The City shall compensate the Contractor for Construction Phase services as follows:

26.01 Compensation. For the Contractor's performance of the Work as described in Paragraph 23.04, the City shall pay the Contractor in current funds the Agreement Sum consisting of the Cost of the Work as defined in Section 27 and the Contractor's Fee determined as follows:

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Contractor's Fee and explain how said Fee is to be adjusted for changes in the Work.)

General Conditions – \$700,157.00

Construction Manager at Risk Fee – 2.5% of the Cost of the Work

26.02 Guaranteed Maximum Price. The sum of the Cost of the Work and the Construction Manager's Fee for the Work are guaranteed by the Contractor not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Agreement Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Agreement Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement paid by the City. In the event the Cost of Work plus the Contractor's Fee is less than the Guaranteed Maximum Price ("GMP"), the savings shall accrue one hundred percent (100%) to the City.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

The Parties agree that any cost savings shall accrue one hundred percent (100%) to the City.

26.03 Changes in the Work.

(a) Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods named in Paragraph 13.01(b), General Conditions, subject to the limitations provided in the General Conditions.

(b) In calculating adjustments to subcontracts (except those awarded with the City's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Paragraph 13.01(b)(3), General Conditions and the term "costs" as used in Paragraph 13.03(f), General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by this Paragraph 26. Adjustments to subcontracts awarded with the City's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

(c) In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Paragraph 27 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 26.01 of this Agreement.

(d) If no specific provision is made in Paragraph 26.01 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 26.01 will cause substantial inequity to the City or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

27. COST OF THE WORK FOR CONSTRUCTION PHASE.

27.01 Costs to be Reimbursed. The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Paragraph 27.

27.02 Labor Costs.

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

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

(c) Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

(d) Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the City's agreement.

Classification

Name

N/A

N/A

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified above)

(e) Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Further, the time for performance does not necessitate overtime work and the City shall not be required to reimburse the "premium time" portion of any overtime payments by Contractor, unless otherwise approved, in writing, in advance by the City.

(f) Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Paragraphs 27.02(a) through 27.02(d).

27.03 Subcontract Costs. Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

27.04 Costs of Materials and Equipment Incorporated in the Completed Construction.

- (a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- (b) Costs of materials described in the preceding Paragraph 27.4(a) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

27.05 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

- (a) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.
- (b) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.
- (c) Costs of removal of debris from the site.
- (d) Reproduction costs, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- (e) That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

27.06 Miscellaneous Costs.

- (a) That portion directly attributable to this Agreement of premiums for insurance and bonds.
(If charges for self-insurance are to be included, specify the basis of reimbursement.)
- (b) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Agreement Documents to pay.
- (c) Fees of testing laboratories for tests required by the Agreement Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph 27.08.

(d) Royalties and license fees paid for the use of a particular design, process or product required by the Agreement Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Agreement Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the City's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Paragraph 6.01, General Conditions or other provisions of the Agreement Documents.

(e) Data processing costs related to the Work.

(f) Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

27.07 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

27.08 Included. The costs described in Paragraphs 27.01 through 27.07 shall be included in the Cost of the Work notwithstanding any provision of General Conditions of the Agreement which may require the Contractor to pay such costs, unless such costs are excluded by the provisions of Paragraph 27.09.

27.09 Costs not to be Reimbursed.

(a) The Cost of the Work shall not include:

1. Salaries and other compensation of the Contractor's personnel stationed at its principal office or offices other than the site office, except as specifically provided in Paragraphs 27.02(a) and 27.02(b).
2. Expenses of the Contractor's principal office and offices other than the site office, except as specifically provided in Paragraph 27.01.
3. Overhead and general expenses, except as may be expressly included in Paragraph 27.01.
4. The Contractor's capital expenses, including interest on the Construction Manager's capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided in Paragraph 27.05(b).
6. Costs due to the negligence of the Contractor or to its failure to fulfill a specific responsibility to the City set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Phase Services.
8. Except as provided in Paragraph 27.07, any cost not specifically and expressly described in Paragraph 27.01.
9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

27.10 Discounts, Rebates and Refunds.

(a) Cash discounts obtained on payments made by the Contractor shall accrue to the City if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the City, or (2) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be secured.

(b) Amounts which accrue to the City in accordance with the provisions of Paragraph 27.010(a) shall be credited to the City as a deduction from the Cost of the Work.

27.11 Accounting Records. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the Contractor shall preserve these for a period of four (4) years after final payment, or for such longer period as may be required by law.

28. CONSTRUCTION PHASE.

28.01 Progress Payments.

(a) Based upon Applications for Payment submitted to the Architect by the Contractor, in a form acceptable to City and the Architect, and Certificates for Payment approved by the City and issued by the Architect, the City shall endeavor to make progress payments on account of the Agreement Sum to the Contractor as provided below and elsewhere in the Agreement Documents.

(b) The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

(c) Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the City, upon approval of the Application for Payment, shall endeavor to make payment to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall endeavor to be made by the City not later than thirty (30) days

after the Architect receives the Application for Payment and after the City approves the Application for Payment.

(d) With each Application for Payment, the Contractor shall submit detailed payrolls, detailed petty cash accounts, detailed receipted invoices or detailed invoices with check vouchers attached and any other evidence required by the City or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

(e) Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Agreement Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City and Architect may require. This schedule, unless objected to by the City or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

(f) Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which it has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

(g) Subject to other provisions of the Agreement Documents, the amount of each progress payment shall be computed as follows:

1. First, take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Next, pending final determination of cost to the City of changes in the Work, amounts not in dispute may be included as provided in Paragraph 13.03(g), General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order;

2. Next, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing;

3. Next, add the Construction Manager's Fee, less retainage of: (i) ten percent (10%) where the GMP is less than \$400,000; or (ii) five percent (5%) where the

GMP is \$400,000 or more. Next, the Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Paragraphs at the rate stated in Paragraph 25.01(a) or, if said Fee is stated as a fixed sum in that Paragraph, said Fee shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Paragraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion;

4. Next, subtract the aggregate of previous payments made by the City;

5. Next, subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 28.01(d) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation;

6. Next, subtract amounts, if any, for which the City or Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 15.05, General Conditions.

(h) Except with the City's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The City and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

(i) Except with the City's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(j) In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 28.01(d) or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

28.02 Final Payment.

(a) Final payment shall be made by the City to the Contractor when (1) the Agreement has been fully performed by the Contractor except for its responsibility to correct punch list items or nonconforming Work, as provided in Paragraph 20.02(b), General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the City's accountants; and (3) a final Certificate for Payment has then been approved by the City and issued by the Architect;

such final payment shall endeavor to be made by the City not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

(b) The amount of the final payment shall be calculated as follows:

1. First, take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price;
2. Next, subtract amounts, if any, for which the Architect withholds or the City is entitled to withhold under this Agreement, in whole or in part, a final Certificate for Payment as provided in Paragraph 15.05(a), General Conditions or other provisions of the Agreement Documents;
3. Next, subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the City exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the City.

(c) The City's accountants will endeavor to review and report in writing on the Contractor's final accounting within sixty (60) days after delivery of the final accounting to the Architect by the Contractor, together with all backup documentation reasonably required by the City. Based upon such Cost of the Work as the City's accountants shall report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Paragraph 28.02(a) have been met, the Architect will endeavor within seven days after receipt of the written report of the City's accountants, either issue to the City a final Certificate for Payment with a copy to the Contractor or notify the Contractor and City in writing of the Architect's reasons for withholding a certificate as provided in Paragraph 15.05(a), General Conditions. The time periods stated in this Paragraph 28 supersede those stated in Paragraph 15.04(a), General Conditions.

(d) If the City's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Paragraph 29 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 30-day period shall result in the substantiated amount reported by the City's accountants becoming binding on the Contractor. Pending a final resolution of the disputed amount, the City shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

If, subsequent to final payment and at the City's request, the Contractor incurs costs described in Paragraph 27.01 and not excluded by Paragraph 27.09(a) to correct nonconforming Work or (2) arising from the resolution of disputes, the City shall reimburse the Contractor such costs and the Contractor's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed

Maximum Price. If the Contractor has participated in savings, the amount of such savings shall be recalculated, and appropriate credit given to the City in determining the net amount to be paid by the City to the Contractor.

29. DISPUTE RESOLUTION.

29.01 Dispute Resolution. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Paragraph 10, General Conditions, except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation.

30. TERMINATION OR SUSPENSION.

30.01 Termination Before Establishing Guaranteed Maximum Price.

(a) Before execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the City may terminate this Agreement at any time without cause, and the Contractor may terminate this Agreement for any of the reasons described in Paragraph 22.01(a), General Conditions.

(b) If the City or Contractor terminates this Agreement pursuant to Paragraph 9.01 prior to commencement of the Construction Phase, the Contractor shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Paragraph 25.01(a).

(c) If the City or Contractor terminates this Agreement pursuant to Paragraph 30.01 after commencement of the Construction Phase, the Contractor shall be paid, in addition to the compensation provided in Paragraph 30.1(b), an amount calculated as follows:

1. First, take the Cost of the Work incurred by the Contractor;
2. Next, add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 26.01 or, if said Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Next, subtract the aggregate of previous payments made by the City on account of the Construction Phase.

The City shall also pay the Contractor fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Contractor which the City elects to retain and which is not otherwise included in the Cost of the Work under Paragraph 30.01(c)(1). To the extent that the City elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in

Paragraph 30, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the City may require for the purpose of fully vesting in the City the rights and benefits of the Contractor under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Contractor with the City's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the City as described above. If the City accepts such assignment, the City shall reimburse the Contractor with respect to all valid and properly payable costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the agreement had not been terminated. If the City elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement and the City shall pay the Contractor the costs necessarily and reasonably incurred by the Contractor by reason of such termination, but in no event to include any overhead or profit on work not performed.

30.02 Termination Subsequent to Establishing Guaranteed Maximum Price. Subsequent to execution by both parties of Amendment No. 1, the Agreement may be terminated as provided in Paragraph 22, General Conditions.

