



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#

November 14, 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. Canvassing of Election.

- 2.1. Presentation, discussion, and possible action of an ordinance of the City Council of the City of College Station, Texas, canvassing returns and declaring results of the general election, held on November 5, 2024 for the purpose of electing a City Council Member, Place 3, a City Council Member, Place 4, a City Council Member, Place 5, and a City Council Member, Place 6. (*Presentación, discusión, y posible acción acerca de una ordenanza del consejo de la ciudad de College Station, Texas, para escrutinar los resultados de los votos y declarando los resultados de las elecciones especiales, celebrada el 5 de noviembre de 2024 con el propósito de elegir un Miembro del Concejo Municipal, Lugar 3, un Miembro del Concejo Municipal, Lugar 4, un Miembro del Concejo Municipal, Lugar 5, y un Miembro del Concejo Municipal, Lugar 6.*)

Sponsors: Tanya Smith

Attachments: 1. Canvassing Ordinance English 2024
2. Canvassing Ordinance Spanish 2024

- 2.2. Issuance of Certificates of Election to elected City Council Member Places 3, 4, 5 and 6; and administer Oaths of Office. (*Emisión de Certificados de Elección a Concejales electos Lugares 3, 4, 5 y 6; y administrar juramentos de cargo.*)

Sponsors: Tanya Smith

Attachments: None

3. Reception.

4. 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.

4.1. 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.

4.2. 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.
- d. Approximately 300 acres generally located at Corporate Parkway and Midtown Drive in the Midtown Business Park.

4.3. Personnel {Gov't Code Section 551.074};

Possible action. The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer. After executive session discussion, any final action or vote taken will be in public. The following public officer(s) may be discussed:

- a. City Manager
- b. Council Self-Evaluation

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

6. 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.

7. 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.

8. 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.

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

- October 24, 2024 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM102424 DRAFT Minutes

8.2. Presentation, discussion, and possible action on approval of a construction contract with Sadie Burche, LLC. in the amount of \$271,463 for the remodel of a portion of the Carter Creek Wastewater Treatment Plant Office, plus the City's contingency in the amount of \$27,146 for a total appropriation of \$298,609. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

Sponsors: Jennifer Cain

Attachments: 1. CCWWTP Office Remodel Vendor Signed Contract
2. CCWWTP Office Remodel Map
3. CCWWTP Office Remodel 25-004 ITB bid tab

8.3. Presentation, discussion, and possible action on a construction contract with G.A.M. Construction, Inc. in the amount of \$113,900 for the VPAC Cabinets & Counters Project.

Sponsors: Jennifer Cain

Attachments: 1. VPAC Concessions Improvements Vendor Signed Contract

8.4. Presentation, discussion, and possible action on a construction contract with Musco Sports Lighting, LLC for the Pickleball and Futsal Courts at Anderson Park in the amount of \$313,068 and for Bee Creek and Central Park Tennis Courts Rehabilitation project in the amount of \$334,506 for a total combined amount of \$647,574.

Sponsors: Jennifer Cain

Attachments: 1. Pickleball Futsal Map
2. Bee Creek and Central Map
3. Bee Creek and Central Lighting Contract Vendor Signed
4. Musco Sports Lighting Contract for Anderson Park Project Vendor Signed

- 8.5. Presentation, discussion, and possible action on the Office of the Governor's Victim Services Grant Resolution.

Sponsors: Billy Couch

Attachments: 1. FY 25 VOCA Grant Resolution 11-14-24

- 8.6. Presentation, discussion, and possible action on a resolution and letter agreement that concurs with the Texas Department of Transportation's (TxDOT) de minimis impact determination for the Smith Tract Park property regarding the State Highway 6 Central BCS lane expansion project and future Highway 30 roundabout.

Sponsors: Kelsey Heiden

Attachments: 1. Resolution City Concurrence Sec 4f TxDOT_Smith Tract Park_11-7-2024

2. SH6 BCS Central_4(f) De Minimis Letter 09262024

- 8.7. Presentation, discussion, and possible action on a construction contract with Becker Arena Systems for the dasher board systems and goals for the Futsal (Multi-use) Courts at Anderson Park for \$229,440.

Sponsors: Jennifer Cain

Attachments: 1. Pickleball Futsal at Anderson Park Location Map

2. Pickleball Futsal Becker Systems Contract Vendor Signed

9. Workshop Agenda.

- 9.1. Presentation, discussion, and possible action regarding a presentation and update on the Mabel Clare Thomas Park Redevelopment Project.

Sponsors: Kelsey Heiden

Attachments: None

- 9.2. Presentation, discussion, and possible action regarding the economic impact of large summer events and the upcoming 2024 Christmas in College Station campaign.

Sponsors: Jeremiah Cook

Attachments: 1. June 2024 Economic Impact Study

2. Economic Impact Analysis - USATF

- 9.3. Presentation, discussion, and possible action regarding the FY2024 Comprehensive Plan and Unified Development Ordinance (UDO) Annual Review.

Sponsors: Christine Leal

Attachments: 1. FY2024 Comprehensive Plan & Unified Development Ordinance Annual Review

10. Regular Agenda.

- 10.1. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundary from SC Suburban Commercial to O Office for approximately 2.08 acres at 4205-4211 Rock Prairie Road, being Lots 1-4, Block 1 of the Waterford Heights Phase 1 Subdivision, generally located east of the intersection of Rock Prairie Road and Bird Pond Road.

Sponsors: Jeff Howell

Attachments: 1. Rezoning Ordinance

2. Aerial and Small Area Maps

3. Rezoning Exhibit

4. Background Information
5. Applicant's Supporting Information
6. Existing Future Land Use Map
7. Rezoning Map

10.2. Public Hearing, presentation, discussion, and possible action on an ordinance vacating and abandoning a 0.139 acre portion of a 10-foot-wide utility easement located along Lots 1-7, Block 1 of the Needham Estates Subdivision, College Station, Brazos County, Texas, according to the final plat recorded in Volume 276, Page 301 of the Deed Records of Brazos County, Texas.

Sponsors: Lucas Harper

- Attachments:
1. Needham Abandonment Ordinance
 2. Vicinity Map
 3. Location Map
 4. Easement Abandonment Application

10.3. Public Hearing, presentation, discussion, and possible action regarding a resolution authorizing a grant application to the Texas Water Development Board for the installation of a phase of the Flood Early Warning System.

Sponsors: Carol Cotter

- Attachments:
1. Grant Resolution TWDB

10.4. Presentation, discussion, and possible action on an interlocal agreement with the City of Bryan for approval and access to City of Bryan properties and right-of-way for the Northeast Trunkline Phase 4 Sewer Project.

Sponsors: Bryan Woods

- Attachments:
1. College Station Bryan Sewer ILA - COB Council version 10-17-24

10.5. Presentation, discussion, and possible action on Change Order No. 2 for the Northeast Sewer Trunk Line Ph IV Project design contract with Kimley-Horn and Associates, Inc., not to exceed \$1,030,400.

Sponsors: Jennifer Cain

- Attachments:
1. NETL Ph 4 Design Change Order
#2_DocuSign_22300588_CO2_VendorSigned

11. 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.

12. 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)

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

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

14. Adjourn.

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

I certify that the above Notice of Meeting was posted on the website and at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on November 8, 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."

November 14, 2024
Item No. 2.1.
Canvassing (escrutinio)

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action of an ordinance of the City Council of the City of College Station, Texas, canvassing returns and declaring results of the general election, held on November 5, 2024 for the purpose of electing a City Council Member, Place 3, a City Council Member, Place 4, a City Council Member, Place 5, and a City Council Member, Place 6.

(Presentación, discusión, y posible acción acerca de una ordenanza del consejo de la ciudad de College Station, Texas, para escrutinar los resultados de los votos y declarando los resultados de las elecciones especiales, celebrada el 5 de noviembre de 2024 con el propósito de elegir un Miembro del Concejo Municipal, Lugar 3, un Miembro del Concejo Municipal, Lugar 4, un Miembro del Concejo Municipal, Lugar 5, y un Miembro del Concejo Municipal, Lugar 6.)

Relationship to Strategic Goals:

- Good Governance *(buen gobierno)*

Recommendation(s): N/A

Summary: N/A

Budget & Financial Summary: N/A

Attachments:

1. Canvassing Ordinance English 2024
2. Canvassing Ordinance Spanish 2024

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, CANVASSING RETURNS AND DECLARING RESULTS OF A GENERAL ELECTION, HELD ON NOVEMBER 5, 2024; FOR THE PURPOSE OF ELECTING A CITY COUNCILMEMBER PLACE 3, CITY COUNCILMEMBER PLACE 4, CITY COUNCILMEMBER PLACE 5 AND CITY COUNCILMEMBER PLACE 6.

RECITALS:

1. On July 25, 2024 the City Council adopted Ordinance No. 2024-4530 ordering a General Election be held on November 5, 2024 for the purpose of electing a City Councilmember Place 3, City Councilmember Place 4, City Councilmember Place 5 And City Councilmember Place 6.
2. Notice of this election was duly published in The Eagle on October 10 and October 17, 2024 and in La Voz Hispana on October 11 and 18, 2024.
3. A copy of the notice was posted on the bulletin board at City Hall on September 3, 2024.
4. This election was duly and legally held on November 5, 2024, in conformity with the election laws of the State of Texas, and the results of the election have been certified and returned by the proper judges and clerks.
5. The City Council of the City of College Station, Texas with the following members present: Mayor John P. Nichols, Councilmembers Mark Smith, William Wright, Linda Harvell, Elizabeth Cunha, Bob Yancy, and Dennis Maloney have today considered the returns of the General Election held on November 5, 2024.
6. It appears to the Council, and the Council finds, that the election was in all respects lawfully held.
7. It appears to the Council, and Council finds, that the tabulation of the results of the election is correct.

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

SECTION 1. The General Election of November 5, 2024 were duly called, notice of the elections was given in accordance with law, and the elections were held in accordance with law.

SECTION 2. The tabulation of votes cast in the General Election held on November 5, 2024, for the purposes stated in Recitals above, a copy of which is attached to and made a part of this ordinance, is adopted as the official tabulations of the votes cast at the elections, and the tabulations will be filed and recorded in the official records of the City of College Station as the official canvass of the elections.

SECTION 3. The official canvass of the returns of the election reflects the following:

A. For the City Councilmember, Place 3 a four (4) year term, the following votes were cast:

David White _____
Valen Cepak _____

B. For the City Councilmember, Place 4 a four (4) year term, the following votes were cast:

Melissa McIlhaney _____
Aron Collins _____

C. For the City Councilmember, Place 5 a four (4) year term, the following votes were cast:

Bob Yancy _____

D. For the City Councilmember, Place 6 a four (4) year term, the following votes were cast:

Tre Watson _____
Scott Shafer _____

SECTION 4. That David White received a majority of the votes is elected to serve as City Councilmember, Place 3, that Melissa McIlhaney received a majority of the votes and is elected to serve as City Councilmember, Place 4; that Bob Yancy received a majority of the votes and is elected to serve as City Councilmember, Place 5; that Scott Shafer received a majority of the votes to serve as City Councilmember, Place 6.

PASSED, APPROVED AND ADOPTED this the 14th day of November 2024.

Mayor

ATTEST:

City Secretary

APPROVED:

City Attorney

ORDENANZA NO. _____

UNA ORDENANZA DEL CONSEJO DE LA CIUDAD DE COLLEGE STATION, TEXAS, SONDEANDO EL RECUENTO DE VOTOS Y DECLARANDO LOS RESULTADOS DE LAS ELECCIONES GENERALES, CELEBRADAS EL 5 DE NOVIEMBRE DE 2024, CON EL PROPÓSITO DE ELEGIR UN MIEMBRO DEL CONSEJO DE LA CIUDAD PUESTO NÚMERO 3, UN MIEMBRO DEL CONSEJO DE LA CIUDAD PUESTO NÚMERO 4, UN MIEMBRO DEL CONSEJO DE LA CIUDAD PUESTO NÚMERO 5, Y UN MIEMBRO DEL CONSEJO DE LA CIUDAD PUESTO NÚMERO 6.

ANTECEDENTES:

1. El 25 de julio de 2024, el Consejo de la Ciudad adoptó la Ordenanza Número 2024-4530, ordenando Elecciones Generales 4 para celebrarse el 5 de noviembre de 2024, con el propósito de elegir un miembro del consejo de la ciudad puesto numero 3, un miembro del consejo de la ciudad puesto 4, un miembro del consejo de la ciudad puesto 5, y un miembro del consejo de la ciudad puesto numero 6.
2. Notificación de estas elecciones se publicó debidamente en el periódico *The Eagle* el 10 de octubre y el 17 de octubre de 2024; y en *La Voz Hispana* el 11 y el 18 de octubre de 2024.
3. Una copia de la notificación se colocó en el tablón de anuncios de la Municipalidad el 3 de septiembre de 2024.
4. Estas elecciones se celebraron de manera debida y legalmente el 5 de noviembre de 2024, de acuerdo con las leyes de elecciones del Estado de Texas, y los resultados de las elecciones han sido certificados y devueltos por los jueces y oficiales apropiados.
5. El Consejo de la Ciudad de College Station, Texas, con los siguientes miembros presentes: Alcalde John P. Nichols, Miembros del Consejo Mark Smith, William Wright, Linda Harvell, Elizabeth Cunha, Bob Yancy y Dennis Maloney han considerado hoy los recuentos de los votos emitidos en las Elecciones Generales celebrada el 5 de noviembre de 2024.
6. Le parece al Consejo, y el Consejo concluye, que las elecciones fueron celebradas legalmente en todo aspecto.
7. Le parece al Consejo, y el Consejo concluye, que la tabulación del recuento de votos de las elecciones es correcta.

CÚMPLASE POR EL CONSEJO DE LA CIUDAD DE COLLEGE STATION, TEXAS:

SECCIÓN 1. Las Elecciones Generales del 5 de noviembre de 2024 fueron debidamente convocadas, la notificación de las elecciones se dio de acuerdo con la ley y las elecciones se celebraron de acuerdo con la ley.

SECCIÓN 2. La tabulación de los votos emitidos en las Las Elecciones Generales del 5 de noviembre de 2024, para los propósitos declarados anteriormente en Antecedentes, una copia de la cual se adjunta y se hace parte de esta ordenanza, se adopta como la tabulación oficial de los votos emitidos en las elecciones, y la tabulación se archivará y se registrará en los registros oficiales de la Ciudad de College Station como el sondeo oficial de las elecciones.

SECCIÓN 3. El sondeo oficial del recuento de votos de las elecciones refleja lo siguiente:

A. Para el Miembro del Consejo Puesto Número 3, término de cuatro (4) años, los siguientes votos se emitieron:

David White _____
Valen Cepak _____

B. Para el Miembro del Consejo Puesto Número 4, término de cuatro (4) años, los siguientes votos se emitieron:

Melissa McIlhaney _____
Aron Collins _____

C. Para el Miembro del Consejo Puesto Número 5, término de cuatro (4) años, los siguientes votos se emitieron:

Bob Yancy _____

D. Para el Miembro del Consejo Puesto Número 6, término de cuatro (4) años, los siguientes votos se emitieron:

Tre Watson _____
Scott Shafer _____

SECCIÓN 4. Que David White recibió una mayoría de los votos y es electo para servir como Miembro del Consejo Puesto Número 3; que Melissa McIlhaney recibió una mayoría de los votos y es electo para servir como Miembro del Consejo Puesto Número 4; que Bob Yancy recibió una mayoría de los votos y es electo para servir como Miembro del Consejo Puesto Número 5; que Scott Shafer recibió una mayoría de los votos y es electo para servir como Miembro del Consejo Puesto Número 6.

PASADO, APROBADO Y ADOPTADO este día 14 de noviembre de 2024.

Alcalde

DOY FE:

Secretaria de la Ciudad

APROBADO:

Abogado de la Ciudad

November 14, 2024
Item No. 2.2.
Oaths of Office (*Juramento del cargo*)

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: N/A

Agenda Caption: Issuance of Certificates of Election to elected City Council Member Places 3, 4, 5 and 6; and administer Oaths of Office. (*Emisión de Certificados de Elección a Concejales electos Lugares 3, 4, 5 y 6; y administrar juramentos de cargo.*)

Relationship to Strategic Goals:

- Good Governance (*Buen gobierno*)

Recommendation(s): N/A

Summary: N/A

Budget & Financial Summary: N/A

Attachments:

None

November 14, 2024

Item No. 4.2.

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.
- d. Approximately 300 acres generally located at Corporate Parkway and Midtown Drive in the Midtown Business Park.

Relationship to Strategic Goals:

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

None

November 14, 2024
Item No. 8.1.
October 24th Council Meeting Minutes

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action of minutes for:
• October 24, 2024 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommend approval.

Summary: N/A

Budget & Financial Summary: N/A

Attachments:

1. CCM102424 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
OCTOBER 24, 2024

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

John Nichols, Mayor

Council:

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

City Staff:

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

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

With a quorum present, the meeting of the College Station City Council was called to order by Mayor Nichols via In-Person and Teleconference at 3:00 p.m. on October 24, 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 §551.087- Economic Incentive Negotiations, and the College Station City Council convened into Executive Session at 3:01 p.m. on October 24, 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 & Geoffry Hopkins v. City of College Station, Cause No. 23-002880-CV-85 in the 85th District Court, Brazos County Texas.
- Texas A&M University System v. BVGCD, et al, Cause No. 24-002626-CV-472, in the 472nd District Court, Brazos County.
- 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. 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

2.4. Deliberation on an offer of financial or other incentives for a business prospect that the Council seeks to have locate, stay or expand in or near the City; to wit:

- 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.

Executive Session recessed at 6:38 p.m. No action was taken.

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

5. PRESENTATION - PROCLAMATIONS, AWARDS, AND RECOGNITIONS.

5.1. Presentation proclaiming the month of October 2024 as Community Planning Month.

Mayor Nichols presented a proclamation to Andrew Armstrong and the Planning and Development staff declaring the week of October 2024, as Community Planning Month.

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

Mayor Nichols presented a proclamation to Judge Spillane and the Municipal Court staff declaring the week of November 4-8, 2024, as Municipal Court Week.

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

Mayor Nichols presented a proclamation to Andrea Lauer, Gene Ballew, Michael Isermann and Parks and Recreation staff declaring the week of November 1, 2024, as Texas Arbor Day.

6. Hear Visitors Comments.

Brian Watford, College Station, came before Council to speak about the areas feral cats, give his opinion that the City needs help volunteers actively manage colony's, and raise awareness that local shelters are overwhelmed and help is needed.

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 7.3, 7.4, 7.5, 7.13, 7.15 and 7.17 was pulled from Consent for clarification.

(7.3) Anthony Armstrong, Planning and Development Director, explained the process of the ETJ petitions and how they are handled by law. Staff was only reached out by the petitioner

Scott Lovett, College Station, stated that he was in full compliance with the compliance with the ETJ process and that if the city denied his application they are in violation of state law.

(7.4) Anthony Armstrong, Planning and Development Director, explained that the previous petition was denied but the second petition which the petitioner is now the owner has been approved and staff will be work with Mr. Lovett.

(7.5) Anthony Armstrong, Planning and Development Director, explained that petitioner has not reached out to regarding his petition. Staff recommending denial of this release ETJ petition.

(7.12) Jeremiah Cook, Tourism Manager, explained that 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.

(7.13) Emily Fisher, Public Works Director, explained that 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.

(7.15) Emily Fisher, Public Director, explained that 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 sign is worn and in need of replacement.

(7.16) Jennifer Cain, Capital Projects Director, explained that 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, for the rehabilitation of William D. Fitch Parkway from SH30 to Tonkaway Lake Drive in the amount of \$5,654,859.

(7.17) Jennifer Cain, Capital Projects Director, explained that this 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. 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 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.

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

- **October 7, 2024 Council Meeting**

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.

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.

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.

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.

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.

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.

7.8. Presentation, discussion, and possible action regarding Ordinance No. 2024-4554 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.

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.

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.

7.11. Presentation, discussion, and possible action to the BVWACS Annual Operating & Maintenance and Capital Budget.

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.

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.

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

7.15. Presentation, discussion, and possible action regarding Ordinance No. 2024-4555 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.

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.

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.

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.

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

8. WORKSHOP ITEMS

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

Barbara Moore, University & Community Relations Manager, introduced Jaclyn Upshaw-Brown and Nickie McDaniel of Texas A&M Student Life who presented an update about Off-Campus Student Services and teaching students about off campus living.

Target Audiences:

- New students through mandatory online orientation and First Year Seminars
- Students living on-campus who did not renew with Residence Life for the following year
- Students currently searching for next year's housing
- Students currently in violation

Outreach includes:

- Educational marketing campaign (print marketing on and off campus; social media; bulk emails)
- Parent and Family member webinars, emails, social media posts, and Aggie Moms Club meetings
- Student organization/class presentations
- Good Neighbor education walk-n-talks including specific information for homes inside and outside recently approved HOOs
- Featured announcement on AggieSearch home page plus information on Student Life website

Ms. Upshaw-Brown explained that "Party Smart" packs contained educational materials and supplies for the responsible hosting/attending of parties and being a good neighbor. They were distributed to approximately 700 homes across three neighborhoods that were identified with the help of partners at the City of College Station. In the largest neighborhood, City representatives from Code Enforcement, Neighborhood Services, and Waste Management also assisted with the distribution. The Party Smart event was hosted about two weeks before Spring Break and was attended by more than 50 students. Resource tables hosted by on- and off-campus partners provided information about safety, host responsibility, risk management, student conduct expectations, and alcohol laws. Students were also able to sample several mocktails as examples of non-alcoholic alternatives that could be offered at parties.

Neighborhood engagement efforts are focused on bettering relations between students and permanent residents in mixed neighborhoods:

- Quarterly Community Luncheon to engage with students and local residents/gather feedback about student and community needs.
- Upcoming series of Block Parties in neighborhoods with a mix of rental and owner-occupied properties.

Good Neighbor education efforts are focused on equipping off campus students with tools, resources, and strategies to be a respectful community member now and beyond their time at TAMU, including:

- Providing information about local ordinances.

- Encouraging students to make safe and responsible choices around alcohol use and hosting parties.

9. REGULAR ITEMS

9.1. Presentation, discussion, and possible action regarding Ordinance No. 2024-4556 creating a voluntary rental inspection and certification program.

Debbie Eller, Community Services Director, stated that 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.

Ordinance for Consideration

Implement a voluntary Residential Rental Inspection & Certification Program

- 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
- Certificate issued is valid for 2 years
- Address included on list posted on web page – “Gig’em List”

Mayor Nichols opened for Citizen Comments.

Pasquale Mazzoccoli, College Station, came before Council opposing the program and stated that passing these regulations would be detrimental.

Jaime Stanley, College Station, came before Council speaking on behalf of the Bryan College Station Realtor Association. She stated that if council passes this voluntary program the organization has recommendations on how to implement or develop it.

Tre Watson, College Station, came before Council stating that he was part on the group that brought this forward a few years ago and felt the council at that time supported the inspection program. He went on to state that many of the people opposing this program do not live in the city.

Kevin Matthews, College Station, came before Council to ask at what point something is broken and the responsibility of the tenant.

Ivan Teter, College Station, came before Council and stated that he knows when you move in with problems it’s already too late but inspections would protect the tenant before moving.

Kevin Pierce, College Station, came before Council to echo Ivan Teter on the voluntary inspections and went on that some rentals should not even be rented and having an inspection will help address issues before hand.

Jessica Williams, Illiano, came before Council stating that she moved to Urbana, Illinois and they have a Rental Inspection Program. She stated the proposed program is fantastic as it is and does not need to be changed as it balances the relationship between the renter and landlord.

Mario Runco, Jr., College Station, came before Council to express strong opposition to the proposed city ordinances implementing voluntary rental property inspections. Mr. Runco stated that he recommends that Council refrain from lumping all of the responsible property owners in with the few bad apples who have caused this issue to arise in the first place.

Jamie Lynn Johnson, College Station, came before Council to express her opposition to the proposed city ordinances implementing voluntary and/or mandatory rental property inspections. She believes this program would only reach compliant owners and non-compliant locations would not improve.

Jeff Leatherwood, College Station, came before Council to state his concerns on the voluntary rental inspection certification program, including what he feels are plans to eventually make this inspections mandatory.

Grant Hockenberry and Campbell Gattis, TAMU Student Government, came before Council representing the Texas A&M Student Body and they are in strong opposition to the proposed city ordinance implementing voluntary and/or mandatory rental property inspections.

There being no further comments, citizen comments were closed.

MOTION: Upon a motion made by Councilmember Cunha and a second by Councilmember Yancy, the City Council voted four (4) for and three (3) opposed, with Councilmember Maloney, Wright and Harvell voting against, to deny Ordinance No. 2024-4556, creating a voluntary rental inspection and certification program. The motion carried.

Mayor Nichols recessed the meeting at 9:16 p.m.

The meeting resumed at 9:26 p.m.

9.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2024-4557 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.

Anthony Armstrong, Planning and Development Director, stated 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:

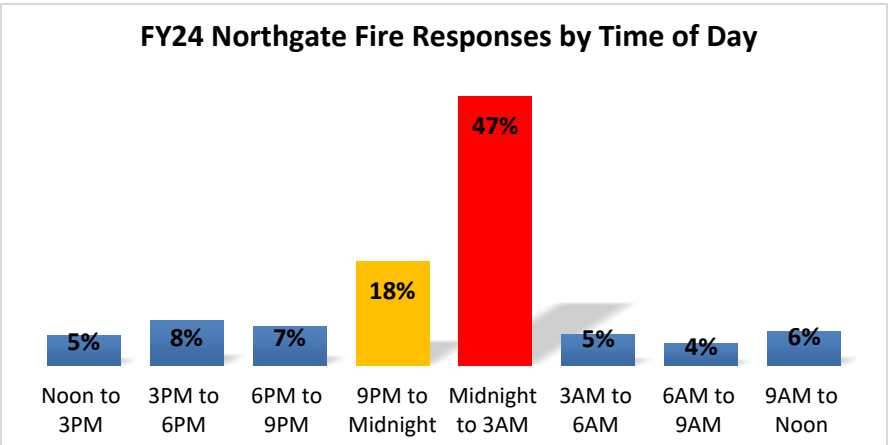
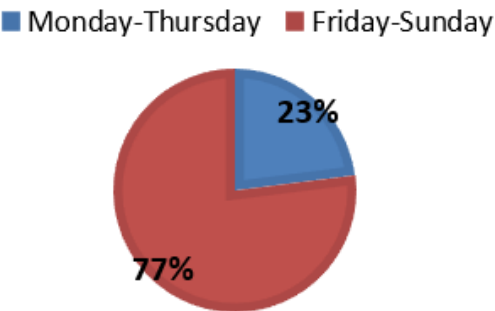
1. Extends Conditional Use Permit (CUP) requirement to bars in Northgate
2. Adds additional thresholds for new CUP related to occupancy loads
3. Extends CUP opening deadline when part of a larger development under construction
4. Strengthens language to revoke a CUP
5. Doubles time to backfill uses.

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.

Richard Mann, Fire Chief, presented information on Northgate Fire and EMS responses.

Fire Department Calls: Northgate FY24

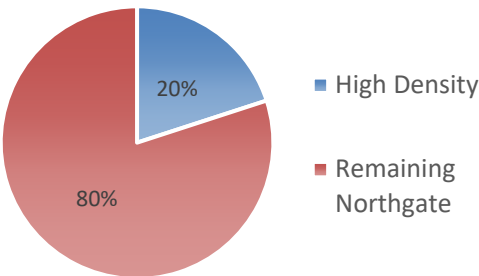
Ambulance Reponses	454
Engine Ladder Responses	441
Bike Responses	91
Command Responses	22
Prevention	176
TOTAL	1184



Northgate High Density Residential Responses: 242

315 College Main (REV Northgate)	78
315 Boyett St (The Standard Apartments)	70
301 Church Ave (12 North)	37
711 Univerty Dr. (Aspire)	22
717 University Dr. (The Rise at Northgate)	15
101 Church Ave. (Domain Northgate)	20

FY 24 Northgate Response Locations



Northgate Remaining Occupancies Total: 942

Billy Couch, Police Chief, presented the impact of high-density residential high-rises and the Northgate Bar District Activity FY 22 – FY 24.

Total Calls <u>For</u> Service	18,729
Assault	123
Aggravated Assault	3
Sexual Assault	8
Drug Possession	115
Fight/ Civil Disturbance	1,030
Public Intoxication	501

DUI/ DWI	95
Minor in Possession	1,569
Evading / Interfering	59
Fail to Identify	43
Welfare Concern	789
Unlawful Carrying a Weapon	14
Total Arrests	883

At approximately 10:20 p.m., Mayor Nichols opened the Public Hearing.

Travis Vollering, College Station, stated that he agreed with P&Z the area should be left as is. He stated that the city is blaming the alcohol related businesses around Northgate for a problem that is now centralized but would be decentralized if this zoning is changed.

Lisa Broadway, Bryan, came before Council stating if the law is changed a property zoned as a bar now could lose their zoning designation in the future. She asked Council to look at P&Z's recommendations and consider the Northgate business owners thoughts as well.

Tyler Skinner, College Station, came before Council as a Texas A&M student and stated that Northgate is a backyard to their living room, allowing students place to unwind. He feels the proposed change will diminish the character and businesses in this area.

Robert Grabowski, College Station, came before Council as a business owner from Northgate and stated everything he does is here is College Station. His fear is that bars are not wanted there but many of the business owners there have made a home here, but not the individual owners of the high rises.

Robert Forrest, College Station, came before Council to go through the history of Northgate and the evolution of the characteristic in this area.

Hunter Shurtleff, College Station, came before Council and understands where Council is coming from as an attorney, but this proposed ordinance will cause unforeseen issues and there are other ways to address safety concerns.

Justin Manning, College Station, came before Council to request that bar and nightclub owners be a part of the conversation before the changes that are being made and delay any action on this item.

There being no further comments, the Public Hearing was closed at 10:49 p.m.

MOTION: Upon a motion made by Mayor Nichols and a second by Councilmember Smith, the City Council voted four (4) for and three (3) opposed, with Councilmember Harvell, Yancy and Maloney voting against, to adopt Ordinance No. 2024-4557, 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. The motion carried.

9.3. Public Hearing, presentation, discussion and possible action regarding Ordinance No. 2024-4558 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.

Gabriel Schrum, Planning and Development, stated that 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.

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.

At approximately 11:23 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 11:23 p.m.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2024-4558, 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. The motion carried unanimously.

9.4. Presentation, discussion, and possible action regarding the Tourism Advisory Committee.

Bryan Woods, City Manager, stated that this item was at Council's request for discussion.

Councilmember Harvell requesting that the Tourism Advisory Committee be created and to make this a City Council appointed committee.

Majority of Council requested that this discussion be brought to the strategic planning with then new elected officials.

MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember Cunha, the City Council voted four (4) for and three (3) opposed, with Mayor Nichols and Councilmember Wright and Maloney voting against, to create a Tourism Committee of 10 to 15 members appointed by City Council with the perimeters. The motion carried.

9.5. Presentation, discussion, and possible action regarding on-street parking removal policy and guidelines.

Emily Fisher, Public Works Director, stated that staff has developed a policy and guidelines for the removal of on-street parking based on current procedures and practices. 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.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Smith, the City Council voted seven (7) for and none (0) opposed, to approve on-street parking removal policy and guidelines. The motion carried unanimously.

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.

Jennifer Cain, Capital Projects Director, stated that 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 build internal access roads and power distribution.
- The project will 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.

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

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.

Jennifer Cain, Capital Projects Director, stated that 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.

MOTION: Upon a motion made by Councilmember Harvell and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve 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. 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.

Councilmember Harvell hosted 16 fourth graders from the Boy Scouts at City Hall and took them on a tour of the facility.

Councilmember Yancy thanked the outgoing Councilmembers.

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 Maloney reported on the Legislative Affairs Committee.

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

No futures items at this time.

12. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 12:42 a.m. on Thursday, October 24, 2024.

John P. Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

November 14, 2024
Item No. 8.2.
CCWWTP Office Remodel

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on approval of a construction contract with Sadie Burche, LLC. in the amount of \$271,463 for the remodel of a portion of the Carter Creek Wastewater Treatment Plant Office, plus the City's contingency in the amount of \$27,146 for a total appropriation of \$298,609. Approval of this item grants authority for the City Manager to authorize 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 Sadie Burche, LLC., for the remodel of a portion of the Carter Creek Wastewater Treatment Plant Office, in the amount of \$298,609.00.

Summary: Under this contract, the old existing office in the back building would be remodeled, including new finishes and new restroom fixtures. The project originated from the slow degradation of the existing finishes and fixtures in the building over the last 30 years to the point where regular maintenance was no longer enough to address the needs. This project also includes the creation of one accessible parking space and ramp to the office.

An Alternate was bid and accepted for additional concrete removal and replacement that may be required for plumbing drain lines under the concrete slab. This project was bid as an Invitation to Bid (ITB) and 11 responses were received of which Sadie Burche, LLC is the lowest, qualified, responsible and responsive bidder.

Budget & Financial Summary: Budget in the amount of \$650,000 is included for this project in the Wastewater Capital Improvement Projects Fund. A total of \$66,723 has been expended or committed to date, leaving a balance of \$583,277 for this construction contract and future costs.

Attachments:

1. CCWWTP Office Remodel Vendor Signed Contract
2. CCWWTP Office Remodel Map
3. CCWWTP Office Remodel 25-004 ITB bid tab



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300095 PROJECT #: WW1957448 BID/RFP/RFQ#: 25-004

Project Name / Contract Description: CCWWTP Office Remodel as described in ITB 25-004

Name of Contractor: Sadie Burche, LLC

CONTRACT TOTAL VALUE: \$ 271,463.00 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)

The project was advertised as an Invitation to Bid (ITB) and opened on October 9, 2024. Eleven (11) bids were received with Sadie Burche, LLC. being the lowest, qualified, responsible and responsive bidder. Budget in the amount of \$583,277.00 is included for this project in the Wastewater Capital Improvement Projects Fund.

(If required)*
CRC Approval Date*: N/A Council Approval Date*: 11/14/24 Agenda Item No*:

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

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

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT _____ DATE _____

ASST CITY MGR – CFO _____ DATE _____

LEGAL DEPARTMENT _____ DATE _____

APPROVED & EXECUTED

CITY MANAGER _____ DATE _____

N/A _____ DATE _____

MAYOR (if applicable) _____ DATE _____

N/A _____ DATE _____

CITY SECRETARY (if applicable) _____ DATE _____

**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 Sadie Burche, LLC (the "Contractor") for the construction and/or installation of the following:
As described in ITB 25-004 Carter Creek Wastewater Treatment Plant Office Remodel.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Twenty-Seven Thousand One Hundred Forty-Six and NO /100 Dollars (\$27,146.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Two Hundred Seventy-One Thousand Four Hundred Sixty-Three and NO /100 Dollars (\$271,463.00).

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

SADIE BURCHE, LLC

CITY OF COLLEGE STATION

By: Oscar Saavedra

By: _____

Printed Name: Oscar Saavedra

City Manager

Date: _____

Title: President

Date: 11/8/2024

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20230007

State: Texas

Construction Types: Heavy and Highway

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

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McLennon 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 0 Publication Date 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. SUR2006532

THE STATE OF TEXAS

§

§

THE COUNTY OF BRAZOS

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Sadie Burche, LLC, as Principal, hereinafter called "Contractor" and the other subscriber hereto Frankenmuth Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Hundred Seventy-One Thousand Four Hundred Sixty-Three and NO /100 Dollars (\$271,463.00) 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 ITB 25-004 CCWWTP Office Remodel

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. 25300096
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. SUR2006532

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: 

Name: Luis Sanchez

Title: Project Manager

Date: November 14, 2024

Sadie Burche, LLC

(Name of Contractor)

By: 

Name: Oscar Saavedra

Title: President

Date: November 14, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: 

Name: Drew Riddle

Title: Witness

Date: November 14, 2024

Frankenmuth Insurance Company

(Full Name of Surety)

One Mutual Ave.

Frankenmuth, MI 48787

(Address of Surety for Notice)

By: 

Name: Betty J. Reeh

Title: Attorney-in-Fact

Date: November 14, 2024

FOR THE CITY:

REVIEWED:

City Attorney

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

City Manager

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

Contract No. 25300096
Construction Agreement Over \$50,000
Form 04-20-2023

TEXAS STATUTORY PAYMENT BOND

Bond No. SUR2006532

THE STATE OF TEXAS

§

THE COUNTY OF BRAZOS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Sadie Burche, LLC, as Principal, hereinafter called "Principal" and the other subscriber hereto Frankenmuth Insurance Company, a corporation organized and existing under the laws of the State of Michigan, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Hundred Seventy-One Thousand Four Hundred Sixty-Three and NO 00/100 Dollars (\$271,463.00) 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 14 day of November, 2024, for ITB 25-004 CCWWTP Office Remodel

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.

Contract No. 25300096
Construction Agreement Over \$50,000
Form 04-20-2023

Bond No. SUR2006532

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

Sadie Burche, LLC
(Name of Contractor)

By: [Signature]

Name: Luis Sanchez

Title: Project Manager

Date: November 14, 2024

By: [Signature]

Name: Oscar Seavindra

Title: President

Date: November 14, 2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: [Signature]

Name: Drew Riddle

Title: Witness

Date: November 14, 2024

Frankenmuth Insurance Company
(Full Name of Surety)

One Mutual Ave.

Frankenmuth, MI 48787
(Address of Surety for Notice)

By: [Signature]

Name: Betty J. Beeh

Title: Attorney-in-Fact

Date: November 14, 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. 25300096
Construction Agreement Over \$50,000
Form 04-20-2023

FRANKENMUTH INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Frankenmuth Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the State of Michigan, having its principal office at 1 Mutual Avenue, Frankenmuth, Michigan 48787, does hereby nominate, constitute and appoint:

Bryan Moore, Betty Reeh, Elizabeth Ortiz, Ana Owens, Andrew Addison, Patrick Coyle

Their true and lawful attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal, acknowledge and deliver any and all bonds, contracts and undertakings of suretyship, with the exception of Financial Guaranty Insurance, provided, however, that the penal sum of any one such instrument shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000)

This Power of Attorney is granted pursuant to the following Resolution duly adopted at a meeting of the Board of Directors of Frankenmuth Insurance Company:

"RESOLVED, that the President, Senior Vice President or Vice President and each of them under their respective designations, 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 of the Company, qualifying the attorney(s) named in the given power of attorney, to execute on behalf of, and acknowledge as the act and deed of Frankenmuth Insurance Company on all bonds, contracts and undertakings of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 15th day of December, 2022.



Frankenmuth Insurance Company

By Frederick A. Edmond, Jr.
Frederick A. Edmond, Jr.,
President and Chief Executive Officer

Sworn to before me, a Notary Public in the State of Michigan, by Frederick A. Edmond, Jr., to me personally known to be the individual and officer described in, and who executed the preceding instrument, deposited and said the Corporate Seal and his signature as Officer were affixed and subscribed to said instrument by the authority of the Company.

IN TESTIMONY WHEREOF, I have set my hand, and affixed my Official Seal this 15th day of December, 2022.

Susan L. Fresorger

(Seal)

Susan L. Fresorger, Notary Public
Saginaw County, State of Michigan
My Commission Expires: April 3, 2028



I, the undersigned, Executive Vice President of Frankenmuth Insurance Company, do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and is in full force and effect as of this date.

IN WITNESS WHEREOF, I have set my hand and affixed the Seal of the Company, this 14th day of Nov, 2024

Andrew H. Knudsen
Andrew H. Knudsen, Executive Vice President,
Chief Operating Officer and Secretary

ALL CORRESPONDENCE RELATED TO BOND VALIDATION AND/OR A CLAIM SHOULD BE DIRECTED TO
VP SURETY, 701 U.S. ROUTE ONE, SUITE 1, YARMOUTH, ME 04096

IMPORTANT NOTICE TO ALL TEXAS POLICYHOLDERS

IMPORTANT NOTICE

To obtain information or make a complaint:

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

1-704-421-7002

You may also write to Frankenmuth Insurance Company at:

**Frankenmuth Insurance Company One
Mutual Avenue
Frankenmuth, MI 48787**

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

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the Frankenmuth Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Frankenmuth Insurance Company para informacion o para someter una queja al:

1-704-421-7002

Usted también puede escribir a Frankenmuth Insurance Company:

**Frankenmuth Insurance Company One Mutual
Avenue
Frankenmuth, MI 48787**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Frankenmuth Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/22/2024

PRODUCER MANNY LONGORIA INSURANCE DBA FOR MANUEL SANCHEZ LONGORIA PO BOX 1295 BANDERA, TX 78003	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED SADIE BURCHE LLC 11434 FORT WYNE DR SAN ANTONIO, TX 78245	INSURERS AFFORDING COVERAGE INSURER A: TOKIO MARINE SPECIALTY INSURANCE INSURER B: PROGRESSIVE COMMERCIAL AUTO INSURER C: TEXAS MUTUAL INSURER D: LIBERTY MUTUAL INSURER E:	NAIC #

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC	PPK2692819-000	07/13/2024	07/13/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$ 1000000 \$ 100000 \$ 5000 \$ 1000000 \$ 2000000 \$ 2000000
B	X	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS	959724820	07/13/2024	07/13/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$ 500000 \$ \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN EA ACC AUTO ONLY: AGG	\$ \$ \$
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE AGGREGATE 	\$ \$ \$ \$ \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N If yes, describe under SPECIAL PROVISIONS below	0002101266	10/20/2023	10/20/2024	☒ WC STATUTORY LIMITS E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 \$ 1000000 \$ 1000000 \$ 1000000
D		BUILDERS RISK - FORM ACV	68385365MLN1	10/30/2024	10/30/2025	EXISTING BUILDING PROJECT	\$552,500 \$271,463
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS CITY OF COLLEGE STATION IS ADDITIONAL INSURED, GIVEN WAIVER OF SUBROGATION AND PROVISIONS OF PRIMARY AND NON CONTRIBUTORY WORDING BY BLANKET FORM ON THE GENERAL LIABILITY POLICY. FURTHERMORE THE GL AGGREGATE LIMIT APPLIES ON A PER PROJECT BASIS FOR ALL PROJECTS. SPECIFIC PROJECT: ITB 25-004 CARTER CREEK WASTEWATER TREATMENT PLANT OFFICE REMODEL							

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, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
---	---

EXHIBIT E
CONSTRUCTION SCHEDULE

Total number of completion days is 185 days.

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.

ITB 25-004 ARE INCORPORATED BY REFERENCE INTO THIS CONTRACT.

TECHINCAL SPECIFICATIONS AND DRAWINGS ARE LOADED AS SEPERATE DOCUMENTS.

CONTRACTOR'S PROPOSAL
AND
ALTERNATES (if applicable)

BID SUMMARY
BID NO. 25-004

Date: October 09, 2024

PROPOSAL FROM: Sadie Burche

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 CCWWTP Office Remodel and to perform the work required for the CCWWTP Office Remodel Project at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

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

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

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

Base Bid: Base Bid Single-Prime (All Trades) Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, Drawings, Specifications, and all subsequent Addenda, as prepared by The Arkitex Studio, Inc. and Architect's consultants, having visited the site, and being familiar with all conditions and requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the construction of the above-named project, according to the requirements of the Procurement and Contracting Documents, for the stipulated sum of:

\$ 247,000.00

Two Hundred Forty Seven Thousand Dollars

Add Alternate Bid No. 1: Provide alternate under slab piping in restrooms and associated concrete removal/replacement as shown on plumbing drawing P2.2 and structural drawings. This alternate is if field investigation by contractor reveals that the existing plumbing lines are in the concrete grade beams and reroute is required to eliminate the need to compromise the integrity of the existing grade beam.

\$ 24,463.00

Twenty Four Thousand Four Hundred Sixty Three Dollars

Total Sum of Proposal Including all Additive Alternates

(Gen. Conditions, overhead and profit are to be attributed with each item)

\$ 271,463.00

Two Hundred Seventy One Thousand Four Hundred Sixty Three Dollars

CALENDAR DAYS: Total number of calendar days to substantial completion is 185 days.

RECEIPT OF ADDENDA

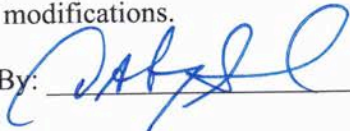
I hereby acknowledge receipt of the following Addenda: 0

CONTRACTOR NAME: Sadie Burche

CONTRACTOR SIGNATURE. 

CERTIFICATION OF BID

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

Signed By:  Title: President

Typed Name: Oscar Saavedra Company Name: Sadie Burche

Phone No.: 210-489-0839 Fax No.: _____

Email: oscar@sadieburche.com

Bid Address: 11434 Fort Wyne Dr. San Antonio Texas 78245
P.O. Box or Street City State Zip

Order Address: 11434 Fort Wyne Dr. San Antonio Texas 78245
P.O. Box or Street City State Zip

Remit Address: 11434 Fort Wyne Dr. San Antonio Texas 78245
P.O. Box or Street City State Zip

Federal Tax ID No.: 84-4145426

DUNS No.: _____

Date: _____

END OF BID #25-004

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

Name of Company: Sadie Burche

Company Years in Business: 3

List Municipal Projects
(Similar Projects in Size and Scope Completed in Last 5 Years)

Project	Municipality	\$ Amount	Type	Date
ADC Auxilary Courts	Bexar County	\$670,000	Renovation	07/2024

Superintendent & Project Manager Information

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

Superintendent	Years Experience	Projects
Luis Sanchez	4 years	Maverick County Tax Office
		Fair Oaks City Hall Renovation
		ADC Kitchen Upgrades
		ADC Auxilary Courts
		UMC Veterans Clinic Remodel

Project Manager	Years Experience	Projects
Oscar Saavedra	12 years	Live Oak County JP Office
		Judson ISD Millers Point Reno
		ADC Auxilary Courts
		UMC Veterans Clinic Remodel

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

1. CBG Valley High White Box

Commercial Builders Group

Owner's Rep: Ze'ev Bar yadin

Ph: 281-222-11223

2. ADC Virtual Hearing Rooms/ Auxiliary Courts

Owner: Bexar County

Owners Rep: Fernando Aguilar

Ph: 210-335-3834

Architect: Sammy Hernandez

Ph: 210-349-7950

3. LDS Pavilion Projects

Owner: Church of Jesus Christ of Latter Day Saints

Owners Rep: Jacob Ordyna

Ph: 817-602-1883

Architect: Rob Burgheimer

Ph: 480-668-8015

4. LDS Bryan/College Station Drainage Improvements

Owner: Church of Jesus Christ of Latter Day Saints

Owners Rep: Jacob Ordyna

Ph: 817-602-1883

Architect: John Sargent

Ph: 435-586-8510

5. Lockhart ISD Multi Kitchen Ceiling Replacement

Owner: Lockhart Independent School District

Owners Rep: Jeremiah Chapman

Ph: 737-357-6344



OSCAR SAAVEDRA
PRESIDENT/PROJECT MANAGER

CONTACT INFO
oscar@sadieburche.com
210-489-0839

EXPERIENCE

SADIE BURCHE EXPERIENCE

- LDS Cibolo Driveway Addition (\$66K)
- La Oruga Interior Renovation (\$77k)
- HIR Deer Park Phase 1 Renovation (\$161k)
- LDS Harlingen Restroom Renovation (\$200k)
- HIR Deer Park Phase 2 Renovation (\$1MM)
- HIR Sunnyvale Wash Bay (\$2.1MM)
- HIR Sunnyvale Office Renovation (\$118K)
- CBG Valley Hi White Box (\$320k)
- NEISD JOC Projects (\$100K)
- La Oruga Kingsville Suite Renovation (\$178K)
- CBG Mission TX White Box (\$100K)
- Bexar County Adult Detention Center Virtual Hearing Rooms (\$620K)
- LDS Pavilion Projects (\$618K)
- LDS Kingwood Drainage Improvements (\$100K)
- LDS College Station Drainage Improvements (\$170K)
- LDS Bryan Drainage Improvements (\$397K)
- Goodlife Pharmacy Modular Clean Room (\$90K)
- United Medical Centers Veterans Clinic Remodel (\$376K)
- CBG Laredo Multiple Suite Improvements (\$50K)

PAST GC EXPERIENCE

- UMC El Indio Clinic Remodel (Exec PM/ Estimator) \$200K
- Live Oak County JP Office Project
- Live Oak County Annex Building
- Eagle Pass ISD (Exec PM/ Estimator) \$75K
- Camp Stanley ECM Renovations (Exec PM) \$1MM
- Camp Stanley ECM Renovations Phase 2 (Exec PM) \$2MM
- Camp Stanley Building 639 (Exec PM/ Estimator) \$1.5MM
- Camp Stanley Outer Rd Asphalt Project (Exec PM/ Estimator) \$200K
- NEISD Multi-Campus Modular Wall Renovation (PM/Estimator) \$3.5 MM
- NEISD Montgomery ES Secured Vestibule (PM/Estimator) \$600K
- NEISD Reagan HS INCubator (Exec PM/ Estimator) \$450K

OSCAR SAAVEDRA

PRESIDENT/PROJECT MANAGER

- NEISD BAC Walker Pool Practice Area (Exec PM/ Estimator) \$700K
- NEISD RAMEC Pocket Park (PM/Estimator) \$300K
- NEISD JOC Contract | Multiple Projects (Exec PM/ Estimator) \$3MM combined.
- JISD Millers Point ES Modernization (Exec PM) \$4.5MM
- City of Live Oak Fire Department Renovations (PM/ Estimator) \$200K
- Gather Brewery Company (Exec PM/ Estimator) \$1MM
- Black Lab Brewery (PM) \$600K
- Aztec Theater Restroom Additions (PM) \$450K
- Little Cherub Child Care Center (PM) \$1.6MM
- NEISD BAC Josh Davis Pool Renovations (Superintendent) \$2.9MM
- Austin Airport Hyatt Place (Superintendent) \$11MM
- Downtown Austin Hyatt House (Superintendent) \$19MM
- Downtown SA VIA pd Historical Building
- Bright Starr Medical Finish Out Project
- NSA San Antonio Utility Yard

EDUCATION

BACHELOR OF SCIENCE IN BUSINESS MANAGEMENT

UNIVERSITY OF PHOENIX

CERTIFICATIONS

OSHA 30

CPR CERTIFIED



LUIS SANCHEZ

PROJECT MANAGER/
SUPERINTENDENT

CONTACT INFO

luis@sadieburche.com
830-421-1030

EXPERIENCE

SADIE BURCHE EXPERIENCE

- HIR Sunnyvale Washbay (\$2.1MM)
- HIR Sunnyvale Office Renovation (\$118K)
- La Oruga Kingsville Suite Reno (\$178K)
- Potranco Techmasters Reno (\$90k)
- CBG Mission TX White Box (\$100K)
- Bexar County Adult Detention Center Virtual Hearing Rooms (\$620K)
- Lockhart ISD Multi Kitchen Ceiling Replacements (\$170k)
- United Medical Clinics Veterans Blvd Renovation (\$376,000)

PAST GC EXPERIENCE

- Maverick County Tax Office Conversion (\$2.5MM)
- BCADC Kitchen Renovation (\$1.1MM)
- City of Fair Oaks City Hall Renovation (\$900k)

EDUCATION

BACHELOR OF SCIENCE IN CONSTRUCTION MANAGEMENT

UNIVERSITY OF TEXAS SAN ANTONIO

CERTIFICATIONS

OSHA 30

EXHIBIT F
SCHEDULE OF VALUES

South Central Texas Regional Certification Agency of Bexar County, Texas hereby duly affirms that:

Sadie Burche

has successfully met the established requirements of SCTRCA's Business Enterprise Certification Program to be
certified as a

***HABE MBE SBE**

Certified NAICS Codes

NAICS 236220: COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION



Certification Number: 223107941

Effective Date: October 31, 2023

Expiration Date: October 31, 2025

Sandra Ramos
Executive Director

Note: This certificate is the property of the South Central Texas Regional Certification Agency and may be revoked should the above named firm graduate from or fails to comply with SCTRCA's Business Enterprise Program. A Certification Renewal Application is required every two years.

Texas Historically Underutilized Business (HUB) Certificate



Certificate/VID Number: **1844145426300**
Approval Date: **October 31, 2023**
Scheduled Expiration Date: **October 31, 2025**

In accordance with the Memorandum of Agreement between the
SOUTH CENTRAL TEXAS REGIONAL CERTIFICATION AGENCY (SCTRCA)
and the Texas Comptroller of Public Accounts (CPA), the CPA hereby certifies that

Sadie Burche

has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate printed **October 31, 2023**, supersedes any registration and certificate previously issued by the HUB Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, addresses, phone and fax numbers or authorized signatures) provided in the submission of the business; application for registration/certification into SCTRCA's program, you must immediately (within 30 days of such changes) notify SCTRCA's program in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility. If your firm ceases to remain certified in SCTRCA's program, you must apply and become certified through the State of Texas HUB program to maintain your HUB certification.

*Statewide HUB Program
Statewide Procurement Division*

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies, universities and prime contractors are encouraged to verify the company's HUB certification prior to issuing a notice of award by accessing the Internet (<https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>) or by contacting the HUB Program at **512-463-5872** or toll-free in Texas at **1-888-863-5881**.



FACILITIES MANAGEMENT

BEXAR COUNTY

1948 Probandt - San Antonio, Texas 78214
(210) 335-3350

Date: May 2, 2024

Subject: Recommendation for Sadie Burche, LLC

To Whom It May Concern:

It is my absolute pleasure and honor to recommend the services of Sadie Burche, LLC

From the time we got in touch with Sadie Burche, LLC to the time they handed over the project we were nothing but impressed with their professionalism and integrity. They were on top of their game when it came to technical knowledge, expertise, communication, and implementation.

Throughout the project, there was clear communication to us about the status and they were always on schedule with the tasks. I am also happy to report that the project was delivered to us on time and to our utmost satisfaction.

I have no reservations giving Sadie Burche, LLC my highest recommendation. I am confident that you cannot go wrong by hiring them for your project.

Should you require more details, please do not hesitate to contact me.

Sincerely,

Jesus Castillo
Project Manager

210-241-7716



Bexar County Sheriff's Office

★ ★ ★ ★ Sheriff Javier Salazar ★ ★ ★ ★

Letter of Recommendation

May 22, 2024

To Whom it May Concern,

I oversee all the capital improvement projects for the Sheriff's Office, and Saide Burche, LLC has been one of the best contractors I have had an opportunity to work alongside with.

Sadie Burche, LLC is organized, stays on schedule, does quality work and their communication throughout the entire project has been exceptional. We have not had one single issue or concern with their work.

I highly recommend Sadie Burche, LLC as a reliable contractor and look forward to working with them again in the future. Hope you take them into consideration as a contractor of choice for any future projects you may have.

Sincerely,

Deputy Chief Keith Klepac #409
Bexar County Sheriff's Office
Adult Detention Bureau
210-335-6307
kklepac@bexar.org

23 May 2024

To Whom It May Concern,

We have had the pleasure of working with Oscar Saavedra of Sadie Burche, LLC for the last year on four different projects. The staff and company have been professional in every way. They are attentive to all details and work well with everyone involved – municipalities, subcontractors, owners, and with us as architects.

If a concern arises, they research the concern and provide solutions for all to review and come to a conclusion that satisfies all and will keep the project moving forward. They anticipate the next steps needed so the project does not come to a standstill while waiting for parts, approvals, or equipment.

I highly recommend Oscar Saavedra and his company Sadie Burche, LLC as a competent construction company for your upcoming project or projects. They are a pleasure to work with.

Sincerely,



Dorothy Shupe, Partner

Sketch

Architecture Company

2454 E. Southern Avenue, Suite 110

Mesa, AZ 85204

480-668-8015 office

480-390-4264 cell

dorothy@sketcharchitecturecompany.com



Letter of Recommendation for Sadie Burche, LLC

May 5, 2024

To Whom it May Concern,

It is my pleasure to recommend Sadie Burche, LLC.

The quality of work and attention to detail impressed me the most with Sadie Burche. They always maintained clear communication. In addition, they performed their work on time and on schedule.

I have no problem giving Sadie Burche, LLC my highest recommendation and would gladly work with them again in the future.

If you require any more details feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Cesar Flores".