(a) In the event of such termination by the City, the amount payable to the Contractor pursuant to Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive pursuant to Paragraphs 30.01(a) and 30.01(c) of this Agreement.

(b) In the event of such termination by the Contractor, the amount to be paid to it under Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive under Paragraphs 30.01(b) and 30.01(c) above. In no event shall Contractor nor any supplier or subcontractor be entitled to any fee or lost profits for work not performed.

30.03 Suspension. The Work may be suspended by the City as provided in Paragraph 22, General Conditions, and in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Paragraph 22.03(b), General Conditions, except that the term "cost of performance of the Contract" in that Paragraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Paragraphs 26.01 and 26.03(d) of this Agreement.

31. OTHER CONDITIONS AND SERVICES.

31.01 Licensing, Permits, Registrations, and Approvals. Contractor represents to the City that it has, and will keep in effect at all times during the term of this Agreement, any licenses, permits, registrations, and approvals which are legally required for the Contractor to practice its trade.

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

31.03 Authority to Contract. Each party represents that it has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entity. However, notwithstanding anything stated to the contrary in this Agreement, the parties acknowledge and agree that this Agreement is subject to the proper application of, and to all protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

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

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

31.06 Presumption Against Waiver. No waiver by either party hereto of any one or more defaults by the other party hereto in the performance of this Agreement shall be construed as a waiver of any future defaults whether of a like or different character. No waiver of a default of this Agreement occurs if the non-defaulting party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting party of this Agreement.

31.07 Owner's Reserved Rights. The City shall have the rights by its officers, employees, or agents to examine and inspect the Contractor Work regarding the Project and the business records and financial records of the Contractor regarding the Project, at any time, to verify Contractor's compliance with the terms of this Agreement. Any approval by City or acceptance of the Contractor's Work shall not waive any obligation of the Contractor to correct defective work or to later provide additional business records or financial records regarding portions of the Project approved or accepted by the City.

31.08 Benefit. Subject to a proper application of the doctrine of governmental immunity under Texas law, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement. Nothing in this Paragraph shall be construed to waive the conditions elsewhere contained in this Agreement applicable to assignment by the Contractor. Nothing contained in this Agreement shall be construed to confer any benefit upon any subcontractor or any other third party.

31.09 Headings, Gender, Number. The headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

31.10 Agreement Read. The parties acknowledge that they have had the opportunity to consult with counsel of their choice, have read, understand, and intend to be bound (subject to the proper application of the doctrine of governmental immunity under Texas Law) by the terms and conditions of this Agreement.

31.11 Written Notice. Written notice shall be deemed to have been served only if the writing is hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

City: City of College Station
Capital Projects: Rusty Warnke
PO Box 9960, College Station, TX 77842

Contractor: Crain Group, LLC
Attn: John Green, Executive Vice President
3801 Knapp Rd., Pearland, TX 77581

31.12 Extent of Contract. This Agreement (and its attached or incorporated documents and exhibits) represents the entire and integrated agreement between the City and the Contractor regarding the Project and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Contractor. If anything in any document or exhibit attached to or incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Ownership and Use of Documents. Paragraph 3.4, General Conditions, shall apply to both the Preconstruction and Construction Phases.

31.13 Governing Law. The parties expressly agree that: (a) this Agreement shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the Performance, Work, and all matters pertaining to this Agreement and the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue in any lawsuit or legal proceeding regarding or relating to this Agreement or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for Brazos County.

31.14 Assignment. Subject to a proper application of the doctrine of governmental immunity under Texas law, the City and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and

obligations contained in the Agreement Documents. Neither party to the Agreement shall assign the Agreement in whole or in part without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

31.15 Effective Date. This Agreement goes into effect when duly approved by all the parties hereto and is contingent upon Contractor obtaining and maintaining the insurance and bonds required herein throughout the duration of the Project and applicable warranty periods.

31.16 Verification or Representations Regarding Certain Statutory Matters. To the extent applicable, this Agreement is subject to the following:

- (a) **No Boycott of Israel.** Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (1) does not boycott Israel, and (2) will not boycott Israel during the term of this Agreement;
- (b) **No Boycott of Firearms.** Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association;
- (c) **No Boycott of Energy Companies.** Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (1) does not boycott energy companies, and (2) will not boycott energy companies during the term of this Agreement; and
- (d) **Conflicts Disclosure.** Before the approval of this Agreement, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (1) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (2) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

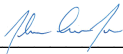
31.17 Virtual Payment Method. For increased payment and financial information security, the Contractor must use the City's approved virtual payment card system or digital payment system for all payments, storing, and modifications of financial information used for City payments to the Contractor. Any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

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

List of Exhibits

- A. Davis Bacon Wage Rates
- B. Performance and Payment Bonds
- C. Certificates of Insurance and Endorsements
- D. Technical Specifications & Plans

CRAIN GROUP, LLC

By: 
Printed Name: John Green
Title: Executive Vice President
Date: 10/14/2024

CITY OF COLLEGE STATION

By: _____
City Manager: Bryan Woods
Date: _____

APPROVED:

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20230007

State: Texas

Construction Types: Heavy and Highway

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

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

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

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

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

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

Rates

Fringes

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

ELECTRICIAN.....\$ 26.35

FORM BUILDER/FORM SETTER

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

Structures.....\$ 12.87 **

LABORER

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

Flagger.....\$ 9.45 **

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

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

Pipelayer.....\$ 12.79 **

Work Zone Barricade

Servicer.....\$ 11.85 **

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

POWER EQUIPMENT OPERATOR:

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

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

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

Boom Truck.....\$ 18.36

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

Concrete Pavement

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

Crane, Hydraulic 80 tons

or less.....\$ 18.36

Crane, Lattice Boom 80

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

Crane, Lattice Boom over

80 tons.....\$ 19.38

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

Directional Drilling

Locator.....\$ 11.67 **

Directional Drilling

Operator.....\$ 17.24

Excavator 50,000 lbs or

Less.....\$ 12.88 **

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

Foundation Drill, Truck

Mounted.....\$ 16.93 **

Front End Loader, 3 CY or

Less.....\$ 13.04 **

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

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

Mechanic.....\$ 17.10 **

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

Motor Grader, Fine Grade...\$ 18.51

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

Pavement Marking Machine...\$ 19.17

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

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

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

Scraper.....\$ 12.27 **

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

Trenching Machine, Heavy...\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....\$ 14.00 **

Structural.....\$ 19.29

TRAFFIC SIGNALIZATION:

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

TRUCK DRIVER

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

WELDER.....\$ 15.97 **

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

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
- * an existing published wage determination
 - * a survey underlying a wage determination
 - * a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additionalclassification and rate) ruling

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION"

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

EXHIBIT B

PERFORMANCE AND PAYMENT BONDS

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

PERFORMANCE BOND

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
THE COUNTY OF BRAZOS	§	

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, Texas ("City"), a municipal corporation, in the sum of _____ (\$_____) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally pursuant to the obligations and payment of this Performance Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed an Agreement (as used herein including the Agreement Documents) in writing with the City of College Station for the following City Project ("Project"):

_____,
with all of the work ("Work") for the Project to be done as set out in full in said Agreement therein referred to and adopted by the City Council of the City of College Station, Texas, all of which

documents, as amended, are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

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

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

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom. Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this bond, and Surety does hereby waive notice of any such change in the Agreement Time or Agreement Sum.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of

the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party. A copy of the Surety agent "Power of Attorney" also must be attached to this Bond instrument.

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

CONTRACTOR EXECUTION:

ATTEST, SEAL OF CONTRACTOR: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Contractor: _____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

(Name of Surety)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address of Surety: _____

**ACCEPTANCE BY CITY:
REVIEWED:**

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

City Attorney's Office

Date: _____

City Manager

Date: _____

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

TEXAS STATUTORY PAYMENT BOND

THE STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS:**
THE COUNTY OF BRAZOS §

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do business in the State of Texas and admitted to write bonds, as Surety, hereinafter called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, Texas ("City"), a municipal corporation, in the sum of _____ (\$_____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, pursuant to the obligations and payment of this Texas Statutory Payment Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain Agreement ("Agreement" including the Agreement Documents, as amended) in writing with the City of College Station for the following City Project ("Project") dated the ____ day of _____, 20____: _____, with all of the work ("Work") for the Project to be done as set out in full in said Agreement, as amended, therein referred to and adopted by the City Council of the City of College Station, Texas, all of which documents are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, the condition of this Bond obligation is such that if Principal shall pay all claimants supplying labor, equipment, and/or material to Principal for the Project, or to a subcontractor for the Project, regarding he performance and prosecution of the Work of the Project

provided for in the Agreement, as amended, then, this Bond obligation shall be null and void; otherwise this Bond obligation is to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this Bond, and Surety does hereby waive notice of any such change in the Agreement Time or Agreement Sum. A copy of the Surety agent "Power of Attorney" also must be attached to this Bond instrument.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached a current Power of Attorney as required by this Bond.

PRINCIPAL EXECUTION:

ATTEST, SEAL OF PRINCIPAL: (if a corporation)

WITNESS: (if not a corporation)

By: _____

Name: _____

Title: _____

Date: _____

(Name of Principal)

By: _____

Name: _____

Title: _____

Date: _____

Address of Principal: _____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

By: _____

Name: _____

Title: _____

Date: _____

(Name of Surety)

By: _____

Name: _____

Title: _____

Date: _____

Address of Surety: _____

**ACCEPTANCE BY CITY:
REVIEWED:**

City Attorney's Office
Date: _____

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

City Manager
Date: _____

EXHIBIT C

CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CRAIGRO-01

FONBR1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/4/2024

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

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

PRODUCER Barry Insurance Group 4418 Broadway St. Pearland, TX 77581	CONTACT NAME: PHONE (A/C, No, Ext): (281) 464-3383 FAX (A/C, No): (281) 464-3050 E-MAIL ADDRESS: certs@barryinsurancegroup.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : HARTFORD FIRE GRP	00914
	INSURER B : HARTFORD CASUALTY INS CO	29424
	INSURER C : HARTFORD FIRE IN CO	19682
	INSURER D : TRAVELERS INSURANCE COMPANY	36161
	INSURER E :	
	INSURER F :	

INSURED

Crain Group LLC
3801 Knapp Rd
Pearland, TX 77581-2307

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:			61 UEA AZ9T81	3/7/2024	3/7/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 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 LIMITED POLLUTI \$ 1,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			61UEADL1102	3/7/2024	3/7/2025	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 \$ 10,000			61 RHA BB5VHM	3/7/2024	3/7/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	☒ 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	61 WEA AP6UD8	3/7/2024	3/7/2025	☒ 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	Builders Risk			QT-660-6N111444-TLC-24	3/7/2024	3/7/2025	Per Occurrence 20,000,000

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

GENERAL LIABILITY:

Blanket additional insured - automatic status including coverage for products completed operations as required by written contract only if the injury or damage arises out of the operations performed by the insured to which the written contract applies. Per Project General Aggregate applies when required by written contract. Blanket waiver of subrogation as required by written contract. General Liability is Primary & Non-Contributory when required by written contract. 30-Day Notice of Cancellation Form(s) Attached

SEE ATTACHED ACORD 101

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



ADDITIONAL REMARKS SCHEDULE

AGENCY Barry Insurance Group		NAMED INSURED Crain Group LLC 3801 Knapp Rd Pearland, TX 77581-2307 Brazoria	
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:

BUSINESS AUTO LIABILITY:

Blanket Additional Insured as required by written contract. Primary/Non-Contributory coverage is provided when required by written contract. Blanket waiver of subrogation is provided when required by written contract. 30-Day Notice of Cancellation as required by written contract per the list on file with the carrier.

Form(s) Attached

EXCESS LIABILITY:

Excess liability policy is in excess of and follows form of general liability, business auto liability, and workers' compensation as evidenced on this COI.

WORKERS COMPENSATION/EMPLOYERS LIABILITY:

Blanket Waiver of Subrogation is provided as required by written contract.

Form(s) Attached

BUILDERS RISK/LEASED/RENTED EQUIPMENT:

Blanket Mortgagee, Loss Payee or Lender's Loss Payable as their interest may appear.

City of College Station is listed as additional insured.

EXHIBIT D

TECHNICAL SPECIFICATIONS AND PLANS

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



CRAIN GROUP, LLC

CONSTRUCTION MANAGER-AT-RISK

CITY OF COLLEGE STATION
BALLFIELDS AT VETERANS PARK
RFP NO. 24-069

3801 Knapp Rd.
Pearland, TX 77581

www.craingroup.com

713-436-8727



July 31, 2024

CITY OF COLLEGE STATION
PURCHASING DEPARTMENT
Ms. Brandi Whittenton, Buyer
1101 Texas Ave
College Station, Texas 77840

Re: RFP #24-069 (CMAR) Ballfields at Veterans Park; Executive Summary

Dear Ms. Whittenton and Review Committee Members:

Crain Group is very pleased to present this proposal for Construction Manager-at-Risk Services for the Ballfields at Veterans Park in College Station, Texas. This project indeed provides us with an outstanding opportunity to demonstrate the strength of our experience and resources, and to begin a valued relationship with the City of College Station.

In connection with our knowledge of the City's needs for this project, one of Crain Group's most important benefits stems from our team's depth of experience with other local municipalities and County Government construction similar sports complex facilities; with most recently completed South Post Oak Sports Complex for Fort Bend County. We pride ourselves in committing to a partnership approach to each project we pursue and will further instill this commitment once engaged to work side-by-side with the City and proposed Design Team to coordinate and collaborate on all aspects of this project. We proudly provide an exceptional level of service in establishing detailed work schedules which allow all stakeholders the opportunity to be most efficient and further help provide the City with the best overall project value from the market.

With myself as Project Executive, Chris Holley as the Project Manager, and Jim Dukes as Project Superintendent, we have dedicated key personnel for this project and who are eager to partner with the City and delivery a successful project for the use and benefit of its citizens.

We are grateful for the opportunity and hope to be the Construction Manager-at-Risk of choice for this project. Hopefully, the contents herein will provide a glimpse of our desire to "hit the ground running" to have an immediate impact on this project. We are confident we can provide the depth of services and quality of management you expect.

If we can provide additional information, please do not hesitate to call.

Sincerely,

John Green
Executive Vice President
jgreen@craingroup.com

OFFEROR'S EXPERIENCE & QUALIFICATIONS

OFFEROR'S EXPERIENCE & QUALIFICATIONS

Offeror's Name: Crain Group, LLC

I. General

- a. Qualification information submitted shall be applicable only to the company entity or branch that will perform this Work.
- b. Attach Offeror's Project Organization Chart
- c. Submit list of other fully staffed branch offices
- d. Submit list of corporate officers, partnerships or owners of organization

II. History

- a. Please specify: **** Limited Liability Company**
☐ Corporation - State of Incorporation _____
☐ Partnership
☐ Sole Proprietorship
☐ Joint Venture
- b. Specify: In continuous business since: 2004
- c. Specify:
☐ Large Business (100 or more employees)
☒ Small Business (fewer than 100 employees)
☐ Other _____

III. Experience

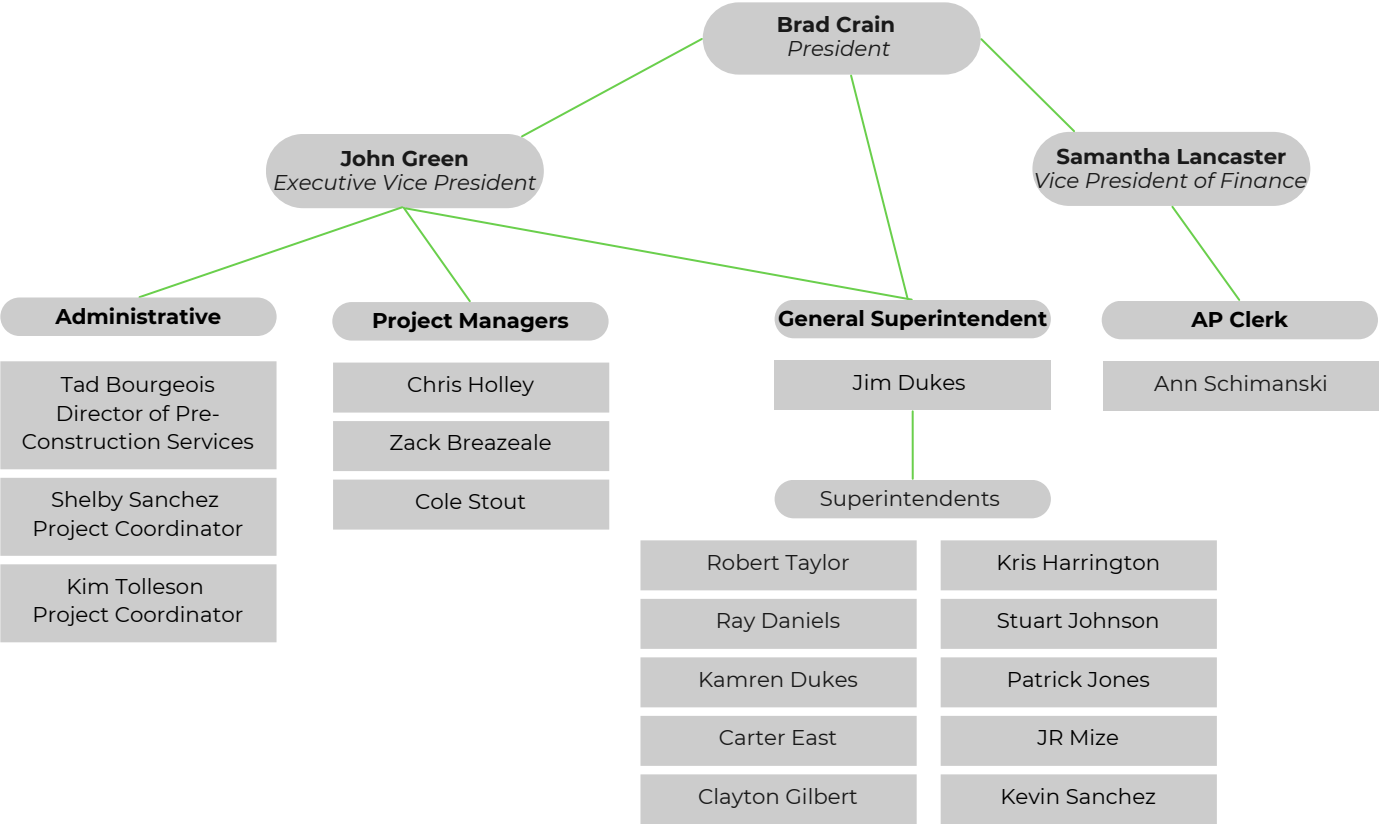
- a. Normally performs 0 % of work with own forces.
- b. Proposing to perform 100 % of work for this project with own forces.
 - i. List Trades Crain Group performs all pre-construction services, accounting, and construction management in house. Crain Group has the capacity to self-perform concrete and general interior finishes (i.e., drywall framing, tape/float/finish, and painting) scopes and can for this project if it proves to be economical and beneficial.
 (additional attachments as required)

IV. Identify and describe the firm's past experience for providing Construction Manager at Risk services that are MOST RELATED TO THIS PROJECT within the last five (5) years. List the projects in order of priority, with the most relevant project listed first. (Similar Projects in Size and Scope Completed in Last Five Years)

	Project	Municipality	\$ Amount	Type	Date
**	FBC South Post Oak Sportsplex	Fort Bend County	\$9,207,786	New Construction	7.6.2024
**	FBC South Post Oak Expansion	Fort Bend County	\$5,812,475	New Construction	8.9.2021
	FBC Fairgrounds Livestock Auction Barn	Fort Bend County	\$7,957,810	New Construction	9.20.2017
	Lutheran Southern Academy Sports Pavilion	Lutheran Southern Academy	\$368,623	New Construction	12.8.2016
**	City of Pearland Sports Complex	City of Pearland	\$7,913,789	New Construction	11.30.2016

** Please see attached.

Organization



Branch Offices

Crain Group conducts business out of its sole location:
3801 Knapp Rd., Pearland, TX 77581
713-736-8727

Owners of Organization

Crain Group has been in business since 2004 and is a Limited Liability Company with the principal being Phillip Bradley (Brad) Crain.