Cesar Flores

VLK Architects

Construction Administrator

210-371-9610

cflores@vlkarchitects.com



Michael Vasquez
Vice President of Brokerage
Lockwood Realty Group
214 E Ashby Place
San Antonio, TX 78212
(562)755-7049
mike@lockwoodrealtygroup.com

05/15/2024

To Whom it May Concern:

I am writing to recommend Sadie Burche as a General Contractor in the San Antonio, Texas area. I have had the opportunity to witness Sadie Burche exceptional skill, dedication, and professionalism firsthand.

Oscar possesses a combination of technical expertise, creativity, and leadership that sets him apart in the field of general contracting. Whether overseeing a new construction project or managing complex renovations, Oscar approaches each task with a meticulous eye and a strong commitment to quality.

In addition to technical skills, Oscar is known for his integrity, reliability, and professionalism. Oscar operates with the utmost honesty and integrity in all dealings.

In summary, Oscar is an outstanding General Contractor who brings a wealth of expertise, dedication, and integrity to every project they undertake. I am confident given an opportunity they will be a valuable asset and partner to your organization's needs.

Please feel free to contact me if you require any further information or if you have any questions regarding Oscar's qualifications or experience.

Sincerely,



CBG
REAL ESTATE
GROW WITH US

May 15, 2024

Re: **Recommendation for Sadie Burche, LLC**

To Whom It May Concern:

I am pleased to recommend Sadie Burche, LLC, led by Oscar Saavedra, for your construction needs. As the Operations Manager at CBG, I have had the pleasure of working with Oscar on two significant projects, and I am consistently impressed by his professionalism and dedication.

Oscar's proactive management style stands out distinctly. He doesn't merely manage; he leads from the front, actively solving problems with innovative solutions that keep projects moving forward smoothly. His hands-on approach ensures that each project adheres to our strict timelines and high standards.

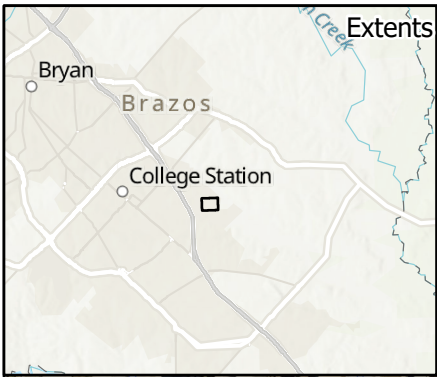
Transparency and fairness are core principles that Oscar upholds, especially evident in his handling of change orders. His integrity makes him a trusted partner, as he provides reasonable cost adjustments, demonstrating his commitment to fair and honest business practices.

Additionally, the job sites under Oscar's supervision are always well-organized and immaculate. His quick action in addressing any arising issues minimizes downtime and ensures that operations continue unhindered.

I confidently recommend Sadie Burche, LLC, for your projects, believing that Oscar's leadership and the company's commitment to quality and efficiency will bring great value to your endeavors.

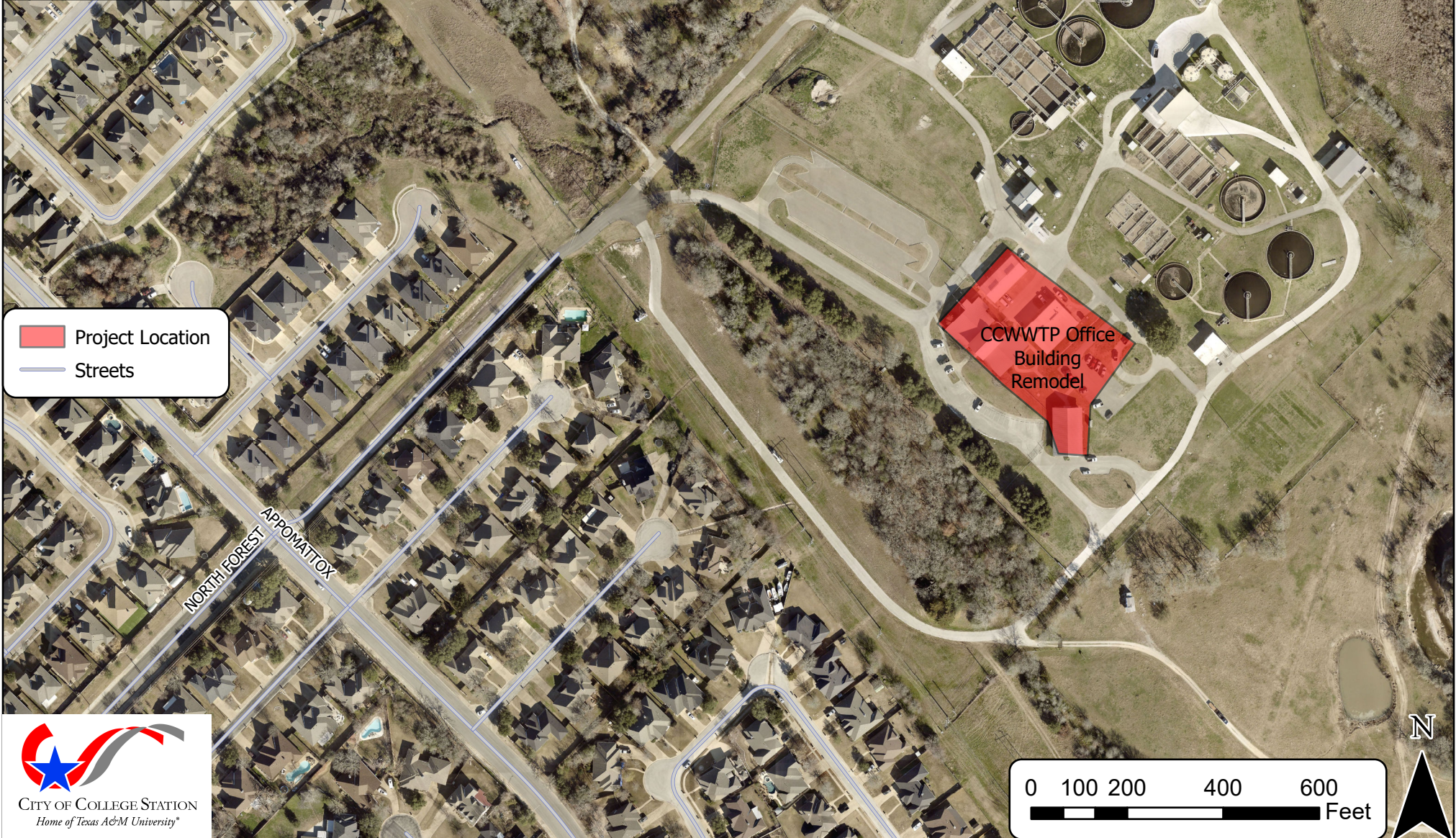
Should you require more details or wish to discuss his qualifications further, please do not hesitate to contact me.

Sincerely,
Ze'ev Bar-Yadin
Operations Manager, CBG
Zeev@CBGcre.com
210-424-8029 Work/Fax
281-222-1123 Mobile



CCWWTP Office Remodel Project

2200 N. Forest Pkwy, College Station, TX 77845





INVITATION TO BID (ITB) NO. 25-004
“CCWWTP OFFICE REMODEL”
October 09, 2024, at 2:00PM CT

This posting is only intended to notify interested parties of the names of the responding firms, base bid amounts and alternate amounts read aloud during the official opening of this solicitation. This posting shall not be construed as a notice of award or an indication the City accepts the bids as responsive. All bids are still subject to evaluation for accuracy, completeness, and compliance with the solicitation specifications by the City.

ITB Summary:

Responding Supplier	City	State	Response Submitted	Base bid	Alternate	Base bid +Alt
Aggieland Construction	Wellborn	TX	10/9/2024	\$247,000.00	\$68,000.00	\$315,000.00
BH Harris Construction, LLC	Bryan	TX	10/9/2024	\$277,948.00	\$13,000.00	\$290,948.00
Camelback & Co., LLC (SERVPRO of Round Rock)	Pflugerville	TX	10/9/2024	\$301,224.78	\$0.00	\$301,224.78
Crowned Eagle Construction	Spring	TX	10/9/2024	\$344,222.50	\$22,195.00	\$366,417.50
Dudley Construction	College Station	TX	10/9/2024	\$321,000.00	\$19,000.00	\$340,000.00
Frost Construction Co., Inc.	Humble	TX	10/9/2024	\$359,000.00	\$25,000.00	\$384,000.00
Majestic Services, Inc.	Austin	TX	10/9/2024	\$372,777.00	\$63,777.00	\$436,554.00
Marek Brothers Construction, Inc.	College Station	TX	10/9/2024	\$252,500.00	\$19,000.00	\$271,500.00
RAVA Construction LLC	Houston	TX	10/9/2024	\$276,000.00	\$23,000.00	\$299,000.00
Sadie Burche, LLC (Oscar Saavedra)	San Antonio	TX	10/9/2024	\$247,000.00	\$24,463.00	\$271,463.00
UMD Energy Solutions Corp	Houston	TX	10/9/2024 1	\$250,405.00	\$54,595.00	\$305,000.00

This ITB is now in the evaluation phase. Bids submitted in compliance with the ITB terms, conditions and specifications will be tabulated and evaluated by the City and Consultant. If a contract is awarded, it will be awarded to the lowest responsible bidder as solely determined by the City. Factors used to assist with determining the lowest responsible bidder are specified in ITB No. 25-004

During the evaluation phase, please refrain from contacting City Staff and the Consultant for further information. Information contained in the proposals will not be disclosed until after the award of contract.

City of College Station
Purchasing Division

November 14, 2024
Item No. 8.3.
VPAC Cabinets & Counters Project

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with G.A.M. Construction, Inc. in the amount of \$113,900 for the VPAC Cabinets & Counters Project.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project includes cabinet and countertop replacements at two concession buildings at the Veterans Park and Athletic Complex. Some sink work is also included.

This project was procured via Invitation to Bid (ITB), and G.A.M Construction, Inc. was selected as the lowest responsible bidder.

Budget & Financial Summary: A project budget of \$5,000,000 is available in the Facilities and IT Capital Improvement Projects Fund. A total of \$699 has been expended or committed to date, leaving a balance of \$4,999,301 for this contract and related costs.

Attachments:

1. VPAC Concessions Improvements Vendor Signed Contract

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300056 PROJECT#: GG2401 BID/RFP/RFQ#: 24-089

Project Name / Contract Description: VPAC Concessions Counter-tops and Cabinet Replacements

Name of Contractor: G.A.M. Construction, Inc.

CONTRACT TOTAL VALUE: \$ 113,900.00 **Grant Funded** Yes ☐ No ☒

If yes, what is the grant number:

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

☒ NEW CONTRACT ☐ RENEWAL # 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 in account 1001080-5315 for Pentagon Concessions and GG2401 for the Pavilion

Vendor chosen as lowest responsible bidder meeting specifications in ITB-24-089

CRC Approval Date*: N/A (If required)* Council Approval Date*: 11/14/2024 Agenda Item No*: TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain 11/4/2024
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE


11/4/2024

ASST CITY MGR – CFO
 DATE

John A. Haislet 11/4/2024
LEGAL DEPARTMENT DATE

APPROVED & EXECUTED

CITY MANAGER _____ DATE _____

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 G.A.M. Construction, Inc. (the "Contractor") for the construction and/or installation of the following:
Cabinet and Countertop Replacements at Veterans Park Athletic Complex.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Zero and no /100 Dollars (\$00.00)).

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 Hudred Thirteen Thousand Nine Hundred and no /100 Dollars (\$113,900.00)).

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 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 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

G.A.M. CONSTRUCTION, INC.

CITY OF COLLEGE STATION

By: Gail Moran

By: _____

Printed Name: Gail Moran

City Manager

Date: _____

Title: President

Date: 11/1/2024

APPROVED:

John R. Haislet

City Attorney

Date: 11/4/2024

Jim Costa

Assistant City Manager/CFO

Date: 11/4/2024

EXHIBIT A
DAVIS BACON WAGE RATES

"General Decision Number: TX20240234 07/12/2024

Superseded General Decision Number: TX20230234

State: Texas

Construction Type: Building

County: Brazos County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

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

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

The applicable Executive Order minimum wage rate will be

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

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

Modification Number	Publication Date
0	01/05/2024
1	06/14/2024
2	07/12/2024

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

ELEV0031-003 01/01/2024

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 51.32	37.885+a+b

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0084-011 06/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 27.51	8.13

PLUM0068-002 10/01/2023

	Rates	Fringes
PLUMBER.....	\$ 34.86	11.68

PLUM0211-002 10/01/2023

	Rates	Fringes
PIPEFITTER (HVAC Pipe Installation Only).....	\$ 38.31	12.61

* PLUM0286-011 06/03/2024

	Rates	Fringes
PIPEFITTER (Excludes HVAC Pipe Installation).....	\$ 36.15	15.92

SHEE0054-002 04/01/2020

	Rates	Fringes
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 29.70	13.85

* SUTX2014-009 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER, Excludes Form Work....	\$ 14.56 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 14.68 **	0.00
ELECTRICIAN.....	\$ 22.96	4.83
FORM WORKER.....	\$ 11.83 **	0.00

INSULATOR - MECHANICAL
(Duct, Pipe & Mechanical

System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 13.35 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 20.74	5.25
LABORER: Common or General.....	\$ 11.57 **	0.00
LABORER: Mason Tender - Brick...	\$ 10.96 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 9.93 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.33 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22 **	0.34
OPERATOR: Forklift.....	\$ 15.00 **	0.00
OPERATOR: Grader/Blade.....	\$ 14.34 **	1.68
OPERATOR: Loader.....	\$ 14.01 **	0.44
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03 **	0.00
OPERATOR: Roller.....	\$ 13.11 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 13.14 **	0.00
ROOFER.....	\$ 13.75 **	0.00
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 14.62 **	0.00
TILE FINISHER.....	\$ 11.22 **	0.00

TILE SETTER.....	\$ 14.74 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 11.97 **	1.23
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

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

=====
 ** 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

PREMIUM IS FOR CONTRACT TERM

AND IS SUBJECT TO ADJUSTMENT

BASED ON FINAL CONTRACT AMOUNT.

PERFORMANCE BOND

Bond No. 108116238

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, G.A.M. Construction, Inc., as Principal, hereinafter called
"Contractor" and the other subscriber hereto Travelers Casualty and Surety Company of America, as
Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal
corporation, in the sum of One Hundred Thirteen Thousand Nine Hundred and
and 00 /100 Dollars (\$ 113,900.00) 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 Contract No. 25300056
Cabinet and Countertop Replacements at Veterans Park Athletic Complex,
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. 25300056
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. 108116238

FOR THE CONTRACTOR:

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

WITNESS: (if not a corporation)

By: Lauren E. Sues
Name: Lauren E. Sues

Title: _____

Date: 10/23/2024

(Name of Contractor)

G.A.M. Construction, Inc.

By: Gail Moran
Name: Gail Moran

Title: PRESIDENT

Date: 10/23/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Victoria Madore

Name: _____

Title: Secretary

Date: 10/23/2024

Travelers Casualty and Surety Company of America

(Full Name of Surety)

ONE TOWER SQUARE,

HARTFORD, CT 06183

(Address of Surety for Notice)

By: Ryan Tash

Name: _____

Title: Attorney-in-Fact

Date: 10/23/2024

FOR THE CITY:

REVIEWED:

John A. Haislet 11/4/2024
City Attorney

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

City Manager

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

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 Sacramento

On 10/23/24 before me, Traci E. Nakagaki, Notary Public
(insert name and title of the officer)

personally appeared Ryan Tash,
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)





**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

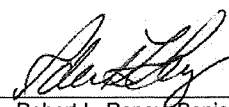
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Ryan Tash** of **RANCHO CORDOVA, California**, their true and lawful Attorney(s)-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 **21st** day of **April**, 2021.



State of Connecticut

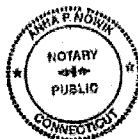
City of Hartford ss.

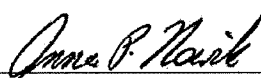
By: 
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, 2026




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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

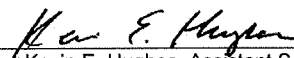
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Assistant 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 each of the Companies, 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 **23rd** day of **October**, 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(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**

TEXAS STATUTORY PAYMENT BOND

Bond No. 108116238

THE STATE OF TEXAS

§

THE COUNTY OF BRAZOS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, G.A.M. Construction, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of One Hundred Thirteen Thousand Nine Hundred and 00 /100 Dollars (\$ 113,900.00) 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 14th day of November, 20 24, for Contract No. 25300056
Cabinet and Countertop Replacements at Veterans Park Athletic Complex, 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. 108116238

FOR THE CONTRACTOR:

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

By: Lauren E. Sues
Name: Lauren E. Sues
Title: _____
Date: 10/23/2024

(Name of Contractor)

G.A.M. Construction, Inc.

By: GAIL MORAN
Name: GAIL MORAN
Title: PRESIDENT
Date: 10/23/2024

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: Victoria Madore
Name: Victoria Madore
Title: Secretary
Date: 10/23/2024

Travelers Casualty and Surety Company of America

(Full Name of Surety)

ONE TOWER SQUARE,

HARTFORD, CT 06183

(Address of Surety for Notice)

By: Ryan Tash
Name: Ryan Tash
Title: Attorney-in-Fact
Date: 10/23/2024

FOR THE CITY:

REVIEWED:

John A. Haislet 11/4/2024
City Attorney

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

City Manager

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

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 Sacramento)

On 10/23/24 before me, Traci E. Nakagaki, Notary Public
(insert name and title of the officer)

personally appeared Ryan Tash,
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)





Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

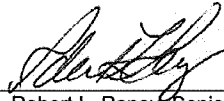
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Ryan Tash** of **RANCHO CORDOVA**, **California**, their true and lawful Attorney(s)-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 **21st** day of **April**, **2021**.



State of Connecticut

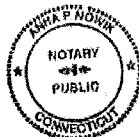
City of Hartford ss.

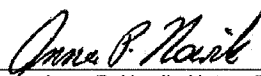
By: 
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, **2026**




 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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

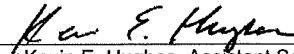
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice 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 each of the Companies, 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 **23rd** day of **October**, **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(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/22/2024

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 SIG/F&M Insurance Group 26009 Budde Road A-100 Spring TX 77380	CONTACT NAME: Kim Sylvester PHONE (A/C, No, Ext): (832) 299-1520 E-MAIL ADDRESS: kim.sylvester@sig4you.com FAX (A/C, No): (346) 980-0103																					
INSURED G.A.M. Construction 3091 College Park Drive Suite 240-134 The Woodlands TX 77384	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>AmWINS Brokerage of Texas - Houston</td><td></td></tr><tr><td>INSURER B:</td><td>Mercury County Mutual Insurance Co</td><td>29394</td></tr><tr><td>INSURER C:</td><td>Texas Mutual</td><td>22945</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:	AmWINS Brokerage of Texas - Houston		INSURER B:	Mercury County Mutual Insurance Co	29394	INSURER C:	Texas Mutual	22945	INSURER D:			INSURER E:			INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																				
INSURER A:	AmWINS Brokerage of Texas - Houston																					
INSURER B:	Mercury County Mutual Insurance Co	29394																				
INSURER C:	Texas Mutual	22945																				
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:** CL2411970728**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	0100222241-1	01/21/2024	01/21/2025	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 100,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 1,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	MED EXP (Any one person)	\$ 1,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000		\$
EACH OCCURRENCE	\$ 1,000,000																				
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000																				
MED EXP (Any one person)	\$ 1,000																				
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			BA420000021227	01/05/2024	01/05/2025	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td>Waiver of Subrogation</td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$	Waiver of Subrogation	\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																				
BODILY INJURY (Per person)	\$																				
BODILY INJURY (Per accident)	\$																				
PROPERTY DAMAGE (Per accident)	\$																				
Waiver of Subrogation	\$																				
A	☐ UMBRELLA LIAB ☐ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			0100222425-1	01/21/2024	01/21/2025	<table><tr><td>EACH OCCURRENCE</td><td>\$ 2,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 2,000,000	AGGREGATE	\$ 2,000,000		\$								
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) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		001197918	01/29/2024	01/29/2025	<table><tr><td>☒ PER STATUTE ☐ OTH-ER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	☒ 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						
☒ 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)

Veterans' Park Athletic Complex- Cabinet and Countertop Replacement.

The general liability policy includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. The general liability policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the event of cancellation by the insurance company the policy provides 30 days Notice of Cancellation (except for non-payment) to the certificate holder shown below.

CERTIFICATE HOLDER**CANCELLATION**

CERTIFICATE HOLDER The City of College Station 1101 Texas Avenue College Station TX 77840	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
---	---

© 1988-2015 ACORD CORPORATION. All rights reserved.

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.

Additionally, if the plans and specifications from the ITB are not physically inserted here, then they are fully incorporated into this contract by reference.



**VETERANS PARK ATHLETIC COMPLEX
CABINET AND COUNTERTOP REPLACEMENT**



**BID NO. 24-089
DUE DATE: TUESDAY, SEPTEMBER 24th @ 2:00 P.M. CT**

**CONTRACTOR'S PROPOSAL
AND
ALTERNATES (if applicable)**

BID NO. 24-089

1. Base Bid (Turnkey Construction)
for Cabinets and Countertop Replacements \$ 113,900.00

TOTAL number of calendar days to substantial completion 30
(Project **must** be completed by February 1st, 2025).

Number of Addenda is hereby acknowledged 1

CONTRACTOR DATA SHEET

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

Name of Company: G.A.M. Construction Inc

Company Years in Business: 28

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

Project	Municipality	\$ Amount	Type	Date
Lake Bryan Restrooms	Bryan Texas Utili	277,511	Ground up	11/20
County Clerk Storage	Brazos County	413,706	Remodel	8/19
Multiple	City of Taylor Lake	300,000+	Multiple	2/24
TownHall Restrooms	City of Lake Jackson	176,055	Renovate	2/24
TownHall 3rd Floor	City of Katy	117,700	Build out	721
Freeman Library	Harris County	110,900	Remodel	5/21

Superintendent & Project Manager Information

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

Superintendent	Years Experience	Projects
Jorge Moreno	7	EMCID Buildout, LSCS 7th Floor
		Woodlands CVB, YES Prep
Brian Hoffman	28	EMCID, City of Taylor Lake
		City of Lake Jackson, Houston
		Gateway Academy, YES Prep

Project Manager	Years Experience	Projects
Gail Moran	28	EMCID, LSCS, Woodlands Township
		YES prep school, HGA Schools
		SJRA, Brazos County, BTU

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

1. East Montgomery County

J.A. Costanza - Gregory Phipps

281 930 9339

City of Taylor Lake Village

Jon Keeney - Mayor

281 326 2843

2. City of Katy

Lindsey Kerr

281 326 2843

Harmony Public Schools

Eduardo Tosky

281 854 6112

3. Houston Gateway Academy

Shaun Garibaldi

281 253 8449

YES Prep Public School

JR Lankston

713 903 6837

4. Harmony School of Technology

Amine El Hiyat

713 842 0084

The Woodlands Township

Michelle Betcher

281 210 3903

5. Lone Star College

Daphne Harris

903 363 7727

City of Lake Jackson

Eddie Herrera

281 326 2843

CERTIFICATION OF BID

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

Signed By:



Title: President

Typed Name: Gail Moran

Company Name: G.A.M. Construction Inc

Phone No.: 281-923-1154

Fax No.: n/a

Email: caribeproperties@gmail.com

Bid Address: 3091 College Park Drive, Ste. 240-134, The Woodlands, Texas 77384
P.O. Box or Street City State Zip

Order Address: _____
P.O. Box or Street City State Zip
P.O. Box or Street City State Zip

Remit Address: _____

Federal Tax ID No.: 73-1653109

Date: September 24, 2024

END OF BID #24-089



City of College Station
1101 Texas Ave * College Station, TX 77840 * (979) 764-3555
www.cstx.gov

ADDENDUM NO. 1
ITB NO. 24-089

Date: September 18, 2024
To: All Interested Parties
From: Alan Degelman, Buyer II
Re: **ITB 24-089 New Cabinets and Countertops at VPAC**

The following information related to Invitation to Bid No. 24-089 is hereby made a part of the ITB Documents for the above referenced project as fully and as completely as though the same were included therein.

Clarifications:

All existing vinyl base will be replaced by park managers.

Owners park managers will deenergize existing outlets and circuits run in conduit that will be in conflict with the removal & reinstallation of cabinets and counter tops. Park Management will be solely responsible for all associated electrical work.

All moveable FF&E in conflict with the work will be removed and relocated back in place by the owner or its vendors & Contractor will not have to provide onsite storage. Re-installation of FFE will take place after the new cabinets and countertops are installed by the contractor.

Marine plywood is not required. Just regular plywood.

Clarifications continued...

The sink in the pavilion will need to be replaced with the existing sink that is currently at the location.

Specifications for countertops are as follows:

Wilsonart Q1022 Bodega

Thickness Product Type 063 = 1.18" (3 cm) $\pm$ 0.060" (0.15 cm)

Additions:

Please see attached Pre-Bid Sign in Sheet.

Please acknowledge receipt of this addendum with signature and date and return with completed proposal. Failure to do so may cause your proposal to be considered non-responsive.

Receipt of this Addendum No. 1 is hereby acknowledged



Authorized Signature

9/18/2024
Date

GAM CONSTRUCTION INC.
Company Name

BID BOND

Travelers Casualty and Surety Company of America
Hartford, CT 06183

KNOWN ALL BY THESE PRESENTS, That we, G.A.M. Construction, Inc.,
as Principal, and Travelers Casualty and Surety Company of America, as Surety, are
held and firmly bound unto City of College Station, as
Obligee, in the sum of Five Percent of Total Amount Bid
Dollars (5% of Total Amount Bid) for the payment of which we bind ourselves, and our
successors and assigns, jointly and severally, as provided herein.

WHEREAS, Principal has submitted or is about to submit a bid to the Obligee on a
contract for Bid No. 24-089 Veterans Park Athletic Complex Cabinet and Countertop Replacements
City of College Station, TX ("Project").

NOW, THEREFORE, the condition of this bond is that if Obligee accepts Principal's bid,
and Principal enters into a contract with Obligee in conformance with the terms of the
bid and provides such bond or bonds as may be specified in the bidding or contract
documents, then this obligation shall be void; otherwise Principal and Surety will pay to
Obligee the difference between the amount of Principal's bid and the amount for which
Obligee shall in good faith contract with another person or entity to perform the work
covered by Principal's bid, but in no event shall Surety's and Principal's liability exceed
the penal sum of this bond.

Signed this 9th day of September, 2024.

G.A.M. Construction, Inc.

(Principal)

By: 

GAIL MORAN - PRESIDENT

Travelers Casualty and Surety Company of America

By: 

Ryan Tash

, Attorney-in-Fact

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 Sacramento

On 09/09/24 before me, Traci E. Nakagaki, Notary Public
(insert name and title of the officer)

personally appeared Ryan Tash
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 [Signature] (Seal)





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 **Ryan Tash** of **RANCHO CORDOVA**, **California**, their true and lawful Attorney(s)-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 **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By: _____

Robert L. Raney
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, 2026



Anna P. Nowik
 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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 each of the Companies, 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 **9th** day of **September**, 2024



Kevin E. Hughes
 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(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

EXHIBIT E
CONSTRUCTION SCHEDULE

30 days for substantial completion.

Project must be complete by February 1st, 2024.

November 14, 2024

Item No. 8.4.

Pickleball and Futsal Courts at Anderson Park & Bee Creek and Central Park Tennis Courts Rehabilitation Projects

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a construction contract with Musco Sports Lighting, LLC for the Pickleball and Futsal Courts at Anderson Park in the amount of \$313,068 and for Bee Creek and Central Park Tennis Courts Rehabilitation project in the amount of \$334,506 for a total combined amount of \$647,574.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval and award of the Musco Sports Lighting Contract for the sports lighting for Pickleball and Futsal Courts at Anderson Park and the Bee Creek and Central Park Tennis Courts Rehabilitation Project.

Summary: The 2022 Bond Proposition D projects will install sports lighting for 4 new outdoor pickleball courts and 2 multi-use courts to be used for futsal, bike polo, roller hockey and other sports at Anderson Park and the rehabilitation of the Tennis Courts at Bee Creek and Central Park will include new lighting. The projects include materials delivered to the project sites and turnkey installation of the Musco lights and control systems.

Budget & Financial Summary:

Pickleball and Futsal Courts at Anderson Park

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 the contract 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.

Bee Creek and Central Park Tennis Court Rehabilitation Projects

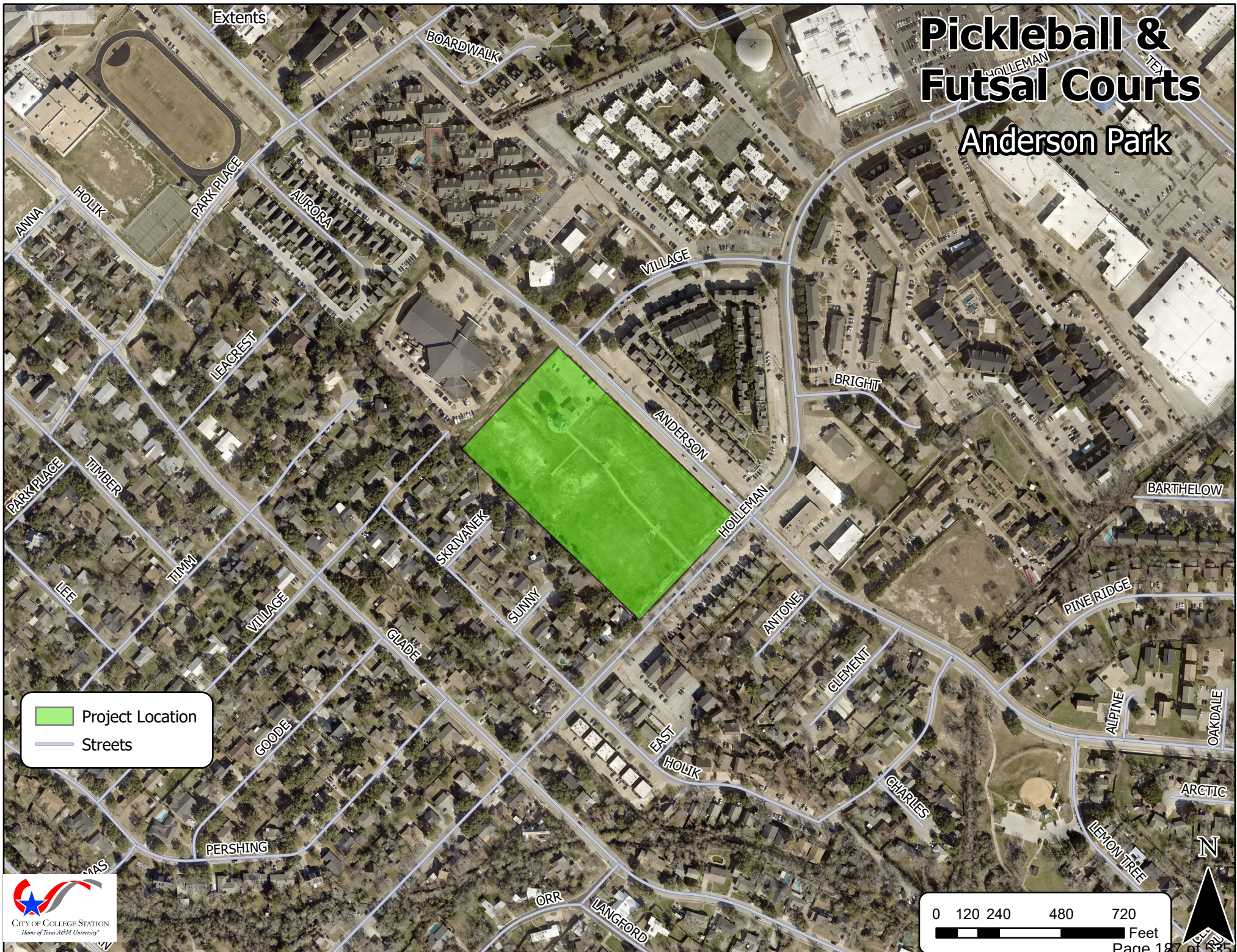
Budget in the amount of \$1,700,000 is included for this project in the Parks Capital Improvement Projects Fund. A total of \$1,354,189 has been expended or committed to date, leaving a combined balance of \$345,811 for the contract and future expenses. Funding for this project was approved via the City of College Station's November 2022 General Obligation Bond Election.

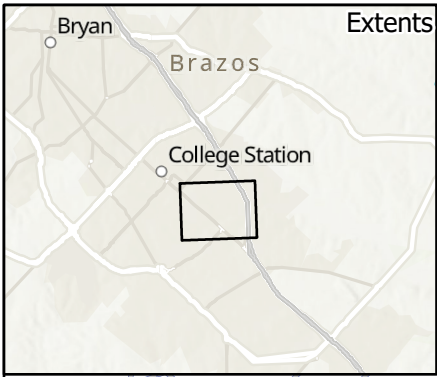
Attachments:

1. Pickleball Futsal Map
2. Bee Creek and Central Map
3. Bee Creek and Central Lighting Contract Vendor Signed
4. Musco Sports Lighting Contract for Anderson Park Project Vendor Signed

Pickleball & Futsal Courts

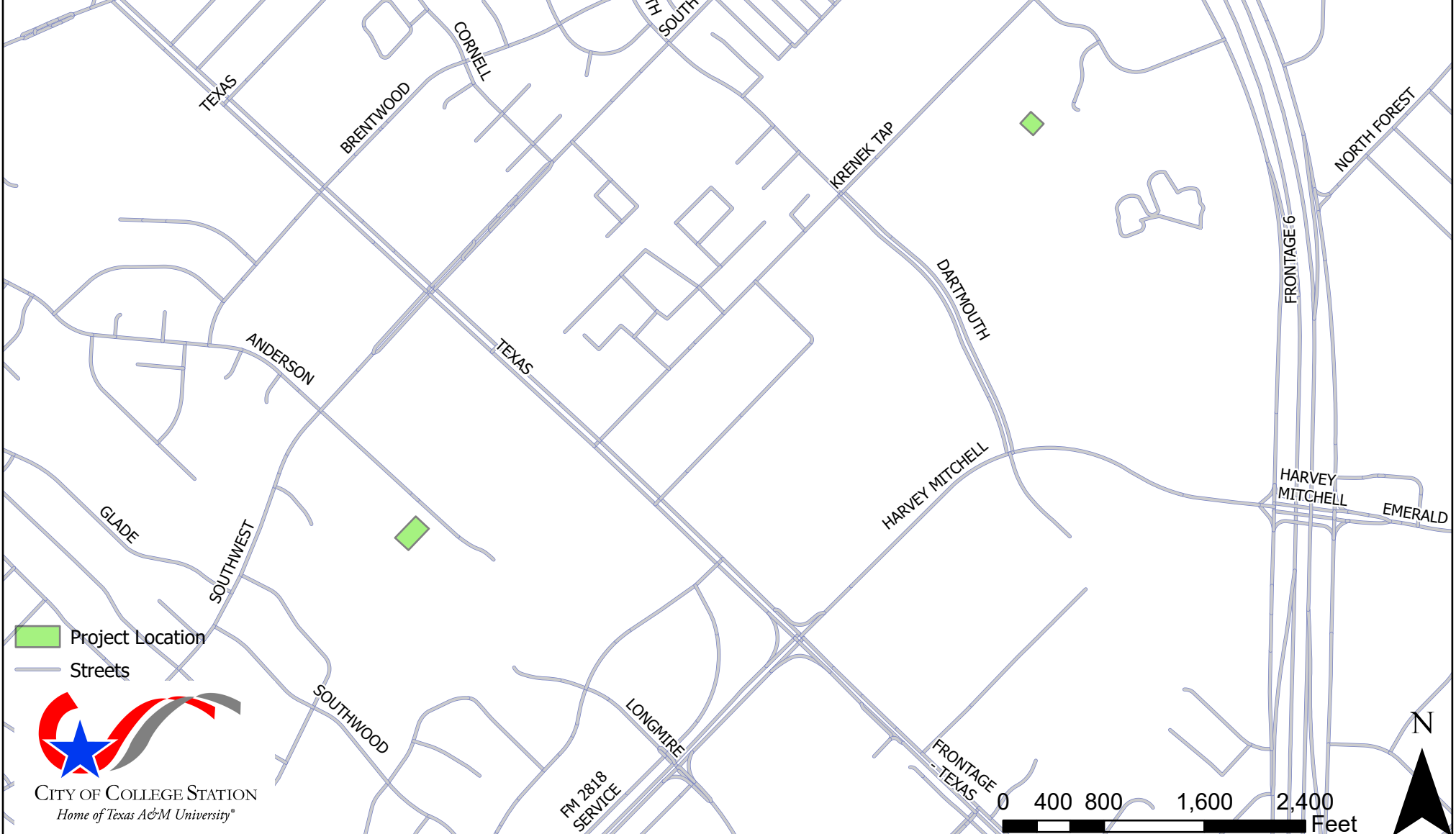
Anderson Park





Bee Creek and Central Park Tennis

**1900 Anderson and
1000 Krenek Tap**



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



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300820 PROJECT#: PK2306 BID/RFP/RFQ#: N/A

Project Name / Contract Description: Purchase and Installation of Sports Lighting at Bee Creek and Central Park Tennis Courts

Name of Contractor: Musco Sports Lighting, LLC

CONTRACT TOTAL VALUE: \$ 334,506.00 **Grant Funded** Yes ☐ No ☒
If yes, what is the grant number:

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

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

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

PK2306 41389971-6561

BuyBoard contract number 677-22

CRC Approval Date*: N/A (If required)* **Council Approval Date*:** 11/14/2024 **Agenda Item No*:** TBD

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

Insurance Certificates: DDV **Performance Bond:** Bluebonnet **Payment Bond:** Bluebonnet **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 Musco Sports Lighting, LLC (the "Contractor") for the construction and/or installation of the following:
Installation of sports lighting at both the Bee Creek Park and Central Park tennis courts.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Zero
and No /100 Dollars (\$00.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Three Hundred Thirty-Four Thousand Five Hundred Six
and No /100 Dollars (\$334,506.00).

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 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 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

MUSCO SPORTS LIGHTING, LLC

CITY OF COLLEGE STATION

By: James Hansen

By: _____

Printed Name: James Hansen

City Manager

Date: _____

Title: Secretary

Date: 11/7/2024

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

PERFORMANCE BOND

Bond No. 108131765

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

THAT WE, Musco Sports Lighting, LLC., as Principal, hereinafter called "Contractor" and the other subscriber hereto Travelers Casualty and Surety Company of America, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Hundred Thirty-Four Thousand Five Hundred Six and 00 /100 Dollars (\$ 334,506.00) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for Bee Creek Park Project #229408 and Central Park Tennis Project #229409

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.

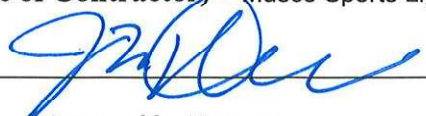
IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

Bond No. 108131765

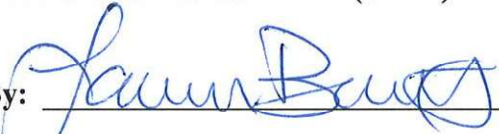
SEE LIMITED MAINTENANCE PROVISION RIDER ATTACHED HERETO AND MADE A PART HEREOF
FOR THE CONTRACTOR:

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

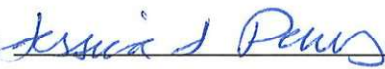
By: 
Name: Elizabeth Johannes
Title: Legal Assistant
Date: 10/24/2024

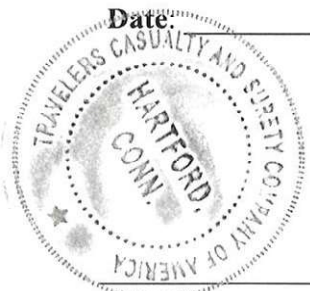
(Name of Contractor) Musco Sports Lighting, LLC.
By: 
Name: James M. Hansen
Title: Secretary
Date: 10/24/2024

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: 
Name: Lauren Bruns
Title: Account Manager
Date: 10/24/2024

Travelers Casualty and Surety Company of America
(Full Name of Surety)
One Tower Square 6GS
Hartford, CT 06183
(Address of Surety for Notice)

By: 
Name: Jessica J. Perkins
Title: Attorney-in-Fact and Licensed TX Agent
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.

TEXAS STATUTORY PAYMENT BOND

Bond No. 108131765

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Musco Sports Lighting, LLC., as Principal, hereinafter called "Principal" and the other subscriber hereto Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Hundred Thirty-Four Thousand Five Hundred Six and 00 /100 Dollars (\$ 334,506.00) 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 Bee Creek Park Project #229408 and Central Park Tennis Project #229409

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. 108131765

SEE LIMITED MAINTENANCE PROVISION RIDER ATTACHED HERETO AND MADE A PART HEREOF
FOR THE CONTRACTOR:

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

(Name of Contractor) Musco Sports Lighting, LLC.

By: Elizabeth Johannes

Name: Elizabeth Johannes

Title: Legal Assistant

Date: 10/24/2024

By: James M. Hansen

Name: James M. Hansen

Title: Secretary

Date: 10/24/2024

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: Lauren Bruns

Name: Lauren Bruns

Title: Account Manager

Date: 10/24/2024

Travelers Casualty and Surety Company of America
(Full Name of Surety)

One Tower Square 6GS

Hartford, CT 06183

(Address of Surety for Notice)

By: Jessica J. Perkins

Name: Jessica J. Perkins

Title: Attorney-in-Fact and Licensed TX Agent

Date: 10/24/2024



FOR THE CITY:

REVIEWED:

City Attorney

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

City Manager

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

Contract No. 24300820
Construction Agreement Over \$50,000
Form 04-20-2023

Limited Maintenance Provision

Rider

To be attached to and form part of bond no 108131765 issued by the **Travelers Casualty and Surety Company of America** on behalf of Musco Sports Lighting, LLC in the amount of (\$334,506.00) and dated October 24, 2024 in favor of City of College Station for Bee Creek Park Project #229408 and Central Park Tennis Project #229409.

Principal and Surety shall guarantee that the work will be free of defective materials and workmanship for a period of **Twelve (12)** months following completion of the contract. Any additional warranty or guarantee whether expressed or implied is extended by the Principal or Manufacturer only, and the Surety assumes no liability for such a guarantee.

Musco Sports Lighting LLC

By: _____

Travelers Casualty and Surety Company of America

By: _____

Jessica J. Perkins, Attorney-in-Fact & Licensed TX Agent





**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

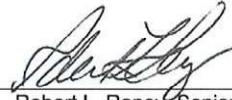
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **JESSICA J PERKINS** of **DES MOINES**, **Iowa**, their true and lawful Attorney(s)-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 **21st** day of **April**, **2021**.



State of Connecticut

City of Hartford ss.

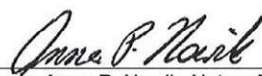
By: 
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, **2026**




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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

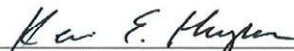
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice 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 each of the Companies, 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 **24th** day of **October**, **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(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**

To be attached to and form a part of:

Bond No. **108131765**

Type of Bond: **Performance/Payment**

Executed by **Musco Sports Lighting, LLC.**, as Principal, and by **Travelers Casualty and Surety Company of America**, as Surety, in favor of **City of College Station** and dated **October 24, 2024**.

In consideration of the premium charged for the attached bond, it is hereby agreed to change:
the bond and contract date

From:
October 24, 2024

To:
November 14, 2024

This rider is effective **October 24, 2024**.

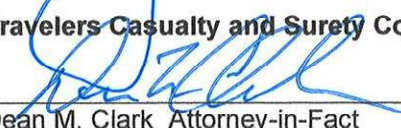
This rider is executed upon the express condition that the surety's liability under said bond shall not be cumulative and shall in no event exceed the amount specifically set forth in said bond or any existing certificate changing the amount of said bond. The referenced bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

SIGNED, SEALED AND DATED this **24th** day of **October, 2024**.

Musco Sports Lighting, LLC.

By: 
Principal

Travelers Casualty and Surety Company of America

By: 
Dean M. Clark Attorney-in-Fact

*RIDER ACCEPTED BY:

(Obligee)

Date

*If Obligee signature required, please sign duplicate and return to Surety.





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 **Dean M. Clark** of **DES MOINES**, Iowa, their true and lawful Attorney(s)-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 **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By: 
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, 2026




 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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 each of the Companies, 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 **24th** day of **October**, 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(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



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 Arthur J. Gallagher Risk Management Services, LLC 4201 Westown Parkway, Suite 120 West Des Moines IA 50266	CONTACT NAME: Francisco Honzura PHONE (A/C, No, Ext): 515-309-6220 E-MAIL ADDRESS: Francisco_Honzura@ajg.com	FAX (A/C, No): 515-457-8849
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Sentry Insurance Company		24988
INSURER B: Travelers Casualty Company of CT		36170
INSURER C: Indian Harbor Insurance Company		36940
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:** 1101793176**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	9016877004	7/1/2024	7/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y	Y	9016877003	7/1/2024	7/1/2025	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			CUP9X03061124NF	7/1/2024	7/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	Y	9016877001 9016877002	7/1/2024 7/1/2024	7/1/2025 7/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Architects & Engineers Professional Liability & Pollution Liability			CEO742113904	7/1/2024	7/1/2025	Each Claim Aggregate Retention 5,000,000 5,000,000 250,000

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

Re: Musco Project #229408 – Bee Creek Park and Project #229409 – Central Park Tennis | Contract No. 24300820 |

The City of College Station, its agents, officials, employees and volunteers are shown as Additional Insureds solely with respect to General Liability coverage as evidenced herein on a Primary/Non-Contributory basis and Auto Liability coverage as required by written contract with respect to work performed by the Named Insured. A Waiver of Subrogation is included in favor of Additional Insured under the General Liability, Auto Liability and Workers Compensation coverages as evidenced herein as required by written contract. Umbrella Follows Form.

CERTIFICATE HOLDER**CANCELLATION**City of College Station
PO Box 9960
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

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.

Quote

Date: 10/03/2024
Expiration date: 11/03/2024
To: Steve Richardson

Project: Central Park Tennis
College Station, TX
Musco Project Number: 229409

BuyBoard

Master Project: 218434, Contract Number: 677-22, Expiration: 09/30/2024
Commodity: Parks and Sports Field Lighting Products and Installation Services

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 677-22

Quotation Price – Materials Delivered to Job Site and Turnkey Installation

Tennis Courts – 2-Courts Side-by-Side\$159,137.00 (includes bonding)
Sales tax is not included.

Light-Structure System™ with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

- Guaranteed light levels of 50fc and uniformity of 2:1

System Description

- Factory aimed and assembled LED luminaries
- 4 Galvanized steel poles
- 4 Pre-cast concrete bases with integrated lightning grounding
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- UL listed assemblies

Operation and Warranty Services

- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years.
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors.

Musco Scope

- Provide design and layout for lighting system
- Test and final aim equipment

Installation Services Provided

[See attached scope of work]

Responsibilities of Buyer

- Confirm pole or luminaire locations, supply voltage and phase required for lighting system prior to production
- Provide electrical design and materials for electrical distribution system
- Provide labor and equipment for installation of electrical distribution system
- Buyer is responsible for getting electrical power to the site, coordination with the utility, and any power company fees

Payment Terms

Musco's Credit Department will provide payment terms.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:



Quote

Musco Sports Lighting, LLC
Attn: Chris Hailey
Fax: 800-374-6402
Email: musco.contracts@musco.com

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 677-22

Delivery Timing

8 - 12 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole/luminaire locations.

Notes

Quote is based on following conditions:

- Shipment of entire project together to one location.
- 240 Volt, single phase electrical system requirement.
- Structural code and wind speed = 2021 IBC, 115 mi/h, Exposure C, Importance Factor II.
- Due to the built-in custom light control per luminaire, pole or luminaire locations need to be confirmed prior to production.
- Standard soil conditions – rock, bottomless, wet, or unsuitable soil may require additional engineering, special installation methods and additional cost.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Sam Yaeger

Senior Sales Representative
Musco Sports Lighting, LLC
Phone: 832-975-4398
E-mail: Sam.Yaeger@musco.com



**Central Park Tennis
College Station, TX
Turnkey Scope of Work**

Customer Responsibilities:

1. Complete access to the site for construction utilizing standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities. (i.e. water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout. (i.e. home plate, center of FB field)
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed Electrical Plans. (If required)

Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, wire harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Contract Management as required.
4. Provide stamped foundation designs based on soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2.
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

Musco Subcontractor Responsibilities

General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.
10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.

Demolition:

1. Disassemble and leave at owner designated location on-site the existing lighting poles, fixtures, and electrical enclosures. This will include the recycling of lamps, aluminum reflectors, ballast, and steel, as necessary.
2. Demolish existing foundations to 2 ft (0.6 m) below grade.
3. Leave existing power feed in place for connection to new pole locations.

Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install 4 LSS foundations as specified on Layout and per the stamped foundation drawings, if applicable.
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect 4 dressed LSS Poles and aim utilizing the pole alignment beam.

Electrical:

1. Provide labor, materials, and equipment to reuse existing electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, **(if required)**.

Control-Link Control and Monitoring:

1. Provide labor, equipment, and materials to install 1 Musco control and monitoring cabinet and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.

Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.

CODE OF CONDUCT

In order to maintain a high-quality jobsite and installation, Subcontractor represents to Musco that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its employees for the purpose of enforcing compliance with these safety requirements. Subcontractor acknowledges that Musco does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect their work activities for the purpose of enforcing compliance with these safety requirements, but Subcontractor agrees to abide by any reasonable recommendations made by Musco or Musco representatives with respect to safety.

Subcontractor agrees that it is or will be familiar with and shall abide by the safety rules and regulations of Musco and the Owner, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto.

Subcontractor further agrees to require all its employees, subcontractors, and suppliers to comply with these requirements. Subcontractor shall also observe and comply with all laws with respect to environmental protection applicable to the Project.

Subcontractor shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to comply with the following:

1. GENERAL JOBSITE SAFETY AND CLEANLINESS.
 - a. Subcontractor's employees and agents shall be required to wear appropriate personal protective equipment including, but not limited to, safety glasses with side shields, work shoes, fall protection devices, and hard hats.
 - b. Where a walking or working surface has an unprotected side or edge which is six feet or more above a lower level, Subcontractor shall use guardrail systems, safety net systems, or personal fall arrest systems.
 - c. Jobsite shall be kept free of debris including, but not limited to, cardboard and packing materials which can become windborne.
 - d. Construction equipment shall be parked during non-use in an orderly fashion so as not to create inconvenience to others using the jobsite.
 - e. Subcontractor shall provide for and ensure the use of safety equipment for the Project in accordance with Musco's and Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.
 - f. Subcontractor shall provide the Musco project manager with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided.
 - g. Within eight (8) hours from the time of an accident (or such shorter period as laws may require), Subcontractor shall advise Musco of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Musco with a written report of any such accident as well as a copy of all insurance and worker's compensation claims involving the Project.
 - h. Subcontractor shall maintain and inspect all construction equipment, including cranes and other lifting equipment, prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training is the responsibility of the Subcontractor.
 - i. Jobsite shall be policed daily for compliance to the above conditions.
 - j. Subcontractor's employees and agents are prohibited from using drugs and alcohol on the Project property or being under the influence of alcohol or drugs while performing work on the Project. Anyone observed participating in or observed under the influence will be removed from the Project immediately and prohibited from returning, with no exceptions.

2. CONFORMANCE TO STANDARD MUSCO INSTALLATION GUIDELINES.
 - a. Review and understand installation instructions are provided with every product installation.
 - b. Education of installation personnel to allow for highest efficiency and lowest possibility of failure.
 - c. Verify that components have been assembled per Musco installation instructions.
 - d. Verify plumb of concrete foundations prior to standing of poles.
3. PROVIDING A QUALITY INSTALLATION TEAM.
 - a. Subcontractor's work directly reflects the quality of the installation and may indirectly relate to the quality of the product upon which Musco's reputation is built.
 - b. Provide and maintain quality installation equipment. Records of maintenance and/or calibration shall be provided upon request.
 - c. Personnel shall be knowledgeable in operation of equipment as well as installation of Musco product.
 - d. All personnel provided by Subcontractor shall understand the relationship developed by and between Subcontractor and Musco, also by and between Musco and the customer, and act accordingly.

Quote

Date: 10/03/2024
Expiration date: 11/03/2024
To: Steve Richardson

Project: Bee Creek Park
College Station, TX
Musco Project Number: 229408

BuyBoard

Master Project: 218434, Contract Number: 677-22, Expiration: 09/30/2024
Commodity: Parks and Sports Field Lighting Products and Installation Services

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 677-22

Quotation Price – Materials Delivered to Job Site and Turnkey Installation

Tennis Courts – 4-Courts Side-by-Side \$ 175,369.00 (includes bonding)
Sales tax not included.

Light-Structure System™ with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

- Guaranteed light levels of 50fc and uniformity of 2:1

System Description

- Factory aimed and assembled LED luminaries
- 4 Galvanized steel poles
- 4 Pre-cast concrete bases with integrated lightning grounding
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- UL listed assemblies

Control Systems and Services

- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

Operation and Warranty Services

- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years.
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors.

Musco Scope

- Provide design and layout for lighting system
- Test and final aim equipment

Installation Services Provided

[See attached scope of work]

Responsibilities of Buyer

- Confirm pole or luminaire locations, supply voltage and phase required for lighting system prior to production
- Provide electrical design and materials for electrical distribution system
- Provide labor and equipment for installation of electrical distribution system
- Buyer is responsible for getting electrical power to the site, coordination with the utility, and any power company fees

Payment Terms



Quote

Musco's Credit Department will provide payment terms.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC

Attn: Chris Haley

Fax: 800-374-6402

Email: musco.contracts@musco.com

All purchase orders should note the following:

BuyBoard purchase – Contract Number: 677-22

Delivery Timing

8 - 12 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole/luminaire locations.

Notes

Quote is based on following conditions:

- Shipment of entire project together to one location.
- 240 Volt, single phase electrical system requirement.
- Structural code and wind speed = 2021 IBC, 115 mi/h, Exposure C, Importance Factor II.
- Due to the built-in custom light control per luminaire, pole or luminaire locations need to be confirmed prior to production.
- Standard soil conditions – rock, bottomless, wet, or unsuitable soil may require additional engineering, special installation methods and additional cost.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Sam Yaeger

Senior Sales Representative

Musco Sports Lighting, LLC

Phone: 832-975-4398

E-mail: Sam.Yaeger@musco.com

**Bee Creek Park
College Station, TX
Turnkey Scope of Work**

Customer Responsibilities:

1. Complete access to the site for construction utilizing standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities. (i.e. water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout. (i.e. home plate, center of FB field)
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed Electrical Plans. (If required)

Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, wire harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Contract Management as required.
4. Provide stamped foundation designs based on soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2.
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

Musco Subcontractor Responsibilities

General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.
10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.

Demolition:

1. Disassemble and leave at owner designated location on-site the existing lighting poles, fixtures, and electrical enclosures. This will include the recycling of lamps, aluminum reflectors, ballast, and steel, as necessary.
2. Demolish existing foundations to 2 ft (0.6 m) below grade.
3. Leave existing power feed in place for connection to new pole locations.

Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install 4 LSS foundations as specified on Layout and per the stamped foundation drawings, if applicable.
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect 4 dressed LSS Poles and aim utilizing the pole alignment beam.

Electrical:

1. Provide labor, materials, and equipment to reuse existing electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, **(if required)**.

Control-Link Control and Monitoring:

1. Provide labor, equipment, and materials to install 1 Musco control and monitoring cabinet and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.
4. Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.

CODE OF CONDUCT

In order to maintain a high-quality jobsite and installation, Subcontractor represents to Musco that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its employees for the purpose of enforcing compliance with these safety requirements. Subcontractor acknowledges that Musco does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect their work activities for the purpose of enforcing compliance with these safety requirements, but Subcontractor agrees to abide by any reasonable recommendations made by Musco or Musco representatives with respect to safety.

Subcontractor agrees that it is or will be familiar with and shall abide by the safety rules and regulations of Musco and the Owner, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto.

Subcontractor further agrees to require all its employees, subcontractors, and suppliers to comply with these requirements. Subcontractor shall also observe and comply with all laws with respect to environmental protection applicable to the Project.