HIGHLIGHTED PROJECTS

OF SIMILAR SIZE AND SCOPE COMPLETED WITHIN THE LAST 5 YEARS

FORT BEND COUNTY SOUTH POST OAK SPORTSPLEX



Demolish of the existing concession building and construction of a new 4,422 square foot pre-engineered building. Additionally, a 10,156 square foot six-bay building with netting systems, restrooms, two 112 square foot press boxes, and a sidewalk. The baseball fields have been improved with new turf, re-grading, and necessary equipment. The existing parking lot was replaced with a new concrete one.

FORT BEND COUNTY SOUTH POST OAK EXPANSION



Turnkey football sports complex including 136,856sqft of turf, (2) all turf football fields, 4,000sqft PEMB structures for concessions, press boxes, restrooms, team meeting rooms, and covered bleachers.

CITY OF PEARLAND SPORTS COMPLEX



New construction of a sports complex on 65+/- acres that will include lighted baseball/softball fields, a soccer field, a pavilion with restrooms and concession facilities, a maintenance building, and other site amenities.

OFFEROR'S REFERENCES

OFFEROR'S REFERENCES

References: Name 5 projects of similar work, giving owner's name, owner's representative's name, project architect's name, and telephone numbers for each. References must be provided for owners of similar size and scope as the proposed City project.

1.	Fort Bend County South Post Oak Sportsplex	IDG Architects
	Fort Bend County	Ben McMillan
	Darren McCarthy	832-448-2462
	281-342-3411	
2.	Fort Bend County South Post Oak Expansion	IDG Architects
	Fort Bend County	Ben McMillan
	Jamie Knight	832-448-2462
	832-256-9682	
3.	Lutheran Southern Academy Sports Pavilion	Helm Design Group, LLC
	Lutheran Education Association of Houston	Jim Helm
	Scott Fogo	281-332-6680
	281-617-5189	
4.	City of Pearland Sports Complex	Helm Design Group, LLC
	City of Pearland	Jim Helm
	Kevin Cole	281-332-6680
	281-652-1600	
5.	Port Neches City Hall & Emergency Operations Center	Brown Reynolds Watford, Architects, Inc.
	City of Port Neches	Ray Holliday
	Andre Wimer	979-694-1791
	940-464-7273	

OFFEROR'S KEY PERSONNEL

OFFEROR'S KEY PERSONNEL

I. Project Team Information

- a. Resumes of key personnel shall also be included. Professional affiliations, memberships, and certifications for each of the key personnel must be included and will be used to evaluate the proposed team and personnel.
- b. Commitment indicates the amount of time (in percent) that the staff person would be available to work on the project during the preconstruction, permitting and construction phases of work. Indicted by "N/A" where the individual is not proposed to be involved in particular phase of work. For example, if a person would be available 20 hours per week out of a 40-hour work week, reply 50%.
- c. Provide this information for as many projects as are applicable.

Project Manager	Years' Experience	Projects
Chris Holley	20 Years	See Attached Resume

Commitment: Preconstruction: 25 %

Permitting: 25 %

Construction: 75 %

Estimator	Years' Experience	Projects
Tad Bourgeois	30 Years	See Attached Resume
Chris Holley	20 Years	See Attached Resume

Commitment: Preconstruction: 50 %

Permitting: 50 %

Construction: 50 %

Modeling	Years' Experience	Projects
Tad Bourgeois	30 Years	See Attached Resume
Chris Holley	20 Years	See Attached Resume

Commitment: Preconstruction: 50 %

Permitting: 50 %

Construction: 50 %

OFFEROR'S KEY PERSONNEL-CONTINUED

Project Engineer	Years' Experience	Projects
Kamren Dukes	7 Years	See Attached Resume

Commitment: Preconstruction: 25 %

Permitting: 25 %

Construction: 75 %

Assistant Project Manager	Years' Experience	Projects
Kamren Dukes	7 Years	See Attached Resume

Commitment: Preconstruction: 25 %

Permitting: 25 %

Construction: 50 %

Superintendent	Years' Experience	Projects
1 Jim Dukes	19 Years	See Attached Resume
2 Robert Taylor	13 Years	See Attached Resume

1 Commitment: Preconstruction: 25 % 2 Commitment: Preconstruction: 25 %

Permitting: 25 %

Construction: 50 %

Permitting: 25 %

Construction: 100 %

Scheduler	Years' Experience	Project
Robert Taylor	13 Years	See Attached Resume

Commitment: Preconstruction: 25 %

Permitting: 25 %

Construction: 100 %

OFFEROR'S KEY PERSONNEL-CONTINUED

Quality Control Person	Years' Experience	Project
1 John Green	20 Years	See Attached Resume
2 Jim Dukes	19 Years	See Attached Resume
3 Chris Holley	20 Years	See Attached Resume
4 Robert Taylor	13 Years	See Attached Resume

1 Commitment: Preconstruction: As Required %
 Permitting: As Required %
 Construction: As Required %

2 Commitment: Preconstruction: 50 %
 Permitting: 50 %
 Construction: 75 %

3 Commitment: Preconstruction: 50 %
 Permitting: 50 %
 Construction: 75 %

4 Commitment: Preconstruction: 25 %
 Permitting: 25 %
 Construction: 100 %



John Green, Project Executive

Crain Group

2005 to Present

Professional Affiliations

- Associated Builders and Contractors, Inc.
- TAMU Construction Science Advisory Council

Education

Bachelor of Science
Psychology & Business
Stephen F Austin University

Profile

Mr. John Green began his professional construction career with Crain Group, LLC in 2004 as a Project Manager and quickly became responsible for the day-to-day operations and management of key construction projects. In February 2011, John was appointed Vice-President of Crain Group, LLC.

Mr. Green is charged with general project management and operations, subcontract administration, estimating, and scheduling for Crain Group, LLC. **Mr. Green has been involved in the overall management of multiple projects of similar scope and complexity for the past 20 years.**

His skill set includes levels of project management from conceptual estimating, detailed scheduling, subcontractor administration, quality control, value engineering, design/build coordination, and general operations throughout a broad array of project types.

- K-12 Schools
- Medical Facilities
- Professional Buildings
- Retail Centers
- Fire Stations
- Tilt-Wall Structures
- Sports Complexes
- Pre-Engineered Metal Buildings
- Renovations
- Multi-Story Parking Structures

Under his leadership, Crain Group, LLC has successfully completed numerous high-profile projects, earning a reputation for quality, efficiency, and innovation. Mr. Green's dedication to excellence and his ability to foster strong relationships with clients, subcontractors, and team members have been instrumental in the company's growth and success.



City of Pearland Sports Complex



Project Success!

The new sports complex construction, planned with a budget of \$7,900,000, covers around 65 acres. It features illuminated baseball/softball fields, a soccer field, a pavilion with restrooms and concession facilities, a maintenance building, and several other site amenities. The project was completed on schedule and within budget, providing the City and community with a space to enjoy.



Tad Bourgeois, Director of Preconstruction Services

Crain Group

2020 to Present

Professional Affiliations

- Associated Builders and Contractors, Inc.
- TAMU Construction Science Advisory Council

Education

Bachelor of Science
Building Construction
Texas A&M University

Profile

Mr. Bourgeois began his professional career with Brown & Root, Inc. while working within their Project Management Services Division and focusing on scheduling procurement and cost control. Subsequent positions have encompassed a full range of commercial construction in markets across the United States. Mr. Bourgeois has been involved in the project management of numerous projects including public schoolwork, aviation, restaurant, medical facilities, professional buildings, and retail centers. His responsibilities have included owner side construction management for programs nationwide, as well as project management which includes conceptual estimating, scheduling, subcontract administration, value engineering, design build coordination, and operations on various projects.

Primary Roles as Director of Preconstruction:

- Primary Liaison with Project Owner and Design Team during Design Phase
- Establishes Work/Scope Schedules to Monitor Design Progress
- Establishes Bidder's interest in Projects
- Involved in the qualifications of potential trades/vendors
- Manages each phase of Estimating from Conceptual Estimate to GMP
- Manages all aspects of the RFQ/SOQ deliverable process
- Manages Constructability Reviews

Highlighted Experience

DIRECTOR OF CONSTRUCTION

Consolidated Development Services | 2013 - 2020

- Responsible for Owner Side Program and Construction Management for multiple franchises and clients, totaling over 400 projects and over \$300M. Roles included integrating with the design team for constructability, budgeting and program design, and managing these programs during the development, pre-construction and construction process to project completion. Programs include, Salons by JC, Bishops Barber Shops, Spavia, Cycle bar, Shred 415, Perry's Steakhouse, Ted's Montana Grill, and Raising Cane's.

SENIOR PROJECT MANAGER

Parkway Construction

- Construction Management for multiple restaurants for National Chains, totaling over \$10M.

COMMERCIAL CONSTRUCTION MANAGER

Fred Smith Company

- Completed over \$8M of construction projects. Responsibilities included negotiation of all production contracts, estimating and pricing of all existing plans, and managing the Commercial Construction and Purchasing Teams.

VICE PRESIDENT

Mission Constructors

- Coordinated and managed the construction of multiple K-12 schools, churches and private facilities. Responsibilities included project management, estimating and value engineering.