Subcontractor shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to comply with the following:

1. GENERAL JOBSITE SAFETY AND CLEANLINESS.
 - a. Subcontractor's employees and agents shall be required to wear appropriate personal protective equipment including, but not limited to, safety glasses with side shields, work shoes, fall protection devices, and hard hats.
 - b. Where a walking or working surface has an unprotected side or edge which is six feet or more above a lower level, Subcontractor shall use guardrail systems, safety net systems, or personal fall arrest systems.
 - c. Jobsite shall be kept free of debris including, but not limited to, cardboard and packing materials which can become windborne.
 - d. Construction equipment shall be parked during non-use in an orderly fashion so as not to create inconvenience to others using the jobsite.
 - e. Subcontractor shall provide for and ensure the use of safety equipment for the Project in accordance with Musco's and Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.
 - f. Subcontractor shall provide the Musco project manager with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided.
 - g. Within eight (8) hours from the time of an accident (or such shorter period as laws may require), Subcontractor shall advise Musco of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Musco with a written report of any such accident as well as a copy of all insurance and worker's compensation claims involving the Project.
 - h. Subcontractor shall maintain and inspect all construction equipment, including cranes and other lifting equipment, prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training is the responsibility of the Subcontractor.
 - i. Jobsite shall be policed daily for compliance to the above conditions.
 - j. Subcontractor's employees and agents are prohibited from using drugs and alcohol on the Project

property or being under the influence of alcohol or drugs while performing work on the Project. Anyone observed participating in or observed under the influence will be removed from the Project immediately and prohibited from returning, with no exceptions.

2. CONFORMANCE TO STANDARD MUSCO INSTALLATION GUIDELINES.

- a. Review and understand installation instructions are provided with every product installation.
- b. Education of installation personnel to allow for highest efficiency and lowest possibility of failure.
- c. Verify that components have been assembled per Musco installation instructions.
- d. Verify plumb of concrete foundations prior to standing of poles.

3. PROVIDING A QUALITY INSTALLATION TEAM.

- a. Subcontractor's work directly reflects the quality of the installation and may indirectly relate to the quality of the product upon which Musco's reputation is built.
- b. Provide and maintain quality installation equipment. Records of maintenance and/or calibration shall be provided upon request.
- c. Personnel shall be knowledgeable in operation of equipment as well as installation of Musco product.
- d. All personnel provided by Subcontractor shall understand the relationship developed by and between Subcontractor and Musco, also by and between Musco and the customer, and act accordingly.

EXHIBIT E
CONSTRUCTION SCHEDULE



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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300821 PROJECT#: PK2305 BID/RFP/RFQ#: N/A

Project Name / Contract Description: Sports Lighting Project at Anderson Park Courts

Name of Contractor: Musco Sports Lighting, LLC

CONTRACT TOTAL VALUE: \$ 313,068.00

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)

PK2305 41389000-4040

BuyBoard contract number 677-22

CRC Approval Date*: N/A (If required)* Council Approval Date*: 11/14/2024 Agenda Item No*: TBD

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

Insurance Certificates: DDV Performance Bond: Bluebonnet Payment Bond: Bluebonnet 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 Musco Sports Lighting, LLC (the "Contractor") for the construction and/or installation of the following:
Lighting project at Anderson Park for Pickleball and Futsal courts.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Zero
and No /100 Dollars (\$00.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Three Hundred Thirteen Thousand Sixty-Eight
and No /100 Dollars (\$313,068.00).

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 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 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

MUSCO SPORTS LIGHTING, LLC

CITY OF COLLEGE STATION

By: James Hansen

By: _____

Printed Name: James Hansen

City Manager

Date: _____

Title: Secretary

Date: 11/7/2024

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

PERFORMANCE BOND

Bond No. 108131766

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

THAT WE, Musco Sports Lighting, LLC., as Principal, hereinafter called "Contractor" and the other subscriber hereto Travelers Casualty and Surety Company of America, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Hundred Thirteen Thousand Sixty Eight and 00 /100 Dollars (\$ 313,068.00) 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 Anderson Park Pickleball Project #228101 and Anderson Park MP Project #228103

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. 108131766

SEE LIMITED MAINTENANCE PROVISION RIDER ATTACHED HERETO AND MADE A PART HEREOF
FOR THE CONTRACTOR:

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

By: Elizabeth Johannes
Name: Elizabeth Johannes
Title: Legal Assistant
Date: 10/24/2024

(Name of Contractor) Musco Sports Lighting, LLC.
By: James M. Hansen
Name: James M. Hansen
Title: Secretary
Date: 10/24/2024

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: Lauren Bruns
Name: Lauren Bruns
Title: Account Manager
Date: 10/24/2024

Travelers Casualty and Surety Company of America
(Full Name of Surety)
One Tower Square 6GS
Hartford, CT 06183
(Address of Surety for Notice)

By: Jessica J. Perkins
Name: Jessica J. Perkins
Title: Attorney-in-Fact and Licensed TX Agent
Date: 10/24/2024



FOR THE CITY:

REVIEWED:

City Attorney

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

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Bond No. 108131766

THE STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

THAT WE, Musco Sports Lighting, LLC, as Principal, hereinafter called "Principal" and the other subscriber hereto Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Three Hundred Thirteen Thousand Sixty Eight and 00 /100 Dollars (\$ 313,068.00) 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 Anderson Park Pickleball Project #228101 and Anderson Park MP Project #228103, 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. 108131766

SEE LIMITED MAINTENANCE PROVISION RIDER ATTACHED HERETO AND MADE A PART HEREOF
FOR THE CONTRACTOR:

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

(Name of Contractor) Musco Sports Lighting, LLC.

By: Elizabeth Johannes

Name: Elizabeth Johannes

Title: Legal Assistant

Date: 10/24/2024

By: James M. Hansen

Name: James M. Hansen

Title: Secretary

Date: 10/24/2024

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

By: Lauren Bruns

Name: Lauren Bruns

Title: Account Manager

Date: 10/24/2024

Travelers Casualty and Surety Company of America
(Full Name of Surety)

One Tower Square 6GS

Hartford, CT 06183
(Address of Surety for Notice)

By: Jessica J. Perkins

Name: Jessica J. Perkins

Title: Attorney-in-Fact and Licensed TX Agent

Date: 10/24/2024



FOR THE CITY:

REVIEWED:

City Attorney

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

City Manager

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

Contract No. 24300821
Construction Agreement Over \$50,000
Form 04-20-2023

Limited Maintenance Provision

Rider

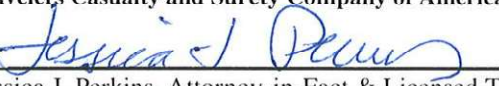
To be attached to and form part of bond no 108131766 issued by the **Travelers Casualty and Surety Company of America** on behalf of Musco Sports Lighting, LLC in the amount of (\$313,068.00) and dated October 24, 2024 in favor of City of College Station for Anderson Park Pickleball Project #228101 and Anderson Park MP Project #228103.

Principal and Surety shall guarantee that the work will be free of defective materials and workmanship for a period of **Twelve (12)** months following completion of the contract. Any additional warranty or guarantee whether expressed or implied is extended by the Principal or Manufacturer only, and the Surety assumes no liability for such a guarantee.

Musco Sports Lighting LLC

By: 

Travelers Casualty and Surety Company of America

By: 

Jessica J. Perkins, Attorney-in-Fact & Licensed TX Agent





**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

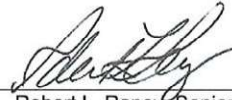
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **JESSICA J PERKINS** of **DES MOINES**, **Iowa**, their true and lawful Attorney(s)-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 **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

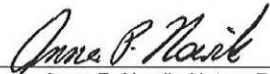
By: 
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, 2026




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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 each of the Companies, 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 **24th** day of **October**, 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(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**

RIDER

Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183

To be attached to and form a part of:

Bond No. **108131766**

Type of Bond: **Performance/Payment**

Executed by **Musco Sports Lighting, LLC.**, as Principal, and by **Travelers Casualty and Surety Company of America**, as Surety, in favor of **City of College Station** and dated **October 24, 2024**.

In consideration of the premium charged for the attached bond, it is hereby agreed to change:
the bond and contract date

From:
October 24, 2024

To:
November 14, 2024

This rider is effective **October 24, 2024**.

This rider is executed upon the express condition that the surety's liability under said bond shall not be cumulative and shall in no event exceed the amount specifically set forth in said bond or any existing certificate changing the amount of said bond. The referenced bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

SIGNED, SEALED AND DATED this **24th** day of **October, 2024**.

Musco Sports Lighting, LLC.

By: _____

Principal

Travelers Casualty and Surety Company of America

By: _____

Dean M. Clark Attorney-in-Fact

*RIDER ACCEPTED BY:

(Obligee)

Date

*If Obligee signature required, please sign duplicate and return to Surety.





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 **Dean M. Clark** of **DES MOINES**, Iowa, their true and lawful Attorney(s)-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 **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, 2026




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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 each of the Companies, 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 **24th** day of **October**, 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(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



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 Arthur J. Gallagher Risk Management Services, LLC 4201 Westown Parkway, Suite 120 West Des Moines IA 50266	CONTACT NAME: Francisco Honzura PHONE (A/C, No, Ext): 515-309-6220 E-MAIL ADDRESS: Francisco_Honzura@ajg.com	FAX (A/C, No): 515-457-8849
INSURED Musco Sports Lighting, LLC 100 1st Ave W Oskaloosa, IA 52577		MUSCLIG-01
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Sentry Insurance Company		24988
INSURER B: Travelers Casualty Company of CT		36170
INSURER C: Indian Harbor Insurance Company		36940
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:** 1151234624**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	9016877004	7/1/2024	7/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y	Y	9016877003	7/1/2024	7/1/2025	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			CUP9X03061124NF	7/1/2024	7/1/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	Y N/A	9016877001 9016877002	7/1/2024 7/1/2024	7/1/2025 7/1/2025	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Architects & Engineers Professional Liability & Pollution Liability			CEO742113904	7/1/2024	7/1/2025	Each Claim Aggregate Retention 5,000,000 5,000,000 250,000

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

Re: Musco Project #228103 – Anderson Park Multi Purpose and Project #228101 – Anderson Park Pickleball Courts | Contract No. 24300821

The City of College Station, its agents, officials, employees and volunteers, are shown as Additional Insureds solely with respect to General Liability coverage as evidenced herein on a Primary/Non-Contributory basis and Auto Liability coverage as required by written contract with respect to work performed by the Named Insured. A Waiver of Subrogation is included in favor of Additional Insured under the General Liability, Auto Liability and Workers Compensation coverages as evidenced herein as required by written contract. Umbrella Follows Form

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
PO Box 9960
College Station TX 77842

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

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.

Quote

Date: 10/03/2024
Expiration date: 11/03/2024
To: Steve Richardson

Project: Anderson Park Multi-Use Courts
College Station, TX
Musco Project Number: 228103

BuyBoard

Master Project: 218434, Contract Number: 677-22, Expiration: 09/30/2024
Commodity: Parks and Sports Field Lighting Products and Installation Services

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 677-22

Quotation Price – Materials Delivered to Job Site and Turnkey Installation

Multi-Use Fields 1-2 **\$166,239.00** (includes bonding)
Sales tax is not included.

Light-Structure System™ with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

- Guaranteed light levels of 40 footcandles and uniformity of 3:1

System Description

- Factory aimed and assembled luminaries
- 4 Galvanized steel poles
- 4 Pre-cast concrete bases with integrated lightning grounding
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- UL listed assemblies

Environmental Light Control

- Spill light minimized at property line to 0.52 footcandles
- Off-site glare light minimized at property line to 3291.2 candela

Control Systems and Services

- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

Operation and Warranty Services

- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors

Musco Scope

- Provide design and layout for lighting system
- Test and final aim equipment

Installation Services Provided

[See attached scope of work]

Responsibilities of Buyer

- Confirm pole or luminaire locations, supply voltage and phase required for lighting system prior to production
- Provide electrical design and materials for electrical distribution system
- Provide labor and equipment for installation of electrical distribution system
- Buyer is responsible for getting electrical power to the site, coordination with the utility, and any power company fees



Payment Terms

Musco's Credit Department will provide payment terms.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC

Attn: Chris Hailey

Fax: 800-374-6402

Email: musco.contracts@musco.com

All purchase orders should note the following:

BuyBoard purchase – Contract Number: 677-22

Delivery Timing

8 - 12 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole/luminaire locations.

Notes

Quote is based on following conditions:

- Shipment of entire project together to one location.
- 208 Volt, 3 phase electrical system requirement to be confirmed before production
- Structural code and wind speed = 2021 IBC, 115 mi/h, Exposure C, Importance Factor II.
- Due to the built-in custom light control per luminaire, pole or luminaire locations need to be confirmed prior to production. Changes to pole or luminaire locations after the product is sent to production could result in additional charges.
- Standard soil conditions – rock, bottomless, wet, or unsuitable soil may require additional engineering, special installation methods and additional cost.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Sam Yaeger

Senior Sales Representative

Musco Sports Lighting, LLC

Phone: 832-975-4398

E-mail: Sam.Yaeger@musco.com

**Anderson Park Multi-Use Courts
College Station, TX
Turnkey Scope of Work**

Customer Responsibilities:

1. Complete access to the site for construction utilizing standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities. (i.e. water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout. (i.e. home plate, center of FB field)
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed Electrical Plans. (If required)

Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, wire harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Contract Management as required.
4. Provide stamped foundation designs based on soil parameters as outlined in the geotechnical report, or soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2.
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

Musco Subcontractor Responsibilities

General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.
10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.



Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install 4 LSS foundations as specified on Layout and per the stamped foundation drawings, if applicable.
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect 4 dressed LSS Poles and aim utilizing the pole alignment beam.

Electrical:

1. Provide labor, materials, and equipment to reuse existing electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, **(if required)**.

Control-Link Control and Monitoring:

1. Provide labor, equipment, and materials to install Musco control and monitoring cabinet(s) and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.
4. Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.

CODE OF CONDUCT

In order to maintain a high-quality jobsite and installation, Subcontractor represents to Musco that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its employees for the purpose of enforcing compliance with these safety requirements. Subcontractor acknowledges that Musco does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect their work activities for the purpose of enforcing compliance with these safety requirements, but Subcontractor agrees to abide by any reasonable recommendations made by Musco or Musco representatives with respect to safety.

Subcontractor agrees that it is or will be familiar with and shall abide by the safety rules and regulations of Musco and the Owner, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto.

Subcontractor further agrees to require all its employees, subcontractors, and suppliers to comply with these requirements. Subcontractor shall also observe and comply with all laws with respect to environmental protection applicable to the Project.

Subcontractor shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to comply with the following:

1. GENERAL JOBSITE SAFETY AND CLEANLINESS.
 - a. Subcontractor's employees and agents shall be required to wear appropriate personal protective equipment including, but not limited to, safety glasses with side shields, work shoes, fall protection devices, and hard hats.
 - b. Where a walking or working surface has an unprotected side or edge which is six feet or more above a lower level, Subcontractor shall use guardrail systems, safety net systems, or personal fall arrest systems.
 - c. Jobsite shall be kept free of debris including, but not limited to, cardboard and packing materials which can become windborne.
 - d. Construction equipment shall be parked during non-use in an orderly fashion so as not to create inconvenience to others using the jobsite.
 - e. Subcontractor shall provide for and ensure the use of safety equipment for the Project in accordance with Musco's and Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.
 - f. Subcontractor shall provide the Musco project manager with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided.
 - g. Within eight (8) hours from the time of an accident (or such shorter period as laws may require), Subcontractor shall advise Musco of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Musco with a written report of any such accident as well as a copy of all insurance and worker's compensation claims involving the Project.
 - h. Subcontractor shall maintain and inspect all construction equipment, including cranes and other lifting equipment, prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training is the responsibility of the Subcontractor.
 - i. Jobsite shall be policed daily for compliance to the above conditions.
 - j. Subcontractor's employees and agents are prohibited from using drugs and alcohol on the Project property or being under the influence of alcohol or drugs while performing work on the Project. Anyone observed participating in or observed under the influence will be removed from the Project immediately and prohibited from returning, with no exceptions.

2. CONFORMANCE TO STANDARD MUSCO INSTALLATION GUIDELINES.
 - a. Review and understand installation instructions are provided with every product installation.
 - b. Education of installation personnel to allow for highest efficiency and lowest possibility of failure.
 - c. Verify that components have been assembled per Musco installation instructions.
 - d. Verify plumb of concrete foundations prior to standing of poles.
3. PROVIDING A QUALITY INSTALLATION TEAM.
 - a. Subcontractor's work directly reflects the quality of the installation and may indirectly relate to the quality of the product upon which Musco's reputation is built.
 - b. Provide and maintain quality installation equipment. Records of maintenance and/or calibration shall be provided upon request.
 - c. Personnel shall be knowledgeable in operation of equipment as well as installation of Musco product.
 - d. All personnel provided by Subcontractor shall understand the relationship developed by and between Subcontractor and Musco, also by and between Musco and the customer, and act accordingly.

Quote

Date: 10/03/2024
Expiration date: 11/03/2024
To: Steve Richardson

Project: Anderson Park Pickleball Courts
College Station, TX
Musco Project Number: 228101

BuyBoard

Master Project: 218434, Contract Number: 677-22, Expiration: 09/30/2024
Commodity: Parks and Sports Field Lighting Products and Installation Services

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 677-22

Quotation Price – Materials Delivered to Job Site and Turnkey Installation

Pickleball Courts 1-4 \$146,829.00 (includes bonding)

Sales tax is not included.

Light-Structure System™ with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

- Guaranteed light levels of 52 footcandles and uniformity of 1.5:1

System Description

- Factory aimed and assembled luminaries
- 4 Galvanized steel poles
- 4 Pre-cast concrete bases with integrated lightning grounding
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- UL listed assemblies

Environmental Light Control

- Spill light minimized at property line to 0.52 footcandles
- Off-site glare light minimized at property line to 3291.2 candela

Control Systems and Services

- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

Operation and Warranty Services

- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors

Supplemental Lighting

- Two (2) OSQ area luminaires

Musco Scope

- Provide design and layout for lighting system
- Test and final aim equipment

Installation Services Provided

[See attached scope of work]

Responsibilities of Buyer

- Confirm pole or luminaire locations, supply voltage and phase required for lighting system prior to production
- Provide electrical design and materials for electrical distribution system
- Provide labor and equipment for installation of electrical distribution system
- Buyer is responsible for getting electrical power to the site, coordination with the utility, and any power company fees



Payment Terms

Musco's Credit Department will provide payment terms.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC

Attn: Chris Hailey

Fax: 800-374-6402

Email: musco.contracts@musco.com

All purchase orders should note the following:

BuyBoard purchase – Contract Number: 677-22

Delivery Timing

8 - 12 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole/luminaire locations.

Notes

Quote is based on following conditions:

- Shipment of entire project together to one location.
- 208 Volt, 3 phase electrical system requirement to be confirmed before production
- Structural code and wind speed = 2021 IBC, 115 mi/h, Exposure C, Importance Factor II.
- Due to the built-in custom light control per luminaire, pole or luminaire locations need to be confirmed prior to production. Changes to pole or luminaire locations after the product is sent to production could result in additional charges.
- Standard soil conditions – rock, bottomless, wet, or unsuitable soil may require additional engineering, special installation methods and additional cost.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Sam Yaeger

Senior Sales Representative

Musco Sports Lighting, LLC

Phone: 832-975-4398

E-mail: Sam.Yaeger@musco.com

**Anderson Park Pickleball Courts
College Station, TX
Turnkey Scope of Work**

Customer/Electrical Contractor Responsibilities

General:

1. Complete access to the site for construction utilizing 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities. (i.e., water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout. (i.e. home plate, center of FB field)
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed Electrical Plans. (If required)

Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, wire harnesses, fixtures, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide stamped foundation designs based on soil parameters as outlined in the geotechnical report or soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2.
4. Provide Contract Management as required.
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

Musco Subcontractor Responsibilities

General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.
10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.



Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming drawing provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install 4 LSS foundations as specified on Layout and per the stamped foundation drawings, if applicable.
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED fixtures, electrical enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect dressed 4 LSS Poles and aim utilizing the pole alignment beam.

Electrical:

1. Provide labor, materials, and equipment to reuse existing electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, **(if required)**.

Control-Link Control and Monitoring:

1. Provide labor, equipment, and materials to install Musco control and monitoring cabinets and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.
4. Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.

CODE OF CONDUCT

In order to maintain a high-quality jobsite and installation, Subcontractor represents to Musco that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its employees for the purpose of enforcing compliance with these safety requirements. Subcontractor acknowledges that Musco does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect their work activities for the purpose of enforcing compliance with these safety requirements, but Subcontractor agrees to abide by any reasonable recommendations made by Musco or Musco representatives with respect to safety.

Subcontractor agrees that it is or will be familiar with and shall abide by the safety rules and regulations of Musco and the Owner, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto.

Subcontractor further agrees to require all its employees, subcontractors, and suppliers to comply with these requirements. Subcontractor shall also observe and comply with all laws with respect to environmental protection applicable to the Project.

Subcontractor shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to comply with the following:

1. GENERAL JOBSITE SAFETY AND CLEANLINESS.
 - a. Subcontractor's employees and agents shall be required to wear appropriate personal protective equipment including, but not limited to, safety glasses with side shields, work shoes, fall protection devices, and hard hats.
 - b. Where a walking or working surface has an unprotected side or edge which is six feet or more above a lower level, Subcontractor shall use guardrail systems, safety net systems, or personal fall arrest systems.
 - c. Jobsite shall be kept free of debris including, but not limited to, cardboard and packing materials which can become windborne.
 - d. Construction equipment shall be parked during non-use in an orderly fashion so as not to create inconvenience to others using the jobsite.
 - e. Subcontractor shall provide for and ensure the use of safety equipment for the Project in accordance with Musco's and Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.
 - f. Subcontractor shall provide the Musco project manager with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided.
 - g. Within eight (8) hours from the time of an accident (or such shorter period as laws may require), Subcontractor shall advise Musco of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Musco with a written report of any such accident as well as a copy of all insurance and worker's compensation claims involving the Project.
 - h. Subcontractor shall maintain and inspect all construction equipment, including cranes and other lifting equipment, prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training is the responsibility of the Subcontractor.
 - i. Jobsite shall be policed daily for compliance to the above conditions.
 - j. Subcontractor's employees and agents are prohibited from using drugs and alcohol on the Project property or being under the influence of alcohol or drugs while performing work on the Project. Anyone observed participating in or observed under the influence will be removed from the Project immediately and prohibited from returning, with no exceptions.



2. CONFORMANCE TO STANDARD MUSCO INSTALLATION GUIDELINES.
 - a. Review and understand installation instructions are provided with every product installation.
 - b. Education of installation personnel to allow for highest efficiency and lowest possibility of failure.
 - c. Verify that components have been assembled per Musco installation instructions.
 - d. Verify plumb of concrete foundations prior to standing of poles.
3. PROVIDING A QUALITY INSTALLATION TEAM.
 - a. Subcontractor's work directly reflects the quality of the installation and may indirectly relate to the quality of the product upon which Musco's reputation is built.
 - b. Provide and maintain quality installation equipment. Records of maintenance and/or calibration shall be provided upon request.
 - c. Personnel shall be knowledgeable in operation of equipment as well as installation of Musco product.
 - d. All personnel provided by Subcontractor shall understand the relationship developed by and between Subcontractor and Musco, also by and between Musco and the customer, and act accordingly.

EXHIBIT E
CONSTRUCTION SCHEDULE

November 14, 2024
Item No. 8.5.
Victim Services Grant Resolution

Sponsor: Billy Couch

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on the Office of the Governor's Victim Services Grant Resolution.

Relationship to Strategic Goals:

- Good governance

Recommendation(s): Approve the resolution and receive the grant.

Summary: The purpose of the VOCA grant program is to assist in providing services to victims of crime through crisis funding and full-time personnel (Victims Advocates). Victims Advocates are also expected to promote and educate the community and other professionals about victim rights and services to be able to help identify crime victims and provide or refer them to needed services.

Budget & Financial Summary: The Office Of the Governor has granted the City of College Station \$109,156 to use for the purpose of funding the salary and benefits for the position of Victim Advocate and for crisis funding. The grant requires a 20% cash match of the total cost of the project (\$136,446). The match is expected to be \$27,290. The match will be covered by the current OAG VCLG grant, which is a state grant and not a federal grant.

Attachments:

1. FY 25 VOCA Grant Resolution 11-14-24

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION AUTHORIZING THE CHIEF OF POLICE TO EXECUTE APPLICATION NECESSARY DOCUMENTS TO SUBMIT TO THE OFFICE OF THE GOVERNOR FOR GRANT FUNDS FOR FUNDING OF ONE FULL-TIME VICTIM SERVICES LIAISON ON BEHALF OF THE CITY AND TO ACT ON ITS BEHALF WITH RESPECT TO ANY ISSUES ARISING DURING THE APPLICATION PROCESS.

WHEREAS, the City Council of College Station finds it in the best interest of the citizens of College Station that the College Station Police Department Victim Services be operated for FY 2025; and

WHEREAS, the City of College Station agrees to provide applicable matching funds for the VOCA Grant Program as required by the Office of the Governor application; and

WHEREAS, the City of College Station agrees that in the event of loss or misuse of the Office of the Governor funds, the City of College Station assures that the funds will be returned to the Office of the Governor in full; and

WHEREAS, the City of College Station designates the Chief of Police as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the City of College Station.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of College Station hereby approves the submission of the VOCA Grant Program grant application to the Office of the Governor.

PART 1: That the City Council hereby authorizes the funding of one full-time victim services liaison for the use of the VOCA Grant Program grant funds.

PART 2: That the City Council hereby authorizes the Chief of Police as the authorized official to execute documents necessary for the submission of the VOCA Grant Program application, with Application Number **4781102**, to the Office of the Governor on behalf of the City of College Station and to act on its behalf with respect to any issues that may arise during processing of said application.

PART 3: That the Chief of Police as the authorized official is given the power to apply for, accept, reject, alter or terminate the VOCA Grant Program grant application on behalf of the City of College Station.

PART 4: That the City of College Station agrees in the event of loss or misuse of the funds, the City of College Station assures the funds will be returned in full.

PART 5: That this resolution shall take effect immediately from and after its passage.

ADOPTED this ____ day of _____, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

November 14, 2024

Item No. 8.6.

Smith Tract Parkland Environmental Review by TxDOT

Sponsor: Kelsey Heiden

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a resolution and letter agreement that concurs with the Texas Department of Transportation's (TxDOT) de minimis impact determination for the Smith Tract Park property regarding the State Highway 6 Central BCS lane expansion project and future Highway 30 roundabout.

Relationship to Strategic Goals:

N/A

Recommendation(s): Staff recommends approval.

Summary: TxDOT proposes to widen existing SH 6 from 4 to 6 lanes. In the area of the City of College Station property, referred to as the Smith Tract Park (Undeveloped), 0.85 acre of ROW is required to accommodate drainage improvements as well as a proposed roundabout at the intersection of SH 30 and Associates Way. It is anticipated that federal funds will be used for this project, and therefore this project is subject to Section 4(f) of the Department of Transportation Act of 1966 (23 USC 138) and the Federal Highway Administration's (FHWA's) implementing regulations at 23 CFR 774.3(b).

TxDOT believes that the above-described use will not adversely affect the features, attributes, or activities qualifying the Smith Tract Park for protection under Section 4(f), and therefore intends to make a de minimis impact determination under 23 CFR 774.3(b). Approximately one percent (0.85 acre) of the 78.9 acre Smith Tract would be required in order to accommodate the proposed improvements. At this time, where ROW is proposed, there are no trails, recreational equipment, or other existing features that would be impacted by the ROW take.

TxDOT has provided public notice and an opportunity to comment on this proposed de minimis use of Smith Tract Park. A public notice was posted in The Eagle on September 10, 2024 that described the proposed use of the Smith Tract Park for the project. Additionally, the public notice was also published on the TxDOT web page for the project. During the 15-day comments period, from September 10, 2024 to September 25, 2024, no comments were received regarding that use.

Under FHWA's regulations, the official with jurisdiction's concurrence is required before TxDOT can make a final de minimis determination. For the Smith Tract Park, the City of College Station is the official with jurisdiction. If the City of College Station concurs that the above-described use would not adversely affect the features, attributes, or activities qualifying the Smith Tract Park for protection under Section 4(f), then please endorse the attached letter. This concurrence is limited to the required concurrence for a de minimis determination under Section 4(f). It does not constitute approval of the above-described project and does not represent the position of the City of College Station on any other aspect of the project other than the de minimis determination. This de minimis determination is just one aspect of TxDOT's environmental review process under the National Environmental Policy Act (NEPA).

Budget & Financial Summary: N/A

Attachments:

1. Resolution City Concurrence Sec 4f TXDOT_Smith Tract Park_11-7-2024
2. SH6 BCS Central_4(f) De Minimis Letter 09262024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, CONCURRING WITH THE TEXAS DEPARTMENT OF TRANSPORTATION'S (TXDOT) DE MINIMIS DETERMINATION FOR USE OF 0.85 ACRES OF THE 78.9 ACRE SMITH TRACT PARK PROPERTY.

WHEREAS, TXDOT has represented that TXDOT's planned use of 0.85 acres of the 78.9 acre Smith Tract Park property for the SH 30 round-about project will not adversely affect the features, attributes, or activities qualifying the Smith Tract Park for protection under Section 4(f) of the federal Department of Transportation Act of 1966 (23 USC 138) and the Federal Highway Administration (FHWA) implementing regulations (23 CFR 774.3(b)); and

WHEREAS, this Resolution does not convey to TXDOT or the State of Texas any right of way (ROW), easements, or any other real property rights; and

WHEREAS, the City of College Station concurs that the described use, as presented by TXDOT, would not adversely affect the features, attributes, or activities qualifying the Smith Tract Park for protection under Section 4(f); now therefore,

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

PART 1: That the City Manager is authorized to execute the attached letter from TXDOT requesting the City's concurrence on a de minimis impact finding under Section 4(f) regarding the Smith Tract Park property.

PART 2: That this Resolution does not convey to TXDOT or the State of Texas any right of way (ROW), easements, or any other real property rights.

PART 3: That this Resolution shall take effect immediately from and after its passage.

ADOPTED this ____ day of November 2024.

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:

City Attorney



2591 North Earl Rudder Freeway | Bryan, Texas 77803
979.778.2165
txdot.gov

September 26, 2024

Bryan C. Woods
City Manager
P.O. Box 9960
College Station, TX 77842
bwoods@cstx.gov

SUBJECT: REQUEST FOR CONCURRENCE ON A *DE MINIMIS* IMPACT FINDING UNDER SECTION 4(f) OF THE DEPARTMENT OF TRANSPORTATION ACT OF 1966
District: Bryan
County: Brazos
CSJ#: 0049-12-110
Highway: SH 6
Project Limits: from US 190/SH 21 to SH 40/ William D. Fitch Parkway
Section 4(f) Property: 13188 (Smith Tract Park)

Dear Mr. Woods:

The Texas Department of Transportation proposes to widen existing SH 6 from 4 to 6 lanes. Project activities would include interchange improvements; ramp adjustments; U-Turns; collector-distributor roads and auxiliary lanes; bridge upgrades and replacements as necessary; continuous bicycle/pedestrian facilities; and upgrades to drainage, illumination, signals, and intelligent transportation system (ITS) facilities. In the area of the City of College Station property, referred to as the Smith Tract Park (Undeveloped), 0.85 acre of ROW is required to accommodate drainage improvements as well as a proposed roundabout at the intersection of SH 30 and Associates Way. It is anticipated that federal funds will be used for this project, and therefore this project is subject to Section 4(f) of the Department of Transportation Act of 1966 (23 USC 138) and the Federal Highway Administration's (FHWA's) implementing regulations at 23 CFR 774.3(b). Additional information about Section 4(f) requirements can be found on FHWA's website: [http://environment.fhwa.dot.gov/\(S\(1vyep545s3wmhuubnvexkmm2\)\)/4f/index.asp](http://environment.fhwa.dot.gov/(S(1vyep545s3wmhuubnvexkmm2))/4f/index.asp)

TxDOT believes that the above-described use will not adversely affect the features, attributes, or activities qualifying the Smith Tract Park for protection under Section 4(f), and therefore intends to make a *de minimis* impact determination under 23 CFR 774.3(b). Approximately one percent (0.85 acre) of the 78.9 acre Smith Tract would be required in order to accommodate the proposed improvements. At this time, where ROW is proposed, there are no trails, recreational equipment, or other existing features that would be impacted by the ROW take. According to City of College Station Master Plan maps, the Smith Tract Park is a planned 78.9-acre park that could include a multi-use path within the Gulf States Utilities Easement. In this

area, the proposed ROW tapers down and approximately 0.07 acre (approximately 30 feet from the existing SH 30 ROW) would be required. It is not anticipated that the 0.85 acre of ROW required would significantly impact the function of the proposed park.

The undeveloped Smith Tract Park would remain available for development as a park after the SH 6 project is complete. The relatively minor changes needed to accommodate the SH 6 improvements would not adversely affect the features, attributes, or activities that they City of College Station may have planned for the Smith Tract Park.

TxDOT has provided public notice and an opportunity to comment on this proposed *de minimis* use of Smith Tract Park. A public notice was posted in The Eagle on September 10, 2024 that described the proposed use of the Smith Tract Park for the project. Additionally, the public notice was also published on the TxDOT webpage for the project. During the 15-day comments period, from September 10, 2024 to September 25, 2024, no comments were received regarding that use.

Under FHWA's regulations, the official with jurisdiction's concurrence is required before TxDOT can make a final *de minimis* determination. For the Smith Tract Park, the City of College Station is the official with jurisdiction. If the City of College Station concurs that the above-described use would not adversely affect the features, attributes, or activities qualifying the Smith Tract Park for protection under Section 4(f), then please endorse this letter below and return it to us by October 28, 2024. This concurrence is limited to the required concurrence for a *de minimis* determination under Section 4(f). It does not constitute approval of the above-described project and does not represent the position of Bryan C. Woods on any other aspect of the project other than the *de minimis* determination. This *de minimis* determination is just one aspect of TxDOT's environmental review process under the National Environmental Policy Act (NEPA).

Thank you for your assistance with our environmental review process. If you need further information, please call Sydney Fox at (979) 778-9231.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Sincerely,



Doug Marino, P.E.
Director of Transportation Planning and Development

**CONCURRENCE WITH TXDOT'S PROPOSED SECTION 4(F) DE MINIMIS
DETERMINATION FOR TXDOT'S PROPOSED USE OF Smith Tract Park**

SIGNATURE: _____

DATE: _____

PRINTED NAME: _____

TITLE: _____

November 14, 2024

Item No. 8.7.

Becker Arena Systems Contract for 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 Becker Arena Systems for the dasher board systems and goals for the Futsal (Multi-use) Courts at Anderson Park for \$229,440.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval and award of the Becker Arena Systems construction contract for the construction of the Futsal (Multi-use) Courts dasher boards and goals 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.

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 Systems in the amount of \$229,440.

The Bid Alternate 1 shade structure will be provided through a Buy Board contract with USA Shade in the amount of \$23,350.

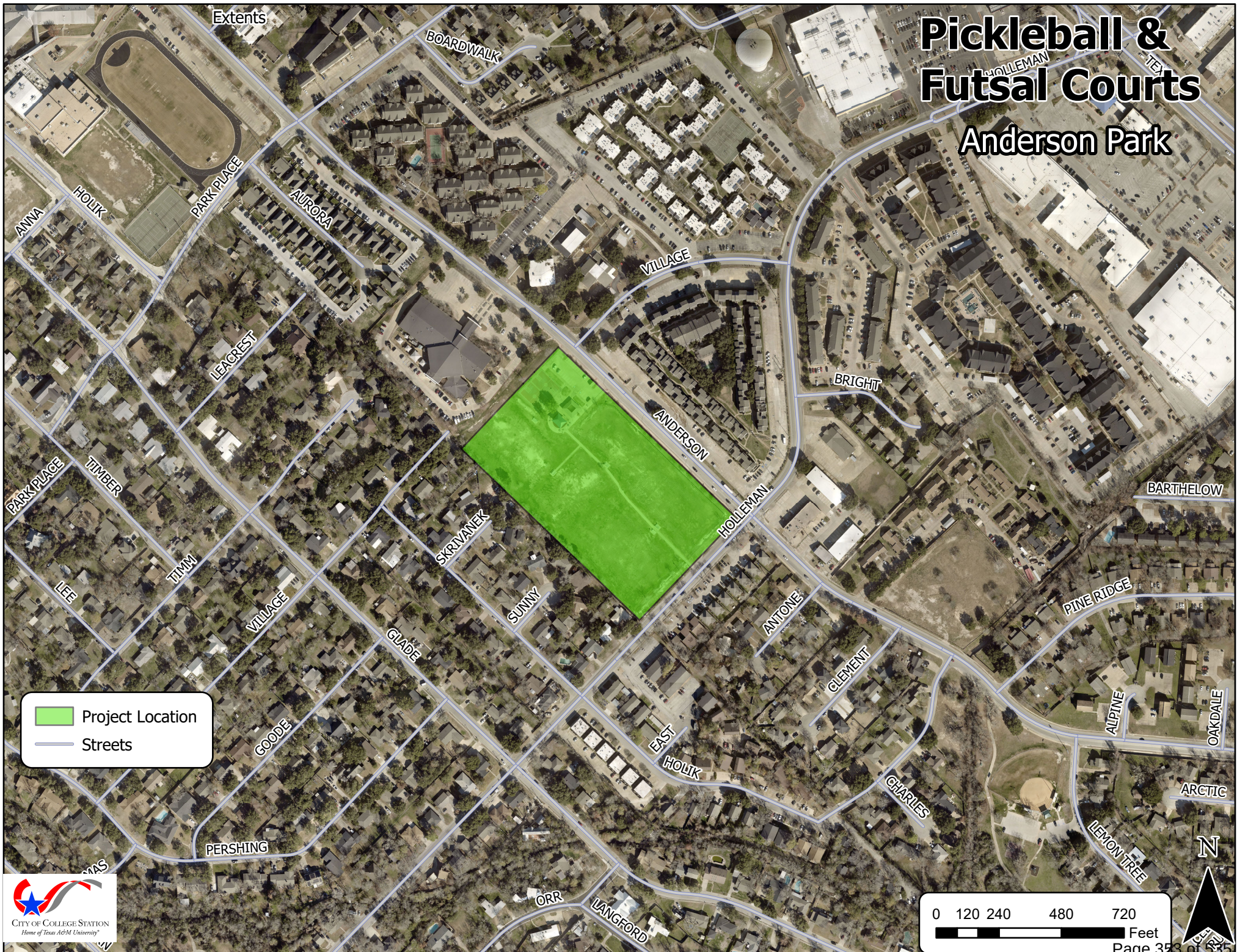
Budget & Financial Summary: Budget in the amount of \$1,700,000 is included for this project in the Parks Capital Improvement Projects Fund with an additional \$350,000 included in the Parkland Zone 1 Fund for a total budget of \$2,050,000. A total of \$195,980 has been expended or committed to date, leaving a combined balance of \$1,854,020 this contract, the contract with Tucker Construction, and Buy Board Contracts with Musco Sports Lighting and USA Shade. 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.

Attachments:

1. Pickleball Futsal at Anderson Park Location Map
2. Pickleball Futsal Becker Systems Contract Vendor Signed

Pickleball & Futsal Courts

Anderson Park





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

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300050 PROJECT#: PK2305 BID/RFP/RFQ#: N/A

Project Name / Contract Description: Purchase and Installation of a Dasher System at Anderson Park

Name of Contractor: Becker Arena Products, Inc.

CONTRACT TOTAL VALUE: \$ 229,440.00 **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)

PK2305 41389000-4040

Sourcewell contract number 120320-ATH

CRC Approval Date*: N/A (If required)* **Council Approval Date*:** 11/14/2024 **Agenda Item No*:** TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

10/29/2024
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
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 Becker Arena Products, Inc. (the

"Contractor") for the construction and/or installation of the following:

The purchase and installation of an outdoor Dasher System at Anderson Park in College Station.

1. DEFINITIONS

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

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

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

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

1.05 Contingency Amount. The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Twenty Thousand and no /100 Dollars (\$20,000.00).

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: Two Hundred Twenty Nine Thousand Four Hundred Forty and no /100 Dollars (\$229,440.00).

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 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 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

BECKER ARENA PRODUCTS, INC.

CITY OF COLLEGE STATION

By: Jeff Brosz

By: _____

Printed Name: Jeff Brosz

City Manager

Date: _____

Title: Vice President

Date: 10/28/2024

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

PERFORMANCE BOND

Bond No. 0265221

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Becker Arena Products, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto Berkley Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Hundred Twenty-nine Thousand Four Hundred Forty and xx /100 Dollars (\$ 229,440.00) 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 Contract No. 25300050 - The Purchase and Installation of an outdoor Dasher System at Anderson Park in College Station, 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. 25300050
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.

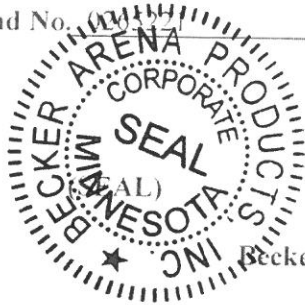
IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

Bond No. _____

FOR THE CONTRACTOR:

ATTEST & SEAL: (if a corporation)

WITNESS: (if not a corporation)



Becker Arena Products, Inc.

By: Klu W

Name: Kalce Wothe

Title: Witness

Date: 11/14/2024

By: Jeff Brosz

Name: Jeff Brosz

Title: Vice President

Date: 11/14/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: [Signature]

Name: Maria A. Gonzalez

Title: Witness

Date: 11/14/2024

Berkley Insurance Company

(Full Name of Surety)

475 Steamboat Road

Greenwich, CT 06830

(Address of Surety for Notice)

By: [Signature]

Name: James I. Moore

Title: Attorney-in-fact

Date: 11/14/2024

FOR THE CITY:

REVIEWED:

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

City Attorney _____

City Manager _____

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

TEXAS STATUTORY PAYMENT BOND

Bond No. 0265221

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

THAT WE, Becker Arena Products, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto Berkley Insurance Company, a corporation organized and existing under the laws of the State of Delaware, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Two Hundred Twenty-nine Thousand Four Hundred Forty and xx /100 Dollars (\$ 229,440.00) 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 14th day of November, 2024, for Contract No. 25300050 - The Purchase and Installation of an outdoor Dasher System at Anderson Park in College Station, 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. 0265221

FOR THE CONTRACTOR:

ATTEST & SEAL: (if a corporation)

WITNESS: (if not a corporation)



Becker Arena Products, Inc.

By: Kalee Wothe
Name: Kalee Wothe
Title: Witness
Date: 11/14/2024

By: Jeff Brosz
Name: Jeff Brosz
Title: Vice President
Date: 11/14/2024

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Maria A. Gonzalez
Name: Maria A. Gonzalez
Title: Witness
Date: 11/14/2024

Berkley Insurance Company
(Full Name of Surety)
475 Steamboat Road
Greenwich, CT 06830
(Address of Surety for Notice)

By: James I. Moore
Name: James I. Moore
Title: Attorney-in-fact
Date: 11/14/2024

FOR THE CITY:

REVIEWED:

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

City Attorney

City Manager

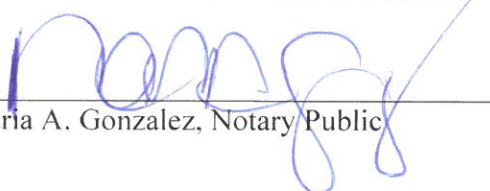
NOTE: Date of bonds must be on or after the date of execution by City.

State of Illinois
} ss.
County of DuPage

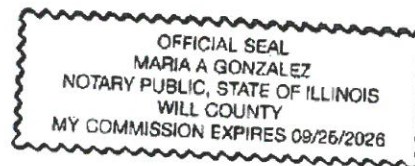
On November 14, 2024, before me, Maria A. Gonzalez, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared, James I. Moore, known to me to be Attorney-in-Fact of Berkley Insurance Company, the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires September 25, 2026



Maria A. Gonzalez, Notary Public



Commission No. 882909

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *James I. Moore; Stephen T. Kazmer; Kelly A. Gardner; Jennifer J. McComb; Melissa Schmidt; Tariesse M. Pisciotto; Diane M. Rubright; Sinem Nava; Martin Moss; or Maria A. Gonzalez of HUB International Midwest Limited of Downers Grove, IL* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.\$100,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 2nd day of May, 2024.



Attest:

By *Philip S. Welt*
Philip S. Welt
Executive Vice President & Secretary

Berkley Insurance Company

By *Jeffrey M. Hafter*
Jeffrey M. Hafter
Senior Vice President

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 2nd day of May, 2024, by Philip S. Welt and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDBAKEN
NOTARY PUBLIC
CONNECTICUT

MY COMMISSION EXPIRES 04-30-2029

Maria C. Rundbaken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.



Given under my hand and seal of the Company, this 14th day of November 2024.

Vincent P. Forte
Vincent P. Forte

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/23/2024

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

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

PRODUCER Marsh & McLennan Agency LLC 332 West Superior Street Duluth MN 55802	CONTACT NAME: Dee Ann Briegel PHONE (A/C, No, Ext): 218-722-7472 E-MAIL ADDRESS: Dee.briegel@marshmma.com	FAX (A/C, No):
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Cincinnati Specialty Underwriters		13037
INSURER B : Cincinnati Insurance Company		10677
INSURER C : Liberty Mutual Insurance Company		23043
INSURER D : Great American E&S Insurance Company		37532
INSURER E :		
INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** 387758614 **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 ☒ Ded. 25,000 GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:			CSU0161523	1/1/2024	1/1/2025	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 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			ENP0600407	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) \$ SIR/Deductible \$ NONE
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ NONE			CSU0161525	1/1/2024	1/1/2025	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) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC7B71171574014	1/1/2024	1/1/2025	☒ PER STATUTE ☐ OTH-ER SIR/DED: NONE 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			XSE924527	1/1/2024	1/1/2025	Limit, per Occurrence 3,000,000 Limit, Aggregate 3,000,000 SIR: NONE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Contract #25300050, Anderson Park, 900 Anderson St., College Station, TX 77840.
City of College Station included as additional insureds for general liability, including ongoing and completed operations and automobile liability, on a primary and non-contributory basis, for work performed by the named insured, if required by written contract. Waiver of subrogation is in favor of the additional insureds for general liability, automobile liability and workers compensation. Umbrella follows form over the General Liability, Automobile Liability and Employers Liability subject to policy terms, conditions and exclusions.

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

© 1988-2015 ACORD CORPORATION. All rights reserved.

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.

See Attached...

Quotation #: CS ODR 5.0-3
Revision #: 03
Date: October 7, 2024
Proposal Expiration Date: November 7, 2024
Sales Consultant: Pat Groetsch

Prepared For:
Veronica Morgan
Mitchell and Morgan
3204 Earl Rudder Fwy S
College Station, TX 77845

Project Location:
Anderson Park
900 Anderson St
College Station, TX 77840

Thank you for considering Becker Arena Products, Inc., we appreciate the opportunity...

Benefits of Choosing to Partner with Becker Arena Products

- A stable and reliable company since 1988
- A staff with in-depth knowledge of the industry and products
- Quality products that last
- Experienced and professional installers
- Excellent customer service
- Worry Free Projects – Guaranteed

Per your request, please see the below details and updated pricing to provide College Station, Anderson Park, an outdoor dasher system. BAP will provide the material and labor to install.

BECKER ARENA 5.0 PRO-SERIES OUTDOOR DASHER BOARD SYSTEM

Becker Arena Products, Inc. shall furnish and install the following new custom-built 5.0 Pro-Series Aluminum outdoor dasher board system. Pricing is based on the information provided and will include the following items and features.

RINK SIZE: 143'x72'x10' RADIUS (RING ONLY) X 2

DASHER FRAMING WITH UV STABILIZED POLY FACING AND KICK PLATE - POLYETHYLENE CAP RAIL

- Rink Size: 143'x72'x10' radius – 413 lineal feet of 42" high 5" wide Becker 5.0 Pro-Series aluminum outdoor dasher boards, ring only.
- 1/2" white UV Stabilized Poly dasher facing, 4' long sections
- 1/2" x 8" UV Stabilized poly kick plate
- 1/2" white UV stabilized high-density polyethylene cap rail.

ANCHORING

- New 5/8" drilled-in epoxy anchors into new concrete curb or pad
- Cast-In-Place anchors in radius corners to be set by Becker during pour for dasher boards
- Concrete Work by others

GATES

- Two 2'-6" straight access gate with heavy duty hinges
- 1" thick high-density polyethylene thresholds access gates

PUCK CONTROL CHAIN LINK FENCING

- New chain link fencing, 6' tall in endzones and radius corners
- 6 ga. fence fabric with vinyl coating. Includes top, middle, and bottom rail, additional mid-rail in endzones, all required fasteners.
- 1-11/16 diameter Galvanized posts with caps, tension bars, and hardware to support fencing
- Four (4) shield termination pads

ANCHORED GOAL SYSTEMS

- One pair of Gared regulation sized futsal goals with anchors
- One pair of regulation sized bike polo goals with anchors

INSTALLATION

- Becker Arena Products, Inc. will furnish an experienced and professional installation crew that meets all requirements to be considered a Qualified Becker Arena Products, Inc. Employee or Partner. This approved team will complete the installation of the dasher system and chain link fencing as described above. Price includes labor (**Non-union labor / non prevailing wage rate**) required forklift and all equipment for installing chain link fence.

DELIVERY

- Freight to College Station, TX has been estimated and included in the total dasher pricing. Due to the volatility in transportation and freight rates, Becker Arena Products reserves the right to adjust the total price to match the actual freight rates incurred on the date of shipment(s).

BASE SCOPE: 5.0

TOTAL PRICE DELIVERED & INSTALLED FOR TWO RINKS: Accept _____ \$235,819.00

OPTION PRICING:

OPTION 1. BECKER ARENA 5.0 PRO SERIES OUTDOOR DASHER BOARD SYSTEM, ONE RINK AT 143' X 72' AND ONE RINK AT 120' X 60', BOTH WITH 10' RADIUS CORNERS

- Scope is the same as base, except for the second rink, which is to be 120' x 60' x 10'.

OPTION 1. DELIVERED & INSTALLED: Accept X \$229,440.00

OPTION 2. BECKER ARENA 3.0 PRO SERIES OUTDOOR DASHER BOARD SYSTEM (143'x72'x10') X2

- Same scope as listed in Base except with a 3" aluminum framing in lieu of 5" aluminum framing.

OPTION 2. DELIVERED & INSTALLED: Accept _____ \$219,727.00

OPTION 3. BECKER ARENA 3.0 PRO SERIES OUTDOOR DASHER BOARD SYSTEM ONE RINK AT 143' X 72' AND ONE RINK AT 120' X 60', BOTH WITH 10' RADIUS CORNERS

- Scope to be same as option 2, except for the second rink, which is to be 120' x 60' x 10'.

OPTION 3. DELIVERED AND INSTALLED: Accept _____ \$214,880.00

OPTION 4. ¼" FIBERGLASS REINFORCED PANELS (FRP) FACING FOR (2) 143' X 72' RINKS

- Install FRP facing in lieu of UV stabilized high-density polyethylene dasher facing.

OPTION 4. DELIVERED AND INSTALLED, ADD:

Accept _____ \$34,358.00

OPTION 5. ¼" FIBERGLASS REINFORCED PANELS (FRP) FACING FOR (1) 143' X 72' RINKS AND (1) 120' X 60' RINK

- Install FRP facing in lieu of UV stabilized high-density polyethylene dasher facing.

OPTION 5. DELIVERED AND INSTALLED, ADD:

Accept _____ \$29,687.00

TOTAL OF ABOVE SELECTED OPTION:

\$ _____

ESTIMATED SALES TAX IN COLLEGE STATION, TX, 8.25% (IF APPLICABLE)

\$ _____

GRAND TOTAL OF ABOVE SELECTED OPTIONS

\$ _____

Please Note: Price does not include taxes. All taxes are the responsibility of the purchaser. Prices do not include special insurance requirements or applicable permits and/or license fees. Prices subject to site visit and/or receipt of final construction drawings and specifications. If sales tax is applicable, it will be added to the proposal totals and noted on a Contract Summary Sheet that will be sent back with your executed contract.

All payment terms are based on credit approval.

Our Standard Payment terms are:

45% due upon placement of order

45% due 10 days prior to delivery

10% due upon delivery and installation

Material Price Escalation & De-Escalation Clause (Due to the volatility of all components of the above dasher board system)

- In the event that the price of any of the material(s) used in the Becker Arena Products, Inc. production of the above product increase or decrease by 3% or greater from the price used for that material(s) at the time the quote was signed, then the price for the material(s) in the contract between Becker Arena Products, Inc. and the purchaser shall be increased or decreased to reflect the additional or reduced cost to obtain that material or materials. Purchaser agrees that Becker Arena Products, Inc. shall be entitled to an adjustment to the contract price to reflect and price increases of material(s) that occur because of Becker Arena Products, Inc. incurring additional costs when ordering materials.

We are looking forward to the opportunity of working with you on your project and if we can be of further assistance please do not hesitate to call.

This proposal is subject to Becker Arena Products, Inc. Standard Terms and Conditions and Limited Warranty and may be withdrawn without penalty at any time before contract execution. If accepted, please sign, and return this copy to Becker Arena Products. When approved and signed by one of our officers a fully executed copy will be forwarded for your records. This proposal is subject to change, withdrawal, or cancellation until accepted by you. If Becker Arena Products, Inc. have not received your

acceptance within 60 days from the date hereof, this proposal shall automatically expire. Becker Arena Products, Inc. retains a security interest in all products covered in this agreement until all payment terms have been met. In addition, the purchaser agrees to sign any additional documents for Becker Arena Products, Inc. to perfect its security interest in the products.

Proposal/Contract # **CS ODR 5.0-3** is accepted with initialed options:

Purchaser Signature

Title

Print Name

Date

Sourcewell ID #

Becker Arena Products, Inc.

General Manager
Title

Dan Mehren
Print Name

Date

#120320 – ATH
Sourcewell ID #

Desired Installation Date: _____

Becker Arena Products, Inc. is an Affirmative Action/Equal Employment Opportunity Employer

BECKER ARENA PRODUCTS INC. STANDARD TERMS AND CONDITIONS OF SALE - EFFECTIVE JANUARY 2021

1. Definitions. In these terms "Seller" means the seller of the Goods as defined herein; "Buyer" means the entity purchasing the Goods, including any successors thereof; "Goods" means the goods, products and materials manufactured, imported, supplied and/or delivered for or by Seller to Buyer, as such were approved by Seller in reply to Buyer's order and accordingly listed in the Approval of Order; "Approval of Order", in respect of any Buyer's order, means the instrument issued by Seller, bearing the same reference number of such order and specifying, *among any other terms*, the items of Goods, including their respective price and quantity, which shall be supplied to Buyer upon such order; "Contract" means the contract for the supply of Goods which have been ordered by Buyer and specified in Seller's Approval of Order, which contract is concluded based on these Terms and Conditions of Sale unless otherwise specified in the Approval of Order.

2. Payment. Payment for Goods shall be due on or prior to the delivery date of Goods and no discount may be taken. Payments received after the due date thereof shall bear a service charge from their due date, at the maximum lawful interest rate applicable, and if none – at the annual rate of 5% above the base rate from time to time of the central bank of the place of Buyer's incorporation. All payments shall be made to Seller's designated bank account in the same currency and for the same amounts as specified in the Approval of Order.

3. Prices, Duties and Taxes. Prices specified in the Approval of Order are net, excluding packaging, and shall be deemed Ex-works (Incoterms 2000 as amended). Prices are based, inter alia, on production costs for supplies, labor, deliveries, duties, and services current on the order date. In the event of material increase in any such costs, Seller reserves the right either to adjust the prices for Goods accordingly, or to cancel any certain part of the sales relating to undelivered Goods. Duties, taxes, fees, levies and other compulsory payments applicable to the sale of Goods any time, as well as freight, express, insurance and delivery charges, shall all be borne and paid in full by Buyer, unless otherwise expressly stipulated.

4. Delivery. Delivery dates noted on the Approval of Order are estimates only, and are not guaranteed, and are all subject to adjustment as determined by the Seller acting reasonably. The acceptance of shipment by a common carrier or by any licensed public truckman shall constitute proper delivery. Risk associated with the Goods shall pass to Buyer on delivery or with the passing of title in the Goods, whichever occurs first; provided however, that where delivery is delayed due to circumstances caused by or within the responsibility of Buyer, risk of loss shall pass to Buyer upon Seller's notification that Goods are ready for dispatch.

5. Retention of Title. Title shall pass to Buyer only upon full payment by Buyer for the Goods and following payment of any other outstanding debt by Buyer to Seller. Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's title in the Goods, and lawfully notify Buyer's present or potential creditors of Seller's title on and interest in the Goods. Buyer acknowledges that so long as title has not been transferred in the Goods, it holds the Goods as bailee and fiduciary agent for the Seller and shall safely and securely store and keep the Goods separate and in good condition, clearly showing the Seller's ownership of the Goods and shall respectively record the Seller's ownership of the Goods in its books. Notwithstanding the above, Buyer may use Goods for its own use, or sell Goods, as fiduciary agent for the Seller, to a third party in the normal course of business by bona fide sale at market value, whereby proceeds of such usage or sale of Goods, as the case may be, shall, to the extent of the amount being owed by Buyer to Seller at the time of receipt of such proceeds, be held by Buyer on trust for Seller and specifically ascertained, until payment in full for all payable debts by Buyer to Seller.

6. Warranty.

a) If applicable, Seller warrants that Goods as set out in the warranty applicable thereto given by Seller to Buyer, subject always to the terms and conditions thereof, and subject to use, storage and application thereof in accordance with and based on Seller's standard tolerances, instructions of use and recommendations. b) Unless otherwise restricted by mandatory applicable law, THE WARRANTY SET FORTH HEREIN IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR USE AND FOR PURPOSE, ANY ADVICE AND RECOMMENDATION AND ANY OBLIGATIONS OR LIABILITIES WHICH MAY BE IMPUTED TO SELLER, ANY AND ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, DENIED AND EXCLUDED. BUYER EXPRESSLY AGREES THAT NO WARRANTY THAT IS NOT SPECIFICALLY STATED IN THIS AGREEMENT WILL BE CLAIMED OR OTHERWISE ADHERED TO BY BUYER AND/OR BY ANYONE ACTING ON BUYER'S BEHALF AND/OR BY ANYONE DERIVING THE LEGALITY OF ITS CLAIM FROM BUYER, NOR THAT WILL ANY SUCH WARRANTY BE VALID. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, USE OR HANDLING OF ANY AND ALL GOODS SPECIFIED OR CONTEMPLATED BY THIS CONTRACT. NO WARRANTY IS MADE WITH RESPECT TO ANY OF THESE GOODS WHICH HAVE BEEN SUBJECT TO ACCIDENT, NEGLIGENCE, ALTERATION, IMPROPER CARE, IMPROPER STORAGE, IMPROPER MAINTENANCE, ABUSE OR MISUSE.

7. Claims and Liability.

a) Unless Seller shall within 30 days after delivery of the Goods, receive from Buyer written notice of any matter or thing by reason whereof it is alleged that Goods are not in accordance with the Contract, Goods delivered shall be deemed to have been supplied, delivered and accepted in all respects in full conformity with the Contract and Buyer shall be entitled neither to reject the same nor to raise any claim for damages or for other remedy in respect of any alleged negligence and/or breach of warranty and/or any condition. b) In any claim, brought subject to the conditions above, Buyer must prove to the satisfaction of Seller that it followed Seller's instructions for use, care, storage, maintenance, handling and application of the Goods. c) Unless otherwise specifically restricted by mandatory applicable law, Seller's liability under any claim and in connection with any possible allegation, whether based on negligence, contract, or any other cause of action, shall, if the Seller shall be liable hereunder, be limited to either (i) the replacement of the Goods or the supply of equivalent goods; (ii) the repair, or payment of the cost of repair, of the Goods; or (iii) credit in an amount equal to the purchase price specified in Seller's pertinent invoice, or in an amount of equivalent goods, all at Seller's sole option. Buyer acknowledges that the remedy available to him as specified herein, is in lieu of any remedies that may be otherwise available to him, now or in the future, whether in law or in equity, relating to any loss or damage, whether directly or indirectly, arising from the purchase and/or the use of Goods, including without limitation, any actual or contingent damages, loss of production, loss of profit, loss of use, loss of contracts or any other consequential or indirect loss whatsoever, whether pecuniary or non-pecuniary, and it is acknowledged and agreed by Buyer that in no circumstances shall Seller be liable for any such damages. Should any limitation on Seller's liability hereunder be held ineffective under applicable law, than Seller's liability shall in any event be limited to the minimum amount of damages to which Seller may limit its liability, where such is greater than the purchase price as specified in Seller's pertinent invoice. Additionally, any action against Seller must be commenced within one year after the cause of action accrues. ~~d) Buyer, for himself and for any other party which may claim either under or through Buyer, or independently of Buyer, including Buyer's employees, directors, officers, representatives and personnel, shall indemnify and hold Seller harmless, from and against any claim or liability for damages in any way relating to the supply or use of the Goods, including claims for negligence and including but not limited to, any claim in connection with the design, manufacture, use, care, storage, delivery, application or maintenance of any Goods sold hereunder, whether alleged to have been committed by Seller or by any other person whatsoever. Buyer's undertaking as specified in this subsection shall extend and inure to the benefit of Seller and of Seller's successors at any time, as well as to Seller's personnel, representatives, managers, directors and officers.~~ Nothing contained herein shall take effect to exclude or limit liability where liability may not be excluded or limited under applicable law, including, without limitation, for death, personal injury and fraudulent misrepresentations. e) Any and all warranties, undertakings, guarantees, or assurances provided herein by Seller, are specifically limited to Buyer herein, and not imputed by Seller, whether directly or indirectly, expressly or impliedly, to any other person or entity, including any subsequent buyer or user, bailee, licensee, assignee, employee and agent of Buyer.

8. Default. Upon failure of Buyer to pay any amounts due to Seller, or in the event of any breach or anticipated breach by Buyer of any Contract with Seller, or if Buyer shall either (i) become insolvent, (ii) call a meeting of its creditors, or (iii) make any assignment for the benefit of creditors, or if (iv) a bankruptcy, insolvency, reorganization, receivership or reorganization proceeding shall be commenced by or against Buyer, then, in each such occasion, Seller may, at its sole discretion, opt to (1) cancel this and any other Contract with Buyer (without waiving any of Seller's rights to pursue any remedy against Buyer); (2) claim return of any Goods in the possession of Buyer, the title of which has not passed to Buyer, and enter Buyer's premises (or the premises of any associated company or agent where such Goods are located), without liability for trespass or any alleged damage, to retake possession of such Goods; (3) defer any shipment hereunder; (4) declare forthwith due and payable all outstanding bills of Buyer under this or any Contract; and/or (5) sell all or part of the undelivered Goods, without notice at public and/or on private sale, while Buyer shall be responsible for all costs and expenses of such sale and be liable to Seller for any shortfall in the discharge of the amounts due to Seller. **9. Independent Delivery.** Each delivery of Goods shall (without prejudice to Seller's rights under clause 8 hereinabove) be considered a separate contract and the failure of any delivery shall not vitiate any contract as to deliveries of other Goods and payment therefor.

10. Cancellation. Orders manufactured in whole or in part, pursuant to Buyer's specifications, may not be cancelled except with Seller's prior written consent, on terms which will compensate Seller for any resulting losses.

11. No-Assignment. No rights or obligations of Buyer arising out of this Contract may be assigned without the express prior written consent of Seller.

12. Force Majeure. Should Seller be prevented from effecting deliveries of the Goods or any of them by reason of either an act of god, insurrection, riot, war hostilities, terror attacks, warlike operations, piracy, arrests, restraints or detentions by any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, permanent or temporary delay or inability to obtain labor, material or services through Seller's usual and regular sources, or any other circumstances (whether of a nature similar to those specified, or not) beyond the absolute control of the Seller, then, in each such cases, the obligation of the Seller to effect deliveries hereunder shall be suspended until after such prevention shall cease to continue. Should any deliveries under this Contract be suspended under this clause for more than 90 days – either party may withdraw from this Contract and be relieved from any liability; provided however, that Buyer shall nevertheless accept delivery and pay for such Goods once the Seller is able to deliver in accordance with the period(s) of shipment named in this Contract. Seller shall not be liable for, and be relieved from, any loss or damages of any kind resulting from the causes mentioned hereinabove.

13. Advice. Any provisions specified or implied by herein or elsewhere notwithstanding, any advice, recommendation, information, assistance or service provided by Seller in relation to the Goods or in respect of their use or application is given in good faith, shall be deemed accepted by Buyer without imputation of any liability to Seller, and it shall be the responsibility of Buyer to confirm the accuracy and reliability of the same in light of the use of which Buyer makes or intends to make of the Goods.

14. Entire Agreement. This Contract merges the entire terms and conditions for sale of the Goods. In the event of any conflict between the terms herein and any provisions included in the Approval of Order, the latter shall govern and prevail. Subject to the foregoing, nothing specified in, or referred to by, any other document, record or instrument whatsoever, which relates to and/or which otherwise subsists in connection with the sale of Goods herein, whether expressly or impliedly, including any written order, request or other standard or specific terms of any entity, shall or may be interpreted to attribute to Seller and/or to Seller's affiliates or representatives (i) any liability, obligation, commitment and/or undertaking, and/or (ii) any waiver in connection with or of any right, whether contractual, proprietary, in-person and/or equitable, including but not limited to, any and all intellectual property rights in connection with the Goods, which are and shall always remain in the Seller's exclusive and complete ownership under all circumstances whatsoever, notwithstanding any sale of Goods hereunder and whether the Goods shall be standard Goods or manufactured to a specific order. No modification or waiver of any provision hereof shall become valid and effective except upon a written instrument duly signed beforehand by Seller. No waiver by either party of any default of the other party shall be deemed a waiver of any subsequent or other default. If any provision of this Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, the balance of this Contract shall continue in full force and effect without the provision.

15. Law and Arbitration. This Contract shall be governed by and construed in accordance with the laws of the state of Seller's incorporation. Any dispute arising out of or in connection with this Contract shall, if so determined by the Seller, be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"), as shall be in effect from time to time, and if so determined, the balance of this Section shall apply. The arbitration shall be held at such location in the state of Seller's incorporation as shall be determined by Seller, in its sole discretion. The arbitrator shall be mutually appointed by Seller and Buyer within 21 (twenty-one) days following a written demand for arbitration by either of the parties. Failing to reach an agreement regarding the nomination of an arbitrator, the head of the relevant ICC national committee (located in the Seller's country of incorporation; and absent such local committee in that specific country – the ICC UK Committee (www.iccuk.net)) shall appoint an arbitrator at the request of any of the parties, a copy of which request for the appointment of an arbitrator shall be provided by the requesting party to the other party. Awards may be enforced in accordance with the 1958 New York Convention and judgment may be entered upon any award in any court having jurisdiction over the parties and/or their assets. The arbitrator's fees shall be paid by both parties in equal parts unless otherwise determined by the arbitrator. This provision shall survive any termination of any of the terms and conditions herein and shall be deemed to constitute an independent arbitration agreement between Buyer and Seller for all purposes and intents.

16. Dasher Board Systems

1. Seller may choose whether or not to produce the rink according to its production schedule. ~~If they produce the rink on schedule, it will be stored at Becker Arena Product's location of business and storage fees will be charged to the Purchaser at the rate of US \$300 per week.~~ All payments will be due according to the terms from the original ship date. If the Seller chooses to delay production to coincide with the new ship date, no storage fees will apply, and payment will be due according to the terms from the original ship date. ~~If contract terms are paid in full prior to shipping, the time will start from the original ship date and not the adjusted ship date.~~
2. A new shipping installation date will be coordinated with Seller's installation department and confirmed with the Purchaser. The Seller will reschedule the installation for the next available date according to the Seller's installation schedule. In some cases, the site delay may cause additional charges. This includes, but is not limited to, wages, remobilization, and equipment rental, to be paid by the Purchaser.
3. If the Purchaser's site is not ready when the Seller's installation crew arrives, additional costs will be charged to the Purchaser. This includes, but is not limited to wages, travel, lodging, meals, equipment rental and changes in Becker Arena Product's installation schedule.

17. General Site Requirements.

The following criteria must be met, or extra charges may apply, and delays will be incurred, if the site is not in compliance when Seller is ready to deliver and install the goods:

1. Concrete and Floor Work: All concrete work is to be completed and allowed to cure, according to job specifications and/or refrigeration contractors requirements, before the date installation is scheduled to begin.
2. The levelness of the perimeter concrete, where the rink is to be installed, must be within 1/8" of levelness for every 10' in length and no more than 1/4" difference in height over the length and width of the perimeter surface.
3. For sand floors, the first 6" from the front of the curb, where the rink is to be installed, must be within 1/16" of flatness from the inside edge outward and meet the levelness and flatness conditions specified above, Sand floors are not to be final graded prior to dasher board installation.
4. Expansion joints, which are to be covered completely by the rink, are to be within 1/2" of straightness from end to end and side to side. The distance from side to side and end to end of the outside edge of the expansion joint is to be within 1/2" of the required dimension for the frame to cover it.
5. If, upon arrival, the perimeter concrete is inspected and does not meet the specifications for levelness, flatness, straightness and size, the following will occur:
6. Seller's Representative will determine if rink can be shimmed or adjusted/cut to achieve desired levelness, fit and/or expansion joint coverage while maintaining the structural integrity of the rink. If so, the additional time and materials to do this will be paid by the Purchaser. A change order must be filled out by the Seller's Representative and signed by the Purchaser before any work commences.
7. If the rink cannot be shimmed or adjusted to the desired levelness and/or coverage while maintaining the structural integrity of the rink, the Purchaser will be responsible for fixing the surface to meet specifications. All associated costs for this are the sole responsibility of the Purchaser.
8. The Seller will accept contracts that are retrofit projects with the understanding that the condition of the underlying perimeter concrete work meets the specifications stated above. If, after removal of the existing rink, the concrete does not meet these conditions, points "1" and "2" from above will apply.

18. Requirements for Rink Installations:

(Refer to the enclosed Site Requirements)

1. Walk Through Inspection. When Seller's work is complete or near complete, Purchaser or the Purchaser's Representative (including general contractors and architects) must be available for a final walk-through inspection with the Seller's Representative. Any parties who do not attend the walk through will forfeit their right to submit punch list items. A final punch list of items to be completed or repaired will be prepared as a result of this walk through. Any item not included on the final "punch list" will not be the responsibility of the Seller unless it is covered by the Seller's Warranty.
2. Shop Drawings and Non-standard Shielding. Preparation of shop drawings will not commence until after the signed contract has been delivered to Seller. Production will not commence until Seller receives approved shop drawings. Field measured; tempered glass (non-standard sizes) may require an additional 3-4 weeks for delivery after completion of installation. Any field measured tempered glass to be installed by purchaser.
3. Polyethylene. All polyethylene used to manufacture the rink shall be virgin material. All colors shall match within manufacturer's tolerance.
4. Seller will not be responsible for replacing polyethylene that conforms to manufacturers color tolerance. During manufacturing, all panels shall have the polyethylene overhang past the frame a minimum of 1/16" on each end to allow for contraction of the material due to temperature change in the field. Seller shall not be responsible for material contraction gaps between panels due to temperature change if it adheres to these manufacturing requirements.
5. Material Check-in. (Installation supervision and supply only contracts) The Purchaser shall be responsible to verify the shipment for quantities and any damage caused from shipping for jobs that include installation supervision or are supply only. Any quantity variances and/or damage must be noted and reported to the Project Manager by filling out the Material Check-in Form and faxing it to the Project Manager. Missing/damaged items must be reported within 24 hours of receipt to receive credit. All boxes will be clearly marked by the Seller. The Ship list will clearly identify the contents and quantities of the shipment. It is the responsibility of the Purchaser to verify that all box numbers in the hardware crate are accounted for, not to open and count each individual item per box. The Purchaser must count anything that is not boxed.

EXHIBIT E
CONSTRUCTION SCHEDULE

See Attached...

November 14, 2024
Item No. 9.1.
Mabel Clare Thomas Park Redevelopment Project

Sponsor: Kelsey Heiden

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a presentation and update on the Mabel Clare Thomas Park Redevelopment Project.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s):

Summary: City Council will receive a presentation on the proposed master plan for Mabel Clare Thomas Park. This project is part of the 2022 voter-approved bond initiatives and aims to enhance one of the community's most cherished parks, while preserving its historic character and charm. The presentation will provide City Council with an overview of the proposed Mabel Clare Thomas Park master plan for their consideration.

Budget & Financial Summary:

Attachments:

None

November 14, 2024

Item No. 9.2.

Tourism Update - Summer Event Summary and Christmas in College Station

Sponsor: Jeremiah Cook, Assistant Director - Tourism

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding the economic impact of large summer events and the upcoming 2024 Christmas in College Station campaign.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): Staff recommends Council receive this presentation and provide direction.

Summary: Economic Development and Tourism staff will provide an overview of the 2024 summer season which brought many large events to College Station helping to drive economic impact through tourism during typically slower months. Aside from multiple annual youth sporting events and conventions, the George Strait concert and MEXTOUR Soccer match in June, and the USATF Junior Olympic National Championships in July brought an increase of 30.6% in June and 58.6% in July year over year in hotel occupancy taxes. The events also helped contribute to an increase of 7.3% in June and 8.3% in July in sales tax year over year.

Staff will also discuss the annual Christmas in College Station campaign including the brand refresh, a renewed partnership with Santa's Wonderland, and key annual events as cornerstones of the 2024 season.

Budget & Financial Summary: N/A

Attachments:

1. June 2024 Economic Impact Study
2. Economic Impact Analysis - USATF



TEXAS A&M UNIVERSITY

IMPACT ON THE LOCAL ECONOMY

EVENTS OF JUNE 2024

Ashley Bullock
Dennis W. Jansen
Somali Ghosh Sinha

September 2024

Sponsored by
the Greater Brazos Partnership



TEXAS A&M UNIVERSITY
Private Enterprise
Research Center

SUMMARY

June 2024 was a landmark month for College Station and Bryan, marked by several high-profile events that drew significant crowds and boosted the local economy. At the beginning of the month, Texas A&M held two super regional baseball games, Texas A&M vs. Texas, followed by Texas A&M vs. Louisiana, both of which packed Blue Bell Stadium. The George & Barbara Bush Foundation also celebrated what would have been former President Bush's 100th birthday. Aggieland then played host to the Brazil vs. Mexico soccer friendly in the second week of June, followed by a concert held by country music artist George Strait on June 15, each drawing record-breaking crowds.

This report evaluates the economic impact of these events on the College Station-Bryan economy by focusing on taxable sales, hotel room revenues and mixed beverage sales for the month of June 2024. Together, these two cities make over 90% of taxable sales in Brazos County. Gross ticket sales and net revenue for the Brazil vs. Mexico game and George Strait concert are also shared.

KEY FINDINGS

- Comparing taxable sales in June 2023, College Station saw a 7.3% increase from \$206.6 million to \$221.6 million.
- Taxable sales for Bryan increased 0.9% from \$178.4 million in June 2023 to \$179.9 million in June 2024.
- Hotel room revenues were considerably higher in both cities over June of the previous year - College Station showed a 30.8% increase and Bryan showed a 32.4% increase.
- College Station's mixed beverage sales in June 2024 rose 70.8% over June 2023 sales.
- Bryan's mixed beverage sales increased 5.2% in June 2024 over the same month in 2023.
- Texas A&M reported \$7,680,678 in net revenue and \$6,887,020 in gross ticket sales from the Brazil vs. Mexico soccer friendly event.
- Net revenue for the George Strait concert totaled \$33,039,087, gross ticket sales totaled \$27,829,811.
- The two large-scale events held on campus at Texas A&M University provided a large positive impact on the local economy, an impact similar to the various fall football weekends in terms of hotel occupancy revenues and other related spending.

BACKGROUND

In June 2024, Aggieland played host to several high-profile events that drew significant crowds and boosted the local economy. Early in the month, the National Collegiate Athletic Association (NCAA) held two pivotal super regional baseball games at Blue Bell Stadium in College Station. On June 1, Texas A&M squared off against their archrivals from Texas, followed by a game against Louisiana on June 2nd, with both events drawing packed audiences of over 7,000 spectators each.

On June 8, the spotlight shifted to Kyle Field, which hosted the much-anticipated Brazil vs. Mexico soccer match. This event drew a record-breaking crowd of 85,249, the third-largest attendance ever recorded for a MexTour friendly. This match now holds the distinction of being the most attended game featuring the Mexican national team in Texas.

The George & Barbara Bush Foundation marked a significant milestone with its centennial celebration, which began on June 11 and continued through June 13. The festivities honored what would have been President Bush's 100th birthday, featuring a panel discussion with Pulitzer Prize-winning historian Jon Meacham, a skydiving exhibition by the Bush grandchildren, and a special concert at the Bush Presidential Library Center, headlined by Robert Earl Keen and Lyle Lovett.

Rounding out the month's events, country music legend George Strait made history on June 15th at Kyle Field in College Station. Strait's concert set a new record for the largest single-ticketed concert in U.S. history, with 110,905 fans in attendance. The show also featured performances by special guests Parker McCollum and Catie Offerman.

The purpose of this report is to evaluate the economic impact of the June events on the College Station-Bryan economy focusing on taxable sales, hotel room revenues and mixed beverage sales. These two cities together make over 90% of sales in Brazos County. Gross ticket sales and net revenue for the Brazil vs. Mexico soccer friendly and the George Strait concert are also reported.

DATA SOURCES

Taxable sales are sourced from the tax allocation summary reports, which is provided by the Texas Comptroller of Public Accounts. These data are reported on a monthly basis but lag by two months. The Hotel room revenues are collected from the public files reported under the Texas Comptroller's Office and the mixed beverage sales are obtained from the Texas Open Data Portal. We used these monthly taxable sales, hotel room revenues and mixed beverage sales displayed in Academic Year-format (September - August) for our analysis below. Texas A&M University supplied the information on gross ticket sales and net revenue.

ANALYSIS

In the following pages, gross ticket sales and net revenue from the Brazil vs. Mexico soccer friendly and the George Strait concert are reported. Additionally, we present the seasonal pattern of the monthly taxable sales, hotel room revenues and mixed beverage sales for the past three years for both College Station and Bryan. Data in the figures below are in academic year format, which spans from September to August of the following year. All metrics are not seasonally adjusted and not inflation adjusted.

LARGE EVENT TICKET SALES AND REVENUE

Although data from the Texas Comptroller is reported monthly, information about gross ticket sales, and the net revenue for the Brazil Mexico soccer friendly and George Strait concert from Texas A&M, give us a glimpse of the revenue generated from the two largest events held in June 2024.

Table 1 below illustrates the gross ticket sales for two events: the George Strait concert and the Brazil vs. Mexico soccer friendly.

TABLE 1. GEORGE STRAIT, BRAZIL VS MEXICO NET REVENUE AND TICKET SALES

	George Strait Concert	Brazil vs. Mexico
Gross Ticket Sales	\$27,829,810.94	\$6,887,020.49
Total Attendance	110,905	85,249
Estimated Average Ticket Price	\$250.93	\$80.79
All Event Net Revenue	\$33,039,087	\$7,680,678

Source: Texas A&M University.

At \$27.8 million, the George Strait concert generated four times more gross ticket sales than the Brazil vs. Mexico match with \$6.8 million. The concert attracted 110,905 attendees, compared to the soccer game’s 85,249 spectators. The average ticket price for the George Strait concert was approximately \$251, while the average ticket for the soccer match was around \$81. In comparison, the average ticket price for Texas A&M Football games is around \$150. Net revenue from the George Strait concert also surpassed the soccer friendly’s net revenue at \$33 million to nearly \$7.7 million.¹

TAXABLE SALES

The surge in spending in merchandise and services due to large events generates additional taxable sales for the cities of College Station and Bryan. The following two figures illustrate the trend of taxable sales for College Station and Bryan for academic years 2022-2024. Taxable sales include sales from retail goods and services.

COLLEGE STATION TAXABLE SALES

Table 1 below illustrates the gross ticket sales for two events: the George Strait concert and the Brazil vs. Mexico soccer friendly.

FIGURE 1: COLLEGE STATION TAXABLE SALES TRENDS, AY 2022-2024



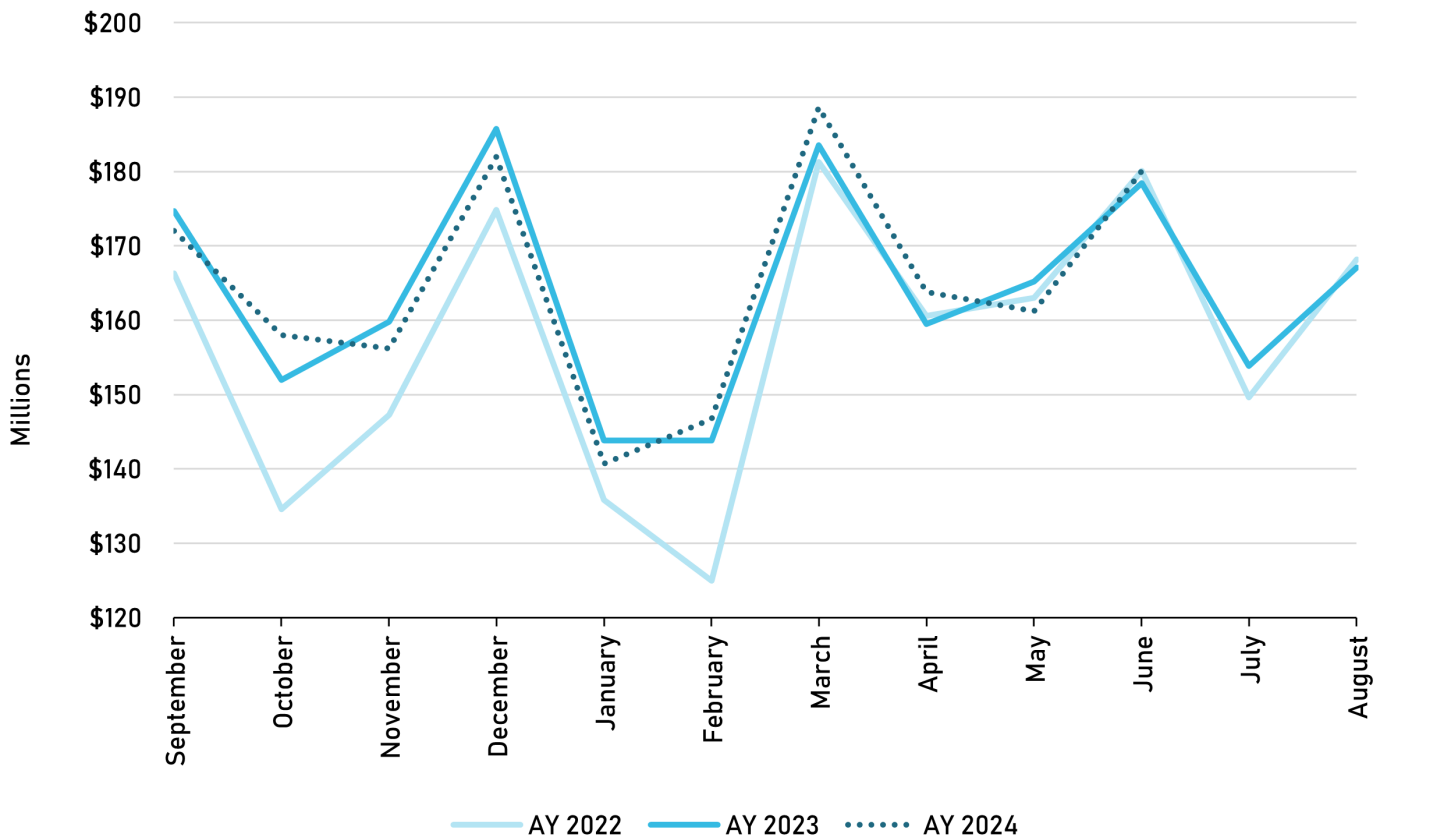
Source: Texas Comptroller of Public Accounts.

Throughout these years, a seasonal pattern is noticeable, with the highest peaks occurring during the football and holiday seasons, averaging around \$240.5 million when all three academic years are considered. Other notable peaks are seen in March and August each year. In previous years, the month of June consistently exhibits lower economic activity, as reflected by the absence of significant peaks during this period. However, June 2024 marked an exception, with taxable sales increasing by 7.3% compared to the previous academic year, rising from \$206.6 million to \$221.6 million. While it is challenging to attribute the increase to a specific event due to the monthly nature of the data, it is clear that the additional June events had a substantial impact on taxable sales and the local economy.

BRYAN TAXABLE SALES

Figure 2 highlights the seasonal pattern and trends in taxable sales in Bryan from the academic years 2022-2024.

FIGURE 2: BRYAN TAXABLE SALES TRENDS, AY 2022-2024



Source: Texas Comptroller of Public Accounts.

Similar to College Station, Bryan shows a consistent seasonal pattern, with notable peaks during the football and holiday season and in March. Additionally, Bryan experienced a peak in taxable sales each June across the three academic years, averaging around \$179.5 million. In AY 2024, June’s taxable sales were roughly average, with no significant deviation, although taxable sales in June 2023-24 were 0.9% higher than in June 2022-23.

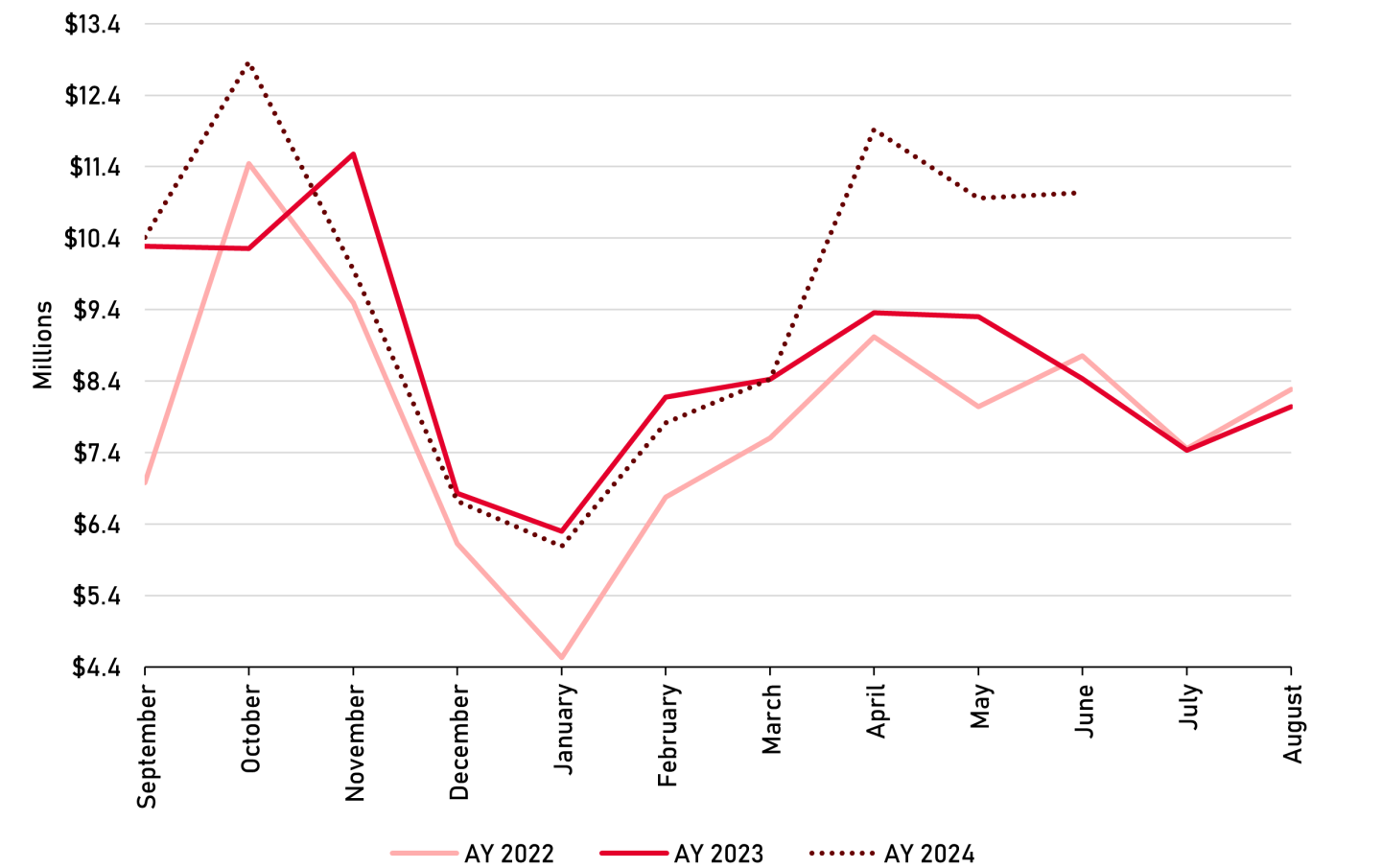
HOTEL ROOM REVENUES

The next two figures describe the seasonal patterns in hotel room revenues for both College Station and Bryan for academic years 2022-2024.

COLLEGE STATION HOTEL ROOM REVENUES

Figure 3 depicts the seasonal pattern and trends in hotel room revenues in College Station for academic years 2022-2024.

FIGURE 3: HOTEL ROOM REVENUES FOR COLLEGE STATION, AY 2022-2024



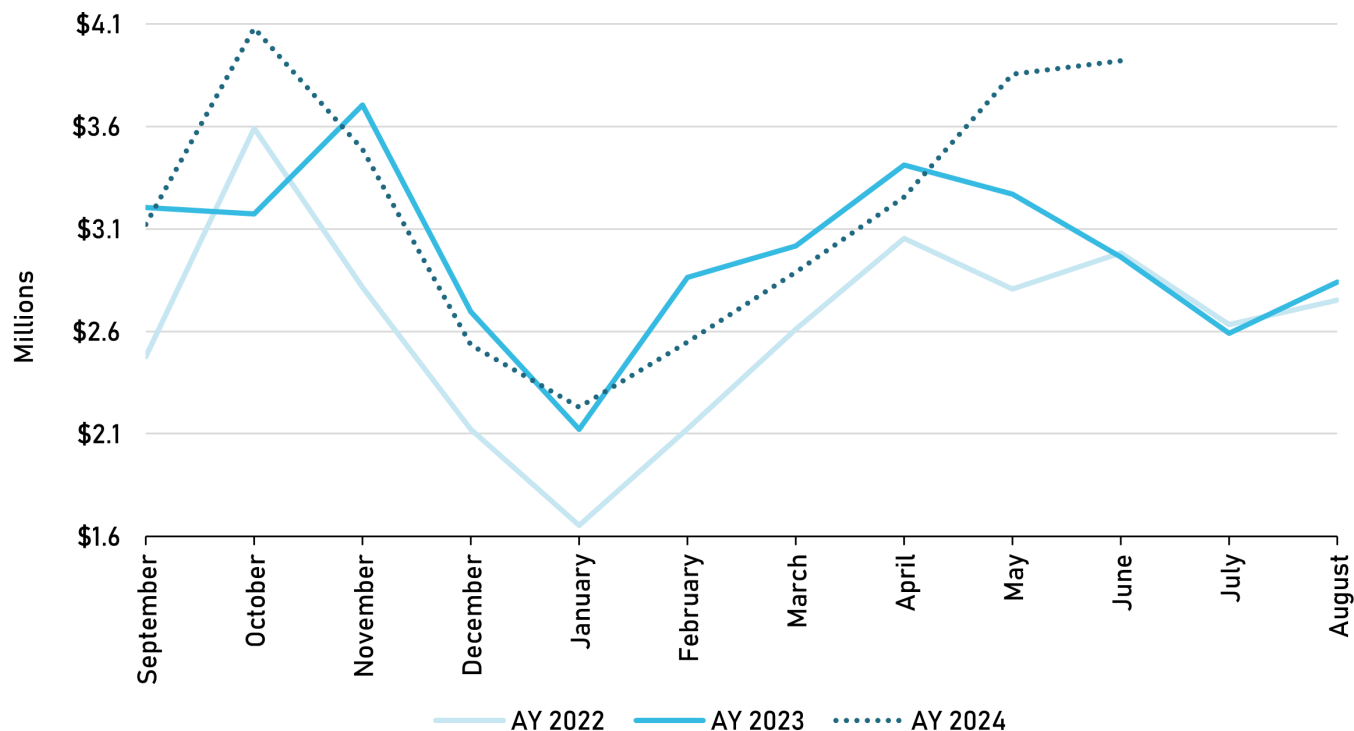
Source: Texas Comptroller of Public Accounts.

A clear seasonal cycle is evident, with higher revenues during the spring and fall and lower revenues in the summer and winter. The peaks in September and October align with the start of the academic year and football season, attracting many visitors from outside the area. In October, total room revenues across the three years averaged around \$11.5 million. Another peak occurs in the spring, particularly in March and April, coinciding with spring break, graduation events, and other activities that draw visitors from outside. The graph also shows a decline in hotel room revenues from May to July across all years due to the absence of any major events. For the month of June 2024, however, hotel room revenues were 30.8% higher than June 2023 and 26.1% higher than June 2022 - a substantial increase.

BRYAN HOTEL ROOM REVENUES

Figure 4 illustrates the seasonal cycle and trends in hotel room revenues for the city of Bryan.

FIGURE 4: HOTEL ROOM REVENUES FOR BRYAN, AY 2022-2024



Source: Texas Comptroller of Public Accounts.

The peaks and valleys in hotel room revenues mirror the patterns observed in College Station, with higher peaks in the fall and dips during the winter months, and smaller peaks around March and April. Notably, during the 2023-24 academic year, hotel room revenues showed a consistent upward trend starting from January, maintaining high levels through to the latest available data in June. The hotel room revenues for June of AY 2023- 24 were 32.4% higher than in June of AY 2022- 23 and 31.5% higher than in June of AY 2021-22, highlighting the impacts of the June events.

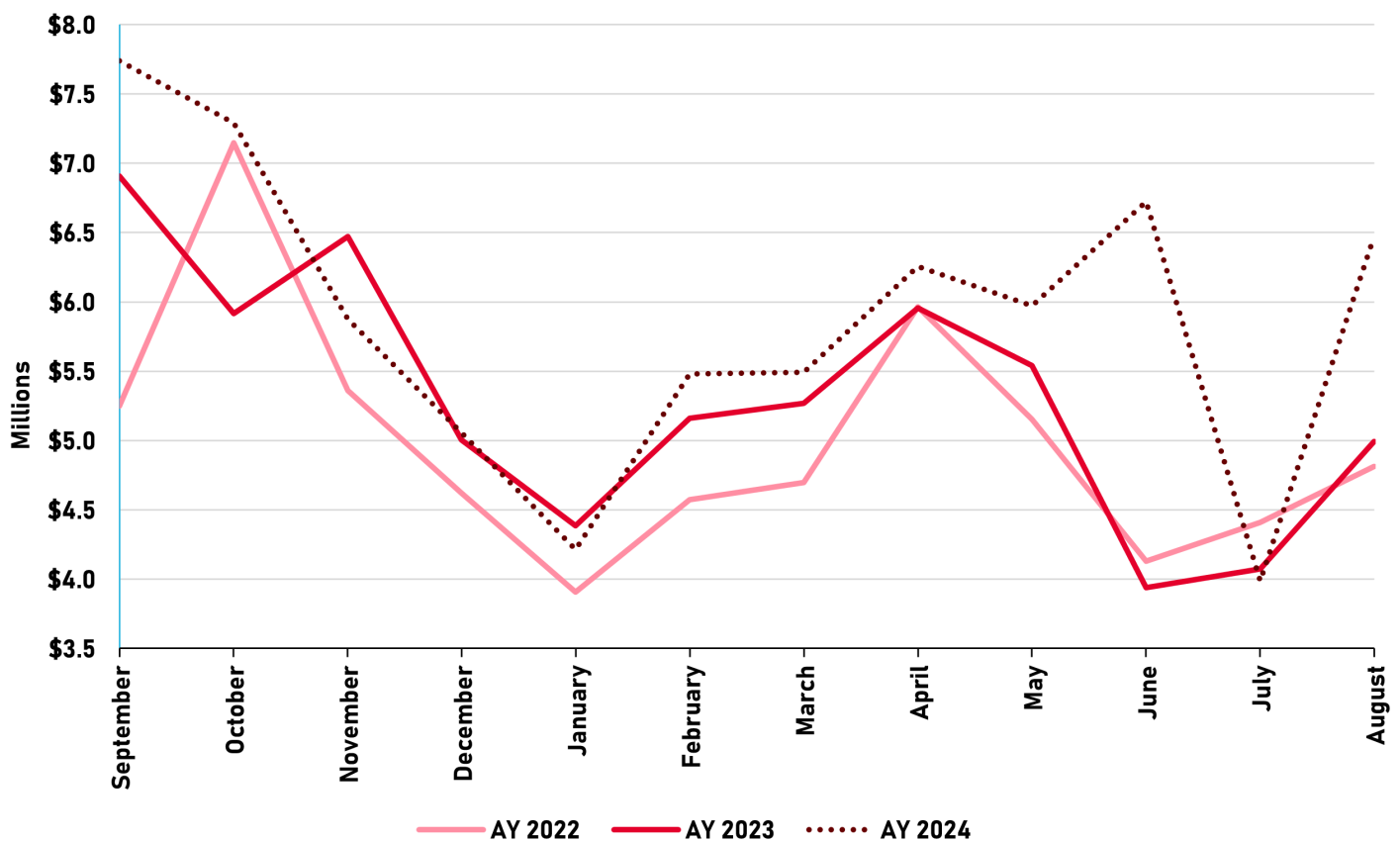
MIXED BEVERAGE SALES

The Texas Open Data Portal provides insights into mixed beverage sales, which include revenues from the sale of liquor, wine, and beer in various locations such as College Station and Bryan. The size of the crowd attending an event plays a crucial role in determining the volume of mixed beverage sales. For example, major events like the George Strait concert or the Brazil vs. Mexico soccer match, which attracted significant attendance, led to a notable rise in mixed beverage sales in College Station.

COLLEGE STATION MIXED BEVERAGE SALES

Figure 5 below demonstrates the seasonal trends in mixed beverage sales for College Station from for academic years 2022-2024.

FIGURE 5. COLLEGE STATION MIXED BEVERAGE SALES, AY 2022-2024



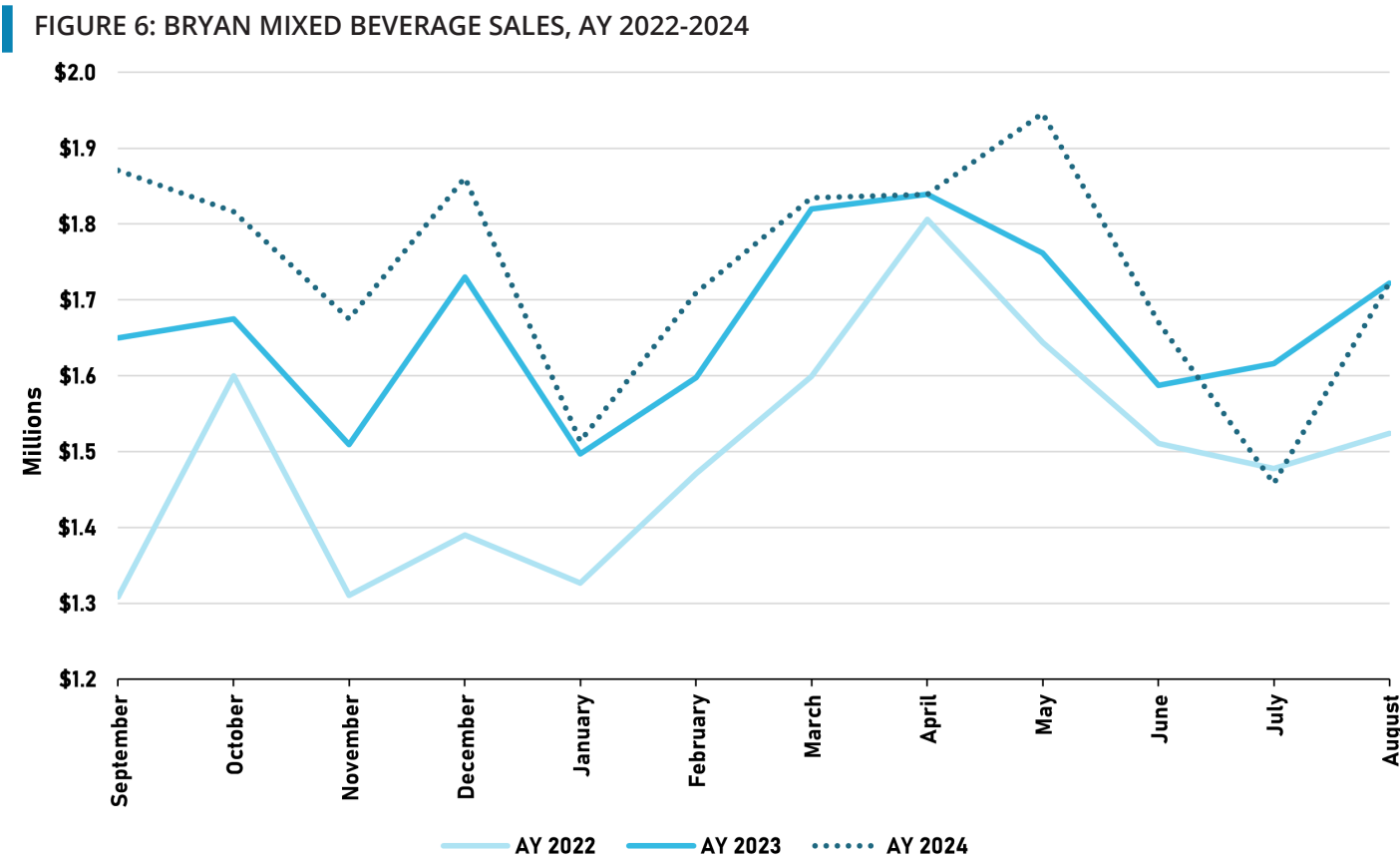
Source: Texas Comptroller of Public Accounts.

Typically, sales peak in the fall when the football season begins at Texas A&M University. Sales tend to decrease in January but gradually rise again in the spring. The summer months usually see a dip in sales, particularly in June, due to the lack of significant economic activities. On average, mixed beverage sales from September to June during the 2024 academic year were 10.2% higher than those from the same month for the previous academic year.

The events in June 2024 notably positively impacted mixed beverage sales, as illustrated in the graph below. Specifically, June 2024 saw a 70.8% rise in mixed beverage sales compared to June 2023 and a 62.9% increase from June 2022.

BRYAN MIXED BEVERAGE SALES

Figure 6 illustrates the mixed beverage sales (in dollars) for Bryan over three academic years 2022-2024.



Source: Texas Comptroller of Public Accounts.

The seasonal pattern for each year reveals monthly fluctuations, with noticeable peaks and troughs, highlights the variability in beverage sales. The seasonal pattern for 2024 displayed a significant surge particularly in May, where sales reached the highest levels across all years and months. However, mixed beverage sales dropped from a peak of \$1.9 million in May to \$1.6 million in June 2024. But, compared to the year prior in June 2023, mixed beverage sales in June 2024 were up by 5.2%.

JUNE 2024 METRICS

Table 2 summarizes the hotel room revenues, mixed beverage sales, and taxable sales for Brazos County, College Station and Bryan. Together, both the cities make 91% of the taxable sales, the hotel room revenue and mixed beverage sales of Brazos County.

TABLE 2. TAXABLE SALES, MIXED BEVERAGE SALES, HOTEL REVENUES FOR JUNE 2024

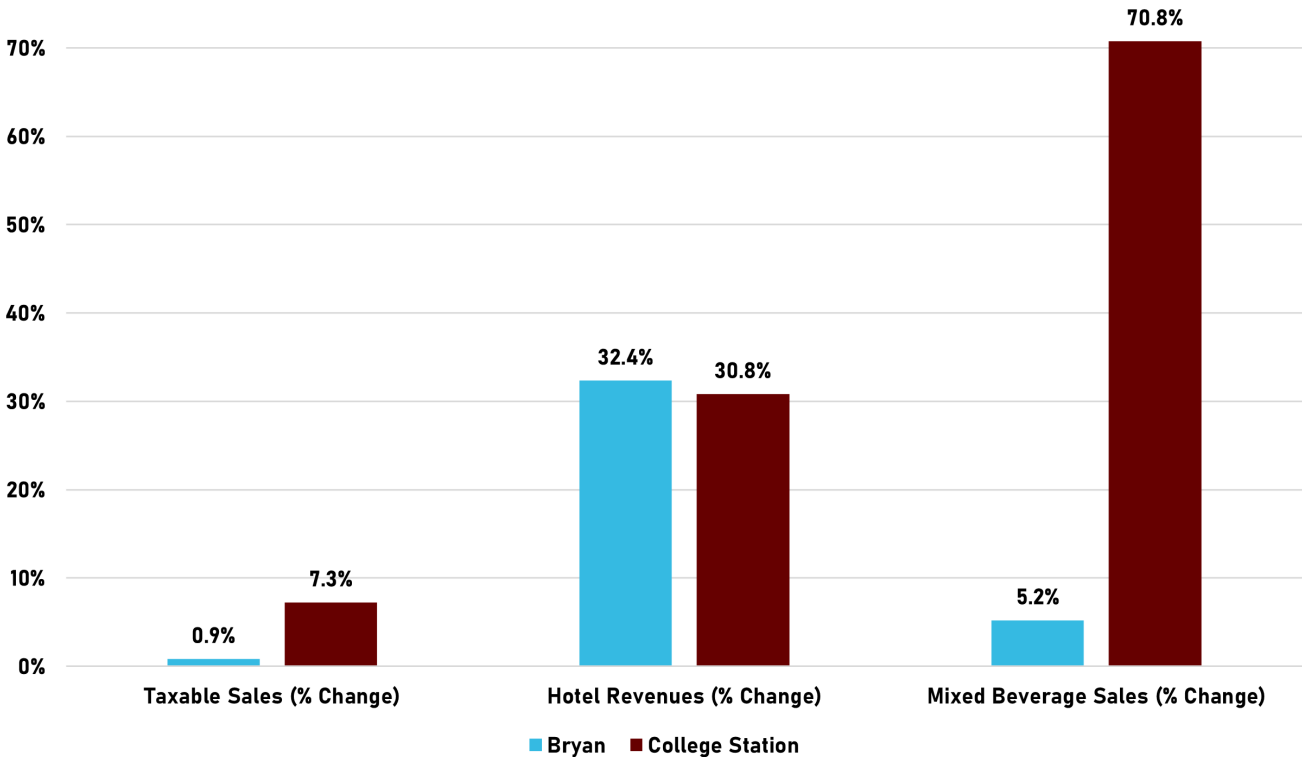
Area	Taxable Sales	Hotel Room Revenues	Mixed Beverage Sales
College Station	\$221,679,145	\$11,033,170	\$6,711,812
Bryan	\$179,979,724	\$3,921,285	\$1,670,479
Brazos	\$438,737,864	\$14,954,455	\$8,382,291

Source: Texas Comptroller of Public Accounts.

Overall, College Station reported \$221.7 million in taxable sales, just over \$11 million in hotel room revenues, and \$6.7 million in mixed beverage sales in June 2024. Bryan reported just under \$180 million in taxable sales, \$3.9 million in hotel revenues, and \$1.6 million in mixed beverage sales.

Figure 7 compares the percentage changes in taxable sales, mixed beverage sales, and hotel room revenues in College Station and Bryan during June 2023 and June 2024.

FIGURE 7: TAXABLE SALES, HOTEL REVENUES AND MIXED BEVERAGE SALES, JUNE 2023, JUNE2024



College Station saw the largest increases in taxable sales, hotel room revenues and mixed beverage sales for the month of June of 2024. The increase in mixed beverage sales in College Station from June 2023 to June 2024 was 70.8%, the highest among the three metrics. In Bryan, the largest increase was in hotel room revenues, which saw a rise of 32.4%.

CONCLUSION

The major events held in June 2024 had a positive impact on the economies of College Station and Bryan, particularly in terms of increased taxable sales, hotel room revenues, and mixed beverage sales. The George Strait concert and the Brazil vs. Mexico soccer game were particularly effective in attracting large crowds from outside the region, leading to increased spending within the local economy.

Since the data from the Texas Comptroller is presented in monthly increments, it makes it difficult to isolate the impact of any single event, but it is clear that College Station experienced substantial economic benefits, with notable gains in hotel room revenues and mixed beverage sales. Bryan, too, saw a substantial increase in hotel room revenues. The overall trend across both cities underscores the important role that these major events play in driving the local economy. In summary, June 2024 stands out as a month of exceptional economic activity, demonstrating the ability of Texas A&M University to leverage large-scale events that aid the local economies of College Station and Bryan.

ENDNOTE

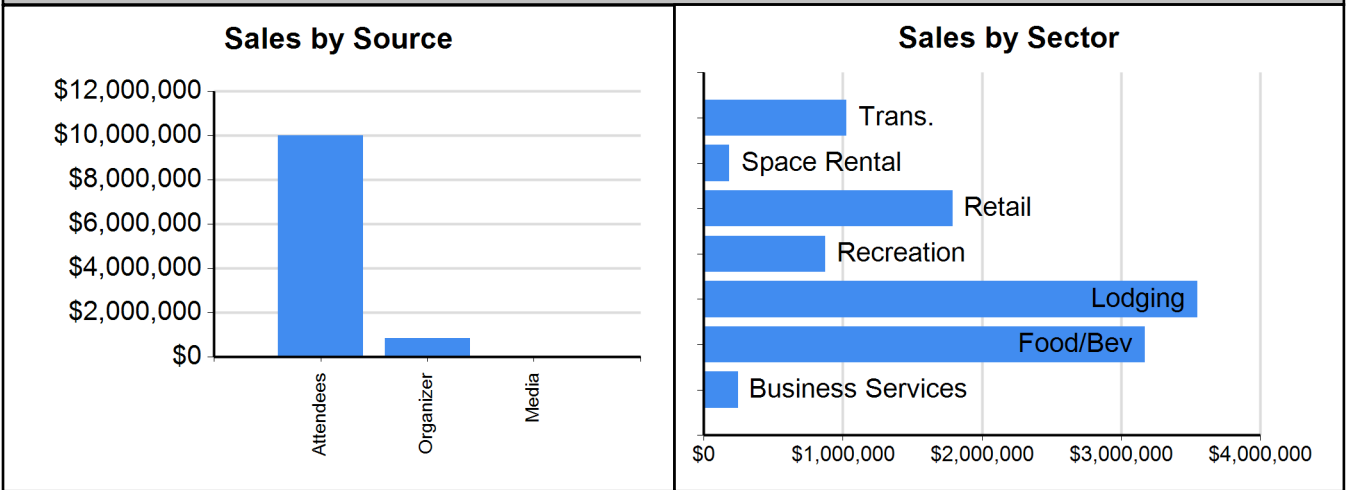
¹The large events at Kyle Field in June 2024 had an impact on the local economy much like the fall semester home football games. There was increased spending on hotels, on mixed beverages, and at restaurants, as well as additional spending on local area retail establishments. This was a boon for the local economy. These events do not have the same impact on Texas A&M University finances, however. Home football games yield funds from ticket sales and donations. Large concerts and large non-university sporting events earn large sums for the performers and sponsors of the events, with Texas A&M University receiving a payment for use of the venue. This payment, while substantial, is much lower than the financial return to the university from a home football game.