Chris Holley, Project Manager

Crain Group

2013 to Present

Education

Bachelor of Arts
Political Science
Texas Tech University

Certifications

- OSHA 10
- CPR Certified

Professional Affiliations

- Associated Builders and Contractors, Inc.
- TAMU Construction Science Advisory Council

Profile

Mr. Holley's expertise in the construction industry is unmatched, thanks to his 20+ years of experience managing numerous commercial projects. His extensive knowledge of all levels of project management, from conceptual estimating to general operations, has enabled him to achieve top results in all types of construction projects. Mr. Holley has successfully managed projects ranging from \$3,300,000.00 to \$35,000,000.00, including conventional steel structures, pre-engineered metal buildings, retail centers, renovations, and interior construction. He has a proven track record of delivering projects on time and under budget, and his leadership skills have been instrumental in motivating teams to achieve optimal results. Mr. Holley is adept at building rapport at all business levels, making him a valuable asset to any construction project.

Highlighted Experience

PROJECT MANAGER

Cleveland Independent School District Northside Elementary School, Cleveland, TX | Steve McCanless 281-593-1148, Completed 8.10.22

Fort Bend Independent School District Fine Arts, Sugarland, TX | Ashley Dixon 281-634-5590, Completed 4.22.22

Fort Bend Independent School District Madden Elementary, Missouri City, TX | Ashley Dixon 281-634-5590, Completed 6.30.21

FBISD Police & Extended Learning Triplex Center, Missouri City, TX | Ashley Dixon 281-634-5590, Completed 1.22.21

Brenham High School Renovation, Brenham, TX | Paul Aschenbeck 979-277-3704, Completed 9.30.19

Innovative Business Plaza, Pearland, TX | Jennifer Enabe 713-413-8881, Completed 10.7.19

Fort Bend County Sienna Annex Phase 2 Renovation, Sienna, TX | Jamie Knight 281-238-3095, Completed 9.11.18

Krause Elementary School Renovation, Brenham, TX | Paul Aschenbeck 979-277-3704, Completed 8.15.18

Fort Bend County Fairgrounds Livestock Auction Barn, Rosenberg, TX | Jamie Knight 832-256-9682, Completed 9.20.17

Seabrook Public Works and Animal Control Complex, Seabrook, TX | Gayle Cook 281-291-5688, Completed 8.25.17

City of Pearland Sports Complex, Pearland, TX | Kevin Cole 281-652-1600, Completed 11.30.16

Lutheran Southern Academy Sports Pavilion, Houston, TX | Scott Fogo 281-617-5189, Completed 12.8.16

Fort Bend County George Memorial Library Renovation, Richmond, TX | Jamie Knight 281-238-3095, Completed 10.15.15



Kamren Dukes, Project Engineer

Crain Group

2018 to Present

Education

Bachelor of Science
Texas Southern University

Post Baccalaureate Certificate
Construction Management
Louisiana State University

Certifications

- OSHA 10
- CPR Certified

Professional Affiliations

- Associated Builders and Contractors, Inc.

Profile

Mr. Dukes assumes the responsibility of overseeing general project management, coordinating subcontractor schedules, and ensuring project quality and safety at Crain Group, L.L.C. With 7 years of experience in the construction industry, Mr. Dukes brings a wealth of knowledge to his role.

His project supervision portfolio encompasses a diverse range of projects such as schools, churches, and sports complexes. His expertise spans various aspects of project oversight, including development, subcontractor coordination, pre-construction meetings, compliance with municipal inspection standards, safety regulations, project finalization with municipalities, and the generation and completion of punch lists.

Dukes pursued his undergraduate studies at Texas Southern University, earning a bachelor's degree in science. Subsequently, in 2019, he enhanced his qualifications by obtaining a Post Baccalaureate Certificate in Construction Management from Louisiana State University. For the past 7 years, he has been an integral part of the Crain Group, L.L.C.

Experience

SUPERINTENDENT

Healgen Scientific Office & Warehouse, Houston, TX | Ting Zhou 713-733-8088, Completed 1.30.24

Mustang Seal II Spec Building, Webster, TX | Mark Ward 281-991-8300, Completion 5.31.22

Fort Bend County South Post Oak Sports Complex, Houston, TX | Jamie Knight 832-256-9682, Completion 9.1.21

Lifepoint Fellowship Church, Pearland, TX | Cecil Whitton 281-485-1952, Completed 2.20.20

Techemet Receiving & Partial Processing Center, Pasadena, TX | Mark Ward 281-991-8300, Completed 10.19.20

Lake Park Plaza, Pearland, TX | Kent Ballard 281-639-1275, Completed 9.30.19

Innovative Business Plaza, Pearland, TX | Jennifer Enabe 713-413-8881, Completed 10.7.19

Lutheran South Academy Flood Renovation, Houston, TX | Sheila Psenick 281-889-0485, Completed 8.15.18



Jim Dukes, General Superintendent

Crain Group

2005 to Present

Education

Air National Guard Fireman, 1988—2005

Fire Captain, 1997—2005

Fire Academy Instructor San Jacinto Jr.

College 1999—2005

Certifications

- OSHA 30 Hour
- CPR Certified
- Forklift Certified
- Scissor Lift Certified
- Excavator Certified
- Fall Protection Certified

Professional Affiliations

- Associated Builders and Contractors, Inc.
- TAMU Construction Science Advisory Council

Profile

Mr. Dukes is charged with general project supervision, management of subcontractor scheduling, and project quality and safety for Crain Group, L.L.C. Mr. Dukes has 20 years' experience in the construction industry. Mr. Dukes has been involved in the project supervision of numerous projects including, medical facilities, professional buildings, retail centers, light-industrial buildings, storage facilities, fire stations and sports complexes. He has experience in all levels of project supervision from development, subcontractor scheduling & coordination, pre-construction trade meetings, complying and conforming to municipality inspection requirements, safety compliance, municipality project close-outs, and punch list generation and completion. Mr. Dukes attended Blinn Jr. College for one year. Before Mr. Dukes entered the construction industry, he joined the United States Air Force in 1987. He spent 7 years in the Air National Guard at Ellington Field where he also was a firefighter for the State of Texas.

Highlighted Experience

SUPERINTENDENT

Fort Bend County South Post Oak Sportsplex, Houston, TX | Jamie Knight 832-256-9682, Completed 7.6.24

Winward Racing Facility, Houston, TX | Mark Ward 281-991-8300, Completed 3.1.24

Hometown Bank of Galveston—Seawall Branch, Galveston, TX | Jimmy Rasmussen 409-763-1271, Completed 3.1.23

Fort Bend County Public Safety Annex, Richmond, TX | Jamie Knight 832-256-9682, Completed 11.18.21

Mustang Seal Solutions, Webster, TX | Mark Ward 281-991-8300, Completed 10.22.21

Innovative Business Plaza, Pearland, TX | Jennifer Enabe 713-413-8881, Completed 10.7.19

Seabrook Public Works and Animal Control Complex, Seabrook, TX | Gayle Cook 281-291-5688, Completed 8.25.17

Lutheran Southern Academy Sports Pavilion, Houston, TX | Scott Fogo 281-617-5189, Completed 12.8.16

City of Pearland Shadow Creek Ranch Sports Complex, Pearland, TX | Kevin Cole 281-652-160, Completed 11.30.16

Pearland Fire Station #2, Pearland, TX | Kevin Cole 281-652-1600, Completed 3.4.16

Pearland Fire Station #3, Pearland, TX | Kevin Cole 281-652-1600, Completed 8.6.15

Fort Bend County Library Administration Building, Richmond, TX | Jamie Knight 832-256-9682, Completed 3.31.14



Robert Taylor, Superintendent

Crain Group

2020 to Present

Professional Affiliations

- Associated Builders and Contractors, Inc.
- TAMU Construction Science Advisory Council

Certifications

- Scissor Lift Certified
- Forklift Certified Excavator
- Certified Fall Protection
- Certified OSHA 30 Hour
- CPR Basic Plus Certified
- Apprentice Plumber

Education

- Trade Safety Coordinator - 1996
- Constuction Safety Officer - 1996

Profile

Mr. Taylor is charged with general project supervision, management of subcontractor scheduling, and project quality and safety for Crain Group, L.L.C. Mr. Taylor is a goal-oriented, hands-on construction professional with over 30 years of experience in all aspects of residential and commercial construction projects. Mr. Taylor has a successful track record of completing both large and small projects on time and under budget by working closely and developing a positive rapport with all parties involved. He also has extensive experienced in various types of formwork and systems, concrete placement, drywall installation and finish, layout, engineering, and heavy equipment operation; along with quality control, safety inspections and complete of punch lists, compiling written reports and computer programs.

Experience Abbreviated

SUPERINTNDENT

Fort Bend County Precinct 3 Annex, Sugar Land, TX | Jamie Knight 832-256-9682, Completed 5.31.24

Fort Bend County Fulshear Annex, Fulshear, TX | Jamie Knight 832-256-9682, Completed 12.21.23

Fort Bend County Medical Examiner's Office Expansion, Rosenberg, TX | Jamie Knight 832-256-9682, Completed 4.4.23

Fort Bend Independent School District Fine Arts, Sugar Land, TX | Raul Ramos 281-327-5479, Completed 4.22.22

Fort Bend County Emergency Operations Center, Richmond, TX | Jamie Knight 832-256-9682, Completed 3.3.22

PRODUCTION MANAGER

Mak Studio | 2015 - 2020

Oversee and coordinate installation scheduling. Lead safety meetings and conduct quality control checks. Utilize CNC machining technology for fabrication purposes.

LEAD FOREMAN

Durotech, LP | 2013 - 2015

Coordinate and schedule subcontractors in conjunction with company personnel. Perform quality control and safety inspections.