Event Impact Summary

Destination: Visit College Station

Event Parameters		Key Results	
Event Name:	2024 USATF National Junior Olympic Track & Field Championships	Business Sales (Direct):	\$10,837,299
Organization:	USA Track & Field	Business Sales (Total):	\$16,396,696
Event Type:	Youth Amateur	Jobs Supported (Direct):	2,601
Start Date:	7/22/2024	Jobs Supported (Total):	2,983
End Date:	7/28/2024	Local Taxes (Total):	\$422,771
Overnight Attendees:	12000	Net Direct Tax ROI:	\$387,637
Day Attendees:	0	Estimated Room Demand:	22,324

Direct Business Sales



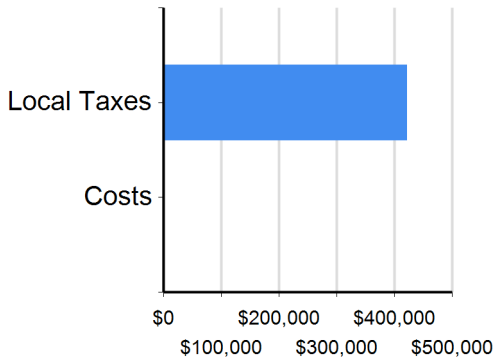
Industry	Attendees	Organizer	Media/Sponsors	Total
Lodging	\$3,549,453	\$0	\$0	\$3,549,453
Transportation	\$1,015,791	\$10,342	\$1,452	\$1,027,584
Food & Beverage	\$2,774,355	\$395,080	\$0	\$3,169,435
Retail	\$1,788,702	\$0	\$0	\$1,788,702
Recreation	\$873,297	\$0	\$0	\$873,297
Space Rental	\$0	\$183,869	\$0	\$183,869
Business Services	\$0	\$244,140	\$819	\$244,959
TOTAL	\$10,001,598	\$833,430	\$2,271	\$10,837,299

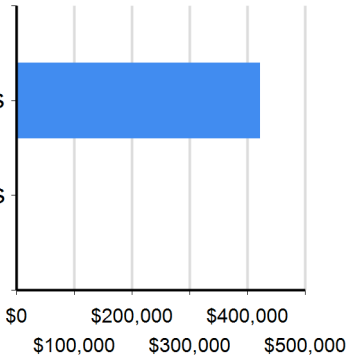
Event Impact Details

Destination: Visit College Station

Event Name: 2024 USATF National Junior Olympic Track & Field Championships 2024
Organization: USA Track & Field

Economic Impact Details			
	Direct	Indirect/Induced	Total
Business Sales	\$10,837,299	\$5,559,397	\$16,396,696
Personal Income	\$3,090,268	\$1,494,475	\$4,584,742
Jobs Supported			
Persons	2,601	382	2,983
Annual FTEs	119	18	137
Taxes and Assessments			
Federal Total	\$919,081	\$461,127	\$1,380,208
State Total	\$630,143	\$100,690	\$730,832
sales	\$390,227	\$86,866	\$477,093
income	\$0	\$0	\$0
bed	\$212,967	-	\$212,967
other	\$26,948	\$13,824	\$40,772
Local Total (excl. property)	\$387,637	\$35,134	\$422,771
sales	\$124,873	\$27,797	\$152,670
income	\$0	\$0	\$0
bed	\$248,462	-	\$248,462
per room charge	\$0	-	\$0
tourism district	\$0	-	\$0
restaurant	\$0	\$0	\$0
other	\$14,302	\$7,337	\$21,639
property tax	\$128,630	\$44,361	\$172,991

Event Return on Investment (ROI)		
Direct local tax ROI (net property taxes)		
Direct Tax Receipts	\$387,637	
DMO Hosting Costs	\$0	
Direct ROI	\$387,637	
Net Present Value	\$387,637	
Direct ROI (%)	-	
Total local tax ROI (net property taxes)		
Total Local Tax Receipts	\$422,771	
Total ROI	\$422,771	
Net Present Value	\$422,771	
Total ROI (%)	-	



Estimated Room Demand Metrics	
Room Nights (total)	22,324
Room Pickup (block only)	1,650
Peak Rooms	4,444
Total Visitor Days	60,274

November 14, 2024
Item No. 9.3.
FY2024 Comprehensive Plan and UDO Annual Review

Sponsor: Christine Leal, Long Range Planning Administrator

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Presentation, discussion, and possible action regarding the FY2024 Comprehensive Plan and Unified Development Ordinance (UDO) Annual Review.

Relationship to Strategic Goals:

- Good Governance
- Financially Sustainable City
- Core Services and Infrastructure
- Neighborhood Integrity
- Diverse Growing Economy
- Improving Mobility
- Sustainable City

Recommendation(s): Staff recommends that the City Council receive the Annual Report and provide direction as appropriate. The Planning & Zoning Commission received this update at their October 17, 2024 meeting.

Summary: The FY2024 Comprehensive Plan & Unified Development Ordinance (UDO) Annual Review highlights the major Comprehensive Plan initiatives that occurred during FY2024. It covers the Comprehensive Plan and all associated master plans, programs, and small area plans. The review also includes amendments that were made to the UDO, which helps implement the Comprehensive Plan's vision. This Annual Review is organized into the following categories and each item is labeled with its associated plan(s), as applicable:

- Associated Plans and Small Area Plans;
- Infrastructure projects that were completed, under construction, or under design;
- Programs that were hosted by City departments;
- UDO Amendments; and
- Implementation Progress Report.

In 2022, the City began using collaborative, project management software to track the implementation progress of every action item in the Comprehensive Plan. City staff utilize this software to establish project milestones, assign tasks, set due dates, and generate automated update reminders. This software enables staff to manage projects more efficiently and supports the City's commitment to transparent reporting. Appendix A is a report generated from this system that details the current status of each action item as of September 30, 2024. The breakdown by status for all 98 action items is listed below.

- Achieved - 5 (5%)
- On Track - 81 (83%)

- Off Track - 0 (0%)
- At Risk - 1 (1%)
- Not Started - 11 (11%)

Looking ahead, in FY2025, the City will initiate a process to evaluate and update the Comprehensive Plan. The Comprehensive Plan calls for an Evaluation and Appraisal Report to be prepared every five years by City staff with input from the community, various City departments, the Planning and Zoning Commission, and other appropriate boards and commissions. The purpose of the evaluation is to identify the successes and shortcomings of the Plan, consider changing conditions, and recommend appropriate updates. Ultimately, the Report will provide a review of the basic conditions and assumptions related to College Station's growth, an evaluation of the 5-year implementation progress, and may recommend updates to the existing Comprehensive Plan.

Budget & Financial Summary:

Attachments:

1. FY2024 Comprehensive Plan & Unified Development Ordinance Annual Review



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

FY2024 COMPREHENSIVE PLAN & UNIFIED
DEVELOPMENT ORDINANCE ANNUAL REVIEW



TABLE OF CONTENTS

Introduction	3
Associated Plans and Icons	4
Completed Infrastructure Projects	6
Map	7
Construction Underway Projects	8
Map	10
Design Underway Projects	11
Map	15
Programs	17
UDO Amendments	20
Appendix A - Implementation Progress Report. . .	21

FY2024 COMPREHENSIVE PLAN & UNIFIED DEVELOPMENT ORDINANCE ANNUAL REVIEW

The FY2024 Comprehensive Plan & Unified Development Ordinance (UDO) Annual Review highlights the major Comprehensive Plan initiatives that occurred during FY2024. It covers the Comprehensive Plan and all associated master plans, programs, and small area plans. The review also includes amendments that were made to the UDO, which helps implement the Comprehensive Plan's vision. This Annual Review is organized into the following categories and each item is labeled with its associated plan(s), as applicable:

- Associated Plans and Small Area Plans;
- Infrastructure projects that were completed, under construction, or under design;
- Programs that were hosted by City departments;
- UDO Amendments; and
- Implementation Progress Report.

Summary

In 2022, the City began using collaborative, project management software to track the implementation progress of every action item in the Comprehensive Plan. City staff utilize this software to establish project milestones, assign tasks, set due dates, and generate automated update reminders. This software enables staff to manage projects more efficiently and supports the City's commitment to transparent reporting. Appendix A is a report generated from this system that details the current status of each action item as of September 30, 2024. The breakdown by status for all 98 action items is listed below.

- Achieved - 5 (5%)
- On Track - 81 (83%)
- Off Track - 0 (0%)
- At Risk - 1 (1%)
- Not Started - 11 (11%)

Looking Ahead

The Comprehensive Plan calls for an Evaluation and Appraisal Report to be prepared every five years by City staff with input from the community, various City departments, the Planning and Zoning Commission, and other appropriate boards and commissions. In FY2025, the City will initiate a process to evaluate the Comprehensive Plan. The purpose of the evaluation is to identify the successes and shortcomings of the Plan, consider changing conditions, and recommend appropriate updates. Ultimately, the Report will provide a review of the basic conditions and assumptions related to College Station's growth, an evaluation of the 5-year implementation progress, and may recommend updates to the existing Comprehensive Plan.

ASSOCIATED PLANS

While all associated plans implement the broad goals and aspirations of the Comprehensive Plan, many of the plans contain specific actions and infrastructure projects that have been implemented throughout the last year. Each item on the following tables is labeled with the associated plan(s), if applicable. Please note, if an item is not labeled with any associated plan(s), it is an item that implements the broader Comprehensive Plan.



Bicycle, Pedestrian, and Greenways Master Plan - provides a long-term vision of the bicycle, pedestrian, and greenway facilities necessary to meet the community's mobility needs (*adopted January 2010, updated May 2018 and October 2021*)



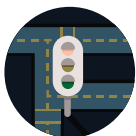
Consolidated Plan/Annual Action Plan – provides guidance for a 5-year period to allow for the effective use of federal grant funds to address the housing and community development needs of the City's low- to moderate-income population (*2020-2024 Consolidated Plan adopted July 2020, Action Plans adopted annually*)



Economic Development Master Plan – provides guidance for the next 5 to 10 years to ensure growth and development advance the City's economic development objectives (*adopted September 2013, updated May 2020*)



Parks & Recreation Master Plan - identifies parks and recreation needs over a 10-year horizon and provides guidance on how to best address those needs (*adopted July 2011*)



Thoroughfare Plan – provides the long-term plan of the major street network necessary to meet future mobility needs (*adopted 2009, updated October 2021*)



Wastewater Master Plan* - identifies the wastewater system infrastructure needed to serve future growth and rehabilitate existing areas where needed (*adopted April 2017, updated October 2021*)



Water Master Plan* - identifies the water system infrastructure needed to serve future growth and rehabilitate existing areas where needed (*adopted April 2017, updated October 2021*)

**Projects are typically not mapped as part of this Annual Review for security purposes.*



SMALL AREA PLANS

Small area plans are shorter-term, action-oriented plans that focus on the needs and opportunities within a specific geographic area. Over the years, the City of College Station has adopted several small area plans which fall under four main categories - Neighborhood Plans, District Plans, Redevelopment Area Plans, and Corridor Plans.

During the Comprehensive Plan's 10-year evaluation process in 2020, the need to audit small area plans was identified through rigorous stakeholder engagement and plan analysis. The purpose of the audit is to determine the status of each plan's implementation, associated successes and challenges, and recommendations for each plan's retirement or update.

In 2022, the City conducted research on peer city audit methods, established an auditing process, and completed the evaluation of five small area plans. In 2024, the City completed the process began in 2022 by auditing three additional small area Plans - Wolf Pen Creek Corridor Study (1987), Northgate Redevelopment Plan (1996), and Medical District Master Plan (2012).



Wellborn District Plan – covers over 929 acres in the southwestern portion of the city, including much of the historic Wellborn Community
(adopted April 2013, updated October 2023)



Northeast Gateway Redevelopment Plan – creates a coordinated strategy for future change and redevelopment along two of the busiest corridors in the city: Texas Avenue and University Drive (FM 60)
(adopted September 2023)

INFRASTRUCTURE PROJECTS

Construction Completed

Map #	Project / Location	Responsible Party / Project Description	Associated plan(s)
1	UNIVERSITY DRIVE E & VETERANS PARK TRAFFIC SIGNAL	CITY/TXDOT: Installed traffic signal at the intersection of University Drive East and Veterans Park	
2	DRAINAGE IMPROVEMENTS	CITY: Upgraded drainage at Stallings Dr. and University Oaks Blvd.	
3	BEE CREEK PARK & TARROW PARK NATIVE TREE PLANTING	CITY - GRANT FUNDED: Planted 108 Native Trees (15, 30, and 45 Gallon) as part of the Cooling College Station Plan	 PARKS AND RECREATION MASTER PLAN
4	CARTERS CREEK WWTP EQUIPMENT BUILDING	CITY: Designed and constructed a pre-engineered metal building with 6 bays adjacent to a 2-pump fuel island that is currently under construction.	
5	ROCK PRAIRIE ROAD WEST SIDEWALK	RIVER BEND DEVELOPMENT: Constructed sidewalk on south side of Rock Prairie Road West from Holleman Drive South to 260 west of Holleman Drive South	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
6	ROCK PRAIRIE ROAD WEST IMPROVEMENTS	CITY: Rehabilitated Rock Prairie West from Wellborn Road to City Limits	 THOROUGHFARE PLAN
7	GREENS PRAIRIE ROAD – PHASE 2	CITY: Reconstructed Greens Prairie Road from Arrington to City Limits. Replaced asphalt with concrete roadway, including curb, gutter, underground storm drain, and sidewalks.	
8	LICK CREEK BIRD BLINDS	CITY: Designed and constructed 2 bird blinds in Lick Creek Park	 PARKS AND RECREATION MASTER PLAN
*	FM 2818 TRANSMISSION LINE REHABILITATION	TXDOT: Relocated multiple utilities along FM 2818 from FM2154 to FM60	
*	SPPS SHED & SITE IMPROVEMENTS, WELL #5 SECURITY FENCE	CITY: Designed and constructed a pre-fabricated metal building with 3 bays and security fence.	

FY2024 CONSTRUCTION COMPLETED PROJECTS

- 1 UNIVERSITY DRIVE EAST & VETERANS PARK TRAFFIC SIGNAL
- 2 DRAINAGE IMPROVEMENTS AT STALLINGS DRIVE AND UNIVERSITY OAKS BLVD
- 3 BEE CREEK AND TARROW PARK NATIVE TREE PLANTING
- 4 CARTERS CREEK WWTP EQUIPMENT BUILDING
- 5 ROCK PRAIRIE ROAD WEST SIDEWALK
- 6 ROCK PRAIRIE ROAD WEST IMPROVEMENTS
- 7 GREENS PRAIRIE ROAD - PHASE 2
- 8 BIRD BLINDS



Construction Underway

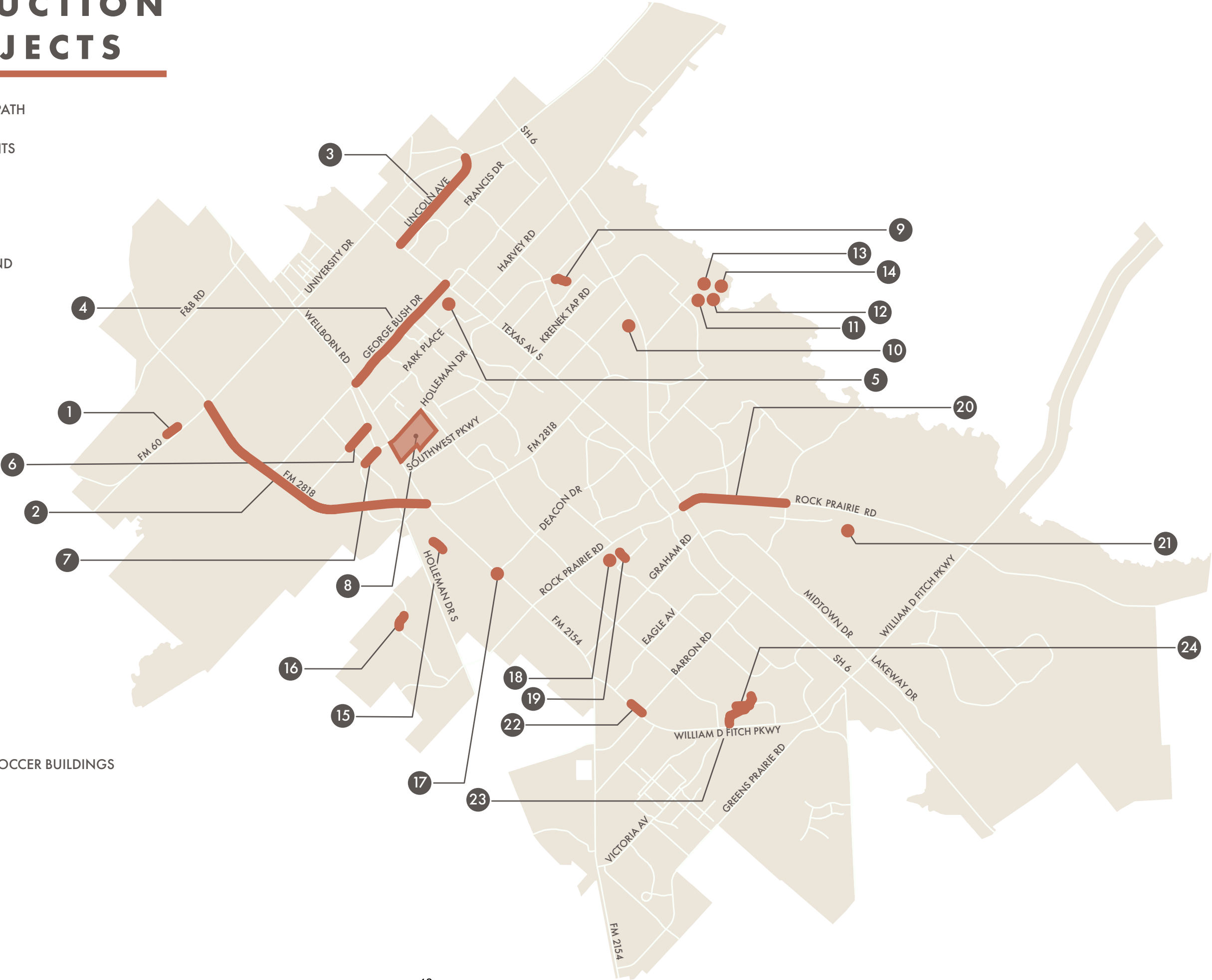
Map #	Project / Location	Responsible Party / Project Description	Associated plan(s)
1	RAYMOND STOTZER PARKWAY (FM60) SHARED USE PATH	TURKEY CREEK DEVELOPMENT: Constructing a 10-ft wide shared use path on Turkey Creek Dr extending 800 ft east	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
2	HARVEY MITCHELL PARKWAY (FM2818) IMPROVEMENTS	TXDOT: FM 2154 (Wellborn Road) to FM60 (Raymond Stotzer Parkway)	 THOROUGHFARE PLAN
3	LINCOLN AVENUE REHABILITATION	CITY: Reconstructing Lincoln Avenue from Texas Avenue to University Drive	
4	GEORGE BUSH SEPARATED BIKE LANES	CITY/TXDOT: Separated bike lanes from Texas Avenue to Wellborn Road	
5	DRAINAGE IMPROVEMENTS	CITY: Drainage improvements at Milliff and Redmond	
6	LUTHER STREET REHABILITATION	CITY: Rehabilitation of Luther Street from Marion Pugh to Penberthy	
7	HOLLEMAN DRIVE WEST SIDEWALKS	WOODWAY WEST DEVELOPMENT: Constructing sidewalk on north side of Holleman Drive West between Marion Pugh Drive and Jones Butler Road	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
8	MUCCULLOCH REHAB	CITY: Rehabilitation of water and wastewater lines in the Southgate area, in the vicinity generally bounded by Wellborn Rd, Holleman Dr, Georgia St, Nevada St, and Southland St	 WATER MASTER PLAN  WASTEWATER MASTER PLAN
9	WOLF PEN CREEK COORIDOR EROSION	CITY: Erosion control project	 PARKS AND RECREATION MASTER PLAN
10	FUN FOR ALL PLAYGROUND IMPROVEMENTS	CITY – DONOR FUNDED: Playground & shade cover installation for 2- to 5-year-old children with disabilities	 PARKS AND RECREATION MASTER PLAN
11	CARTERS CREEK OFFICE REMODEL	CITY: Office renovation at Carters Creek Wastewater Treatment Plant	
12	CARTERS CREEK FUEL ISLAND	CITY: Constructing 2-pump fuel island next to new equipment building at Carters Creek WWTP	
13	CARTERS CREEK BLOWER BLDG #2 REPLACEMENT	CITY: Replacing existing aeration blowers within blower bldg. #2	 WASTEWATER MASTER PLAN
14	CARTERS CREEK BLOWER BLDG #3 REPLACEMENT	CITY: Replacing existing aeration blowers within blower bldg. #3	 WASTEWATER MASTER PLAN

Construction Underway

Map #	Project / Location	Responsible Party / Project Description	Associated plan(s)
15	GENERAL PARKWAY EXTENSION	CHARLESTON MILLS DEVELOPMENT: Extending General Pkwy as a minor collector with bike lanes and sidewalks on both sides for 675 ft	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN  THOROUGHFARE PLAN
16	FEATHER RUN SIDEWALK	MISSION RANCH DEVELOPMENT: Constructing a sidewalk on west side of Feather Run between Briscoe Manor Ct and Kerr Valley Ln	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
17	CAIN/DEACON RAILROAD SWITCH	CITY: Constructing Railroad Crossing at Deacon and closing crossing at Cain	
18	BACHMANN LITTLE LEAGUE & SENIOR LEAGUE/SOCCER BUILDINGS	CITY – BONDS: Demolishing existing structure and building new facilities with expanded restrooms, concession areas, and storage for user groups	 PARKS AND RECREATION MASTER PLAN
19	BACHMANN PARK SHARED USE PATH	ARNOLD ROAD SENIOR LIVING DEVELOPMENT: shared use path Arnold Rd extending north 430 ft into the park	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
20	ROCK PRAIRIE ROAD EAST WIDENING	CITY: Constructing Rock Prairie Rd from State Highway 6 to Town Lake Dr	 THOROUGHFARE PLAN
21	TEXAS INDEPENDENCE PARK – RESTROOM BLDG	CITY: Constructing restroom building at Texas Independence Park	 PARKS AND RECREATION MASTER PLAN
22	WILLIAM D. FITCH SHARED USE PATH	BARRON LANDING DEVELOPMENT: Constructing a shared use path on the north side of William D. Fitch between Barron Rd and Hofburg Dr	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
23	SPRING CREEK TRIBUTARY 7 SHARED USE PATH	PHILLIPS SQUARE DEVELOPMENT: Constructing a shared use path along Spring Creek Tributary 7 west of Castle Rock Subdivision	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
24	CASTLE ROCK PARKWAY EXTENSION	PHILLIPS SQUARE DEVELOPMENT: Extending Castle Rock Pkwy as a minor collector; bike lanes & sidewalks on both sides for 800 ft west from Castle Rock	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN  THOROUGHFARE PLAN
*	BEE CREEK PARALLEL TRUCKLINE – PHASE 3	CITY: Constructing a 42" trunkline between SH6 and Texas Avenue	 WASTEWATER MASTER PLAN
*	CARTERS CREEK WWTP LIFT STATION FORCE MAIN	CITY: Constructing a diversion lift station and 20" force main at Carters Creek WWTP	 WASTEWATER MASTER PLAN
*	DECOMISSION CARTER LAKE WWTF	CITY: Constructing a low flow lift station and 2" force main	 WASTEWATER MASTER PLAN

FY2024 CONSTRUCTION UNDERWAY PROJECTS

- 1 RAYMOND STOTZER PARKWAY (FM 60) SHARED USE PATH
- 2 HARVEY MITCHELL PARKWAY (FM 2818) IMPROVEMENTS
- 3 LINCOLN AVENUE REHAB
- 4 GEORGE BUSH SEPARATED BIKE LANES
- 5 DRAINAGE IMPROVEMENTS AT MILLIFF AND REDMOND
- 6 LUTHER STREET REHAB
- 7 HOLLEMAN DRIVE WEST SIDEWALKS
- 8 MCCULLOCH REHAB
- 9 WOLF PEN CREEK CORRIDOR EROSION
- 10 FUN FOR ALL PLAYGROUND IMPROVEMENTS
- 11 CARTERS CREEK WWTP OFFICE REMODEL
- 12 CARTERS CREEK WWTP FUELING ISLAND
- 13 CARTERS CREEK BLOWER BLDG #2 REPLACEMENT
- 14 CARTERS CREEK BLOWER BLDG #3 REPLACEMENT
- 15 GENERAL PARKWAY EXTENSION
- 16 FEATHER RUN SIDEWALK
- 17 CAIN/DEACON RR SWITCH
- 18 BACHMANN LITTLE LEAGUE AND SENIOR LEAGUE/ SOCCER BUILDINGS
- 19 BRIAN BACHMANN PARK SHARED USE PATH
- 20 ROCK PRAIRIE ROAD EAST WIDENING
- 21 TEXAS INDEPENDENCE PARK - RESTROOM BUILDING
- 22 WILLIAM D FITCH PARKWAY SHARED USE PATH
- 23 SPRING CREEK TRIBUTARY 7 SHARED USE PATH
- 24 CASTLE ROCK PARKWAY EXTENSION



Design Underway

Map #	Project / Location	Responsible Party / Project Description	Associated plan(s)
1	CITY GATEWAY SIGN #3 (WEST)	CITY: Design and construction of gateway monument sign to be located at the western entrance of the City near FM60/SH47 interchange	
2	COLLEGE HEIGHTS UTILITY REHABILITATION	CITY: Rehabilitation of water and wastewater lines in the vicinity of Eisenhower St, University Dr, Jane St, and Nimitz St, approximately 4,000 linear ft of 8" water distribution line and 2,000 linear ft of 12" water distribution line	 WATER MASTER PLAN  WASTEWATER MASTER PLAN  NORTHEAST GATEWAY REDEVELOPMENT PLAN
3	STATE HIGHWAY 6 IMPROVEMENTS	TXDOT: SH6 improvements	
4	FOSTER AVENUE SIDEWALKS	CITY – CDBG FUNDING: Sidewalk safety improvements on Foster Ave from Walton Dr to Francis Dr and Gilchrist Ave to George Bush Dr E	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN  CONSOLIDATED PLAN/ANNUAL ACTION PLAN
5	FRANCIS DRIVE - PHASE 3	CITY: Rehabilitation of Francis Dr from Texas Ave to Walton Dr	
6	CITY HALL BUS SHELTER	CITY – CDBG FUNDING: Design and construction of a Bus Shelter at City Hall	 CONSOLIDATED PLAN/ANNUAL ACTION PLAN
7	JAMES/PURYEAR REHABILITATION	CITY: Rehabilitate James and Puryear from Francis Dr to Kyle, including park improvements	
8	THOMAS PARK IMPROVEMENTS	CITY: Improvements and new amenities to Thomas Park	 PARKS AND RECREATION MASTER PLAN
9	VETERANS PARK MASTERPLAN	CITY: Masterplan of 3 entrances (University Dr, Harvey Rd, and to Veteran's Memorial area) and landscaping of entire park	 PARKS AND RECREATION MASTER PLAN
10	VETERANS PARK BASEBALL COMPLEX	CITY: Addition of 3 youth baseball fields to current park system	 PARKS AND RECREATION MASTER PLAN
11	SUMMIT CROSSING PARK DEVELOPMENT	CITY – PARKLAND DEVELOPMENT: New Neighborhood Park Development	 PARKS AND RECREATION MASTER PLAN
12	STATE HIGHWAY 30 (HARVEY RD) WIDENING	TXDOT: Widening roadway to 4 lanes with shared use paths and intersection improvements	 THOROUGHFARE PLAN
13	HOLLEMAN DR WEST/ JONES BUTLER RD ROUNDABOUT	CITY: Design and construction of a roundabout at the intersection of Holleman Dr and Jones Butler Rd	

Design Underway

Map #	Project / Location	Responsible Party / Project Description	Associated plan(s)
14	LINCOLN CENTER AREA IMPROVEMENTS	CITY – BONDS: Addition of bathrooms and pedestrian improvements	
15	LINCOLN CENTER SPLASH PAD RENOVATION	CITY – CDBG FUNDING: Renovation of Lincoln Center Splash Pad	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
16	ANDERSON PARK PICKLEBALL & MULTI-USE COURTS	CITY – BONDS: Installation of 4 outdoor Pickleball courts and 2 multi-use courts for futsal and other sports. Includes full LED lighting and may include additional parking	 PARKS AND RECREATION MASTER PLAN
17	JONES BUTLER EXTENSION AND ROUNDABOUT	CITY: Roundabout at Holleman/ Jones Butler/ N. Dowling St	
18	BEE CREEK & CENTRAL PARK TENNIS COURT REPLACEMENT	CITY – BONDS: Surface rehabilitation of tennis courts, possible structural rehabilitation at Bee Creek, replace chain link fence, and remove/replace selective overhead lights with LED poles	 PARKS AND RECREATION MASTER PLAN
19	KRENEK TAP REHABILITATION	CITY: Design and construction for the Rehabilitation of Krennek Tap Rd from SH6 to Texas Avenue	
20	CENTRAL PARK OPERATIONS SHOP	CITY – BONDS: Demolition of existing structure to be replaced with storage, workshops, restrooms, and office spaces	 PARKS AND RECREATION MASTER PLAN
21	FUN FOR ALL PLAYGROUND PLAZA & DONOR RECOGNITION	CITY – DONOR FUNDED: Improve plaza, add shade, and recognize community donors	 PARKS AND RECREATION MASTER PLAN
22	CARTERS CREEK WWTP EFFLUENT CLOTH FILTERS	CITY: Addition of effluent filtration system to Carters Creek WWTP	 WASTEWATER MASTER PLAN
23	CARTERS CREEK OUTFALL PROJECT	CITY: Replace final effluent lines at Carters Creek WWTP	 WASTEWATER MASTER PLAN
24	HARVEY MITCHELL PKWY (FM 2818) SHARED USE PATH	CITY/TXDOT: Construction of shared use path on south side of Harvey Mitchell Pkwy from Waxwing to Texas Avenue	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
25	BACHMANN PARK TENNIS/PICKLEBALL COURT RENOVATIONS	CITY: Refurbish court surfaces and convert 2 of the 4 tennis courts into 6 permanent pickleball courts	 PARKS AND RECREATION MASTER PLAN
26	WELLBORN ROAD (FM 2154) WIDENING	TXDOT: FM 2154 widening	 THOROUGHFARE PLAN

Design Underway

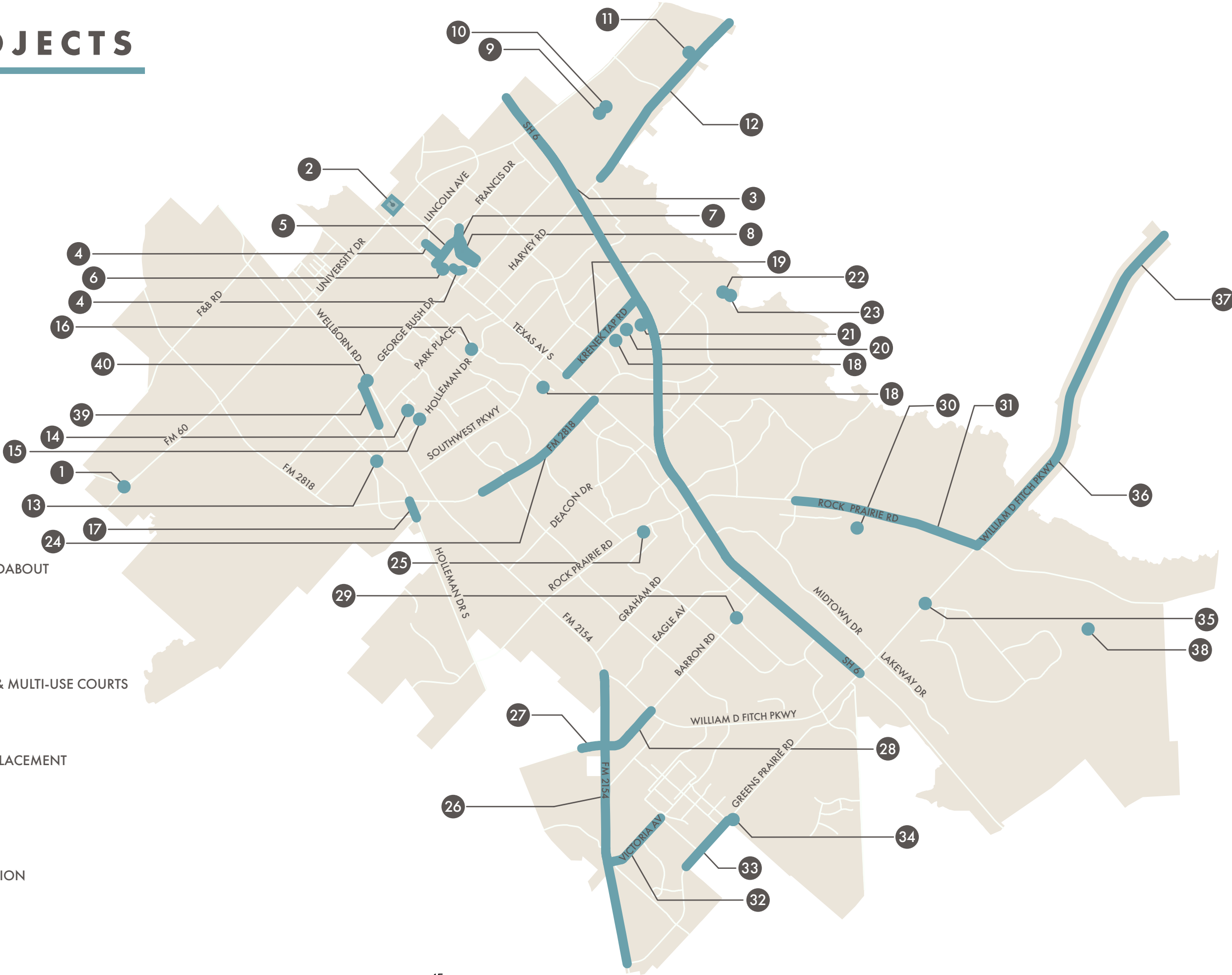
Map #	Project / Location	Responsible Party / Project Description	Associated plan(s)
27	CAPSTONE ALIGNMENT	CITY: Design and construction of Capstone realignment at FM2154 to meet Barron Rd	
28	BARRON RECONSTRUCTION	CITY: Design and reconstruction of Barron Rd from SH40 to FM2154	
29	TRAFFIC SIGNAL AT BARRON AND DECATUR	CITY: Addition of new traffic light at the intersection of Barron Rd and Decatur	
30	TEXAS INDEPENDENCE PARK – PHASE 1	CITY: New Community Park Development. Design & construction of Independence Park Phase 1 - TBD	 PARKS AND RECREATION MASTER PLAN
31	ROCK PRAIRIE EAST WIDENING	CITY - BONDS: Widening of Rock Prairie East corridor from Town Lake to William D. Fitch Pkwy from 2-lane asphalt roadway to 4-lane concrete roadway with separated bike lanes and sidewalks. Additional scopes of stormwater sewer, street lighting, and traffic signal at Town Lake	
32	VICTORIA AVENUE REHABILITATION & ROUNDABOUT	CITY: Design and construction of roundabout on Victoria Avenue at Creek Meadows	 WELLBORN DISTRICT PLAN
33	GREENS PRAIRIE ROAD BRAZOS COUNTY PORTION	CITY: Reconstruction of Greens Prairie (County Section) to replace asphalt with concrete roadway with curb, gutter, underground storm sewer and sidewalks	
34	FIRE STATION #7	CITY - BONDS: Design for Fire Station #7 is a new build to include the building construction and site improvements	
35	TRAFFIC SIGNAL AT PEBBLE CREEK PKWY AND WILLIAM D. FITCH	CITY: Addition of a new traffic signal at the intersection of Pebble Creek Pkwy and William D. Fitch	
36	WILLIAM D. FITCH REHABILITATION – PHASE 2	CITY: Rehabilitation of William D. Fitch from Tonkaway to Rock Prairie	
37	WILLIAM D. FITCH REHABILITATION – PHASE 1	CITY: Rehabilitation of William D. Fitch from SH30 to Tonkaway	
38	BUTTERFLY ALLEY	CITY: Natural trail erosion improvements	 PARKS AND RECREATION MASTER PLAN

Design Underway

Map #	Project / Location	Responsible Party / Project Description	Associated plan(s)
39	MARION PUGH DR REHABILITATION	CITY: Rehabilitation of Marion Pugh from George Bush Dr to Luther Street	
40	WELLBORN AND GEORGE BUSH GRADE SEPARATION	CITY/TXDOT: Interchange project with grade separation from railroad, and relocation of 16" waterline crossing Wellborn	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN  THOROUGHFARE PLAN
*	ALUM CREEK SANITARY SEWER TRUNKLINE	CITY: Design and construction of trunkline from Arrington Rd to Lick Creek Park	 WATER MASTER PLAN
*	MEDICAL DISTRICT TRUNKLINE- PHASE 2 & 3	CITY: Design and construction of trunkline between Rock Prairie Rd, SH6, and Corporate Pkwy. Project will decommission 3 lift stations	 WASTEWATER MASTER PLAN
*	NORTHEAST TRUNKLINE – PHASE 3	CITY: Install a 36" sewer line from Harvey Rd to SH6 along Carters Creek	 WASTEWATER MASTER PLAN
*	NORTHEAST TRUNKLINE – PHASE 4	CITY: Construct sewer line from SH6 to Hensel Park Lift Station	 WASTEWATER MASTER PLAN
*	PUBLIC WORKS FACILITY	CITY: New Public Works Facility building/campus	
*	RECREATION CENTER	CITY: Feasibility Study	
*	SH40 WATER LINE – GRAHAM TO BARRON	CITY: Design and construction of 24" waterline between Graham and Barron	 WATER MASTER PLAN
*	SH40 WATER LINE – SONOMA TO VICTORIA	CITY: Design and construction of 24" waterline between Victoria and Sonoma	 WATER MASTER PLAN
*	SH6 WIDENING UTILITY RELOCATIONS	TXDOT: Relocation of multiple utilities along State Highway 6	
*	TRAFFIC SIGNAL FIBER EXPANSION	CITY: Upgrade fiber optic feeds to multiple traffic signals	
*	WATER WELLS 10, 11, & 12	CITY: Design and construction of Water Wells 10,11, and 12	 WATER MASTER PLAN
*	WATER WELLS COLLECTION LINE	CITY: Design and construction of new water wells collection line	 WATER MASTER PLAN
*	JONES BUTLER WATERLINE REHABILITATION	CITY: Roundabout at Holleman/ Jones Buttler/ N. Dowling St	 WATER MASTER PLAN

FY2024 DESIGN UNDERWAY PROJECTS

- 1 CITY GATEWAY SIGN #3 (WEST)
- 2 COLLEGE HEIGHTS UTILITY REHAB
- 3 STATE HIGHWAY 6 (SH 6) IMPROVEMENTS
- 4 FOSTER AVENUE SIDEWALKS
- 5 FRANCIS DRIVE - PHASE 3
- 6 CITY HALL BUS SHELTER
- 7 JAMES PKWY & PURYEAR DRIVE REHAB
- 8 THOMAS PARK IMPROVEMENTS
- 9 VETERANS PARK MASTERPLAN
- 10 VETERANS PARK BASEBALL COMPLEX
- 11 SUMMIT CROSSING PARK DEVELOPMENT
- 12 STATE HIGHWAY 30 (HARVEY ROAD) WIDENING
- 13 HOLLEMAN DRIVE WEST/JONES BUTLER RD ROUNDABOUT
- 14 LINCOLN CENTER AREA IMPROVEMENTS
- 15 LINCOLN CENTER SPLASH PAD RENOVATION
- 16 ANDERSON PARK OUTDOOR PICKLEBALL COURTS & MULTI-USE COURTS
- 17 JONES BUTLER EXTENSION AND ROUNDABOUT
- 18 BEE CREEK AND CENTRAL PARK TENNIS COURT REPLACEMENT
- 19 KRENEK TAP REHAB
- 20 CENTRAL PARK OPERATIONS SHOP
- 21 FUN FOR ALL PARK PLAZA AND DONOR RECOGNITION
- 22 CCWWTP EFFLUENT CLOTH FILTERS
- 23 CCWWTP OUTFALL PROJECT
- 24 HARVEY MITCHELL PARKWAY SHARED-USE PATH



FY2024 DESIGN UNDERWAY PROJECTS

- 25 BACHMANN PARK TENNIS/PICKLEBALL COURT RENOVATIONS
- 26 WELLBORN ROAD (FM 2154) WIDENING IMPROVEMENTS
- 27 CAPSTONE ALIGNMENT
- 28 BARRON RECONSTRUCTION
- 29 TRAFFIC SIGNAL AT BARRON AND DECATUR
- 30 TEXAS INDEPENDENCE PARK - PHASE 1
- 31 ROCK PRAIRIE EAST WIDENING
- 32 VICTORIA AVE REHABILITATION & ROUNDABOUT
- 33 GREENS PRAIRIE ROAD BRAZOS COUNTY PORTION
- 34 FIRE STATION #7
- 35 TRAFFIC SIGNAL AT PEBBLE CREEK PKWY & W.D. FITCH
- 36 W.D. FITCH REHAB - PHASE 2
- 37 W.D. FITCH REHAB - PHASE 1
- 38 BUTTERFLY ALLEY
- 39 MARION PUGH DR REHABILITATION
- 40 WELLBORN AND GEORGE BUSH GRADE SEPARATION





PROGRAMS

Department	Program	Description	Associated plan(s)
PARKS AND RECREATION	ADULT ATHLETIC PROGRAMS		 PARKS AND RECREATION MASTER PLAN
	YOUTH ATHLETIC PROGRAMS		 PARKS AND RECREATION MASTER PLAN
	ADULT SOFTBALL TOURNAMENTS		 PARKS AND RECREATION MASTER PLAN
	GIRLS FASTPITCH TOURNAMENTS		 PARKS AND RECREATION MASTER PLAN
	YOUTH SOCCER TOURNAMENTS		 PARKS AND RECREATION MASTER PLAN
	YOUTH FOOTBALL TOURNAMENTS		 PARKS AND RECREATION MASTER PLAN
	AQUATICS INSTRUCTORS HOSTED FIRST AID, CPR, LIFEGUARD, WATER SAFETY INSTRUCTOR, AND BABYSITTING CLASSES		 PARKS AND RECREATION MASTER PLAN
	I HEART AMERICA EVENT	Independence Day Celebration at Wolf Pen Creek Park	 PARKS AND RECREATION MASTER PLAN
	URBAN HEAT ISLAND MITIGATION TREE PLANTING	Planted 108 Native Trees (15, 30, and 45 Gallon) as part of the Cooling College Station Plan	 PARKS AND RECREATION MASTER PLAN
	BIRD CITY USA APPLICATION	Certification program to help protect birds and their habitats in the community	 PARKS AND RECREATION MASTER PLAN

Department	Project / Location	Description	Associated plan(s)
ECONOMIC DEVELOPMENT & TOURISM	RETAIL RECRUITMENT	Completed the RFP process for brokerage services on the 28+ acres next to Costco, currently marketing the property for sale with the goal of selecting a developer in FY 2025 to develop a mixed-use center consisting of retail, entertainment, and public space. Attended national and local trade shows to recruit targeted retailers and developers.	 ECONOMIC DEVELOPMENT MASTER PLAN
	INDUSTRY RECRUITMENT	Completed the sale of two lots in the College Station Business Center to an HVAC distributor, generating over \$3.3 million in sales proceeds. Entered into a real estate contract with a local health company for the sale of two lots in the College Station Business Center. The agreement totals \$3.3 million, and the future development will serve as the headquarters and manufacturing facility for critical diagnostics and biologicals.	 ECONOMIC DEVELOPMENT MASTER PLAN
	BUSINESS RETENTION AND EXPANSION	Engaged with local businesses through quarterly Business Over Breakfast meetings and the Hospitality Insider Newsletter. Collaborated with Bryan/College Station Chamber of Commerce, Brazos Valley EDC, and Brazos Valley SBDC to continue to promote local economic development. Maintained the mobile visitor pass program, linking tourists to College Station retailers. Executed a contract with a regional business incubator to establish a digital platform for small business owners and entrepreneurs.	 ECONOMIC DEVELOPMENT MASTER PLAN
	CHRISTMAS IN COLLEGE STATION CAMPAIGN	Executed the "Christmas in College Station" campaign for the fourth consecutive year to position College Station as a premier holiday destination. This year's campaign including an ongoing partnership with Santa's Wonderland, engagement with local businesses and stakeholders, and hosting signature events in the entertainment district.	 ECONOMIC DEVELOPMENT MASTER PLAN
	DESTINATION ENTERTAINMENT VENUES: WOLF PEN CREEK & NORTHGATE DISTRICT	Continued to organize and promote recurring events in the Northgate District such as "Homegrown at Northgate" vendor marketing and "Howdy Holly Days" signature family-friendly Christmas market. Leveraged the new 1207 event space to feature a series of tailgate events during football season to host visiting fans and connect with residents	 ECONOMIC DEVELOPMENT MASTER PLAN
	AMPLIFYING EXISTING EVENTS	Successfully achieved the Texas Music Friendly certification and hosted monthly "Hang Out and Tune In" events to further enhance the local music scene, attract musicians, and related economic activities. Hosted a Texas Music Friendly regional meeting and led the City's inaugural participation in "Make Music Day."	 ECONOMIC DEVELOPMENT MASTER PLAN
	MARKETING AND PROMOTIONAL STRATEGIES	Continued to focus on community engagement through presentations and local media. Updated industry-specific collateral and carried out a refresh to grow.cstx.gov. Launched new Visit College Station website and created a new visitors guide.	 ECONOMIC DEVELOPMENT MASTER PLAN

Department	Project / Location	Description	Associated plan(s)
COMMUNITY SERVICES	RENTER-OCCUPIED HOUSING ASSISTANCE - HOME	Tenant Based Rental Assistance: Security Deposits provide for 40 households	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
	RENTER-OCCUPIED HOUSING ASSISTANCE - HOME & CDBG	Elder Aid affordable senior rental housing: Completed units - 3 Units underway - 3	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
	OWNER-OCCUPIED HOUSING ASSISTANCE - HOME	Down Payment assistance: Units Assisted - 4	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
	OWNER-OCCUPIED HOUSING ASSISTANCE - CDBG	Minor Home Repair: Completed Units - 7 Units Underway - 5	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
	PUBLIC SERVICE AGENCY FUNDING - CDBG	Programs to provide health and human services to low to moderate income residents Completed Programs - 5 Currently Funded Programs - 3	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
	HOME - AMERICAN RESCUE PLAN SUPPORTIVE SERVICES	L.E.A.D. Program will provide assistance and supportive services to vulnerable residents for \$1.7 million. Program will conclude when funding is exhausted or September 2030, whichever occurs first.	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
	RENTAL HOUSING REHABILITATION SECTION 108/CDBG	50 units of low-income senior housing rehabilitated	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
	HOMEOWNERSHIP - ACQUISITION/ REHABILITATION	1 unit acquired, rehabilitated, and sold to an income eligible household	 CONSOLIDATED PLAN/ ANNUAL ACTION PLAN
PLANNING & DEVELOPMENT SERVICES	THE LEAGUE OF AMERICAN BICYCLISTS - BICYCLE FRIENDLY AMERICA	Bicycle Friendly Community designation: Bronze (2020-2024) Bicycle Friendly Business designation: Silver (2024-2028)	CITY COUNCIL STRATEGIC PLAN
	ADOPT-A-GREENWAY PROGRAM	Volunteers collected 74 40-gallon trash bags from 264 acres of adopted greenways and parks	 BICYCLE, PEDESTRIAN AND GREENWAYS MASTER PLAN
	STORMWATER MANAGEMENT PROGRAM	Conducted over 3,600 stormwater inspections; reviewed and approved 45 erosion control plans; and investigated and/or took enforcement action in 26 illicit discharge cases. Administered stormwater quality training for 169 City employees and provided stormwater education to the public through 6 blog articles, 18 social media posts, and 2 outreach events.	



UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENTS

Amendment	Description
SHARED HOUSING <i>(adopted October 26, 2023)</i>	Removed Shared Housing as a use permitted by right in the MH Middle Housing Zoning District. Modified the ordinance to permit Shared Housing uses in the MH Middle Housing zoning district only when there is also a HOO High Occupancy Overlay.
PLATTING AUTHORITY <i>(adopted January 25, 2024)</i>	Delegated platting authority to City staff for any plat approvals that do not require a public hearing, waivers, or discretion. Allows staff to approve or approve with conditions a plat that meets all minimum subdivision requirements and disapprove plats that do not.
OWNERSHIP CERTIFICATION <i>(adopted July 25, 2024)</i>	Removed the requirement for developers to dedicate right-of-way to the City in fee simple. This change allows the City to have right-of-way easements to access land for described purposes, rather than owning the property outright.

#	Level	Indented Name	Status	Start Date	Due Date	Last Updated	Last Comment
1	Goals	1. Plan Foundation	On Track	10/14/2021	09/30/2030	06/26/2024	
2	Goals	2. Distinctive Places	On Track	10/14/2021	09/30/2030	09/23/2024	
2.1	Action Items	2.1 Review and undertake amendments to the Unified Development Ordinance's zoning districts.	On Track	10/14/2021	09/30/2030	09/30/2024	In FY 2024, the City modified the UDO to permit Shared Housing uses in the Middle Housing zoning District only when there is also a HOO High Occupancy Overlay.
2.1.1	Project	☞ Unified Development Ordinance Amendment - Creation of Middle Housing Zoning District	Achieved	10/01/2022	12/31/2022	02/03/2023	Ordinance was adopted by the City Council on 10/27/2022.
2.1.2	Project	☞ Unified Development Ordinance Amendment - Mixed Use Zoning District	On Track	10/01/2024	08/31/2025	11/27/2023	Internal discussions are ongoing and are expected to conclude in January 2024. Public engagement will be scheduled in Q2 2024. Anticipated adoption is in Q3 2024.
2.1.3	Project	☞ Unified Development Ordinance Amendment - Planned Development District	On Track	11/01/2023	08/30/2024	09/30/2024	City staff met with the development community and received feedback. City staff made revisions to the proposed ordinance amendment based on feedback. Staff will need to meet to discuss revisions before it is ready for consideration by P&Z Commission and City Council.
2.2	Action Items	2.2 Prioritize and undertake detailed plans for priority neighborhoods, districts, corridors, or redevelopment areas.	On Track	10/14/2021	09/30/2030	09/30/2024	In FY 2024, the Wellborn District Plan was adopted by City Council. Future small area planning efforts may be identified during the 2025 Comprehensive Plan 5-Year Update. City staff will utilize this process to gather feedback from elected officials, community stakeholders, and the public to help identify areas in the community for targeted study.
2.2.1	Project	☞ Small Area Plan - Wellborn District Plan Update	Achieved	10/01/2022	10/12/2023	11/15/2023	This planning effort was adopted by City Council on October 12, 2023.
2.2.2	Project	☞ Small Area Plan - Northeast Gateway Redevelopment Plan	Achieved	10/01/2022	10/31/2023	10/02/2023	This planning effort was adopted by City Council on September 28, 2023.
2.3	Action Items	2.3 Creative incentives and programs to revitalize existing areas and established neighborhoods.	On Track	10/14/2021	09/30/2030	09/30/2024	The Community Services department continues to operate multiple housing assistance programs for income-qualified applicants at or below 80% AMI. These programs include Down Payment Assistance, Housing Minor Repairs, Housing Rehabilitation Loans, Housing Reconstruction Loans, and Tenant-Based Rental Assistance.
2.4	Action Items	2.4 Evaluate existing policies and create incentives for low impact and sustainable development.	On Track	10/14/2021	09/30/2027	09/30/2024	Staff continues to draft modifications to the City's Unified Development Ordinance relating to landscape requirements. After this first round of amendments are made, additional changes can be explored as desired.
2.4.1	Project	☞ Unified Development Ordinance Amendment - Sustainable Landscaping / Yards	Off Track	01/01/2023	09/30/2024	09/30/2024	Personnel changes within the department prompted a reassessment of priorities and this project was temporarily put on hold. Expected to be completed in FY 2025.
2.5	Action Items	2.5 Pursue feasibility of a tree preservation and/or tree planting incentive program.	On Track	10/14/2021	09/30/2025	09/30/2024	The FY25 budget includes funds to launch a residential tree planting program and continue the tree-planting program in City parks. A Unified Development Ordinance amendment to support sustainable landscaping is in progress.
2.5.1	Project	☞ Urban Heat Island Mitigation Plan	Achieved	10/01/2022	12/31/2022	10/01/2022	The City Council accepted the "Cooling" College Station plan in September of 2022.
2.5.2	Project	☞ Identify and Secure Funding Sources for Urban Heat Islands Plan	Achieved	01/01/2023	09/30/2024	09/03/2024	Funding for FY24 was secured and spent.
2.6	Action Items	2.6 Create additional incentives for conservation design and evaluate the effectiveness of cluster development standards in the Unified Development Ordinance.	Achieved	10/14/2021	09/30/2024	09/23/2024	Ordinance 2022-4374 was approved at City Council on 7/28/2022. This update proposed that properties zoned GS General Suburban when developed as a cluster subdivision will have no lot size minimums to better achieve the maximum density for the zoning district. This update also increased the minimum amount of open space required from 10% to 25% and requires that the minimum open space area be 5,000 sq. ft. for all zoning districts. To date there have been no additional cluster subdivisions proposed in the city, and there has not been adequate time to determine if additional changes are needed.
2.7	Action Items	2.7 Integrate parks, greenways, and community facilities within new neighborhoods.	On Track	10/14/2021	09/30/2030	09/30/2024	Staff continues to look at the relationship between public spaces and facilities with their surrounding neighborhoods. Most recently efforts to incorporate connectivity with Texas Independence Park from the expansion of the Midtown Reserve subdivision.
2.8	Action Items	2.8 Evaluate and update development standards in the Unified Development Ordinance.	On Track	10/14/2021	09/30/2030	09/30/2024	Staff identified several UDO amendments to be taken forward over FY25. This past fiscal year included amendments to the UDO for ROW dedication language, platting authority, Condition al Use Permits and the flood ordinance.
2.9	Action Items	2.9 Develop or refine incentives to promote high quality design.	Not Started	10/14/2021	09/30/2030	09/30/2024	Development of incentives for high-quality design have not begun.
2.10	Action Items	2.10 Encourage parking alternatives to support redevelopment opportunities.	On Track	10/14/2021	09/30/2030	09/23/2024	Planning & Development Services continues to encourage parking alternatives to support redevelopment opportunities.
2.10.1	Project	☞ Unified Development Ordinance Amendment - Off-Street Parking Requirements	Achieved	10/01/2022	08/30/2023	09/07/2023	The City Council approved the ordinance amendment on August 10, 2023.
2.11	Action Items	2.11 Continue to initiate proactive zoning map updates.	On Track	10/14/2021	09/30/2027	09/30/2024	Phase 1 and Phase 2 of City-initiated MH Middle Housing rezonings were completed this fiscal year.
2.11.1	Project	☞ City-Initiated Rezoning to MH Middle Housing	On Track	03/01/2023	09/30/2024	09/30/2024	Area SS Approved by City Council. Area K was denied by City Council - Further internal discussion needed to determine if/how to proceed with any modified area.

#	Level	Indented Name	Status	Start Date	Due Date	Last Updated	Last Comment
2.12	Action Items	2.12 Continue beautification programs.	On Track	10/14/2021	09/30/2030	09/30/2024	Public Works was able to relocate over fifty trees from the SH 6 and University Drive intersection over the last two years. These are trees that would have otherwise been removed for the widening project. The trees were moved to various locations, including near the intersection of Texas Avenue and FM 2818 and in front of the College Station post office. The partnership with Keep Brazos Beautiful continues as they transition to new leadership, and we will continue to look at opportunities to expand current programs. We are currently determining plantings for several medians of recently completed road projects. We are using drought tolerant native plantings to enhance the median while using less or no irrigation.
3	Goals	3. Strong Neighborhoods	On Track	10/14/2021	09/30/2030	09/23/2024	
3.1	Action Items	3.1 Evaluate the effectiveness and refine neighborhood compatibility standards in the UDO.	Not Started	10/14/2021	09/30/2030	09/30/2024	Evaluation of the effectiveness of neighborhood compatibility standards has not begun.
3.2	Action Items	3.2 Create a neighborhood planning toolkit.	Achieved	10/14/2021	09/30/2027	03/31/2024	The neighborhood toolkit was developed about 10+ years ago and annually gets updated and reviewed.
3.3	Action Items	3.3 Create and promote a housing maintenance educational program.	On Track	10/14/2021	09/30/2027	09/30/2024	The Community Services Department is developing a series of housing maintenance education videos for public consumption. Community Services Staff has compiled scripts for the videos and will continue to work with the Public Communications Department to begin video development.
3.4	Action Items	3.4 Expand affordable housing and workforce housing.	On Track	10/14/2021	09/30/2027	09/30/2024	The Housing Action Plan was adopted by City Council on September 12, 2024. The Plan seeks to provide new avenues for providing affordable housing as well as better practices for homeownership and renting. Additionally, the Community Services Department has drafted and submitted the PRO Housing Grant, aiming to contribute in excess of 7 million dollars to developing affordable housing in College Station over the next 4 years.
3.5	Action Items	3.5 Develop a parking strategy for neighborhoods near the university.	At Risk	10/14/2021	09/30/2027	09/30/2024	In FY 2024, City staff conducted a paid parking pilot program. It was determined that there was no desire from City Council to pursue a permanent parking program at this time. Staff will continue to meet with the Council Traffic Committee to discuss parking issues in the neighborhoods adjacent to the University and throughout the city.
3.5.1	Project	Paid Parking Pilot Program	Achieved	10/01/2023	09/30/2024	09/26/2024	In the summer of 2024, staff implemented a paid parking pilot program in neighborhoods surrounding campus during two major tourism events. During the September 12, 2024 City Council Meeting, staff presented the results of the pilot program. It was determined that there was no desire from City Council to pursue a permanent parking program at this time
3.6	Action Items	3.6 Develop and refine data monitoring processes to analyze housing trends and define a strategic set of actions to address housing affordability, diversity, and gentrification.	On Track	10/14/2021	09/30/2027	09/30/2024	The Community Services Department continued to develop web-based monitoring platforms for its Existing Conditions Survey, Rental Survey, and Point in Time Count serviced by GIS. The Housing Conditions Survey and Rental Survey comprehensively covered the entire city, by assessing the condition of structures and the rental burden on citizens. These surveys played a crucial role in shaping the Existing Conditions Report as well as providing important data for the Housing Action Plan.
3.7	Action Items	3.7 Continue to track neighborhood change.	On Track	10/14/2021	09/30/2030	09/30/2024	The Community Services Department tracked neighborhood character through ongoing updates to its Rental Registered Property and Short-Term Rental lists. The Housing Conditions Survey is updated every five (5) years. The next update is scheduled for 2025, and it will implement innovative new tracking and data collection techniques using Esri products.
3.8	Action Items	3.8 Evaluate relevancy of neighborhood and small area plans that are beyond their planning horizon.	Achieved	10/14/2021	09/30/2025	09/23/2024	The findings of the September 2024 Small Area Plan Audit were accepted by the P&Z Commission on September 19, 2024. City Council will hear the presentation on October 7, 2024 and vote whether or not to accept the findings and officially retire the audited plans.
3.8.1	Project	Small Area Plan Audit Phase 1	Achieved	10/14/2021	09/30/2022	09/23/2024	The Small Area Plan Audit Phase 1 was completed in September 2022. During Phase 1, staff developed the small area auditing process and audited 5 neighborhood plans that were beyond their planning horizons.
3.8.2	Project	Small Area Plan Audit Phase 2	Achieved	10/02/2023	10/07/2024	09/20/2024	Presentation and final documents completed. Presented at P&Z 9/19/2024.
3.9	Action Items	3.9 Continue partnering with local nonprofit organizations and area partners to support affordable housing options.	On Track	10/14/2021	09/30/2030	09/30/2024	During the fourth quarter, the Community Services Department was awarded the 2024 CDBG Best Project Recognition Award by HUD for the work done with the LULAC non-profit organization. Additionally, the department reached out for public input on the Housing Action Plan. Furthermore, it maintained its representation in the Health, Housing, Homelessness, and Hunger Coalitions. The department also sustained its ongoing partnerships with 10 other local nonprofit organizations and is preparing for the United Way Fundraiser and Fall Festival this upcoming November.
3.10	Action Items	3.10 Continue outreach and educational efforts to support existing and encourage new neighborhood organizations.	On Track	10/14/2021	09/30/2027	09/30/2024	The Neighborhood Services Department operates several programs for neighborhoods to stay plugged into what is happening with the City. Every week, a Neighborhood Newsletter is sent to registered homeowners and neighborhood associations. Additionally, a monthly Seminar Supper is convened highlighting a topic of conversation or updates for different neighborhood stakeholders.
3.11	Action Items	3.11 Continue to fund the Neighborhood Grant Program.	On Track	10/14/2021	09/30/2030	03/31/2024	Grant applications were made available in May 2024 and are due back by the end of June 2024. We anticipate having at least 4-6 applications from the neighborhoods.
3.12	Action Items	3.12 Require neighborhood meetings for certain development applications.	On Track	10/14/2021	09/30/2025	09/23/2024	Planning & Development Services continues to evaluate opportunities for enhanced neighborhood engagement for certain development applications.
3.12.1	Project	Unified Development Ordinance Amendment - Comprehensive Plan Notifications	Achieved	07/01/2022	11/30/2022	09/23/2024	The Unified Development Ordinance was amended in November 2022 to include a required Project Proposal Meeting with neighborhoods and surrounding residents for all Comprehensive Plan Amendments requests for land use changes. This will foster citizen involvement and input from the beginning stages of a development proposal.
3.13	Action Items	3.13 Maintain property maintenance enforcement efforts.	On Track	10/14/2021	09/30/2030	09/30/2024	Code Enforcement employs best practices involving Property Maintenance issues and continues to educate owners on issues within the city. Additionally, the Housing Conditions Survey, next scheduled for 2025, is set to begin on time.

#	Level	Indented Name	Status	Start Date	Due Date	Last Updated	Last Comment
3.14	Action Items	3.14 Evaluate the effectiveness of short-term rental regulations.	On Track	10/14/2021	09/30/2030	09/30/2024	The Community Services Department employs a third-party data collection agency to scrape the internet for newly listed short-term rentals. Q4 has yielded 51 new, unregistered STRs and Officers will continue to evaluate properties as they arise.
3.15	Action Items	3.15 Evaluate and refine the rental registration program.	On Track	10/14/2021	09/30/2030	09/30/2024	To maintain programmatic sustainability, new analysis techniques have continued to be developed in GIS to help identify rental properties which are not registered with the Rental Registration program. In Q4 these techniques have aided in identifying and registering 192 new rental properties.
4	Goals	4. A Prosperous Economy	On Track	10/14/2021	09/30/2030	09/30/2023	Progress is being made toward actions within the Economic Development Master Plan (last updated May 2020).
5	Goals	5. Engaging Spaces	On Track	10/14/2021	09/30/2030	09/23/2024	
5.1	Action Items	5.1 Continue to support, promote, and operate major arts, entertainment, sporting, and cultural destinations through cumulative actions.	On Track	10/14/2021	09/30/2030	09/30/2024	Completed summer schedule of 20+ tournaments and sporting events at VPAC, sports complexes, and school district facilities around town. CSPARD held an Independence Day Celebration at Wolf Pen Creek which included fireworks, a drone show, and live music.
5.2	Action Items	5.2 Maintain and expand community-based greenway and open space preservation programs.	On Track	10/14/2021	09/30/2030	09/30/2024	The Adopt-a-Greenway program continued. Volunteers collected 74 forty-gallon trash bags from 264 acres of adopted greenways and parks.
5.3	Action Items	5.3 Continue to expand outreach about the parks and greenway system.	On Track	10/14/2021	09/30/2030	09/30/2024	Parks & Recreation released its Fall Guide for recreation and leisure activities over the Fall and Winter months. Parks & Recreation will continue to release flyers, post announcements online, utilize sandwich boards, arrange radio spots, make appearances on "What's Up College Station," and provide information through the new "I Heart CS" digital monthly newsletter.
5.4	Action Items	5.4 Support a community-wide public art program.	On Track	10/14/2021	09/30/2030	09/30/2023	The City of College Station worked with the Arts Council of the Brazos Valley to do a mural program throughout the city. Five murals were completed throughout College Station. Additional opportunities for murals or other public art that are identified in future years will be considered by City staff in coordination with the Arts Council of the Brazos Valley.
5.5	Action Items	5.5 Continue leisure, health, and educational programming.	On Track	10/14/2021	09/30/2030	09/30/2024	Parks & Recreation worked diligently to continue to develop new recreational and leisure programs, activities, and cultural events to answer the desires of our community while discontinuing programs with low attendance or waning interest.
5.6	Action Items	5.6 Identify and secure public and private funds for the acquisition of parks, greenways, and facilities.	On Track	10/14/2021	09/30/2030	09/30/2024	Texas Independence Park TPWD grant application was submitted 7/31/2024. Monies generated by the FFAP Committee was allocated for Plaza/Donor Recognition project at Fun For All Park. Parks & Recreation will complete the TAMU Forest Service Heat Island Mitigation Grant this Fall/Winter thereby finalizing the FY24 tree planting effort.
5.7	Action Items	5.7 Continue inter-agency coordination and establish new public-private partnerships to provide additional amenities, funding, networking, and co-production opportunities.	On Track	10/14/2021	09/30/2030	09/30/2024	Quarter 4 activities - Planning for Games of Texas: School Districts, TAMU, City of Bryan and private businesses working together to bring a major statewide event to Bryan/College Station for the next two years.
5.8	Action Items	5.8 Evaluate, amend, and develop relevant ordinances to protect natural resources, habitats, and green-water infrastructure.	Not Started	10/14/2021	09/30/2030	09/30/2024	Development of ordinances protecting natural resources, habitats, and green-water infrastructure have not begun.
5.8.1	Project	Unified Development Ordinance Amendment - Parkland Dedication	Achieved	10/01/2021	06/09/2022	06/09/2022	On June 9, 2022, City Council adopted Ordinance #2022-4367. This amendment eliminated the distinction between community and neighborhood parks for dedication purposes, reduced the number of parkland dedication zones to four, and added an appeals process. This change also allowed developers of private parks to receive up to a 25% credit and updated the dedication and fee amounts.
5.9	Action Items	5.9 Investigate the feasibility of incorporating riparian buffer standards to preserve sensitive land along waterways.	Not Started	10/14/2021	09/30/2030	09/30/2024	Future Plan of Work Project possibly FY25/26.
5.10	Action Items	5.10 Consider new and enhanced natural resource management strategies that promote environmental sustainability and stewardship and improve quality of life.	On Track	10/14/2021	09/30/2030	09/30/2024	Began execution of the "No mow zone" at Wolf Pen Creek as part of a three year erosion study. Finalized planned improvements to Butterfly Alley to enhance and support butterfly migration awareness. Submitted the Bird City USA application. Began planning for the Urban Heat Island Mitigation Tree Planting. Number of trees to be planted this fall are 988 - 15 gallon to 45 gallon trees and 1,500 - 5 gallon seedlings. Preliminarily approved planting designs which enhance biodiversity for renovation projects such as Thomas Park.
5.11	Action Items	5.11 Invest in the redevelopment of existing parks.	On Track	10/14/2021	09/30/2027	09/30/2024	Multiple parks improvements are underway across the city. Thomas Park design moving forward; Anderson Pickleball and Multi-use Court renovation underway; Bachmann Park Little League/Senior League/Soccer Buildings project underway; Fun For All Playground enhancements will start next month; VPAC Pavilion maintenance project soon to be underway; and Bee Creek/Central Park Tennis Court renovation will also begin construction within the next month. We are also planning to make improvements to the Tennis/Pickleball Courts at Bachmann Park.
5.12	Action Items	5.12 Conduct community-wide parks and recreation needs assessments and pursue recommended improvements.	On Track	10/14/2021	09/30/2027	09/30/2024	Public comments for Thomas Park were held September 27, 2024. New Recreation Center discussions are underway with public comment being a key component of consideration. Received and incorporated public comments, requests and concerns regarding the construction of three new Baseball fields planned for the VPAC facility.
5.13	Action Items	5.13 Identify a land acquisition strategy and integrate additional greenspace.	Not Started	10/14/2021	09/30/2027	09/30/2024	Development of a land acquisition strategy has not begun.
5.14	Action Items	5.14 Create connections between key elements of the parks, recreation, greenways systems, and destinations.	On Track	10/14/2021	09/30/2030	09/30/2024	Texas Independence Park Master Plan was approved by City Council on August 9, 2024. This new park will highlight the use of trails within the park as well as making connections to the Lick Creek Trail and the new pedestrian shared use path being constructed along Rock Prairie Rd.

#	Level	Indented Name	Status	Start Date	Due Date	Last Updated	Last Comment
5.15	Action Items	5.15 Design and construct inclusive, accessible, and sustainable parks and greenway trails.	On Track	10/14/2021	09/30/2030	09/30/2024	A new inclusive playground for 2-5 year-old children will be constructed this November at the Fun For All Playground located within Central Park. This unique park encourages children of all abilities to share experiences and play together while removing boundaries and creating a sense equality and inclusion.
6	Goals	6. Integrated Mobility	On Track	10/14/2021	09/30/2030	09/23/2024	
6.1	Action Items	6.1 Implement complete street and context sensitive design.	On Track	10/14/2021	09/30/2027	09/30/2024	Staff worked with the City of Bryan to update the Streets section of the Bryan/College Station Unified Design Guidelines, which was completed in spring 2024. Staff is currently working to finalize an update to the City's thoroughfare cross sections to offer more alternatives for consideration in street design and construction.
6.2	Action Items	6.2 Conduct a Thoroughfare Plan audit.	On Track	10/14/2021	09/30/2027	09/30/2024	Several adjustments to the Thoroughfare Plan were made with the adoption of the Comprehensive Plan in fall 2021. A Traffic Congestion & Mobility Analysis is currently in progress that is assessing 50 intersections for potential modifications to relieve traffic congestion while accommodating other modes of travel.
6.3	Action Items	6.3 Enhance and upgrade intersections.	On Track	10/14/2021	09/30/2030	09/30/2024	Capital Projects Department staff are managing several intersection upgrade projects in 2024. In total, more than 20 street projects with intersection upgrades are under design or construction. Many of these will continue into FY25 and beyond.
6.4	Action Items	6.4 Continue to evaluate and implement best management practices to increase bicycle and pedestrian use.	On Track	10/14/2021	09/30/2030	09/30/2024	Implementation of best management practices has been on-going with the update of the City's thoroughfare street cross sections that includes alternatives for bicycle and pedestrian facility design. In FY25, the Bicycle, Pedestrian, and Greenways Master Plan will be updated and current practices and the public's interest in various types will be assessed further.
6.5	Action Items	6.5 Undertake streetscape improvements within gateways and image corridors.	On Track	10/14/2021	09/30/2027	09/30/2024	The third gateway sign located at the intersection of Highway 47 and Raymond Stotzer Parkway has been designed and a construction contract awarded. It is estimated to be under construction in late 2024/early 2025.
6.6	Action Items	6.6 Evaluate transit funding partnerships.	On Track	10/14/2021	09/30/2030	09/30/2024	With the adoption of the FY25 City budget, Council approved funding for Brazos Transit District (BTD) to assist, along with other local jurisdictions, in closing the funding gap created by the reduction in federal and state funds. BTD has organized a Brazos Urbanized Area committee comprised of executive staff of local jurisdictions and transit advocates to assist with recommendations on service levels and funding needs in upcoming years.
6.7	Action Items	6.7 Prioritize programs and improvements that will reduce vehicular demand.	Not Started	10/14/2021	09/30/2030	09/30/2024	Prioritization and implementation of programs designed to reduce vehicular demand have not begun.
6.8	Action Items	6.8 Maintain the various funding programs for mobility projects.	On Track	10/14/2021	09/30/2030	09/30/2024	Staff has assisted the Bryan-College Station Metropolitan Planning Organization (MPO) in developing its next 25-year Metropolitan Transportation Plan (MTP), which is expected to be adopted in December 2024 and will include future TxDOT funding for high priority projects in Brazos County. Implementation of the projects in the approved City capital improvements program is on-going.
6.9	Action Items	6.9 Fund bicycle and pedestrian infrastructure and safety improvements.	On Track	10/14/2021	09/30/2030	09/30/2024	Council approved \$5 million in funding for sidewalk and trail projects in summer 2024. These funds will be used to construct priority sidewalk and trail projects identified in the Bicycle, Pedestrian, and Greenways Master Plan. Staff has sought and will continue to seek additional funding available through state and federal grant programs.
6.10	Action Items	6.10 Develop performance measures, collect transportation data, and monitor trends.	Not Started	10/14/2021	09/30/2030	09/30/2024	Development of standardized performance measures for the City's transportation and mobility systems have not begun.
6.11	Action Items	6.11 Evaluate Traffic Impact Analysis (TIA) requirements.	Not Started	10/14/2021	09/30/2025	09/30/2024	Analysis of the Traffic Impact Analysis (TIA) requirements have not begun.
6.12	Action Items	6.12 Evaluate and update access management strategies.	Not Started	10/14/2021	09/30/2025	09/30/2024	Evaluation and updates to the City's access management standards have not begun.
6.13	Action Items	6.13 Develop and implement a travel demand management program.	Not Started	10/14/2021	09/30/2030	09/30/2024	Development and implementation of a travel demand management program has not begun.
7	Goals	7. Exceptional Services	On Track	10/14/2021	09/30/2030	09/23/2024	
7.1	Action Items	7.1 Prioritize utility and service improvements in existing areas.	On Track	10/14/2021	09/30/2027	09/30/2024	Several utility improvements and infrastructure rehabilitation projects are ongoing to accomplish this action, including upgrades to the Northeast and Bee Creek Trunklines, improvements at the Carter's Creek Wastewater Treatment Plant, and water line rehabs for McCulloch Road, Jones-Butler Road, and Marion Pugh Drive, among other projects.
7.2	Action Items	7.2 Develop a comprehensive facilities plan.	On Track	10/14/2021	09/30/2027	09/30/2024	The facilities master plan covering 5 facilities: Municipal Court, Utility Customer Service, PW Operations, CSU, and Parks Admin was completed in April. The City is considering an expanded facilities master plan covering all city facilities.
7.3	Action Items	7.3 Continue capitalizing on opportunities to achieve multiple community objectives through coordinated infrastructure projects.	On Track	10/14/2021	09/30/2030	09/30/2024	As a standard practice, Capital Projects staff coordinate with Public Works, Water Services, Electric, and Planning & Development Services on all capital projects as needed and appropriate. Several projects in FY24 involved this coordination, including the College Heights Utility Rehab, McCulloch Road Rehab and Krenek Tap Reconstruction.
7.4	Action Items	7.4 Continue to build resiliency in municipal operations and services.	On Track	10/14/2021	09/30/2030	09/30/2024	Development and adoption of the Brazos County Hazard Mitigation Action Plan continued in FY24, with implementation to follow. Several actions proposed in the plan will help build resiliency within municipal operations and services, including a collaborative strategy on sheltering during extreme weather events.
7.5	Action Items	7.5 Evaluate the utilization of community paramedicine.	Achieved	10/14/2021	09/30/2023	09/30/2023	CSFD evaluated the feasibility of community paramedicine and determined that this community's demand does not meet the minimum threshold for the implementation of this program.

#	Level	Indented Name	Status	Start Date	Due Date	Last Updated	Last Comment
7.6	Action Items	7.6 Continue to pursue recognition, credentials, and accreditations City-wide.	On Track	10/14/2021	09/30/2030	09/30/2024	As a standard practice, City staff pursue individual and departmental recognition, credentials, and accreditations. These include, but are not limited to, our Commission on Accreditation for Law Enforcement Agencies (CALEA) accredited Police Department, our Commission on Fire Accreditation International (CFAI) accredited and Insurance Service Office (ISO) accredited Fire Department, our Commission for Accreditation of Park and Recreation Agencies (CAPRA) accredited Parks & Recreation Department, our State of Texas rated Superior Water Services Department, our American Public Works Association accredited Public Works Department, and our Richard R. Lillie, FAICP Planning Excellence recognized Planning & Development Services Department.
7.7	Action Items	7.7 Continue to sustain and grow emergency management preparedness.	On Track	10/14/2021	09/30/2030	09/30/2024	The Brazos County Hazard Mitigation Action Plan update continued in FY24, with implementation to follow. Several actions proposed in the plan will help build resilience to natural hazards and emergencies, including educational materials shared with residents to build preparedness.
7.8	Action Items	7.8 Continue using business intelligence, data analytics, and data visualization tools.	On Track	10/14/2021	09/30/2030	09/30/2024	The Information Technology Department will continue to assist city departments in their desire to leverage these tools. Departments can collect and analyze data from various sources, including citizen feedback, social media, traffic data, and sensor data, to gain valuable insights. These insights can be used to inform policy decisions, such as infrastructure planning, transportation improvements, and public safety initiatives, that are tailored to the specific needs of the residents of College Station.
7.9	Action Items	7.9 Continue to expand wi-fi to public buildings.	On Track	10/14/2021	09/30/2030	09/30/2024	The Information Technology Department ensures all new or renovated city buildings have sufficient wi-fi services. All wi-fi services include a free public option and a secure employee-only internal city network.
7.10	Action Items	7.10 Update public service plans.	On Track	10/14/2021	09/30/2027	09/30/2024	The Water System Master Plan and the Wastewater System Master Plan, adopted April 2017, are actively pursued by City staff. Updates to these plans will be considered by staff beginning in FY26 based on changed conditions. The Stormwater Management Plan also continues implementation, with updates made as needed. Master plans for other departments will be considered by Staff as necessary.
7.11	Action Items	7.11 Utilize municipal service cost-benefit assessments in planning utility expansion.	On Track	10/14/2021	09/30/2030	09/30/2024	The Planning and Development Services department has contracted with a new software, Fiscal Analysis Toolkit, to assist with cost-benefit assessment for new developments, including the impact to utility infrastructure.
7.12	Action Items	7.12 Evaluate ways to reduce energy consumption.	Not Started	10/14/2021	09/30/2030	09/30/2024	Development and implementation of comprehensive energy-saving strategies have not begun.
7.13	Action Items	7.13 Pursue and support local water conservation and reuse initiatives.	On Track	10/14/2021	09/30/2030	06/30/2024	The Water Services Department currently utilizes reclaimed water at Veteran's Park. In August 2023, the department initiated Stage 1 drought restrictions. Water Services continues to monitor water usage and encourage conservation.
7.14	Action Items	7.14 Continue outreach and educational programs to reduce resource consumption.	On Track	10/14/2021	09/30/2030	09/30/2024	The Solid Waste division continues to encourage the participation in single stream recycling though public outreach including radio appearances, podcasts, blog posts, keeping Recollect mobile app updated, and updating and distributing the Solid Waste and Recycling Guide for 2024-2026. We assist Twin Oaks Landfill with Household Hazardous Waste Collection twice a year.
7.15	Action Items	7.15 Continue to implement best practices in meeting or exceeding State and Federal standards for stormwater management.	On Track	10/14/2021	09/30/2030	09/30/2024	Staff continued to progress on yearly Stormwater Management Plan Best Management Practices. Annual SWMP certification submitted to TCEQ March 2024.
7.16	Action Items	7.16 Advance sound floodplain management practices.	On Track	10/14/2021	09/30/2030	09/30/2024	Received formal notification this past Spring from FEMA that the City of College Station retained its current rating as a Class 6 in NFIP CRS based on the floodplain management activities implemented by our community. These higher floodplain management standards result in 20% reduction in flood insurance premiums for citizens.
7.16.1	Project	⌘ Ordinance Amendment - Flood for Community Rating System Requirements	Achieved	10/02/2023	12/15/2023	12/12/2023	Ordinance amendment approved by City Council 12/11/23.
7.16.2	Project	⌘ Ordinance Amendment - Flood for BCS Drainage Design Guideline Update	Not Started	07/01/2024	10/30/2024	09/30/2024	Not needed currently
7.17	Action Items	7.17 Continue to meet or exceed State and Federal water quality standards for drinking water sources.	On Track	10/14/2021	09/30/2030	06/30/2024	In 2023, our water system was re-designated as a "Superior Water System".
7.18	Action Items	7.18 Continue to keep wastewater collection and treatment capacities ahead of demand.	On Track	10/14/2021	09/30/2030	06/30/2024	Water Services staff reported zero State/Federal Notice of Violations this year.
7.19	Action Items	7.19 Continue coordinated electric planning along with area partners.	On Track	10/14/2021	09/30/2030	09/30/2024	CSU Electric staff continue to collaborate with other departments and customers on new and proposed developments.
7.20	Action Items	7.20 Design high-quality public facilities that reflect the character of their surroundings.	On Track	10/14/2021	09/30/2030	09/30/2024	As a standard practice, Capital Projects staff work with stakeholders and residents to develop public facilities that reflect and serve their community. Several projects in FY24 worked to achieve this action, including Fire Station #7 and the Bus Shelter.
7.21	Action Items	7.21 Design City facilities and infrastructure to incorporate sustainable and resilient practices.	On Track	10/14/2021	09/30/2030	09/30/2024	As a standard practice, Capital Projects staff work to incorporate sustainability and resilience in City facilities and infrastructure. Several projects in FY24 worked to achieve this action, including upgrades at the Arnold Road fuel station and the future installation of generators at the Lincoln Center and the Bob & Wanda Meyer Senior Center.
7.22	Action Items	7.22 Provide public safety facilities to maintain adequate service and response times.	On Track	10/14/2021	09/30/2030		
7.22.1	Project	Provide Fire Department facilities to maintain adequate service and response times.	Off Track	10/14/2021	09/30/2030	09/30/2024	Total response times do not meet department benchmarks for EMS responses.

#	Level	Indented Name	Status	Start Date	Due Date	Last Updated	Last Comment
7.22.2	Project	Provide Police Department facilities to maintain adequate service and response times.	On Track	10/14/2021	09/30/2030	09/23/2024	The City of College Station Police Department maintains three key performance indicators (KPIs) to track critical areas of the department's operations. KPI 1 tracks the number of criminal investigation cases cleared during each quarter. The department's stated goal of this KPI is to clear 65% or more of the active criminal investigations. For FY23, the department reached its clearance rate goal for three out of the four quarters. Overall, for the year the criminal investigation case clearance rate was 66.9%. KPI 2 tracks the response time for officers responding to priority one calls for service. The department's stated goal for this KPI is for the officers to respond to all priority one calls in less than 6.5 minutes. In FY23, the department met its stated response time goal in every quarter of the year except for the first quarter. Overall, response times to priority one calls for the year were 5.98 minutes. KPI 3 tracks the percentage of 911 calls answered within 15 seconds. The department's stated goal for this KPI is to answer 90% of all 911 phone calls in under 15 seconds. In FY23 the department exceeded this goal in all four quarters. Overall, the Communication's Division answered 97.5% of all 911 calls in less than 15 seconds.
8	Goals	8. Managed Growth	On Track	10/14/2021	09/30/2030	09/23/2024	
8.1	Action Items	8.1 Prioritize proactive infrastructure investments and programs in strategic redevelopment and infill areas.	On Track	10/14/2021	09/30/2030	09/30/2024	The Northeast Gateway Redevelopment Area Plan contains action items related to infrastructure investments to catalyze redevelopment in this area. In FY 2026, City staff will work with the community and city leaders to develop the Harvey Road Redevelopment Area Plan, which will likely include additional proactive infrastructure investments.
8.2	Action Items	8.2 Amend the zoning map and consider regulatory incentives to encourage infill and redevelopment.	On Track	10/14/2021	09/30/2030	09/30/2024	Planning & Development Services is currently preparing updates to the MU Mixed-Use zoning district, which would be appropriate for vertical redevelopment once adopted. Evaluation of the RDD Redevelopment District will be considered in future years.
8.3	Action Items	8.3 Re-envision underutilized retail uses and incentivize redevelopment and/or reuse of vacant buildings and properties.	On Track	10/14/2021	09/30/2027	09/30/2024	Ongoing collaboration with our retail consultant targeting specific retailers that lead to recruitment in the following areas: retail entertainment, destination/specialty retailers, or restaurant brands not presently in Brazos County, with a focus on backfilling along primary city corridors and presenting the former Macy's and former Sears service center as redevelopment opportunities along Holleman Drive. Attended a state retail conference along with retail consultant, meeting with regional brands, brokers, and developers. Popstroke, a new entertainment destination, opened on TAMU system property adjacent to Century Square.
8.4	Action Items	8.4 Evaluate the utilization of impact fees that provide revenues to support infrastructure demands.	On Track	10/14/2021	09/30/2027	09/30/2024	First of three residential collection rate annual increases for water and roadway impact fees was implemented January 1st of this year as programmed. Semi-annual reporting was presented to Impact Fee Advisory Committee and City Council in compliance with LGC.
8.5	Action Items	8.5 Evaluate and revise the Water/Sanitary Sewer Extension Policy.	Achieved	10/14/2021	09/30/2023	09/30/2023	Water Services staff completed an evaluation of the policy and determined no changes were needed at this time. The policy will be reviewed in the future as conditions change.
8.6	Action Items	8.6 Conduct fiscal impact analyses.	On Track	10/14/2021	09/30/2030	06/30/2024	Consultant is finalizing the model, will then test it, and then deliver it in September.
8.7	Action Items	8.7 Continue the City's Oversize Participation practice, where appropriate.	On Track	10/14/2021	09/30/2030	09/30/2024	Two projects received approval for funding; Highpoint Apartments and the Nova. Upon completion of the Highpoint Apartments they were reimbursed their approved funding for a waterline. The Nova is still under construction and will receive approved funds once their sanitary sewer project is completed.
8.8	Action Items	8.8 Use available tools to strategically manage growth pressure in the ETJ.	On Track	10/14/2021	09/30/2030	09/30/2024	Legislative actions have influenced the City's ability to regulate the ETJ. The City is pursuing every avenue protect it's citizens through managed growth, while complying with state laws. The City is seeking further clarification of the City's rights through the court system, and is asking the legislature to provide greater clarity during the 2025 Legislative Session.
9	Goals	9. Collaborative Partnerships	On Track	10/14/2021	09/30/2030	09/23/2024	
9.1	Action Items	9.1 Reference the Comprehensive Plan actions within City master plans.	On Track	10/14/2021	09/30/2030	09/30/2024	The College Station Housing Action Plan, adopted September 26, 2024, referenced four Comprehensive Plan Action Items.
9.2	Action Items	9.2 Reference the Comprehensive Plan and City master plans in Capital Improvements Planning, departmental work programs, and budgeting processes.	On Track	10/14/2021	09/30/2030	09/30/2024	The Comprehensive Plan, as well as the Council Strategic Plan and departmental Key Performance Indicators (KPIs), were referenced throughout departmental budget requests for FY24. The FY24 budget was approved by City Council on August 10, 2023.
9.3	Action Items	9.3 Establish a university/city annual agenda.	On Track	10/14/2021	09/30/2027	09/30/2024	There is no annual meeting. However City leaders and University leaders are in regular communication.
9.4	Action Items	9.4 Gather growth expectations.	On Track	10/14/2021	09/30/2030	09/30/2024	In FY 2024, City staff began evaluating the community's existing conditions in preparation for the 2025 Comprehensive Plan 5-Year Update. This evaluation considered growth projections for Texas A&M University, and it was informed by the University's Capacity Study released August 2024.
9.5	Action Items	9.5 Formalize ongoing collaborations and establish a planning coordination task force with Texas A&M University and the City.	On Track	10/14/2021	09/30/2027	09/30/2024	The University released its capacity study for public comment in September. City Staff has provided feedback and recommendations.
9.6	Action Items	9.6 Continue "good neighbor" initiatives with Texas A&M for permanent and temporary residents.	On Track	10/14/2021	09/30/2030	09/30/2024	Community Services engaged in the "Be a Good Neighbor" initiative by meeting with Texas A&M faculty, including Greek Life, to discuss issues in the city involving Aggie students. Staff met quarterly and will continue this program into the future.
9.7	Action Items	9.7 Contribute to a joint branding effort with Texas A&M University.	On Track	10/14/2021	09/30/2027	09/30/2024	City staff coordinated with A&M athletics on the sharing of photo assets. During this period, ED & Tourism staff launched a new website and visitor guide prominently highlighting A&M's history, traditions, and impact as a tourism destination within the City of College Station.
9.8	Action Items	9.8 Expand tourism opportunities with Texas A&M University.	On Track	10/14/2021	09/30/2030	09/30/2024	Tourism staff partnered with Texas A&M in July for the 2024 USATF National Junior Olympic Track & Field Championships, a national-level event which brought thousands of competitors and their families to College Station for the week-long experience.



#	Level	Indented Name	Status	Start Date	Due Date	Last Updated	Last Comment
9.9	Action Items	9.9 Pursue partnerships with Texas A&M University regarding environmental stewardship.	On Track	10/14/2021	09/30/2030	09/30/2024	Planning and Development Services staff worked with the University on the Cooling College Station plan. City staff will continue to collaborate with the University as additional environmental stewardship projects come up.
9.10	Action Items	9.10 Convene coordination meetings with neighboring jurisdictions and regional planning organizations.	On Track	10/14/2021	09/30/2027	09/30/2024	Planning of coordination meetings with neighboring jurisdictions are ongoing based on issues of mutual interest. This fiscal year, City of Bryan Planning and Zoning Commission and the City of College Station Planning and Zoning Commission plan held a joint meeting on August 28. Commissioners and city staff discussed regional growth projections, development and housing pressures, and strategies each city is employing.
9.11	Action Items	9.11 Pursue interlocal cooperation agreements.	On Track	10/14/2021	09/30/2030	09/30/2024	City is currently awaiting the City of Bryan to return an MOU regarding NETL Phase 4 and water wells in the ETJ.
9.12	Action Items	9.12 Continue to coordinate with the College Station Independent School District and public charter schools.	On Track	10/14/2021	09/30/2030	09/30/2024	City Council held a joint meeting with College Station ISD School Board on October 12, 2023. Collaboration between the City of College Station and College Station ISD will continue in FY2025 and beyond
9.13	Action Items	9.13 Continue to participate in regional mobility initiatives.	On Track	10/14/2021	09/30/2030	09/30/2024	Collaboration with other regional partners of Bryan-College Station Metropolitan Planning Organization, Brazos County, Brazos Transit District, City of Bryan, College Station ISD, and Texas Department of Transportation has continued in several planning and implementation efforts.



November 14, 2024
Item No. 10.1.
Waterford Heights

Sponsor: Jeff Howell

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundary from SC Suburban Commercial to O Office for approximately 2.08 acres at 4205-4211 Rock Prairie Road, being Lots 1-4, Block 1 of the Waterford Heights Phase 1 Subdivision, generally located east of the intersection of Rock Prairie Road and Bird Pond Road.

Relationship to Strategic Goals:

Diverse & Growing Economy

Recommendation(s): This item was heard at the October 17th, 2024 Planning and Zoning Commission meeting where the Commission voted 4-0 to recommend approval.

Summary: This request is to rezone approximately 2.08 acres of land being four platted lots generally located at 4205 thru 4211 Rock Prairie Road from SC Suburban Commercial to O Office. The subject properties were originally platted in 2019 as part of a larger subdivision which also included residential properties as well. The applicant intends to rezone the four lots adjacent to Rock Prairie Road to allow for office use. While office uses are permitted within the existing zoning district, the applicant indicates that the commercial uses currently allowed may not be as suitable to the adjacent neighborhood.

REZONING REVIEW CRITERIA

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject properties are designated on the Comprehensive Plan Future Land Use & Character Map as Neighborhood Commercial. For the Neighborhood Commercial land use, the Comprehensive Plan provides the following:

Areas of commercial activities that cater primarily to nearby residents. These areas tend to be smaller format than general commercial and locate adjacent to major roads along the fringe of residential areas.

The intent of the district is to:

- Accommodate limited commercial services compared to General Commercial.
- Encourage transitions in building height and mass when adjacent to residential neighborhoods.
- Support some residential uses that are compatible with the surrounding neighborhood character.

The zoning districts that are generally appropriate within this land use include: SC Suburban Commercial and O Office zoning.

The proposed rezoning is in line with the Comprehensive Plan as the request is for O Office zoning and will be providing a small-scale office development.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject property is adjacent to low to medium density residential development with detached single-family dwellings to the north, as well as to the south across Rock Prairie Road. The property to east is currently a retention pond, while the property to the west is currently vacant. The O Office zoning district acts as a buffer for the residential uses between Rock Prairie Road, which is a future 4-Lane Major Arterial. Uses allowed within this district are small scale and low-intensity which are considered complimentary to existing single-family development. While office uses are allowed within the existing zoning, the applicant has indicated that only office uses are proposed and may be more suitable adjacent to the existing neighborhood.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The size and location of the subject property is suitable for office uses allowed within the proposed zoning district. The site has adequate space to meet the minimal dimensional standards for the zoning district. Due to its location adjacent to a major roadway and single-family neighborhood it is also suitable for the proposed zoning district. Due to the existing limitation of not having access to Rock Prairie Road and size of the property, development may be constrained under the existing zoning. The proposed zoning district also requires a landscape buffer to the existing neighborhood.

4. Whether there are available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water and wastewater infrastructure is adequate to support the needs of this development. Drainage and any other infrastructure required with the site redevelopment shall be designed and constructed in accordance with the BCS Unified Design Guidelines. The subject property fronts Rock Prairie Road, which is classified as a major arterial. While the lots front onto this roadway, as indicated on the subdivision plat, direct access to Rock Prairie is not allowed. The proposed use is expected to generate less than 150 trips in any peak hour; therefore, a TIA was not required.

5. The marketability of the property:

The uses allowed by the proposed zoning district are generally marketable for the area. The applicant states that the property is marketable for suburban commercial uses, but may be less desirable than office uses for the adjacent neighborhood.

Budget & Financial Summary: N/A

Attachments:

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

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A “UNIFIED DEVELOPMENT ORDINANCE,” ARTICLE 4 “ZONING DISTRICTS,” SECTION 4.2, “OFFICIAL ZONING MAP” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES FROM SC SUBURBAN COMMERCIAL TO O OFFICE FOR APPROXIMATELY 2.08 ACRES AT 4205-4211 ROCK PRAIRIE ROAD, BEING LOTS 1-4, BLOCK 1 OF THE WATERFORD HEIGHTS PHASE 1 SUBDIVISION CERTAIN PROPERTIES AS DESCRIBED BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1:** That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2 “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A” and Exhibit “B”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED, and APPROVED this 14th day of November, 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit A

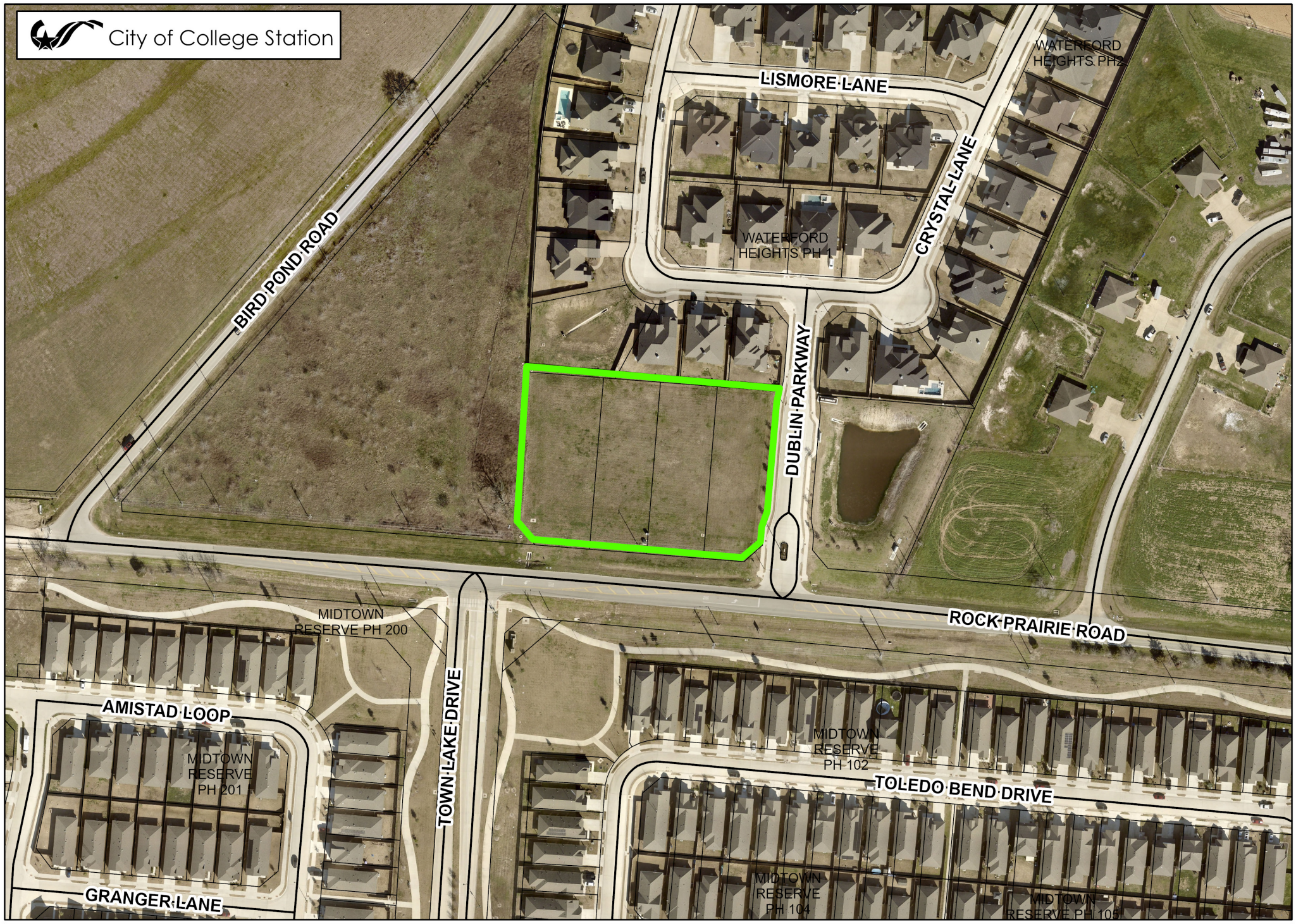
That Appendix A “Unified Development Ordinance,” Article 4 “Zoning Districts,” Section 4.2, “Official Zoning Map” of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from SC Suburban Commercial to O Office:

LOTS 1-4, BLOCK 1 OF THE WATERFORD HEIGHTS PHASE 1 SUBDIVISION

Exhibit B





0 175 350 Feet

WATERFORD HEIGHTS

Case:
REZ2024-000020

REZONING



ZONING DISTRICTS (In Grayscale)

Residential		MH	Middle Housing
R	Rural	MF	Multi-Family
WE	Wellborn Estate	MU	Mixed-Use
E	Estate	MHP	Manufactured Home Pk.
WRS	Wellborn Restricted Suburban		
RS	Restricted Suburban		
GS	General Suburban		
D	Duplex		
T	Townhome		

Non-Residential

NAP	Natural Area Protected
O	Office
SC	Suburban Commercial
WC	Wellborn Commercial
GC	General Commercial
CI	Commercial Industrial
BP	Business Park
BPI	Business Park Industrial
C-U	College and University

Planned Districts

P-MUD	Planned Mixed-Use Dist.
PDD	Planned Develop. Dist.

Design Districts

WPC	Wolf Pen Creek Dev. Cor.
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate

Overlay Districts

OV	Corridor Ovr.
RDD	Redevelopment District
HOO	High Occupancy Ovr.
ROO	Restricted Occupancy Ovr.
NPO	Nbrhd. Prevailing Ovr.
NCO	Nbrhd. Conservation Ovr.
HP	Historic Preservation Ovr.

Retired Districts

R-1B	Single Family Residential
R-4	Multi-Family
R-6	High Density Multi-Family
C-3	Light Commercial
RD	Research and Dev.
M-1	Light Industrial
M-2	Heavy Industrial

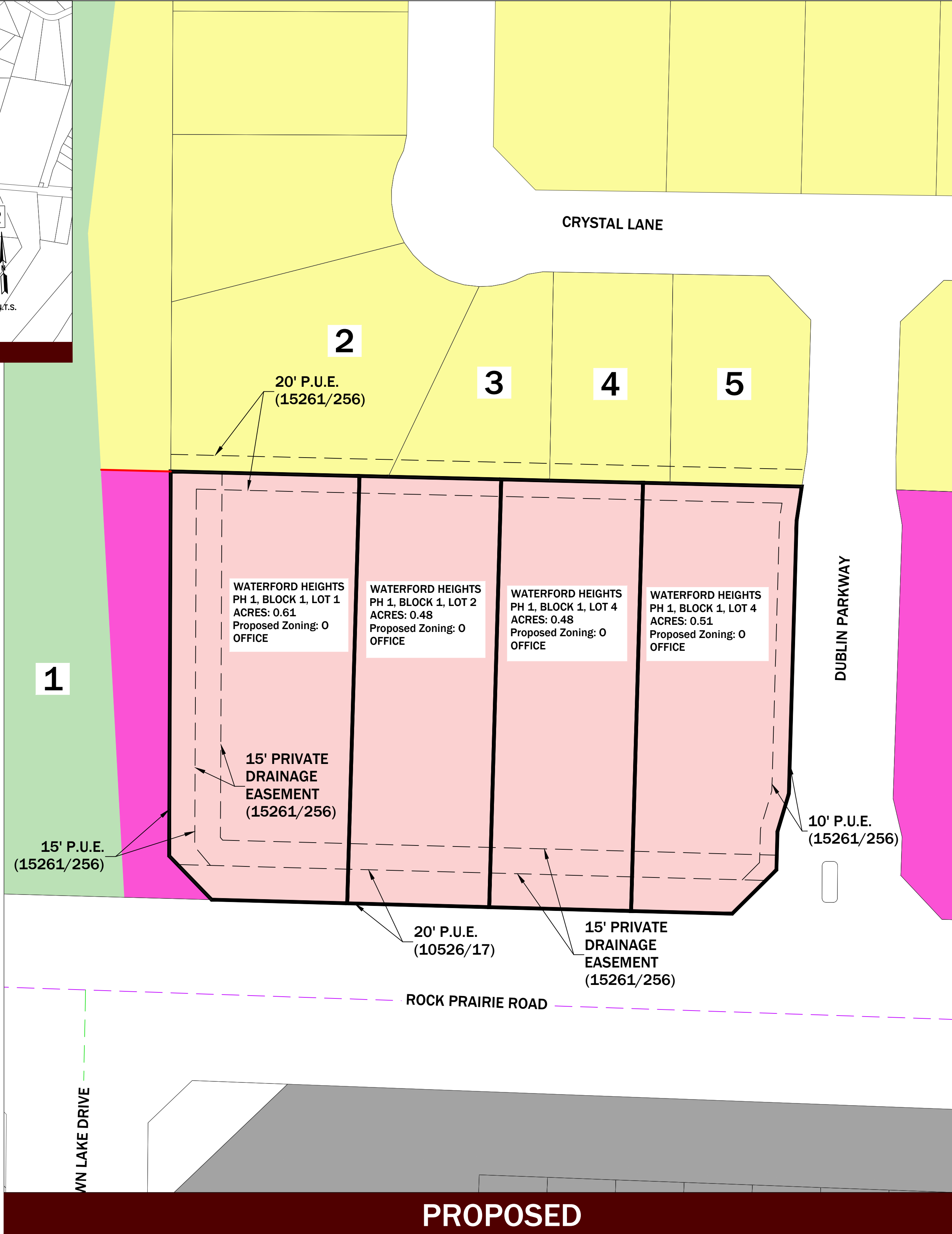
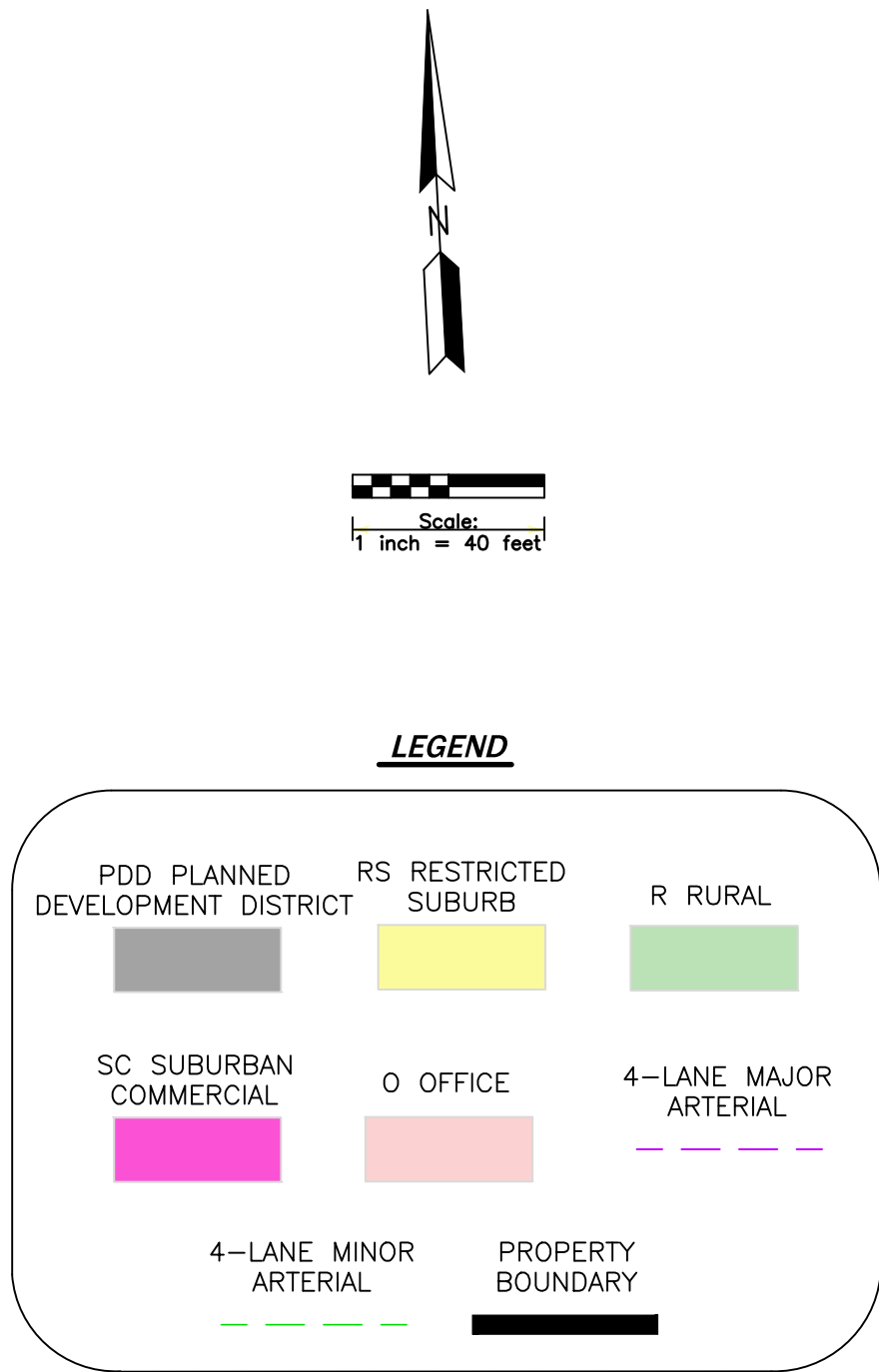
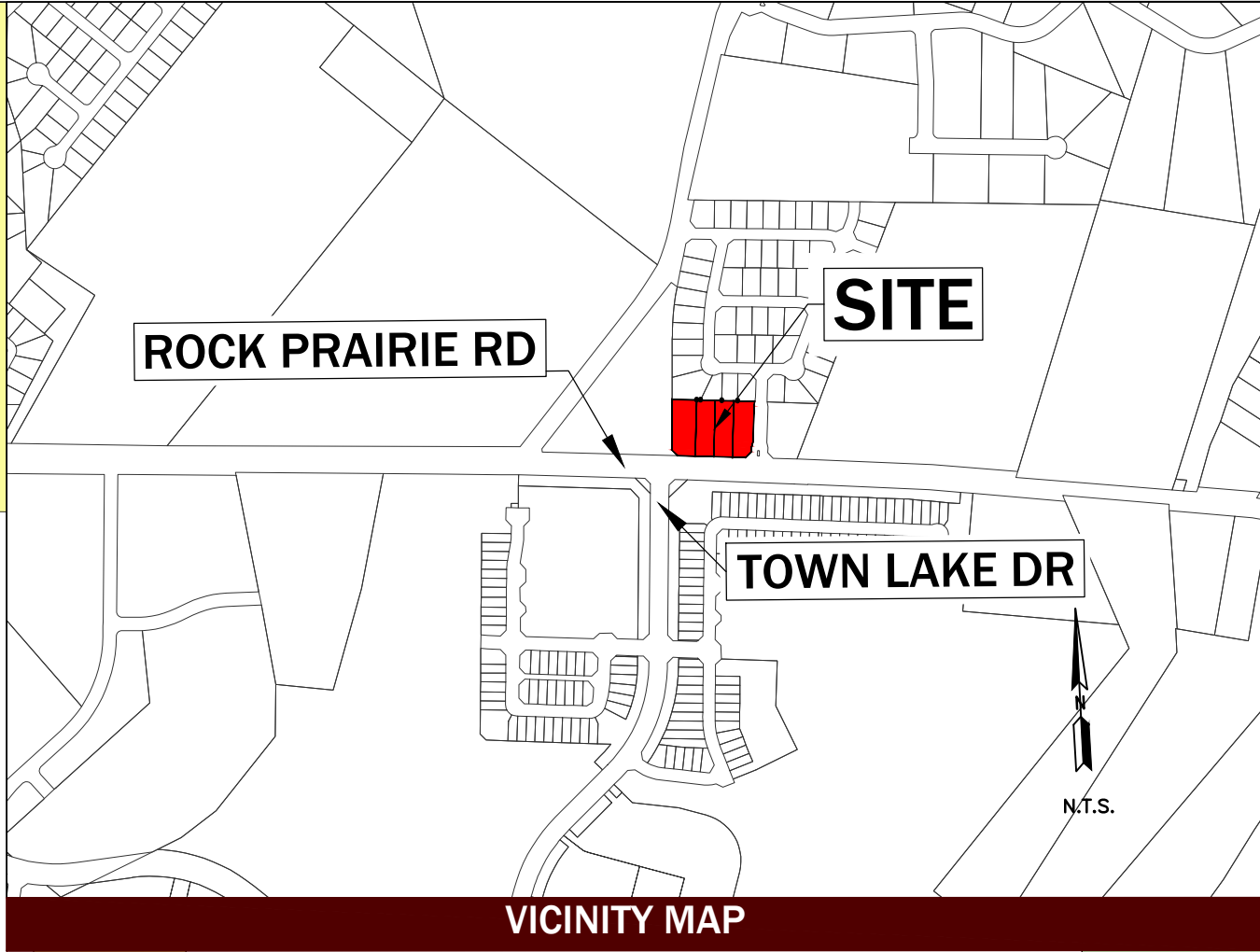
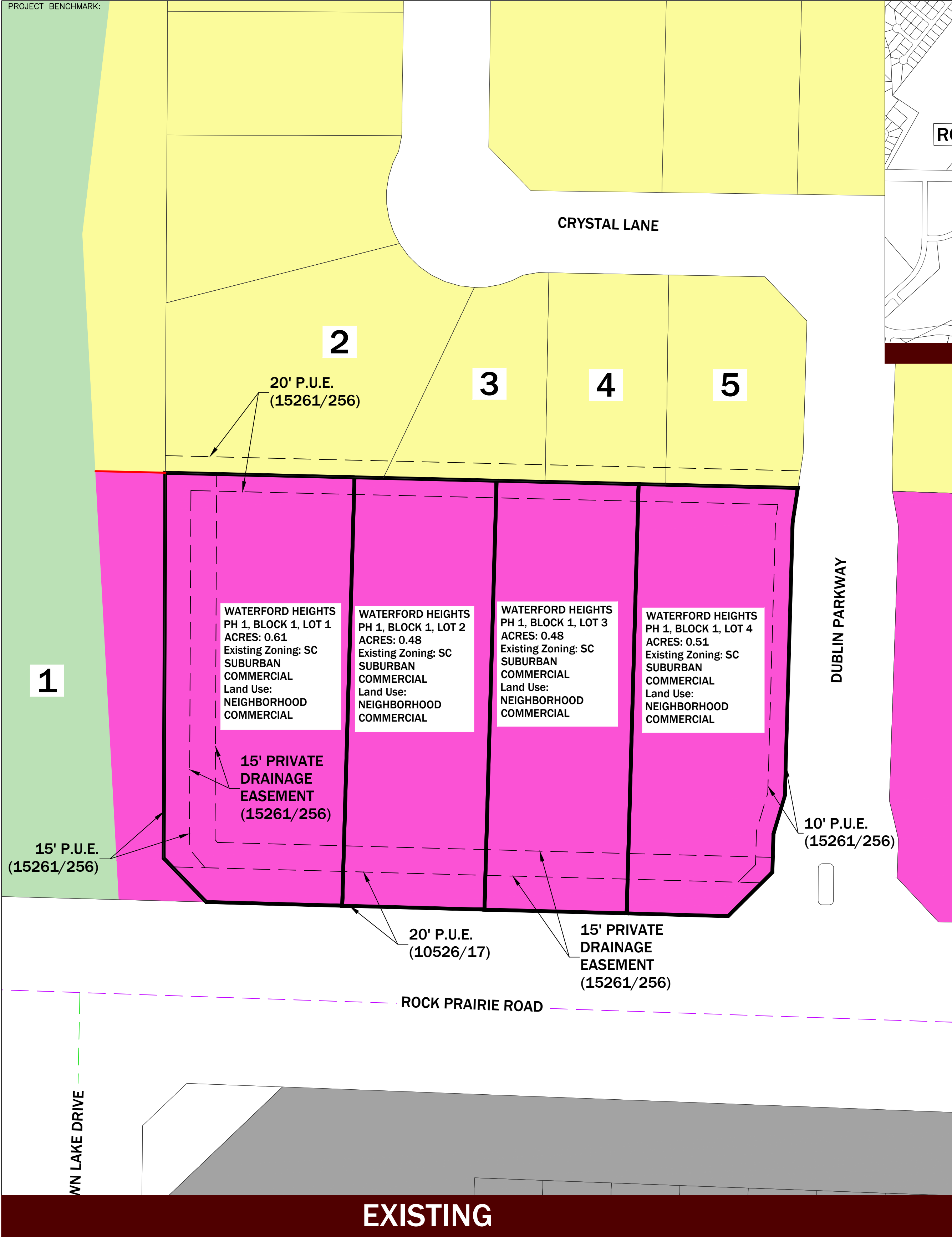


0 175 350 Feet

WATERFORD HEIGHTS

Case:
REZ2024-000020

REZONING



Number	Owner	Legal Description	Existing Land Use	Existing Zoning
1	SHARAJ HOLDINGS LLC	A000901, THOMAS CARRUTHERS (ICL), TRACT 11.2, 5.332 ACRES	Neighborhood Commercial, Suburban Residential	RS-Restricted Suburban, R-Rural, SC-Suburban Commercial
2	WATERFORD HEIGHTS HOMEOWNERS ASSOC	WATERFORD HEIGHTS PH 1, BLOCK 1, LOT CA & DRAINAGE EASEMENTS	Suburban Residential	RS-Restricted Suburban
3	MARRS JUDALON & MICHAEL D PRICE	WATERFORD HEIGHTS PH 1, BLOCK 1, LOT 7	Suburban Residential	RS-Restricted Suburban
4	WILLIAMS DERALD LAMON & BETTIE	WATERFORD HEIGHTS PH 1, BLOCK 1, LOT 6	Suburban Residential	RS-Restricted Suburban
5	JONES JEFFREY ROBERT & LISA FUNKHOUSER-JONES	WATERFORD HEIGHTS PH 1, BLOCK 1, LOT 5	Suburban Residential	RS-Restricted Suburban

MITCHELL
MORGAN

T.979.260.6963
F.979.260.3564
TX. FIRM # F-1443

3204 EARL RUDDER FWY. S.
COLLEGE STATION, TX 77845

PLAN & DESIGN SPECIALISTS IN
CIVIL ENGINEERING • HYDRAULICS
HYDROLOGY • UTILITIES • STREETS
SITE PLANS • SUBDIVISIONS
www.mitchellandmorgan.com

For Interim Review Only
Not to be used for construction
Issued, Prepared by: Morgan, P.E.
Version: No. 7/2024

SEPTEMBER 2024
Drawn By: RB
Checked By: JBM

Prepared For:
OWNER:
JP&M INVESTMENTS, LP
PO BOX 7170
Julesburg, CO 80732
77805-7170

Revisions

REZONING MAP

RZ

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: October 17, 2024
Advertised Council Hearing Date: November 14, 2024

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

N/A

Property owner notices mailed: 25

Contacts in support: None at the time of this report
Contacts in opposition: 1 at the time of this report
Inquiry contacts: 3 at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Suburban Residential	RS Restricted Suburban	Single-family detached, Common Area (detention pond)
South	Parks & Greenways, Mixed Residential	PDD Planned Development District	Rock Prairie Rd (major arterial)
East	Neighborhood Commercial	SC Suburban Commercial	Dublin Pkwy (local street) and Common Area (retention pond)
West	Suburban Residential, Neighborhood Commercial	SC Suburban Commercial, RS Restricted Suburban, R Rural	Vacant

DEVELOPMENT HISTORY

Annexed: Portion in October 1983, Portion in November 2002
Zoning: Portion as A-O Agricultural-Open (upon annexation 1983)
Portion as A-O Agricultural-Open (upon annexation 2002)
A-O Agricultural-Open renamed to R Rural (2013)
From R Rural to SC Suburban Commercial (2015)
Final Plat: Waterford Heights Phase 1 (2019)
Site Development: Vacant



REZONING APPLICATION SUPPORTING INFORMATION

Name of Project: WATERFORD HEIGHTS (REZ2024-000020)

Address: 4211 ROCK PRAIRIE RD

Legal Description: WATERFORD HEIGHTS PH 1, BLOCK 1, LOT 4

Total Acreage: 2.08

Applicant:: CRISSY HARTL

Property Owner: J P & M INVESTMENTS LP

List the changed or changing conditions in the area or in the City which make this zone change necessary.