TOOL MANAGER

TD Industries | 2011 - 2013

Oversee and coordinate tool deliveries Conduct quality control and safety inspections of all tools Act as the purchasing agent for all tools

OFFEROR'S CURRENT WORK SCHEDULE/RECORD

OFFEROR'S CURRENT WORK SCHEDULE/RECORD

I. Current Work Schedule

a. List major construction projects Offeror has in-progress using the format below:

Name & Location of Project	Contract \$	% Complete	Projected Completion Date	Owner Contact And Phone
Highland Village End Cap Houston, TX	\$8,586,148	91%	8/26/2024	Mike Butler 713.850.3100
Humble ISD Multi-Purpose Gyms Humble, TX	\$16,013,091	73%	10/19/2024	Jason Seybert 281.641.8712
THV - Warehouse Expansion Houston, TX	\$1,903,184	50%	8/17/2024	Wes Barlow 780.919.2996
Salons by JC - Humble Humble, TX	\$1,184,658	25%	8/30/2024	Shinpei Kuo 469-936-0208
Fort Bend County Elections Building Rosenberg, TX	\$8,052,000	5%	12/13/2024	Jamie Knight 281.341.8640

b. Total number and dollar amount of contracts currently in progress:

Number 11 \$ 47,190,138

c. Largest single contract amount currently in progress:

Project Name: Humble ISD Multi-Purpose Gyms

Projected Completion Date : 10/19/2024

Dollar Amount \$ 16,013,091

II. Past Record

a. List major construction projects Offeror has completed in the last 5 years with completion dates and references.

Name & Location of Project	Contract \$	Date Completed	Owner Contact and Phone
*Please see attached			

b. Volume of work completed over last 5 years:

2019\$ 17,876,281

2020\$ 32,866,338

2021\$ 48,392,392

2022\$ 40,388,462

2023\$ 50,097,021

List major construction projects of our organization has completed in the last 5 years with completion dates and references.

Project	Location	Completion Date	Contract Amount	Owner Contact
FBC South Post Oak Baseball Fields	5675 Hobby Road., Houston, TX 77053	7/6/2024	\$9,207,786	James Knight 832-256-9682
FBC Precinct 3 Annex	151 Stadium Dr., Sugar Land, TX 77498	5/31/2024	\$8,516,530	James Knight 832-256-9682
Hometown Bank Galveston - Seawall	4424 Seawall Blvd., Galveston, TX 77550	1/30/2024	\$3,810,305	Allan Rasmussen 281-996-4900
Winward Racing Facility	11910 Space Center Blvd., Houston, TX 77059	1/29/2024	\$8,807,285	Bryce Ward 281-991-8300
Healgen Scientific Office /Warehouse	3910 Fuqua Street, Houston, TX 77047	6/30/2023	\$7,103,348	Ting Zhou 713-733-8088
FBC Medical Examiner's Expansion	3840 Bamore Road, Rosenberg, TX 77471	6/9/2023	\$1,775,778	James Knight 832-256-9682
Cleveland ISD Northside Elementary School	1020 Northside Blvd., Cleveland, TX 77327	8/10/2022	\$34,243,435	Steve McCanless 281-593-1148
FBC Emergency Operations Center	307 Fort Street, Richmond, TX 77018	6/2/2022	\$9,552,167	James Knight 832-256-9682
FBISD Fine Arts Renovations & Additions	Fort Bend ISD	4/22/2022	\$27,173,685	Ashley Dixon 281-634-5909
FBC Public Safety Annex	5651 Flewellen Way, Fulshear, TX 77441	11/18/2021	\$4,655,722	James Knight 832-256-9682
FBC South Post Oak Expansion	5685 Hobby Road, Houston, TX 77053	8/29/2021	\$5,812,475	James Knight 832-256-9682
FBISD Madden Elementary School	17727 Abermore Lane, Richmond, TX 77407	7/30/2021	\$2,696,387	Ashley Dixon 281-634-5909
FBISD Triplex Extended Learning Center	550 Julie Rivers Drive, Sugar Land, TX 77478	1/22/2021	\$5,596,978	Ashley Dixon 281-634-5909
Messina Hof Winery	8921 Harlem Road, Richmond, TX 77406	1/2/2021	\$2,490,087	Paul Bonarrigo 979-218-5313
Techemet Receiving and Partial Processing Center	6011 Genoa Red Bluff Road, Pasadena, TX 77507	10/19/2020	\$7,761,495	Mark Ward 281-991-8300
UTMB Moody Medical Library Faculty lounge	914 Market Street, Galveston, TX 77555	7/9/2020	\$585,000	Jim Walker 409-771-5979

FBC Medical Examiner's Office	3840 Bamore Road, Rosenberg, TX 77471	10/25/2019	\$3,664,849	James Knight 832-256-9682
Innovative Buisness Plaza	11161 Shadow Creek Parkway, Pearland, TX 77584	9/30/2019	\$4,508,288	Jennifer Enabe 713-413-8881
Brenham ISD Highschool Renovation	525 A.H. Ehrig Drive, Brenham, TX 77833	9/30/2019	\$2,539,060	Paul Aschenbeck 979-277-3704
Lake Park Plaza	1535 Cullen Blvd., Pearland, TX 77584	9/30/2019	\$2,540,862	Kent Ballard 281-639-1275



OFFEROR'S LITIGATION, CLAIMS, REPUTATION & COMPLIANCE

OFFEROR'S LITIGATION, CLAIMS, REPUTATION & COMPLIANCE

I. Please answer the following questions

- a. Has Offeror ever defaulted, been declared to be in default, or failed to complete any work awarded?

☐ yes

☒ no

If yes, stipulate where and why: _____

- b. Has Offeror ever paid (or had withheld from payment) liquidated damages for failure to complete a contract on time?

☐ yes

☒ no

If yes, stipulate where and why: _____

- c. Has Offeror ever been charged with or paid a fine for non-compliance of State and/or Federal statutes or regulations?

☐ yes

☒ no

If yes, stipulate where and why: _____

II. List pending claims and/or litigation against or involving project owners at time of submitting Proposal. Show project name, owner and summary explanation.

Humble ISD Multi-Purpose Gyms

Crain Group was left no choice but to file suit against a Houston area Independent School District after a request for an amicable resolution and mediation was denied by the District from a dispute that arose from significant delays (over 100% of the original contract) caused by the District. This lawsuit is still pending resolution; however, has no bearing on our financial stability.

OFFEROR'S SAFETY RECORD

OFFEROR'S SAFETY RECORD

- I. List Offeror's Workers Compensation Experience Modification Rate (EMR) for the last five years, as obtained from Offeror's insurance agent.

2019 0.91
2020 0.93
2021 0.94
2022 0.94
2023 0.92

- II. Complete the matrix below for the last five years, as obtained from OSHA No. 200 Log:

	2018	2020	2021	2022	2023
Number of injuries & illnesses	0	0	0	0	0
Number of lost time accidents	0	0	0	0	0
Number of recordable cases	0	0	0	0	0
Number of fatalities	0	0	0	0	0
Number of employee direct hire fixed hours (round to 1,000's)	41,000	44,000	57,000	53,000	52,000

- III. Please answer the following questions regarding Offeror's safety program

- a. Are regular project safety meetings held for Field Supervisor(s)?
☒ yes
☐ no
If yes, frequency:
☒ weekly
☐ bi-monthly
☐ monthly
☐ as needed
- b. Are project safety inspections conducted?
☒ yes
☐ no
If yes, who performs inspections? Superintendents and/or Safety Consultant (Safe Construction, LLC)
How often? Monthly
Who is required to attend? On Site Subcontractor's Foreman and Superintendents
- c. Does Offeror have a written safety program?
☒ yes
☐ no
If yes, provide a copy. It will become a compliance document upon contract award.
** Crain Group's Safety Manual attached in separate file submission.

OFFEROR'S SAFETY RECORD-CONTIUNED

d. Does Offeror have a safety orientation program for new employees?

☒ yes

☐ no

For employees promoted to Field Supervisor?

☒ yes

☐ no

If yes, does Offeror's Supervisor Safety Program include instructions on the following:

Safety work practices ☒ yes ☐ no

Tool box safety meetings ☒ yes ☐ no

First aid procedures ☒ yes ☐ no

Accident investigation ☒ yes ☐ no

Fire protection ☒ yes ☐ no

New worker's orientation ☒ yes ☐ no

OFFEROR'S QUALITY CONTROL PROGRAM

- I. Submit a complete quality control program which will become a compliance document upon contract award.
- II. This plan should address all aspects of quality control including responsibility for surveillance work, acceptance, rejection, documentation and resolution of deficiencies, trend analysis and corrective action and interface with City's inspectors.

QUALITY CONTROL PROGRAM

The CRAIN GROUP, L.L.C. Quality Assurance and Quality Control System is overseen by our Executive Vice President, John Green; however, it requires participation from all project team members with the assigned Project Manager and General Superintendent following in hierarchy. The program is developed to ensure construction conforms to expectations set by each customer, applicable government regulations, industry standards, and the contract documents. The plan requires continuous collaboration between Crain Group and the Project Owner, Crain Group and the Design Team, and Crain Group and each Subcontractor and Supplier.

In a CMAR or Design/Build arrangement, QAQC starts with a Constructability Review of the Contract Documents at the appropriate stage of construction document development. The objective of performing a Constructability Review is to verify that the project can be constructed according to the design assumptions, the intent of the contract documents, and within the cost and schedule guidelines. The purpose of the review is 1) to provide a simplified format for review of construction documents and 2) to maintain an accurate list of issues and details which may have an adverse impact on cost, schedule, quality, and coordination. The following is a general guideline for this review.

1.DOCUMENTATION CLARITY AND CONSISTENCY

- Review design documents for design errors, omissions, and ambiguities.
- Review contract provisions to ensure they are capable of being administered and enforced.
- Revise construction details that can be simplified or improved.
- Review any potential design conflicts between structural, mechanical, architectural, and electrical scopes of work.
- Review design compatibility with available materials, equipment, and construction techniques.

2.IMPLEMENTED PLANNING

- Review sequencing and implementation assumptions.
- Review project turnover and closeout guidelines.
- Adjustments made based on historical and current market data.
- Review construction performance period to determine if the project timeline is realistic.

3.PROJECT SCHEDULE

- Review timeline for schedule details.
- Incorporate procurement details for inclusion of long lead items.
- Review logic to ensure critical path is identified.
- Review logistics for potential impact on schedule.
- Detail project closeout, inspections, and training windows.
- Review owner FF&E implementation.