As this area of College Station develops with new residences, the need for non-commercial uses to serve the residents becomes more important, including office uses. While offices are permitted in the current zoning, SC Suburban Commercial, some permitted uses may not be as favored on such a small site that backs up to a single-family neighborhood.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

The Comprehensive Plan designates these properties for Neighborhood Commercial land uses. The O Office zoning district is compatible with the Neighborhood Commercial land use category as it is a low-intensity zoning that would have minimal impacts on the adjacent neighborhood, which is a priority discussed in the Comprehensive Plan.

How will this zone change be compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood?

The uses permitted in the Suburban Commercial zoning district are suitable for the property as they are intended to serve nearby neighborhoods. The O Office zoning district allows for several uses permitted in SC Suburban Commercial, but eliminates uses that generate higher traffic counts and may include less desirable site elements to support those uses.

Explain the suitability of the property for uses permitted by the rezoning district requested.

Office uses are very suitable for and compatible with properties adjacent to single-family residences as they are low-intense, quiet, and friendly. The permitted uses typically operate during standard business hours and do not include uses that may utilize drive-thru order windows, nor queuing spaces or other such requirements. By eliminating these potential uses and limiting the uses to primarily offices, future development is more suitable.

Explain the suitability of the property for uses permitted by the current zoning district.

Office uses are very suitable for and compatible with properties adjacent to single-family residences as they are low-intense, quiet, and friendly. The permitted uses typically operate during standard business hours and do not include uses that may utilize drive-thru order windows, nor queuing spaces or other such requirements. By eliminating these potential uses and limiting the uses to primarily offices, future development is more suitable.

Explain the marketability of the property for uses permitted by the current zoning district.

The property is marketable for suburban commercial uses, but may be less desirable than office uses for the adjacent neighborhood.

List any other reasons to support this zone change.

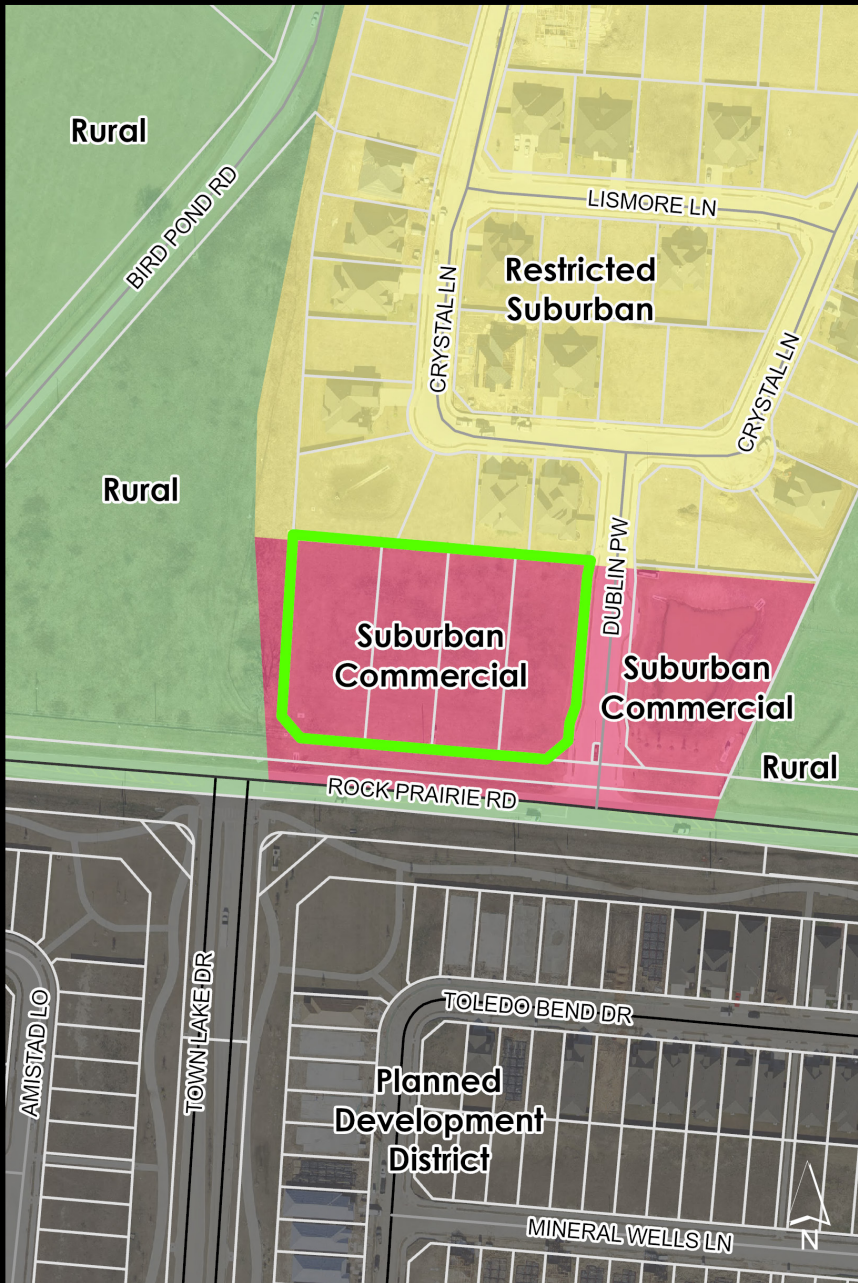
N/A

EXISTING

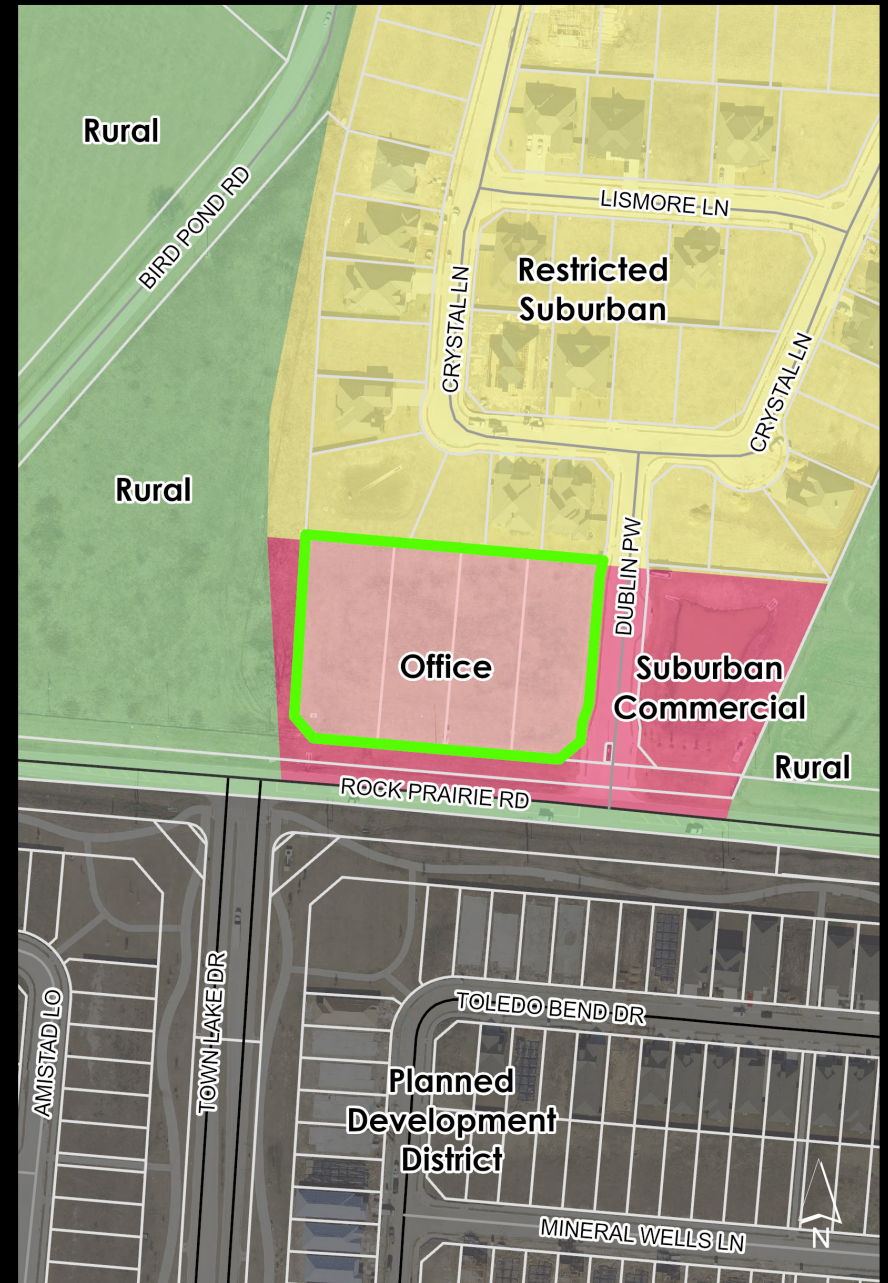
Future Land Use



EXISTING Zoning



PROPOSED Zoning



November 14, 2024
Item No. 10.2.
Needham Estates – Utility Easement Abandonment

Sponsor: Lucas Harper

Reviewed By CBC: City Council

Agenda Caption: Public Hearing, presentation, discussion, and possible action on an ordinance vacating and abandoning a 0.139 acre portion of a 10-foot-wide utility easement located along Lots 1-7, Block 1 of the Needham Estates Subdivision, College Station, Brazos County, Texas, according to the final plat recorded in Volume 276, Page 301 of the Deed Records of Brazos County, Texas.

Relationship to Strategic Goals:

- Core Services and Infrastructure
- Diverse Growing Economy

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

Summary: The utility easement abandonment is being requested by the applicant as a result of a desire to revise the lot layout and construct a common area and storm-water detention facility. The proposed layout necessitates relocating the utility easement at the front of both rows of lots in the future subdivision. The originally dedicated easement was not utilized by utilities, a future public utility easement will be dedicated along the frontage of the new lots and the existing 60-foot right-of-way of Jamey Lane will remain in place to provide access and utilities to the lots.

The utility easement is located approximately 139 feet southwest and parallel to Jamey Lane, extending down the rear lot lines of Lots 1-7, Block 1 of the Needham Estates Subdivision, also currently known as 2522 Barron Road.

Budget & Financial Summary: N/A

Attachments:

1. Needham Abandonment Ordinance
2. Vicinity Map
3. Location Map
4. Easement Abandonment Application

ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AFFIRMATIVE FINDINGS AND VACATING AND ABANDONING A 0.139 ACRE PORTION OF THE 10-FOOT-WIDE UTILITY EASEMENT, SAID PORTION LYING ALONG LOTS 1 THROUGH 7, BLOCK 1, OF THE NEEDHAM ESTATES SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN VOLUME 276, PAGE 301 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

WHEREAS, the City of College Station, Texas, has received an application for the vacation and abandonment of a portion of the 10-foot Width Utility Easement, said portion lying along Lots 1 through 7, Block 1, of the Needham Estates Subdivision, according to the plat recorded in Volume 276, Page 301, of the Deed Records of Brazos County, Texas, as described in **Exhibit “A”**, attached hereto (such portion hereinafter referred to as the “Utility Easement”); and

WHEREAS, in order for the Utility Easement to be vacated and abandoned by the City Council of the City of College Station, Texas, the City Council must make certain affirmative findings; now therefore,

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

PART 1: That after opening and closing a public hearing, the City Council finds the following pertaining to the vacating and abandoning of the Utility Easement described in **Exhibit “A”** attached hereto and made a part of this ordinance for all purposes.

1. Abandonment of the Utility Easement will not result in property that does not have access to public roadways or utilities.
2. There is no public need or use for the Utility Easement.
3. There is no anticipated future public need or use for the Utility Easement.
4. Abandonment of the Utility Easement will not impact access for all public utilities to serve current and future customers.

PART 2: That the Utility Easement as described in **Exhibit “A”** be abandoned and vacated by the City.

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

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

Exhibit “A”

METES AND BOUNDS DESCRIPTION
0.139 ACRE (10' WIDE UTILITY EASEMENT ABANDONMENT)
Block 1, Needham Estates

All that certain tract or parcel containing 0.139 acre of land in the Robert Stevenson League, A-54, Brazos County, Texas, 10' wide utility easement along Block 1, Needham Estates, a subdivision of record in Volume 276, Page 301, of the Brazos County Deed Records, (BCDR), said 0.139 acre being more particularly described by metes and bounds as follows, basing bearings on the Texas Coordinate System of 1983, (NAD 83) Central Zone, to wit:

BEGINNING at a 1/2" iron rod found for a northwest corner, being the west corner of Lot 7, Block 1, Needham Estates and north corner of a tract which was called 4.89 acres and conveyed from Eugene Bernard Savage III, et al, to Grace Lynn Savage, Trustee, by an instrument of record in Volume 16669, Page 95, BCOPR, lying in the southeast line of Lot 3, Block 1, Edelweiss Ridge, a subdivision of record in Volume 10065, Page 244, BCOPR, from which a city monument #120 found for reference bears: N31°52'26"W, 18,215.29 feet;

THENCE N44°51'14"E, 10.01 feet, along the common line of said Lot 7, Block 1, Needham Estates and Lot 3, Block 1, Edelweiss Ridge to a point for north corner, from which a 1/2" iron rod found for north corner of Lot 7 bears: N44°51'14"E, 138.78 feet;

THENCE S47°59'50"E, 605.85 feet, crossing said Block 1, Needham Estates to a point for east corner;

THENCE S42°25'53"W, 10.00 feet, crossing Lot 1, Block 1, Needham Estates to a point for south corner, lying in the northeast line of said 4.89 acre tract, from which a 1/2" iron rod found for south corner of Lot 1, Block 1, Needham Estates and east corner of said 4.89 acre tract, lying in the northwest right of way (R-O-W) line of Barron Road, a public road, bears: S47°59'50"W, 10.00 feet;

THENCE departing Barron Road, N47°59'50"W, along the common line of said Block 1, Needham Estates and said 4.89 acre tract, at 76.24 feet pass a 5/8" iron rod found for a common corner of Lot 1 and Lot 2, 0.17 feet to the right of line, and continuing along said common line, at 248.34 feet pass a 5/8" iron rod found for common corner of Lot 3 and Lot 4, 0.23 feet to the right of the line, and continuing along said common line, at 334.46 feet pass a 5/8" iron rod found for common corner of Lot 4 and Lot 5, 0.19 feet to the right of the line, and continuing along said common line, at 420.46 feet pass a 5/8" iron rod found for common corner of Lot 5 and Lot 6, 0.08 to the right of the line, and continuing along said common line, at 506.49 feet pass a 5/8" iron rod found for common corner of Lot 6 and Lot 7, 0.20 to the right of the line, and continuing along said common line for a distance in all of 606.26 feet to the PLACE OF BEGINNING, containing 0.139 acre of land, more or less. As a part of this professional service, a certified plat has been prepared by Johnson & Pace Incorporated under Job # 5624-001.


Troy Maxwell
Professional Land Surveyor
Texas Registration No. 5585

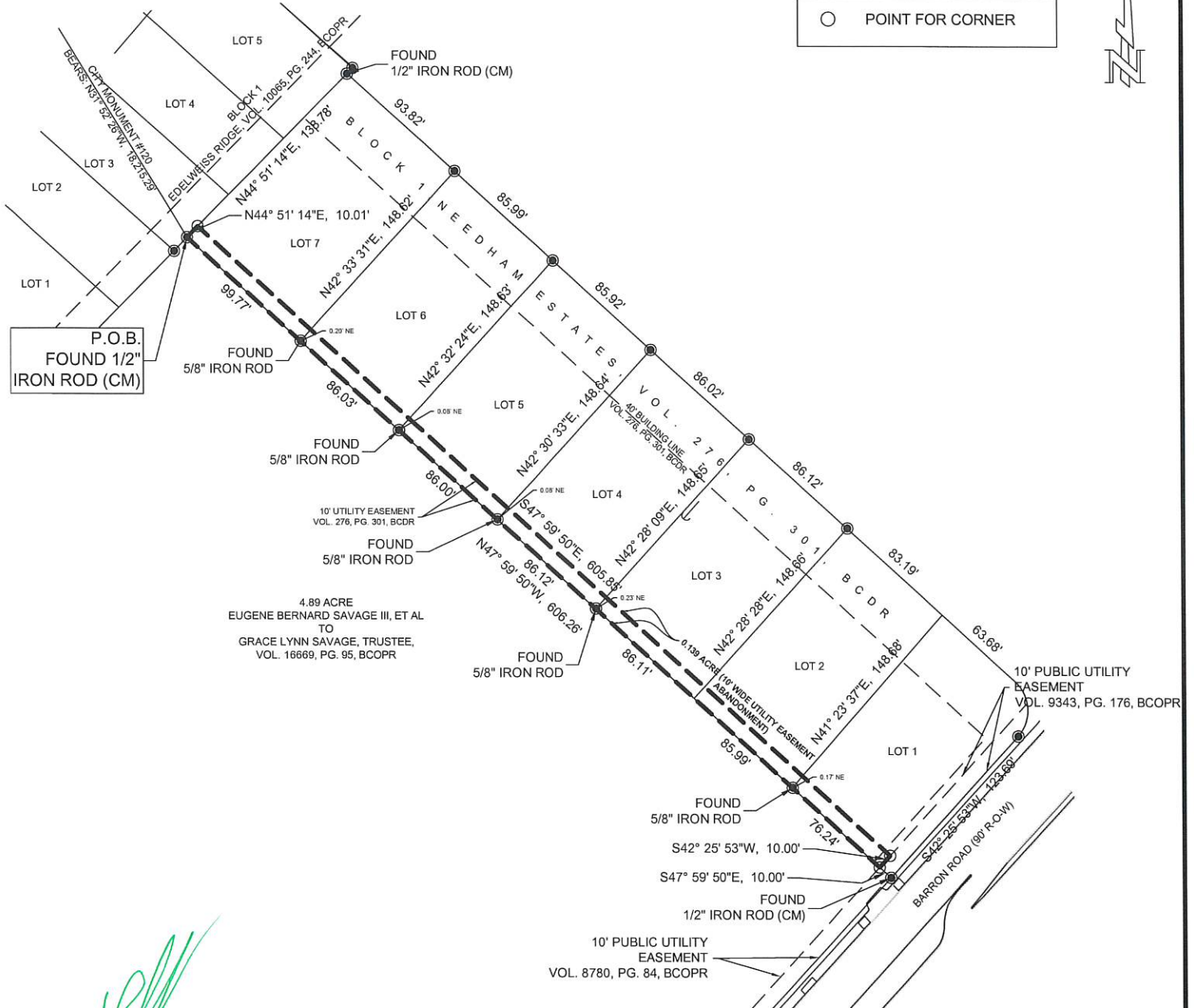
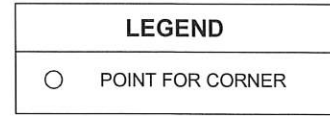
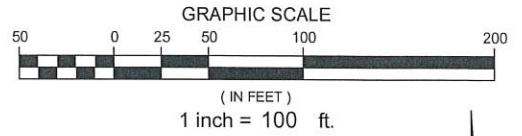


Compiled By:
Johnson & Pace Incorporated
1201 NW Loop 281 • Suite 100
Longview, Texas, 75604
TBPLS #10025400

Engineering • Architecture • Surveying
Job No. 5624-001
Date: August 22, 2024
Revised Date: October 7, 2024

NOTES

1. BEARINGS ARE BASED UPON THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), CENTRAL ZONE.
2. A CERTIFIED METES AND BOUNDS DESCRIPTION HAS BEEN PREPARED UNDER THE SAME JOB NUMBER AS A PART OF THIS PROFESSIONAL SERVICE.
3. THIS PROFESSIONAL SERVICE WAS PERFORMED WITHOUT BENEFIT OF HAVING BEEN FURNISHED A TITLE COMMITMENT. EASEMENTS AND/OR OTHER MATTERS AND/OR ISSUES RELATING TO TITLE COULD AND MAY EXIST.
4. ACCORDING TO TEXAS LOCAL GOVERNMENT CODE, CHAPTER 212.004 AND 212.005, DIVIDING ANY TRACT OR LOT INTO TWO OR MORE PARTS WITHOUT BENEFIT OF A SUBDIVISION PLAT APPROVED BY THE CITY OF LONGVIEW AND ALSO FILED AND RECORDED WITH THE COUNTY CLERK, IS A VIOLATION OF CITY ORDINANCE AND STATE LAW, SUBJECTING THE VIOLATOR TO FINES AND/OR THE WITHHOLDING OF UTILITIES AND BUILDING PERMITS.



AUGUST 29, 2024
DATE

REVISED: OCT. 7, 2024
-REVISED: SEPT. 12, 2024

0.139 ACRE BEING A 10' WIDE UTILITY EASEMENT ALONG ABANDONMENT

LOTS 1-7, BLOCK 1,
NEEDHAM ESTATES
VOL. 276, PAGE 301, BCOPR

IN THE ROBERT STEVENSON LEAGUE, A-54
BRAZOS COUNTY, TEXAS

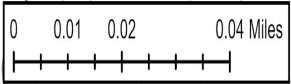
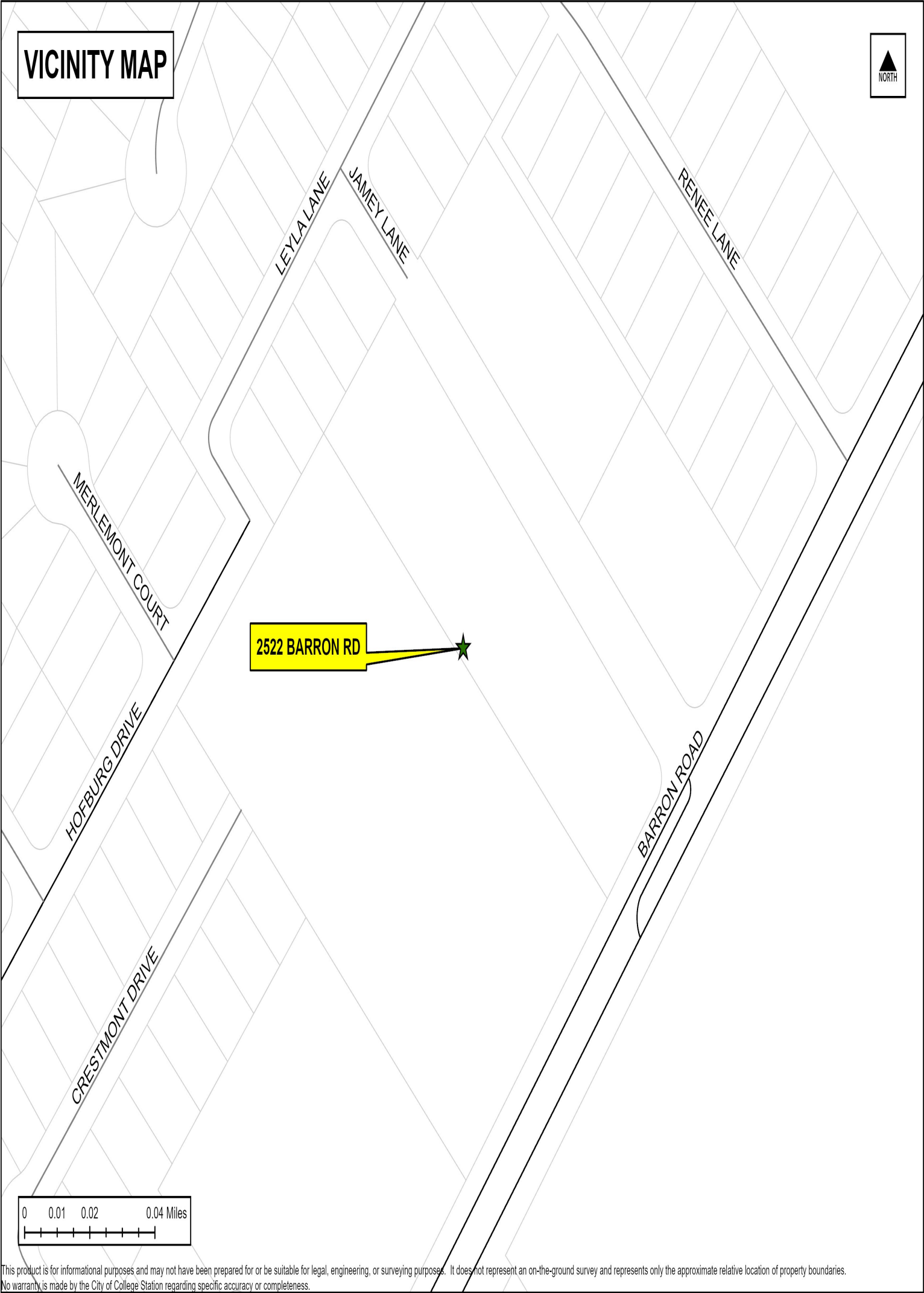


JOHNSON & PACE INCORPORATED

1201 NW LOOP 281, SUITE 100, LONGVIEW, TEXAS 75604
(903)753-0663 FAX (903)753-8803
WWW.JOHNSONPACE.COM
TBPELS 10025400, TBPE F-4691

AUG. 29, 2024 BOOK NA, PG NA DRAWN BY: JTJ JOB #5624-001

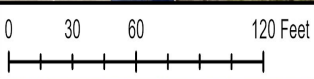
VICINITY MAP



LOCATION MAP



PUE TO BE ABANDONED
0.139 ACRES



BARRON ROAD

FOR OFFICE USE ONLY

CASE NO.: _____
 DATE SUBMITTED: _____
 TIME: _____
 STAFF: _____

ABANDONMENT OF PUBLIC RIGHT-OF-WAY/EASEMENT APPLICATION

MINIMUM SUBMITTAL REQUIREMENTS:

- ☒ Abandonment of Public Right-of-Way/Easement Application Fee. (Refer to the Planning and Development Fee Schedule for all applicable fees)
- ☒ Application completed in full. This application form provided by the City of College Station must be used and may not be adjusted or altered. Please attach pages if additional information is provided.
- ☒ All exhibits processed (except for Exhibit No. 4, which will be processed by staff).
- ☒ Title report for property current within ninety (90) days or accompanied by a Nothing Further Certificate current within ninety (90) days. The report must include applicable information such as ownership, liens, encumbrances, etc.
- ☐ For unplatted property, a signed, sealed and dated metes and bounds description and a diagram of the property showing the location of the abandonment.
- ☒ For platted property, a copy of the plat showing the lot, block, subdivision, and recording information.

LOCATION OF RIGHT-OF-WAY/EASEMENT TO BE ABANDONED (Include legal description):

10' Utility Easement located on the west line of the Needham Estates Subdivision recorded in Volume 276, Page 301 BCOPR

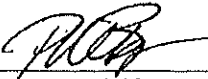
APPLICANT/PROJECT MANAGER'S INFORMATION (Primary contact for the project):

Name Philip Bargas E-mail bargas@bargasdev.com
 Street Address 4040 SH 6 South, Suite 200
 City College Station State TX Zip Code 77845
 Phone Number 979-224-5147 Fax Number _____

PROPERTY OWNER'S INFORMATION (ALL owners must be identified. Please attach an additional sheet for multiple owners):

Name Leyla TH LLC E-mail bargas@bargasdev.com
 Street Address: 4040 SH 6 South
 City College Station State TX Zip Code 77845
 Phone Number 979-224-5147 Fax Number _____

The applicant has prepared this application and certifies that the facts stated herein and exhibits attached hereto are true and correct. IF THIS APPLICATION IS FILED BY ANYONE OTHER THAN THE OWNER OF THE PROPERTY, this application must be accompanied by a power of attorney statement of the owner. If there is more than one owner, all owners must sign the application or power of attorney. If the owner is a company, the application must be accompanied by proof of authority for the company's representative to sign the application on its behalf.


 Signature and title

8/29/24
 Date

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF COLLEGE STATION:

The undersigned hereby makes application for the abandonment of that portion of the above right-of-way particularly described in Exhibit No. 1, attached. In support of this application, the undersigned represents and warrants the following:

1. The undersigned will hold the City of College Station harmless, and indemnify it against all suits, costs, expenses, and damages that may arise or grow out of such abandonment.
2. Attached, marked Exhibit No. 1, is a sealed metes and bounds description of the area sought to be abandoned, prepared by a Registered Public Surveyor.
3. Attached, marked Exhibit No. 2, is a copy of a plat or detailed sketch of that portion of the public right-of-way/easement sought to be abandoned and the surrounding area to the nearest streets in all directions, showing the abutting lots and block, and the subdivision in which the above described right-of-way/easement is situated, together with the record owners of such lots.
4. Attached, marked Exhibit No. 3, is the consent of all public utilities to the abandonment.
5. Attached, marked Exhibit No. 4, is the consent of the City of College Station staff to the abandonment.
6. Attached, marked Exhibit No. 5, is the consent of all the abutting property owners, except the following: (if none, so state)

Name None E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name _____ E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name _____ E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

7. That the abandonment will not result in property that does not have access to public roadways or utilities because:

The property will provide an updated rear lot utility easement during development.

8. That there is no current public need or use for the easement or right-of-way because:

The property will provide an updated rear lot utility easement during development.

The easement does not currently have utilities in it.

9. That there is no anticipated future public need or use for the easement or right-of-way because:

The property will provide an updated rear lot utility easement during development.

10. That all public utilities have access to serve current and future customers because:

The property will provide an updated rear lot utility easement during development.

11. Such public right-of-way/easement has been and is being used as follows:

The easement does not currently have utilities in it.

I swear that all of the information contained in this application is true and correct to the best of my knowledge and belief.

PMB *Project MGR*
Signature and title

8/23/24
Date

STATE OF TEXAS

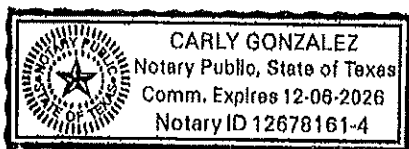
§
§
§

ACKNOWLEDGEMENT

COUNTY OF BRAZOS

Subscribed and sworn to before me, a Notary Public, this *23* day of *August*, ^{*2024*}~~2009~~ by

Philip Bargas



[Signature]
Notary Public in and for
the State of Texas

Application for Abandonment of
a Public Right-of-Way/Easement

Location: Needham Estates, Block 1, Lots 1-7

EXHIBIT NO. 1

Attached is a sealed copy of the metes and bounds description of the public right-of-way/easement situated in
Needham Estates

Addition/Subdivision to the City of College Station, Brazos County, Texas, sought to be abandoned.

METES AND BOUNDS DESCRIPTION
0.139 ACRE (10' WIDE UTILITY EASEMENT ABANDONMENT)
Block 1, Needham Estates

All that certain tract or parcel containing 0.139 acre of land in the Robert Stevenson League, A-54, Brazos County, Texas, 10' wide utility easement along Block 1, Needham Estates, a subdivision of record in Volume 276, Page 301, of the Brazos County Deed Records, (BCDR), said 0.139 acre being more particularly described by metes and bounds as follows, basing bearings on the Texas Coordinate System of 1983, (NAD 83) Central Zone, to wit:

BEGINNING at a 1/2" iron rod found for a northwest corner, being the west corner of Lot 7, Block 1, Needham Estates and north corner of a tract which was called 4.89 acres and conveyed from Eugene Bernard Savage III, et al, to Grace Lynn Savage, Trustee, by an instrument of record in Volume 16669, Page 95, BCOPR, lying in the southeast line of Lot 3, Block 1, Edelweiss Ridge, a subdivision of record in Volume 10065, Page 244, BCOPR, from which a city monument #120 found for reference bears: N31°52'26"W, 18,215.29 feet;

THENCE N44°51'14"E, 10.01 feet, along the common line of said Lot 7, Block 1, Needham Estates and Lot 3, Block 1, Edelweiss Ridge to a point for north corner, from which a 1/2" iron rod found for north corner of Lot 7 bears: N44°51'14"E, 138.78 feet;

THENCE S47°59'50"E, 605.85 feet, crossing said Block 1, Needham Estates to a point for east corner;

THENCE S42°25'53"W, 10.00 feet, crossing Lot 1, Block 1, Needham Estates to a point for south corner, lying in the northeast line of said 4.89 acre tract, from which a 1/2" iron rod found for south corner of Lot 1, Block 1, Needham Estates and east corner of said 4.89 acre tract, lying in the northwest right of way (R-O-W) line of Barron Road, a public road, bears: S47°59'50"W, 10.00 feet;

THENCE departing Barron Road, N47°59'50"W, along the common line of said Block 1, Needham Estates and said 4.89 acre tract, at 76.24 feet pass a 5/8" iron rod found for a common corner of Lot 1 and Lot 2, 0.17 feet to the right of line, and continuing along said common line, at 248.34 feet pass a 5/8" iron rod found for common corner of Lot 3 and Lot 4, 0.23 feet to the right of the line, and continuing along said common line, at 334.46 feet pass a 5/8" iron rod found for common corner of Lot 4 and Lot 5, 0.19 feet to the right of the line, and continuing along said common line, at 420.46 feet pass a 5/8" iron rod found for common corner of Lot 5 and Lot 6, 0.08 to the right of the line, and continuing along said common line, at 506.49 feet pass a 5/8" iron rod found for common corner of Lot 6 and Lot 7, 0.20 to the right of the line, and continuing along said common line for a distance in all of 606.26 feet to the PLACE OF BEGINNING, containing 0.139 acre of land, more or less. As a part of this professional service, a certified plat has been prepared by Johnson & Pace Incorporated under Job # 5624-001.


Troy Maxwell
Professional Land Surveyor
Texas Registration No. 5585



Compiled By:
Johnson & Pace Incorporated
1201 NW Loop 281 • Suite 100
Longview, Texas, 75604
TBPLS #10025400

Engineering • Architecture • Surveying
Job No. 5624-001
Date: August 22, 2024
Revised Date: October 7, 2024

Application for Abandonment of
a Public Right-of-Way/Easement

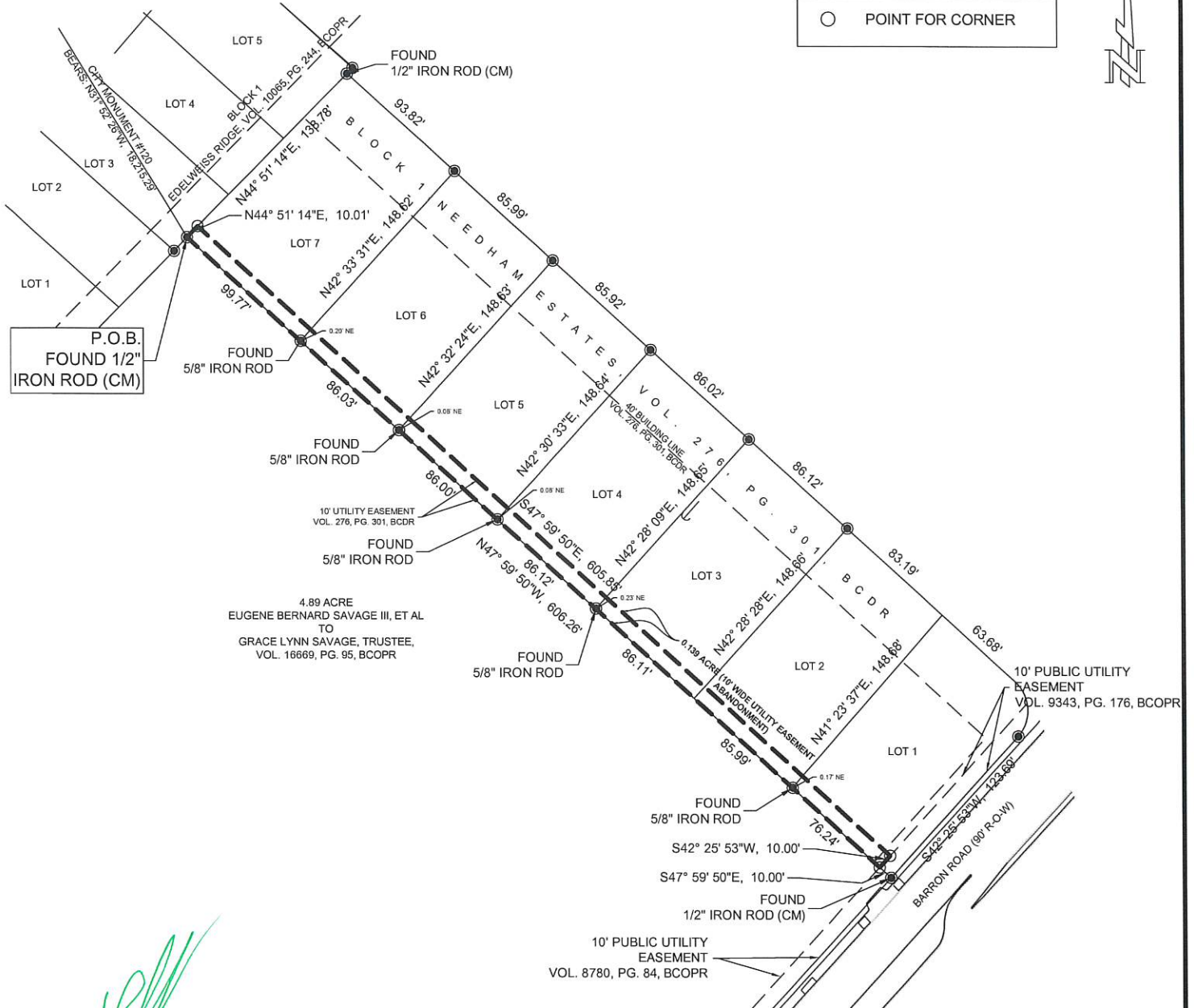
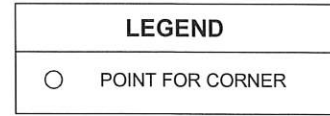
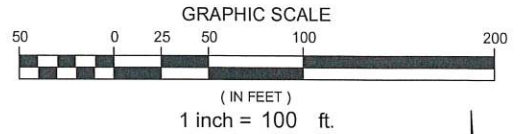
Location: Needham Estates, Block 1, Lots 1-7

EXHIBIT NO. 2

Attached is a copy of a plat or detailed sketch of the public right-of-way/easement sought to be abandoned in the above-mentioned application, showing the surrounding area to the nearest streets in all directions, abutting lots, the block or blocks in which the portion of the public right-of-way/easement sought to be vacated is situated, and the addition or subdivision in which the portion of the public right-of-way/easement sought to be abandoned is situated. Also, the names of record owners of the abutting lots are shown.

NOTES

1. BEARINGS ARE BASED UPON THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), CENTRAL ZONE.
2. A CERTIFIED METES AND BOUNDS DESCRIPTION HAS BEEN PREPARED UNDER THE SAME JOB NUMBER AS A PART OF THIS PROFESSIONAL SERVICE.
3. THIS PROFESSIONAL SERVICE WAS PERFORMED WITHOUT BENEFIT OF HAVING BEEN FURNISHED A TITLE COMMITMENT. EASEMENTS AND/OR OTHER MATTERS AND/OR ISSUES RELATING TO TITLE COULD AND MAY EXIST.
4. ACCORDING TO TEXAS LOCAL GOVERNMENT CODE, CHAPTER 212.004 AND 212.005, DIVIDING ANY TRACT OR LOT INTO TWO OR MORE PARTS WITHOUT BENEFIT OF A SUBDIVISION PLAT APPROVED BY THE CITY OF LONGVIEW AND ALSO FILED AND RECORDED WITH THE COUNTY CLERK, IS A VIOLATION OF CITY ORDINANCE AND STATE LAW, SUBJECTING THE VIOLATOR TO FINES AND/OR THE WITHHOLDING OF UTILITIES AND BUILDING PERMITS.



AUGUST 29, 2024
DATE

REVISED: OCT. 7, 2024
-REVISED: SEPT. 12, 2024

0.139 ACRE BEING A 10' WIDE UTILITY EASEMENT ALONG ABANDONMENT

LOTS 1-7, BLOCK 1,
NEEDHAM ESTATES
VOL. 276, PAGE 301, BCOPR

IN THE ROBERT STEVENSON LEAGUE, A-54
BRAZOS COUNTY, TEXAS



JOHNSON & PACE INCORPORATED

1201 NW LOOP 281, SUITE 100, LONGVIEW, TEXAS 75604
(903)753-0663 FAX (903)753-8803
WWW.JOHNSONPACE.COM
TBPELS 10025400, TBPE F-4691

AUG. 29, 2024 BOOK NA, PG NA DRAWN BY: JTJ JOB #5624-001

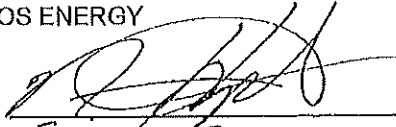
Application for Abandonment of
a Public Right-of-Way/Easement

Location: Needham Estates, Block 1, Lots 1-7

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: 

Title: Engineer 3

VERIZON TELEPHONE COMPANY

By: _____

Title: _____

SUDDENLINK COMMUNICATIONS

By: _____

Title: _____

BRYAN TEXAS UTILITIES

By: _____

Title: _____

Application for Abandonment of
a Public Right-of-Way/Easement

Location: Needham Estates, Block 1, Lots 1-7

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: _____

Title: _____

VERIZON TELEPHONE COMPANY

By: Kevin Moseley

Title: Engineering Manager

SUDDENLINK COMMUNICATIONS

By: _____

Title: _____

BRYAN TEXAS UTILITIES

By: _____

Title: _____

Application for Abandonment of
a Public Right-of-Way/Easement

Location: Needham Estates, Block 1, Lots 1-7

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: _____
Title: _____

VERIZON TELEPHONE COMPANY

By: _____
Title: _____

SUDDENLINK COMMUNICATIONS (OPTIMUM)

By: [Signature]
Title: Ops Supervisor - Construction
8/20/2024

BRYAN TEXAS UTILITIES

By: _____
Title: _____

Application for Abandonment of
a Public Right-of-Way/Easement

Location: NEEDHAM ESTATES, B11C 1, LOTS 1-7

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchises with the City of College Station, that portion of the public right-of-way/utility easement sought to be abandoned in the Application for Abandonment above referred to, do hereby consent to the abandonment of the described portion thereof.

ATMOS ENERGY

By: _____
Title: _____

VERIZON TELEPHONE COMPANY

By: _____
Title: _____

SUDDENLINK COMMUNICATIONS

By: _____
Title: _____

BRYAN TEXAS UTILITIES

By: SHARON BUCKMASTER
Title: ENGINEERING DESIGN MANAGER

Application for Abandonment of a Public Right-of-Way / Easement

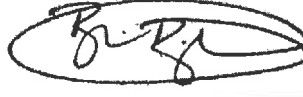
Location: Needham Estates, Block 1 Lots 1 -7

EXHIBIT NO.4

The undersigned, City staff of the City of College Station, certify that they have carefully considered the Application for Abandonment of the public right-of-way/easement referred to above the standpoint of City of College Station ordinances and with respect to recent and future needs of the City of College Station and see no objection to the requested abandonment from the City's standpoint.

X 

City Engineer
City of College Station

X 

Building Official
City of College Station

X 

Zoning Official
City of College Station

X 

Fire Marshal
City of College Station

X 

Electric Department
City of College Station

X 

Water Services Department
City of College Station

X 

Public Works Director
City of College Station

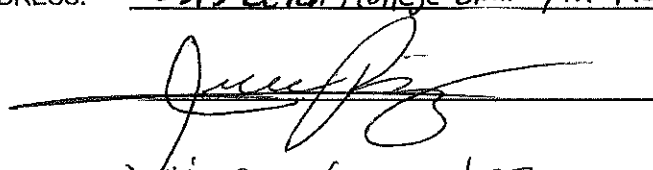
Application for Abandonment of
a Public Right-of-Way/Easement

Location: Needham Estates, Block 1, Lots 1-7

EXHIBIT NO. 5

The undersigned, owners of property abutting upon that portion of the public right-of-way/easement named and described in the Application for Abandonment of a Public Right-of-Way/Easement referred to above, do hereby consent to such abandonment.

NAME: Jose Luis Perez, Mirna Gonzalez
ADDRESS: 2515 LEYLA, College Station, TX 77845


NAME: Mirna Gonzalez
ADDRESS: 2515 Leyla Ln
College Station, TX

NAME: _____
ADDRESS: _____

NAME: _____
ADDRESS: _____

November 14, 2024
Item No. 10.3.
Resolution Approving Flood Infrastructure Fund Application

Sponsor: Carol Cotter

Reviewed By CBC: City Council

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding a resolution authorizing a grant application to the Texas Water Development Board for the installation of a phase of the Flood Early Warning System.

Relationship to Strategic Goals:

Core Services and Infrastructure

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

Summary: In April 2024, the City submitted an Abridged Funding Application for projects that would be eligible as part of the Intended Use Plan developed by the Texas Water Development Board for the Flood Infrastructure Fund. The application submitted included a request for approximately \$90,000 to fund a phase of a Flood Early Warning System (FEWS) that would install three stormwater gauges with associated flood warning flashers and alert system to notify drivers, residents and emergency responders of the potentially hazardous conditions of roadway flooding with significant rainfall events that could threaten life, safety and property. In addition, the FEWS system will collect critical rainfall and stream data which can be used for future drainage projects and studies. The Abridged Application was approved by the Texas Water Development Board to allow for the submission of the full application for funding. The City of College Station is eligible for an amount being 40% of the project in grant funds, not to exceed \$50,000.00. The Drainage Fund will cover the remainder of the installation and continued operation and maintenance.

The proposed resolution will allow staff to submit the full application for funding and authorize the City Manager to sign all documents related to the grant. A public hearing is included with this item as required. The application is due November 19, 2024.

Budget & Financial Summary: \$54,000 in Construction and \$10,000 in Operation and Maintenance (O&M) from the Drainage Fund

Attachments:

1. Grant Resolution TWDB

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AND AUTHORIZING AN APPLICATION FOR FINANCIAL ASSISTANCE FROM THE TEXAS WATER DEVELOPMENT BOARD FOR INSTALLATION OF FLOOD EARLY WARNING SYSTEMS.

WHEREAS, the City submitted an Abridged Funding Application to the Texas Water Development Board (TWDB) for a phase of its Flood Early Warning System (FEWS); and

WHEREAS, the TWDB approved the City's Abridged Application and now the City needs to submit a full application for funding to the TWDB; and

WHEREAS, the City is eligible for an amount not to exceed forty percent of the project cost for this phase of its Flood Early Warning System; and

WHEREAS, TWDB established criteria on how funding will be applied to applicants for various projects; and

WHEREAS, the City Council of the City of College Station desires to submit an application for TWDB funding; and

WHEREAS, the City intends to access the financial assistance for the FEWS project; **NOW, THEREFORE,**

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

PART 1: That the City Council hereby approves the submission of an application to the TWDB seeking financial assistance for an amount not to exceed \$50,000.00 for the purpose of funding a phase of its Flood Early Warning System (FEWS).

PART 2: That the City Manager or his designee are authorized to appear before the TWDB in support of such application.

PART 3: That the City Council of the City of College Station hereby authorizes and designates the City Manager to negotiate and execute all necessary agreements to obtain the funding on behalf of the City of College Station.

PART 4: That this Resolution shall take effect immediately from and after its passage.

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

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:

City Attorney

November 14, 2024
Item No. 10.4.
COB Sewer ILA

Sponsor: Bryan Woods, City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an interlocal agreement with the City of Bryan for approval and access to City of Bryan properties and right-of-way for the Northeast Trunkline Phase 4 Sewer Project.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This proposed Interlocal Agreement (ILA) between the City of College Station and the City of Bryan establishes a collaborative framework for the Northeast Trunkline Phase 4 sewer project. The project is designed to expand sewer capacity in College Station's northern service areas, including the Northgate District, and includes upgrades to the Hensel Park Lift Station, its force main, and the installation of a large-diameter trunkline. Some sections of the sewer lines are proposed to be located within City of Bryan right-of-ways and properties, and this agreement ensures College Station has the necessary approval to proceed with the infrastructure in those areas.

The ILA also outlines both cities' willingness to decommission College Station's Valley Park Lift Station, located near FM 2818 and FM 60. Under the agreement, the City of Bryan will contribute up to \$200,000 toward a future project to redirect sanitary sewer flow and transfer the affected service area to the City of Bryan. Additionally, the agreement includes provisions for the City of Bryan to potentially provide some level of sewer service to areas north of Highway 30, between Elmo Weedon Road and Cole Lane, upon completion of the City of Bryan's proposed east side wastewater treatment plant.

Budget & Financial Summary:

Attachments:

1. College Station Bryan Sewer ILA - COB Council version 10-17-24

**COLLEGE STATION AND BRYAN
UTILITY AND SEWER
INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT (the “ILA” or “Agreement”) is by and between the **CITY OF COLLEGE STATION**, a Texas Home Rule Municipal Corporation (“College Station”), and the **CITY OF BRYAN**, a Texas Home Rule Municipal Corporation (“Bryan”), collectively the “Parties” or “Cities”, each acting by and through their authorized agents.

WHEREAS, the Parties are authorized by the Interlocal Cooperation Act, Texas Government Code, Chapter 791, to enter into a joint agreement for the performance of the governmental functions; and

WHEREAS, Bryan and College Station desire to enter into an agreement for the use of certain existing Bryan public rights-of-way and certain limited portions of City of Bryan property located in the vicinity of Bryan’s Burton Creek Wastewater Treatment Plant as shown in **Exhibit A**, (“Wastewater Main Project”) as part of College Station’s Northeast Trunkline Project; and

WHEREAS, the Wastewater Main Project is necessary for College Station to transfer untreated wastewater from the Hensel Park Lift Station in College Station to College Station’s Carter Creek Wastewater Treatment Plant; and

WHEREAS, College Station will submit preliminary and final construction plans for the construction of the Wastewater Main Project for the portions located in Bryan, including plans for the horizontal and vertical alignment of the pipeline and construction details for the pipeline and necessary appurtenances, to Bryan for its review; and

WHEREAS, Bryan will review said preliminary and final construction plans and approve aspects of the plans related to the work in Bryan before construction; and

WHEREAS, the Parties agree that it is in the public interest that all permits, licenses, and easements required for the Wastewater Main Project be granted; and

WHEREAS, the Parties have negotiated a reasonable construction path and plan for parts of the Wastewater Main Project route that is in Bryan; and

WHEREAS, Bryan and College Station agree that this new Agreement does not amend, repeal or replace the Biocorridor ILA; and

WHEREAS, College Station’s Northeast Trunkline Project serves College Station sanitary sewer system customers; and

WHEREAS, Bryan and College Station agree to take certain actions to define the Northeast Trunkline Project route within Bryan’s city limits and in furtherance of Bryan City Council’s Resolution No. 4078, including College Station’s selection of a construction path and route, installation and ongoing maintenance for the Wastewater Main Project, College Station’s

expansion and continued operation of the Hensel Park Lift Station, and the potential transfer of certain Certificates of Convenience and Necessity (“CCNs”) and infrastructure pursuant to this Agreement, and both parties acknowledge that such actions will create on-going financial obligations on behalf of both Bryan and College Station; and

WHEREAS, the Cities have determined that the actions and projects contemplated by this Agreement will promote the public health, safety and welfare of the residents of each City; and

WHEREAS, the Cities acknowledge that the actions and projects contemplated by this Agreement require on-going financial obligations for maintenance, repair, and replacement by both Cities.