4.CONSTRUCTION COST ESTIMATE

- Verify cost estimate includes all aspects of the project.
- Adjust costs based on historical data and the current market.
- Ensure materials and equipment are practical and cost-effective.
- Review logistics for potential delays and/or cost impacts.

QUALITY CONTROL PROGRAM

Responsible team members include the Project Executive, Pre-Construction Manager, Project Manager, Project Engineer, and Project Superintendent.

As the QAQC initiative continues to the Construction Phase, the focus shifts to ensuring subcontractors and suppliers meet the requirements and expectations of the contract documents, along with complying with local Authorities Having Jurisdiction (AHJ) and the required building code. The following is a general guideline for this process.

1.Vetting Scopes with Subcontractors and Suppliers

- Prior to issuance of Agreements, detailed review of scopes, inclusions, exclusions, and materials/products quoted are reviewed to ensure compliance with contract documents
- Requires interface with Crain Group and each Subcontractor/Supplier

2.Review Submittals and Shop Drawings

- Product data, installation manuals, material selections/finishes, and shop drawings are reviewed prior to purchasing to ensure compliance with contract documents
- Substitutions, alternate manufacturers/products/finishes may be reviewed, approved, or denied during this process
- Requires interface with Crain Group and the Design Team and potentially the Project Owner as required

3.Verification of Delivered Products/Materials

- Field team members are given Approved Submittals and Shop Drawings upon approval and use to cross-check delivered products and materials. Deficient, defective, or non-compliant products are rejected.
- Requires interface with Crain Group and applicable Subcontractor/Supplier

4.Preinstallation Meetings with Applicable Trades and Project Team

- Meetings establish protocols for assurance of required installation procedures and necessary sequencing to ensure coordination of dissimilar material connections
- Requires interface and collaboration with Crain Group, Design Team, applicable Subcontractors

5.Periodic Review/Inspection of Installation

- Ensures protocol established in pre-installation meetings and contract documents are sequentially followed. Requires review, as applicable, of local AHJ inspectors to ensure established building codes are adhered to. Rejected/non-conforming work is documented to the applicable subcontractor for corrective action.
- Requires interface with Crain Group and applicable Subcontractor, Crain Group and Design Team, and Crain Group and local AHJ

6.Creation and Completed Punchlist

- Final observation of completed scope is reviewed and inspected for conformance to the contract documents and is documented and distributed to the applicable trades with any deviations for immediate corrective action.

ROLES	PROJECT TEAM	Pre-construction Manager	Project Manager	Project Engineer	Project Superintendent
Vetting Scopes with Subcontractors & Suppliers	✓	✓			
Review Submittals & Shop Drawings		✓	✓		
Verification of Delivered Products/Materials			✓	✓	
Preinstallation Meetings with Trades		✓	✓	✓	
Periodic Review/Inspection of Installation		✓		✓	
Creation & Completion of Punchlist		✓		✓	

OFFEROR'S FINANCIAL RESOURCES

Submit Offeror's last audited financial statement and most current financial statement.

*Documents were hand delivered 7/30/2024 and received by Brandi Whittenton at City Hall.

OFFEROR'S PROPOSAL FORM

OFFEROR'S PROPOSAL FORM

Date: 7/31/2024

PROPOSAL FROM: Crain Group, 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 Baseball Fields at Veterans Park** and to perform the work required for the construction of said building at the location set out by the Plans and Specifications, in strict accordance with the Proposal/Contract Documents.

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

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

1. PRECONSTRUCTION FEE

List Offeror's proposed fee for all pre-construction phase services, including pre-planning, cost estimating, scheduling, value engineering, and constructability reviews, as a lump sum amount:

Dollars \$ 30,000

2. GENERAL CONDITIONS

List Offeror's proposed cost for General Conditions to accommodate the onsite staff as a lump sum amount. These items will include, but not be limited to, office trailers, phones, furniture, copiers, computers, software, supplies, cleaning, move in/move out, printing expenses, site personnel's radios, pagers, phones, etc., required equipment, insurance premiums, and other items specifically provided for in **Attachment 1**:

Dollars \$ 700,157

3. CONSTRUCTION MANAGER AT RISK FEE

List Offeror's proposed fee as a percentage of construction cost, including all overhead and profit:

Percent % 2.5%

4. NUMBER OF PROPOSED CONSTRUCTION DAYS

List Offeror's proposed number of calendar days from the Notice to Proceed that will be sufficient for performing all work:

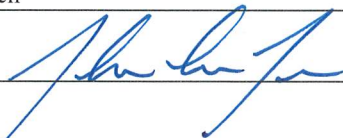
Days 365 Days

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: #1 & #2

BY SUBMITTING A PROPOSAL, EACH OFFEROR AUTHORIZES CITY TO PERFORM ALL INVESTIGATIONS INTO THE OFFEROR'S BACKGROUND, CAPABILITIES, PRIOR EXPERIENCE AND OTHER FACTORS PERTAINING TO OFFEROR'S PERFORMANCE OF THE WORK, AS CITY DEEMS NECESSARY IN ITS SOLE DISCRETION, AND FOR THAT PURPOSE, SUBMISSION OF A PROPOSAL SHALL ACT AS OFFEROR'S SPECIFIC AUTHORIZATION TO PERSONS AND ENTITIES CONTACTED BY CITY IN CONNECTION WITH SUCH INVESTIGATIONS ("EVALUATING PARTIES") TO PROVIDE CITY WITH THE INFORMATION REQUESTED BY CITY AND TO DISCUSS AND EXPRESS OPINIONS CONCERNING OFFEROR. FURTHER, BY SUBMISSION OF A PROPOSAL, OFFEROR AGREES TO FULLY AND FOREVER WAIVE AND RELEASE ANY CLAIM (KNOWN OR UNKNOWN) IT HAS OR MAY HAVE AGAINST CITY, ARCHITECT, THE EVALUATING PARTIES AND THEIR RESPECTIVE ATTORNEYS, EMPLOYEES, CONSULTANTS, REPRESENTATIVES, AND AGENTS WHICH IN ANY WAY ARISE OUT OF OR ARE CONNECTED TO THE: (I) ADMINISTRATION, EVALUATION, OR RECOMMENDATION (OR LACK THEREOF) OF ANY PROPOSAL; (II) WAIVER OF ANY REQUIREMENTS UNDER THE PROPOSAL/CONTRACT DOCUMENTS; AND (III) ACCEPTANCE OR REJECTION OF ANY PROPOSAL AND AWARD OF THE CONTRACT.

OFFEROR'S NAME: John Green

OFFEROR'S SIGNATURE: 

ATTACHMENT 1
GENERAL CONDITIONS DETAIL

DESCRIPTION	QTY	UNIT	\$ Cost/Unit Including All Burden & Insurance, Etc.	TOTAL
On Site Project Management				
Project Executive	12	MO	\$ 2,500.00	\$ 30,000.00
Project Manager	12	MO	\$ 6,250.00	\$ 75,000.00
Superintendent(s)	12	MO	\$ 10,500.00	\$ 126,000.00
Asst. Superintendent	12	MO	\$ 3,900.00	\$ 46,800.00
Office Engineer(s)	12	MO	\$ 1,953.00	\$ 23,436.00
Project Expeditor	12	MO	\$ -	\$ -
Scheduler	12	MO	\$ -	\$ -
Project Support Staff	12	MO	\$ 1,692.00	\$ 20,304.00
Cost Engineer	12	MO	\$ -	\$ -
Bonds and Insurance				
GL, Auto, WC & Builders Risk	1	LS	\$ 139,497.00	\$ 139,497.00
Payment & Performance Bonds	1	LS	\$ 146,000.00	\$ 146,000.00
Temporary Project Construction and Utilities for CM Staff				
Dumpsters or CM staff	12	MO	\$ 1,150.00	\$ 13,800.00
Monthly Telephone Service	12	MO	\$ 250.00	\$ 3,000.00
Project Water/Utilities	12	MO	\$ 350.00	\$ 4,200.00
Temporary Toilets	12	MO	\$ 400.00	\$ 4,800.00
Temporary Fire Protection	12	MO	\$ 45.00	\$ 540.00
Telephone System Installation	1	LS	\$ -	\$ -
Ceremonies	1	LS	\$ 1,000.00	\$ 1,000.00
Field Offices & Office Supplies for CM Staff				
Job Photos and Videos	12	MO	\$ 50.00	\$ 600.00
CM Project Specific Signage	1	LS	\$ 1,000.00	\$ 1,000.00
Postage and Deliveries	12	MO	\$ 50.00	\$ 600.00
Mobilization for Office Trailers	1	LS	\$ 2,500.00	\$ 2,500.00
Monthly Office Rental Costs	12	MO	\$ 1,500.00	\$ 18,000.00
Storage Trailers	12	MO	\$ 225.00	\$ 2,700.00
Field Office Equipment	12	MO	\$ 420.00	\$ 5,040.00
Vehicles including Fuel, Maintenance &	12	MO	\$ 2,000.00	\$ 24,000.00
Safety Equipment	12	MO	\$ 420.00	\$ 5,040.00
First Aid Supplies	12	MO	\$ 85.00	\$ 1,020.00
Job Office Supplies	12	MO	\$ 50.00	\$ 600.00
Janitorial Supplies	12	MO	\$ 25.00	\$ 300.00
Project Computers and Software	12	MO	NA	NA
Field Office Furniture	12	MO	\$ 240.00	\$ 2,880.00
Copy Machine and Supplies	12	MO	\$ 125.00	\$ 1,500.00
Communications Equipment	12	MO		\$ -
Advertising	12	MO		\$ -
TOTAL GENERAL				\$ 700,157.00

REDUCTION FORM

OFFEROR'S COST REDUCTION SUGGESTIONS

- I. The Offeror is encouraged to suggest to the City possible cost reduction items to be taken into consideration prior to awarding a construction contract. This includes any discounts such as prompt payments being suggested. Offeror may include this listing as a referenced attachment if additional space is needed. Please do not provide costs at this time, only suggestions for items to be taken into consideration.