NOW, THEREFORE, in consideration of the mutual promises, benefits, and covenants made herein, the Parties agree as follows:

I. COLLEGE STATION WASTEWATER MAIN PROJECT SCOPE

1.1 Wastewater Main Scope. College Station, for the consideration described in this Agreement, desires to construct wastewater main pipelines associated with the Hensel Park Lift Station including vent stacks, manholes, open cut, tunneled, or bored sections, and all other wastewater main pipeline appurtenances necessary for operation and maintenance of the wastewater mains to be located within existing rights-of-way, easements, and real property within Bryan. The wastewater main’s locations are shown on **Exhibit A**.

II. COLLEGE STATION WASTEWATER MAIN PROJECT

2.1 Consideration for Wastewater Main Project Route. In consideration of the covenants and promises from Bryan regarding the Valley Park Sewer Area, the East Side Sewer Area, and the West Side Sewer Area, and as further described below, and the sum of TEN AND NO/100 (\$10.00) DOLLARS, receipt of which is hereby acknowledged, College Station will construct the Wastewater Main Project down a path as generally shown in **Exhibit A**.

2.2 Consideration Granting Easements. In consideration of the covenants and promises, and the sum of TEN AND NO/100 (\$10.00) DOLLARS, receipt of which is hereby acknowledged, Bryan hereby grants to College Station the non-exclusive right, privilege, and easement to lay, construct, operate, repair and replace the Wastewater Main, along with any and all appurtenances thereto, and such additional pipes and/or appurtenances as are needed in the future along the same route incidental to the use, operation, maintenance (including increased capacity), or replacement of the Wastewater Main, including granting College Station any necessary temporary and permanent utility easements, permits, or licenses to perform work in Bryan within Bryan’s public rights-of-way, easements, and real property where depicted as “Bryan City Limit Wastewater Main Project Area” as shown on **Exhibit A**.

2.3 Timing and No Interference with Utilities. College Station agrees to construct the Wastewater Main within a reasonable length of time and to maintain and operate the Wastewater

Main to not unreasonably interfere with existing utilities located within the Bryan or with the general public's reasonable use. College Station, at its sole cost, agrees to relocate any permanent utility facilities that must be relocated as a result of College Station's construction and installation of the Wastewater Main.

2.4 Relocation.

- a. Within the existing twenty-foot (20') wide easement and an adjoining, parallel twenty-foot (20') easement, along with a temporary twenty-foot (20') construction easement to be granted by this Agreement that crosses Bryan's Burton Creek Wastewater Treatment Plant property, public rights-of-way, easements, and real property, College Station shall not be required to alter, change, or relocate the Wastewater Main once it is complete and in place. If Bryan determines that relocation is necessary, due to public health and safety, then Bryan shall reimburse College Station for the design, land acquisition, and construction of such relocation. All plans that result in the alteration, change, or relocation of the Wastewater Main within Bryan's easements, and real property shall be reviewed and approved by College Station. No work shall commence until College Station has approved the proposed plans, which approval shall not be unreasonably withheld or delayed. In the event that College Station fails to reasonably review and comment within a reasonable time, it will be deemed to consent to any Bryan relocation.
- b. If Bryan shall require College Station to adapt or conform its facilities, or in any way or manner to alter, relocate, or change its property to enable any other Person to use, or to use with greater convenience, any right-of-way in which the Wastewater Main is located, College Station shall not be bound to make such changes until such other Person or entity shall reimburse or make satisfactory arrangements for reimbursement to College Station for any loss and expense caused by or arising out of such change. Bryan shall not be liable for third-party reimbursements owed to College Station from others.
- c. When College Station is required by Bryan to remove or relocate its facilities to accommodate public right-of-way improvements or improvements at Burton Creek Wastewater Treatment Plant property, if Bryan is obligated to reimburse College Station for such, and College Station is eligible under Federal, State, County or other local agencies or programs for reimbursement of costs and expenses incurred by College Station as a result of such removal or relocation and such reimbursement is required to be handled through College Station, Bryan's costs and expenses shall be included in any application by College Station for reimbursement.

2.5 Sewer Service. The permissions, rights, and easements granted to College Station for the Wastewater Main Project within Bryan's public rights-of-way, easements, and real property does not authorize College Station to serve any property in Bryan or along the Wastewater Main route, unless otherwise authorized in writing by both parties or as authorized in a validly issued wastewater Certificate of Convenience and Necessity ("CCN"). By authorizing this Agreement,

Bryan agrees to abstain from connecting its wastewater system directly to the Wastewater Main, unless done in a subsequent agreement with the appropriate approvals.

2.6 Line Abandonment. College Station agrees to notify Bryan in the event it wishes to abandon or partially abandon the Wastewater Main. Bryan agrees to notify College Station in the event it wishes to abandon any part of Bryan's public rights-of-way, easements, and real property along the Wastewater Main route. Said abandonment, however, will not require that College Station relocate the Wastewater Main unless Bryan agrees to pay, or otherwise arrange for the payment by a third party, for the design, land acquisition and reconstruction of the Wastewater Main relocation.

2.7 Repair to Surfaces and Infrastructure. College Station agrees to repair, patch or replace all Bryan rights-of-way surfaces, paved or unpaved, and BTU facilities within public rights-of-way, easements, and real property which may be cut or damaged during construction and installation of the Wastewater Main. College Station agrees that it will reasonably restore those rights-of-way cuts and BTU facilities to their original condition of such rights-of-way and BTU facilities as existed before construction and installation of the Wastewater Main. Notwithstanding anything herein to the contrary, all repairs and replacements of any pavement, curbs, sidewalks or other street appurtenances and BTU facilities within public rights-of-way, easements, and real property or any other area affected by construction, repair, maintenance, reconstruction, replacement or removal of the Wastewater Main or any of their related appurtenances shall be conducted in accordance with the then-current construction specifications for such public improvements adopted by Bryan and be completed within a commercially reasonable period of time following the completion of College Station's work on the Wastewater Main. College Station will coordinate and provide reasonable notice to Bryan. Bryan may require a traffic control plan to be submitted for review and comment before implementation.

2.8 Entering Wastewater Main Area. Bryan may enter and utilize its public rights-of-way, easements, and real property where the Wastewater Main is located at any time for the purpose of performing, installing, or maintaining improvements so long as it does not unreasonably interfere with College Station's use or maintenance of the Wastewater Main. Bryan agrees to provide notice before performing work, except in an emergency situation. Bryan will give College Station reasonable notice and opportunity to coordinate its work to prevent unnecessary damage or disruption of the Wastewater Main. Bryan's inquiry to Texas811 (or its successor) shall constitute reasonable notice. Bryan agrees to use reasonable efforts to not damage or disrupt the Wastewater Main.

2.9 Utility Crossings. Bryan will follow applicable laws, regulations and industry standards for its installation of any utility crossing, and for its approval of another's utility crossing, above or under the Wastewater Main in Bryan's public rights-of-way, easements, and real property. Bryan will notify College Station prior to such installation by Bryan or Bryan's approval of another entity's request for approval for a utility crossing.

III. VALLEY PARK SEWER AREA

3.1 Valley Park Lift Station Project. College Station's Valley Park lift station can be taken off-line once College Station transfers the CCN that covers the Valley Park lift station to Bryan and once the infrastructure connects the existing wastewater line to the Valley Park lift station into the City of Bryan wastewater service line. City of Bryan may participate in the amount not to exceed \$200,000.00 to this City of College Station project. This option may require amending certain current agreements between the two cities.

IV. WEST SIDE SEWER AREA

4.1 West Side Sewer Area. The Interlocal Cooperation and Joint Development Agreement dated December 15, 2011, with subsequent amendments dated December 31, 2012, and January 17, 2020 ("Biocorridor ILA") will continue to govern sewer service in the designated West Side Sewer Area as described in the Biocorridor ILA and as shown in **Exhibit B** ("Valley Park Sewer Area").

V. EAST SIDE SEWER AREA

5.1 East Side Sewer Project. Upon the completion of the City of Bryan's new east side wastewater treatment plant, City of Bryan is willing to provide service to City of College Station's two east side lift stations (Yaupon Trails Lift Station and the future Reveille Park Lift Station) serving areas north of Highway 30 roughly between Elmo Weedon Road and Cole Lane as shown on **Exhibit C** (the "Area"). The City of Bryan also is willing to accept responsibility for providing complete wastewater treatment in the Area, in Bryan's city limits and Bryan's extraterritorial jurisdiction (ETJ), if the Parties separately negotiate the transfer of the Certificates of Convenience and Necessity (CCN) and related infrastructure. Otherwise, the City of Bryan will treat wastewater flow from the two aforementioned lift stations at Bryan's then current wholesale rate, once the City of College Station, with cost participation from Bryan for segments within Bryan's CCN area, connects to the City of Bryan's service. If the property currently located at 1991 FM 158 and served by the City of College Station is subdivided and changes ownership at some point in the future, the "Area" will be expanded by moving the boundary line shown at Hunter's Hollow extending between Hicks Lane and Harvey Road to the new northeastern property line of the property located at 1991 FM 158.

VI. GENERAL TERMS

6.1 Term and Termination. The initial Agreement term is twenty (20) years. The Agreement will automatically renew for successive ten (10) year terms after the initial term.

6.2 Recitals Incorporated. The Recitals (whereas provisions) in this Agreement are acknowledged as true by both Parties and are hereby incorporated and made a part of this Agreement for all purposes.

6.3 Alternative Dispute Resolution. No suit shall be filed, nor a penalty be imposed, 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 thirty (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.

6.4 Interlocal Cooperation Act. The Parties to this Agreement are local governments as defined in the Interlocal Cooperation Act. Nothing in this Agreement will be construed as a waiver or relinquishment by either Party of its right to claim such exemptions, privileges, and immunities as may be provided by the Constitution and the laws of the State of Texas. No separate legal entity is created by this Agreement.

6.5 Amendment. The terms and conditions of this Agreement may be amended upon written mutual consent of each governing body.

6.6 Hold Harmless and Immunity. To the extent permitted by the Constitution and the laws of the State of Texas, and subject to the limitations as to liability and damages in the Texas Tort Claims Act, and without waiving its governmental immunity, each Party agrees to hold harmless each other, its governing board, officers, agents, and employees for any liability, loss, damages, claims, or causes of action caused or asserted to have been caused directly or indirectly by any other party to this Agreement or any of its officers, agents, or employees, or as the result of its performance under this Agreement. Each Party remains solely responsible for any legal defense and any civil liability due to the acts or omission of each Party's employees. Notwithstanding any other terms in this Agreement, nothing is construed as a waiver of any legal defense or remedy of any nature to any claim against a Party. Notwithstanding any other provision of this Agreement, this Agreement shall be expressly subject to the governmental immunity of the Parties, Title 5 of Texas Civil Practice and Remedies Code, and all applicable federal and state law.

6.7 Source of Payment and Current Funds.

- a.** Each Party paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying Party or from funds otherwise lawfully available to the Party for use in the payment of the Party's obligations as set forth in this Agreement. If any Party fails to budget and appropriate sufficient funds or make available sufficient funds to pay for any of the Party's obligations, responsibilities, and consideration contained in this Agreement, it is agreed that such failure is a breach.
- b.** Bryan and College Station each covenant and represent to the other that such City has sufficient current revenue or other funding reasonably available to satisfy such City's obligations with respect to its obligations pursuant to this Agreement.

6.8 Entire Agreement. With the exception of the Biocorridor ILA, as amended, this Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements, arrangements, and understandings between the Parties relating to the subject matter of this Agreement. No oral understandings, statements, promises, or inducements contrary to the terms of this agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any Party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

6.9 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.10 Venue and Choice of Law. 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, and venue shall be in any court having jurisdiction in Brazos County.

6.11 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 they have authorization to sign on behalf of their respective governmental bodies.

6.12 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 either Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused, unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to, waiver of, or excuse of any other different or subsequent breach.

6.13 Savings Clause. If one or more provisions or terms contained in this Agreement shall, for any reason, be held invalid, illegal, or otherwise unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision or term hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or term had never been contained herein.

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

6.15 Effective Date. This Agreement is effective when signed by the last Party signing, thereby making the Agreement fully executed.

6.16 Notice. Any official notices by one Party to another must be in writing and sent by certified mail return receipt requested, and properly addressed to the respective Parties as stated below. Any other day-to-day communication by the Parties' staff may be by any other means of sufficient communication.

COLLEGE STATION

City Manager
City of College Station
P.O. Box 9960
College Station, Texas 77842

BRYAN

City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

Exhibit List:

- A.** Wastewater Main Project
- B.** Valley Park Sewer Area
- C.** East Side Sewer Area

[signature page follows]

EXECUTED this _____ day of _____, 2024 by City
of College Station.

CITY OF COLLEGE STATION

By:

Mayor

ATTEST:

City Secretary

APPROVED

City Manager

City Attorney

Assistant City Manager/CFO

EXECUTED this _____ day of _____, 2024 by **City of Bryan.**

CITY OF BRYAN

By:

Bobby Gutierrez, Mayor

ATTEST:

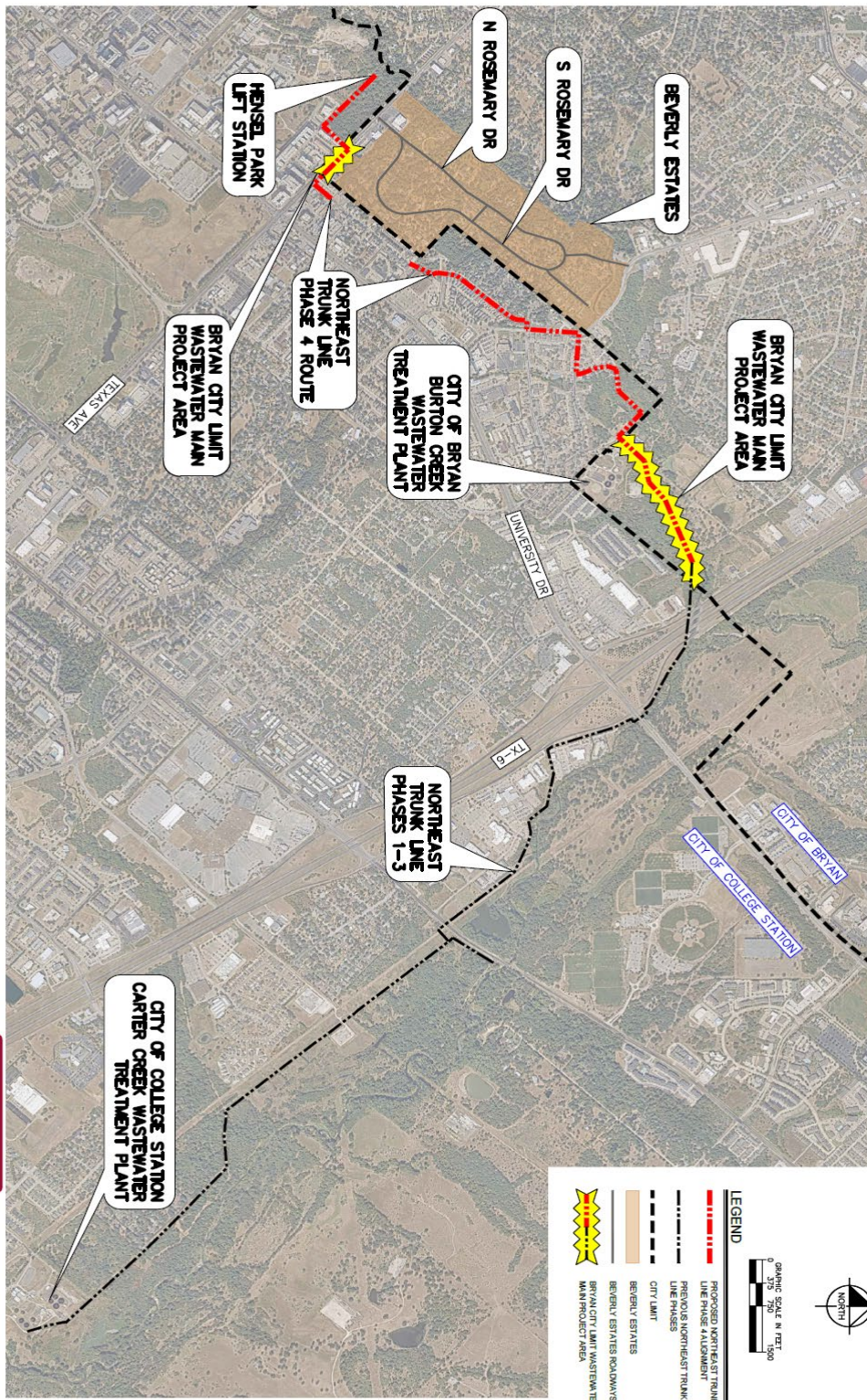
APPROVED AS TO FORM:

Melissa Brunner, City Secretary

Thomas A. Leeper, City Attorney

EXHIBIT A WASTEWATER MAIN PROJECT

EXHIBIT A – BRYAN CITY LIMIT WASTEWATER MAIN PROJECT AREA



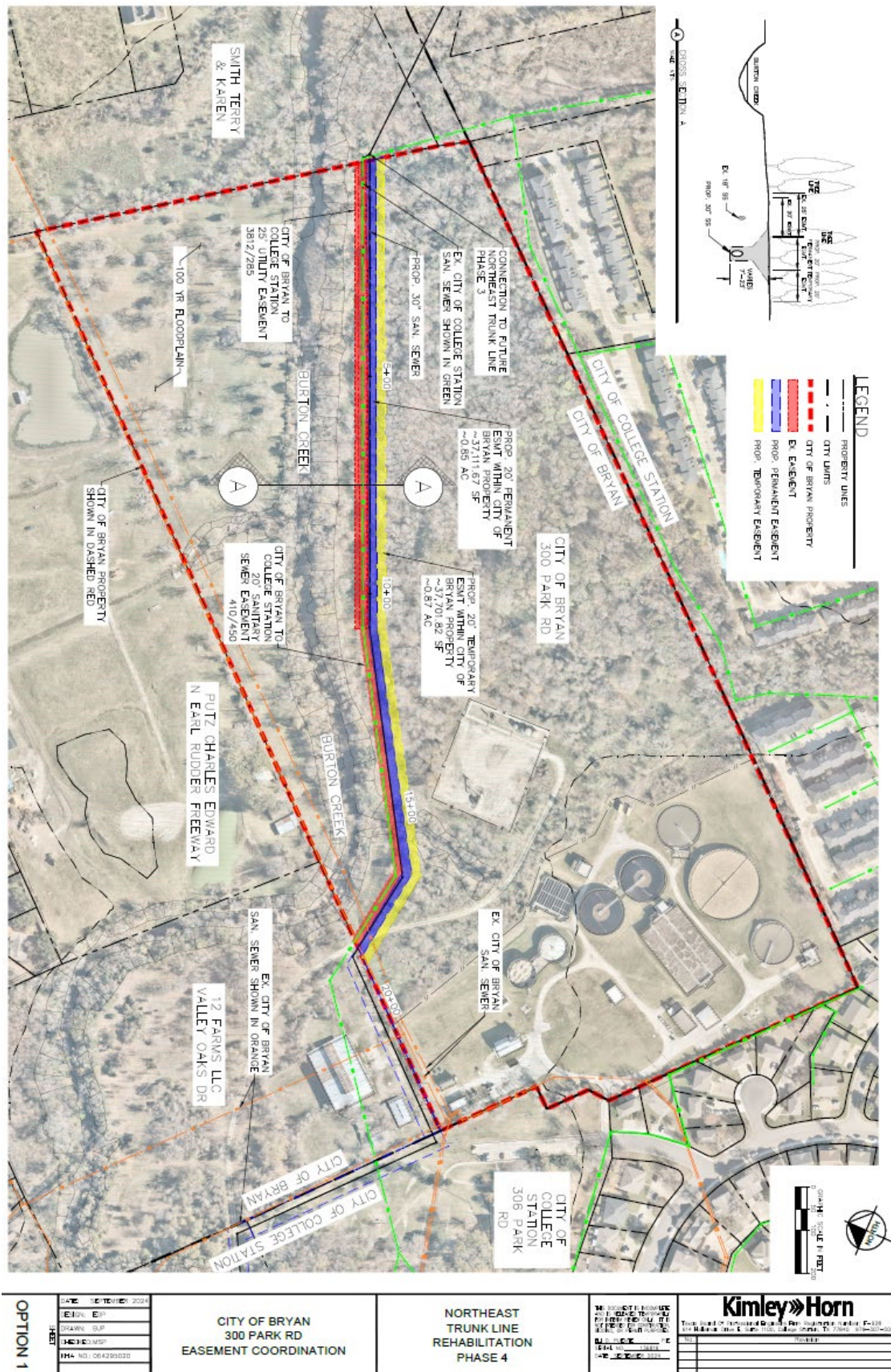


EXHIBIT B VALLEY PARK SEWER AREA

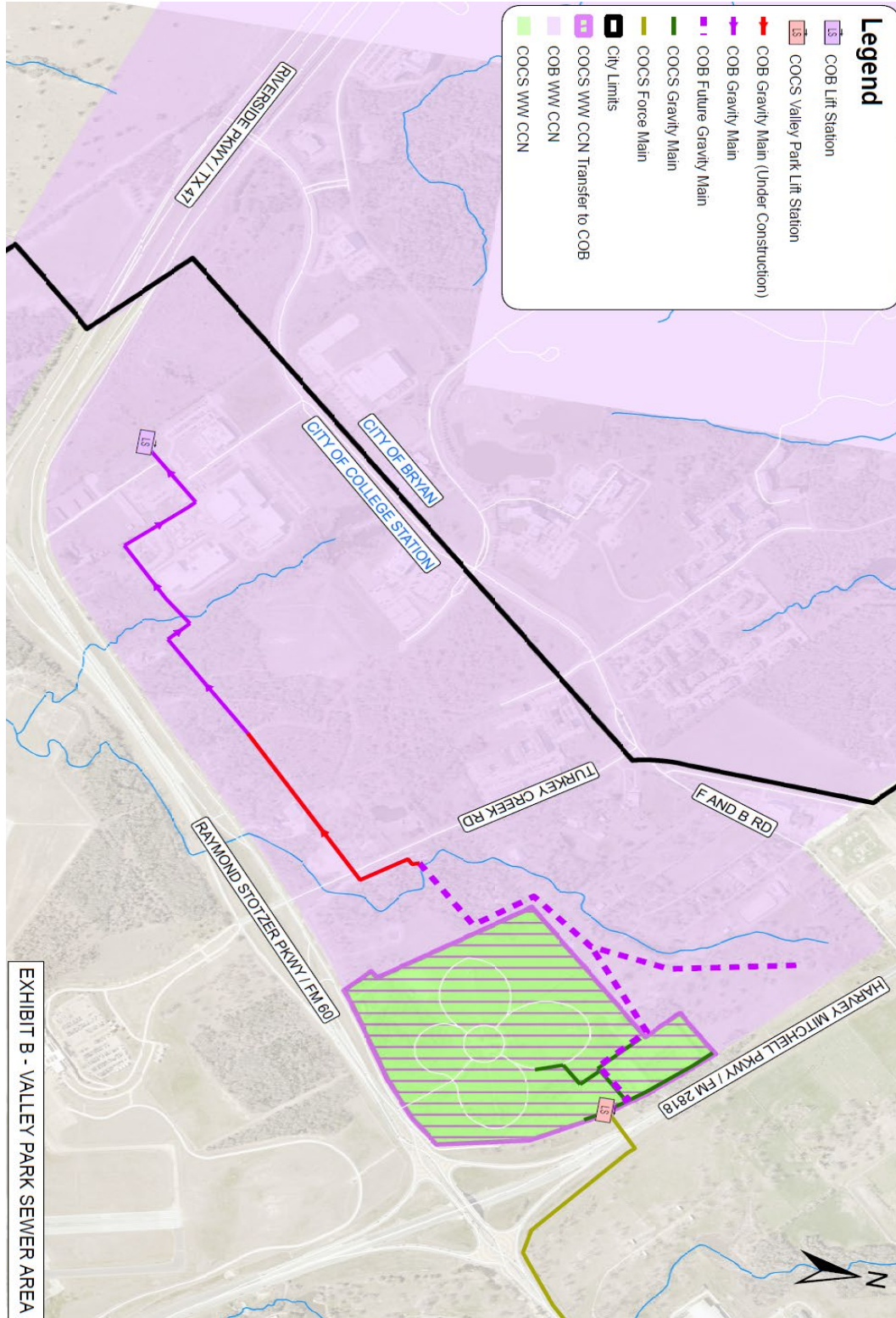
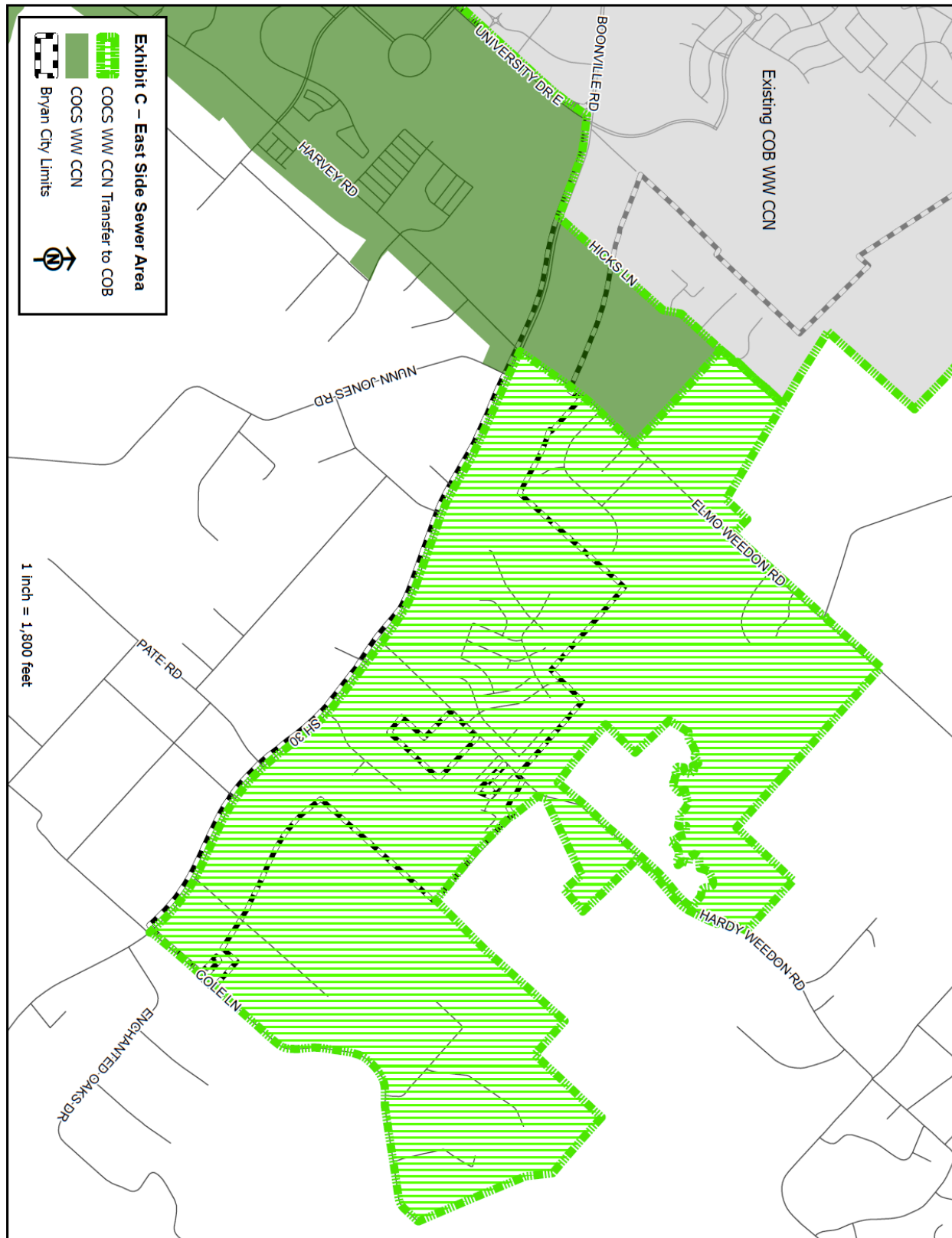


EXHIBIT C EAST SIDE SEWER AREA



November 14, 2024
Item No. 10.5.
NETL Ph 4 Design Change Order 2

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on Change Order No. 2 for the Northeast Sewer Trunk Line Ph IV Project design contract with Kimley-Horn and Associates, Inc., not to exceed \$1,030,400.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: The City of College Station approved a contract in 2022 with Kimley-Horn and Associates, Inc. for the design of the Northeast Sewer Trunk Line Phase IV. The design will include installation of a sewer trunk line which will serve areas of the community including the University Corridor and Northgate. This project will allow for continued development in this area which could soon be limited by existing sewer capacity. The contract amendment allows for the design of the lift station in order to reroute the sewer trunk line to Cooner Street/Chimney Hill instead of through the Beverley Estates neighborhood in Bryan.

Budget & Financial Summary: A budget of \$26,200,000 is included in the Wastewater Capital Improvement Projects Fund for this project. A total of \$1,587,941 has been spent or committed to date, leaving a balance of \$24,612,059 for this change order and future costs.

Attachments:

1. NETL Ph 4 Design Change Order #2_DocuSign_22300588_CO2_VendorSigned

CHANGE ORDER NO. 2		DATE: March 14, 2024	Contract No. 22300588			
P.O.#- 22204717		PROJECT: NE SEWER TRUNKLINE PH IV DESIGN				
OWNER: City of College Station P.O. Box 9960 College Station, Texas 77842		CONTRACTOR: Kimley-Horn and Associates, Inc. 2800 S. Texas Ave, Ste 201 Ph: 979-775-9595 Bryan, Texas 77802 Fax: N/A				
PURPOSE OF THIS CHANGE ORDER:						
A. This change order is for additional design services neccesitated by the route change of the proposed sewer trunkline through the Chimney Hill area instead of Beverly Estates. The significant cost increase to the design is due to the added cost of designing the lift station required by this route.						
ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	PREVIOUS QUANTITY	REVISED QUANTITY	ADDED COST
CO2	EA	Scope Amendment No. 2 Design Fees	\$1.00	1458500	2488900	\$1,030,400.00
					TOTAL	\$1,030,400.00
THE NET AFFECT OF THIS CHANGE ORDER IS 82%.						
LINE 2 SEWER (SCWOC-6590)			\$541,498.00			
LINE 3 SEWER (SCWOC-6590)			\$488,902.00			
TOTAL CHANGE ORDER			\$1,030,400.00			
ORIGINAL CONTRACT AMOUNT			\$1,371,000.00			
CHANGE ORDER NO. 1			\$87,500.00	6% CHANGE		
CHANGE ORDER NO. 2			\$1,030,400.00	75% CHANGE		
REVISED CONTRACT AMOUNT			\$2,488,900.00	82% TOTAL CHANGE		
SUBSTANTIAL COMPLETION DATE			6/4/2025			
APPROVED						
 A/E CONTRACTOR		11/8/2024 Date	ASST CITY MGR - CFO Date			
 PROJECT MANAGER		11/8/2024 Date	CITY ATTORNEY Date			
 DEPARTMENT DIRECTOR		11/8/2024 Date	CITY MANAGER Date			

AMENDMENT NUMBER 2 TO THE AGREEMENT BETWEEN CLIENT AND KIMLEY-HORN AND ASSOCIATES, INC.

This is Amendment number 2 dated March 14, 2024 to the agreement between City of College Station ("Client") and Kimley-Horn and Associates, Inc. ("Consultant") dated July 28, 2022 ("the Agreement") concerning Northeast Sewer Trunkline Ph IV Design Contract (the "Project").

The Consultant has entered into the Agreement with Client for the furnishing of professional services, and the parties now desire to amend the Agreement.

The Agreement is amended to include services to be performed by Consultant for compensation as set forth below in accordance with the terms of the Agreement, which are incorporated by reference.

This Amendment is for additional professional services determined to be needed during preliminary sanitary sewer trunk line design, public involvement, and jurisdictional coordination phases. The scope of the project has changed to conveying sanitary sewer flow from the Hensel Park Lift Station to the upstream end of Northeast Sanitary Sewer – Phase 3, on the west side of SH 6, via sanitary sewer force main and gravity sewer. The new alignment will route through Winter Park, Autumn Circle, Tarrow Street, Hearthstone Circle, Chimney Hill Drive, Texas Avenue, and Hensel Street. Services involve design of approximately 1,660 linear feet of 30-inch sanitary sewer gravity line, 6,340 linear feet of 24-inch sanitary sewer gravity line, 2,930 linear feet of 18-inch sanitary sewer force main, and one (1) 6.7 million gallon per day (MGD) sanitary sewer lift station. The proposed 18-inch sanitary sewer force main will convey flow from the proposed sanitary sewer lift station at Hensel Park to an existing 24-inch sanitary sewer along Cooner Street. The proposed 24-inch sanitary sewer will connect to the existing 24-inch sanitary sewer at the east end of Cooner street and route towards Winter Park.

Consultant will perform the following services based on direction provided by City. Additional scope detailed below will be performed in accordance with the original Project scope. Reference **Attachment A** Scoping Exhibit.

Task 1: Project Management

- Prepare and attend five (5) additional project status meetings.
- Perform additional project administration.
- Perform additional Quality Assurance/Quality Control (QA/QC)
 - o Perform quality control reviews for the following submittals:
 - Design Survey
 - Preliminary Sanitary Sewer Trunk Line Design (50%)
 - Lift Station Design (50%, 90%)
 - Force Main Design (50%, 90%)

Task 2: Preliminary Investigation

- Perform additional data collection and record research.
- Perform additional data review with the City.

Task 3: Design Survey

- For Setting horizontal and vertical control based on the City of College Station Control Monumentation.
- Chimney Hill Gravity Alignment Survey limits include the area from Cooner Street to Chimney Hill Drive, along Chimney Hill Drive to Spring Loop, along Spring Loop to Tarrow Street, along Tarrow Street to Autumn Circle, along Autumn Circle to Winter Park, along Winter Park for approximately 1500 lf to the southwest line of Parcel 38996, along the southwest line of Parcel 38996 to the south corner, along the southeast line of Parcel

38996 to the existing city of College Station sewer easement, along the existing sewer easement to end of line for a total length of approximately 8200 linear feet.

- Sewer Force Main Survey extents is approximately 2,600 linear feet along with 450 linear feet along Cooner Street to tie to the existing gravity main.

Task 4: Easement Documents – No Change in Scope

Task 5: Subsurface Utility Engineering

- Perform additional Level A – vacuum excavation of existing utility lines up to four (4) locations (up to 12 feet below existing grade).
- Perform Level B – Two-dimensional horizontal information obtained through application and interpretation of non-destructive surface geophysical methods. Also known as “designating,” this level incorporate Level C information and provides horizontal positioning of subsurface utilities to within approximately 1.0 foot. Designation extents will be along the proposed sanitary sewer force main corridor along the east side of Texas Avenue.
 - o Level C – Surveyed data depicting visible above-ground features supplemented with Level D information.
 - o Level D – information obtained from existing utility records.
 - o

Task 6: Geotechnical Investigation – No Change in Scope

Task 7: Preliminary Sanitary Sewer Trunk Line Design (50%)

- Prepare 50% design submittal based upon new alignment.

Task 8: Jurisdictional Coordination

- Perform additional coordination with Texas A&M University and Texas Department of Transportation (TxDOT).

Task 9: Final Sanitary Sewer Trunk Line Design – No additional Scope

Task 10: Erosion Control Plan

- Perform additional plan preparation for sanitary sewer force main and sanitary sewer lift station.

Task 11: Environmental Services

- Perform additional environmental services for sanitary sewer force main and sanitary sewer lift station.

Task 12: Tree Protection Plan

- Perform additional plan preparation for sanitary sewer force main and sanitary sewer lift station.

Task 13: Traffic Control

- Perform additional plan preparation for sanitary sewer force main and sanitary sewer lift station.

Task 14: Public Involvement

- Prepare and attend additional public meetings with affected property owners along new alignment and Texas A&M University.
- Prepare additional exhibits, handouts, presentation slides, and meeting notes.

Task 15: Bidding Phase Services – No additional Scope

Task 16: Control Staking – No additional Scope

Task 17: Construction Phase Services

- Perform additional construction phase services for sanitary sewer force main and sanitary sewer lift station.

Task 18: Construction Materials Testing Services

- Perform additional construction materials testing for sanitary sewer lift station.

Task 19: As-built Survey – No additional Scope**Task 20: Record Drawings**

- Prepare record drawings for sanitary sewer force main and sanitary sewer lift station.

Task 21: Tree Inventory – No additional Scope**Task 22: Further Investigation Directed by the City – No additional Scope****Task 23: Lift Station Design**

- Preliminary Design
 - o Lift Station
 - Site selection
 - Site access
 - Site screening and landscaping
 - Preliminary site layout (up to three (3) site layouts options will be provided)
 - Design calculations
 - Pump head calculations
 - Cycle time calculations
 - Hydraulic grade line calculations
 - Electrical needs
 - Instrumentation, controls, and SCADA
 - Emergency backup power options
 - Ventilation and odor control
 - Metering options (force main)
 - Site security
 - Safety considerations
 - Evaluation of reusing equipment from existing Market Center lift station (including pumps and generator)
 - Geotechnical considerations
 - Opinion of probable construction cost
 - o Prepare and submit preliminary (50%) construction plan sheets for the proposed lift station. A list of specifications by section number and title will be submitted with the preliminary 60% submittal. Kimley-Horn will identify any specifications requiring a “delegated design”.
 - Plan sheets will consist of the following:
 - Cover
 - General Notes
 - Project Horizontal and Vertical Control
 - Grading Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Electrical site plan
 - Electrical control schematics

- o Prepare and submit final (90% and 100% level) Contract Documents for the proposed lift station. Contract Documents shall include construction plans, front-end documents, and technical specifications.
 - Plan sheets will consist of the following:
 - Cover
 - General Notes
 - Project Horizontal and Vertical Control
 - Site Plan
 - Grading and Erosion Control Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Structural details (anticipate generator pad and electrical rack/canopy)
 - Odor control details and notes
 - Electrical site plan with arc flash analysis
 - One-line diagram, load analysis
 - Generator sizing calculations
 - Conduit schedule
 - Electrical control schematics
 - Electrical details and notes
 - Existing lift station demolition plan
- o Preparation of an opinion of probable construction cost (OPCC) at 60%, 90%, and 100% design.
- o Incorporate the City's 60% and 90% comments.
- o TCEQ Coordination – Prepare correspondence for submittal to the TCEQ. Kimley-Horn will receive and address up to one (1) round of ordinary and reasonable comments from the TCEQ.

Task 24: Force Main Design

- Prepare and submit preliminary (60% level) 24"x36" construction plan sheets for the proposed lift station. A list of specifications by section number and title will be submitted with the preliminary 60% submittal. Kimley-Horn will identify any specifications requiring a "delegated design".
 - o Plan sheets will consist of the following:
 - General Notes
 - Project Horizontal and Vertical Control
 - Site Plan
 - Grading Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Electrical site plan
 - Electrical control schematics
- Prepare and submit final (90% and 100% level) Contract Documents for the proposed lift station. Contract Documents shall include construction plans, front-end documents, and technical specifications.
 - Plan sheets will consist of the following:
 - Cover
 - General Notes
 - Project Horizontal and Vertical Control
 - Site Plan
 - Grading and Erosion Control Plan
 - Access Road
 - Mechanical Plan and Section
 - Construction details
 - Structural details (anticipate generator pad and electrical rack/canopy)

- Odor control details and notes
- Electrical site plan with arc flash analysis
- One-line diagram, load analysis, and fault current analysis
- Generator sizing calculations
- Conduit schedule
- Electrical control schematics
- Electrical details and notes
- Preparation of an opinion of probable construction cost (OPCC) at 60%, 90%, and 100% design.
- Incorporate the City's 60% and 90% comments.
- TCEQ Coordination – Prepare correspondence for submittal to the TCEQ. Kimley-Horn will receive and address up to one (1) round of ordinary and reasonable comments from the TCEQ.

We will provide our services as expeditiously as practicable with the goal of meeting the following schedule and presenting 100% Design Plans for the Sanitary Sewer Gravity Main, Sanitary Sewer Force Main, and Sanitary Sewer Lift Station to City Staff by March 14, 2025:

Task 3: Design Survey	<u>16 Weeks</u> from 2/13/2024
Task 7: Preliminary Sanitary Sewer Trunk Line Design (50%)	<u>28 Weeks</u> from 2/13/2024
Task 23: Lift Station Design	<u>28 Weeks</u> for 50%, <u>12 Weeks</u> for 90%, <u>8 Weeks</u> for 100%
Task 24: Force Main Design	<u>28 Weeks</u> for 50%, <u>12 Weeks</u> for 90%, <u>8 Weeks</u> for 100%

For the services set forth above, Client shall pay Consultant the following compensation noted under proposed CO #2 in **Attachment B**.

CLIENT:

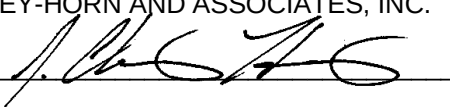
By: _____

Title: _____

Date: _____

CONSULTANT:

KIMLEY-HORN AND ASSOCIATES, INC.

By:  _____

Title: Senior Associate

Date: 03/14/2024

4 - Chimney Hill Atmospheric
City Sewer Trunk Line V Phase 2-4 PEI (Public) CAD Sheets 0203009
All of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

LEGEND

- PROPERTY LINE
- CITY LIMIT
- EXISTING OVERHEAD POWER
- EXISTING BRYAN SANITARY SEWER MAIN
- EXISTING COLLEGE STATION SANITARY SEWER MAIN
- EXISTING COLLEGE STATION SANITARY SEWER FORCE MAIN
- EXISTING SANITARY SEWER MAIN TO BE ABANDONED

CO#1 - DESIGN
SURVEY
COMPLETE

ORIGINAL
CONTRACT -
DESIGN SURVEY
COMPLETE

PROP. CO#2 -
- ADD JURISDICTIONAL COORDINATION
- ADD EROSION CONTROL
- ADD ENVIRONMENTAL
- ADD TREE PROTECTION
- ADD TRAFFIC CONTROL
- ADD PUBLIC INVOLVMENT
- ADD BIDDING PHASE SERVICES
- ADD CONSTRUCTION PHASE SERV.
- ADD RECORD DRAWINGS
- ADD LIFT STATION DESIGN
- ADD FORCE MAIN DESIGN

PROP. CO#2 - ADDITIONAL
SUE LEVEL A AND LEVEL B

ORIGINAL
CONTRACT -
DESIGN SURVEY
COMPLETE
(MANHOLES
ONLY FOR SLIP
LINING)

PROP. CO#2 -
ADDITIONAL DESIGN
SURVEY / PRELIMINARY
INVESTIGATION

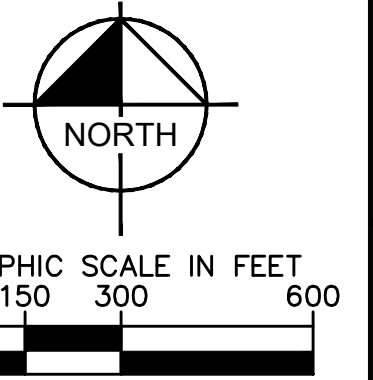
PROP. CO#2 -
ADDITIONAL
DESIGN SURVEY

ORIGINAL
CONTRACT -
DESIGN SURVEY
IN PROGRESS

ORIGINAL
CONTRACT - (8)
SUE LEVEL A'S
REPOSITIONED
FOR CHIMNEY
HILL ALIGNMENT
(TYP.)

ORIGINAL
CONTRACT - (14)
GEOTECHNICAL
INVESTIGATIONS
REPOSITIONED
FOR CHIMNEY
HILL ALIGNMENT
(TYP.)

- = PROP. GEOTECHNICAL BORE
- = PROP. SUE LEVEL A
- = PROP. ADDITIONAL SUE
LEVEL A AND LEVEL B AREAS



Kimley»Horn

Texas Board of Professional Engineers Firm Registration Number: F-938
2800 South Texas Ave., Suite 201, Bryan, TX 77802, 979-307-5043

THIS DOCUMENT IS INCOMPLETE
AND IS RELEASED TEMPORARILY
FOR INTERIM REVIEW ONLY. IT IS
NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
MARTY S. PARIS P.E.
SERIAL NO. 84766
DATE: MARCH 2024

NORTHEAST
TRUNK LINE
REHABILITATION

PHASE 4
AMENDMENT #2
SCOPING EXHIBIT

DATE: MARCH 2024
DESIGN: EDP
DRAWN: BJP
CHECKED: WSP
KHA NO: 064295020

EXHIBIT

A

Phase 4 - Chimney Hill Dr Alignment (8,000 LF of 30"/24" Sanitary Sewer Line, 3,000 LF of 18" Force Main, and 4,500 LF of 18"/12" Replacement - Including Trenchless Specialist

Task	Original Contract 7/28/2022	CO #1 7/6/2023	Revised Contract Amount with CO #1	Proposed Amendment Number 2 3/14/2024	Revised Contract Amount with Amendment Number 2
1 Project Management	\$ 67,300.00		\$ 67,300.00	\$ 17,600.00	\$ 84,900.00
2 Preliminary Investigation	\$ 46,100.00		\$ 46,100.00	\$ 20,000.00	\$ 66,100.00
3 Design Survey	\$ 163,600.00	\$ 6,400.00	\$ 170,000.00	\$ 78,000.00	\$ 248,000.00
4 Easement Documents	\$ 53,700.00		\$ 53,700.00		\$ 53,700.00
5 Subsurface Utility Engineering	\$ 24,500.00		\$ 24,500.00	\$ 47,500.00	\$ 72,000.00
6 Geotechnical Investigation	\$ 37,600.00	\$ 1,600.00	\$ 39,200.00	\$ 9,000.00	\$ 48,200.00
7 Preliminary Sanitary Sewer Trunk Line Design	\$ 317,900.00	\$ 30,000.00	\$ 347,900.00	\$ (36,400.00)	\$ 311,500.00
8 Jurisdictional Coordination	\$ 21,300.00		\$ 21,300.00	\$ 6,800.00	\$ 28,100.00
9 Final Sanitary Sewer Trunk Line Design	\$ 246,700.00		\$ 246,700.00	\$ (42,600.00)	\$ 204,100.00
10 Erosion Control Plan	\$ 27,100.00		\$ 27,100.00	\$ 12,500.00	\$ 39,600.00
11 Environmental Services	\$ 23,200.00		\$ 23,200.00	\$ 13,200.00	\$ 36,400.00
12 Tree Protection Plan	\$ 25,400.00		\$ 25,400.00	\$ 12,200.00	\$ 37,600.00
13 Traffic Control	\$ 12,600.00		\$ 12,600.00	\$ 10,200.00	\$ 22,800.00
14 Public Involvement	\$ 40,600.00	\$ 15,000.00	\$ 55,600.00	\$ 5,400.00	\$ 61,000.00
15 Bidding Phase Services	\$ 30,900.00		\$ 30,900.00	\$ (1,000.00)	\$ 29,900.00
16 Control Staking	\$ 4,300.00		\$ 4,300.00		\$ 4,300.00
17 Construction Phase Services	\$ 114,400.00		\$ 114,400.00	\$ 41,900.00	\$ 156,300.00
18 Construction Material Testing Services	\$ 54,000.00		\$ 54,000.00	\$ 3,000.00	\$ 57,000.00
19 As-built Survey	\$ 12,200.00		\$ 12,200.00		\$ 12,200.00
20 Record Drawings	\$ 47,600.00		\$ 47,600.00	\$ 8,500.00	\$ 56,100.00
21 Tree Inventory		\$ 17,000.00	\$ 17,000.00		\$ 17,000.00
22 Further Investigation Directed by the City		\$ 17,500.00	\$ 17,500.00	\$ (17,500.00)	\$ -
23 Lift Station Design				\$ 688,800.00	\$ 688,800.00
24 Force Main Design				\$ 153,300.00	\$ 153,300.00
Contract Totals =	\$ 1,371,000.00	\$ 87,500.00	\$ 1,458,500.00	\$ 1,030,400.00	\$ 2,488,900.00

ATTACHMENT B

**Amendment 2 Fee Summary
Northeast Wastewater Trunk Line - Phase 4
City of College Station**

Phase 4 - Chimney Hill Dr Alignment (8,000 LF of 30"/24" Sanitary Sewer Line, 3,000 LF of 18" Force Main, and 4,500 LF of 18"/12" Replacement - Including Trenchless Specialist												
Task	Labor Hours					Labor Costs					ODC's and Subs	Subtotal
	Senior Professional	Professional	Analyst	Support Staff	Total	Senior Professional	Professional	Analyst	Support Staff	Total		
1 Project Management	10	42	12	12	76	\$ 4,000	\$ 9,600	\$ 1,900	\$ 1,300	\$16,800	\$800	\$17,600
2 Preliminary Investigation	4	36	59		99	\$ 1,600	\$ 8,200	\$ 9,300		\$19,100	\$900	\$20,000
3 Design Survey	12	124	12		148		\$ 2,800	\$ 21,200		\$24,000	\$54,000	\$78,000
4 Easement Documents												
5 Subsurface Utility Engineering											\$47,500	\$47,500
6 Geotechnical Investigation											\$9,000	\$9,000
7 Preliminary Sanitary Sewer Trunk Line Design	-12	-40	-140		-192	\$ (4,800)	\$ (9,100)	\$ (20,800)		(\$34,700)	(\$1,700)	(\$36,400)
8 Jurisdictional Coordination	4	9	17		30	\$ 1,600	\$ 2,100	\$ 2,700		\$6,400	\$400	\$6,800
9 Final Sanitary Sewer Trunk Line Design	-10	-42	-184		-236	\$ (4,000)	\$ (9,600)	\$ (27,100)		(\$40,700)	(\$1,900)	(\$42,600)
10 Erosion Control Plan		12	62		74		\$ 2,800	\$ 9,100		\$11,900	\$600	\$12,500
11 Environmental Services		30	40		70		\$ 6,900	\$ 5,700		\$12,600	\$600	\$13,200
12 Tree Protection Plan	2	10	58		70	\$ 800	\$ 2,300	\$ 8,500		\$11,600	\$600	\$12,200
13 Traffic Control	2	14	40		56	\$ 800	\$ 3,200	\$ 5,700		\$9,700	\$500	\$10,200
14 Public Involvement	2	8	16		26	\$ 800	\$ 1,900	\$ 2,500		\$5,200	\$200	\$5,400
15 Bidding Phase Services		-4			-4		\$ (900)			(\$900)	(\$100)	(\$1,000)
16 Control Staking												
17 Construction Phase Services	15	80	100		195	\$ 6,000	\$ 18,200	\$ 15,700		\$39,900	\$2,000	\$41,900
18 Construction Material Testing Services											\$3,000	\$3,000
19 As-built Survey												
20 Record Drawings		12	30		42		\$ 2,700	\$ 4,600		\$7,300	\$1,200	\$8,500
21 Tree Inventory												
22 Further Investigation Directed by the City		-38	-51				\$ (8,700)	\$ (8,000)		(\$16,700)	(\$800)	(\$17,500)
23 Lift Station Design	240	1,048	2,117		3,405	\$ 95,100	\$ 238,400	\$ 320,200		\$653,700	\$35,100	\$688,800
24 Force Main Design	82	192	444		718	\$ 32,500	\$ 43,700	\$ 68,200		\$144,400	\$8,900	\$153,300
Contract Totals =	351	1,493	2,632	12	4,577	\$ 134,400	\$ 314,500	\$ 419,400	\$ 1,300	\$869,600	\$160,800	\$1,030,400

Amendment 2 Fee Summary
Northeast Wastewater Trunk Line - Phase 4
City of College Station

Phase 4 - Chimney Hill Dr Alignment (8,000 LF of 30"/24" Sanitary Sewer Line, 3,000 LF of 18" Force Main, and 4,500 LF of 18"/12" Replacement - Including Trenchless Specialist													
Task		Labor Hours					Labor Costs					ODC's and Subs	Subtotal
		Senior Professional	Professional	Analyst	Support Staff	Total	Senior Professional	Professional	Analyst	Support Staff	Total		
1	Project Management	10	42	12	12	76	\$ 4,000	\$ 9,600	\$ 1,900	\$ 1,300	\$16,800	\$800	\$17,600
2	Preliminary Investigation	4	36	59		99	\$ 1,600	\$ 8,200	\$ 9,300		\$19,100	\$900	\$20,000
3	Design Survey	12	124	12		148		\$ 2,800	\$ 21,200		\$24,000	\$54,000	\$78,000
4	Easement Documents												
5	Subsurface Utility Engineering											\$47,500	\$47,500
6	Geotechnical Investigation											\$9,000	\$9,000
7	Preliminary Sanitary Sewer Trunk Line Design	-12	-40	-140		-192	\$ (4,800)	\$ (9,100)	\$ (20,800)		(\$34,700)	(\$1,700)	(\$36,400)
8	Jurisdictional Coordination	4	9	17		30	\$ 1,600	\$ 2,100	\$ 2,700		\$6,400	\$400	\$6,800
9	Final Sanitary Sewer Trunk Line Design	-10	-42	-184		-236	\$ (4,000)	\$ (9,600)	\$ (27,100)		(\$40,700)	(\$1,900)	(\$42,600)
10	Erosion Control Plan		12	62		74		\$ 2,800	\$ 9,100		\$11,900	\$600	\$12,500
11	Environmental Services		30	40		70		\$ 6,900	\$ 5,700		\$12,600	\$600	\$13,200
12	Tree Protection Plan	2	10	58		70	\$ 800	\$ 2,300	\$ 8,500		\$11,600	\$600	\$12,200
13	Traffic Control	2	14	40		56	\$ 800	\$ 3,200	\$ 5,700		\$9,700	\$500	\$10,200
14	Public Involvement	2	8	16		26	\$ 800	\$ 1,900	\$ 2,500		\$5,200	\$200	\$5,400
15	Bidding Phase Services		-4			-4		\$ (900)			(\$900)	(\$100)	(\$1,000)
16	Control Staking												
17	Construction Phase Services	15	80	100		195	\$ 6,000	\$ 18,200	\$ 15,700		\$39,900	\$2,000	\$41,900
18	Construction Material Testing Services											\$3,000	\$3,000
19	As-built Survey												
20	Record Drawings		12	30		42		\$ 2,700	\$ 4,600		\$7,300	\$1,200	\$8,500
21	Tree Inventory												
22	Further Investigation Directed by the City		-38	-51				\$ (8,700)	\$ (8,000)		(\$16,700)	(\$800)	(\$17,500)
23	Lift Station Design	240	1,048	2,117		3,405	\$ 95,100	\$ 238,400	\$ 320,200		\$653,700	\$35,100	\$688,800
24	Force Main Design	82	192	444		718	\$ 32,500	\$ 43,700	\$ 68,200		\$144,400	\$8,900	\$153,300
Contract Totals =		351	1,493	2,632	12	4,577	\$ 134,400	\$ 314,500	\$ 419,400	\$ 1,300	\$869,600	\$160,800	\$1,030,400

November 14, 2024
Item No. 11.1.
Items of Community Interest and Council Calendar

Sponsor:

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 the days of MM DD thru MM DD:
DD – EVENT

Budget & Financial Summary: None

Attachments:

None

November 14, 2024
Item No. 12.1.

Sponsor:

Reviewed By CBC:

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:

Recommendation(s):

Summary:

Budget & Financial Summary:

Attachments:

None