Crain Group has recently completed the construction of the Fort Bend County South Post Oak Sportsplex - Phase I (Football Fields) and II (Baseball Fields), located at 5535 Hobby Road, Houston, Texas. Phase I, included sitework, landscaping, football fields, bleachers, concession and restroom building, maintenance building, lighting, scoreboards and sports equipment. Phase II included construction of a new restroom and concession building, sitework, (3) three new turf ballfields, a six (6) bay pre-engineered building of approximately 10,156 square feet with self-retractable netting systems and restrooms, two (2) press boxes, sidewalks, bleachers, new stadium lighting.

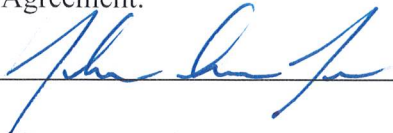
During the bidding and submittal stages of the project, Crain Group was able to work with the County and the Architect to successfully value engineer a number of items with the Project Team. Some of the items and lessons learned from these projects are:

1. Review the specifications for the Turf Manufacturer. The specified vendor's price was \$250,000 higher than other comparable vendors. Crain Group was able to negotiate and provide the original specified vendor at a price-point comparable to other bidding installers.
2. Review how turf will be terminated, specification often have curb, but potentially could terminate with alternate methods, saving money.
3. Review the drainage for both the turf field internal drainage systems and the drainage of the spaces between and adjacent to the fields. These tie-ins and drainage locations need to be denoted on the Civil drawings to ensure there are no added costs that arise after initial installation to get water away from the fields and traffic areas.
4. Review specified field lighting vendors. Crain Group was able to save the County over \$250,000, by using an alternate lighting vendor for the Phase I Football Fields, creating a specification that was reused for the Phase II Baseball Fields.
5. There are a number of sports equipment and scoreboard companies in the market. Crain Group has successfully completed multiple Sports Complexes, Sports Training facilities and schools and we have successfully saved the County or Owner of these facilities through competitive pricing using comparable specifications.
6. Plan the logistics of the turf field installation. Proactive review of the schedule and installation sequencing will allow time and money to be saved.
7. Review the food services that will be served with the Health Inspector to ensure that no unforeseen requirements arise due to Health Department requirements not being addressed in the design.

CERTIFICATION OF PROPOSAL

CERTIFICATION OF PROPOSAL

The undersigned affirms that they are duly authorized to execute the City of College Station Construction Agreement, that this Proposal has not been prepared in collusion with any other Offeror, and that the contents of this Proposal have not been communicated to any other Offeror prior to the official opening of this Proposal. Additionally, subject to Section 2269.254 of the Code, the undersigned affirms that the firm is willing to sign the enclosed City of College Station Construction Agreement.

Signed By:  Title: Executive Vice President

Typed Name: John Green Company Name: Crain Group, LLC

Phone No.: 713-436-8727 Fax No.: 713-436-8730

Email: jgreen@craingroup.com

Proposal Address:	<u>3801 Knapp Rd.</u>	<u>Pearland</u>	<u>Texas</u>	<u>77581</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Order Address:	<u>3801 Knapp Rd.</u>	<u>Pearland</u>	<u>Texas</u>	<u>77581</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Remit Address:	<u>3801 Knapp Rd.</u>	<u>Pearland</u>	<u>Texas</u>	<u>77581</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Federal Tax ID No.: 20-1621237

Date: 7/31/2024

PROPOSAL NO. 24-069

SURETY BOND

ATTACHMENT 4

SECURITY BOND

Surety Bond No. N/A

STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF BRAZOS

That we, Crain Group, L.L.C., as Principal (the CMAR), and Travelers Casualty and Surety Company of America, as Surety, are hereby held and firmly bound unto the City of College Station, Texas, as Obligee (the City), and its successors and assigns, in the Penal Sum of Five Percent (5%) of Twenty Million and no/100 Dollars (\$ 20,000,000.00), the Construction Budget, for a total Penal Sum of One Million and no/100 Dollars (\$ 1,000,000.00), for the Project defined hereinbelow, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has executed a Construction Manager at Risk contract, dated _____, with Obligee, Contract No. _____ (the "Contract"), for the Baseball Fields at Veterans Park - RFP No. 24-069 / Project No. PK2502 Project (the "Project").

NOW THEREFORE, the condition of this obligation is such that, if the aforesaid Principal shall execute a Guaranteed Maximum Price Proposal acceptable to the Obligee, and the said Obligee executes the Contract Amendment in connection therewith and, the principal fails to execute the Contract Amendment or fails to deliver Performance and Payment Bonds within the time required by the Contract, to secure the performance of the terms and conditions of the Contract, the Principal and surety will pay the Obligee the difference in money between the amount of the partially executed Contract Amendment, the Guaranteed Maximum Price, as may be applicable (or all of them in the case of multiple Contract Amendments and/or Guaranteed Maximum Prices), of the said Principal and the amount for which the Obligee contracts with another party to perform the work of the partially executed Contract Amendment and/or Guaranteed Maximum Price, if the latter amount be in excess of the former (respectively, in the case of multiple Contract Amendments and/or Guaranteed Maximum Prices), and the costs Obligee incurs to reselect a Construction Manager at Risk, including but not limited to the difference in the amount of Principal's Fee and General Conditions costs and the new Construction Manager at Risk's Fee and General Conditions costs, but in no event shall the surety's aggregate liability hereunder exceed the Penal Sum hereof.

PROVIDED, FURTHER, that this Security Bond is effective for the term of twelve months from the time of its execution and will deemed to be automatically extended without amendment for six months from the expiry date hereof, or any future expiration date, unless at least sixty (60) days prior to any expiration date Surety notifies Obligee by registered mail, at the address for notices to Obligee set forth in the Contract, that it elects not to extend the term of this Security Bond for any additional period.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument on the respective dates written below their signatures and under their several seals the name and corporate seal of each entity being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body and have attached a current Power of Attorney.

Bond No. N/A

FOR THE PRINCIPAL/CMAR:

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

By: *Shelby Sanchez*
Name: shelby Sanchez
Title: project coordinator
Date: July 31, 2024

Crain Group, L.L.C.
(Name of Principal/CMAR)

By: *John Green*
Name: John Green
Title: Executive Vice President
Date: July 31, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: *Hannah Montagne*
Name: Hannah Montagne
Title: Surety Account Analyst
Date: July 31, 2024

Travelers Casualty and Surety Company of America
(Full Name of Surety)

1500 Market Street
29th Floor, West Tower
Philadelphia, PA 19102
(Address of Surety for Notice)

By: *Jillian O'Neal*
Name: Jillian O'Neal
Title: Attorney-in-Fact
Date: July 31, 2024

FOR THE OBLIGEE/CITY:

REVIEWED:

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

City Attorney

City Manager



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **JILLIAN O'NEAL** of **THE WOODLANDS**, Texas, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

City of Hartford ss.

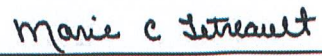
By: 
Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed 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 hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

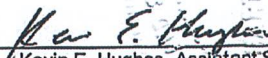
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 31st day of July, 2024




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**



IMPORTANT NOTICE

TO OBTAIN INFORMATION OR MAKE A COMPLAINT:

You may contact Travelers Casualty and Surety Company of America, for information or to make a complaint at:

Travelers Bond
Attn: Claims
1500 Market Street, 29th Floor, West Tower
Philadelphia, PA 19102
(267) 675-3057 / (267) 675-3102 Fax

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

Texas Department of Insurance
P.O. Box 149104
Austin, TX 78714-9104
(800) 252-3439

ATTACH THIS NOTICE TO YOUR BOND. This notice is for information only and does not become a part or a condition of the attached document and is given to comply with Section 2253-021, Government Code, and Section 53.202, Property Code, effective September 1, 2001.

October 24, 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): None

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 from the days of October 26th thru November 14th:

Oct. 26 SEC Tailgate - LSU
Oct. 28 Bicycle, Pedestrian and Greenways Advisory Board Meeting, 3:30 pm
Nov. 4 Historic Preservation Committee Meeting, 4:00 pm
Nov. 6 B/CS MPO Policy Board Meeting, 9:30 am
Nov. 6 Economic Development Committee Meeting, 3:00 pm
Nov. 6 Zoning Board of Adjustments Meeting, 6:00 pm
Nov. 7 Inner Loop East Study Public Meeting, 5:00 pm
Nov. 7 Planning & Zoning Commission Meeting, 6:00 pm
Nov. 8 Design Review Board Meeting, 11:00 am
Nov. 11 Bicycle, Pedestrian and Greenways Advisory Board Meeting, 3:30 pm
Nov. 11 Brazos Valley Veterans Memorial's Annual Veterans Day Ceremony, 5:30 pm
Nov. 11 Chamber of Commerce "2024 Annual Banquet," 6:00 pm
Nov. 12 Parks Board, 6:00 pm
Nov. 14 Rock Prairie Management District No. 2, 2:00 pm
Nov. 14 City Council Meeting, 4:00 pm

Budget & Financial Summary: None.

Attachments:

None

October 24, 2024

Item No. 11.1.

Council Reports on Committees, Boards, and Commissions

Sponsor: City Council

Reviewed By CBC: City Council

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

Relationship to Strategic Goals:

Good Governance

Recommendation(s): Review meetings attended.

Summary: Animal Shelter Board, Arts Council of Brazos Valley, Architectural Advisory Committee, Audit Committee, Bond Citizens Advisory Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Economic Development Corporation, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, Census Committee Group, Compensation and Benefits Committee, Experience Bryan-College Station, Design Review Board, Economic Development Committee, Gulf Coast Strategic Highway Coalition, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Metropolitan Planning Organization, Operation Restart, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Technology Council, Regional Transportation Committee for Council of Governments, Sister Cities Association, Spring Creek Local Government Corporation, Transportation and Mobility Committee, TAMU Student Senate, Texas Municipal League, Walk with the Mayor, YMCA, Zoning Board of Adjustments. (Notice of Agendas posted on City Hall bulletin board.)

Budget & Financial Summary: None.

Attachments:

None